

DOCKET NO. 232-SE-0305

Student BNF Parent ,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
VS.	§	HEARING OFFICER FOR
SEGUIN INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

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Student BNF Parent, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER FOR
	§	
SEGIUN INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, Student, by his next friend, Parent brought this action against Seguin Independent School District (hereafter “Seguin ISD”) pursuant to the Individuals with Disabilities Education Act (hereafter IDEA), as amended by the IDEA Amendments of 1997, 20 U.S.C. §1400 *et seq.*, claiming that Seguin ISD failed to comply with its “child find” obligations when it failed to identify, refer, and evaluate Petitioner as a child with disabilities at the beginning of the of 2004-2005 school year.¹

Procedural History

Petitioner filed this request for a due process hearing on March 17, 2005 and this matter was scheduled for hearing on April 5, 2005. A telephone prehearing conference was held on March 28, 2005, wherein the issue for hearing was identified. The parties also requested numerous continuances of the hearing dates due to scheduling conflicts and to obtain additional time to prepare for the hearing. These requests were granted and this matter proceeded to hearing on September 1, 2005. The parties extended the decision due date to September 26, 2005. Petitioner was represented in this matter by his legal counsel, Mr. Christopher Jonas. Seguin ISD was represented by its legal counsel, Ms. Holly B. Wardell, of the law firm of Schwartz & Eichelbaum, P.C. Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:²

Findings of Fact

1. Student is a ***-year-old student who resides with his mother within the jurisdictional boundaries of Seguin ISD. [Hearing Transcript, page 14, hereafter, T. ____].
2. Seguin ISD is a political subdivision of the State of Texas and a duly incorporated independent school district.

¹ This case was filed prior to the effective date of relevant provisions of the Individuals with Disabilities Education Improvement Act (IDEIA). Accordingly, the IDEIA is not applicable to this proceeding, except as to the prospective relief required herein.

² Findings of fact and conclusions of law are also contained in the Discussion section of this decision.

3. In the 2003-2004 school year, Student attended a *** class in Seguin ISD. His mother and teacher discussed his possible need for special education services because of his apparent attention deficit hyperactivity disorder (ADHD), but his teacher believed he was too young to make that determination. [T. 24].
4. Student is impulsive, impatient and has a hard time focusing and paying attention. At school, he wouldn't sit still in class, talked out of turn, didn't raise his hand but would just blurt out answers. He often fidgeted or squirmed in his seat, had difficulty remaining seated, had difficulty following instructions, had difficulty sustaining attention to tasks, often failed to carry out assigned tasks, often did not listen, and often engaged in physically dangerous activity without considering the consequences. [T. 15; Petitioner's Exhibit # 3].
5. At home, Student cannot focus. Any type of noise distracts him. When his mother works with him on his homework, she constantly has to snap her fingers to remind him to stay focused. It would take them up to 10 o'clock at night to get him to complete his homework. He constantly runs and does not seem to know how to walk to get to places. He is very unorganized and talks constantly. His mother has difficulty reading to him because any noise distracts him and he interrupts her to ask "what is going to happen next" or "are you finished reading that page yet." He is constantly climbing on things and jumping. She has to stand behind him to make sure he brushes his teeth correctly and does not start climbing on the counter. He is restless and has difficulty falling asleep. [T. 32-34, 50-51].
6. During the 2004-2005 school year Student attended ***. When he started ***, he was still *** years old and turned *** shortly after the beginning of the school year. [T. 115]. During the fall semester, he continued to have behavioral problems due to his inability to focus on his class work; in completing his work on time, in sitting quietly while doing his work and in keeping his hands to himself. His teacher had numerous conversations with Student's mother and uncle concerning his misbehavior in class. His teacher described him as being "out of control" and suggested his mother take him to see the family physician. [T. 25-26, 116, 124; Petitioner's Exhibit #9].
7. Student's teacher would place him in time-out or sit him at a desk outside the classroom when he became too disruptive. Also, his teacher would call his uncle when he misbehaved, and his uncle would either come to school or talk to Student over the telephone in the classroom. [T. 19].
8. In late October or early November, 2004, Student's teacher completed an ADHD Rating Profile and Child Attention Profile provided by his private counselor and returned it to his mother. On the ADHD Rating Profile, Student scored significantly higher than the cutoff for inattention/hyperactivity and impulsivity/hyperactivity. On the Child Attention Profile, Student scored significantly higher than the cutoff for inattention and overactivity. [Petitioner's Exhibit # 3; T. 15, 120].
9. In December, 2004, Student's teacher had a conversation with his private counselor and requested assistance in getting Student's behavior under control. She described him as "bouncing off the walls" and sought his assistance in getting Student's family doctor to prescribe some kind of medication. [T. 57, 76-77, 129].

10. On March 17, 2005, Student's mother filed this request for a special education due process hearing to obtain special education services for Student. She contends that Seguin ISD should have identified and evaluated Student for special education services because of his ADHD type behavior within the first 6 weeks of the 2004-2005 school year. [T. 49].
11. On April 13, 2005, after the filing of the due process hearing request, Student's teacher commented in a progress report that he was doing well and had all the *** skills in place. She also stated that he had made great improvements in his behavior, that he was more on task, able to finish his work and more attentive most days. [Petitioner's Exhibit #6].
12. Student's mother responded to the teacher's comments as follows: "I have to say that I am very surprised @ the contents of this progress report. Especially since on more than one occasion you described his behavior as out of control, not only to me but as well as to Dr. **. You & I are probably the 2 people who see him the most. I still see the patterns of his behavior and his inattentiveness. It wasn't that long ago that you & I spoke about how his "focus" was a problem, and that it was affecting his learning so much so that you and I also discussed the appt. w/our family doctor about his ADHD. I even spoke to you after the Appt. Amazing how your view & opinion of his ability to focus and behave has changed now that an attorney is involved." [Petitioner's Exhibit #6].
13. During the first three quarters of the school year, Student's *** report card indicated concern in following classroom, school and safety rules; following directions; and completing work on time. An area of concern noted throughout the entire school year involved his ability to work independently. [Respondent's Exhibit #1, First Supplement].
14. Academically, Student was identified as an "at-risk" student on a District wide assessment completed at the beginning of his *** school year. He was assessed in the area of Language Arts and of the six indicators on the assessment, he did not meet District standards on two of them. In the area of Mathematics, of the total of ten objectives assessed, he did not meet District standards on four of them. [T. 86-87; Respondent's Exhibit #2, First Supplement].
15. As a result of his "at-risk" status, he was monitored closely for intervention services. After the end of the first quarter of the school year, Student was no longer deemed to be an "at-risk" student. He continued meeting meet District standards through the end of the 2004-2005 school year. [T. 100-101; Respondent's Exhibit #3, 4, 5, 6, First Supplement].
16. Prior to filing the request for this due process hearing, Student's mother never contacted Seguin ISD's Director of Special Education to request special education services of behalf of Student [T. 140].
17. Student was never referred to the principal's office, was never suspended, expelled, or placed in an alternative education program. His behavioral issues were handled by his regular education teacher using basic classroom management techniques.
18. After being notified of the filing of this proceeding by Student's mother, Seguin ISD agreed to conduct a full and individual assessment of Student [T. 140].
19. Student's Other Health Impairment Eligibility Report was completed by his family physician on July 6, 2005 and forwarded to Seguin ISD. It indicated that Student had

- limited alertness due to chronic or acute health problems, such as possible ADHD, which adversely affect his educational performance. It also listed as the implications of this impairment for the educational process as being attention span difficulties, not sitting still and not finishing tasks. [Respondent's Exhibit #4, Second Supplement; T. 142].
20. I find this medical diagnosis to be sufficient to establish that Student has ADHD, especially in light of other evidence in the record supporting such a diagnosis [See Petitioner's Exhibit #3].
 21. As of November 1, 2004, school district should have suspected Student of being in need of special education services despite his overall academic success.
 22. Student's educational needs include development of appropriate social skills, including proper age-based interactions with his classmates and teacher. Additionally, a behavior intervention plan should be developed that prioritizes and targets the forms of misbehavior most disruptive to the class. Such a plan should include positive reinforcers for good behavior. Special education counseling services should be provided to help Student improve his interactions in class and with his teacher, and in understanding consequences for his misbehavior. Parent training and in-home training should be provided to assist Student's mother in implementing the behavior intervention plan in the home.

Discussion

The sole issue in this proceeding is whether Seguin ISD failed to comply with its "child find" obligations when it failed to identify, locate and evaluate Student as a child with disabilities at the beginning of the 2004-2005 school year. Petitioner contends that Seguin ISD should have identified and evaluated Student for special education services because of his ADHD type behavior within the first six weeks of the 2004-2005 school year and its failure to do so was a significant procedural violation of the IDEA -- the type entitling Petitioner to relief in the form of compensatory educational services. See, *Adam J. v. Keller I.S.D.*, 328 F.3d 804 (5th Cir. 2003); *Houston I.S.D. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

The "child find" provisions of the IDEA require school districts to have in place procedures to ensure that "All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." 34 C.F.R. §300.125 (a) (1). Additionally, school districts must ensure that a free appropriate public education (FAPE) "is available to all children with disabilities, aged 3 through 21, residing in the State, including children with disabilities who have been suspended or expelled from school. 34 C.F.R. §300.300 (a) (1) and (2). "Child find" is an affirmative duty by school districts to seek out and identify students with disabilities. Although parents may request a referral for such services on behalf of their child, they are not required or obligated to do so.

Student's suspected disability is ADHD. Students with ADHD are included in the IDEA's eligibility category of "other health impairment."³ The multidisciplinary team that

³ "Other health impairment means having limited strength, vitality or alertness, 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 asthma, attention deficit

collects and reviews evaluation data in connection with the determination of a student's eligibility based on "other health impairment" must include a licensed physician. 19 Tex. Admin. Code §89.1040 (c) (7).

The IDEA requires a two-pronged analysis for determining if a child should be identified and referred for special education services. The first prong is that the district must have some reason to suspect that the child has a disability. The second prong is that the district must have some reason to suspect that the child is in need of special education and related services. *Spring Branch ISD v. Paris A., bnf Alice A.*, Docket No. 197-SE-392 (SEA Tex. 1992). In this proceeding, Seguin ISD contested both prongs, claiming that there was no reason to suspect that Student was a child with a disability or that he was in need of special education and related services.

Under the first prong analysis, Seguin ISD claims that because Student was such a young *** student, his behavior may have been an adjustment to school and not due to ADHD. Seguin ISD argues that it is difficult to diagnose ADHD in a child as young as 4 to 5 years of age.

The evidence confirmed that although it is difficult to diagnose ADHD in a child as young as 4 to 5 years of age, it is not impossible. [T. 73]. Accordingly, I find such argument, without more, to be unpersuasive in this case. Seguin ISD produced no expert testimony regarding this issue. Moreover, Seguin ISD's contention that it is difficult to diagnose ADHD in a child as young as 4 to 5 years of age completely misses the point. Student does not have to be specifically diagnosed with ADHD to qualify for special education as a child with other health impairments. The laundry list of health problems contained in the IDEA's definition of other health impairment is not all inclusive. See, 34 C.F.R. §300.7 (c) (9) (i). Instead, under the first prong of the criteria, a physician must document a deficit in strength, vitality or alertness that results in limited alertness with respect to the educational environment due to a chronic or acute health problem. I note that in July, 2005, Student's physician diagnosed and confirmed that Student had an unspecified acute or chronic "alertness" type deficit, possibly ADHD, and that he met the IDEA criteria for eligibility for special education services as a child with "other health impairments", including needing special education and related services. I find this medical diagnosis to be sufficient to establish that Student has ADHD, especially in light of other evidence in the record supporting such a diagnosis [See Petitioner's Exhibit #3].

Under the second prong analysis, Seguin ISD claims that Student, despite displaying symptoms of ADHD, has never shown a need for special education and related services. Seguin ISD asserts that Student is performing academically at or above grade level and mastered what he needed to be promoted to the first grade. It noted that although Student was identified as an "at-risk" student during the first quarter of the school year, the regular education academic interventions provided by his teacher were successful and he thereafter met the District's academic standards for the remainder of the school year. With respect to his behavior, Seguin ISD claims that Student was never referred to the principal's office, was never suspended, expelled, or placed in an alternative education program, and that his behavioral issues were handled by his regular education teacher using basic classroom management techniques.

For additional support, Seguin ISD cites to the opinion testimony of Student's regular education teacher, Seguin ISD's Assistant Superintendent for Curriculum and Instruction and its

disorder, or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and (ii) Adversely affects a child's educational performance." 34 C.F.R. §300.7 (c) (9).

Special Education Director that because he achieved reasonable educational progress, both academically and behaviorally, in regular education without special education and related services, there was no reason for Seguin ISD to suspect that he needed special education services. [T. 103, 137, 143].

Again, I find these arguments and opinions unpersuasive. The evidence established that by November 1, 2004, Student's misbehavior was so significant at home and school that his mother and teacher had discussed the need to seek medical intervention. His teacher described Student's behavior to his mother as being "out-of-control." His teacher also told his private counselor that Student was "bouncing off the walls" and later sought his assistance in trying to convince Student's physician to prescribe medication. Additionally, Student's teacher had completed the ADHD Rating Profile and Child Attention Profile and gave through her responses a strong indication of an ADHD diagnosis. Although the final scores from these profiles were not provided to Seguin ISD, his teacher knew or should have known from her answers that the scores were highly indicative of ADHD and she should have referred Student for a full and individual evaluation at that time. Accordingly, I find that Seguin ISD failed to meet its "child find" obligations by failing to timely identify and evaluate Student for special education and related services. However, I find that the referral should have occurred at the beginning of November, 2004, not within the first six weeks of the 2004-2005 school year as alleged by Petitioner. Consequently, I find that as of November 1, 2004, Seguin ISD should have suspected Student of having ADHD, or at a minimum, a chronic health problem affecting his alertness, and of being in need of special education and related services and should have referred him for a full and individual evaluation.

Seguin ISD's argument that Student did not display any academic or behavioral need for special education services because he met the District's academic standards and because his behavior was reasonably controlled by his teacher using regular classroom management techniques, is minimized by the evidence. First, Student's educational needs do not involve just the academic and behavioral domains. They include all aspects of his education, including social skills, developmental skills and functional skills. *Venus Independent School District v. Daniel S.*, 36 IDELR 185 (N.D. Tex. 2002). Secondly, Student did not initially meet the District's academic standards and was considered an "at-risk" student until at least November 2004, when subsequent testing showed some improvement. [Respondent's Exhibit #4, First Supplement]. Also, according to his teacher, his behavior did not begin to improve until after December 2004, but she did not indicate the level or extent of his behavioral improvement. The request for hearing in this matter was filed in March, 2005.⁴ At that time, his mother had not noticed any improvement in his behavior or attentiveness at home. Consequently, when this hearing was filed (the relevant time period) I find that Student's behavior at school was still problematic, although improving.

Accordingly, I find that Petitioner established by a preponderance of the evidence that not only should Student have been suspected as having a disability by Seguin ISD in November, 2004, but that he also qualifies for special education and related services as a student with other health impairments, including having an educational need for such services.

⁴ There is a conflict in testimony as to whether Student's behavior actually improved after the filing of the hearing or whether this evidence was fabricated as a means to respond to this hearing request. I assume, for purposes of this decision, that there was some improvement in Student's behavior as testified to by this teacher, but the evidence indicated it was by no means corrected, even by the end of the school year. As indicated, his mother saw no improvement in his patterns of behavior and attentiveness and in May, 2005, Student was expelled from an after-school program he was enrolled in because of misbehavior. [Petitioner's Exhibit #6; T. 130, 147,].

Thus, I find that Seguin ISD's failure to comply with the "child find" requirements of the IDEA, including its failure to timely refer, evaluate and determine Student's eligibility for special education and related services, constituted a procedural violation that resulted in the denial of a free appropriate public education to Student from November 1, 2004 through the end of the 2004-2005 school year. 20 U.S.C. §1401 (8); 34 C.F.R. §§300.550 – 300.552; *Board of Educ. v. Rowley*, 458 U.S. 176 (1982). This procedural violation caused Student to suffer a loss of access to the special education referral process and special education services and seriously infringed on his parent's opportunity to participate in his educational planning. *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003).

In awarding appropriate relief, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). In this action, I have reviewed the educational services previously provided to Student by Seguin ISD and his overall academic and behavioral progress through the end of the 2004-2005 school year. The evidence indicates that Student made satisfactory academic progress throughout the school year despite the lack of special education services and that he was promoted to the first grade. Consequently, his areas of need that should have been addressed through special education are in the behavior and social skill domains. Student's educational needs include learning appropriate social skills, including proper age-based interactions with his classmates and teacher; development of a behavior intervention plan that prioritizes and targets the types of misbehavior most disruptive to the class, using among other strategies positive reinforcers for good behavior; special education counseling services to improve his interactions in class and with his teacher, and in understanding consequences for his misbehavior; and parent training and in-home training to assist his mother in implementing the behavior intervention plan at home.

I find that these services can be provided adequately and most appropriately as prospective relief and they are so awarded. However, I also find that an award of compensatory educational services as a form of equitable relief for the past deprivation of educational services caused by the procedural violation would not provide Student with any additional meaningful educational benefit. Accordingly, I deny Petitioner's request for compensatory educational services.

Conclusion of Law

After due consideration to matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. The "child find" provisions of the IDEA require school districts to have in place procedures to ensure that: "All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." 34 C.F.R. §300.125 (a) (1)
2. Students with ADHD are included in the IDEA's eligibility category of "other health impairment." The multidisciplinary team that collects and reviews evaluation data in connection with the determination of a student's eligibility based on "other health impairment" must include a licensed physician. 19 Tex. Admin. Code §89.1040 (c) (7).

3. Educational need does not include just academic and behavioral domains. It includes all aspects of a child's education, including social skills, developmental skills and functional skills. See, e.g. *Venus Independent School District v. Daniel S.*, 36 IDELR 185 (N.D. Tex. 2002).
4. Seguin ISD failed to timely identify and evaluate Student for special education and related services at the beginning of November, 2004. 34 C.F.R. §300.125 (a) (1).
5. Student meets the IDEA's eligibility criteria for special education and related services as a child with other health impairments (ADHD). 34 C.F.R. §300.7 (c) (9).
6. Student was denied a free appropriate public education by Seguin ISD from November 1, 2004 through the end of the 2004-2005 school year. 20 U.S.C. §1401 (8); 34 C.F.R. §§300.550 – 300.552; *Board of Educ. v. Rowley*, 458 U.S. 176 (1982).
7. Seguin ISD's failure to comply with the IDEA's requirements governing "child find" including its failure to timely refer, evaluate and determine Student's eligibility for special education and related services constitutes a procedural violation. This procedural violation caused Student to suffer a loss of access to the special education referral process and ultimately timely special education services and seriously infringed on his parent's opportunity to participate in his educational planning. *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003).
8. In awarding appropriate relief, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. In this action, based on the educational services previously provided to Student by Seguin ISD and in reviewing Student's academic and behavioral progress through the end of the 2004-2005 school year, only prospective relief is appropriate. An award of compensatory educational services as equitable relief for the procedural violation that occurred would not provide Student with any additional meaningful educational benefit. *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

ORDER

After due consideration of the record and the foregoing findings of fact and conclusions of law, I ORDER that Seguin ISD, within 30 days of the date of this Order, convene an ARD Committee meeting to review its full and individual evaluation of Student and find and confirm that he meets the eligibility criteria for special education services as a child with disabilities due to his other health impairment – attention deficit hyperactivity disorder. The ARD Committee shall develop and implement IEPs for Petitioner that include, at a minimum, the following services:

1. Thirty minutes per week of social skills training, including learning proper age-based interactions with his classmates and teacher. Such training may be provided in conjunction with other educational/instructional services.
2. Thirty minutes per week of counseling services designed to assist Student in improving his interactions in class and with his teacher, in understanding consequences for his misbehavior, and in learning and understanding how his misbehavior affects others.

3. A behavior intervention plan that prioritizes and targets the types of misbehavior most disruptive to the class. Such a plan shall include positive reinforcers for good behavior that have been individualized to him.

4. Parent training and in-home training of one hour per month to assist Student's mother in implementing the behavior intervention plan in the home environment or otherwise maintaining a similar behavior plan in the home.

Nothing in this ORDER prevents the ARD Committee from providing additional services from those required herein.

It is further ORDERED that such services, where appropriate, shall be provided in the general education environment in accordance with the least restrictive environment provisions of the IDEIA and that they be implemented immediately upon completion of the ARD Committee meeting required herein. It is further ORDERED that such services shall be provided and maintained for the remainder of the 2005-2006 school year unless otherwise agreed to by Petitioner.

Finding that the public welfare requires the immediate effect of this Final Decision and ORDER, I hereby make it effective immediately.

Seguin ISD shall timely implement this decision within 10 school days in accordance with 19 Tex. Admin. Code §89.1185(q) and 34 C.F.R. §300.514. The following must be provided to the Division of Complaints Management at the Texas Education Agency and copied to Petitioner within 15 school days from the date of the decision: 1. documentation demonstrating that the decision has been implemented; or 2. if the timeline set by the hearing officer for implementing certain aspects of the decision is longer than 10 school days, then the school district's plan for implementing the decision within the prescribed timeline, and a signed assurance from the director that the decision will be implemented.

SIGNED this 26th day of September 2005.

James W. Holtz
Special Education Hearing Officer

DOCKET NO. 232-SE-0305

Student BNF Parent, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER FOR
	§	
SEGIUN INDEPENDENT SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

SYNOPSIS

Issue: Whether school district violated its “child find” obligations under the IDEA when it failed to identify and refer a *** student with ADHD symptoms of inattentiveness and impulsivity resulting in misbehavior in class?

Held: For Parent. In the fall of 2004, teacher described student to his mother as being “out-of-control” and “bouncing off the walls.” Student regularly disrupted class and was being disciplined using regular classroom management techniques of time-out, placing him in at a desk outside of the classroom and by calling his uncle to discipline him. Despite no disciplinary referrals to the office, parent and teacher discussed need for possible medical intervention to address student’s suspected ADHD and his potential need to be regulated through medication. Teacher filled out an ADHD rating scale and Child Attention Scale for student’s private therapist, giving a strong indication for an ADHD diagnosis. Accordingly, as of November 1, 2004, school district should have suspected student as being in need of special education services despite his overall academic success. Student’s educational need did not include just the academic and behavioral domains. It included all aspects of his education, including social skills, developmental skills and functional skills. Student should have referred and evaluated for special education services by November 1, 2004. In July, 2005, student’s physician diagnosed student with an “alertness” deficit, possibly ADHD, and opined that he met the IDEA criteria for eligibility for special education services as a child with an “other health impairment, including an educational need for special education and related services.

Cite: *Venus Independent School District v. Daniel S.*, 36 IDELR 185 (N.D. Tex. 2002). See, *Board of Education v. Rowley*, 458 U.S. 176, 207 n.28 (1982).