



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

2003 JUN 30 P 3:39
RECORDS OFFICE

In the Matter of

██████████ by and through
his Father, ██████████,

Petitioners,

vs.

DEPARTMENT OF EDUCATION,
STATE OF HAWAII,

Respondent.

DOE-2003-025

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION**

I. CHRONOLOGY OF CASE

On February 25, 2005, ██████████ requested a due process hearing on behalf of his son, ██████████ (hereinafter collectively referred to as "Petitioners").

On March 6, 2003, ██████████ Esq., transmitted Petitioners' request for a due process hearing to the Office of Administrative Hearings, Department of Commerce and Consumer Affairs.

On March 27, 2003, the pre-hearing conference in the above-captioned matter was conducted by the undersigned Hearings Officer. Petitioners were represented by their attorneys, ██████████ and ██████████. The Department of Education, State of Hawai'i ("Respondent") was represented by its attorney, ██████████. During the course of the pre-hearing conference, the parties requested that the hearing be rescheduled.

On April 10, 2003, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer in ██████████ ██████████

[REDACTED] were present and were represented by [REDACTED] and [REDACTED], Esq. [REDACTED], Special Education Resource Teacher for the Department of Education, appeared at the hearing as the designated representative for the Respondent, and Respondent was represented by its attorney, [REDACTED]. The hearing continued on April 11, and 17, 2003, in Hilo, Hawai'i with the parties present and represented by their respective counsel.

On May 9, 2003, the hearing was reconvened via conference call at the request of the parties, and the hearing was concluded after the parties rested their respective cases.

At the conclusion of the hearing on May 9, 2003, the parties requested that the forty-five day period specified by Hawai'i Administrative Rules ("HAR") §8-56-77(a) be extended from April 11, 2003, to June 30, 2003 in order to allow the parties to receive and review the transcript of the proceedings, and to submit their written closing arguments. Good cause appearing therefore, the Hearings Officer granted the parties' request.

On June 16, 2003, the parties submitted their respective Closing Briefs.

II. ISSUES PRESENTED

The primary issue to be decided in the present matter is whether [REDACTED] should have been determined to be eligible to receive special education services under the Individuals with Disabilities Education Act ("IDEA") from the time he began attending [REDACTED] Elementary School in August 2001, up to the date of the hearing in the present case.

III. FINDINGS OF FACT

1. In August 2001, [REDACTED] came to live with Mr. and Mrs. [REDACTED] on the [REDACTED] of Hawai'i, after being removed from his biological mother's home in [REDACTED] by [REDACTED].
2. [REDACTED] exhibited behavioral problems, both at home and at school, since his arrival in Hawai'i.
3. Soon after his arrival, and prior to [REDACTED] being diagnosed as being sexually abused while in [REDACTED], [REDACTED] began exhibiting inappropriate sexual behavior toward his step-mother.
4. Because of concerns regarding [REDACTED] behavior, [REDACTED] took [REDACTED] to a psychologist before the school year began.

5. In August 2001, [REDACTED] was enrolled in [REDACTED] Elementary School as a sixth grader. [REDACTED] attempted to alert the school to his son's emotional problems at that time. No services were discussed or offered.

6. The first time [REDACTED] 5th grade teacher learned about [REDACTED] history of abuse was during the first quarter parent conference.

7. No records from [REDACTED] previous school were made available to [REDACTED] teacher.

8. [REDACTED] teacher "knew he was on medication for his behavior", but did not know his diagnosis.

9. [REDACTED] had trouble "focusing" in class, and was "talkative" in the classroom.

10. On several occasions [REDACTED] was kept after school by his teacher so that his teacher could talk to him about budgeting his time and to check on his work; [REDACTED] got very angry and told his teacher that he had to go home.

11. [REDACTED] had trouble getting his homework finished, and sometimes it would take [REDACTED] four (4) hours to complete his homework. [REDACTED] teacher told Mrs. [REDACTED] that [REDACTED] should have been able to complete his homework within one hour per night. However, [REDACTED] teacher had an agreement with all of the students in [REDACTED] class that students would have to complete their homework at recess if the homework was not completed when due. [REDACTED] teacher noted that there were many times that [REDACTED] completed his homework during recess, although [REDACTED] apparently had no problems completing the homework within the time span of recess.

12. [REDACTED] teacher moved [REDACTED] classroom seat because [REDACTED] was talkative and needed to learn how to control his talkativeness at the right time.

13. On or about February 14, 2002, Mr. [REDACTED] took [REDACTED] to see [REDACTED] Ph.D., a licensed psychologist. Dr. [REDACTED] noted that [REDACTED] exhibited significant symptoms of an underlying learning disability.

14. In March 2002, Mr. [REDACTED] took [REDACTED] to see [REDACTED] M.D., a psychiatrist, because of concerns regarding [REDACTED] behavior problems. Dr. [REDACTED] diagnosed [REDACTED] as having Attention Deficit Hyperactivity Disorder ("ADHD") and

prescribed medication for [REDACTED] ADHD symptoms. Dr. [REDACTED] also told Mr. [REDACTED] that services were available under Section 504 and IDEA eligibility.

15. By letter dated March 18, 2002, Dr. [REDACTED] noted that [REDACTED] was under his care for severe emotional and behavioral problems related to [REDACTED] ADHD and that these problems pre-dated [REDACTED] move to Hawai'i. Dr. [REDACTED] was of the opinion that [REDACTED] problems with behavior, school performance, and interpersonal interactions were going to require medication and intensive psychological intervention for a long time.

The current plan involves daily medication, monthly medical follow-up and frequent therapy sessions with a skilled psychologist. He [REDACTED] also requires accommodation at school and may require supplemental educational assistance. My professional opinion is that [REDACTED] will require substantial resources for a long time as a result of his problems.

Petitioners' Exhibit 78.

16. By letter dated March 21, 2002, [REDACTED], Ph.D., a licensed psychologist, state that:

This is to certify that [REDACTED] is a patient of the undersigned (since 2/14/02) and is being treated for an Attention Deficit Hyperactive Disorder, Adjustment disorder and possible Learning Disability. He has significant problems being very easily distracted, short attention span and problems with concentration and short term memory. These symptoms have been long standing and occur both at home and in school. The nature of the disorders is such that he will need long term treatment with varying intensity over the next several years. Treatment will include individual and family therapy, school intervention and accommodations, and medication management. He also has some significant symptoms of oppositional defiant behavior. Some of the problems he has had with personal hygiene behavior seem to be the result of lack of prior parent training and/or supervision when he was living with his biological mother.

Petitioners' Exhibit 77.

17. Mr. [REDACTED] subsequently shared Drs. [REDACTED] and [REDACTED] letters with the school.

18. On or about April 1, 2002, Mr. [REDACTED] submitted a Request for Evaluation whereby he requested that [REDACTED] Elementary School evaluate [REDACTED] because of concerns regarding [REDACTED] behavior.

19. On or about April 4, 2002, [REDACTED] Elementary School issued a Meeting Announcement in response to Mr. [REDACTED] request to have [REDACTED] evaluated, and informed Mr. [REDACTED] that a Student Support Team ("SST") meeting would be held on April 8, 2002. According to the April 4, 2002 Meeting Announcement, the purpose of the meeting was to: a) discuss the request for an initial evaluation for [REDACTED]; and b) determine what additional data, if any, was needed as part of an initial evaluation.

20. On April 8, 2002, the SST met to discuss Mr. [REDACTED] request to have [REDACTED] evaluated. The SST meeting was attended by Mr. [REDACTED]; [REDACTED], Principal of [REDACTED] Elementary School; [REDACTED], Student Services Coordinator ("SSC"); [REDACTED], Regular Education Teacher (via memo); [REDACTED], Complex Clinical Psychologist; and [REDACTED], School Counselor. The notes of the April 8, 2002 SST meeting reflect:

Mr. [REDACTED] related his concerns. He described [REDACTED] as going through rages (i.e., crying, screaming, swearing) at home. He recently (August '01) moved in with father and father's wife after little or no contact since father and [REDACTED] mother separated in '95. [REDACTED] move to father's home came as a result of abuse in mother's home in [REDACTED]. He is seeing a therapist privately. His present therapist asked father to request a comprehensive evaluation through the school. Teacher reported through the SSC that [REDACTED] is doing well in her class and that he is focusing, is in control of himself and is doing good work. Although the team acknowledges [REDACTED] problems at home, he is experiencing success in school and does not evidence a need for specialized services in school. Lastly, the team agreed to have the SSC conduct assessments to see where [REDACTED] is functioning at this time. Father gave consent.

Petitioners' Exhibit 40.

21. On April 8, 2002, the SST issued its Prior Written Notice which stated that the SST agreed that a comprehensive evaluation would not be conducted because, "[REDACTED] was described by his teacher as 'showing his potential to think and do good work.' 'He is focusing and in control of himself.'" The April 8, 2002 Prior Written Notice also indicated that a comprehensive evaluation was considered by the SST, but rejected because, "Although the team acknowledges that [REDACTED] is experiencing problems at home, the negative behaviors are not evident at school, nor are they impacting on his academic performance."

Petitioners' Exhibit 41.

22. On May 9, 2002, [REDACTED] was hospitalized at [REDACTED] after attempting to set fire to his home and after making suicidal and homicidal threats.

23. On May 21, 2002 [REDACTED] was released from [REDACTED] however, [REDACTED] Elementary School informed Mr. Mosher it needed to make preparations to receive [REDACTED].

24. On or about May 21, 2002, a draft Coordinated Services Plan ("CSP") was prepared for [REDACTED] and was supposed to have been reviewed by the SST on October 16, 2002. According to the draft of the May 21, 2002 CSP, a Functional Behavior Assessment ("FBA") was to have been completed at Queen's Medical Center in conjunction with Respondent, however, the FBA apparently was not conducted.

25. On May 24, 2002, a Core Meeting was held at the request of Mrs. [REDACTED] to discuss Mr. and Mrs. [REDACTED] request for additional services for [REDACTED] under the IDEA or Section 504. The meeting participants included: Mr. [REDACTED], Principal; Dr. [REDACTED], Complex Clinical Psychologist; [REDACTED], Complex School Psychologist; [REDACTED], School Based Behavioral Health ("SBBH"), [REDACTED], SSC; [REDACTED], teacher; and [REDACTED], Counselor. The Core Meeting Notes for the May 24, 2002 meeting stated in relevant part:

Teacher shared [REDACTED] Progress Portfolio with the Team. It was also mentioned that there were no serious behavior concerns in school. Mr. [REDACTED] expressed much frustration at not receiving the level of support he felt that [REDACTED] should be receiving (i.e. if [REDACTED] qualified as a Felix child). Although the Team understood the situation at home was extremely difficult for the parents, the Complex School Psychologist explained that because [REDACTED] was progressing in school that he [REDACTED] did not evidence a need for additional services at school. After this discussion, Mr. [REDACTED] said that he understood why the team felt that [REDACTED] was not eligible under IDEA/504 at this point in time with the information that was shared with the team. The Complex School Psychologist also offered his services to Mr. [REDACTED] in assisting the family in creating a Behavior Plan for home.

Since the team felt that more information would be helpful in this case, the team asked Mr. [REDACTED] if he would consent to having [REDACTED] send the school a copy of their evaluation. After some discussion, Father agreed and signed the consent form. In addition to this evaluation, SSC asked Mr. [REDACTED] if it would be agreeable to give [REDACTED] an academic assessment in the summer since he has missed approximately two weeks of school. Mr. [REDACTED] agreed and an appointment would be arranged after school has finished.

The team also discussed [REDACTED] transition back to school on Tuesday. The Teacher agreed to call the home in the afternoon so that she would be able to welcome him back to school. It was agreed that Mr. [REDACTED] would bring [REDACTED] to the office at 7:55 am and he [REDACTED] would meet with the SBBH Therapist and the Counselor before going to class. Mr. [REDACTED] also agreed that he would be able to pick [REDACTED] up after school if necessary. Transition to [REDACTED] Intermediate was also discussed since [REDACTED] missed Orientation Day. The Principal and Counselor agreed to see what could be arranged for Christopher.

Petitioners' Exhibit 38.

26. On or about May 29, 2002, a Psychiatric Discharge Summary was prepared by [REDACTED], M.D., of [REDACTED]. In the May 29, 2002 Psychiatric Discharge Summary, [REDACTED] noted:

Overall, over the nearly two weeks on the unit, [REDACTED] did not exhibit any acts of oppositional behavior of any form. No acting out behavior was observed. He was always very compliant, courteous, and engaging. The worst thing that happened at [REDACTED] was during an incident at the pool when a peer threw something at [REDACTED] which struck him, [REDACTED] said one swear word.

In terms of family therapy, I was very interest in engaging the family in session. I felt that it was very important that this family therapy be done in person rather than over the telephone. Both [REDACTED] father and his stepmother, sounded quite emotionally charged on the telephone when I would speak with them. They seemed extremely upset about [REDACTED] behaviors at home.

It was apparent with my conversations with the parents that they do care very much for [REDACTED]. However, the emotional situation at home seemed to be so highly charged that their participation in [REDACTED] treatment was probably very difficult for them. It was with great concern that I discharged [REDACTED] back home into such an emotionally charged environment.

DISCHARGE CONDITION:

Psychiatrically, [REDACTED] did not have any concerns during his stay. He never voiced any suicidal or homicidal ideations. His behavior was always appropriate. He was able to make some friends with peers on the unit. He was able to readily engage in individual and group therapy. Physically and functionally, he did not have any limitations. . .

PROGNOSIS:

Guarded with continued follow-up.

FOLLOW-UP:

I think it is critical that [REDACTED] receive intensive family therapy sessions. Otherwise, I fear that there is not much hope for success in his current living situation. The family was going to pursue and request services through the Department of Health. It was hoped that [REDACTED] might be able to go into a therapeutic foster home or alternative living situation while the family underwent intensive family therapy. At the present time, I do not feel very comfortable having [REDACTED] discharged home. Likewise, the parents as well as [REDACTED] do not feel comfortable with the discharge arrangement. However, there really was not any alternative at the present time other than having the family continue to pay cash for his hospitalization. However, the costs of hospitalization are quite prohibitive. [REDACTED] medication were not changed during his stay. . . [REDACTED] will return home to live with his father and stepmother. He can return to his regular schooling.

Petitioners' Exhibit 57 at 5 - 7.

27. Mr. [REDACTED] noticed that [REDACTED] became more aggressive after returning home from his hospitalization at [REDACTED]

28. On or about July 16, 2002, [REDACTED] began receiving treatment from [REDACTED], a Board certified psychiatrist in child, adolescent, and adult psychiatry.

29. By letter dated July 24, 2002, [REDACTED], SSC for [REDACTED] Elementary School, informed Mr. and Mrs. [REDACTED] of the results of [REDACTED]'s academic assessment: a) on the Kaufman Brief Intelligence Test (K-BIT), [REDACTED] potential for learning was estimated to be in the superior range based upon his composite standard score of 120 ± 7 ; and b) on the Woodcock-Johnson III: Tests of Achievement (WJ-III), [REDACTED] academic functioning levels fell within average to superior ranges. Ms. [REDACTED] went on to note that [REDACTED] academic scores ranged from 98 in math calculation (which was compromised by his Math Fluency score of 80, a timed test) to a relative high of 121 in basic reading skills.

30. By letter dated August 6, 2002, Dr. [REDACTED] informed the Counselor at [REDACTED] Middle School that he had diagnosed [REDACTED] as having AD/HD. Dr. [REDACTED] also reiterated the diagnosis that had been previously made by [REDACTED] "AD/HD Combined Type, Posttraumatic Stress Disorder and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct." Based upon these diagnoses of AD/HD,

which Dr. [REDACTED] understood was a 504 qualifying diagnosis, Dr. Matsumura requested that the "01 assessment be started." Petitioners' Exhibit 75.

31. In August 2002, Mr. and Mrs. [REDACTED] enrolled [REDACTED] in the Boys & Girls Club ("Club") of the [REDACTED] for summer activities.

32. On August 6, 2002, [REDACTED] was expelled from the Club for highly inappropriate behavior, including physical aggression, bizarre and inappropriate acts, damaging Club property, and ultimately for bringing a knife to the Club. The Executive Director of the Club also testified that parents of other children had threatened to withdraw their children from the Club if [REDACTED] was not expelled.

33. On August 6, 2002, [REDACTED] was admitted to [REDACTED] Acute Psychiatric Unit, after Mrs. [REDACTED] called the police when a pocket knife was found in [REDACTED] possession at the Club.

34. By letter dated August 11, 2002, Mr. [REDACTED] again requested a comprehensive evaluation of [REDACTED] due to the severity of [REDACTED]'s behaviors.

35. By letter dated August 13, 2002, [REDACTED] M.D., and [REDACTED] M.D., psychiatrists at [REDACTED] informed [REDACTED] Intermediate that:

[REDACTED] needs to be identified as a Felix class child as he needs intensive in-home services to include individual and family therapy and routine medical management by a child psychiatrist. He needs to be identified as a Felix class child in order to receive intensive in-home services such as multi-system therapy upon discharge as this is his second acute hospitalization in three months given his severe behavior problems and family issues.

Petitioners' Exhibit 73.

36. On or about August 20, 2002, [REDACTED] was admitted to the [REDACTED] Residential Treatment Program.

37. By letter dated August 22, 2002, [REDACTED] of [REDACTED] informed the Principal of [REDACTED] Intermediate School that [REDACTED] had been admitted to the [REDACTED] Residential Treatment Program, and that a teacher from [REDACTED] Educational Program would be in contact with [REDACTED]'s school counselor to exchange information regarding course work, grades, progress, and discharge plans. Additionally, Ms. [REDACTED] stated that staff from the Educational Program would be available to attend IEP meetings or give input regarding [REDACTED]. Ms. [REDACTED] requested that she be kept informed of any

meetings, and that [REDACTED] would inform [REDACTED] Intermediate School of [REDACTED] discharge from [REDACTED]

38. On August 26, 2002, the SST met to discuss Mr. [REDACTED]'s request to have [REDACTED] evaluated. Present at this meeting were both staff from [REDACTED] Elementary and [REDACTED] Intermediate. After considering the information presented at the meeting, the SST found that there was sufficient data to determine that [REDACTED] was qualified for 504 services. However, the SST determined that although there was sufficient information to establish that [REDACTED] met the criteria for emotional disturbance, [REDACTED] did not meet the eligibility criteria for Essential Conditions and Need for Special Education to qualify for IDEA, primarily because [REDACTED] was doing well academically in school and because [REDACTED] disability did not adversely affect his educational performance.

39. At the conclusion of the August 26, 2002 SST meeting, Mr. [REDACTED] spoke to the [REDACTED] (Mr. and Mrs. [REDACTED]'s advocate) without Mr. and Mrs. [REDACTED] being present. Without being specific, Mr. [REDACTED] indicated to Ms. [REDACTED] that he had received certain information that may have reflected unfavorably upon Mr. and Mrs. [REDACTED], and that Ms. [REDACTED] might consider looking into certain matters regarding Mr. and Mrs. [REDACTED].

School psychologist T

40. Mr. and Mrs. [REDACTED] wrote a letter of complaint regarding Mr. [REDACTED] to the Department of Commerce and Consumer Affairs, State of Hawai'i ("DCCA"), and Mr. and Mrs. [REDACTED] were subsequently referred by DCCA to the Respondent. However, Respondent did not respond.

41. On September 3, 2002, Mr. and Mrs. [REDACTED] wrote to the Department of Education ("DOE") directly regarding [REDACTED] eligibility and their complaint about Mr. [REDACTED]

42. During the month of September 2002, [REDACTED] psychiatrists and psychologists wrote letters refuting any allegations of abusive treatment of [REDACTED] by Mr. and Mrs. [REDACTED]. Mr. [REDACTED] gave these letters to the school.

43. On September 26, 2002, Dr. [REDACTED] wrote a letter expressing his fears that the stress from problems with [REDACTED] were "ruining" Mr. and Mrs. [REDACTED] marriage.

44. On September 26, 2002, while [REDACTED] was still hospitalized, the Wechsler Abbreviated Scale of Intelligence (WASI) and the Wechsler Individual Achievement Test, Second Edition (WIAT-II), were administered to [REDACTED] by [REDACTED] Psychological Examiner IV for the Respondent. [REDACTED] obtained scores on the WASI in the High Average Range, and his specific scores were: 113 on his verbal I.Q.; 115 on his performance I.Q.; and 116 on his full scale I.Q. On the WIAT-II, [REDACTED] scores were in the "high" to "high average" range, however his Written Expression Score (87) resulted in a grade equivalency of 3.7. [REDACTED] was not further evaluated because he was able to perform satisfactorily in his English and language arts classes.

45. By letter dated September 12, 2002, Dr. [REDACTED] noted that his treatment of [REDACTED] was being discontinued by mutual agreement between himself and Mr. [REDACTED] because [REDACTED] behavior was becoming worse and because they felt that it would be better for [REDACTED] to see a psychiatrist and try a different treatment approach.

46. On September 13, 2002 another SST meeting was convened to discuss [REDACTED] 504 Modification Plan. [REDACTED] 504 Modification Plan provided that [REDACTED] would receive school based behavioral health services ("SBBH") at school, and also school counseling at school. [REDACTED] 504 Modification Plan also stated that the SST would reconvene a month after [REDACTED] returned to school to revise/review the 504 Modification Plan, and that if there were any concerns before then, the SST would reconvene as soon as possible.

47. At the September 13, 2002 meeting, Mr. and Mrs. [REDACTED] attempted to discuss [REDACTED]'s IDEA eligibility.

48. On September 27, 2002, [REDACTED] was discharged from [REDACTED]

49. On September 30, 2002, the SST agreed that during the week of September 30, 2002 through October 4, 2002, [REDACTED] would attend school from 8:00 a.m. to 12:00 noon, and that Mrs. [REDACTED] would pick [REDACTED] up at 12:00 noon. [REDACTED] would begin attending school for the full school day starting on October 7, 2002.

50. Pursuant to the transition plan developed by the SST, [REDACTED] attended half-day school the first week. Although the transition plan specified that [REDACTED] was to be picked up from school by 12:00 noon, on one occasion, [REDACTED] received permission

from the Counselor to have lunch at school. However, the school lunch staff apparently had not been informed by the Counselor that [REDACTED] had received permission to eat lunch at school. Consequently, the cafeteria staff informed [REDACTED] that he was supposed to leave school grounds by 12:30 p.m. and was not authorized to eat lunch at the school. Because of the conflicting information given to [REDACTED] he became upset and subsequently told Mr. and Mrs. [REDACTED] that the "school didn't want him" there.

51. Within one week of his return to school, [REDACTED] behavior deteriorated.

52. On or about October 5, 2002, [REDACTED] was admitted to the [REDACTED] after being transferred from the [REDACTED] Emergency Department.

53. On October 16, 2002 the school held another SST meeting. Upon Mr. [REDACTED] request for IDEA eligibility, he was informed that the process had been initiated and the 60-day time period applied as to its completion.

54. In the Psychiatric Discharge Summary, Residential Treatment Services B/C report dated October 21, 2002 and October 25, 2002, Drs. [REDACTED] and [REDACTED] stated:

DISCHARGE CONDITION:

The patient is discharged in stable condition. He denies suicidal ideation or homicidal ideation, displays no psychotic symptoms and has no current medical complaints. No limitations.

PROGNOSIS:

His prognosis is fair depending on the efforts of the patient and the family to remain compliant with established treatment regimen to include management of medication, resumption of regular psychotherapy, provision of family supports, psychoeducation and availability of appropriate educational services. I highly recommend that this patient be considered a Felix child and that he be put in place for therapeutic foster care should that become necessary

FOLLOW-UP:

2. The patient is scheduled for follow up with Dr. [REDACTED] on 10/03/02 at 1600. The patient is discharged to the custody of his biological father, [REDACTED]. He will follow-up with Mr. [REDACTED] for family therapy. He will also follow-up with [REDACTED] for MST services. The

family was also given the number for the crisis line on the [REDACTED]. The patient can return to his regular schooling as dictated through his IEP.

Petitioners' Exhibit 54.

55. On November 13, 2002 a SST meeting was held and the SST approved [REDACTED] 504 placement at [REDACTED]. The SST reviewed [REDACTED] eligibility under IDEA's criteria For Emotional Disturbance ("ED"), Other Health Impairment ("OHI") and Specific Learning Disability ("SLD"). [REDACTED] was found not to meet the criteria under any of these categories.

56. In his Treatment Review report dated November 25, 2002, [REDACTED] M.D., of [REDACTED]

[REDACTED] remains on 36 mg of Concerta with good effect. The School program reports excellent classroom performance, working at grade level and in a highly specialized and supportive setting good concentration and attention skills as well as independent reading and good motivation.

Behaviorally he has been able to organize himself well and has consistently been able to maintain an upper level. This demonstrates the capacity to follow direction and to limit an aggressive response. . . There have been no episodes of physical management.

The environment is so supportive that negative aspects of his personality such as the potential for criminality, oppositionality, and cruelty to family members and animals have not been expressed. It is also likely because of the number of staff available and the network of relationships we have not seen the full expression of his pathology. He responds well to structure. We've tried to discuss the difference between his behaviors both here and at [REDACTED] and to determine why he does well in treatment environments and not with his family. There has been little success in this endeavor.

. . . It is anticipated that he will move to a therapeutic foster home at the end of November as previously reviewed in Treatment Team discussions with care coordinator, school personnel, and family.

Petitioners' Exhibit 47.

57. As a result of [REDACTED] hospitalization and concomitant absences, [REDACTED] grades for the first quarter at [REDACTED] Intermediate School (according to his November 6, 2002 report card) were: "F" in Math Applications; "No Grade" in Social

Studies or Language Arts; "D" in Physical Education, "C" in Math. [REDACTED] was absent from school 35 days of that quarter.

58. However, [REDACTED] report card from the [REDACTED] Family Treatment Center for October 7, 2002 through November 12, 2002, reflected that [REDACTED] received "A"s for reading, art, and P.E.; an "A-" for math; and "B"s for spelling, science, and history. [REDACTED] teacher noted that he was completing all of his assigned school work at the sixth grade level and showed no signs of a learning disability. [REDACTED] teacher also noted that [REDACTED] could be talkative in class, but was willing to quiet down when requested to do so. [REDACTED] teacher considered [REDACTED] to be a good student with a lot of potential.

59. On December 24, 2002, Mr. [REDACTED] suffered a serious cardiac arrest.

60. On or about December 29, 2002, [REDACTED] was discharged from the [REDACTED]

61. On January 15, 2003, the [REDACTED] faxed a copy of [REDACTED] Behavioral Observations and Support Plan, and Dr. [REDACTED] Treatment Review report to [REDACTED] Family Guidance Center.

62. On January 22, 2003 a SST meeting decided that [REDACTED] would receive medication monitoring and school counseling "as needed."

63. On February 5, 2003, the SST approved a psychiatric evaluation for [REDACTED]

64. The principal testified that, as of the date of the hearing, no clinical assessment had been requested or conducted by the DOE or the Department of Health ("DOH").

65. On March 4, 2003, [REDACTED] a, M.D., conducted a psychiatric evaluation of [REDACTED]. In her March 4, 2003 Psychiatric Evaluation report, Dr. [REDACTED] noted:

The dilemma regarding provision of services by the Department of Education to [REDACTED] is the following: he is aggressive and unmanageable at home but he is compliant and exhibits no behavior problems at school.

While [REDACTED] is able to progress in school, he cannot be maintained safely at home with his father and stepmother. Because of this, he has had three psychiatric hospitalizations in one calendar year and his educational progress has been disrupted during those times. . .

Until his symptoms of post-traumatic stress disorder are addressed therapeutically, his prognosis for being able to be maintained safely and consistently in his biological father's and stepmother's home is poor. And while he is not presently exhibiting behavior problems in school, he will probably not be able to maintain appropriate behavior in school as time goes on if these trauma issues are not successfully addressed in his life.

Petitioners' Exhibit 116.

66. On March 17, 2003, Mr. [REDACTED] physician wrote a note to DOH stating that Mr. [REDACTED] should have no overnight visits with [REDACTED], because of the risk of another cardiac arrest.

67. Mr. and Mrs. [REDACTED] did not see a copy of the March 4, 2003 Psychiatric Evaluation report until April 7, 2003.

68. According to the Respondent, [REDACTED] remains ineligible under the ED, OHI, or SLD categories of IDEA.

69. At the hearing, all of Respondent's witnesses, including teachers, administrators, and counselors testified that [REDACTED] did not present inappropriate behaviors at [REDACTED] Elementary School or [REDACTED] Intermediate School. Furthermore, there were no reports of [REDACTED] behavioral problems at school, except for relatively minor situations that were not considered to be significant by the school staff.

70. At the hearing, Dr. [REDACTED] testified that in his understanding, a point difference of more than 15 or more is considered "significant" as to identifying learning disabilities. If there is a 15 point or more difference, it arouses suspicions that "something more is going on, and a scoring discrepancy between 1½ standard deviations (22 pts.) indicates presence of a learning disability. Given [REDACTED] scores on the K-BIT, Dr. [REDACTED] recommended that an experienced psychologist/tester review the results and "do more in depth testing because of big scatter of scores between his IQ and the tested grade equivalency."

71. Possible interpretation of discrepancy in cognitive scores was never discussed with Mr. and Mrs. [REDACTED].

72. Mr. and Mrs. [REDACTED] had to pay all the costs of [REDACTED] first two hospitalizations and related travel costs, which resulted in a financial strain to the family.

73. As of April 17, 2003 Mr. [REDACTED] still did not have clearance from his cardiologist to have [REDACTED] return home due to the inevitable stress.

74. As of the date of the hearing, pursuant to his 504 Modification Plan, [REDACTED] was in a therapeutic foster home and receiving individual therapy, with a multi-systemic therapist ("MST") available at any time should the need arise for MST services. [REDACTED] also receives transportation services through his 504 Modification Plan, so that [REDACTED] can attend the same school that he will attend once he returns to Mr. and Mrs. [REDACTED]'s home.

IV. CONCLUSIONS OF LAW

The primary issue of the instant case is whether [REDACTED] is eligible for special education and related services under the IDEA.

Based upon the evidence presented at the hearing, the Hearings Officer concludes that the Respondent proved by a preponderance of the evidence that [REDACTED] is not eligible for special education and related services under specific learning disability (SLD), other health impairment (OHI), or emotional disturbance (ED) categories for two primary reasons: 1) [REDACTED] disability did not adversely impact on his educational performance, and 2) [REDACTED] did not require special education and related services in order to benefit from his education.

As noted by the Respondent, in order to qualify for special education and related services under the IDEA, a student must be shown to be in need of special education and related services as a result of his disability or disabilities. 20 U.S.C.S. § 1401(a)(1)(A)(ii).

Under the IDEA and its implementing regulations regarding emotional disturbance, in order to be eligible for special education and related services, a student's out-of-school behavior must have an adverse impact on the student's educational performance.

In the present case, the evidence is clear that [REDACTED] has behavioral problems that have, and will continue to require treatment by mental health professionals. The evidence is also clear that Mr. and Mrs. [REDACTED] continued support for [REDACTED] will be an essential and integral part of [REDACTED]'s treatment and development.

The Hearings Officer understands and respects Mr. and Mrs. [REDACTED] desire to obtain all available services for [REDACTED] as well as the frustrations and stress caused by not being able to obtain services under the IDEA.

However, because [REDACTED] behavioral problems have not manifested themselves in the school environment and do not impact on his ability to receive education, the Hearings Officer must conclude that the Respondent did not err in determining that [REDACTED] is not yet eligible under the IDEA.

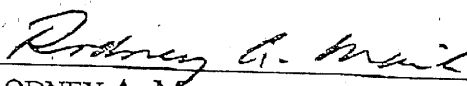
V. DECISION

For the reasons stated above, the Hearings Officer finds and concludes that Respondent proved by a preponderance of the evidence that: 1) Respondent did not improperly refuse to conduct an evaluation of [REDACTED] for IDEA eligibility; 2) Respondent properly determined that [REDACTED] was not eligible for special education services under the IDEA; and 3) [REDACTED] could receive all the appropriate and necessary mental health services under his 504 Modification Plan.

VI. RIGHT TO APPEAL

The parties have the right to appeal to a court of competent jurisdiction within thirty (30) days of receipt of this Decision.

DATED: Honolulu, Hawai'i, June 30, 2003



RODNEY A. MAILE
Senior Hearings Officer
Department of Commerce
and Consumer Affairs