

**ARKANSAS DEPARTMENT OF EDUCATION  
Special Education Unit**

**IN RE:**

**XXXXXXXX and XXXXXXXX, Parents on behalf of  
XXXXXXXX, Student**

**PETITIONER**

**VS.**

**CASE NO. H-19-31**

**SPRINGDALE SCHOOL DISTRICT**

**RESPONDENT**

**HEARING OFFICER’S FINAL DECISION AND ORDER**

**ISSUE PRESENTED:**

Whether the Springdale School District (hereinafter “District” or “Respondent”) denied XXXXXXXX (hereinafter “Student”) a free, appropriate, public education (hereinafter “FAPE”) between August 6, 2018 and June 4, 2019, in violation of the Individuals with Disabilities in Education Act of 2004, 20 U.S.C. §§ 1400-1485, as amended (hereinafter “IDEA”), by failing to find Student eligible for special education services.<sup>1</sup>

**PROCEDURAL HISTORY:**

On June 4, 2019, the Arkansas Department of Education (hereinafter “Department”) received a written request from Parents<sup>2</sup> to initiate due process hearing procedures on behalf of Student. Parents requested a due process hearing because they believed that District failed to comply with the IDEA by failing to find Student eligible for special education

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<sup>1</sup> See Due Process Complaint.

<sup>2</sup> The term Parents is being used in this opinion to describe Student’s legal guardians. Student has been in the custody of her grandparents, XXXXX and XXXXX XXXXX, for many years. See Exhibit Volume III, p. 53. Throughout the transcript, “Parents” and “Guardians” are used interchangeably.

services under one of two categories, specifically the categories of “other health impairment” or “emotional disturbance.”<sup>3</sup>

In response to Parents’ request for hearing, the Department assigned the case to an impartial hearing officer. Thereafter, the date of July 22, 2019 was set as the date on which a hearing would commence if Parents and District failed to reach resolution prior to that time.<sup>4</sup> On July 17, 2019, a prehearing conference regarding this matter was conducted, via telephone. Counsel for both parties participated in the hearing. During the prehearing conference, the parties discussed unresolved issues to be litigated at the hearing of this matter, as well as the witnesses and evidence necessary to address same.

On July 22, 2019, the closed hearing of this matter commenced. Testimony was heard on July 22, 2019, July 23, 2019, and July 24, 2019.<sup>5</sup> On July 24, 2019, at the end of the third day of hearing, Parents requested a continuance. This Hearing Officer granted Parents’ request and the hearing was continued to August 14, 2019.<sup>6</sup> Prior to August 14, 2019, Parents filed a motion to close the due process hearing in this matter. Specifically, Parents indicated in the motion that they wished to forego their opportunity to take additional testimony and wished to rest their case. Parents further requested that this Hearing Officer officially close the due process hearing of this matter. On August 12, 2019, this Hearing Officer notified all parties in writing, via email, that the motion was being granted and would

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<sup>3</sup> *Id.* The allegations stated herein are derived from Parents initial complaint, as clarified by Parent at the prehearing and hearing of this matter.

<sup>4</sup> The due process hearing in this matter was originally scheduled to commence on July 21, 2019; however, counsel for both parties stipulated to changing the initial hearing date to July 22, 2019 to accommodate scheduling a necessary witness.

<sup>5</sup> See Hearing Transcript, Vols. I-III.

<sup>6</sup> See Hearing Transcript, Vol. III, pp. 294-95.

be documented in the final order of this case. The hearing of this matter was officially closed on August 14, 2019. All testimony was heard in person at the Springdale School District Administrative Offices or via telephone.

The following witnesses testified in this matter: Audra Lindley, Dr. Michael Flowers, Rachel Harp, Jessica Perry, Tiffany Gibson, Alonzo Terrell, Patricia Vaughn, Sue Evans, Liisa Pridemore, Chrissy Jackson, Ruth Trainor, Kelsey Eursery, and Coby Davis.<sup>7</sup> Parents had the burden of proof regarding the issues raised in this case.

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated §§ 6-41-202 through 6-41-223, Danna J. Young, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. Parent was represented by Theresa Caldwell (Little Rock, Arkansas) and the District was represented by Kendra Clay (Springdale School District Counsel).

Both parties were offered the opportunity to provide post-hearing briefs. Counsel for both parties timely submitted a post-hearing brief for consideration by this Hearing Officer.

**FINDINGS OF FACT:**

Student is a fifteen-year-old female (DOB 09/07/2004) who is enrolled in the Springdale School District. Between August 6, 2018 and June 4, 2019, the time period addressed in Parents' due process complaint, Student was in the eighth grade and was enrolled in a total of three different schools, two of which were in the District. At the beginning of the 2018-2019 school year, Student was enrolled in Southwest Junior High

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<sup>7</sup> See Hearing Transcript, Vols. I-III.

School, which is located in District.<sup>8</sup> On October 12, 2018, Parents withdrew Student from the District and enrolled her in Arkansas Connections Academy to avoid expulsion of Student from District on account of disciplinary infractions.<sup>9</sup> Thereafter, Student was reenrolled in District in December 2018, after which she was assigned to an alternative learning environment in the District.<sup>10</sup>

Prior to the 2018-2019 school year, Student's eighth grade year, Student attended sixth and seventh grades in District, initially attending Sonora Middle School, and ultimately moving to Helen Tyson Middle School.<sup>11</sup> Upon enrollment, Parents indicated that Student did not receive special education services at her prior school in Oklahoma, and also that Student had been in advanced math prior to moving into the District.<sup>12</sup> When Student moved into the District, Parents submitted grades for Student for the 2016-2017 school year, her sixth-grade year. Student's grades included three As, three Bs, and one C.<sup>13</sup> Student's ACT Aspire test scores for the same year indicated that Student was at the 64<sup>th</sup> percentile for English ("exceeding"), 21<sup>st</sup> percentile for reading ("in need of support"), 38<sup>th</sup> percentile for writing ("close"), 53<sup>rd</sup> percentile for science ("close"), and 73<sup>rd</sup> percentile for math ("ready").<sup>14</sup> Her overall English language arts score was in the "below readiness" range, and her STEM overall score was in the "ready" range.<sup>15</sup>

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<sup>8</sup> Hearing Transcript, Vol. I, pp. 40-41.

<sup>9</sup> Exhibit Volume I, pp. 82, 97.

<sup>10</sup> *Id.*

<sup>11</sup> Exhibit Volume III, p. 2.

<sup>12</sup> Exhibit Volume III, pp. 37, 56.

<sup>13</sup> Exhibit Volume III, p. 48.

<sup>14</sup> Exhibit Volume III, p. 3.

<sup>15</sup> *Id.*

During the 2017-2018 school year, Student's seventh grade year, Student received all As with the exception of one B in math (first semester), and two Cs in language arts (both semesters).<sup>16</sup> Student's ACT Aspire test scores for the same year indicated that Student was at the 51<sup>st</sup> percentile for English ("ready"), 59<sup>th</sup> percentile for reading ("close"), 45<sup>th</sup> percentile for science ("close"), and 85<sup>th</sup> percentile for math ("exceeding").<sup>17</sup> Her overall English language arts score was in the "ready" range, and her STEM overall score was in the "below readiness" range.<sup>18</sup>

There is no evidence in the record that Student had disciplinary issues during the 2016-2017 and 2017-2018 school years. Student was described as very "bright" and "ambitious."<sup>19</sup> Other teachers described her as a normal teenager and very compliant in the classroom.

During the 2018-2019 school year, Student's eighth grade year, Student began to engage in behaviors that were in violation of the District's disciplinary policies. Student began the school year attending Southwest Junior High School.<sup>20</sup> Between the start of the school year and October 11, 2018, Student was disciplined for six different policy violations.<sup>21</sup> On September 5, 2018, Student received detention for a minor classroom disruption.<sup>22</sup> On September 6, 2018, Student refused to follow directions at a school football game, specifically, she refused to remain in the stands and stay away from the visitor's side

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<sup>16</sup> Exhibit Volume III, p. 96.

<sup>17</sup> Exhibit Volume III, p. 5.

<sup>18</sup> *Id.*

<sup>19</sup> Hearing Transcript, Volume I, pp. 40-41.

<sup>20</sup> Exhibit Volume III, p. 2.

<sup>21</sup> Exhibit Volume I, p. 89.

<sup>22</sup> *Id.*

of the stadium.<sup>23</sup> When her behavior was addressed by school staff, she was argumentative.<sup>24</sup> At one point, she threw a water bottle off of the top of the stadium.<sup>25</sup> Finally, when Student was told to wait at the gate for Parents to pick her up, she refused to do so and wandered off to a local fast food restaurant.<sup>26</sup> Staff considered her behavior to be insubordinate and a safety risk, and Student was given in-school suspension and banned from attending athletic events for the remainder of the school year.<sup>27</sup> Nearly two weeks later, on September 17, 2018, Student again received in-school suspension for insubordination on account of arguing with another student and lying about same to staff.<sup>28</sup> On September 24, 2018, Student engaged in inappropriate behavior when she showed to other peers a video of a male student who was masturbating.<sup>29</sup> Student recorded the video from another friend's phone and showed it to others at school.<sup>30</sup> Student was given three days of out-of-school suspension for this infraction.<sup>31</sup> On October 2, 2018, Student skipped school and was picked up by police officers and returned to campus, resulting in in-school suspension.<sup>32</sup> Finally, on October 10, 2018, Student made a gang sign during class and, when another student reported the incident, she called the student who came forward a "fucking snitch."<sup>33</sup>

Following the October 10, 2018 disciplinary incident, Student was referred to an alternative learning environment (ALE) program of District, specifically, Youth Bridge. The

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*; Hearing Transcript Volume I, pp. 57-61.

<sup>28</sup> Exhibit Volume I, p. 89.

<sup>29</sup> Exhibit Volume I, p. 89; Hearing Transcript Volume I, pp. 81-83.

<sup>30</sup> *Id.*

<sup>31</sup> Exhibit Volume I, p. 89.

<sup>32</sup> *Id.*

<sup>33</sup> Hearing Transcript, Volume I, pp. 95-96.

District has several types of ALE programs, some requiring physical attendance and others requiring virtual attendance. Youth Bridge, which is a counseling day school program, was reserved for students being recommended for expulsion.<sup>34</sup> The program offers a school environment, coupled with therapeutic services.

Parents opted at that time, however, to withdraw Student from District and enroll her in Arkansas Connections Academy, an online charter school not associated with District.<sup>35</sup> Student enrolled in Arkansas Connections Academy on October 15, 2018.<sup>36</sup> Student's grades prior to leaving Southwest Junior High included three As, one B, one D, and one F.<sup>37</sup> Student's grades while at Arkansas Connections Academy were all Fs, and a report from the school dated January 10, 2019 indicated that Student's class percentages ranged from 2% to 24%.<sup>38</sup>

On January 10, 2019, Student reentered the District.<sup>39</sup> Initially, District allowed Student to return to school on the contingency that she agreed to sign a behavior contract. The behavior contract was signed and put into place on January 8, 2019.<sup>40</sup> The behavior plan stated that Student would provide a doctor's note if she was absent from school, that she would follow all school rules and treat teachers, adults, and students with respect, that Student would follow the student handbook, and that Student would refrain from engaging in activities considered to be disruptive.<sup>41</sup> The behavior contract was signed by Student, Parents, and the principal for Southwest Junior High School.<sup>42</sup>

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<sup>34</sup> Hearing Transcript Volume III, p. 259.

<sup>35</sup> Hearing Transcript Volume I, pp. 137-38.

<sup>36</sup> Exhibit Volume III, p. 35.

<sup>37</sup> Exhibit Volume III, p. 34.

<sup>38</sup> Exhibit Volume III, p. 35.

<sup>39</sup> Exhibit Volume III, p. 2.

<sup>40</sup> Exhibit Volume I, pp. 68-69.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

On January 11, 2019, Student skipped third period and spent the entire period in the school bathroom.<sup>43</sup> She was given in-school suspension for this infraction.<sup>44</sup> Approximately two weeks later, on January 23, 2019, Student was given in-school suspension for skipping school, an infraction that she advertised on snapchat prior thereto.<sup>45</sup> Finally, on January 31, 2019, Student skipped school and was brought to campus by local police.<sup>46</sup> Upon arriving at school, Student's backpack was searched and District discovered that she had in her possession two lighters, a bandanna, another student's telephone, and a phone case that had marijuana leaves pictured, all items that were not allowed at school.<sup>47</sup> Student was placed in the office and assigned school work, but she refused to comply.<sup>48</sup> As a result of these disciplinary infractions, which occurred subsequent to the January 8, 2019 behavior contract that Student signed, District again recommended expulsion for Student. Student was given the option of going to the ALE program at Youth Bridge, which was ALE in lieu of expulsion.<sup>49</sup>

On February 5, 2019, Student began attending school at Youth Bridge.<sup>50</sup> On February 6, 2019, Student and Parents provided information during an intake interview with a Youth Bridge social worker. Student and Parents stated that Student had engaged in fights at school, had issues with truancy, skipped school to hang out with friends, affiliated with individuals known to be involved in gang activity, engaged in theft, and run away from home.<sup>51</sup> Parents reported that Student had been previously diagnosed with Autism, but

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<sup>43</sup> Exhibit Volume I, p. 90.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Exhibit Volume I, p. 90; Exhibit Volume III, p. 14.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Exhibit Volume II, p. 168.

<sup>51</sup> *Id.*



stated that the paperwork had been lost.<sup>52</sup> Parents also reported that Student had been diagnosed with ADHD.<sup>53</sup> Student was diagnosed with unspecified disruptive, impulse-control, and conduct disorder.<sup>54</sup> The reports from Youth Bridge indicate that Student was generally cooperative with treatment while at the facility.<sup>55</sup>

During February 2019, Student missed two days of school at Youth Bridge on account of a doctor appointment and having the flu.<sup>56</sup> During the month of March 2019, Student missed in excess of two weeks of school at Youth Bridge.<sup>57</sup> Student was ultimately released from the Youth Bridge program, as documented via email on March 31, 2019, for non-participation after Student missed ten consecutive days without Parents providing notification of her whereabouts.<sup>58</sup> Student's grades at Youth Bridge for the short duration that she was there included one A, one B, two Ds, and one F.<sup>59</sup>

On April 5, 2019, Parents made a special education referral for Student, and a referral conference was held on April 10, 2019.<sup>60</sup> At the referral conference, District decided to move forward with testing for special education services in light of a recent evaluation indicating that Student had been diagnosed with intermittent explosive disorder and the fact that Student had previously been placed in an ALE program in lieu of expulsion.<sup>61</sup> District conducted vision and hearing screenings on April 10, 2019, and Student passed both

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<sup>52</sup> *Id.*

<sup>53</sup> Exhibit Volume II, p. 169.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Exhibit Volume II, p. 199.

<sup>57</sup> *Id.*

<sup>58</sup> Exhibit Volume II, p. 233.

<sup>59</sup> Exhibit Volume II, p. 214.

<sup>60</sup> Exhibit Volume I, pp. 2, 3-7; Exhibit Volume III, p. 187

<sup>61</sup> Exhibit Volume III, p. 193.

screenings.<sup>62</sup> The record includes a social history completed by Parents, although the document date is not complete. It appears that the document was dated for the month of April.<sup>63</sup> The social history stated that Student lives with Parents, who are actually her grandparents and legal guardians.<sup>64</sup>The social history stated that Student lost her father in 2016 and that the event had been traumatic for her.<sup>65</sup> The social history completed by her Parents further provided that Student had been slow to walk and toilet train, and that she had numerous medical conditions including asthma, allergies, high fever, ear infections, frequent headaches, ADHD, and was born with Fetal Alcohol Syndrome.<sup>66</sup> When asked to state what traits child exhibited at home, Parents indicated that Student was overactive, broke objects, fidgeted, had short attention span, had temper tantrums, had sleeping problems, was withdrawn, cried easily, was anxious, was upset when disappointed, talked too much, daydreamed, was slow moving, was disorganized, and angered easily.<sup>67</sup> Parents did not mark the check box to indicate that Student got along poorly with family members or peers.<sup>68</sup>

District considered an evaluation completed by Dr. Donna M. Van Kirk and dated March 16, 2019. The evaluation report indicated that Dr. Van Kirk performed a record review, behavioral observations, a clinical interview with Parents, and a brief interview with Student. <sup>69</sup> Dr. Van Kirk noted that Student had been in the care of Parents, her guardians,

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<sup>62</sup> Exhibit Volume III, p. 195.

<sup>63</sup> Exhibit Volume I, p. 9.

<sup>64</sup> *Id.*

<sup>65</sup> Exhibit Volume I, p. 10.

<sup>66</sup> Exhibit Volume I, p. 11.

<sup>67</sup> Exhibit Volume I, p. 12.

<sup>68</sup> *Id.*

<sup>69</sup> Exhibit Volume III, p. 201.

since she was four years old on account of issues with Student's mother being able to care for her. Student's father was deceased, having died three years prior to the assessment.<sup>70</sup>

In addition, Dr. Van Kirk administered the following examinations: (1) Wechsler Intelligence Scale for Children - V (WISC-V); (2) Vineland Adaptive Behavior Scale - 3 (VABS-3); (3) Burks' Behavior Rating Scales - 2 (BBS-2); (4) Attention Deficit/Hyperactivity Disorder Test - 2 (ADHDT-2); and (5) Asperger Syndrome Diagnostic Scale (ASDS).<sup>71</sup> It was noted that during the evaluation of Student, she became disruptive when she was required to wait in the waiting room, and that she eventually left the testing center, requiring her Parents to leave as well to follow and supervise her.<sup>72</sup>

Dr. Van Kirk reported that Student's full-scale IQ score was 97, which was in the average range.<sup>73</sup> Her verbal abilities fell within the average range, and her special reasoning abilities fell within the above average range.<sup>74</sup> Student's auditory and visual attention and recall were also average.<sup>75</sup> Dr. Van Kirk concluded that Student had average global intelligence and that Student's cognitive abilities had never been considered problematic.<sup>76</sup> Dr. Van Kirk further noted that Student's "good grades reflect at least average learning ability."<sup>77</sup> Regarding Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder, Dr. Van Kirk concluded that Student did not meet the DSM-V criteria.<sup>78</sup> Dr. Van Kirk noted that the reports of Parents and District officials was widely discrepant, concluding that

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<sup>70</sup> Exhibit Volume I, p. 31.

<sup>71</sup> Exhibit Volume III, p. 201.

<sup>72</sup> Exhibit Volume III, p. 203.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Exhibit Volume III, p. 205.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

Student's ability to be compliant at school more so than at home indicated the ability to control her frustration and actions.<sup>79</sup> The evaluation conclusions indicated that Student showed no signs of anxiety or thought or mood disturbance.<sup>80</sup> Student was diagnosed by Dr. Van Kirk with Intermittent Explosive Disorder and Adjustment Disorder with Disturbance of Conduct.<sup>81</sup> She noted that Student had adequate learning ability and the potential to succeed in college, even noting that she was capable of earning a scholarship and having a successful vocation.<sup>82</sup> She recommended family counseling, clearly spelled out expectations and consequences, and Parents' consideration of opening a Family in Need of Support case if Student did not improve.<sup>83</sup>

As part of District's evaluation, additional testing was performed to supplement that done by Dr. Van Kirk. Dr. Melissa Conaway conducted additional speech language assessments on April 16, 2019.<sup>84</sup> Student was administered the Clinical Evaluation of Language Fundamentals – 5<sup>th</sup> Edition, which is designed to screen school students for language disorders. Student scored higher on this examination than expected for her age level, indicating that her speech language skills were within the average range of functioning.<sup>85</sup> In addition, it was determined that Student's articulation, voice, and fluency skills were in the average range.<sup>86</sup> District also administered to Student the Kaufman Test of Educational Achievement, Third Edition (KTEA-III). Student's scores for reading, math, and

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<sup>79</sup> *Id.*

<sup>80</sup> Exhibit Volume III, p. 206.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Exhibit Volume I, p. 18.

<sup>85</sup> Exhibit Volume I, p. 19.

<sup>86</sup> *Id.*

written language fell within the average range, with reading and math falling within the below average range.<sup>87</sup> The District determined that Student was not eligible for services pursuant to the categories of “other health impairment” or “emotional disturbance.”

### **CONCLUSIONS OF LAW AND DISCUSSION:**

The IDEA was enacted “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. §1400(d)(1)(A). The IDEA defines “children with disabilities” as children having one of the enumerated conditions “who, by reason thereof, need [ ] special education and related services.” 20 U.S.C. § 1401(3)(A); *see also* 34 C.F.R. § 300.8(a)(1). Thus, in determining IDEA eligibility, the Court must examine: (1) whether Student’s disability falls within at least one of the delineated classifications; (2) whether the disability has an adverse effect on educational performance; and (3) whether, as a result, Student needs special education and related services.

### **Eligibility Categories Pursuant to the IDEA**

Regarding the first element, that of whether Student has one of the Act’s enumerated conditions, Parents alleged in their complaint that District violated the IDEA by failing to identify Student as needing special education services pursuant to the categories of “other health impairment” and “emotional disturbance.” An analysis of each is outlined herein.

Regarding the category of “other health impairment” pursuant to the IDEA, Parents had the burden of establishing that Student had “limited strength, vitality, or alertness,

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<sup>87</sup> Exhibit Volume I, p. 22.

including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that (i) is due to chronic or acute health problems such as . . . attention deficit disorder or attention deficit hyperactivity disorder and (ii) adversely affects Student’s educational performance.” 34 C.F.R. § 300.8(c)(9). In the present case, Dr. Van Kirk’s March 2019 evaluation indicated that Student did not meet the criteria for ADHD pursuant to the DSM-5, despite Parents’ assertions. As such, the very evaluation provided by Parents to establish eligibility pursuant to this category defeated Parents’ claim. Parents presented no additional evidence to support their assertion in this regard, therefore, the evidence was insufficient to establish by a preponderance of the evidence that Student was eligible for services under the IDEA pursuant to the category of “other health impairment.”

Regarding the category of emotional disturbance, Parents had the burden of establishing that Student has:

[A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; (E) a tendency to develop physical symptoms or fears associated with personal or school problems.”

34 C.F.R. § 300.8(c)(4)(i). Essentially, there are four specific conditions that Parents must satisfy in order to qualify for special education services pursuant to this category. Parents must establish by a preponderance of the evidence that (1) Student meets at least one of the five listed symptoms, addressed *supra*; (2) Student’s symptom(s) have occurred over a long

period of time; (3) Student's symptom(s) have occurred to a marked degree; and that (4) Student's condition has adversely affected her educational performance. *Id.* It is noted that the regulations specifically address children who are socially maladjusted, stating that children who are only socially maladjusted and fail to exhibit at least one of the emotionally disturbed characteristics do not qualify pursuant to this category. 34 C.F.R. § 300.8(c)(4)(ii).

The Eighth Circuit Court of Appeals, in *Hansen v. Republic R-III Sch. Dist.*, looked to the Fourth Circuit to address the differences between emotional disturbance and social maladjustment. 632 F.3d 1024 (8th Cir. 2011) (citing *Springer v. Fairfax County Sch. Bd.*, 134 F.3d 659 (4th Cir. 1998)). In *Springer*, the student at issue suddenly began engaging in conduct such as stealing, sneaking out of his home, skipping school, and using drugs. Student had a history of successfully progressing from grade to grade and maintaining appropriate relationships with his teachers and friends at school. *Springer*, 134 F.3d 659. The court in *Springer*, finding that the conduct of the student at issue did not constitute emotional disturbance, stated the following:

The fact “[t]hat a child is socially maladjusted is not by itself conclusive evidence that he or she is seriously emotionally disturbed.” Indeed, the regulatory framework under IDEA pointedly carves out “socially maladjusted” behavior from the definition of serious emotional disturbance. This exclusion makes perfect sense when one considers the population targeted by the statute. Teenagers, for instances, can be a wild and unruly bunch. Adolescence is, almost by definition, a time of social maladjustment for many people. Thus a “bad conduct” definition of serious emotional disturbance might include almost as many people in special education as it excluded. Any definition that equated simple bad behavior with serious emotional disturbance would exponentially enlarge the burden IDEA places on state and local educational authorities.

*Springer*, 134 F.3d 659, 664.

In the present case, there is no evidence to suggest that Student has an inability to learn that cannot be explained by intellectual, sensory, or health factors. Student is an average to above-average student when she is regularly attending school and choosing to complete her homework. She earned good grades during her sixth and seventh grade years. While it is true that Student's grades during the most recent school year were lower than typical for Student, Student's conduct coupled with all of the school changes during the 2018-2019 academic year more likely accounts for the difference. In addition, Dr. Van Kirk noted several times in her report that Student did not have issues with intellectual functioning, noting that she had earned good grades and that she could continue doing so. In fact, Dr. Van Kirk noted that Student could be successful in college and even achieve a scholarship. Given these facts, there is insufficient evidence to suggest that Student has an inability to learn.

Similarly, regarding the second stated symptom, there is insufficient evidence to suggest that Student has an inability to build or maintain satisfactory interpersonal relationships with peers. Student's principal at Southwest Junior High testified that Student has friends and gets along with her friend group. Additionally, there was no evidence that Student was unable to have positive relationships with teachers. Parents stated as much in the social history that it completed for Student when they marked numerous symptoms that they alleged Student to have exhibited but failed to mark the box indicating that Student had issues interacting with peers. Given these facts, there is insufficient evidence to suggest that Student has the inability to build and/or maintain satisfactory interpersonal relationships.

Regarding the third stated symptom, there is some evidence to suggest that Student exhibits inappropriate types of behavior or feelings under normal circumstances. Certainly,



a review of Student's disciplinary infractions during the 2018-2019 school year indicates inappropriate behavior. Most notable are the incidents in which Student showed others a video of another peer masturbating, and where Student made gang signs and subsequently called another peer a profane name when her conduct was reported. There is nothing to indicate, however, that Student's inappropriate behaviors have continued for a long period of time or to a marked degree. Prior to the 2018-2019 school year, Student had no behavioral issues at school. As such, all of the behaviors referenced in the record have occurred in less than a year. This case is nearly identical to the *Springer* case, where the student at issue had no history of behavior problems and, within a short period, began exhibiting negative behaviors and having conduct issues. As such, even though Student likely meets this symptom from a behavioral standpoint, that, in and of itself, is not sufficient to establish that Student qualified for the category of emotional disturbance without evidence that the behaviors have been occurring for a long period of time and to a marked degree.

Regarding the fourth and fifth stated symptoms, that of whether Student has exhibited a general pervasive mood of unhappiness or depression and whether Student has exhibited a tendency to develop physical symptoms or fear associated with personal or school problems, Parents have presented insufficient evidence to establish that Student has these symptoms. There is nothing in the record, other than Parents assertions to Youth Bridge and Dr. Van Kirk, to suggest that Student suffers from pervasive mood of unhappiness or depression. Despite these assertions by Parents, the clinicians that diagnosed Student consistently came to the conclusion that Student had diagnoses pertaining to a conduct disorder. In fact, all diagnoses in the record indicate the existence of a conduct disorder,

without mention of depression. Similarly, there is zero evidence that Student has expressed having physical symptoms or fear associated with any personal or school problems. Parents had the burden in this case and have failed to present any evidence to establish either of these symptoms.

It is noted that Parents also referenced the autism category in the record. A review of the complaint and post-hearing brief, however, indicated that Parents focused on the categories of “other health impairment” and “emotional disturbance.” Nonetheless, it is noted that Dr. Van Kirk determined that Student did not have autism pursuant to the factors provided in the DSM-5, and this diagnosis was ruled out in March 2019.

**Adverse Effect on Educational Performance**

Even if Parents had satisfied the categorical element of the eligibility determination and, thus, established that Student had a disabling condition as defined by the IDEA, Parents failed to present any evidence that such condition had an adverse effect on Student’s educational performance. The record indicates that Student has a history of passing from grade to grade without incident. Student’s grades, with the exception of the current school year, have been mostly As, and there is no evidence in the record that Student is unable to manage homework and complete assignments. Dr. Van Kirk, who evaluated Student in March 2019, commented on Student’s academic achievement throughout her report, noting that Student needed to be challenged more and that she could do well in college, perhaps even earn a scholarship. A review of Student’s test scores confirms the same. Student’s most recent ACT Aspire test results show that she was performing, for the most part, at or above the 50<sup>th</sup> percentile. Finally, Student’s full-scale IQ indicated that Student was of average to

above average intelligence. All of these factors, when considered together, indicate that nothing was having an adverse impact on Student's school performance. Certainly, Student's grades dropped significantly during the 2018-2019 school year, but that can be directly attributed to the fact that Student was not in school much of that year. It is logical that failure to attend school, i.e. lack of participation, will directly affect ability to perform. Student's failure to attend school, however, was due to conduct issues which were within her control.

**Need for Special Education Services**

As Parents failed to present evidence sufficient to establish that Student had a qualifying condition to qualify for the IDEA, or that such condition resulted in adverse effect on Student's academic performance, there is no need to evaluate whether there is a need for special services.

**Conclusion.** Having considered Parent's allegations, and in light of the findings and conclusions *supra*, it is the conclusion of this Hearing Officer that Student was not eligible for special education services pursuant to the IDEA and, therefore, was not denied FAPE, between August 6, 2018 and June 4, 2019. Additionally, given that this Hearing Officer lacks jurisdiction to hear claims made pursuant to Section 504 of the Rehabilitation Act, those claims are hereby dismissed as well.

**ORDER:**

The results of the testimony and evidence warrant a finding for District. Specifically, Parent failed to introduce sufficient evidence in the record to establish by a preponderance of the evidence that District failed to find Student eligible for special education services and, thus, denied Student FAPE, between August 6, 2018 and June 4, 2019.

**FINALITY OF ORDER AND RIGHT TO APPEAL:**

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

**IT IS SO ORDERED.**

/s/ Danna J. Young

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**HEARING OFFICER**

09/07/2019

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**DATE**