

**KENTUCKY DEPARTMENT OF EDUCATION
AGENCY CASE NO 1617-20**

RECEIVED
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BY: KDE JP
PETITIONER

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL ORDER**

LIVINGSTON COUNTY SCHOOLS

RESPONDENT

This case involves a sixteen-year-old student who will be a junior in school year 2017-2018. During elementary school, the student had an IEP in speech, but that was discontinued. During the period at issue in this case, the student was operating under a 504 plan. In November of 2015, the student's parent requested an evaluation for special education services. An ARC was convened and the school denied the request because it did not suspect that the student was a child with a disability needing educational services.

A hearing in this matter was held on July 17, 2017, at the Livingston Central High School in Smithland, Kentucky. At issue was (1) whether the school violated applicable law by failing to conduct an evaluation when it was requested by the parent and (2) whether the student is a child with a disability entitled to special education services.

The hearing officer has reviewed the record, the briefs of the parties, and applicable law. Below appearing findings of fact, conclusions of law, and a final order.

FINDINGS OF FACT

1. **The student's academic performance has been above average throughout his**

academic career; Petitioner failed to prove that the student's progress is significantly and consistently below the level of similar age peers.

The parent testified regarding the student's academic performance as follows:

Q. I would like to talk about [REDACTED]'s grades for his freshman year now before we finish up.

A. It's all A's and one B. He always makes the honor roll.

Q. Always has?

A. His whole life, yeah. Perfect attendance as well.

(TE 128-129)

Angie McGee is a guidance counselor at the high school. She testified that the Explore test is part of tests that predict likely success on the ACT, an entrance exam used by many colleges. The student scored in the 53rd percentile nationally, 55th percentile for Kentucky, and 56th percentile for the student's high school. He did better than 81 percent of the students in his school in math, better than 60 percent of the students in reading, and better than 93 percent of the students in science. (TE 286-288).

Elsewhere hereinbelow, other testimony is quoted concerning the student's success in school. The evidence is overwhelming that the student has been successful.

2. Petitioner failed to prove that the student has autism.

The mother testified that the school was informed in 2010 that a psychologist at [REDACTED] had diagnosed the student with autism. (TE 80). The document supporting her testimony, Petitioner's Exhibit 11(d), has no letterhead or other indicia that the report is associated with [REDACTED] and purports to be a report by a psychiatrist named [REDACTED] dated August 13, 2010. It references testing on page 2 and on page 1 gives a diagnosis of Asperger's. When the mother was cross-examined regarding the basis for diagnosis of autism at [REDACTED] in 2010, counsel for the student objected to her answering, contending "I don't think

there's any way for her to know whether [the doctor] did it on observations, her history." (TE 101). The mother testified she assumed the doctor reviewed some records. (TE 101)

A letter dated November 28, 2016, quoting a letter from November 5, 2015, was submitted as Exhibit 11(g). It is on [REDACTED] stationery, signed by a social worker, and states

[b]ased on observation and the Autism Spectrum Rating Scale (ASRS) [the student] meets criteria for a diagnosis of Autism Spectrum Disorder. [The student] is on the Spectrum, which in the past would have been considered Asperger's Disorder.

(Pet. Exh. 11(g)). The letter lists some symptoms of Asperger's and states "[t]hese above symptoms may manifest as avoidance of school work, failure to complete school related task that he is disinterested in or uncertain about." (Pet. Exh. 11(g)). Elsewhere hereinbelow, a finding is made that the student sometimes does not do work he is not interested in and has a history of not turning in work.

A letter from a Dr. [REDACTED] was admitted (Petitioner Ex. 11(c)), notwithstanding the fact that the school apparently did not receive a complete copy prior to the hearing. The glitch was likely inadvertent, but the letter itself is entitled to no weight. It does not indicate that this doctor performed any testing or did anything other than write a letter for the mom repeating what he'd been told by the mom, concluding with the admonition that "[the student's] mother is a wealth of information regarding Asperger's syndrome and can provide more ideas on ways to assist [the student]."

Petitioner admitted Exhibits 11(a) and (b) from [REDACTED] Exhibit 11(b), signed by pediatrician [REDACTED] states "[the student] has been previously received the diagnosis of Asperger's.... [The student] presents with his mother to evaluate whether he meets criteria for an autism spectrum disorder."

The mother testified at the hearing that she brought a packet of records for the doctors to look at, and that she sat in on the interview with the student “but [the student] is not very communicative so there were times that I had to speak up and fill in the blanks or talk about issues that [the student] is not comfortable talking about...” (TE 333). The report mention review or records or indicate that any testing was performed or that ██████ did anything other than meet with the student and the mother together. The report states

[b]ased on history and today’s visit, [the student] does have some delays in nonverbal communication, decreased social emotional reciprocity, lack of developmentally appropriate relationships, rigidity around routine, restricted and intense interests and sensory hypersensitivities. Thus he meets criteria for an autism spectrum disorder requiring level one supports in both the social communication and restricted repetitive patterns of behavior domains.... It should be noted that [the student] has made a number of great developmental gains over the years and has some nice strengths. With a little support around social communication and engaging in nonpreferred activities, [the student] can reach his full potential.

Counsel for Respondent did not object to introduction of Petitioner’s proof. However, no foundation was given for the basis of opinions expressed in Petitioner’s proof, the authors of the documents were not made available for cross-examination, and no expert was called by Petitioner who could testify about the student’s Asperger diagnosis. Petitioner’s proof of Asperger’s can be given very little weight.

The paucity of testing and data in Petitioner’s proof contrasts markedly with the testing and data collected in the school’s screening process. In addition, a foundation was laid for the opinions set forth in Respondent’s report and the preparer of the report was available for cross-examination.

Tammy Sayle is a school psychologist for the school system. She screened the student in 2016 in response to the mother’s referral request. The purpose of a screening is “to get an idea of whether there are any areas that need to be looked further into.” (TE 239-240). Her report

appears as Exhibit 10. The student was in the 73rd percentile cognitively. His overall academic achievement composite was at the 30th percentile. Both the cognitive and the achievement scores fall within the average range, which stretches from just below 20th percentile to 80th percentile (TE 240-243).

Sayle testified, regarding the diagnoses by [REDACTED] and [REDACTED], that she could not comment on their diagnoses because she did not know what testing or methods they used. Regarding the [REDACTED] report, Petitioner Exhibit 11(a), a summary of the [REDACTED] meeting, upon reviewing it she said it appeared to be based upon parent's history, not include any clinical observations, and did not identify testing or any sources of information other than the history given by the mother. (TE 268-273). Exhibit 11(b), the full report, does indicate clinical observations during the meeting with the student and mother, but otherwise Sayle's observation on the basis of [REDACTED] documents is correct.

Pamela Garrett is Director of Special Education for the school system. She prepared an exhibit (R-11) illustrating the scores the student had made on various tests and testified that all the scores fell within the average range. (TE 295). Regarding the student's autism diagnoses,

Garrett testified as follows:

The very only test per se for autism that exists that I know of in his file are the ADOS. Which the way that's administered is you pull him and you work with him and you look for these characteristics of autism.

Q. And that's what [the school psychologist] did?

A. Exactly. As opposed to the Autism Rating Scale reported by [REDACTED] on a report that [REDACTED] submitted, that's parent report.

(TE 321). The results of the school's testing appear in Exhibit 13, which states "[t]he results of the ADPS indicate that [the student] does not meet the criteria for Autistic Disorder or an Autism Spectrum Disorder."

Weighing the evidence, Respondent's evidence on the issue of autism prevails.

3. Petitioner did not establish that a disability impedes the student's progress in school.

The mother testified that she understands the student to have Asperger's and that it is the mildest form of autism and on the high functioning end of the spectrum. (TE 123). Other than the comment in the 2010 document the Petitioner says is from [REDACTED] which says the student may exhibit "avoidance of school work, failure to complete school-related task that he is disinterested in or uncertain about," there is no expert proof associating Asperger's with evidence presented about this student's problems in school.

The parent cited the student's performance on an on-demand writing assignment as academic evidence of his need for an IEP, presumably speculating that the student is unable to organize his thoughts because of a disability:

[T]he fact that they gave him three hours for a scrimmage on-demand writing assignment and he wrote 10 lines indicates that he cannot, given a topic, he cannot organize and write a paper on it. In a future meeting we asked [the student] what happened here and he said, "I don't have any interest in the subject." But the point of on-demand writing assignments, it doesn't matter interest. If he had been taught how to organize thoughts and come up with subtopics, he should be able to write that story.

(TE 79). It was unclear from the testimony whether the parent thought the school had failed to teach the student or the student was unable, because of a disability, to organize his thoughts. If the latter, it would be relevant to this proceeding, but also would be speculation by the parent on a matter that requires expert proof.

The student makes As and Bs in school, but the parent attributes that to the extra help she gives him at home. (TE 113-114). The mother described her extensive involvement in the student's school work as follows:

[H]e wasn't understanding what was going on in the classroom. He was bringing home a book and saying, "I need help. Help me understand what's going on." So I was having to teach him at night and we were spending – he would get home from school. He did the

after-school program. So he would get on the bus at 6:30, he would get off at 6:30, and then I'm doing five hours of homework every night. And I thought, well, if I have to spend five hours at night, I might as well go spend the five hours during the day so that the kid has some kind of life outside of school from 6 a.m. to midnight every night.

(TE 114-115). The mom testified that she thought the help she was giving him was what kept the student from qualifying for special education:

They had an autism OHI eligibility form and they checked "no" on the boxes. The only discussion came down to "significant"; and they kept saying, "Yes, there is a problem, but it's not significant." The principal at that meeting told me, "In order for him to get the help he needs, you're going to have to let him fail." And I was not willing to do that because I have a kid that gets himself up and goes to school, and I'm not going to let him fail just to make the school do what they're supposed to do.

(TE 115-116).

The hearing officer understands the argument made by the parent, that were it not for her help, the student's academic performance would have been significantly below his peers, and that a possible explanation, if that were the case, could be the effect of a disability. However, guessing how the student would perform if the parent did not provide lots of extra help is speculation. And it is further speculation by a non-expert to assert that such hypothesized failure would have been caused by autism.

4. The student was operating under a 504 plan at the time of events complained of.

The student was taken out of special education under the speech in 2010. (TE 106). The mother made a referral to have him considered for eligibility in autism (TE 106-107) but the school determined that the student did not qualify. They did, however, put him on a 504 plan instead. (TE 109-110).

5. The student did well under the 504 plan during middle school.

According to the parent, the student had problems in elementary school but "[m]iddle school was absolutely wonderful" under a 504 plan. (TE 17).

6. The parent had complaints about the content of the 504 plan and how it was being administered in high school.

Much of the proof in the case involved the parent's complaint about administration of the student's 504 plan or about the school or teachers administering it.

The parent testified that teachers and personnel from the high school did not participate in the May 2015 504 meeting about transitioning from middle to high school. (TE 21-23). The mother complained that certain changes the school made to address complaints of the mother had not been put in the student's 504 plan. (TE 97). The mom testified that she wanted an IEP because the 504 plan doesn't acknowledge that the student has autism. (TE 128). The mother asserted that teachers were not informed that the student was under a 504 plan and that problems resulted therefrom:

The end of the years always go fine because by that point everybody is used to each other. ██████ understands. ██████ is on board. Then you have the same thing when school starts all over. It's a cycle. Which is another reason to have an IEP because the current 504 plan doesn't let the teacher that he's coming into give them a heads-up on what they're getting into.

(TE 128).

The student is supposed to have an agenda. The parent testified that a teacher in ninth grade promised to make sure the student filled out his agenda, but then didn't do it. (TE 145). As discussed elsewhere hereinbelow, the parent had numerous complaints that the school should have, but didn't, provide the parent with the student's assignments.

This proceeding concerns entitlement to special education. Complaints about administration of 504 plans or the school generally are not addressable in this proceeding nor are they grounds for entitlement to special education.

7. During fall 2015, freshman year, the student sometimes failed to bring

work home for the mother to help him with them and sometimes did not turn in assignments.

It was the practice of the student to bring work home from school for the mother to help him. The mother testified that during freshman year, at least at the beginning, she wasn't getting the assignments and that she thought the student sometimes didn't understand that there were assignments. (TE 36). The parent testified that because the student is permitted additional time for assignments and therefore does not turn them in at the same time his classmates do, perhaps the student, not prompted by seeing other students turn in papers, sometimes forgets to turn assignments in at all and the teacher doesn't think to prompt him to do so. (TE 51).

8. The student sometimes does not do work that does not interest him.

When the parent discovered that the student hadn't been turning in assignments, she described the student's explanation as follows:

I said "... what's up with all the zeros?" He said, "Well, they're on Chapter 4 and I'm only on Chapter 1." And I said, "What's the problem?" And he said, "It's boring." And I said "I don't care if it's boring. You have to get it done."

(TE 67).

9. The school attempted rectify issues regarding what assignments had been turned in and the student keeping track of assignments.

Five weeks into freshman year, 2015-2016, the parent learned that the student was making "below average grades of what [the student] is used to making." (TE 29) based upon what appeared to have been turned. The student claimed to have done the assignment, but the parent communicated with the teacher, then met with the teacher, and was shown the workbook page indicating that the student appeared to have only done about a quarter of the assignment. However this later proved to be a grading error on the part of the teacher (TE 31-34)

The mother testified that she thought student needed more time to copy assignments from board (TE 38). The school's response was to let the student use the principal's iPad to take a picture of the assignment. (TE 45). Subsequently, the parent got the student an old cellphone to use to take pictures and she testified that that solved the problem of being able to have a record of the assignments. (TE 46).

The parent testified that "things get better as the [2015-2016 school] year goes on because [the student] gets used to the teacher of the teacher gets used to [the student]. Things do get more smooth as the year goes on." (TE 51).

10. In November of 2015, the parent requested an evaluation. An ARC was convened, and the request was denied.

The mother made a referral again in 2015, the student's ninth grade year (TE 123).

11. A primary reason the parent wanted the evaluation was to get an IEP, because she believed that if her student had an IEP it would give her more power when there were disputes with the school system.

The parent testified as follows:

Q. So when you were talking to us earlier and you talked about the reason you want an IEP, and I understand that you think it has more legal clout; is that correct, than a 504 plan?

A. Correct... That's not the only reason, but filing those complaints aren't getting me anywhere.

(TE 140).

The parent complained that the school won't let the student take his book home to enable the parent to work with the student on work the student didn't complete at school. (TE 68). The parent believed that having an IEP would solve that problem:

Q. So is part of the reason you want an IEP because of future problems you think might arise?

A. No. Because we have a history of ongoing problems that aren't solved.

Q. And those ongoing problems that are not solved would be what?

A. The main ones, he doesn't get the assignments. He doesn't have the materials.

(TE 141). The parent seemed to believe that having an IEP would give the parent more leverage with teachers. When asked why she thought the student needed an IEP, the parent testified as follows:

Q. I'm asking you what it was about [the student's] situation where you wanted an IEP. What problems was he having?

A. So I have teachers telling me they don't have to do something. I feel like I need the legal protection of an IEP. Nothing – it's not going smoothly. This isn't the only classroom that we're having trouble in.

(TE 48). The parent explained what these "troubles" were:

A. So I've got to have the material, I've got to have the assignment, and I've got to have the time to get it done and I will help him get it done. But I still wasn't getting those three things, so that's why.

Q. What were the three things again?

A. The assignment, the material to do the assignment, and the time to get the assignment done.

(TE 49-50). When asked why she wanted an IEP in place before fall 2016, the beginning of sophomore year, the parent testified as follows:

Q. Why did you want [an IEP] going from freshman to sophomore year? That's the time frame that's at issue.

A I've got to have the legal protection at this point because I have a school district who is – teachers telling me they don't have to, and I have – when we got into that meeting the principal backed up the teacher. And that's his job, but we're still not getting [REDACTED] the assignments, the material to do the assignments. Time is not a problem as long as I have those two things for the most part.

(TE 63-64). The hearing officer observes that the parent repeatedly testified that *she*, rather than the student, was the one who needed to know the assignment and needed to be provided materials.

12. Another reason the parent wanted an IEP was because she thought the student needed a Behavioral Intervention Plan (BIP), and that an IEP was a prerequisite for a BIP.

During a school-sponsored summer camp between freshman and sophomore year, the student had an altercation with another student, which the parent contends shows the need for an BIP, which the parent thought would entitle the student to an IEP, opining that even though the student's teacher said that the student hasn't had any other behavior problems in high school, this one incident is sufficient to require a behavior plan. (TE 57-59). Scott Gray, the principal of the high school, testified, and counsel for the student stipulated, that the student had not been referred to the principal's office since middle school. (TE 227-228).

The hearing officer need not reach the question of whether the student needs a BIP. For purposes of this proceeding, the parent was under two mistaken assumptions. First, it is not necessary to have an IEP in order to have a BIP. Students under 504 plans may, under appropriate circumstances, be entitled to one. Second, needing or desiring a BIP is not grounds for finding a child eligible for special education services.

13. Another reason the parent sought an IEP was because she thought the student would need help transitioning to college.

Another reason the parent gave for wanting an IEP was that she wanted the student to have a program to help him transition to college:

Q. Okay. Why do you want an IEP to address that situation, starting all over?

A. Because – so after the summer incident then I definitely – if I thought I needed legal protection then, I definitely need it now. Looking forward, I'm getting him ready for college. And as part of an IEP, once the kid is 14, they have to check that box to get him post high school transition assistance. So I need not only the legal protection of an IEP, but we now have to start looking forward to college and so I need that post high school transition program.

(TE 64)

While students who need special education services may be entitled to help transitioning to college, the desire or need for such help is not a basis for finding the student eligible for special education services.

14. Another reason the parent wanted an IEP is because she thought it empower her to direct the school not to require the student to perform assignments the parent thought was just “busybody” work.

Another reason the parent gave for wanting an IEP was that she thought it would give her the power to compel the school to modify “Live Red assignments,” which in her opinion were “not germane to what they’re doing in class” and were too much work for just busybody work. “So under an IEP I needed those Live Red assignments modified, and you can only modify assignments under an IEP.” (TE 65).

The parent’s desire to control which assignments her student performs is not a basis for finding the student needs special education.

15. Another reason the parent wanted an IEP is because she thought 504 plans could not modify assignments.

As quoted elsewhere hereinabove, the parent testified that she believed assignments could not be modified under a 504 plan. However, DoSE Director Pamela Garrett testified that teachers are permitted and encouraged to modify assignments under 504 plans. (TE 326).

In the present case, the student gets double-time to complete assignments. But teachers complained that the student wasn’t using his double time efficiently and added to the plan that he had to be using it efficiently. (TE 158).

16. The parent’s request for an evaluation was denied.

The request was denied. See TE 47.

17. The school declined to evaluate the student because it properly concluded that the student did not appear to need special education services.

The testimony of all teachers and school personnel who appeared overwhelmingly support the school's decision not to evaluate.

Blake Bradley is a special education teacher at the high school. Bradley reviewed information provided, including academic performance, grades, and observation, including a direct observation he had made of the student in biology class. (TE 190-191). He was part of the team that made the decision that the student did not need to be tested for special education. :

Q. Do you recall why he didn't need to be tested for special education, only if you recall?

A. Yeah. Just based on the data and information presented, we did not see an adverse effect across any content area that adversely affected his academic or performance whatsoever.

Q. So do you recall any academic problems, behavior problems, social-emotional problems that day –

A. No, ma'am.

Q – that made you think you needed to test him?

A. No, ma'am.

Q. So, from your knowledge of special education law or special education programming, what you have to do, is it your understanding that the ARC team decides whether they suspect the child needs specially designed instruction and that is why you evaluate him?

A. Yes

Q. Is that true?

A. Uh-huh.

Q. So if you had no specially designed instruction need, the team would not pursue with an evaluation?

A. No.

Q. And that's a normal thing to do?

A. Yes, ma'am.

(TE 187-188).

Amanda Ruth Lane is a speech pathologist for the school system. (TE 170). The student, prior to 2010, had qualified for special education in the area of speech. In 2016, the student was screened by Lane for speech, language, and hearing:

He passed his hearing at 20 decibels in both ears at all frequencies; he also passed the language screener in all areas; he did not exhibit any speech sound errors; and his social skills were age appropriate.

(TE 173).

Michelle Venable taught Spanish to the student his freshman and sophomore years. She testified that the student made A's and B's and had no behavior problems. (TE 180). She saw nothing in academics, behavior or social-emotional areas that would have made her consider referring him for special education services or need specially-designed instruction (TE 181).

Theresa Falder is a social studies teacher at the high school and taught the student in ninth grade. She testified that the student had done well academically, remembered no behavior problems and did not "see anything that led her to believe that the student needed any kind of specially-designed instruction or needed to be referred for a special education evaluation." (TE 193).

Kim Simpson, who taught geometry to the student in sophomore year, testified that the student made an A, was a good student, behaved like a typical high school student, and that she never saw anything that would make her think he needed referral for special education evaluation. (TE 195-196).

Greta Ramage teaches business and marketing at the high school and taught the student Financial Literacy. She testified that he made good grades, behaved like a typical teenager, and that she never saw anything about his academics, behavior or social skills that made her think he should be referred for special education evaluation. (TE 203-204).

Scott Colman taught World Civics to the student in his sophomore year. He testified that the student made good grades, behaved like the other kids, had no behavioral problems, and that he did not see anything that would've had led him to believe that the student needed referral for special education evaluation. (TE 205).

Tamra Clinger taught science to the student in ninth grade. She said he was a good student, behaved like the other kids his age, and never saw anything about his academics,

behavior or social skills that indicated a need to refer the student for special ed evaluation. (TE 208-209).

Lisa Head taught the student in English in ninth grade. He made good grades, had no behavioral problems, and she did not see anything in academics, behavior, or social skills that indicated a need to refer for special education evaluation. (TE 215).

Matt Hargrove taught the student in PE and Health in the ninth grade. The student did well academically, behaved like the other students, engaged with the other students, and he saw nothing academically, emotionally, or otherwise that indicated a need to refer for special education evaluation. (TE 218-219).

Derrick Ford taught the student English in tenth grade. The student had one of the higher grades in the class, behaved like the other students, engaged with the other students, and he saw nothing academically, emotionally, or otherwise that indicated a need to refer for special education evaluation. (TE 220-221).

18. Testimony of school personnel regarding the decision not to evaluate the student was credible.

The hearing officer finds the credibility of witnesses testifying that the student did not require evaluation for special education services credible. It is consistent with the evidence of good school performance and lack of behavioral problems. There were no internal inconsistencies or matters brought out on cross-examination that raised any credibility issues.

CONCLUSIONS OF LAW

Under *Schaffer v. Weast*, 546 US 49, 62 (2005), the student bears the burden of to prove entitlement to relief by a preponderance of the evidence. The School's FAPE obligations are set forth in *Board of Education of Fayette County v. L.M.*, 478 F.3d 307, 314 (6th Cir. 2007):

Under the IDEA, the School is required to provide a basic floor of educational opportunity consisting "of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 201, 102 S.Ct. 3034. There is no additional requirement, however, "that the services so provided be sufficient to *maximize* each child's potential commensurate with the opportunity provided other children." *Id.* at 198, 102 S.Ct. 3034.

(emphasis in *L.M.*)

1. The school had no obligation to conduct a full evaluation of the student because, after screening because it did not suspect that the student was child with a disability in need of special education.

It is undisputed that the student's parent requested an evaluation. The school declined the request because it did and does not suspect that the child had or has a disability and needed or needs special education and related services. It is undisputed that the school provided written notice of that refusal. The fact that regulations require written notice of the school's decision implies that the school is not required to conduct an evaluation simply because the parent requests one.

Where the school and parent disagree on the need to evaluate, the student's option, procedurally, is to challenge that decision by requesting a due process hearing. *See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 70 Fed. Reg. 156, 46636 (August 14, 2006).

2. The school did not overlook clear signs of disability and did not negligently fail to order testing; the decision not to evaluate was rational and justified.

The school's failure to evaluate, if a wrong, would be a violation of Child-Find. To prove a violation of Child-Find, the student must show that (1) the school overlooked clear signs of disability and were negligent in failing to order testing, or (2) that there was no rational justification for not deciding to evaluate. *Board of Education of Fayette County v. L.M.*, 478 F.3d 307 (6th Cir. 2007).

3. Petitioner failed to prove that the student was eligible for educational services.

Whether or not the school violated Child-Find, the student contends that the student is a child with a disability entitled to special education services. To be a child with a disability, the student must (1) have one of the disabilities listed in the statute *and* (2) show that it had an adverse effect on the child's educational performance. 707 KAR 1:1002 Section 1(9). In Kentucky, adverse effect exists when "the progress of a student is impeded by the disability to the extent that it is significantly and consistently below the level of similar age peers." 707 KAR 1:002, Section 1(2). A third requirement is that, if a student is a child with a disability within the meaning of IDEA and applicable regulations, the student's disability must be such that specially designed instruction is required in order for the child to benefit from education. 707 KAR 1:310, Section 1(1).

Per fact-findings hereinabove, none of the requirements are met.

FINAL ORDER

The hearing officer finds for Respondent on all issues.

NOTICE

A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education at Office of Legal Services, 300 Sower Blvd., 5th floor, Frankfort KY 40601. The appeal shall be perfected by sending, by certified mail, to the Kentucky Department of Education, a request for appeal within thirty (30) calendar days of date of the hearing officer's decision.

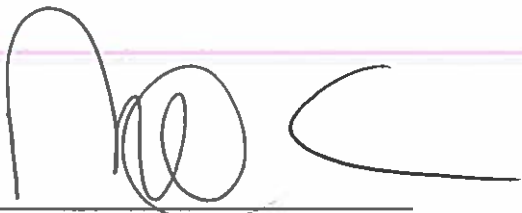
October 16, 2017.



MIKE WILSON, HEARING OFFICER

CERTIFICATION:

The original of the foregoing was mailed to Hon. Todd Allen, KDE, 300 Sower Blvd., Frankfort KY 40601, and copies to Charles Walter, 410 Broadway, Paducah KY 42001, and to Teresa T. Combs, Mazanec, Raskin & Ryder, 230 Lexington Green Circle, Suite 605, Lexington KY 40503, on October 16, 2017.



MIKE WILSON, HEARING OFFICER

