

CORRECTED ABSTRACT
NM SEA DPH No. 1213-39

Request for Due Process granted in-part. Tenth grade Student has transition desire to serve in the United States Marines, which requires at least an eighth grade reading level.

Due Process Complaint filed seeking resolution of matters, some outside two year limitations period. Held that Petitioners did not come within statutory exceptions in some claims by failing to show they were prevented from filing a due process complaint by the LEA.

Among other things in complex case, claims within the two year period alleging substantive and procedural violations were considered. After struggles with the LEA regarding basis for special education eligibility, it was concluded that Student is eligible for Specific Learning Disabled due to dyslexia, as well as to Other Health Impaired, due to ADHD. Weight was given to the PhD pediatric neuropsychologist's diagnosis of dyslexia over that of school psychologist and diagnosticians. Prior to neuropsychologist's diagnosis there was no substantive violation of FAPE due to no suspicion of SLD, only OHI, based on academic testing results showing OHI – LEA did not conduct cognitive testing. After neuropsychologist's diagnosis with cognitive testing then FAPE was denied because LEA did not find Student eligible under dyslexia, which LEA disputed.

LEA's contention that providing this intelligent, dyslexic Student with skills to obtain an eighth grade reading level to transition into U.S. Marines was a "Cadillac service" found unpersuasive. Failure to implement portions of IEPs within time frame were material failures.

LEA ordered to provide 1:1 pull-out services in reading and math, 5 hours of each, each week, to provide appropriate services to Student, to compliment existing provisions of last IEP.

Procedural violations, some resulting in denial of FAPE, such as failure to have adequate transition plan caused substantive harm. Transition plan formed. Student showed disciplinary problems impeding his learning and that of others; BIP ordered.

Assistive technology ordered to be provided, with education regarding the use of the technology to the Student and LEA staff.

Compensatory education services denied because of the prospective ordered 1:1 services in math and reading, to compliment existing IEP, coupled with Student's questionable willingness to accept additional after school services should they be ordered.

DPHO Morgan Lyman
11.21.2013