

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

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
July 11, 2013

Parent,¹ on behalf of,
Student,*

Petitioner,

Date Issued: July 10, 2013

Hearing Officer: Melanie Byrd Chisholm

v.

District of Columbia Public Schools,
Respondent.

HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

The student is a nine year old male, who is currently a rising 4th grade student attending School A. The student is currently a general education student and has not been identified as a student with disabilities eligible for special education and related services.

On April 26, 2013, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by failing to by failing to comply with Child Find obligations and/or timely conduct initial evaluations as requested by the parent in writing and/or convene a meeting to determine eligibility, develop an individualized education program (IEP) for the student and make services available. As relief for this alleged denial of FAPE, Petitioner requested that DCPS conduct or fund a comprehensive psychological evaluation and any other evaluations recommended and/or warranted as a result of the findings of the psychological evaluation; and upon completion of the evaluations, DCPS to conduct a meeting to review the evaluations, address eligibility, and if eligible, develop and IEP and discuss compensatory education.

On May 6, 2013, Respondent filed its Response to the Complaint. In its Response, Respondent asserted that although the student has been diagnosed with attention deficit hyperactivity disorder (ADHD), the student's behaviors have not impacted his education; the student's teachers and school staff have not noticed any issues educationally impacting the child

¹ Personal identification information is provided in Appendix A.

*The student is a minor.

and do not suspect that the student is a student with disabilities in need of special education and related services; when the parent raised issues regarding the student's behavior, during the 2012-2013 school year, DCPS attempted to implement supports and interventions however the parent declined the offered services; DCPS is willing to evaluate the student; and following the Resolution Meeting, DCPS developed and implemented a 504 Plan for the student.

On May 21, 2013, the parties participated in a Resolution Meeting and failed to reach an agreement during the meeting however the parties agreed to continue to attempt to resolve the matter during the 30-day resolution period. Accordingly, the parties agreed that the 45-day timeline started to run on May 27, 2013, following the conclusion of the 30-day resolution period, and ends on July 10, 2013. The Hearing Officer Determination (HOD) is due on July 10, 2013.

On June 5, 2013, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. During the prehearing conference, the parties agreed that the issue related to conducting an initial evaluation pursuant to the parent's written request on March 20, 2013 was not yet ripe. Therefore, only the issue related to DCPS' Child Find obligation would be decided by the Hearing Officer at this time. The Hearing Officer issued the Prehearing Order on June 10, 2013. The Prehearing Order clearly outlined the issue to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issue as outlined in the Order.

On June 17, 2013, Petitioner filed Disclosures including twenty-two (22) exhibits and four (4) witnesses.² On June 17, 2013, Respondent filed Disclosures including eleven (11) exhibits and six (6) witnesses.

The due process hearing commenced at approximately 9:43 a.m.³ on June 24, 2012 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2006. The Petitioner elected for the hearing to be closed.

Petitioner's Exhibits 1-4, 6-7, 9-18 and 20-22 were admitted without objection. Petitioner's Exhibit 5 was not admitted because the content of the document was found to be irrelevant. Petitioner's Exhibit 8 was admitted, over Respondent's objection, because the document contained relevant information regarding the teacher's concerns. Petitioner's Exhibit 19 was not admitted however a description of the exhibit and testimony related to the exhibit were admitted. Respondent's Exhibits 1 and 3-11 were admitted without objection. Respondent's Exhibit 2 was admitted, over Petitioner's objection because the parent and her attorney participated in the meeting and there was no requirement for the document to be provided to the Petitioner prior to the Disclosure deadline in order for the document to be admitted.

² A list of exhibits is attached as Appendix B. A list of witnesses who testified is included in Appendix A.

³ At the scheduled time to begin the due process hearing, all parties were present however the Hearing Officer suggested that the parties engage in a discussion regarding a settlement agreement prior to the commencement of the hearing.

The hearing concluded at approximately 3:52 p.m. on June 24, 2013, following closing statements by both parties.

Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

ISSUE

The issue to be determined is as follows:

1. Whether DCPS failed to comply with Child Find obligations by failing to conduct an initial evaluation of the student during the 2011-2012 school year?

FINDINGS OF FACT

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

1. The student was diagnosed with ADHD in August 2012 by his pediatrician. (Petitioner's Exhibit 14; Mother's Testimony; School Psychologist's Testimony)
2. The pediatrician prescribed medication to address the student's ADHD. (Petitioner's Exhibit 14; Mother's Testimony)
3. The student began taking the prescribed medication the day before the 2012-2013 school year began. (Mother's Testimony)
4. On the first day of the 2012-2013 school year, the parent informed the student's teacher that student diagnosed with ADHD and had begun medication day before. (Mother's Testimony)
5. On the first day of the 2012-2013 school year, the parent requested that the student's teacher monitor the student's reaction to the medication. (Mother's Testimony)
6. The parent is a very involved parent who frequently communicated with the student's teacher and was receptive and helpful in assisting the school with addressing the student's behaviors. (Petitioner's Exhibits 2, 4 and 20; Respondent's Exhibit 9; Mother's Testimony; Teacher's Testimony)
7. The student's teacher has 21 years of teaching experience and throughout her career has worked with students with disabilities and has made referrals for students suspected of having a disability. (Teacher's Testimony)
8. At the beginning of the 2012-2013 school year, the student's behavior was such that the teacher needed to contact the student's mother a two to three times per week. (Mother's Testimony; Teacher's Testimony)
9. The student's behaviors included refusing to make corrections to classwork, being disrespectful to the special education teacher assigned to the classroom and not

- following directions. (Petitioner's Exhibits 11, 13 and 17; Respondent's Exhibits 4 and 9; Mother's Testimony; Teacher's Testimony)
10. The student required significant prompting to correct or edit his writing assignments. (Mother's Testimony; Teacher's Testimony)
 11. School A developed a plan which allowed the student to go to another classroom when the general education teacher was not present in the classroom. (Petitioner's Exhibit 20; Respondent's Exhibit 9; Teacher's Testimony)
 12. The teacher developed a behavior plan for the student which was effective in assisting the student to manage his behaviors. (Petitioner's Exhibit 16; Respondent's Exhibit 9; Teacher's Testimony; School Psychologist's Testimony)
 13. The student's mother and the student's teacher maintained consistent and collaborative communication throughout the school year regarding the student's behavior, progress and interventions utilized by the school to address the student's behaviors. (Petitioner's Exhibits 2, 4 and 20; Respondent's Exhibit 9; Mother's Testimony; Teacher's Testimony; School Psychologist's Testimony)
 14. As an intervention for the student's behavior, the teacher would call the student's mother and the mother would speak to student on the phone. (Mother's Testimony; Teacher's Testimony)
 15. After the student spoke with his mother on the phone, the student would "calm down." (Teacher's Testimony)
 16. The student was able to return to the classroom after a conversation with his mother lasting approximately five minutes. (Teacher's Testimony)
 17. After speaking with his mother, the student was able to return to his schoolwork and accurately complete assignments. (Teacher's Testimony)
 18. The majority of behavioral incidents with the student were able to be handled quickly via telephone. (Teacher's Testimony)
 19. On November 20, 2012, the student's teacher referred the student for counseling services because of the student's difficulty in getting along with other students and the student's anti-social behavior. (Petitioner's Exhibit 16; Respondent's Exhibit 9)
 20. The mother agreed to have the social worker meet with the student. (Petitioner's Exhibits 3 and 4; Respondent's Exhibit 10; Mother's Testimony; Teacher's Testimony)
 21. By November 2012, the student had made progress with interventions implemented by the teacher but continued to have difficulties when the teacher was not present. (Petitioner's Exhibits 16 and 20; Respondent's Exhibit 9; Teacher's Testimony)
 22. The school counselor met with the student in group sessions on November 30, 2012, December 21, 2012 to discuss getting along with others and healthy relationships. (Petitioner's Exhibit 3; Respondent's Exhibit 10)
 23. The guidance counselor also redesigned her classroom guidance lessons to help the class as a whole because of the teacher's concerns related to several other students in the classroom in addition to this student. (Petitioner's Exhibit 3; Respondent's Exhibit 10)
 24. By the end of the 2012-2013 school year, the teacher rarely needed to call the student's mother. (Petitioner's Exhibits 2, 11, 17, 18 and 20; Respondent's Exhibit 9; Teacher's Testimony)

25. Throughout the 2012-2013 school year, the student scored at least proficient in all academic areas on his report card. (Petitioner's Exhibit 13; Respondent's Exhibit 4; Mother's Testimony; Teacher's Testimony; School Psychologist's Testimony)
26. Throughout the 2012-2013 school year, for all academic standards which had previously been introduced, the student was either "developing" or "secure" in his skills and expectations. (Petitioner's Exhibit 13; Respondent's Exhibit 4; Mother's Testimony; Teacher's Testimony; School Psychologist's Testimony)
27. On all of the Paced Interim Assessments (PIA) given during the 2012-2013 school year, the student scored above the class, school and district averages in both math and English Language Arts (ELA). (Respondent's Exhibit 6; Mother's Testimony; Teacher's Testimony)
28. On the fourth PIA math assessment given during the 2012-2013 school year, the student scored 100% on the math learning standards. (Respondent's Exhibit 6)
29. During the 2012-2013 school year, on the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) reading assessment, by mid-year, the student scored above the benchmark goals in accuracy, fluency, retell and comprehension. (Petitioner's Exhibit 12; Respondent's Exhibit 7; Teacher's Testimony)
30. By mid-year of the 2012-2013 school year, the student had met or exceeded the end-of-year goals in reading accuracy, retell and comprehension on the DIBELS assessment. (Petitioner's Exhibit 12; Respondent's Exhibit 7; Teacher's Testimony)
31. At mid-year, the student was behind the book level goal on the DIBELS assessment.
32. At the end of the 2012-2013 school year, the student was on grade level for the book level goal on the DIBELS assessment. (Teacher's Testimony)
33. On all of the DIBELS word recognition assessments during the 2012-2013 school year, the student scored 100%. (Petitioner's Exhibit 12; Respondent's Exhibit 7)
34. Of the ability groupings in the student's 2012-2013 class, the student was in the higher reading group. (Teacher's Testimony)
35. The student is writing on grade level. (Teacher's Testimony)
36. During the 2012-2013 school year, the student independently completed and returned homework and participated in class discussion. (Petitioner's Exhibit 13; Respondent's Exhibit 4)
37. During the 2012-2013 school year, the student needed frequent prompting to follow directions, work well with others, use his time wisely, follow classroom rules, listen while others spoke and practice self-control. (Petitioner's Exhibit 13; Respondent's Exhibit 4; Mother's Testimony; Teacher's Testimony)
38. During the 2012-2013 school year, the student need limited prompting to complete his class work on time. (Petitioner's Exhibit 13; Respondent's Exhibit 4)
39. For the first two quarters of the 2012-2013 school year, the student needed limited prompting to follow playground/school rules and respect the rights/property of others. (Petitioner's Exhibit 13; Respondent's Exhibit 4)
40. For the first two quarters of the 2012-2013 school year, the student independently made an effort with his work. (Petitioner's Exhibit 13; Respondent's Exhibit 4)
41. For the third quarter of the 2012-2013 school year, the student needed frequent prompting to make an effort, follow playground/school rules and respect the rights/property of others. (Petitioner's Exhibit 13; Respondent's Exhibit 4; Mother's Testimony; Teacher's Testimony)

42. Although the student required frequent prompting by the teacher to complete his classwork, follow directions and follow rules, the student was able to complete his work and follow directions and rules once prompted. (Teacher's Testimony)
43. The student has progressed from grade to grade without extra supports such as summer school or special education. (Mother's Testimony)
44. The school counselor met individually with the student on April 8, 2013 to discuss anger management. (Respondent's Exhibit 10)
45. On May 21, 2013, the MDT determined that a comprehensive psychological evaluation was not necessary because the student's behavior was not such that it impacted his ability to perform or access the general education curriculum with success. (Petitioner's Exhibit 9; Respondent's Exhibit 1)
46. A Section 504 Plan was developed for the student on May 21, 2013. (Respondent's Exhibit 3)

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:

Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

"Child find" is the affirmative, ongoing obligation of states and local districts to identify, locate, and evaluate all children with disabilities residing within the jurisdiction that either have, or are suspected of having, disabilities and need special education as a result of those disabilities. *See* 34 CFR 300.111. A State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and a practical method is developed and implemented to determine which children are currently receiving needed special education and related services. 34 CFR §300.111(a). Child find also includes children who are suspected of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade. 34 CFR §300.111(c)(1).

In the present matter, the student was diagnosed with ADHD in August 2012 and at the beginning of the 2012-2013 school year, the parent informed School A that the student was

diagnosed with ADHD. Neither the fact that the student is diagnosed with ADHD nor the fact that the parent informed DCPS of the student's ADHD diagnosis is contested.

The standard for triggering the Child Find duty is suspicion of a disability rather than actual knowledge of a qualifying disability. *See Regional School District Board of Educ. v. Mr. and Ms. M. ex rel. MM*, 15 IDELR 8 (D. Conn. 2009); *Torrance United School District v. E.M.*, 51 IDELR 11 (M.D. Calif. 2009); *District of Columbia Public Schs*, 111 LRP 25929 (SEA DC March 25, 2011). An LEA must have a reason to suspect that a student has a disability. *See E.J. by Tom J. and Ruth J. v. San Carlos Elementary Sch. Dist.* 803 F. Supp. 2d 1024 (N.D.Cal. 2011) (allegations that a California district knew about a student's anxiety disorder for years before it referred her for an evaluation were not enough to show that the district violated its child find obligation because the student's teachers had no reason to believe she needed special education services). To establish a procedural violation of "child find," a parent must show school officials overlooked clear signs of disability. *Board of Educ. of Fayette County, Kentucky v. L.M.*, 47 IDELR 122 (6th Cir. 2007).

The Petitioner argued that DCPS' Child Find obligation was triggered at the beginning of the 2012-2013 school year when the student became disruptive in class, failed to follow directions and displayed an inability to focus. The Petitioner further argued that the student missed class time because of his inability to "moderate his behavior." DCPS argued that although the student displayed some inappropriate behaviors at the beginning of the 2012-2013 school year, the LEA did not suspect that that student had a disability because the student's ADHD did not have an impact on his academic performance.

The student was diagnosed with ADHD in August 2012 by his pediatrician and was prescribed medication. The student began taking the prescribed medication the day before the 2012-2013 school year began. On the first day of school, the parent informed the student's teacher that student diagnosed with ADHD and had begun medication day before. The parent asked the student's teacher to "keep an eye" on the student to watch how the medication was effecting the student. The Mother testified that for the first three weeks of the 2012-2013 school year, the student "seemed to be doing really well." However, during the first week of October, "things spiraled downhill." About this time, the parent gave permission for the social worker to work with the student.

The Teacher testified that at the beginning of the 2012-2013 school year, the student's behavior was such that the teacher needed to contact the student's mother a few times per week, as agreed to by mother. The mother would speak to student on the phone and the student would then "calm down." The student was able to return to the classroom in approximately five minutes and complete his work. The Teacher implemented a behavior plan for the student and by mid-year, the student's behavior was "much better." The Teacher further testified that by mid-year, the student only had difficulty with transitions or when the teacher was not in the classroom. By the end of the 2012-2013 school year, the teacher learned which strategies were effective for the student and rarely needed to call the student's mother. The Teacher indicated that at the beginning of the 2012-2013 school year, the student's behaviors impacted other students by taking away the teacher's time with the other students however the student's behaviors did not impact the student's schoolwork.

The Mother testified that the student has an inability to focus in the classroom, trouble with reading comprehension and writing, and difficulty with transitioning, in non-academic classes and on field trips. The Mother explained that the student is able to read but gets frustrated when asked to complete assignments. The Mother acknowledged that the student's grades were "pretty good" and that the student was "secure" or "developing" in "most" subject areas. While the Mother testified that the student was below grade level in reading, the record indicates that the student was on grade level in reading and performing better than many of his peers in reading.

On cross examination, the Mother acknowledged that the student has progressed from grade to grade without extra supports such as summer school or special education, is "about where he is supposed to be" in reading, is meeting benchmark targets or above benchmark targets in all areas, is doing week in reading and math assessments, and is proficient in English, math and science. Additionally, although the student requires frequent prompting in some work and social areas, the student is able to do other areas with limited prompting or independently.

The Teacher testified that the student is "bright" and is proficient in reading and math. Of the ability groupings in the classroom, the student is in the higher reading group. Although the student does not like to correct or edit his writing assignments once they are complete, the student's writing is on grade level. The Teacher further testified that although the student needs frequent and positive prompting, the student is able to accurately complete assignments and does not need any academic support to access the general education curriculum. The Teacher explained that the student has positive interactions and relationships with his peers, is well liked and exhibits age-appropriate reactions to peer challenges during recess.

The testimony provided by the Mother and the testimony provided by the Teacher painted conflicting pictures of the student's performance during the 2012-2013 school year. The student's teacher is a veteran teacher and throughout her 21 years of teaching has worked with students with disabilities and has made referrals for students suspected of having a disability. The parent is a very involved parent who frequently communicated with the student's teacher and was receptive and helpful in assisting the school with addressing the student's behaviors.

The record is clear that the student could be oppositional when he was asked to make corrections, and when the general education teacher was out of the classroom, the student would become defiant with the special education teacher assigned to the classroom. However, School A developed a plan which allowed the student to go to another classroom when the general education teacher was not present in the classroom and the teacher developed a behavior plan for the student which proved to be effective in assisting the student to manage his behaviors. The student's mother and the student's teacher maintained consistent and collaborative communication throughout the school year regarding the student's behavior, progress and interventions utilized by the school to address the student's behaviors. The majority of incidents with the student were able to be handled quickly via telephone. After speaking with his mother, the student was able to return to his schoolwork and accurately complete assignments. Although the student required frequent prompting by the teacher to complete his classwork, follow

directions and follow rules, the student was able to complete his work and follow directions and rules once prompted.

Additionally, in order to address the student's behaviors, in November 2012, the teacher referred the student for counseling services with the school social worker. The teacher indicated on the referral form that the student had made progress with interventions implemented by the teacher but continued to have difficulties when the teacher was not present. Based on the referral, the school guidance counselor included the student in three group sessions related to character and healthy relationships. The guidance counselor also redesigned her classroom guidance lessons to help the class as a whole because of the teacher's concerns related to several other students in the classroom in addition to this student.

Academically, throughout the 2012-2013 school year, the student scored at least proficient in all academic areas on his report card. For all academic standards which had previously been introduced, the student was either "developing" or "secure" in his skills and expectations. On the PIA assessments, the student scored above the class, school and district averages in all assessments in both math and ELA throughout the school year. In reading, on the DIBELS assessment, by mid-year, the student scored above the benchmark goals in accuracy, fluency, retell and comprehension. By mid-year, the student had met or exceeded the end-of-year goals in reading accuracy, retell and comprehension. While the student was behind the book level goal, the student scored 100% on all word recognition assessments.

A district has an obligation to look beyond a child's cognitive potential or academic progress and to address attentional issues and behaviors that have been identified as impeding his progress. *G.D. ex rel. G.D. v. Wissahickon Sch. Dist.*, 832 F. Supp. 2d 455, (E.D. Pa. 2011) (finding that the school's reevaluation of an elementary school student with significant behavioral problems was inadequate because it overemphasized the student's academic proficiency and assessed behavioral issues only cursorily). However Child Find does not demand that schools conduct a formal evaluation of every struggling student. *See, e.g., J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 661 (S.D.N.Y. 2011) ("The IDEA's child find provisions do not require district courts to evaluate as potentially 'disabled' any child who is having academic difficulties.").

At the beginning of the 2012-2013 school year, the student struggled with oppositional behaviors however the record does not indicate that the behaviors impeded the student's progress. Further, the record indicates that by November 2012, the student's oppositional behaviors manifested outside of the classroom and when the teacher was not present. In her explanation of why DCPS' Child Find obligation should have been triggered, the Mother indicated that "not looking at how he is in the classroom" "does not serve him in the long run." The Mother explained that she did not "see where he will have continued success," that the student "may not be as successful next year" and that the student "may not do his assignments next year." For the 2012-2013 school year, while the student required frequent prompting to complete assignments, the student completed assignments accurately.

While an LEA much not neglect to evaluate a student for special education and related services even when the student is progressing from grade to grade, here, the student was doing

more than merely progressing from grade to grade. In fact, the student was outperforming students in his class, his school and the district on math and ELA assessments throughout the school year. By mid-year the student had met or exceeded a number of the end-of-year reading goals and on the fourth PIA math assessment, the student scored 100% on the math learning standards taught by the teacher during the preceding six weeks. The Teacher testified that the student was “among the top students if not the top student” in the class.

In the District of Columbia, the Court begins with the premise that the Child Find obligation extends to all children suspected of having a disability, not merely to those students who are ultimately determined to be disabled. 34 C.F.R. § 300.111 (c)(1) (“Child find also must include children who are suspected of being a child with a disability ...”). *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, (D.D.C. 2008). The Court has held on numerous occasions that as soon as a student is identified as a potential candidate for special education services, DCPS has a duty to locate that student and complete the evaluation process. *See, e.g., Hawkins v. District of Columbia*, 2008 WL 623588 (D.D.C. March 7, 2008); *see also District of Columbia v. Abramson*, 493 F. Supp. 2d at 85 (D.D.C. 2007) (explaining that once a child is identified, the local educational agency “is then obligated to move forward with the requirement of [IDEA] § 1414(a)(1) and determine whether the student is in fact a child with a disability”). The Court in *N.G.* found that the student exhibited at least two of the five characteristics indicative of her suspected disability and the student’s academic performance was clearly adversely affected as a result. Therefore, the District violated the Child Find provision by failing to recognize the student’s potentially disabling conditions, and failed either to gather relevant information or to properly interpret the information it had. *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, (D.D.C. 2008).

The present matter is distinguished from *N.G.* because in *N.G.* the record contained evidence of adverse impact on the student’s academic performance. Here, the record does not contain evidence that the student’s ADHD behaviors caused an adverse impact on his academic performance. *See Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307 at 311 (6th Cir. 2007) (finding no violation where a student was “meeting expectations” in academic areas despite struggling with social and behavioral problems throughout elementary school).

The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence. *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted). In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it. *Greenwich Collieries v. Director, Office of Workers’ Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *affd*, 512 U.S. 246 (1994). Unlike other standards of proof, the preponderance of evidence standard allows both parties to share the risk of error in roughly equal fashion, *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted). Except that when the evidence is evenly balanced, the party with the burden of persuasion must lose. *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994). In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion.

In this proceeding, the Petitioner carries the burden of persuasion. Child find requires a district to evaluate a child when it suspects or has reason to suspect that the child has a disability *and* needs special education services as a result. *E.S. v. Konocti Unified Sch. Dist.*, 55 IDELR 226 (N.D. Cal. 2010) (emphasis added). In this matter, while DCPS knew that the student was diagnosed with ADHD, the Hearing Officer concludes that the Petitioner did not meet its burden in proving that DCPS' Child Find obligation was triggered during the 2012-2013 because the Petitioner did not meet its burden in proving that DCPS suspected that the student was in need of special education services as a result of his ADHD diagnosis.⁴

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

The due process complaint in this matter is **dismissed** with prejudice. All relief sought by Petitioner herein is **denied**.

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 USC §1415(i).

Date: July 10, 2013


Hearing Officer

⁴ Nothing in this Order alleviates DCPS from its duty to conduct an initial evaluation pursuant to 34 CFR §300.301 when a request for an initial evaluation has been initiated.