

**THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION**

In Re: Parent./District  
IDPH-FY-07-02-053

**HEARING OFFICER DECISION**

I. Introduction

This matter was scheduled for due process hearing as a result of a District request dated February 26, 2007. The request was received at the Department of Education on 2/27/07. The matter was scheduled for prehearing conference on 3/28/07 and hearing dates of April 12 & 17, 2007. The District submitted a SCHOOL DISTRICT PREHEARING CONFERENCE STATEMENT which is in the record and further describes the issue. The District submitted Affidavits from four individuals connected with Student's educational program (not named here for privacy reasons). Parent submitted a letter dated 3/12/07 addressed: "To Whom It May Concern." Parent's letter states that Parent received notice of the prehearing and hearing dates and "... I cannot and will not participate in the aforementioned case due to the following reasons ...." The letter lists four reasons which will appear in the record.

The prehearing conference was held on 3/28/07. Parent did not appear and did not phone in. Parent had participated in another due process hearing about a month prior to the prehearing on 3/28/07 by telephone. The stated issue for the District was the Team's decision to change Student's code and terminate special education services. The reasons for these changes are in the file and the District's PREHEARING CONFERENCE STATEMENT. Generally those reasons are that Student has not been receiving any specialized instruction under the last agreed upon IEP. According to the District, there was no request for specialized instruction pending for the current school year. Parent, at the last hearing, did not assert that any specialized instruction was required, or had been requested. The District was offering accommodations under Section 504 of the Civil Rights Act.

The due process hearing was held on April 12, 2007. The District's case was the Core Exhibits and the four Affidavits presented prior to the prehearing conference. The District's High School Special Education Coordinator (hereinafter "SEC") appeared as a witness in addition to the Affidavits and offered brief testimony and to answer any questions. Parent did not appear or call to participate. The hearing was closed after one witness, with leave to the District and Parent to submit post-hearing documentation due on or before 4/23/07. The District asked to file a proposed order and requests for findings of fact/rulings of law, and that request was granted. The District's post-hearing submissions were received on 4/18/07.

## II. Procedural Matters

No procedural violations were alleged or found.

## III. Discussion

There is no dispute that Student is currently attending the ninth grade at the local public school. Testimony from the SEC was received. SEC has known Student since about January 2006, in connection with a regular meeting to welcome children moving from the eighth grade to the ninth grade. SEC indicated the first meeting with Parent was at the informational meeting scheduled annually to discuss procedures with all children receiving special education and moving from 8<sup>th</sup> to 9<sup>th</sup> grade. Parent requested a meeting prior to the end of the 2005-06 school year so Parent could meet the new teachers for the 2006-07 school year. The parties had a signed IEP for the 2006-07 school year. The meeting was scheduled and Parent elected not to attend. Affidavit at paragraph 4. The testimony indicated that the 8<sup>th</sup> grade Team had arranged an evaluation with Dr. Ray Chin, with Parent's approval. As Student moved to the 9<sup>th</sup> grade, there was a different Team. The parties were awaiting Dr. Chin's evaluation for further discussions on Student's special educational interests. On 7/26/06, a Team meeting was scheduled for 8/9/06, to review Dr. Chin's evaluation and the "educational implications." The meeting notice specifically stated that the Team would be considering Student's ongoing eligibility for special education services. Exhibits page 131.

Dr. Chin appeared at the 8/9/06 Team Meeting. The Team, with Parent as the sole exception, agreed Student was not receiving specialized instruction. Based on Dr. Chin's evaluation, the Team, without objection from Parent at the meeting, agreed that Student does not have the medical condition previously assigned (that condition appears at 34 CFR 300.7 (c)(1)(i), not further identified here for privacy purposes). Affidavit paragraph 8 & 11. The Team met again on 10/2/06, to discuss Student's eligibility for special education. The Team again posed the fact that Student was not receiving specialized instruction as defined by the District. The Team agreed, with the exception of Parent and the Advocate that no specialized instruction was being requested. The facts of this case do not reflect what, or if, specialized instruction was being sought by Parent or the Advocate. The Team proposed Student's discharge from special education because there was no need for specialized instruction and Student was able to advance in regular education classes with some accommodations. Affidavit at paragraph 12. SEC's Affidavit at paragraph 13 describes a view of Parent, by hearsay, that there were curriculum modifications for Student in the 8<sup>th</sup> grade. That view is opposed by SEC testimony, based on conversations with Student's 8<sup>th</sup> grade teachers and the stated view, by hearsay, that Student did not need the individual modifications requested by Parent to benefit from instruction.

SEC described Student's current educational program being provided in the 9<sup>th</sup> grade. Student is enrolled in some "honors" classes. The District's policy is to deny special education to any child in an honors class, however, accommodations may be

provided. Affidavit paragraph 15. SEC described that Parent rejected having Student take “less rigorous” courses if special education was demanded and deemed appropriate. SEC described that Parent approved placing Student in honors classes. At present SEC described that Student has “successfully transitioned” to the high school, as affirmed in the Affidavit from the Guidance Counselor in the file. Affidavit paragraph 19. SEC affirms that Student is presently performing in a regular education curriculum with accommodations only, and with the apparent approval of Parent. Affidavit paragraph 23.

While the evidence in the case might indicate that Student has an emotional condition, the evidence also suggests that at most, the emotional condition has a mild impact of Student’s ability to participate in the regular education program. Not every child eligible for or receiving Section 504 services will necessarily have an impairment described in 34 CFR Section 300.7. Caselaw exists that establishes that a child eligible for Section 504 services does not necessarily require IDEA services where the mild disturbance does not interfere with Student’s ability to do the required class work. See: Doe v. Board of Educ., 753 F. Supp. 65, 70 (D. Conn. 1990), and In Re a Child with Disabilities, 19 IDELR 203. The testimony from SEC indicated that Student is getting high marks in regular and honors level coursed, without specialized instruction.

#### IV. Requests for Findings of Fact

- A. Parent’s Requests: None submitted.
- B. District’s Requests: Granted: 1-20;  
Denied: None; and,  
Neither granted nor denied: None.

#### V. Requests for Rulings of Law

- A. Parent’s Requests: None submitted.
- B. District’s Requests: Granted: 1-4;  
Denied: None; and,  
Neither granted nor denied: None.

#### VI. Order/Conclusion

There being no opposition from Parent, I find that the District has met its burden of proof, that Student does not qualify as a child with a disability under Federal and State law insofar as the anxiety disorder does not adversely affect his educational performance to a degree that requires the provision of special education in order for Student to benefit from his public education.

#### VII. Appeal Rights

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of appropriate jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commissioner of Education when either party, Parent or District, seeks a judicial review of the decision.

VIII. Statement of Compliance with Ed 1128.22(b)

If neither party appeals the decision of the hearing officer to a court, then the LEA shall, within 90 days, provide to the office of legislation and hearings and the hearing officer a written report describing the implementation of the hearing officer's decision and provide a copy of the report to the opposing party. If the opposing party does not concur with the LEA's report, he or she shall submit his or her own report to the office of legislation and hearings.

So Ordered,

April 19, 2007

  
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S. David Siff, Hearing Officer