

7/31



COUNTY PUBLIC SCHOOLS

IN RE: DUE PROCESS HEARING  
COUNTY PUBLIC SCHOOLS

DECISION

Introduction

[redacted] (" [redacted] "), on behalf of [redacted] ("Student") requested a due process hearing to challenge the [redacted] Schools' ("Schools") denial of the Student's eligibility for special education services.

Issue

The only issue to be decided in this appeal is whether the Student is eligible for special education service under the category of "other health impairment" due to [redacted] sickle cell anemia. ("sickle cell") 8 VAC 20-80-10. The [redacted] limited [redacted] claim for special education services only on the basis of the Student's sickle cell.

Procedural History

The [redacted] timely filed a request for a due process hearing. In a telephone hearing, counsel for both parties and the hearing officer agreed on a [redacted] hearing date. Subsequently, the [redacted] requested that the hearing date be set earlier, and it was set within the 45-day limit. The parties and the hearing officer held a pre-hearing conference by telephone.

Prior to the main hearing, the testimony of the [redacted]'s expert, a hematologist and an expert on sickle cell, was taken in a telephone hearing, by the agreement of counsel.

Prior to the main hearing, the School's served a subpoena for documents from the Student's primary medical care provider. The documents had not been provided by the hearing. The Schools requested that the hearing remain open until the documents were received, reviewed and, possibly, submitted to the hearing officer. When the records arrived, the School's filed them with the hearing officer. Both parties requested and received a telephone hearing to argue in light of the new documents. Further requests for extensions of time were made by one or both parties to allow the hearing officer the opportunity to further consider the case. None of the delays were for the convenience of counsel.

#### Certifications of Hearing Officer

The undersigned certifies that the requirements of §8 VAR 20-80-76J5 were complied with. The required notifications to the parties was given. At the main hearing, the parties stipulated that the due process rights of the [redacted] and Student were met.

## Witnesses

The following witnesses testified:

For the .

[REDACTED] M.D.- an expert on sickle cell

The [REDACTED] - a special education teacher with a Master's Degree in education

For the Schools:

[REDACTED] - a school psychologist for the Schools who evaluated the Student

[REDACTED] - the Student's present physical education teacher

[REDACTED] - the Student's step team coach and present biology teacher

[REDACTED] - the Student's present mathematics teacher

[REDACTED] - an assistant principal at the Student's high school who also holds a license in special education and has been a member of the Student's Child Study and Eligibility Committees

## The Legal Standard

To qualify for service under the other health impairment standard a student must satisfy the following criteria.

1. limited strength, vitality, or alertness;
2. due to chronic or acute health problem which may include sickle cell anemia;
3. which adversely affects a child's educational performance.

### Discussion

By all accounts, the Student is a popular young ██████████ with many friends. ██████████ is vivacious and actively participates in social and other activities with ██████████ fellow students. For the last two years, the Student has been a member of ██████████ high school's step team. A step team engages in a choreographed dance-like activity. It is strenuous and requires endurance.

██████████ has had a mixed academic record in high school although ██████████ did well in middle school. ██████████ attributes ██████████ academic performance to sickle cell which is mild. Sickle cell is a serious disease which can be painful and disabling. On the other hand, many sickle cell patients are seemingly not affected. The Student is one of these. Except for one visit to a pediatric hematologist specialist, ██████████ M.D, in ██████████ of this year and one two-and-one-half years ago, the Student has not needed more care than that provided by ██████████ pediatrician. A report from ██████████ was submitted as an exhibit. In the event of a pain crisis,

recommended treatment with ibuprofen and Tylenol with codeine only if the ibuprofen was not sufficient to treat any pain.

visit with was for a consultation only. was not a treating physician, and while received some laboratory reports from them, has not communicated with regular physicians or teachers. explained the disease and the devastating effects that it can have in some cases. However, the Student has had none of the substantial symptoms of the disease.

In meeting with the issue of the Student's grades was discussed. According to "We discussed the need for motivation and further interaction with the school counselor and teachers." Significantly, in report said: "... we are not convinced that [the Student] is in need of special education."

The Student's math grades are low. Over the past two-years, has had five math teachers. Each change was at the request of the because did not like the teaching style of the teachers involved. Likewise, the had the Student transferred from another high school to present high school placement

The testified that the Student had seen physician many times due to sickle cell. also asserted that the Student was frequently fatigued. The



had attended one of the Student's step team practices and saw [redacted] engaged in actual physical activity for approximately 15-minutes.

On the other hand, three of the Student's teachers, one of whom was [redacted] step team coach, testified. None of them had observed the fatigue. [redacted] physical education teacher was told by the Student that [redacted] might need frequent breaks for health reasons. Although the teacher agreed, the Student had never taken any breaks except for those taken by all the class students. [redacted] participated in the classes' Presidential Fitness testing program and did quite well. [redacted] did 38 curl-ups which exceeds the national standard. The student did one-pull-up which, the physical education teacher said, met the national standard and was more than most [redacted] students can do.

The Student ran three-laps of a four-lap mile and [redacted] time was slightly over three-and-one-half minutes per lap. [redacted] did not complete the fourth lap because [redacted] stopped to aid [redacted] partner who had fallen.

[redacted] step coach and other teachers testified that the Student's academic problems stemmed from [redacted] failure to make up tests and to complete assignments including several where an extension had been given. They also believed that other reasons, lack of organization and interest, was also a cause.

### Substituted Page 7 of Decision

In short, the Student's performance is similar to many students who do not have sickle cell and are not otherwise disabled.

Despite the \_\_\_\_\_'s belief that \_\_\_\_\_ had numerous visits to the doctor because of \_\_\_\_\_ sickle cell, the Student's medical records showed no visits for that reason over a two-year period other than a monitoring visit to \_\_\_\_\_. \_\_\_\_\_ other visits were, aside from a step team physical, for allergies, a benign bony cyst, and sinus problems. Although the \_\_\_\_\_ asked for and received a referral to an ear, nose, and throat specialist, \_\_\_\_\_ never went to see that doctor.

### Conclusions of Law

The Student has not met the first and third prong of the criteria. The preponderance of the evidence is that \_\_\_\_\_ is not limited by reason of strength, vitality, or alertness, and \_\_\_\_\_ sickle cell anemia does not adversely affect \_\_\_\_\_ academic performance. Accordingly, \_\_\_\_\_ is not eligible for special education services and the appeal is denied.

Substituted Page 8 of Decision

Right of Appeal

This decision shall be final and binding unless a party within one year of this decision files an appeal with a state or federal court.

[Redacted] 2002

[Redacted]  
Hearing Officer

Copies to:

[Redacted], Esq.  
Counsel for the : and  
Student (Via Fax)

[Redacted], Ph.D.  
Superintendent of Schools  
[Redacted]  
[Redacted] (via mail)

[Redacted], Esq.  
Counsel for the Schools  
(Via Fax)

[Redacted]  
Parent (via mail)

Judy Douglas  
Director  
Office of Due Process and Complaints  
(Via Fax)