

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
August 18, 2014

STUDENT, ¹)	
through the Parent,)	
)	Date Issued: August 18, 2014
Petitioner,)	
)	Hearing Officer: John Straus
v.)	
)	
District of Columbia Public Schools)	
)	
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

The Petitioner, the mother of Student, filed a due process complaint notice on June 4, 2014, alleging that Student had been denied a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”).

The Petitioner stated multiple allegations against the District of Columbia Public Schools (“DCPS”) that included DCPS failed to timely comply within 120 days of Petitioner’s request for an initial evaluation; specifically, on May 22, 2013, Petitioner, through counsel, in writing, requested the Student be evaluated to determine whether the student is a student with a disability under the IDEA who requires specialized instruction to access the curriculum by failing to conduct a comprehensive psychological assessment including a Connor’s behavior rating scale, neuropsychological assessment or neurological assessment; social history; a speech and language assessment, occupational therapy screening and a Functional Behavioral Assessment. The Petitioner also asserted that DCPS failed to determine the student is a student with Other Health Impairment (“OHI”) under the IDEA at the April 8, 2013 meeting. Finally, the Petitioner alleged that DCPS failed to provide Petitioner with a copy of Student’s records within 45 days of parent’s May 22, 2013 written request; specifically, assessment reports completed prior to April 8, 2013.

¹ Personal identification information is provided in Appendix A.

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DCPS asserted that the student was evaluated by Early Stages December 14, 2009 and June 30, 2011. She was determined ineligible for special education and related services both times. The Petitioner requested the student be evaluated again in February 2013 to determine her eligibility. The team, including the parent, convened on February 27, 2013 to discuss the request for evaluation and agreed to conduct an updated educational assessment for the student. The team determined no additional assessments were required. DCPS asserted that it was unaware of any requests for evaluation since the April 8, 2013 meeting. The MDT, including the parent, convened on April 8, 2013 and determined the student ineligible for special education and related services. The ineligibility decision is appropriate. The team, excluding the parent, agreed that a 504 Plan should be developed for the student. Finally, DCPS stated that DCPS was unaware of any request for access to the student's educational records.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.02.

Procedural History

The due process complaint was filed on June 4, 2014. This Hearing Officer was assigned to the case on June 6, 2014. Neither Petitioner nor Respondent waived the resolution meeting. The resolution meeting took place on June 18, 2014. At the resolution meeting, parties agreed to keep the 30-day resolution period open. The 30-day resolution period ended on July 4, 2014, the 45-day timeline to issue a final decision began on July 5, 2014, and the final decision is due on August 18, 2014. See 34 C.F.R. §§ 300.510 and .515. The due process hearing occurred on July 29, 2014.

The due process hearing was a closed hearing.

Neither party objected to the testimony of witnesses by telephone. Petitioner participated in person throughout the hearing. At the outset of the hearing, the Petitioner withdrew issue #3 – "Whether DCPS denied Student a FAPE by failing to provide Petitioner with a copy of Student's records within 45 days of parent's May 22, 2013 written request; specifically, assessment reports completed prior to April 8, 2013."

The Petitioner presented two witnesses: the Petitioner and an Independent Psychologist.

DCPS presented three witnesses: School A Special Education Coordinator ("SEC"); School A general education teacher ("GET") and School B GET.

Petitioner's disclosures dated July 22, 2014, containing a witness list and Exhibits P-1 through P-44, were timely filed. Exhibits P-1, P-2, P-3, P-4, P-5, P-39 and P-40 were admitted over objection and P-44 was withdrawn by the Petitioner.

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DCPS' disclosures dated July 22, 2014, containing a witness list and Exhibits R-1 through R-14, were timely filed and admitted into evidence without objection.

Parties agreed to the following stipulations:

1. The student attended school A during the 2013-2014 school year.
2. The student currently has a 504 plan.

The issues to be determined in this Hearing Officer Determination are as follows:

1. **Whether Respondent denied Student a FAPE by failing to timely comply within 120 days of Petitioner's request for an initial evaluation; specifically, on May 22, 2013, Petitioner, through counsel, in writing, requested the Student be evaluated to determine whether the student is a student with a disability under the IDEA who requires specialized instruction to access the curriculum by failing to conduct a comprehensive psychological assessment including a Connor's behavior rating scale, neuropsychological assessment or neurological assessment; social history; a speech and language assessment, occupational therapy screening and a Functional Behavioral Assessment.**
2. **Whether DCPS denied Student a FAPE by failing to determine the student is a student with Other Health Impairment ("OHI") under the IDEA at the April 8, 2013 meeting.**

For relief, Petitioner requested the Hearing Officer determine the student is a student with an OHI under the IDEA. In the alternative the Petitioner requested the Hearing Officer order DCPS to fund independent assessments consisting of a comprehensive psychological assessment including a Connor's behavior rating scale, neuropsychological assessment or neurological assessment; social history; a speech and language assessment, occupational therapy screening and a Functional Behavioral Assessment. Within 10 days of the receipt of the last of the independent assessments, Respondent to convene a meeting to review the assessments; determine whether the student is a student with a disability under the IDEA; if eligible, develop an IEP; and determine placement with a placement to be made in ten days.

Findings of Fact²

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

² Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

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1. The student attended school B for Kindergarten and first grade during the 2011-2012 and 2012-2013 school years and school A for second grade during the 2013-2014 school year.³
2. The student received some assessments while she was in Pre-Kindergarten. On November 16, 2009, the student received a speech and language assessment. The assessment report states that voice, resonance and fluency skills are within normal limits. Overall language skills are in the solidly average range of performance.⁴
3. The student was given a Battle developmental inventory 2nd Edition (“BDI-2”) assessment, dated November 19, 2009, which measures children’s development performance. The assessment yielded scores in the average and low average range.⁵
4. On June 1, 2011, the student received a Psychological assessment. The assessment yielded cognitive scores in the average range. The assessment included the Behavior Assessment System for Children – Second Edition (“BASC-2”) which was completed by the student’s teacher and the Petitioner and yielded clinically significant scores.⁶
5. On November 28, 2011, the student received a medical assessment.
The student has inattention, fidgetiness, talkativeness, poor concentration and easy distractibility consistent with Attention Deficit Hyperactivity Disorder (“ADHD”). The doctor noted the student has academic problems in reading, writing the alphabet and number and spelling. She is functioning at the Kindergarten Level and needs a small structured class with greater one to one teacher involvement. The doctor recommended the student receive psychoeducational testing for proper academic placement and intervention. The Petitioner provided a copy of the medical assessment to the school A staff at the beginning of the 2012-2013 school year.⁷
6. On January 16, 2013, the Student Support Team (“SST”) convened in response to the medical assessment and developed goals and strategies for the Student.⁸
7. On January 28, 2013, the Student received Dynamic Indicators of Basic Early Literacy Skills (“DIBLES”) and Text Reading and Comprehension (“TRC”) assessments. The assessment states the Student is reaching her goals in reading letter sounds, reading with fluency, reading with accuracy, and instructional reading level. However, she needs support in reading whole words.⁹
8. On February 8, 2013, the Petitioner was notified that the student was at risk of being retained.¹⁰

³ Petitioner

⁴ P-6

⁵ P-7,

⁶ P-8, R-10

⁷ P-39, Petitioner, School A GET

⁸ R-12, School A GET, School A SEC

⁹ P-17

¹⁰ P-29

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9. On February 27, 2013, the SST team convened and reviewed the student's progress.¹¹ The team agreed the student would be evaluated to determine whether the student is a student with a disability under the IDEIA.¹²
10. On March 9, 2013, the student received a Woodcock Johnson III Test of Achievement ("WJ-III"). The assessment yielded the following broad standard scores: broad reading-96, broad math-90 and broad written language-93. The scores were age normed and indicated the Student was achieving on grade level.¹³
11. On April 8, 2013, the team reviewed the November 16, 2009 speech and language assessment, November 16, 2009 PDMS-2 Fine Motor Section,¹⁴ November 19, 2009 BDI-2 assessment, teacher made assessments, January 28, 2013 DIBELS/TRC assessment, March 9, 2013 WJ-III, student work samples and input from the Petitioner and determined no further assessments were needed. The team noted that the WJ-III scores comported with the student's work in class. The team determined the student is not a student with an other health impairment under the IDEIA. The team determined the student did not require special education services in either an inclusion setting or a pull out setting. The Petitioner disagreed with the team's decision.¹⁵
12. On May 14, 2013, DCPS developed a section 504 plan for the student. The plan states the student is a student with ADHD and provides the student with accommodations. The Petitioner agreed to the section 504 plan but also wanted the student to receive an IEP.¹⁶
13. On May 22, 2013, the Petitioner, through counsel, requested the student receive another evaluation; specifically, the Petitioner requested the student receive a comprehensive psychological assessment; social history; Functional Behavioral Assessment; ADHD assessment (Connor's behavior rating scale); Behavior Intervention Plan and a clinical psychological assessment.¹⁷
14. On May 29, 2013, DCPS stated they would not evaluate the student because the student was evaluated twice previously and she has a 504 plan.¹⁸
15. The student's text reading comprehension was at grade level at the end of the 2012-2013 school year.¹⁹
16. On August 27, 2013, the parent, through counsel, requested a status report regarding the parent's May 22, 2013 request for assessments.²⁰

¹¹ P-20

¹² P-18

¹³ R-9

¹⁴ This assessment was not disclosed by the parties, but it was mentioned in the evaluation summary report

¹⁵ P-23, P-24, R-7, R-8, School A GET, School A SEC

¹⁶ P-25, Petitioner, School A SEC

¹⁷ P-32

¹⁸ P-30

¹⁹ R-5

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17. On August 27, 2013, the parent, through counsel, stated the Petitioner disagreed with the assessments conducted by DCPS and requested an independent evaluation.²¹ There has been no follow up to the Petitioner's request for independent evaluations and this request is not an issue in the instant complaint.
18. In October 2013, the School B GET notified the Petitioner the student's reading proficiency and accuracy are below grade level. The student's comprehension and recall are not consistent and she needs support with providing details in a sequential order when asked about her reading. The student is struggling with consonants and vowels letter sounds; therefore, her decoding skills to determine unfamiliar words are difficult for her. In Math, she has a difficult time with explaining the reason for regrouping and with place value in the hundreds. Her understanding of place value is weak and is causing her to struggle with adding and subtracting. She is having a hard time with writing coherent sentences in writer's workshop, as well as, in her response to reading in close reading and with brief constructive responses. The School B GET applied the requirement of the student's 504 plan as well as worked with her during recess time giving her additional assistance with math and reading. Therefore, the School B GET recommended the student be referred back to the SST in order to receive additional strategies to support her with her academics and recommended the student receive additional tutoring.²²
19. On March 25, 2014, the student received a Neurological assessment at her teacher's request. The assessment states the student has a history of seizure disorder, behavior outbursts at home and school consistent with ADHD as well as a learning disability. The student exhibits symptoms of short attention span, impulsive behavior, hyperactive behavior, distractibility, poor listening, forgetfulness, careless mistakes, difficulty remaining seated, difficulty playing quietly, fidgeting, excessive talking, difficulty awaiting turn, interrupting other and academic underachievement. The assessment states she has difficulty with reading comprehension and spelling. She has significant difficulty with both written and abstract calculations as well as a visual perception. She functions at the entering second grade for reading but is otherwise at the first grade level. She needs to have more one on one with her teachers. The evaluator strongly recommend that the student receive an IEP to improve her academic function. The Petitioner, through counsel, provided the assessment report to DCPS on July 21, 2014.²³
20. On June 2, 2014, DCPS reviewed the student's section 504 plan. School B GET stated that the student is reading at a first grade level.²⁴
21. The student's text reading comprehension is far below grade level. Her scores dropped significantly during the summer of 2013.²⁵

²⁰ P-35

²¹ P-34

²² P-16

²³ P-39

²⁴ R-2

²⁵ R-5

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22. The independent psychologist recommends the Student receive another BASC assessment, cognitive assessment, educational assessment, clinical assessment and classroom observation.²⁶

Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

DCPS did deny Student a FAPE by failing to timely comply within 120 days of Petitioner's request for an initial evaluation

The first issue to be addressed is whether DCPS denied Student a FAPE when DCPS failed to evaluate Student and determine eligibility within 120 days of the initial referral. The Individuals with Disabilities Education Improvement Act of 2004, 34 C.F.R. § 300.111(a), requires DCPS, as the State Education Agency to ensure that:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the District and children with disabilities attending private school, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

D.C. MUN. REGS. tit. 5, § 3002.1(d) (2003) requires that the local education authority ensure procedures are implemented to identify, locate, and evaluate children with disabilities residing in the District of Columbia. DCPS' unawareness of a student's possible disability and need for special education likewise will not relieve it of its obligation, if it should have suspected the Student might have such a disability. D.C. MUN. REGS. tit. 5, § 3004.1(a) (2003) (child with a suspected disability to be referred to the IEP team by school staff).

Additionally, pursuant to D.C. MUN. REGS. tit. 5, § 3005.1 (2003), DCPS “shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services in order to determine if the child is a ‘child with a disability’ ...; and the educational needs of the child.” Further, pursuant to D.C. MUN. REGS. tit. 5, § 3005.2 (2003), “the IEP team shall conduct an initial evaluation of a child within a reasonable time of

²⁶ Independent Psychologist

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receiving a written referral and parental consent to proceed and within timelines consistent with Federal law and D.C. Code § 38-2501(a).” Under the D.C. Code, DCPS “shall assess or evaluate a student, who may have a disability and who may require special education services, within 120 days from the date that the student was referred for an evaluation or assessment.” (D.C. Code § 38-2501(a)) Pursuant to D.C. MUN. REGS. Tit. 30, § 3005.7, DCPS shall ensure that “the child is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities [and] in evaluating each child with a disability...the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs...”

In this case, the IEP team determined that the student is not a student with a disability under the IDEA on April 8, 2013. Pursuant to 34 C.F.R. § 300.304(b), in conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under Sec. 300.8, ...not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability ...and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.²⁷ Pursuant to 34 C.F.R. § 300.306(a), upon completion of the administration of assessments and other evaluation measures a group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in Sec. 300.8.²⁸

The April 8, 2013 IEP team reviewed a Speech and Language Assessment, BDI-2, PDMS-2 Fine Motor Section, Psychological Assessment, medical assessment, DIBLES assessment, TRC assessment, WJ-III, work samples and the Petitioner’s input. The hearing officer finds that the IEP team selected and conducted a comprehensive group of assessments that was sufficient to determine whether the student is a student with an Other Health Impairment under the IDEA.

²⁷ Pursuant to 34 C.F.R. § 300.305, as part of an initial evaluation ... under this part, the IEP Team and other qualified professionals, as appropriate, must--

- (1) Review existing evaluation data on the child, including--
 - (i) Evaluations and information provided by the parents of the child;
 - (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
 - (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--
 - (i)(A) Whether the child is a child with a disability, as defined in Sec. 300.8, and the educational needs of the child

²⁸ Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under Sec. 300.8, and the educational needs of the child, each public agency must--

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.
34 C.F.R. § 300.306(c).

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The Petitioner's request for an initial evaluation came on May 22, 2013; following on the heels of the IEP team's ineligibility determination. It is clear that the Petitioner disagreed with the ineligibility determination. However, she was not advised about her right to an independent educational evaluation (IEE) under 34 C.F.R. § 300.502(b).²⁹ Parents have a right to an IEE if they disagree with DCPS' evaluation. In this case, the parent did not request an IEE after the initial evaluation and, instead, she requested another initial evaluation. The parent requested an IEE subsequently in August 2013. However, the Petitioner did not allege in her Due Process Complaint or an Amended Complaint that DCPS failed to provide an IEE at the parent's request.³⁰

The SEC refused to conduct an initial evaluation when the Petitioner made her May 22, 2013 request for evaluations. However, the student was not harmed by the SEC's refusal. The March 27, 2013, WJ-III Score Report shows that the student was on first grade level in every area with the exception of one. The student's classroom performance was also improving by April 8, 2013. According to the School A GET, several interventions were put into place to redirect the student when she was off task or unfocused. The student's TRC scores are reflective of her progress. The scores show that the student met or surpassed her reading goals in every area. The student ended the school year reading on grade level. According to the independent psychologist's report, the student's report card from school A also shows that that the student was making progress without an IEP. "She received scores of Basic and Proficient knowledge in all areas." The school A GET and school B GET stated that the student sometimes gets off task and loses focus. The school A GET and school B GET both utilized specific interventions to redirect the behaviors. The student's progress, report cards and mClass reports that interventions have been successful.

The Petitioner failed to meet her burden of proof on this issue. It is clear that her attorney should have filed a DPC when the DCPS did not respond the request for the IEE. However, based on the evidence presented, the Hearing Officer concludes that DCPS timely and responsibly complied with its statutory obligation to evaluate Student and determine initial eligibility for special education services.

DCPS denied Student a FAPE by failing to determine the student is a student with OHI under the IDEA

The second issue to be addressed is whether Student was denied a FAPE by DCPS' failure to determine the student is a student with an OHI under the IDEA. Pursuant to 34 CFR §300.8 (c)(9), 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 disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.

²⁹ Pursuant to 34 C.F.R. § 300.502(b), DCPS must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained.

³⁰ Pursuant to 34 C.F.R. § 300.511(d), any issue not plead in the due process complaint cannot be raised at the due process hearing unless the other parties agrees.

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ADHD is not specific disabling conditions under the IDEA, although a student with ADHD may be eligible as "other health impaired," or another specific disability, by reason of the conditions. A student with ADHD may also be eligible under Section 504 of the Rehabilitation Act (or the Americans with Disabilities Act) if the disorder substantially interferes with a major life activity such as learning or effectively participating in school activities. A student could have a qualifying "other health impairment" under 34 C.F.R. § 300.8(c)(9) if the ADHD substantially limits the student's alertness and vitality and, as a result, adversely affects academic performance.

However, in *Brendan K. v. Easton Area School District*, 47 IDELR 249 (E.D. Pa. 2007), the court pointed out that the student's skills in reading, math, science, and social studies were at or near his grade and age level. Thus, the student with ADHD could learn in a mainstream classroom setting. He did not qualify for services under the OHI category, because there was no evidence that his condition adversely affected his educational performance.³¹

It should be noted that the IEP team, not a student's physician, makes the determination as to whether the student is eligible for special education and related services under the IDEA. *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 54 IDELR 307 (7th Cir. 2010).³² With regard to OHI eligibility, the Education Department observed that there is nothing in the IDEA that requires the team of qualified professionals and the parent to consider only health problems that are "universally recognized by the medical profession." Likewise, there is nothing in IDEA 2004 that would prevent a state from requiring a medical evaluation for eligibility under OHI, provided the medical evaluation is conducted at no cost to the parent. 71 Fed. Reg. 46,550-51 (2006).

³¹ The parents of a teenager with ADHD failed to demonstrate that a Pennsylvania district improperly evaluated their son's eligibility for services under the IDEA. Noting that the student "master[ed] his subjects with ease" after he began taking medication, the U.S. District Court, Eastern District of Pennsylvania determined that the student did not require special education services. To qualify for services under the OHI category, the court explained, a student must suffer from a chronic or acute health problem that adversely affects his educational performance. The court pointed out that the student's skills in reading, math, science and social studies were at or near his grade and age level. Thus, the court observed, the student was able to learn in a mainstream classroom setting. The court affirmed an administrative decision in the district's favor, determining that the district appropriately accommodated the student's disabilities under a Section 504 plan.

³² In *Marshall*, a physician's belief that a grade schooler with a rare genetic condition could not participate safely in regular PE proved to be no match for an IEP team's eligibility determination. Concluding that the student did not need specialized instruction to receive an educational benefit, the 7th Circuit reversed a decision that he was eligible for IDEA services. The court further held that the ALJ incorrectly relied on testimony from the student's physician that the student needed adapted PE. The evidence showed that the physician based her opinion almost entirely on information obtained from the student's mother. She evaluated the student for only 15 minutes, and did not conduct any testing or observation of the student's educational performance. In contrast, the student's adapted PE teacher testified that the student successfully participated in a regular PE class with modifications. The 7th Circuit explained that the ALJ erred in crediting the physician's opinion over that of the IEP team, which included the adapted PE teacher. "A physician cannot simply prescribe special education; rather, the [IDEA] dictates a full review by an IEP team," Judge Manion wrote. While the team was required to consider the physician's opinion, it did not have to defer to her view about the student's special education needs.

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The Petitioner failed to meet her burden of proof on this issue. Notwithstanding the physician's ADHD diagnosis, the IEP team correctly determined the student is not a student with OHI under the IDEA. The student's academic performance was such that a reasonable IEP team could conclude, at the time, that the student's ADHD does not adversely affect his academic performance.

Conclusion

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1. Free appropriate public education or FAPE means special education and related services that...include an appropriate school and are provided in conformity with an IEP that meets the requirements of the IDEA. 34 C.F.R. § 300.17.

Although the Petitioner did not prevail on the issues in her complaint, the Petitioner is not without recourse. She did request and is entitled to an independent educational evaluation and she is entitled to due process if she disagrees with the IEP team's review of the assessment reports.

ORDER

The complaint is DISMISSED with prejudice.

All requested relief is denied.

SO ORDERED.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action 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 (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: August 18, 2014

/s/ John Straus
Hearing Officer