DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT, **By and through PARENT**[1] ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** ***Respondent.***	))))))))))	**Case No.** **Bruce Ryan, Hearing Officer** **Issued: July 2, 2011**

HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed April 18, 2011, on behalf of a year old student (the "Student") who resides in the District of Columbia and currently attends his neighborhood DCPS elementary school. The Complaint alleges that "DCPS has inappropriately failed to find [the Student] eligible for special education and develop an IEP despite data that clearly supports eligibility." Petitioner is the Student's mother.

DCPS filed its Response on April 28, 2011, which asserts as follows: "Based on all of the information reviewed by the team, the student's deficits are not significant and do not warrant specialized education. The student does not meet the criteria for LD or OHI." *Response,* p. 1.

A resolution session was held on April 28, 2011, which did not resolve the Complaint, and the statutory 30-day resolution period ended as of May 18, 2011. A prehearing conference ("PHC") was then held on May 25, 2011. The due process hearing was scheduled for June 8, 2011, at 9:30 AM.

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

The parties filed five-day disclosures as required on June 2, 2011; and the Due Process Hearing was held as scheduled on June 8, 2011. Petitioners elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence:

Petitioners' Exhibits: P-1; P-2; P-3; P-5.[2]

Respondent's Exhibits: R-1 through R-9.

In addition, the following Witnesses testified on behalf of each party:

Petitioners' Witnesses: (1) Parent-Petitioner; and (2) Educational Advocate.

Respondent's Witnesses: (1) School Psychologist; (2) Teacher; and (3) Special Education Coordinator ("SEC").

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. The statutory HOD deadline is July 2, 2011.

III. ISSUE AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioner resulted in the following single issue being presented for determination at hearing:

> **Eligibility** — Did DCPS deny the Student a FAPE by inappropriately failing to determine him to be eligible for special education and related services under the IDEA at an MDT/IEP team meeting held February 1, 2011? Petitioner alleges that the Student meets the criteria for eligibility as a child with a disability, primarily Other Health Impairment ("OHI") due to his ADHD condition.

Petitioner requests (*inter alia*) that the Hearing Officer: (a) find in Petitioner's favor on the above issue; and (b) develop an appropriate individualized education program ("IEP") based on the information available and/or order DCPS to convene an MDT/IEP meeting to do so.

[2] Exhibit P-4 was withdrawn at hearing.

IV. FINDINGS OF FACT

1. The Student is a -year old child who resides with Petitioner in the District of Columbia. During the 2010-11 school year, he attended the second grade at his neighborhood DCPS elementary school (the "School"). Petitioner is the Student's mother.
2. Around the beginning of the 2010-11 school year, Petitioner noticed that the Student was having problems with reading and shared her concerns with the School. *Parent Test.* The Student's teacher also reported certain behavioral problems to Petitioner. *Id.*
3. In September 2010, the Student was diagnosed as having Attention Deficit Hyperactivity Disorder ("ADHD"). *See R-5, p. 1; Parent Test.* He started seeing a psychiatrist and began taking medication for his ADHD. *Id.* His behavior improved on medication, but he did not always take it as prescribed. *Id.*
4. In October 2010, DCPS completed a Comprehensive Speech and Language Assessment of the Student, which assessed his overall performance on most measures as average. *R-7.*
5. In November 2010, DCPS completed a Comprehensive Psychological Evaluation of the Student, which noted his ADHD diagnosis and problems he was experiencing in the classroom at that time. *See R-5.* The evaluation report also noted that "some [teacher] reported behaviors may be inhibiting performance." *Id. p. 7.*
6. The November 2010 Comprehensive Psychological Evaluation found that the Student had average cognitive abilities; and it found that his overall academic skills were mildly delayed, although still within the average to low average range. *See R-5, pp. 9-12, 19-20* (score reports). On balance, the evaluator concluded that the Student's "academic skills are not impaired to the extent that special education services are needed." *Id., p. 14. See also School Psych. Test.* (testing showed Student was functioning within the average range).
7. On or about January 31, 2011, DCPS convened a meeting of the Student's MDT/IEP team to review the Student's evaluations and determine eligibility for special education. The team noted that the Student's reading comprehension was below grade level, but that he was functioning within the low average to average range on most other measures. *See R-6* (eligibility meeting notes). The team also found "no significant discrepancy between his cognitive and functioning academic levels [and] thus [Student] did not meet IDEA's

criteria for a student with a learning disability." *Id.* And the Student's behavior had improved significantly by this time, with the assistance of medication. *See Teacher Test.*

8. On or about February 1, 2011, DCPS issued a Final Eligibility Determination and a Prior Written Notice – Identification, confirming the IEP team's determination that the Student was ***not*** eligible for special education. *See P-2; R-3* (Final Eligibility Determination Report)*; R-4* (Prior Written Notice – Identification).
9. On or about February 4, 2011, DCPS issued a 2nd Grade Report Card containing grades and teacher comments through the 2nd Advisory. The Student's overall grade in Reading/English Language Arts progressed from "Below Basic" to "Basic." *P-3, p. 1.* However, his teacher commented that "a great deal of improvement is needed in reading comprehension and math word problems." *Id., p. 3.*
10. Since the eligibility meeting, the Student has made progress in reading fluency and math calculation skills. His behavior in the classroom has also continued to improve, to the point where it is no longer a concern. *See EA Test.* (reporting teacher comments)*; Parent Test.* However, the Student's performance on reading comprehension is still a concern, which also affects his work on math word problems. *See Parent Test; Teacher Test.* To assist with reading comprehension, the Student benefits from the BURST program and other strategies and techniques during his regular class, as well as small-group instruction from another general education teacher several hours per week. *Id.; SEC Test.*

V. DISCUSSION AND CONCLUSIONS OF LAW

The burden of proof in a special education due process hearing is on the party seeking relief. *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. DCMR 5-E3030.3.

In this case, Petitioner claims that DCPS denied the Student a FAPE by failing to identify and determine him to be eligible for special education and related services under the IDEA at the 01/31/2011 MDT meeting. However, the Hearing Officer concludes that Petitioner did not prove this claim by a preponderance of the evidence.

The IDEA defines "child with a disability" to mean (in relevant part) "a child evaluated in accordance with 300.304 through 300.311 as having...an Other health impairment, a specific learning disability, ... or multiple disabilities, and who, by reason thereof, needs special education and related services." 34 C.F.R. 300.8 (a). "Other health impairment," in turn, 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 ... ***attention deficit hyperactivity disorder***...; and (ii) ***adversely affects a child's educational performance***." *Id.,* 300.8 (c) (9) (emphasis added).

In this case, the clear weight of the evidence shows that the Student has an ADHD condition, but that his ADHD does ***not*** adversely affect his educational performance. *See Findings,* ¶¶ 5-8; *R-5* (Report of Comprehensive Psychological Evaluation); *School Psych. Test.* The DCPS School Psychologist who conducted the Comprehensive Psychological Evaluation found that the Student has average cognitive functioning and average to low average academic skills. Due in part to his medication, his ADHD condition also is not impacting his behavior in the classroom. And no educational professional has said that the Student is disabled.

In arguing for a different conclusion, Petitioner primarily points to the Student's reading comprehension scores on the DIBELS informal assessment, which are below the 2nd grade level. *See R-8.* However, his DIBELS scores improved over the course of the year; his Woodcock-Johnson reading comprehension score was not significantly below grade level and was generally in line with his cognitive abilities (87 vs. 94); and his teacher and the SEC report steady progress in the classroom. *See R-5,* pp. 19-20 (Score Reports); *Teacher Test.; SEC Test.* Even Petitioner's own educational advocate testified that the Student currently needs no more than a couple hours per week of outside help in reading. *EA Test.*

In short, Petitioner did not present sufficient evidence to overturn the IEP team's non-eligibility determination, based on the information available to the MDT/IEP team at the time of its decision. *See, e.g., N.C. v. Bedford Central School District,* 51 IDELR 149 (2d Cir. 2008); *Mowery v. Board of Education of the School District of Springfield,* 56 IDELR 126 (W.D. Mo. 2011) (finding no evidence that student needed special education and related services to receive an educational benefit). Of course, as additional educational evaluations and information become available, such information may well support a different conclusion at a future date.

VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Petitioner's requests for relief in her Due Process Complaint filed April 18, 2011 are hereby **DENIED;**

2. The Complaint is **DISMISSED, With Prejudice;** and

3. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: July 2, 2011

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415 (i) (2).