

**BEFORE THE WEST VIRGINIA DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL PROGRAMS DUE PROCESS HEARING OFFICER**

DUE PROCESS 18-007

Party requesting Due Process	[REDACTED]
Student	[REDACTED]
Counsel for Student/Parent	[REDACTED] [REDACTED] [REDACTED]
Local Education Agency (LEA)	[REDACTED] County Schools
Counsel for LEA	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
Hearing Location	[REDACTED] County Board of Education [REDACTED] [REDACTED]
Hearing Dates	December 19 and 20, 2017
Type	Closed
Transcription	Court Reporter
Student Present	No
Hearing Officer	Anne Werum Lambright, Esq. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Witnesses	<u>For Student/Parents</u> [REDACTED], Parent [REDACTED], Kindergarten teacher, [REDACTED] Elementary [REDACTED], Kindergarten Aide, [REDACTED] Elementary

██████████ ██████████, First Grade Teacher
██████████ Elementary

_____, Ed.D.
Student's IEE provider

██████████, MD Student's
clinical geneticist, WVU

For [REDACTED] County Schools

_____, School Psychologist _____
County Schools

██████████, Title I Reading Specialist
██████████ County Schools

██████████, RN Nurse at ██████████
Elementary

**BEFORE THE WEST VIRGINIA DEPARTMENT OF
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Due Process No. 18-007

DECISION

The West Virginia Department of Education, Office of Federal Programs designated the undersigned to serve as impartial hearing officer in the above-referenced matter. An evidentiary hearing was conducted on the agreed dates of December 19 and 20, 2017, at a location agreed to by the parties and the hearing was recorded by a certified court reporter. The purpose of the hearing was to consider evidence related to Student/Parents' due process request. Student/Parents were represented by counsel as was the County School System.

PROCEDURAL HISTORY

On November 2, 2017, the undersigned was notified of assignment by the Office of Federal Programs (OFP) to this due process hearing request and contacted the parties by letter dated same. The County Schools filed an Answer dated November 10,

2017.¹ A telephone scheduling conference was held November 21, 2017. Parents elected to not have Student present and to have the hearing closed. The parties were able to agree on hearing dates of December 19 and 20, 2017, and to the hearing location. The parties timely filed their exhibits and witness lists.

On December 19, 2017, the hearing was commenced and evidence received and a record of the proceedings made. Parent testified on her own behalf, presented five (5) witnesses and introduced twenty-eight (28) exhibits that were made part of the record at the hearing. County Schools presented three (3) witnesses and introduced twenty (20) exhibits that were made part of the record at the hearing. Subsequent to the hearing and as agreed to by the parties, counsel for the County Schools filed the missing final two (2) pages from the §504 document (December 21, 2017) and the full contents of an exhibit of the kindergarten records reviewed by the school system psychologist (December 25, 2017); counsel for the Student/Parents filed documents requested at the hearing concerning matters sent to the IEE (December 27, 2017), all of which were made part of the record. The transcript was received January 6, 2018. The parties elected to file proposed findings and conclusions and filed them electronically and by mail on the agreed date of January 29, 2018. This decision is issued on the agreed date of February 19, 2018.

¹The Special Education Director filed this Answer as a letter addressed directly to the attorney for the Parents/Student and failed to copy the hearing officer. A copy was provided to the hearing officer at the hearing and made part of the record.

ISSUES

1. Whether County Schools violated IDEA and/or WV Policy 2419 by failing² to timely identify Student as eligible for special education and related services³?
2. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to completely reimburse the parents for the independent education evaluation (IEE)?
3. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to provide transportation or reimbursement in lieu of transportation for Student to and from school?
4. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to provide an aide for Student?⁴

²Approximately one (1) month after the hearing, Student was found eligible for special education and related services on January 19, 2018 with an eligibility of OHI. This was referenced in both parties' proposed findings and conclusions.

³Counsel for the county school system phrased this issue "Whether the County School System's Eligibility Committee(s) on June 15, 2017 and/or August 31, 2017, failed to comply with the eligibility criteria process when it determined that the Student was not eligible for special education services?"

⁴Counsel for the parents added an additional issue in her proposed findings and conclusions that student "should be provided with specially designed instruction in reading." This issue was not listed on the parents' due process request nor was there any motion to amend the complaint before or during the hearing to add the issue. Although some evidence on the matter was brought at the hearing, insufficient notice to the county school system and the hearing officer was given to permit adjudication of this issue in this due process.

MOTIONS

All decisions rendered at the aforesaid hearings on motions filed in this action are hereby affirmed and all other motions filed in this action by either of the parties which were not previously ruled upon by the hearing examiner are hereby denied and rejected.

CREDIBILITY OF WITNESSES, TESTIMONY, AND EXHIBITS

The hearing officer was and is satisfied that all records and documents entered as exhibits are now complete, authentic and valid and that they were entered with the proper evidentiary foundations.

The hearing officer was and is satisfied that the witnesses brought on by the parties were credible and truthful except as inconsistent with this decision. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below. No evidence suggested any personal gain to be achieved by any witness as a result of testifying except as noted below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and the exhibits admitted into evidence and matters of which the hearing officer took judicial notice during the proceedings, assessing the credibility of the witnesses, and weighing the evidence in consideration of the same, this hearing officer makes the following findings of fact and conclusions of law. To the extent that the testimony of any witness is not in accord with these findings and conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed and submitted by the parties but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

Following a thorough review of the evidence, the hearing officer makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The student is seven (7) years old and in the first grade at an elementary school in the county. Last year, the student attended kindergarten at the same elementary school. TR (December 19, 2017) at 12.

2. The student has a medical disorder called [REDACTED]
[REDACTED] which prevents the student's body from

██████████. It is a ██████████ disease and requires regular blood sugar testing using a meter that tests blood taken from a skin or finger prick. TR (December 19, 2017) at 13-20. *Parent Exhibit No. 8.*

3. If the student's blood sugar falls below a certain level, the student must be transported to the hospital by ambulance and may be treated for several days; if it drops below another level, and there is no timely treatment, the student can die. TR (December 19, 2017) at 13-20.

4. In addition to the regular blood sugar level testings, the student also needs to be tested when he exhibits certain behaviors. Sometimes he gets very quiet and doesn't interact with others; other times he goes a mile-a-minute talking, talking loudly or incoherently and is unable to sit still. TR (December 19, 2017) at 13-20. TR (December 20, 2017) at 14. *Parent Exhibit No. 8.*

5. Dehydration can cause serious problems for the student as can illness or emotional distress or anxiety. In kindergarten, the student ██████████. TR (December 19, 2017) at 13-20. TR (December 20, 2017) at 22-3.

6. The student is not old enough yet to be able to recognize an episode although he is learning. He knows sometimes that he needs to get his blood sugar levels tested but not reliably. TR. (December 19, 2017) at 13-20. TR (December 20, 2017) at 185.

7. The student has also been diagnosed with Attention Deficit Hyperactivity

Disorder (ADHD) and oppositional/defiant and disruptive behaviors (ODD). TR (December 19, 2017) at 13. TR (December 20, 2017) at 10. *Parent Exhibit Nos. 1, 4, 5, 25 and 26.*

8. The student has some oral muscle weaknesses which causes him not to like to chew or eat food much. TR (December 19, 2017) at 13-14.

9. The student also has some fine motor skill deficiencies including writing. TR (December 19, 2017) at 13. TR (December 20, 2017) at 10.

10. The student requires monitoring to be sure he is eating and staying hydrated. He has a lot of stomach problems due to his medications and suffered a resulting [REDACTED] for which he was hospitalized last year. TR (December 19, 2017) at 15. *Parent Exhibit No. 8.*

11. The county school system is a small school system.

12. The student is not attending his neighborhood elementary school because the system wanted him to attend a school with a full-time nurse assigned to the school and his neighborhood school only has a part-time nurse. TR (December 19, 2017) at 24-29.

13. The student attended kindergarten in the school system at the same non-neighborhood elementary school with a full-time nurse. He had a teacher and an aide in his classroom. TR. (December 19, 2017) 128-57, 158-182.

14. In first grade, the student has a teacher, no classroom aide and eighteen (18) or nineteen (19) other students. Since December, the student has been pulled out every day for Title I reading time. He also spends some time every day in the nurse's office. An aide does go with him and other students to music, art and physical education classes referred to as "specials." An aide goes with him to lunch and to recess. This aide also is responsible for an autistic child and a child whom the nurse identified as low-functioning. TR (December 19, 2017) at 209-10. TR (December 20, 2017) at 129-161. *Parent Exhibit Nos. 10, 11, 12 and 13.*

15. The student's treating geneticist and his dietician have given the school information on diet and what foods he can eat and opined that the student needs a personal care assistant or aide to ensure his health and safety. The student has to eat high carbohydrate/low fat meals or snacks every several hours during the day so that affects his ability to continuously focus on his school work. He has to eat on this schedule even through the night so he doesn't get much uninterrupted sleep. This also affects his ability to focus on his school work. The student's daily food intake must be monitored and recorded at school and communicated to the parent so the parents will know what the student has consumed. TR (December 20, 2017) at 161-75. *Parent Exhibit Nos. 8 and 15.*

16. Every morning the parents text the teacher what the student has eaten and what his blood sugar level is. At the end of the student's school day, the school's information is sent to the parent. TR (December 19, 2017) at 19 and 185-6. *Parent Exhibit No. 8.*

17. Transportation is required for the student. Appropriate bus transportation services were not provided to the student by the school system. TR (December 19, 2017) at 24. TR (December 20, 2017) at 191.

18. The student's father was forced to decrease his working hours to about one-half (½) time to provide school transportation services for his student. TR (December 19, 2017) at 25-6.

19. Payment in lieu of transportation was not offered by the school system until several weeks before the hearing and then at a mileage and mileage rate not considered sufficient by the parents. TR (December 19, 2017) at 24. TR (December 20, 2017) 191-4. *Parent Exhibit Nos. 19 and 20.*

20. The student was refused school testing prior to kindergarten on May 31, 2016, for special education and related services although the parent requested an IEP. TR (December 19, 2017) at 24-5. *Parent Exhibit No. 14.*

21. The parent was informed by the school system that the student didn't qualify for special education in kindergarten but that he would be given a §504 Plan. TR (December 19, 2017) at 24-5. *Parent Exhibit No. 14.*

22. The hearing record contains no school testing or evaluations to substantiate that decision. There were no school records introduced demonstrating an IDEA eligibility committee meeting or a §504 Committee meeting or even an SAT meeting at that time.

23. The parent shared all the student's medical diagnoses, records and information with the school system prior to and throughout the student's kindergarten (2016-17) school year. This included the student's early intervention services from birth to three (3) years, an independent psychological evaluation in May 2013 (student age two (2 ½) and one-half) diagnosing Disruptive Behavior Disorder and the testing showing that in April 2016 the student was evaluated and subsequently diagnosed by a licensed psychologist with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD). TR (December 19, 2017) at 24, 29-33. *Parent Exhibit Nos. 4, 5, 9, 15, 25 and 26.*

24. The school system provided a §504 Plan and Health Care Plan for at least part of the student's kindergarten year but the §504 Plan for the student's kindergarten (2016-17) school year was not submitted by the school system as an exhibit. *Answer dated November 10, 2017 at 1.*

25. Near the conclusion of the student's kindergarten year, the parent again requested an independent evaluation for the student for an IEP. This May 16, 2017, letter caused the school system to convene a Student Assistance Team (SAT) meeting on May 22, 2017, that recommended an initial multi-disciplinary evaluation by the county school system. *Answer dated November 10, 2017 at 1. BoE Exhibit No. 1.*

26. Prior Written Notice (PWN) was provided to the parent with the request to set up an appointment with the county school system's school psychologist. *Answer dated November 10, 2017 at 1.*

27. The report of this evaluation was dated June 11, 2017, at the conclusion of the student's kindergarten year. This assessment was done by a county school system's psychologist and reviewed some of the records provided by the parent, including the evaluations and diagnoses of ADHD and ODD. The psychologist used some but not all of the subtests of an intelligence and an achievement test. A behavior test was administered but its results (including clinically significant anxiety and at risk concerns of aggression and hyperactivity) were opined to be not relevant to his school behavior. TR (December 20, 2017) at 48-112. *BoE Exhibit Nos. 2 and 8. Parent Exhibit Nos. 3, 4, 5, 6 and 7.*

28. An IDEA/WV Policy 2419 Eligibility Committee met on June 15, 2017, and issued a one (1) page report with only one (1) page of the state's eligibility committee checklist report form partially completed with scribbles and unreadable notes and an uncompleted Other Health Impairment (OHI) section. The first page report notes that the Committee considered the student's academic information, the intellectual ability, the information from the parents and observations. The committee apparently did not consider the adaptive or developmental skills, his health information or the student's behavioral performance, his perceptual-motor abilities or his social skills in this initial evaluation. *BoE Exhibit No. 3.*

29. The Committee checked off that the student met the three-prong test (meets the eligibility requirements of a specific disability, experiences an adverse effect on his educational performance and needs special education) and wrote that no additional evaluations were needed. However, the committee then found the student not eligible

for special education and related services and found no primary area of exceptionality. The county school system's special education director signed as attending the committee meeting but did not testify at the hearing. The county school system's psychologist who prepared the June 11, 2017, report also attended the meeting, did testify at the hearing but did not explain the discrepancies. TR (December 20, 2017) at 52-4. *BoE Exhibit No. 3.*

30. The parents refused to accept this Eligibility Committee report as appropriate and again requested an independent evaluation. The parent filed a letter request for an IEE on July 13, 2017. *BoE Exhibit No. 4.*

31. The special education director responded on July 17, 2017, requesting the reasons the parent was in disagreement with the evaluation performed by the school. The director wrote that once she received that information, she would provide to the parent a list of qualified examiners and the criteria. *BoE Exhibit No. 5.*

32. On July 24, 2017, the special education director sent by certified mail a Prior Written Notice (PWN) proposing the IEE because the "district wants to establish a positive working relationship and make sure [student] is assured FAPE." Enclosed with the PWN were the county's seven (7) page criteria for IEEs. *BoE Exhibit No. 5.*

33. The special education director's transmission of the policy and PWN was not received by mail by the parent until they returned from the out-of-town evaluation of the student with the IEE on July 25 and 26, 2017. *BoE Exhibit No. 10. Parent Exhibit No. 1.*

34. The special education director met the WV Policy 2419 ten (10) school day time limitation to respond.

35. The invoice for the IEE reflects that the parent paid the evaluator the invoiced cost of three thousand (\$3000.00) dollars. *BoE Exhibit No. 6.*

36. The county school system's IEE policy divides IEEs into requests for IEEs before the IEE is conducted (direct payment) or requests for direct payment or reimbursement for an IEE that has already been obtained by the parent. For the latter, the district must 1) pay for the IEE; or 2) request WVDoe mediation when parent agrees to mediate; or 3) request a due process hearing within ten (10) school days of the receipt of the evaluation report to show that the evaluation obtained by the parent did not meet the criteria for a publicly funded IEE; or request a due process hearing within ten (10) school days of the receipt of billing to demonstrate that the district's evaluation was appropriate. *BoE Exhibit No. 5.*

37. The school district did not follow its own policy, initially refusing to pay any of the invoiced cost and then choosing to reimburse the parent six hundred (\$600.00) dollars, a portion of the cost of the IEE. It also did not request a mediator or a due process hearing. *BoE Exhibit No. 9. Parent Exhibit No. 2.*

38. The invoice for the IEE was considerably more expensive than what the county school system IEE qualifications, type of evaluation and cost chart provided. *BoE Exhibit Nos. 5 and 9. Parent Exhibit No. 2.*

39. The evaluation took place more than seventy-five (75) miles from the school which is the policy limit. *BoE Exhibit Nos. 5 and 9.*

40. The parents did not request reimbursement for travel costs.

41. The independent education evaluator was not on the county school's approved list of independent evaluators but is a nationally recognized evaluator with extensive credentials who has been used by other West Virginia county school systems for evaluations. *BoE Exhibit Nos. 5 and 9 and 10. Parent Exhibit Nos. 1 and 27.*

42. A second IDEA/WV Policy 2419 Eligibility Committee meeting met and dated a report on August 31, 2017, to consider the independent evaluation. This time, the Committee checked off that the student did not meet any prong of the three-prong test (meets the eligibility requirements of a specific disability, experiences an adverse effect on his educational performance and needs special education) but said that additional evaluations were needed. This time the committee did consider the adaptive skills and the student's behavioral performance and his perceptual-motor abilities in this evaluation and noted that the information was provided by the IEE psych-ed evaluation. *BoE Exhibit Nos. 7 and 10. Parent Exhibit Nos. 1 and 24.*

43. At this August 31, 2017 meeting, the committee again did not review his social skills or health information but did include a full and complete state's eligibility committee checklist. The Specific Learning Disability Team Report was included, finding SLD was not the student's eligibility but checking the box that evaluation information confirms that there is an adverse effect on student's

educational performance and handwritten notes saying that “ADHD impacts his behavior in class” and that the student does “miss a lot due to [REDACTED] - need to monitor his attendance” next to the box concerning lack of appropriate instruction in English, language arts or mathematics wasn’t the determining factor in the eligibility decision. The county school system’s special education director signed as attending the committee meeting but did not testify at the hearing. The county school system’s psychologist who prepared the June 11, 2017, report also attended the second Eligibility Committee meeting, did testify at the hearing but again did not explain the discrepancies. TR (December 20, 2017) at 55-111. *BoE Exhibit Nos. 7 and 10. Parent Exhibit Nos. 1 and 24.*

44. The county school system failed to provide the student with transportation to school during the kindergarten (2016-17) year.

45. The school system continued to fail to provide the student with transportation during the 2017-18 school year through the hearing dates of December 19 and 20, 2017.

46. On or about November 30, 2017, the county school system offered a transportation plan of a special education bus that would pick the student up at 6:09AM and deliver the student to the elementary school at 7:30AM and bring the student back home in the afternoon leaving school at 2:42PM and arriving at 4:20PM with a notation that the driver and the aide would have to be trained on [REDACTED]. TR (December 20, 2017) at 191-4. *BoE Exhibit No. 17. Parent Exhibit No. 19.*

47. This bus schedule greatly exceeds the state recommended time on a school bus for elementary school students of thirty (30) minutes one (1) way.

48. The alternative offered by the county school system on November 30, 2017, was payment in lieu of transportation in the amount of eight (\$8.00) dollars per day based on two (2) round trips at 56 miles. There was no explanation by the county school system how the payment in lieu of transportation was determined. TR (December 20, 2017) at 192-3. *BoE Exhibit No. 17. Parent Exhibit No. 19.*

49. The parents provided a Google map that reflected the mileage was twenty-eight (28) miles per round trip home to school to home; that would make the mileage rate about fourteen (\$0.14) cents per mile. *Parent Exhibit No. 20.*

50. The mileage rate specified in the county school system's IEE policy is "standard mileage fees at the IRS rate will be paid" for transportation costs for an IEE. *BoE Exhibit No. 5.*

51. Standard IRS mileage rates vary by transportation activity and by date but the IRS mileage reimbursement site shows no IRS rate that matches the county school's proffered rate of fourteen (\$0.14) cents except that labeled "mileage driven in service of charitable organizations."

52. The county school system has consistently provided aides that work with the student. Last year during the student's kindergarten year, his classroom had an aide who was very attentive and fond of the student. TR (December 19, 2017) at 158-82.

53. This year, although the student's first grade classroom is not assigned a full-time aide, there is an aide who goes with the student and other students when they go to music, art and physical education and an aide for recess and an aide for lunch. TR (December 20, 2017) at 135.

54. The county school system never provided a school bus aide for the student because until shortly before the due process hearing, the school system has not offered to provide bus transportation for the student.

55. The parent regularly requested a full-time dedicated aide for the student to assist him with his medical issues, his attention deficit issues and his educational issues. TR (December 20, 2017) at 184.

56. The student's geneticist and treating physician recommended an aide or personal assistant for the student. TR (December 20, 2017) at 161-75. *Parent Exhibit No. 15.*

57. Provision of an aide is generally the decision of the IEP Team.

58. The testimony of the current first grade teacher and the school nurse demonstrated that the student is spending an extensive amount of time every school day in the nurse's office. TR (December 19, 2017) at 185-218. TR (December 20, 2017) at 135-6, 140-44, 150-3. *Parent Exhibit No. 8.*

59 Under IDEA and WV Policy 2419, the student's time in the nurse's office

time does not count as educational time.

60. The §504 Plan that started the student's first grade (2017-18) school year dated August 31, 2017, and the amended §504 Plan dated November 30, 2017, were made a part of the record.⁵ The August plan appears to be a traditional health plan focused on the student's [REDACTED] with excellent and appropriate training of staff and substitutes itemized. The ADHD, focus/hyperactivity (but no ODD) diagnoses are listed with a few accommodations and a proposed Occupational Therapy (OT) evaluation is noted. After the parent filed the due process request, the §504 eligibility committee met again and the November 30, 2017, plan review included extensive changes to the plan stemming from the OT assessment dated October 12, 2017, and from the Functional Behavior Assessment (FBA) and proposed Behavior Intervention Plan (BIP) dated November 30, 2017, all of which were made a part of the hearing record. *BoE Exhibit Nos. 12, 13, 14, 15 and 16. Parent Exhibit Nos. 16, 17, and 18.*

CONCLUSIONS OF LAW

1. A due process complaint must be initiated within two (2) years of the date a parent or district knew or should have known of a disputed decision or alleged action that forms the basis for the complaint. *WV Policy 2419 (126 CSR 16) Dispute Resolution, Ch. 11, §4A.*

⁵The parties agreed to not contest in this due process hearing the §504 Plans or medical plans provided to the student.

2. When a student is suspected of needing special education and related services, WV Policy 2419 establishes the procedures and requirements for evaluating the student. The initial evaluation is expected to gather information to determine whether the student has a disability, what the educational needs of the student are including his present levels of academic achievement and his related developmental needs, the effects of the disability on educational and functional performance, whether the student needs specially designed instruction and the nature and extent of the special education needed by the student. *WV Policy 2419 Evaluation/Reevaluation, Ch. 3, §2A.*

3. The evaluation team has an eighty (80) day time line to complete this work (with some exceptions) and if appropriate the team should look at information provided by the parent and/or data from current classroom-based assessments and observations, observations by teachers and related service providers and/or results from district-wide or statewide testing. *WV Policy 2419 Evaluation/Reevaluation, Ch. 3, §2 A.*

4. In an initial evaluation, the student needs to be evaluated in all areas related to the suspected disability including, if appropriate, health, social and emotional status, behavioral performance, general intelligence, and academic performance and must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the suspected exceptionality. *WV Policy 2419, Evaluation/Reevaluation, Ch. 3, §4 A.*

5. The evaluation procedures and instruments must include those tailored to

assess specific educational need and must be provided at no expense to the parent. The evaluators must meet the qualifications and the evaluators must write, sign and date the evaluation report which must be available to the committee and the parent within the eighty (80) day time line. *WV Policy 2419, Evaluation/Reevaluation, Ch. 3, §§ 4 B and C.*

6. No single measure or evaluation may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student. *WV Policy 2419, Evaluation/Reevaluation, Ch. 3, § 4 B.2.*

7. The results of an independent educational evaluation (IEE) may not be the sole determining factor for eligibility. *WV Policy 2419, Procedural Safeguards, Ch. 10, §7 D.*

8. The student must meet the requirements of the “three-prong test of eligibility” or is not eligible for special education. *WV Policy 2419, Eligibility, Ch. 4, §3.*

9. The three-prong test requirements are:

- a. student meets state requirements for one or more specific exceptionalities;
- b. student experiences adverse effects on his educational performance (except gifted); and
- c. student needs special education.

WV Policy 2419, Eligibility, Ch. 4, §3.

10. Special education is defined as “specially designed instruction, at no cost to the parents, to meet the unique needs of the student with an exceptionality.” *WV Policy 2419, Eligibility, Ch. 4, § 3.*

11. Specially designed instruction means “the content, methodology, or delivery of instruction is adapted, as appropriate, to address the unique needs of the student that results from the student’s exceptionality and to ensure access of the student to the general curriculum so that the student can meet the educational standards that apply to all students.” *WV Policy 2419, Eligibility, Ch. 4, § 3 A.*

12. The exceptionality nominated Other Health Impairment (OHI) is defined as meaning “having limited strength, vitality or alertness, including heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include but are not limited to asthma, attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke to such a degree that it adversely affects the student’s educational performance.” *WV Policy 2419, Eligibility, Ch. 4, §3 K.*

13. A student is eligible for special education services as a student with other health impairment (OHI) when documentation of five (5) criteria exist: the student exhibits characteristics consistent with the definition, the student has been diagnosed with a chronic or acute medical or health condition by a licensed physician or has ADHD diagnosed by a school or licensed psychologist or physician, the student has

educational needs as a result of the health condition, the condition adversely effects the educational performance of the student and the student needs special education. *WV Policy 2419, Eligibility, Ch. 4, § 3K.*

14. A Parent has a right to obtain an Independent Educational Evaluation (IEE) at public expense if Parent disagrees with an evaluation conducted by the school district and the district has ten (10) days to agree to pay for the IEE after giving Parent the criteria or to file a due process or to request a mediation. *WV Policy 2419, Procedural Safeguards, Ch. 10, §7A.1* and 34 CFR §300.502 (a) and (b)(1).

15. In matters alleging a procedural violation, a hearing officer may find that a student did not receive a free appropriate education only if the procedural inadequacies “...(I) impeded the child’s right to a free appropriate education; (ii) significantly impeded Parent’s opportunity to participate in the decision making process regarding the provision of a free appropriate public education to Parents’ child; (iii) caused a deprivation of educational benefits.” 20 U.S.C. §1415(F)(3)(E)(ii) and *WV Policy 2419, Ch. 11 §4.M.*

16. All students living greater than two (2) miles from their assigned school are eligible for school transportation services. *WV Policy 4336, School Bus Transportation Policy and Procedures Manual, §3.4 School Bus Passenger Regulations.*

17. Special transportation is defined as modifications made in regular school transportation to assure accessibility of special education and other related services for

students with disabilities. It can include special care such as need for health and safety maintenance, medication in transit and the assistance of an aide if required to provide school transportation for a student with a disability. *WV Policy 2419, Glossary.*

18. Special transportation is not limited to transportation for students with IEPs but also includes students with individualized health plans and students with §504 Plans. *WV Policy 4336, School Bus Transportation Policy and Procedures Manual, §5.1 Regulations for Transporting Students with Disabilities Requiring Special Transportation.*

19. Bus drivers who transport students requiring special transportation must complete multiple hours of training in special health care needs including the requirements of *Policy 2422.7 (126 CSR 25A) Standards for Basic Health Care Procedures* and the special education director designee and/or school nurse must provide specific student information. *WV Policy 4336, School Bus Transportation Policy and Procedures Manual, §5.5 and 5.6, Regulations for Transporting Students with Disabilities Requiring Special Transportation.*

20. When the *IEP*, individual health plan or §504 Plan requires that medicine is to be provided to a student while being transported, the procedures must be in accordance with the Administration of Medications policy and aides are to be delegated to and trained by the school nurse in medication administration or in the delivery of medication and other basic or specialized health care procedures as outlined in *WV Policy 2422.7. WV Policy 4336, School Bus Transportation Policy and Procedures Manual, §5.7 and 5.7.1. Regulations for Transporting Students with*

Disabilities Requiring Special Transportation.

21. Payments made to parents by a county school district in lieu of transportation are permitted and are included in the Public School Support Program (PSSP), the state plan of financial support for all public schools in West Virginia. The amount paid by the state from this plan to the county school system for student transportation is determined by the actual transportation expenses incurred by each district in the preceding year, including insurance for the buses, operations maintenance and contracted services for the buses and aid paid to students in lieu of transportation. Payments made to parents in lieu of transportation by the school district have been reimbursable by the West Virginia Department of Special Education, Office of Special Programs (assuming the appropriate forms from the Office of School Finance are submitted and the appropriate criteria met).

22. §504 of the Rehabilitation Act is a federal law designed to protect individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. It prohibits discrimination and requires school districts to provide free, appropriate public education (FAPE) to students with disabilities no matter what the disability is. §504 defines FAPE as the provision of regular and special education and related services designed to meet the students individual educational needs as adequately as the needs of students without disabilities are met. The law is Rehabilitation Act of 1973 (as amended), 29 U.S.C. §794 (Section 504); the regulations implementing §504 in the context of education are found at 34 CFR Part 104.

23. School districts may use the same process to evaluate the needs of students under §504 as under the Individuals with Disabilities Improvement Act (IDEA) but may use a separate process following the requirements for evaluation found at 34 CFR Part 104.35, including the requirement that a group of knowledgeable people draw upon information from a variety of resources to determine whether someone has a disability. 34 CFR Part 104.35 (c.). A school district must evaluate a student prior to providing any §504 services to a student and requires a group of persons, including some who are knowledgeable about the evaluation data and the placement options must make the decision. 34 CFR Part 104.35 (c.)(3).

24. If a student is eligible for services under IDEA, the student must have an IEP, not a §504 Plan. Generally, a student would not have both a §504 Plan and an IEP, since an IEP is one way to meet the anti-discrimination provisions of §504.

25. A school district can not compel a parent to provide an explanation of why the parent disagrees with the school district's original evaluation as a condition of providing an IEE. *WV Policy 2419, Procedural Safeguards Ch. 10 §7 B.*

26. Attorney fees may be awarded by a court or agreed to by the parties. *WV Policy 2419, Dispute Resolution Ch. 11 §4 O.*

27. The United States Supreme Court has determined that in a due process hearing challenging the school system's eligibility determination, the burden of proof is placed upon the party seeking relief which, in this matter, is the parent. Schaffer v. Weast, 546 US 49, 62 (2005).

DISCUSSION

A. Overview

The student is seven (7) years old and in the first grade at an elementary school in the county. He was born and has suffered since with a medical disorder called [REDACTED] which prevents the student's body from converting medium chain fats into energy. It is a life-threatening disease and requires regular blood sugar testing using a meter that tests blood taken from a skin or finger prick. If the blood sugar falls below a certain level, the student must be transported to the hospital by ambulance and may be treated for several days; if it drops below another level, and there is no timely treatment, the student can die. In addition to the regular blood sugar level testings, the student also needs to be tested when he exhibits certain behaviors. Sometimes he gets very quiet and does not interact with others; other times he goes a mile-a-minute talking, talking loudly or incoherently and is unable to sit still. Dehydration can cause serious problems for the student as can illness or emotional distress or anxiety. He is not old enough to be able to recognize an episode although he is learning. He knows sometimes that he needs to get his blood sugar levels tested but not reliably.

The student has also been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and oppositional/defiant and disruptive behaviors (ODD). He has some oral muscle weaknesses (which causes him not to like to chew or eat food much) and fine motor skill deficiencies including writing. He needs to be monitored to be sure he is eating and staying hydrated. He has a lot of stomach problems due to his

medications and suffered a resulting megacolon for which he was hospitalized last year.

The county school system is a small system. The student is not attending his neighborhood elementary school because the school system wanted him to attend a school with a full-time nurse assigned to the school and his neighborhood school only has a part-time nurse. The student attended kindergarten in the school system at the same non-neighborhood elementary school with a full-time nurse. He had a teacher and an aide in his classroom and twenty (20) other students. In first grade he has a teacher, no classroom aide and eighteen (18) or nineteen (19) other students. An aide does go with him and other students to music, art and physical education ('specials') and an aide goes to recess with him and to lunch. The aide also is responsible for an autistic child and a child whom the nurse identified as low-functioning.

The student's treating geneticist and his dietician gave the school information on diet and what foods he can eat and opined that the student needs a personal care assistant or aide to ensure his health and safety. The student has to eat high carbohydrate/low fat meals or snacks every several hours during the day so that affects his ability to continuously focus on his school work. He has to eat on this schedule even through the night so he doesn't get much uninterrupted sleep. This also affects his ability to focus on his school work. The student's daily food intake must be monitored and recorded at school and communicated to the parent so the parents will know what the student has consumed. Every morning the parents text the nurse what the student has eaten and what his blood sugar level is. At the end of the student's school day, the school's information is sent to the parent.

Transportation is required for the student. Appropriate bus transportation services were not provided to the student by the school system. The undisputed evidence is that the student's father was forced to decrease his working hours to about one-half (½) time to provide school transportation services for his student. Payment in lieu of transportation was not offered by the school system until November 30, 2017, and then at a mileage and mileage rate not considered sufficient by the parents.

B. Issues

1. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to timely identify Student as eligible for special education and related services?

a. Kindergarten (2016-17)

The undisputed testimony from the parent is that the student was refused testing prior to kindergarten for special education and related services. It was also undisputed that the parent requested an IEP and was informed by the school system that the student didn't qualify for special education but that he would be given a §504 Plan.

The undisputed evidence from the parent is that the parent shared all the student's medical diagnoses, records and information with the school system prior to and throughout the student's kindergarten (2016-17) school year. This included the student's early intervention services from birth to three (3) years, an independent psychological evaluation in May 2013 diagnosing Disruptive Behavior Disorder and the testing showing that in April 2016 the student was evaluated and subsequently

diagnosed by a licensed psychologist with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD).

Apparently, the school system chose to substitute a §504 Plan for the parent-requested IEP for the student's kindergarten year but the §504 Plan for the student's kindergarten (2016-17) school year was not submitted by the county school system as an exhibit. Generally §504 Plans are not appropriate substitutes for IEPs. If a student qualifies for an IEP, then the school must provide an IEP. Eligibility for §504 Plans and IEPs must be determined by teams or groups of people knowledgeable about specific matters and follow specific procedures as noted in the above conclusions of law. There is no evidence of the school system following the eligibility parts of the law for either a §504 Plan or an IEP before or during the student's kindergarten year until May 2017.

When a student is suspected of needing special education and related services, WV Policy 2419 gives the school system eighty (80) days to gather information to determine whether the student has a disability, what the educational needs of the student are including his present levels of academic achievement and his related developmental needs, the effects of the disability on educational and functional performance, whether the student needs specially designed instruction and the nature and extent of the special education needed by the student. As it is undisputed that the parent suspected and asked for an IEP and was refused by the county school system and there was no evidence that the county school system even began the evaluation process until May or June 2017, considerably past the eighty (80) day deadline, the county school system failed to timely complete either the §504 Plan or the IDEA/WV

Policy 2419 eligibility evaluation procedure of the student during his kindergarten year.

b. Summer before and First Grade (2017-18)

The earliest evidence in the record of any formal evaluations by the county school system was a report dated June 11, 2017, at the conclusion of the student's kindergarten year. This assessment was done by a county school system's psychologist and reviewed some of the records provided by the parent, including the evaluations and diagnoses of ADHD and ODD. The psychologist used some but not all of the subtests of an intelligence and an achievement test. A behavior test was administered but its results (including clinically significant anxiety and at risk concerns of aggression and hyperactivity) were opined to be not relevant to his school behavior.

The record reflects an IDEA/WV Policy 2419 Eligibility Committee one (1) page report dated June 15, 2017, and one (1) page of the state's eligibility committee checklist multi-page report form partially completed with scribbles and unreadable notes and an uncompleted Other Health Impairment (OHI) section. The first page report notes that the Committee considered the student's academic information, the intellectual ability, the information from the parents and observations. The committee apparently did not consider the adaptive or developmental skills, his health information or the student's behavioral performance, his perceptual-motor abilities or his social skills in this initial evaluation. The Committee checked off that the student met the three-prong test (meets the eligibility requirements of a specific disability, experiences an adverse effect on his educational performance and needs special

education) and said no additional evaluations were needed. However, the committee then found the student not eligible for special education and related services and found no primary area of exceptionality. The county school system's special education director signed as attending the committee meeting but did not testify at the hearing. The county school system's psychologist who prepared the June 11, 2017, report also attended the meeting, did testify at the hearing but did not explain the discrepancies.

The parents refused to accept this refusal as appropriate and again requested an independent evaluation. The parent filed a request for an IEE on July 13, 2017. An IEE was completed and shared with the school system and the record reflects a second IDEA/WV Policy 2419 Eligibility Committee meeting with a report dated August 31, 2017, to consider the independent evaluation.

This time, the Eligibility Committee checked off that the student did not meet any prong of the three-prong test (meets the eligibility requirements of a specific disability, experiences an adverse effect on his educational performance and needs special education) and noted that additional evaluations were needed. This time the committee did consider the adaptive skills and the student's behavioral performance and his perceptual-motor abilities in this evaluation and noted that the information was provided by the psych-ed evaluation. Again they did not review his social skills or health information but did include a full and complete state's eligibility committee checklist. The Specific Learning Disability (SLD) Team Report was included noting SLD was not the student's eligibility for special education and related services. On the report, the team checked the box that evaluation information confirms that there is an adverse effect on student's educational performance and included handwritten

notes saying that “ADHD impacts his behavior in class” and that the student does “miss a lot due to [REDACTED] need to monitor his attendance.” These notations were placed next to the box concerning lack of appropriate instruction in English, language arts or mathematics wasn’t the determining factor in the eligibility decision. The county school system’s special education director signed as attending the committee meeting but did not testify at the hearing. The county school system’s psychologist who prepared the June 11, 2017, report also attended the second Eligibility Committee meeting, did testify at the hearing but again did not explain the discrepancies.

The §504 Plan apparently provided in lieu of the parent-requested IEP that started the student’s first grade (2017-18) school year dated August 31, 2017, and the amended §504 Plan dated November 30, 2017, were made a part of the record. The August plan appears to be a traditional health plan focused on the student’s [REDACTED] with excellent and appropriate training of staff and substitutes itemized. The ADHD, focus/hyperactivity (but no ODD) diagnoses are listed with a few accommodations and a proposed Occupational Therapy (OT) evaluation is mentioned. After the parent filed the due process request, the §504 eligibility committee met again and the November 30, 2017, plan review included extensive changes to the plan stemming from the OT assessment dated October 12, 2017, and from the Functional Behavior Assessment (FBA) and proposed Behavior Intervention Plan (BIP) dated November 30, 2017, all of which were made a part of the hearing record.

The poor and confusing documentation by the Eligibility Committee reflected inconsistent and contradictory information. Insufficient evidence was provided at the hearing to explain these documents. The June 15, 2017, Eligibility Committee found

that the student met all of the three-prong eligibility test (student meets state requirements for one or more specific exceptionalities, experiences adverse effects on his educational performance and student needs special education) but on August 30, 2017, the same committee with only the IEE added to their review finds that the student does not meet any prong of the three-prong eligibility test. The IEE, a thorough and extensive psycho-education evaluation by a nationally recognized education expert, clearly supports that the student meets the three-prong test. Although only one (1) evaluation is not permitted to be dispositive of eligibility, by August 30, 2017, the Eligibility Committee had multiple evaluations to help them make their decision and their decision seems inconsistent with the evidence.

2. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to reimburse the parents for the independent education evaluation (IEE)?

The parent requested first requested an IEE in May 2017 and then agreed to allow the county school system to conduct its own evaluation. The parent again requested an IEE on July 13, 2017, and the county special education director responded on July 17, 2017, requesting the reasons the parent was in disagreement with the evaluation performed by the school. The special education director wrote that once she received that information, she would provide to the parent a list of qualified examiners and the criteria. On July 24, 2017, the special education director sent by certified mail a Prior Written Notice (PWN) proposing the IEE because the “district wants to establish a positive working relationship and make sure [student] is assured FAPE.” Enclosed with the PWN were the county’s seven (7) page criteria for IEEs.

Unfortunately, by delaying the transmission of the county's IEE policy through her refusal to send the policy when requested by the parent on July 13, 2017, until the parent gave her reasons as to why she disagreed with the county's evaluation⁶, the special education director's transmission of the policy was not received by mail by the parent until they returned from the out-of-town evaluation of the student with the IEE on July 25 and 26, 2017. The director did meet the ten (10) school day time limitation to respond.

As these events occurred, although the parent requested the school system to pay for an IEE before it happened, in actuality, the evaluation happened after the allowed time frame. The invoice for the IEE reflects that the parent paid the evaluator. This moves the request for an IEE to be obtained at public expense to a request for payment for an IEE that has already been obtained by the parent. Therefore, according to the county school's IEE Policy, the district must 1) pay for the IEE; or 2) request WVDOE mediation when parent agrees to mediate; or 3) request a due process hearing within ten (10) school days of the receipt of the evaluation report to show that the evaluation obtained by the parent did not meet the criteria for a publicly funded IEE; or request a due process hearing within ten (10) school days of the receipt of billing to demonstrate that the district's evaluation was appropriate. The school district did not follow its own policy and initially refused to pay for the IEE and then chose to reimburse the parent a portion of the cost of the IEE. The county school system did not request a due process hearing or request a mediation.

⁶WV Policy 2419 permits a county to ask a parent why she disagrees but the district may not require an explanation. This refusal to provide the county IEE policies until the parent gives reasons for disagreeing with the county's evaluations made this a requirement to get information to which the parent was entitled.

The invoice for the IEE was considerably more expensive than what the county school system IEE qualifications, type of evaluation and cost chart provided. The evaluation took place more than seventy-five (75) miles from the school which is the policy limit.⁷ The independent evaluator was not on the list of county school approved evaluators. If the school system had provided the county IEE policy before the parents took the student to be evaluated, the parents could have properly evaluated whether or not to risk spending the money on the IEE. However, the school system provided the information within the required ten (10) school days to the parent. Therefore, the county school system did not violate IDEA and/or WV Policy 2419 by failing to fully reimburse the parents for the July 2017 IEE.

3. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to provide transportation or reimbursement for transportation for Student to and from school?

The unrebutted evidence is that the county school system failed to provide the student with transportation to school during the 2016-17 year. The school system continued to fail to provide the student with transportation during the 2017-18 school year through the hearing date of December 19 and 20, 2017.

On November 30, 2017, the school system offered a transportation plan of a special education bus that would pick the student up at 6:09AM and deliver the

⁷Parents' counsel pointed out that the parents did not request reimbursement for travel expenses for the IEE so that the mile limitations in her view should not apply.

student to the elementary school at 7:30AM and bring the student back home in the afternoon leaving school at 2:42PM and arriving at 4:20PM with a notation that the driver and the aide would have to be trained on [REDACTED]. This bus schedule greatly exceeds the recommended time on a school bus for elementary school students of thirty (30) minutes one way and would put the student on a bus eighty-one (81) minutes in the morning and ninety-eight (98) minutes in the afternoon for a total of one hundred (179) minutes of bus time- almost two (2) hours extra time on the bus every school day.

The alternative offered by the county school system on November 30, 2017, was payment in lieu of transportation in the amount of eight (\$8.00) dollars per day based on two (2) round trips at fifty-six (56) miles. There was no explanation by the county school system how the payment in lieu of transportation was determined. The parents provided a Google map that reflected the mileage was twenty-eight (28) miles per round trip home to school to home; that would make the mileage rate about fourteen (\$0.14) cents a mile. The only mileage rate offered at the hearing was that specified in the county school's IEE policy as "standard mileage fees at the IRS rate will be paid" for transportation costs for an IEE.

Judicial notice is taken that standard IRS mileage rates vary by transportation activity and by date. A search of the IRS mileage reimbursement site shows no IRS rate⁸ that matches the county school system's proffered rate of fourteen (\$0.14) cents

⁸The 2016 business rate for vehicles for business was \$0.54 per mile, for medical and moving was \$0.19 per mile and \$0.14 per mile in service of charitable organizations. The 2017 business rate for vehicles for business was \$0.535 per mile, for medical and moving was \$0.17 per mile and \$0.14 per mile in service of charitable organizations. The 2018 business rate for

per mile except that labeled “miles driven in service of charitable organizations.”

The county school system did not provide appropriate transportation to the student for his entire kindergarten year and for his first grade year up to and through the hearing dates of December 19 and 20, 2017. The parents should be paid in lieu of transportation for those days, subtracting any days the student was not transported to and from school. The mileage rate should be the appropriate IRS rate for business as the student’s business is school. The student is not moving or going to a medical appointment and he is not being driven by the parent in service of a charitable organization.

4. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to provide an aide for Student?

The evidence reflects that the county school system has consistently provided aides that work with the student. Last year during his kindergarten year, his classroom had an aide. This year although his first grade classroom is not assigned a full-time aide, there is an aide who goes with the student and other students when they go to music, art and physical education. The school system has never provided a school bus aide for the student because until shortly before the due process hearing, the school system has not offered to provide bus transportation for the student.

The parent requested a full-time dedicated aide for the student to assist him with

vehicles for business is \$0.545 per mile, for medical and moving is \$0.18 per mile and \$0.14 per mile in service of charitable organizations. www.irs.gov/standard-mileage-rates.

his medical issues, his attention deficit issues and his educational issues. The student's geneticist and treating physician recommended an aide for the student. The county school system provided a 2004 Tennessee §504 OCR complaint involving a young diabetic student that, based on the evidence presented, OCR did not find that the school needed to provide a medically trained person to receive the student's morning drop-off. *Bradley County (TN) School Dist.*, Complaint No.04-04-1247, 43 IDELR 44 (OCR 2004). The county school system also provided a 1998 Pennsylvania Appeals Panel case involving a student with fragile diabetes and mental retardation. The due process hearing officer in that case found that the school district was the appropriate place for the child but ordered the district to provide a one-on-one aide. The appeals panel removed the requirement of a one-on-one personal aide because the school had in place extensive safeguards: the student was in a class with only ten (10) children with three (3) adults, full-time nursing services at the school, a specially designed set of emergency procedures for each room the student would go in during the day, designation of a specific person to get the student to the health suite and extensive training of all staff that might come in contact with her. The appeals panel also directed that if the Dept. Of Education's Compliance Officer finds that the school district has not implemented the decision correctly or consistently, the officer is to require the provision of a personal one-on-one aide immediately. *Abington Sch. Dist.*, Case No. 812, 28 IDELR 890 (Pa. Appellate Officer 1998). Although interesting, these cases are not really instructive in the case at hand. After a thorough search, the hearing officer discovered that there are no IDEA cases on point.

Provision of an aide is generally the decision of the IEP Team. As the student now is found eligible for special education and related services and therefore has an

IEP team, it should be the decision of that team as to whether the student receives a one-on-one aide going forward and if the parent is not satisfied with that decision, she has several remedies. Looking backward, the evidence reflects that the aide and the teacher in the kindergarten classroom were sufficient to meet both his medical needs and his education needs. This year, the student's first grade year, the student is placed in a classroom with fewer children and no assigned aide although aides help with the transportation of the student and others to other locations in the school. The student seems to be spending an extensive amount of time in the nurse's office. Under IDEA and WV Policy 2419, the nurse's office time does not count as educational time and the school system might prefer to have a trained aide discreetly handle the student's blood testing and snacks in the classroom so that he can continue to get educational benefit from the lessons going on.

Although the student could have benefitted from an aide this school year, there was insufficient evidence to demonstrate that he required a one-on-one aide to benefit from his first grade education.

DECISION

1. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to timely identify Student as eligible for special education and related services?

Based on the preceding findings of fact and conclusions of law, and as described in the discussion section, the impartial hearing officer finds that the parents have met their burden of proof showing that the County school system violated

multiple provisions of IDEA and Policy 2419 by refusing to evaluate the student starting on May 31, 2016, prior to the student's kindergarten year, by claiming that the student was ineligible for special education and related services without evaluating the student and by "substituting" a §504 Plan.

Based on the preceding findings of fact and conclusions of law, and as described in the discussion section, the impartial hearing officer finds that the parents have met their burden of proof showing that the County school system violated multiple provisions of IDEA and Policy 2419 after finally commencing the initial evaluation process over a year after the parent's initial request, by failing to evaluate the student in all the areas of suspected exceptionality including health, social and emotional status, behavioral performance, intelligence and academic performance, motor abilities and by ensuring the evaluation was sufficiently comprehensive to identify all the student's special education and related services needs, whether or not commonly linked to the suspected disability.

2. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to completely reimburse the parents for the independent education evaluation (IEE)?

Based on the preceding findings of fact and conclusions of law, and as described in the discussion section, the impartial hearing officer finds that the parents have not met their burden of proof showing that the County school system violated IDEA and/or WV Policy 2419 by failing to completely reimburse them for the independent education evaluation.

3. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to provide transportation or reimbursement in lieu of transportation for Student to and from school?

Based on the preceding findings of fact and conclusions of law, and as described in the discussion section, the impartial hearing officer finds that the parents have met their burden of proof showing that the County school system violated multiple provisions of IDEA, WV Policy 2419 and WV Policy 4363, by failing to provide appropriate transportation to the student to and from school or in the alternative, to provide payment in lieu of transportation.

4. Whether County Schools violated IDEA and/or WV Policy 2419 by failing to provide an aide for Student?

Based on the preceding findings of fact and conclusions of law, and as described in the discussion section, the impartial hearing officer finds that the parents have not met their burden of proof showing that the County school system violated the IDEA and Policy 2419 by failing to provide the student with a one-on-one aide. Although the student could have benefitted from an aide both school years, there was insufficient evidence to demonstrate that he required a one-on-one aide to benefit from his kindergarten or his first grade education.

DIRECTIVES FOR IMPLEMENTATION

1. As the Student/Parents were able to demonstrate by sufficient evidence that the county school system failed to provide transportation for the student or payment in lieu of transportation, the county school system is directed to pay to the parents payments in lieu of transportation for all of 2016-17 and such part of 2017-18 that the parents continue to provide the transportation. Daily rates will be calculated at the IRS business travel rate for the miles a parent actually traveled to transport the student. This payment in lieu of transportation must be made by the county school system to the parents by April 1, 2018 and the county school system is directed to send proof of payment to the Office of Federal Programs by April 10, 2018.

Going forward the parents will invoice the school system on a monthly basis for these payments and the county school system will pay the parents within fifteen (15) days of receipt of the invoice.

2. As Student/Parents were able to demonstrate by sufficient evidence that the county school system failed to appropriately and timely evaluate the student for special education and related services during the student's kindergarten and a portion of his first grade year, the county school system shall reimburse the parents for the remainder of the cost paid by them to the independent evaluator for the evaluations conducted in July 2017, plus any travel expenses incurred by the parents to transport the student to the evaluation. This remedy is not directed because the school system

failed to follow WV Policy 2419 or their own county IEE policies as noted above.

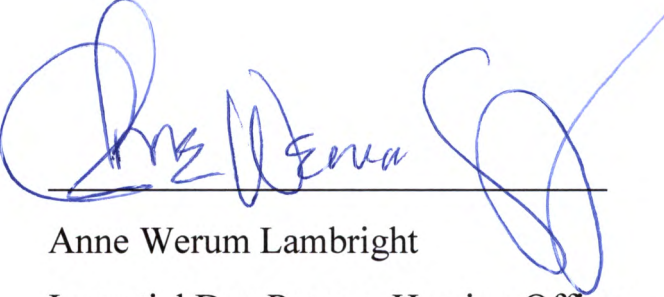
3. As Student/Parents were able to demonstrate by sufficient evidence that the county school system failed to appropriately and timely evaluate the student for special education and related services, the county school system special education director is directed to contact the WV Department of Education, Office of Special Education and Office of Federal Programs, within thirty (30) days of the date of this decision, to arrange for training of all relevant school personnel or contract employees on how to properly complete the appropriate state eligibility forms. This remedial training should be completed by April 15, 2018, and proof of training for all relevant personnel sent to the Office of Federal Programs by May 1, 2018.

4. Parents' requested remedy of payment of parent attorney fees requires a settlement by the parties or an order by a court of record and is therefore not ordered.

APPEAL RIGHTS

Any party aggrieved by the findings and decisions made in the hearing has the right to bring a civil action with respect to the due process complaint in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within ninety days of the issuance of the due process hearing officer's written decision.

DATE: February 19, 2018



Anne Werum Lambright

Impartial Due Process Hearing Officer

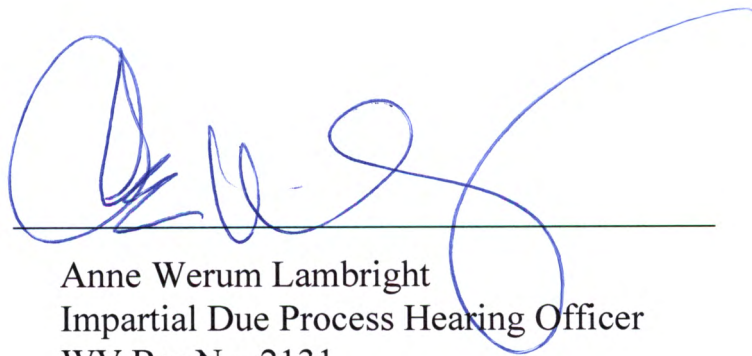
**BEFORE THE WEST VIRGINIA
DEPARTMENT OF EDUCATION OFFICE OF FEDERAL PROGRAMS
DUE PROCESS HEARING OFFICER
DUE PROCESS DUE PROCESS NO. 18-007**

Certificate of Service

The undersigned, ANNE WERUMLAMBRIGHT, do hereby certify that service of the foregoing Decision has been made by e-mail, hand delivery or by forwarding a true copy thereof in an envelope deposited in the regular course of the United States mail, with postage prepaid, on this the 19th day of February 2018, addressed as follows:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]


Anne Werum Lambright
Impartial Due Process Hearing Officer
WV Bar No. 2131