

ABSTRACT

Student, a 10-year-old 4th grader, was diagnosed with ADHD two years prior to the hearing by Parent's experts, following his exit from special ed as developmentally delayed in 1st grade. The decision to exit was based upon an educational evaluation performed in January, 2008 by the LEA's educational diagnostician, who also determined that Student was not eligible for IDEA services as SLD. District had been providing substantial Tier I interventions for Student in the form of shortened assignments, more time, small group instruction, differentiated teaching and other modifications and accommodations. Student had difficulty staying on task, focusing, and completing assignments, especially those that required writing. Student was frequently disciplined for these behaviors with loss of recess, shortened lunch periods, missing parties, etc. He was stressed and frustrated in the regular ed classroom setting, as witnessed by his peers.

Parent was in frequent and often acrimonious communication with District over Student's problems but never expressly stated she wanted an "evaluation," in those specific terms, until she faxed a letter she wrote to the LEA and NMPED dated January 28, 2010 with the assistance of an advocate. District claimed it never received that letter, nor did it receive any response from NMPED.

District's position throughout the two-year statutory period dating from February, 2009 is that Student does not need re-evaluation as a result of his ADHD diagnosis because he advances from grade to grade and performs as proficient or above on standardized tests. In short, his educational performance is not affected by his ADHD.

The DPHO found that, based upon IDEA's mandate that children be evaluated in *all* areas (even if it just a single area), District, by using RTI interventions and not evaluating Student in light of his obvious problems for over three years, denied Student FAPE. The DPHO also found that procedural violations of Child Find and PWN did not represent a substantive denial of FAPE under the facts of this case.

The DPHO ordered an evaluation centering on the area of written language by an independent educational diagnostician, and a MDT/EDT meeting including that evaluator to take place to determine whether Student is eligible for special education services.