

05-103

VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF ACCOUNTABILITY
OFFICE OF SPECIAL PROGRAMS



CASE CLOSURE REPORT

School Division

Name of Parent(s)

Director
Office of Programs for
Exceptional Children

Name of Child

_____, Esquire
Counsel Representing LEA

None
Counsel Representing Parent/Child

Alfred Bernard III, Esquire
Hearing Officer

The Parent
Party Initiating Hearing

HEARING OFFICER'S DETERMINATION OF ISSUES:

1. Was the Student properly evaluated and found ineligible for special education services, in February, 2005?
2. Were that end-of-the-year grades of the Student properly determined?

HEARING OFFICER'S DECISION AND OUTCOME OF HEARING:

I decided the LEA had properly evaluated the Student and found her ineligible for special education services; and,

I decided there was no evidence that the Student's year-end grades had been improperly determined by the LEA.

I ordered that the 504 accommodations remain in place for the Student in accordance with established review procedures.

Signature, Hearing Officer
Alfred Bernard III, Esquire
740 Duke Street, 5th Floor
Norfolk, VA 23510
(Tel) (757) 625-2550
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September 6 2005
Date

c. Parent(s)
School System and Counsel
Virginia Department of Education

VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF ACCOUNTABILITY
OFFICE OF SPECIAL PROGRAMS



Public Schools
School Division

Name of Parents ("Parent")

Special Education Coordinator

Name of Student ("Student")

Counsel Representing LEA

None
Counsel Representing Student

Alfred Bernard III
Hearing Officer

Parent
Party Initiating Hearing

DECISION OF HEARING OFFICER

This matter came on a request dated June 8, 2005, from the Parent for an impartial hearing under the Individuals with Disabilities Education Act ("IDEA"), asserting that the Student, who attends the elementary school in , was impacted by a disability that entitled her to receive special education services under IDEA. An evaluation had been performed through a number of tests administered by the LEA to the Student in February 2005; the result of those tests was that the Student was not entitled to special education services but that she might be helped by several 504 accommodations, which had been implemented several months before. The Parent has in essence challenged that evaluation, and there was a secondary concern by the Parent that some test scores had been omitted from her year-end averages. By letter dated June 13, 2005, from the Public Schools , Director of the Office of Programs for Exceptional Children, I was appointed Hearing Officer in this matter.

three years. She began her testimony by stating that she “disagreed with the concept that [the Student] is an average student. I think that the testing that they’ve done with her, her intelligence and her grades don’t match up.” Ms. further stated that the Student “seems to have difficulty holding concepts, things I have taught and re-taught and re-taught.” She described the Parent’s efforts as not “looking, you know, to have [the Student] achieve what she can’t. She’s looking to find an academic setting that is going to be the most comfortable for [the Student] to learn in.” (1st Hearing Transcript, P. 16.)

Ms. also said that “I think the problem with the public school setting for [the Student] is that if you need the instruction repeated or if you need more repetition in the process, that’s not always provided because the group has to keep moving along” (1st T., P. 17.) And then she testified that “I think the school system has provided adequate testing for [the Student], but the problem that we’re dealing with here is she doesn’t fit into the category of a special ed child because there’s not a high enough discrepancy between the IQ and the reading level.” (P. 18.)

Towards the end of her direct testimony, Ms. stated that “I think the school system needs to provide something in-between special education, you know, the average child, and the gifted program because there are kids who are capable of a lot more, but they get labeled as average, and, I think, you know, any parent wants what’s best for their child, and I don’t think that school system, the way it’s designed now, a normal classroom is going to be the place that she’s going to thrive.” (P. 19.)

On cross-examination, Ms. described her educational qualifications as having “a bachelor’s degree in elementary education with a kindergarten endorsement and a math concentration. I’m certified K through 8, and it’s a Texas certification, and in Texas, it’s a

life certificate. I graduated from University of Texas in 1982.” (P. 24.) She also responded on cross-examination that she has no certification in special education and that she is not qualified to do any type of psychological testing for special education. And she described the Student’s end of the year grades as B’s and C’s.

2. The Student

The Student is 9 years, six months old; and she has an older sister who apparently participates in the LEA’s programs for gifted children. It is difficult to summarize the Student’s testimony; and so I have set forth a portion directly from pages 32 through 34 of the first hearing transcript (“Q” is the parent; and “A” is the Student):

Q. When did you – you did the AR program, which is Accelerated Reader. You did it in first grade and second grade.

A. Yes.

Q. And third grade. When did you stop with the AR program?

A. I kind of didn’t really do it that much in third grade because I was just like, well, I don’t really think I’m going to do good. I’m probably going to fail, so why should I do it.

Q. What was it about the AR test that was giving you a problem, do you know?

A. It was just really not my thing to do, and I didn’t like it. I didn’t really get the books that I read.

Q. So you didn’t understand the books you read?

A. Yes.

Q. But you chose the books?

A. Yeah.

Q. Were you supposed to be at a certain level?

A. No.

Q. You could choose any level?

A. No, I can't choose it. I was just at a level.

Q. Oh, you were at a specific level?

A. Yeah.

Q. Okay. And did anyone read those questions to you?

A. Like, at the end of the year, I did one more test, and, like, one person read it to me, and that's, like, gone now. I still kind of failed it.

Q. You still failed it? Okay. Were all the questions asked for your tests, every single test that you took from when we started our meetings, do you remember having every single test question asked so you didn't have to read it?

A. No, not really. Not all the tests were read to me. Only, like, at the end of the year they started to read them to me.

Q. Did you find that it was easier when the tests were read?

A. Yes.

Q. Okay. Good. I think that's basically all I want to ask you, but if you had a choice to come here next year or go to another school that we looked at, what do you think would be best for you?

A. I would probably go to the school that we looked at.

Q. Why?

A. Because I think it would be better for me. It's not the teachers' fault or anything. They just weren't trained probably, so I would just go to the place where

they were trained an stuff.

Counsel for the LEA deferred to me as hearing officer to ask questions after the Student had been asked questions by her mother. My questions were general, about where she lived, her family and her up-coming trip. I did at the prompting of the LEA's counsel, ask about an incident in which the Student was thrown while riding a horse – an activity she clearly enjoys and has done for a while. She broke her shoulder when the horse broke into a gallop and she “bailed off.”

3. The Parent

The parent described her background as including being the educational coordinator at Hartford Hospital; and she stated she had taught a few courses at Old Dominion University; she also taught “homebound” children in New Jersey for a year. (P. 47.)

She said in reference to the Student that “we noticed from infancy there’s just something not right, not the same as ordinary children, but nothing you could really pinpoint.” (P. 48.) She delineated some of the things she did in an effort to “pinpoint” the difficulty, apparently coming only to a conclusion about the time the Student entered the second grade that she had a “processing problem.” The Parent then testified “[s]o it’s this vague gray area that we’re dealing with [the Student], and she has slipped through the cracks.” (P. 49.) And she described her concern as “Do I keep [the Student] in a public school that really doesn’t have the teaching methodologies that are appropriate for a dyslexic child or do I take her out, and I just want to present this case to the school board, and let it be revealed that there is a problem here.” (P. 50.)

The Parent concluded her direct statement by testifying “that’s why I said I felt [the Student] is not getting the free and appropriate public education. Number one, she was not

identified properly; number two, the research based approaches are not being used for her; and number three, her grades on the daily packet side are not passing. She's got too much of a high and a low, and that's something that needs to be addressed." (PP. 53-54.)

And finally, "[s]o she's clearly miserable in public education." (P. 54.)

After a brief cross-examination, the hearing was continued until the next established date of August 17, 2005. The Parent was assured that the LEA would assist her in obtaining the attendance of any school personnel she may wish to testify. The Parent did not seek the LEA's help in that regard.

The hearing reconvened on August 17, 2005, at the agreed time; the Parent stated she had no further witnesses to present, although the Student riding instructor may appear. She was assured if the instructor arrived she could testify; but there was no appearance by her. The LEA began with the testimony of the psychologist who administered the tests on January 2005, the school administrator who oversaw the implementation of the 504 accommodations, and the coordinator of special education services for the LEA. A summary of their testimony is as follows:

A. Dr.

Dr. _____ was identified as a school psychologist with the LEA and described his educational background as culminating in a doctorate in Clinical Psychology from the University of Indianapolis with a post-doctoral fellowship with a group at Methodist Children's Hospital in Indianapolis. He has been with the LEA for three years plus an internship a year or so before he received his doctorate. He identified the Student as someone who was having "some relative academic difficulties. The mother was concerned that there may be an undiagnosed learning disability that was impacting her educational

performance.” (2nd Hearing Transcript, p. 6.)

He further noted that, with respect to the Student, “she had always performed within grade level average or average range within grade level requirement.” (2nd T., p. 8.) He also stated that a child study team had been meeting with regard to the Student and that “as far as that the team was concerned, there wasn’t a pressing need to determine whether she was eligible for special education services because special education services require not only the presence of a disability but that disability be impacting their educational performance to such a degree that they can’t make or meet general education guidelines or requirements in the general education curriculum, general education classroom.” (P. 8.)

He testified that he was requested to do an evaluation to determine whether or not the Student would be eligible for 504 accommodations, which “accommodations are provided for students who have a disability or suspected disability. It’s impacting their educational performance, but it’s not to such a degree that it would require special education services.” (P. 8.)

Dr. testified that when a student is being assessed for a learning disability, “there’s basically two different things you have to do. One, a learning disability is based on a large and unusual gap between a child’s intelligence and their academic achievement, and that gap is the result of a processing deficit. So based on the diagnostic criteria for learning disability, I have to look at two different areas. One is you have to look at intellectual ability to get that kind of baseline for performance, and you have to look at standardized academic achievement.” (P. 9.)

To obtain results in those areas, Dr. chose the Reynold’s Intellectual Assessment Scale and the Wechsler Individual Achievement Test, Second Edition. He noted

that the Reynolds looks at verbal and non-verbal processing and that its sub-tests have a higher correlation and the overall intelligence index score that is produced. He also said he chose the Wechsler because it is recent – maybe three or four years old – so the standardization sample is more up-to-date.

He then explained his report (LEA's submitted documents, Section C, pages 4 through 10.) as revealing the Student "is a high average student in terms of overall intellectual ability, average to high average student." (P. 13.) Dr. [redacted] then testified that a "learning disability is kind of defined by a large but unusual or statistically significant difference or discrepancy between intellectual ability and academic achievement." (PP. 13-14.) After explaining that, although intelligence and achievement are related to each other, the relationship is not a perfect one but rather one of correlation. He stated "when we look at her overall scores (on the Wechsler), all of her scores were in the average to low average range." (P. 14.)

Dr. [redacted] the testified that "[w]hen you're talking about a learning disability, what you want to do is determine her academic skills relative to her intellectual potential because that's where that discrepancy comes in." (P. 15.)

After noting there were a number of ways to calculate such a discrepancy, Dr. [redacted] testified that the "Diagnostic Statistical Manual of Mental Disorders, American Psychiatric Association recommends two standard deviation scores below the mean – or below the intelligence score. And a standard deviation is just the measure of the average amount of variances a test can have in the general population." (P. 15.) He testified further that "in [redacted] we use a slightly different definition to demonstrate that discrepancy. We use a formula called 'Regression Towards the Mean' or 'Principles Based

on Regression Towards the Mean', and what that indicates is that because intelligence and achievement aren't perfectly related to each other, we would anticipate – if you accept the notion that all abilities or all aspects of abilities or traits are distributed evenly across the population and evenly within an individual, that if you have a student that's very, very bright, although in academic achievement it may be easier for them, they're not likely to have exceptionally high academic achievement scores as well." (PP. 16-17.) He noted that the converse is true as well for less bright students. And he abstracted his testimony on "Principles of Regression" by testifying that "if the child is very bright, we don't need to demonstrate quite as much as a discrepancy to determine a learning disability because we don't anticipate that their academic achievement is going to be as high as their intelligence." (P. 18.)

Dr. _____ then turned his attention to the results of the tests he administered to the Student and noted that she was doing fine in mathematics and written language but that there was a significant discrepancy in her reading. He testified that "as far as learning disability is concerned, I mean, it has to have – you have to have that statistical discrepancy. Okay? That is necessary, but not sufficient for a diagnosis to be made. To make a diagnosis of a learning disability, you have to have significant impairment in general academic skills, significant impairment in academic achievement, and that's what we weren't seeing from [the Student]." (P. 20.)

In the LEA's submitted documents, Section B, the notices, meetings and results of the Student Support Team in reference to 504 references reflect that such accommodations were outlined at a meeting on November 4, 2004, and then implemented. Dr. _____ testified that, in connection with the test he administered to the Student, the "overall question

I had to struggle with is whether or not special education services were appropriate for [the Student] in particular, whether or not her disability was so significant, so severe that the only way to address those disabilities was in special education services, and to be honest, I didn't feel that was the case. I felt that, basically, based on her academic performance, based on the accommodations the teacher had done in the classroom, we could address those academic needs in the general education classroom, and therefore she wasn't eligible for services as far as I was concerned." (PP. 21-22.) He went on to state that "[s]he was making grade level progress. She was meeting grade level expectations. Yeah, she didn't have great grades, but that's not sufficient, in my opinion, clinically to diagnose a learning disability." (P. 22.) He further explained that the Student "was not eligible for special education services because she didn't meet that latter half of the diagnosis. She met the statistical or the quantitative aspect, but not the qualitative. Her grades were just too high. Her academic performance was too good." (P. 25.)

And he then testified that "504 accommodations are appropriate for students that have a disability or a suspected disability that need some general education help or assistance in the general educational classroom. So we provided a 504 for her, and from all accounts, I'm assuming she did pretty well in that. I mean, she passed the grade that she was in. She met all grade level requirements, met all grade level expectations, and she's been promoted on to the next grade. So based on that, I feel the 504 was sufficient to meet her educational needs." (P. 25.)

The balance of Dr. _____ direct testimony was given over to commenting on an evaluation of the Student made by one Dr. _____, at the request of the Parent, some two months or so after Dr. _____ had made his report from his testing of the Student.

In his opinion, the two reports were remarkably similar, although he disputed some of the tests used by Dr. [redacted] in making his evaluation as being insufficiently 'normed' for current students or being too general in what they tested, and the like. Since Dr. [redacted] did not appear to testify as to the tests he used or the evaluation he made, I am compelled to not assign it much weight in my deliberations; and I will not provide a more detailed discussion of Dr. [redacted] direct testimony in regard to that evaluation.

However, in response to a question from the Parent as to how many dyslexic children he had tested (His response was 100 or 200 in the last couple of years.) and how he reached such a diagnosis, Dr. [redacted] testified, on P. 58, that "dyslexia is the medical term for a reading disorder. A reading disorder is defined by a significant and unusual discrepancy between ability, intellectual ability, and academic achievement, and that discrepancy is due to a processing deficit that is having a significant impact on their educational performance."

The Parent then asked on cross-examination "So a mild case like [the Student] would be, she's kind of in the middle, I guess, because she can't be diagnosed with a significant kind?" And Dr. [redacted] replied "[w]hich is why a 504 accommodation was provided for her. It was to address those kids who don't quite fit special education services, but who obviously need some sort of intervention, okay, and that's what the 504 accommodation has done." (PP. 58-59.)

B.

Ms. [redacted] was identified as having served as Assistant Principal at the school attended by the Student in the immediate past academic year and the year before that; she was further identified as having been the gifted resource teacher at the school for three years prior to becoming Assistant Principal. In describing her academic qualifications, Ms. [redacted]

noted that her master's work included courses in special education although she did not have an endorsement for special education.

Ms. [redacted] described the November 2004 504 accommodation meeting and outlined the accommodations put in place. She noted that the Parent continued to be dissatisfied with the results, even though the accommodations had been in place just a short time. At a later meeting in December 2004, it was determined to test the Student, which was accomplished by Dr. [redacted] in February 2005. Thereafter another meeting of the Student Support Team was held and it was determined that the Student was not eligible for special education services but the 504 accommodations would continue in place. She testified that the Parent stated that she would arrange for an independent evaluation for the Student but that when those results came back the team felt they agreed with Dr. [redacted] evaluation, and thus the accommodations were kept in place.

Ms. [redacted] reported that the Student's SOL scores were all passing – a score of 400 is passing, a score over 500 is pass advance, and a score of 600 is perfect. Ms. [redacted] stated that the Student had passed the English portion with a score of 460; mathematics, 496; history, 514; and science, 502. She further reported that the Student's end-of-the-year grades were a B in math and C's in every other class. (P. 79.) Ms. [redacted] felt that the Student's progress was appropriate and in support of that belief cited the Student's Diagnostic Reading Achievement test, for which the Student started the year with a score of 30 but ended the year with a score of 38; she was expected to end the year with a score of 34. She stated the Student had exceeded the expectations for the DRA for her grade level.

On cross-examination by the Parent, and after much discussion about Dr. [redacted] report and other, related items, the Parent asked Ms. [redacted] whether the Student was going

to have to fit into the whole of the student population. Ms. testified that “what we’ve been discussing here that we are doing things to meet their individual needs. We are not just standing up in front of the group and say, This is the way we teach everybody, you either get it or you don’t. But [the Student] is maybe not getting as much as you want her to get, but she is still getting enough to meet the promotional standards, and by virtue of that, does not qualify for special education services. (P. 106.)

A series of questions was then asked by the Parent concerning weekly packets of the Student’s work that had been sent home that the parent asserted had not been included in her grades since the grades in the packet, according to the Parent, were well below passing. The theme of the discussion that ensued was that the Student’s grades had been “padded” in order that she would pass. This exchange then occurred at P. 117 (“Q” is the Parent, and “A” is Ms.):

A. Has this been a concern to you throughout the year of thinking that you’re not seeing a picture of her grades.

Q. I get her grades every packet, and I understand.

A. So my question is, you’re saying that throughout – only at the end you noticed a problem? Okay.

Q. That end of the year is the problem. The end of the year, is it to pass her?

A. Well, then, let’s look back. On the third grading period, she had a C in reading, a C in writing, a C plus in social studies, a C plus in science, a B in math. So it doesn’t sound to me like we would try to adjust anything to boost them up at the end. At the end, it’s not more that a plus and minus difference off what it was for the third grading period.

Ms. [redacted] then testified that “[r]ight, but you’re indicating that, I mean, you’re trying to imply that the teacher has tried to pad the grade at the end so it looks better, but you’re then telling me that this hasn’t been a concern with you throughout the year. I’m saying that her grades have been relatively consistent throughout the year with a slight improvement in some, that she has done a little better throughout the year, but her grades are not substantially different at the end of the year to warrant you making this assertion that she is trying to make it look good for her not to qualify.” (P. 118.)

And then Ms. [redacted] stated that “[redacted] has a student that has improved her reading ability throughout the year, throughout each year she has been here actually, as I go back. Her reading ability has increased. [redacted] has a student that has ended the year with Cs and a B. She has increased in her assessment on her language arts tests, has received a higher percentage at the end of the year, and it’s a cumulative process of that, so I would say that [redacted] is education [the Student], maybe not a perfect optimal of what we would like at the most perfect situation of offering, but in public education, she is receiving an appropriate education.” (P. 121.)

C. Dr.

Dr. [redacted] described her position with the LEA as a special education coordinator in the Office of Programs for Exceptional Children, which does staff development and provides technical assistance to a set of assigned schools, including [redacted] elementary school. She further stated that legal support for the office was among her duties. She said she had served the LEA for 14 years. She described her education qualifications as including a master’s in elementary education and a master’s in special education, and a doctorate in special education administration. She further stated that she had a total of 35 years’

experience in special education.

Dr. [redacted] was asked on direct examination to describe the type of services offered children who are diagnosed with dyslexia or reading disability; and she responded that “[c]hildren that qualify for a learning disability in [redacted] Schools get an individualized program. We try really hard not to make the child fit the program, but design the program to meet the child’s needs. Some children get pull out services. Some children get inclusive services. It varies from individual child to individual child. Currently, our vision for children with disabilities is to stay as close to the curriculum as possible, physically and in terms of the work they do so they can pass SOLs. All of our children have to pass SOLs, and so we’re doing a lot less pull out, and a lot more support in the general ed classroom so that children can stay where the curriculum s being tested is being taught.” (P. 129.)

On cross-examination by the Parent, and in response to a question about a definition of dyslexia, Dr. [redacted] testified that “I don’t [have a definition of dyslexia]. I have a definition of specific learning disability, which Dr. [redacted] went into in vast detail, but basically, what it means is that you have a discrepancy between your intellectual ability and you achievement. At the same time, you have to have the qualitative, not performing well in the classroom, to qualify, and the third prong, which is actually not mentioned by Dr.

[redacted] but you have to need special ed. So you have to have a discrepancy. It has to be directly impacting your educational performance, and you have to need special ed to change that impact from negative to positive.” (PP. 137-138.)

Dr. [redacted] then testified that “[w]hat we are required to do, and I think Ms. [redacted] alluded to that, we are always required to do the least restrictive interventions. We’re

required that by the Rehabilitation Act as well as the special ed law. So the school did the interventions that they felt were appropriate. They tried some interventions. They went to the student support team first, which is required. They went to special ed and tried some interventions. They did a full comprehensive evaluation. They considered the outside evaluation that you (the Parent) had done. They met the time lines that are in both the federal law and IDEA. They did it at exactly the right sequence and speed that's required of them, and the reason why I think it's adequate is because she passed third grade. She passed the SOLs. She's meeting grade level expectations." (P. 343.)

There were no further witnesses. Neither party took the opportunity to make closing arguments; and the hearing was adjourned.

The foregoing is set forth only as a summary of the testimony of the witnesses who were offered by each party. I have based my decision on the whole of the testimony and all the documents submitted by each party.

III. ISSUES PRESENTED

1. Was the Student properly evaluated and found ineligible for special education services, in February, 2005?
2. Were that end-of-the-year grades of the Student properly determined?

IV. FINDINGS OF FACT

1. The Student was nine years, six months at the time of her testing in February 2005 and attending elementary school.
2. The Parent expressed concern to the school about the Student's reading ability, that the Student was dyslexic.
3. In November 2004, a student support team was called together, including the

Parent, that determined to put some 504 accommodations in place relative to the Student's reading ability.

4. The Parent continued to express concern and, at a meeting of the team in December 2004, it was decided to evaluate the Student.
5. The Student's evaluation did not show her to be eligible for special education services, and the 504 accommodations were continued in place.
6. The Parent continued to express her concern and obtained an independent evaluation of the Student, the report of which was done in May 2005.
7. The Parent's evaluation from Dr. was considered and determined to be similar in its conclusions to that evaluation made by the LEA. It was again determined the Student was not eligible for special education services and the 504 accommodations were continued in place.
8. The Student ended the year with slight improvements in her grades, exceeding her grade level expectations for Diagnostic Reading Achievement and passing all her SOLs – two with pass advance, one just short of a pass advance, and the other (English) with a score of 460.

V. OPINION

A. PROCEDURAL ISSUES

1. Burden of Proof

Until recently, the issue of the burden of proof in administrative hearings was not clearly decided in the Fourth Circuit. In *Spielberg v. Henrico County Public Schools*, 853 F.2d 256 (4th Cir. 1988), the court, *in dicta*, stated that the party bringing the action has the burden of proof. Cases, decisions and academic literature on the issue run the gamut.

Recently, in *Weast v. Schaffer by Schaffer*, 104 LRP 35502, U. S. Court of Appeals, Fourth Circuit 03-1030, July 29, 2004, the Fourth Circuit held that the party bringing the action bears the burden of proof.

The Parent brought this hearing and therefore I place the burden on the Parent.

2. Notice

I find that proper and sufficient notice was given the Parent concerning all meetings held in this matter, and I find no violation of the notice requirements by the LEA in this matter. The Parent was properly informed of all meetings.

B. WAS THE STUDENT ELIGIBLE FOR SPECIAL EDUCATION SERVICES?

8 VAC 20-80-56 is the Virginia regulation that is concerned with eligibility for special education services. Among its provisions that are set forth in subsection C.7 are the requirements that the child study team – termed as the student support team by the LEA – determine whether the child has a specific learning disability and whether there is a severe discrepancy between the child's achievement and ability that is not correctable without special education and related services. Without those findings, there can be no eligibility for special education services. The only person qualified to perform the necessary, appropriate testing to make the determination of whether the Student has a specific learning disability was Dr. _____ of the LEA; and he was the sole professional in that field to be presented as a witness and testify. He stated clearly that there was a suspicion of a reading disability based on the statistical evidence resulting from the tests he administered to the Student. And he further testified that there was, however, no severe discrepancy between the Student's ability and her academic achievement. He pointed out that the Student had always performed at or near the average expectations for her grade level. After

she had been retained in the first grade, the Student had always passed to the next level with average or slightly better grades. He concluded she was making progress even though there was a statistical indication of a disability in reading.

, an assistant principal at the Student's school, testified that the student support team believed the statistical imbalance was correctable by 504 accommodations, which were determined in the November 2004 meeting and of which the Parent then approved and accepted. She noted the evaluation of the Student came about one month later when the Parent continued to voice her concern about the ability of the Student to read. The 504 accommodations were continued in place throughout the 2004-05 academic year and the Student ended that year with a B and Cs as her grades – on average with the expectations of her grade-level performance. Ms. also noted that the Student passed all her SOLs – two with pass advances, one almost with a pass advance, and a solid pass in the fourth, English. And finally, she explained the Student had exceeded her grade level expectations for achievement in her Diagnostic Reading Achievement; she was expected to obtain a score of 34 but she achieved a 38.

Based on the testimony of these educational professionals, which was uncontradicted and uncontraverted, I FIND that the Student was not eligible for special education services and further that the LEA acted properly in putting 504 accommodations in place and denying the Student an IEP.

C. WERE THE YEAR-END GRADES PROPERLY DETERMINED FOR THE STUDENT?

The only evidence presented by the Parent concerning this issue was a week-long packet of papers that the Student's teacher sent home for her information in the last week

of the school year. The teacher was not called as a witness to answer any questions about the packet; nor was she present to testify as to how the year-end grades were calculated and the role of the low scores noted by the Parent in such calculations.

The only educational professional that testified as to the grades of the Student was Ms. _____, and she not only denied the allegation of the Parent but she also questioned the source of any motivation to misrepresent the Student's year-end grades since all other indicators – her SOL scores and her Diagnostic Reading Achievement – belied any need for, or logic in, doing such a thing.

I therefore FIND that there is no evidence that the Student's year-end grades were improperly determined.

VI. CONCLUSION AND DETERMINATION

In summary, based on the above and the record of this case, consisting of Exhibits, the transcript and the testimony, I find:

The LEA was correct and acted properly in determining the Student was ineligible for special education services; and

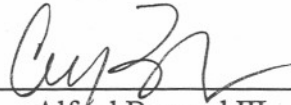
There is no evidence the LEA improperly determined the Student's year-end grades.

And thus I ORDER that the 504 accommodations for the Student remain in place subject to established and ordinary review procedures.

VII. APPEAL RIGHTS

The Parent has the right to appeal this matter through the filing of a state or federal civil action. This decision is final and binding unless appealed in a state circuit court within one (1) year of the issuance date, or in a federal court.

Date: September 6 2005



Alfred Bernard III
Hearing Officer