

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

BY AND THROUGH

Petitioner,

v.

**DEKALB COUNTY SCHOOL
DISTRICT,**

Respondent.

Docket No.: 2311749

2311749-OSAH-DOE-SE-44-Teate

FINAL DECISION

I. Introduction

by and through his parent (“Petitioners”) filed the due process hearing request (hereinafter “the complaint”) which is the basis for this case on November 14, 2022. In the complaint, Petitioners raised claims under the Individuals with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act. The relevant period for this matter is November 15, 2020, through November 14, 2022. This period coincides with s seventh and eighth grade years at Middle School in DeKalb County, before he transferred to High in Henry County on August 3, 2022, where he remains currently enrolled.

Respondent challenged the sufficiency of Petitioners’ complaint on November 29, 2022. After the Court determined Petitioners’ complaint to be insufficient, Petitioners filed an amended complaint on December 2, 2022. After Respondent challenged the sufficiency of Petitioners’ amended complaint, the Court determined the amended complaint to be deficient in all regards except the child find allegation, to the extent that such allegation arose during the applicable statute of limitations (November 15, 2020, through November 2022).

As scheduled, a hearing was held on March 7, 2023. mother, represented

Petitioners and was Petitioners' only witness. Andrea Jolliffe, Esq. and Henry Cleland, Esq. represented Respondent. At the conclusion of Petitioners' presentation, Respondent moved for involuntary dismissal pursuant to Ga. Comp. R. & Regs. 616-1-2-.35.

Having considered the record, Respondent's Motion for involuntary dismissal is **GRANTED** and Petitioners' complaint is **DISMISSED WITH PREJUDICE**.

II. Findings of Fact¹

1. [REDACTED] is currently 14 years old. After transferring from Clayton County in December 2016, he attended three DeKalb County elementary schools before enrolling in [REDACTED] Middle School on August 5, 2019, where he attended 6th, 7th, and 8th grades. (Testimony of [REDACTED] at 00:07:10; 00:07:55; Respondent Exhibits 2, 3, 4, 5, 6, 7, 8 and 9).
2. On April 23, 2015, while [REDACTED] was in the 1st grade, he received a psychological evaluation that diagnosed him with attention deficit hyperactivity disorder (ADHD) and a chronic adjustment disorder. The report indicated that [REDACTED] did not have a learning disability. (Testimony of [REDACTED] at 00:07:55; Respondent Exhibit 1).
3. While [REDACTED] reported verbally discussing [REDACTED] ADHD diagnosis with some DeKalb County School District teachers, she never specifically requested a disability evaluation for IDEA or a Section 504 plan. She also testified that one teacher, an administrator, recommended a Section 504 plan for [REDACTED] did not subpoena any of the teachers or administrators with whom she reportedly discussed [REDACTED] ADHD diagnosis. (Testimony of [REDACTED]
4. [REDACTED] passed all his classes in the 2019-2020 school year, all of his classes for the 2020-

¹ Inasmuch as Respondent's motion for involuntary dismissal was orally granted at the conclusion of Petitioner's case in chief without hearing the Respondent's case in rebuttal, the hearing record consists only of [REDACTED]'s testimony. No other witness was called and none of Petitioner's documents were admitted. The Court allowed 10 days for the submission of a proposed order. Respondent submitted such a proposed order that has been reviewed. The findings refer to exhibits that were utilized in the cross-examination of [REDACTED] but not admitted. The approximate time on the recording of [REDACTED] testimony is also noted on some findings in the following format: HH:MM:SS.

2021 school year with the exception of Spanish 7 and all of his classes for the 2021-2022 school year with the exception of Science. Although [REDACTED] disputes the accuracy of Respondent's grades while in DeKalb County, she presented no credible testimony or documents to refute their accuracy.

5. [REDACTED] teachers never suggested that he required special education services. Also, [REDACTED] never communicated a written or a verbal request to DeKalb County School District teachers or other personnel for an evaluation for special education services. [REDACTED] opines that it was Respondent's duty to inquire rather than her duty to request such an evaluation. (Testimony of [REDACTED] at 00:18:43, 01:02:05).

6. [REDACTED]'s first behavior incident occurred on January 27, 2022, when he was assigned one day of out-of-school suspension for a fight in the bathroom. Subsequently, on February 4, 2022, he was disciplined for vaping. On that same date, [REDACTED]'s household underwent extensive changes after his father suffered a gunshot wound requiring hospitalization and rehabilitation. About two months later, [REDACTED] was given a 10-day out-of-school suspension for engaging in a fist fight with another student. (Testimony of Petitioner at 00:22:24, 00:22:35, 00:22:45-00:26:00).

7. [REDACTED] left DeKalb County School District in May 2022. (Testimony of [REDACTED])

8. When Respondent recommended retaining [REDACTED] in eighth grade due to his performance on the Math and Reading portions of the Georgia Milestones, [REDACTED] appealed the decision and a retention meeting was held on June 21, 2022. During the retention meeting, [REDACTED] disclosed for the first time the 2015 evaluation that diagnosed [REDACTED] with ADHD. [REDACTED] was not a student in DeKalb County School District at the time. (Testimony of [REDACTED] at 01:02:05).

9. Since August 3, 2022, [REDACTED] has been enrolled in [REDACTED] High School in Henry

County, where he completed the 9th grade.

10. ██████ has a Section 504 plan for accommodations in Henry County.² Henry County School District has not yet determined ██████ to be eligible under IDEA or developed an Individualized Education Program (IEP) for him. (Testimony of ██████ at 00:11:40; 00:17:35; 00:20:00; 00:50:00).

III. Conclusions of Law

1. Georgia is required to have in effect policies and procedures that insure all children with disabilities and who are in need of special education are identified, located, and evaluated. 34 C.F.R. § 300.111. Attention-Deficit/Hyperactivity Disorder (ADHD) can be considered a disability under the Individuals with Disabilities Education Act (IDEA). See Durbrow v. Cobb Cty. Sch. Dist., 887 F.3D 1182, 1193 (2018). IDEA regulations define a "child with a disability" as a child who has been evaluated and determined to have one or more of the 13 categories of disabilities, including "other health impairments," which can include ADHD. Id.; 34 C.F.R. § 300.8. To be eligible for services under IDEA, the child's ADHD must not only be established, but also shown to adversely affect the child's educational performance such that special education and related services are required. Id.

2. The present case solely concerns the obligation of school districts to "identif[y]" children with disabilities who are in need of special education services. This requirement is commonly referred to as "child find." A school district's "child find" obligation is triggered when there is reason to suspect a disability and that special education services may be needed to address the disability, and to allow students to progress through the curriculum satisfactorily. See Dep't of Educ. v. Cari Rae S., 158 F. Supp. 2d 1190 (D. Haw. 2001). In order to establish that a school

² A 504 plan is an education accommodation plan pursuant to the Rehabilitation Act of 1973. 29 U.S.C. § 794.

violated its obligation to identify a child with a disability under IDEA, a party “must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.” Clay T. v. Walton Cty. Sch. Dist., 952 F.Supp. 817 (M.D. Ga. 1997), cited by Bd. Of Educ. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007) (adopting Clay T. standard); J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d. 635, 661 (S.D.N.Y. 2011).

3. For a school district to determine whether an ADHD student is disabled and in need of special education services, it must draw upon “information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations.” 34 C.F.R. § 300.306(c); Durbrow v Cobb Cty. Sch. Dist., 887 F. 3d 1182 (11th Cir. 2018). In reviewing these factors, a student is unlikely to need special education if: “(1) the student meets academic standards; (2) teachers do not recommend special education for the student; (3) the student does not exhibit unusual or alarming conduct warranting special education; and (4) the student demonstrates the capacity to comprehend course material.” Id. at 1194 (citing Alvin Indep. Sch. Dist. v. A.D. ex rel. Patricia F., 503 F.3d 378, 383 (5th Cir. 2007)); D.K. v. Abington Sch. Dist., 696 F.3d 233, 251 (3^d Cir. 2012); Bd. of Educ. of Fayette Cty., Ky. v. L.M., 478 F.3d 307, 313 (6th Cir. 2007)).

4. Here, Petitioner failed to prove, by a preponderance of the evidence, that Respondent overlooked clear signs of a disability and negligently failed evaluate ██████ for special education services. The sole evidence presented was ██████’s testimony. Based on the record, the Court notes only the following potential indicia of a need for special education services:

- (1) In his 7th and 8th grade school years, ██████ did not pass two classes: Spanish 7 and Science, respectively.
- (2) ██████’s performance on the reading and math portions of Georgia

Milestones suggested to school personnel that he should be retained in the 8th grade.

- (3) [REDACTED] was subject to disciplinary action three times in early 2022: twice for fighting and once due to an incident involving vaping.³

However, these are insufficient to constitute “clear signs of disability.” Moreover, they must be viewed in light of the fact that [REDACTED]’s academic performance was otherwise nominal. Further, his teachers did not recommend, and [REDACTED] did not request, special education services. Respondent did not possess information regarding [REDACTED]’s ADHD diagnosis until June 2022, after he had left DeKalb County School District.⁴ Accordingly, Petitioners have failed to meet their burden to demonstrate they are entitled to relief under the IDEA.

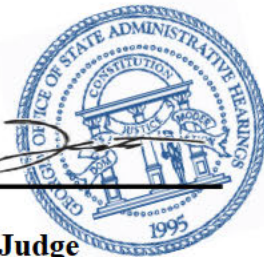
IV. Decision

Based on the foregoing findings of fact and conclusions of law, the Respondent’s motion for involuntary dismissal is **GRANTED** and Petitioners’ complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED, this 24th day of March, 2023.



Steven W. Teate
Administrative Law Judge



³ As indicated in prior orders issued in this case, the statute of limitations for a claim under the IDEA is two years prior to the filing of the due process complaint. 20 U.S.C. §1415(f)(3)(C); Ga Comp. R. & Regs. 160-4-7-.12(3)(a). The relevant time period for this Complaint began on November 14, 2020, and ended when [REDACTED] officially moved out of DeKalb County at the end of the school year in May 2022. That time period covers [REDACTED]’s seventh and eighth grade school years, the 2020-2021 and 2021-2022 school years, respectively.

⁴ Even were the Court to consider [REDACTED] to have been a student of DeKalb County School District in June 2022, Petitioners nonetheless failed to show how the Respondent was “negligent in failing to order testing” at that time.