



VIRGINIA:

VIRGINIA DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION APPEAL  
DUE PROCESS HEARING



COMPLAINANT,

v.

PUBLIC SCHOOLS

RESPONDENT.

IN RE:

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION

I. INTRODUCTION

A. Statement of the case:

This matter concerns (" ") a twelve-year old determined eligible for special education as a student with emotional disabilities ("ED").

's current placement is the School in (" ") and is in the seventh grade. 's parents are divorced, with 's father, Mr.

, Complainant, having physical custody.

's parents disagree as to whether or not should be reevaluated, as requested by 's mother, Ms. prior to the triennial reevaluation due November 13,

. The Public Schools (" ") agrees with Mr. , that reevaluations

now are not necessary to determine [redacted]'s continued eligibility for special education or to modify [redacted] current Individualized Education Program ("IEP").

**B. Procedural Background.**

The undersigned was appointed by the [redacted] Public Schools (" [redacted] ") to serve as the hearing officer to preside over the Due Process Hearing concerning [redacted]. The letter of appointment is dated October 15, [redacted], signed by Mr. [redacted], Coordinator, Monitoring and Compliance for [redacted].<sup>1</sup>

The Due Process Hearing was initiated by Mr. [redacted]; [redacted]'s father, who filed the hearing request on October 9, [redacted] ("hearing request")<sup>2</sup> as the result a decision by [redacted] to reevaluate [redacted] based on the request of [redacted]'s mother, Ms. [redacted].

Following the filling of the hearing request, and subsequent to the appointment, the Hearing Officer, Mr. [redacted] and Mr. [redacted] engaged in a series of pre-hearing telephone conference calls to, among other things, set a date and time for the hearing so that a final decision could be rendered within forty-five (45) days of the hearing request. However, at the request of Mr. [redacted] a continuance was granted in accordance with 8 VAC 20-80-76 K. 8., the Hearing Officer finding after discussions with the parties, that the best interest of the child would be served. Accordingly, the parties agreed to continue the Hearing to January 6 and 7, [redacted].

The Hearing was held as scheduled at the facilities of [redacted], in the [redacted] Center, [redacted], Virginia. A second day for the hearing was not necessary since all testimonial evidence was presented on January 6, [redacted] and the Hearing concluded. The Hearing Officer received the transcript of the Hearing on January 12, [redacted] and this Findings of Fact,

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<sup>1</sup> Hearing Officer's Exhibit 1

<sup>2</sup> Hearing Officer's Exhibit 2

Conclusions of Law and Decision ("Final Decision") is being rendered within ten (10) calendar days of receipt of the transcript as stated to the parties on the record at the Hearing.

As stated earlier, this matter is the result of the hearing request filed by [redacted]'s father, Mr. [redacted] challenging a determination by [redacted] to comply with the request of [redacted]'s mother to have [redacted] reevaluated prior to November 13, [redacted]. Ms. [redacted], as [redacted]'s mother did not file a hearing request or other documentation requesting to intervene as a party to this matter. Even so, since the hearing request resulted from the determination by [redacted] to reevaluate [redacted] as requested by Ms. [redacted], the Hearing Officer deemed her presents at the Hearing necessary. Therefore, prior to the Hearing, the Hearing Officer engaged in a telephone conversation with Ms. [redacted] followed by a letter dated December 3, [redacted]<sup>3</sup> notifying her of the date and time of the Hearing. Ms. [redacted] was also informed of the date, time and location of the Hearing by Mr. [redacted], on behalf of [redacted], in his letter to her dated December 15, [redacted], that also informed her that [redacted] would call her as a witness.<sup>4</sup>

In his hearing request, Mr. [redacted] requested that the hearing be a closed hearing as was his right to request pursuant to 8 VAC 20-80-76 F. 3 and H. 1. Mr. [redacted] had no objection to Ms. [redacted] being present at the Hearing, but opposed the participation of her two non-attorney educational advocates. In considering Mr. [redacted]'s request and as discussed with him prior to the Hearing and subsequently on the record at the Hearing, the Hearing Officer determined that since this matter involves a substantial disagreement between the two natural parents of [redacted] concerning whether or not [redacted] should be reevaluated prior to November 13, [redacted] and in view of the fact that this matter stems from Ms. [redacted]'s request to [redacted] for the earlier

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<sup>3</sup> Hearing Officer's Exhibit 3

<sup>4</sup> Hearing Officer's Exhibit 4

reevaluations, as \_\_\_\_\_'s mother, she had the right to be accompanied and advised by her non-attorney educational advocates. In this regard, the Hearing Officer relied on 8 VAC 20-80-76 F. 1. a., notwithstanding that Ms. \_\_\_\_\_ did not file to participate as a "party" in the Hearing. This decision was explained to Ms. \_\_\_\_\_ and her two advocates prior to the Hearing and on the record at the Hearing. Accordingly, the educational advocates were present throughout the Hearing. They were also advised on the record by the Hearing Officer that their role was to advise Ms. \_\_\_\_\_ during the course of the Hearing, but not to serve as her representative or to engage in any activity that would delay or disrupt the Hearing.

Prior to any testimony at the Hearing, but on the record as a preliminary matter, Mr. \_\_\_\_\_ expressed his desire to call Ms. \_\_\_\_\_'s educational advocates as witnesses; however, Mr. \_\_\_\_\_ objected to this request because they had not been previously identified as witnesses in the Joint Disclosures submitted by the parties (See Hearing Officer Exhibit 6). The objection was sustained, but again, the educational advocates were permitted to remain to advise Ms. \_\_\_\_\_.

### C. The Record:

In addition to the previously mentioned Hearing Officer Exhibits, the Record in this matter consists of the following:

1. Transcripts of the Hearing, dated January 9, \_\_\_\_\_<sup>5</sup>;
2. Joint Disclosures submitted by the parties and filed with the Hearing Officer prior to the Hearing; 1 through 14 submitted by \_\_\_\_\_ and 15 through 26 submitted by Mr. \_\_\_\_\_<sup>6</sup>;

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<sup>5</sup> Hearing Officer's Exhibit 5

<sup>6</sup> Hearing Officer Exhibit 6; Joint Exhibits 1 through 26 will hereinafter be called "Joint Exhibit" followed by the specific exhibit number.

3. Three additional exhibits were submitted on the record at the Hearing without objection:

a. Disclosure Exhibit 14 (a): " Public School Elementary Academic Record, ";

b. Disclosure Exhibit 27: Letter dated December 23, from Dr. and Disclosure Exhibit 28: Letter dated January 5, , from Dr.

**D. Participants at the Hearing:**

1. Mr. , representing
2. Mr. , parent, and Complainant
3. Ms. , parent,
4. Ms. , advocate for Ms.
5. Ms. , advocate for Ms.
6. Ms. , witness for
7. Dr. ; witness for
8. Ms. , witness for the parent,
9. Dr. , witness for
10. Ms. , witness for

**II. CONTENTIONS OF THE PARTIES**

Prior to any testimony, the parties went on the record making their opening remarks. On behalf of , Mr. stated that it was the position of that it was bound by the Individuals with Disabilities Education Act ("IDEA")<sup>7</sup> to proceed with the reevaluations of

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<sup>7</sup> 20 U.S.C. §1400 et. seq.

based on the mother's request. However, it was also the conclusion of [redacted] that the evaluations were not necessary to determine [redacted]'s continued eligibility in special education or to modify his IEP. Tr. p. 19-21.

Mr. [redacted] stated that he was opposed to any reevaluation before the triennial reevaluations due November 13, [redacted]. It was his belief that [redacted]'s current placement at the [redacted] is an appropriate placement and that [redacted]'s overall progress there has been good. Mr. [redacted] believes that reevaluations now would present [redacted] with unnecessary stress. Tr. p. 23-24. Mr. [redacted] stated further that he believes that the reevaluations will require [redacted] to recall numerous issues of mental and physical abuse and that [redacted] would regress as a result. Tr. p. 26.

Ms. [redacted] stated that she wanted the reevaluations now rather than to wait until November 13, [redacted] because [redacted] had been diagnosed as bipolar, attention deficit hyperactivity disorder ("ADHD") and having a learning disability. It was her view that these matters were not being addressed. Tr. p.31. Also she felt that the reevaluations were necessary to find a proper placement for [redacted]. Tr. p. 37. Ms. [redacted] requested that [redacted] conduct the following evaluations: Psychological, Socio-cultural and Educational ([redacted] Exhibit 8).

### III. ISSUES

1. Whether [redacted] is required to conduct reevaluations of [redacted] at the request of [redacted] mother prior to [redacted] triennial reevaluations due November 13, [redacted] ?
2. Whether the conducting of the reevaluations earlier than the triennial reevaluations in November [redacted] would be harmful to [redacted] ?



#### IV. SUMMARY OF RELEVANT EVIDENCE

The first witness to testify at the Hearing was Ms. , 's mother. Ms. was called to testified by . Ms. testified that she participated in an IEP meeting on November 13, in , Virginia, in which was determined eligible for special education as ED. Tr. p. 41-43. ( PC Exhibit 1). Ms. also acknowledged that schools had conducted assessments of prior to the November 13, IEP meeting in order to determine eligibility for special education services Tr. p. 44-47 ( PS Exhibits 2, 3 and 4). Ms. testified that at the IEP meeting in , she expressed no disagreement with the assessments conducted by that determined that was eligible for special education as ED. Tr. p. 47, L 6-15.

Ms. was asked by Mr. to review Exhibit 5, identified as a Transfer IEP Placement for dated December 5, , prepared by . Ms. acknowledged that when was transferred to , was to continue to receive special education services as an ED student. Tr. p. 48 & 49.

Ms. was asked to review 's grade report from , dated December 4, ( Exhibit 18). The report reflected grades for , of A in Science, B+ in Health and PE, A in U.S. History, B+ in English, A in Math, C Technology, B in Basic Skills. Ms.

stated further that had always gotten good grades. Tr. p. 50, L 14-15.

Ms. was also requested to review an Interim Progress Report from for the period November 5, through January 23, also contained as part of Exhibit 18. Tr. p. 50-51. She acknowledged that 's grades for this report period were a B in Science, B in PE, A in History, B+ in English, A in Math, A in Introductory Art and an A in Basic Skills. Ms. agreed that the grades reflected what had done, while at Middle School,



but did not agree that [redacted] was benefiting from placement at [redacted] because she felt what was expected of [redacted] was very low. Tr. 51-52.

Ms. [redacted] was also requested to review Exhibit 12, "Progress Towards IEP Goals and Objectives," reflecting [redacted]'s progress toward IEP goals. Although the progress reports indicated that [redacted] was making progress toward IEP goals, Ms. [redacted] would not agree that [redacted] was benefiting from special education program at [redacted]. Tr. p. 53. And in fact, testified that she did not believe that [redacted]'s needs were being met with regard to what she believed to be [redacted] disabilities to be, bipolar, ADHD and a severe learning disability. Tr. p. 59. Ms. [redacted] did however, agree that [redacted] is a "very nice school" but that she was concerned about [redacted] special education program. Tr. p 75-78.

The next witness called to testify was Ms. [redacted], a sixth grade teacher in a program for students with ED at the [redacted] Center, in [redacted] ("[redacted]"). Ms. [redacted] testified that she served as [redacted]'s teacher when [redacted] first enrolled in the [redacted], during the [redacted] school year and that [redacted] had been identified as eligible for special education as an ED student. Tr. p 116. Ms. [redacted] testified that she believed [redacted] was on or above grade level in most academic subjects.

Ms. [redacted] testified that she was present at a June 9, [redacted] Reevaluation meeting at [redacted]. Tr. p 122. She testified that she did not believe that additional assessments were necessary to determine [redacted]'s continued eligibility as a student with ED, nor that additional assessments were necessary to modify [redacted]'s IEP. Ms. [redacted] stated further that she believed that [redacted] received benefit from placement at [redacted]. Tr. p 123.

Ms. [redacted] was asked on cross-examination by Mr. [redacted] if she had been told that [redacted] had been diagnosed as bipolar or having ADHD and responded by stating that she did not

recall such. Tr. p. 124. Mr. [redacted] also asked Ms. [redacted] if she had ever been told that [redacted] had a severe learning disability. She responded to this question stating that she had never been told that. Tr. 125. Ms. [redacted] also testified that she felt that [redacted]'s placement at [redacted] was appropriate at the time as well as [redacted] current placement at [redacted]. Tr. p. 130.

Ms. [redacted] reviewed [redacted]'s academic grades on the record for the sixth grade year at [redacted] ( [redacted] -14 (a) which reflected 7 A's, 2 B's and 2 C's Tr. p 117. Ms. [redacted] also testified about [redacted]'s progress toward meeting [redacted] IEP goals and objectives ( [redacted] PS-10) She stated that [redacted]'s progress was either reflected as "EP" meaning "Emerging Progress" toward [redacted] goals and objectives, or "SP" meaning Sufficient Progress toward [redacted] goals and objectives. Tr. p 118 & 119.

Following Ms. [redacted], Dr. [redacted] testified for [redacted]. Dr. [redacted] has a doctorate in psychology and has been trained as a school-community psychologist. Tr. p. 132-133. At the time of the Hearing, he had been employed with [redacted] for almost two years. During school year [redacted], he served as the school psychologist at [redacted] and got to know [redacted] while he was in attendance there. Dr. [redacted] testified that he was aware that [redacted] was eligible for special education as an ED student. Tr., p. 134.

Dr. [redacted] testified that he chaired the [redacted] Reevaluation meeting held at [redacted]. Tr. p. 138. He said that no final determination was made at that meeting concerning the need for new assessments that Ms. [redacted] had requested. Tr. p. 138-139. He said that this was because Ms. [redacted] and Mr. [redacted] disagreed with whether additional assessments were necessary. Therefore, the meeting was tabled with the understanding that the parents were to attempt to reach a consensus as to what should be done. Tr. p. 138-139.

Dr. testified that he also attended an October 7, Reevaluation meeting at . He said that a final determination was made at that meeting concerning assessments and that the team decided to conduct the assessments as requested by Ms. . Tr. p.139-140. However, Dr. also testified that in going forward with the assessments, the IEP team did not decide that these would be necessary to determine 's continued eligibility for special education. Also, that the team did not determine that additional assessments were necessary to determine whether any additions or modifications were needed to 's IEP. Tr., p. 140-141. Dr. said that the decision to go forward with the new assessments was based on Ms. 's desire to have additional assessments. Tr. p. 140. Dr. concluded his direct examination by stating that he believed benefited from placement at . Tr. p 141. On cross examination conducted by Mr. , Dr. testified that he had not been formally notified that had been diagnosed as bipolar or ADHD. Tr. p., 144. Following Dr. , Mr. and Mr. agreed that Mr. could call his only witness, Ms. out of turn so that she could return to school. Mr. therefore proceeded with the direct examination of Ms. , who is employed by as the crisis resource teacher at Tr. p. 153-154. Ms. testified that she got to know when first came to . Tr. p. 154 and worked with in the fifth and sixth grades. Tr. p. 155. Ms. testified that she had no doubt about 's disability classification of ED. Ms. was asked by Mr. if she had been told that was bipolar or had ADHD or a severe learning disability. She said that these things had been brought up in a meeting, but that she had not been told directly about being bipolar or ADHD or that had a severe learning disability. Tr.

p. 156. Ms [redacted] also testified that she believed [redacted] qualified for special education as a student with ED and that further assessments would not be necessary. Tr. p. 164.

The next witness to testify was Dr. [redacted]. Dr. [redacted] was called by Mr. [redacted] to testify for [redacted]. Dr. [redacted] testified that she has a Ph.D in clinical psychology and is a licensed clinical psychologist in Virginia and certified as a school psychologist. Tr. p. 172-173. She has been employed by [redacted] for five years as a school psychologist and works with students with ED as well as learning disabilities. Her current assignments are [redacted] and the [redacted] Middle School.

Dr. [redacted] testified that she got to know [redacted] at [redacted]. She is in charge of the reevaluation process and [redacted] case came to her because it had not been completed over the summer. She testified that she chaired the October 7, [redacted] Reevaluation meeting at [redacted]. Tr. p. 175. Dr. [redacted] testified that it was her opinion that assessments were not necessary to determine whether or not [redacted] continued to be eligible for special education as an ED student, nor that further assessments were necessary to make additions or modifications to [redacted]'s IEP. Tr. p. 177. She also said that [redacted] is benefiting from [redacted] placement at [redacted]. Tr. p. 179. Dr. [redacted] said that it had not been reported to her that [redacted] has ADHD.

On cross examination, Mr. [redacted] asked the witness if she felt additional assessments conducted prior to the November [redacted] would be detrimental to [redacted]. Dr. [redacted] testified that she did not know specifically. Tr. p. 187. However, she testified that she did not believe additional psychological and socio-cultural assessments would be necessary for [redacted] at this time. Tr. p. 191.

Following Dr. [redacted], Ms. [redacted] testified for [redacted]. Ms. [redacted] stated that she has been a teacher at [redacted] for one and a half years and prior to that, she taught at [redacted]

Center for eight years. She testified that she serves as [redacted]'s case manager and history teacher at [redacted]. She also has an occasion to speak to [redacted]'s other teachers about [redacted]'s progress at [redacted]. Tr. p. 199.

In reviewing [redacted]'s grades for the first quarter of the [redacted] school year at ( [redacted]-18), Ms. [redacted] stated that [redacted] received an A in Science, B+ in health and PE, A in History, B+ in English, A in Math, C+ in Technology Skills and a B in Basic Skills. Tr. p. 200. With regard to his Interim grades for the second grading period, [redacted] received a B in Science, B in PE, A in History, B+ in English, A in Math, A in Introduction to Art and an A in Basic Skills. Tr. p. 201.

Ms. [redacted] testified about [redacted]'s progress towards his current IEP goals, that was prepared for the October 7, [redacted] Reevaluation meeting. She said that she prepared the report ( [redacted] 12). Tr. p. 201. Ms. [redacted] was asked to read into the record a statement that she had placed at the bottom of the report: "[redacted] seems to have made a successful transition to the program at [redacted] Middle School. [redacted] is doing well academically and is well liked by students and staff". She testified that she continues to have that same opinion of [redacted].

Ms. [redacted] testified that she was present at the October 7, [redacted] Reevaluation meeting. Tr. p. 202. She testified that as a committee member, she did not believe that assessments were necessary at this time to determine that [redacted] continued to be a student with a disability, specifically, ED. She also said that she did not believe that assessments were necessary to determine whether any additions or modifications were needed to [redacted] program or IEP (Tr. p. 203) and that [redacted] is benefiting from [redacted] special education program at [redacted]. Tr. p. 204.

On cross-examination by Mr. [redacted], Ms. [redacted] testified that she did not believe [redacted] had any severe learning disability. Tr. p.205. Furthermore, she testified that she had not been told that [redacted] is bipolar or ADHD. Tr. p. 205.

In lieu of testifying in his own behalf, Mr. [redacted] read a statement into the record of the Hearing. Mr. [redacted] believes that early reevaluations and assessments will only confirm the severe emotional issues that [redacted] is having. Tr. p. 211 . He believes that early reevaluations will require [redacted] to recall, in detail, abuses and traumatic events that [redacted] has experienced that brought [redacted] to being ED. Tr. p. 211

Mr. [redacted] stated that [redacted] is currently being treated on a monthly basis by a Dr. [redacted], a psychologist and Dr. [redacted], a psychiatrist, who did not believe that [redacted] suffers from ADHD as suggested by Ms. [redacted] ( [redacted] Exhibit 28). Tr. p. 212. Mr. [redacted] believes that [redacted] is functioning very well at [redacted] and [redacted] is satisfied with that placement. Tr. p. 212-213. He stated that it was not in [redacted]'s best interest to constantly reiterate a disturbing emotional history that [redacted] had to endure. Mr. [redacted] said that his primary concern is that [redacted] would start to regress from what [redacted] has achieved if [redacted] has to recall those issues. Mr. [redacted] stated that [redacted] has been working with doctors outside the school system and has achieved a level of success with them.

Mr. [redacted], reflecting on the testimony of the witnesses from [redacted] stated that there is no evidence of [redacted] being bipolar, having ADHD or a sever learning disability, but that disability classification of ED is supported. Tr. p. 216-217. Mr. [redacted] feels that [redacted]'s needs are being addressed by [redacted].

#### IV. FINDINGS OF FACT

Based on the evidence presented in this matter, I find that:



1 is twelve (12) years old and currently is in the seventh-grade at the Middle School, a school. Prior to being enrolled in a school, attended school in , Virginia where he was determined on November 13, to be eligible for special education as ED.<sup>8</sup>

2. Based on the evidence in the record, Ms. , 's mother, was invited to attend the November 13, IEP meeting and in fact, she did attend the meeting (See 1) An IEP was developed for and Ms. signed agreeing to the IEP which stated 's disability classification as ED, no secondary disability was indicated. (See -1, IEP dated November 13, ).

3. In developing the IEP for , conducted assessments of , including a Psycho-education report dated November 3, prepared by . This evaluation indicated that 's primary issues involve emotional/behavior issues ( -2, p 8).

4. also relied on a Social History dated October 31, by , School Social ( -3) and several educational evaluations ( PS -4), indicating that academically functions average or above, but has behavior difficulties.

5. While attending school in , Ms. , 's mother, had physical custody of . Following the initial IEP meeting in , Mr. obtained and continues to have physical custody of . Even so, there is no evidence in the record that restricts Ms. from participating in educational matters pertaining to . After gaining custody of , Mr. enrolled with . On December 5, , developed an Individualized Education Program ("IEP") for

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<sup>8</sup>

See Joint Exhibit 1



continuing disability classification of ED. Following the development of IEP, was placed at the Elementary School and remained there until completed the sixth grade and subsequently placed at Middle School.

6. Since 's initial IEP was developed on November 13, , triennial reevaluation is due November 13, . However, during an IEP meeting convened by on May 27, , Ms. , 's mother, requested that reevaluate immediately and not wait until the triennial evaluation process in November .

7. At the May 27, , IEP team meeting at , the team discussed placement considerations for for the school year. The schools that were considered were Middle School and Middle School. An IEP was developed and the placement determined was for the remainder of the school year and for the school year ( -11; Transmittal Letter dated May 27, ). Also, Ms. requested that perform a Psychological evaluation, Sociocultural evaluation and an Educational evaluation, which agreed to perform ( -8); however, Mr. disagreed. Another meeting was set for June 9, .

8. Since 's mother and father disagreed about the need for having reevaluated prior to the triennial reevaluation, reconvened the IEP meeting on June 9, for the purpose of having the parents come to a consensus regarding the need for reevaluations of prior to the November 13, time. did not make a final determination at this meeting regarding placement for for the school year.

9. Ms. and Mr. were not able to come to a consensus; consequently, reconvened the IEP meeting on October 7, at where it was decided that would initiate additional evaluations of based on the mother's request. The

evaluations requested by Ms. [redacted] were a Psychological, Social-cultural and Educational

( [redacted]-8). Two days following this meeting, Mr. [redacted] filed the hearing request.

10. [redacted] does not believe that additional evaluations are necessary at this time to determine [redacted]'s continued eligibility for special education or to modify [redacted] IEP. Mr. [redacted] agrees with this and filed the hearing request in order that the evaluations not be conducted until November [redacted].

11. Based on the testimony of the witnesses and the exhibits admitted into evidence, it is concluded that [redacted] academically has done well while attending a [redacted] school (See [redacted] 9 [redacted]-10, [redacted]-12 and [redacted]-14 (a) and is doing well at [redacted] ( [redacted] 18).

12. Based on the evidence, [redacted] is providing [redacted] with educational benefit and that [redacted] placement at [redacted] is appropriate. The Hearing Officer also finds that the evidence on the record supports the position of [redacted] and Mr. [redacted] that in view of [redacted]'s progress academically and in meeting [redacted] IEP goals, additional evaluations are not necessary at this time.

13. Mr. [redacted] is in agreement with [redacted] that additional evaluations are not necessary, but additionally contends that such would be harmful to [redacted]. No evidence was presented that would support the contention that further evaluation, even though unnecessary, would be harmful.

14. Ms. [redacted] testified that she believes that [redacted] has a severe learning disability and that [redacted] is doing well in school because what is expected of [redacted] is very low. Based on the record in this matter, primarily the reports of [redacted]'s grades at [redacted] as reflected in [redacted] exhibits and the testimony of two witnesses who taught [redacted], Ms. [redacted] and Ms. [redacted]

[redacted], [redacted] is doing well academically and has not demonstrated any indication that

has a learning disability, nor was there any evidence that the expectations of staff concerning 's progress is too low.

15. Ms. testified that the evaluations of as conducted by and accepted by , 's disability is correctly stated as ED. Ms. testified that has a severe learning disability, is bipolar and has ADHD. The evidence however does not support any of Ms. contentions.

16. With the exception of Ms. , all witness who testified at the Hearing support the conclusion that additional evaluations are not necessary to determine 's continued eligibility for special education and that IEP does not need to be modified. The following witnesses testified supporting this conclusion: Ms. , 's 5<sup>th</sup> and 6<sup>th</sup> grade teacher at Elementary School; Dr. , school psychologist at Elementary School; Ms. , crisis resource teacher at Elementary School; Dr. , school psychologist at Middle School and Ms. , 's case manager and history teacher at Middle School. Each of these witnesses believe that is a bright young and that disability classification of ED is appropriate for . All of these witnesses were familiar with having worked with in some manner since enrolling in ; either as a teacher or a resource provider. However, none of the witnesses had any direct knowledge of as bipolar, ADHD or having a severe learning disability. The Hearing Officer finds the testimony of these witnesses to have been based on their own personal knowledge of and that their testimony on the record was unbiased and credible.

17. Based on the testimony of the witnesses and the documents admitted into evidence, the Hearing Officer finds that 's special education program and current

placement to be appropriate for [redacted], that he is making appropriate progress toward [redacted] IEP goals and objectives. Furthermore, there is no credible evidence of [redacted] being bipolar, ADHD or having a severe learning disability, but that there is sufficient evidence to support [redacted] disability classification of ED. However, other than the father's concerns, there was credible evidence that assessments prior to the triennial reevaluation would cause harm to [redacted].

18. The Hearing Officer further finds no denial of FAPE by [redacted], but instead that [redacted] has and continues to offer [redacted] an appropriate special education program and placement.

## VI. CONCLUSION:

1. Whether [redacted] is required to conduct reevaluations of [redacted] at the request of [redacted] mother prior to [redacted] triennial reevaluations due November 13, [redacted] ?

Ms. [redacted] has requested that [redacted] be reevaluated because [redacted] has a severe learning disability is bipolar and has ADHD. The record however does not support this contention. In fact, based on the record, [redacted] is a very bright [redacted] who has done well in school, at least academically with no apparent indication of a learning disability. However, [redacted] academic performance appears to suffer from [redacted] behavior issues indicating that the ED disability classification is appropriate.

Dr. [redacted], [redacted]'s Psychologist stated that [redacted]'s current diagnostic formulation as being Adjustment Disorder with Depressed Mood and Parent-child Relational Problem<sup>9</sup>. Dr. [redacted], [redacted]'s Psychiatrist, diagnosed [redacted] as having Adjustment Disorder and Oppositional Defiant Disorder and specifically ruled out ADHD<sup>10</sup>. Even though the record does not support the basis for Ms. [redacted]'s request for reevaluations at this time, the

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<sup>9</sup> Exhibit 27

<sup>10</sup> Exhibit 28

regulations do not allow for [redacted] to deny her request. In fact, [redacted] has an affirmative obligation to comply with the request of the parent for such evaluations. The IDEA requires school districts to conduct evaluations pursuant to parental request 20 U.S.C. § 1414(a)(2)(A). The implementing regulations as contained in 34 C.F.R. §300. 536 (b) states:

Each public agency shall ensure-

(b) That a reevaluation of each child, in accordance with Secs. 300.532-300.535, is conducted if conditions warrant a reevaluation, **or if the child's parent or teacher requests a reevaluation**, but at least once every three years.

(emphasis added)

The statute and implementing regulations contain no limitation on when a parent can request that their child be reevaluated or any requirement that the parent have a reasonable basis for making the request. Furthermore, the Hearing Officer has found no case authority, on facts similar here, that would support a school district from refusing to reevaluate a child based on a parent's request.

The IDEA entitles disabled students to a Free and Appropriate Public Education ("FAPE). See 20 U.S.C. § 1412(a) (1997). Specifically, Section 1412(a) provides that, "[a] free appropriate public education is available to all children with disabilities residing in the State between ages 3 and 21, inclusive . . . ." Similarly, the accompanying regulation at 34 C.F.R. § 300.121(a) also requires each state to have "[i]n effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the State have the right to FAPE . . . ." Based on the record, [redacted] has provided [redacted] FAPE.

2. **Whether the conducting of the reevaluations earlier than the triennial reevaluations in November [redacted] would be harmful to [redacted] ?**

Mr. [redacted] opposes reevaluations prior to the triennials due in November [redacted] because of his concern that such would be harmful to [redacted] in view of the many emotional issues [redacted] has had to contend with. Even though Mr. [redacted]'s concerns as [redacted]'s father are understood, there was no evidence that having [redacted] evaluated at this time would be harmful to [redacted].

**VII. ORDER**

[redacted] shall proceed with conducting the evaluations of [redacted] as requested by Ms. [redacted].

**APPEAL INFORMATION**

This decision is final and binding unless the decision is appealed by a party in a state circuit court within one year of the issuance of the decision or in a federal district court.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Hearing Officer**