DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

Parents, on behalf of STUDENT,[1]	)	Case Number:
Petitioners,	)	Hearing Date: June 8, 2011 Hearing Room 2009
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	Hearing Officer: Frances Raskin
Respondent.	)	

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HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act of 2004 ("IDEA"), codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; the federal regulations at 34 C.F.R. §§ 300.1 *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

II. BACKGROUND

Petitioners are the parents of a -year-old student ("Student") who attends a public elementary school in Prince Georges County, Maryland. Both Petitioners reside in the District of Columbia.

On April 18, 2011, Petitioners filed a Due Process Compliant ("Complaint") against the District of Columbia Public Schools ("DCPS") pursuant to IDEA. Petitioners allege that DCPS denied the Student a free, appropriate, public education ("FAPE") by developing an individualized educational program ("IEP") on January 25, 2011, that fails to provide him 27.5 hours per week of specialized instruction outside the general education setting. Petitioners also allege that DCPS denied the Student a FAPE by failing to provide him an appropriate educational placement, i.e., a small therapeutic setting with a low student-teacher ratio.

[1] Personal identification information is provided in Attachment A.

This Hearing Officer was appointed to preside over this case on April 19, 2011. Respondent DCPS filed a response to the Complaint on April 27, 2011. On May 5, 2011, DCPS waived the resolution session meeting. Thus, the forty-five day, due process hearing timeline began on May 6, 2011.

On May 12, 2011, this Hearing Officer held a prehearing conference in which Nicholas Ostrem, counsel for Petitioners, and Laura George, counsel for Respondent DCPS, participated. This Hearing Officer issued a prehearing order on May 18, 2011.

On May 16, 2011, Respondent DCPS filed a Motion to Dismiss the Complaint ("Motion"). In its Motion, DCPS argued that DCPS is not "responsible for developing and implementing IEPs for students who are not enrolled in DCPS."

On May 19, 2011, Petitioners filed an Opposition to the Motion to Dismiss ("Opposition"). In their Opposition, Petitioners asserted that, because the Student is a ward of the District of Columbia, DCPS has an obligation to provide a FAPE to him.

On June 1, 2011, this Hearing Officer issued an order denying the Motion to Dismiss. Viewing the facts in the light most favorable to Petitioners, this Hearing Officer reasoned that because it was uncontested that Petitioners reside in the District of Columbia and retain educational decision-making rights, DCPS is the Student's "home school" Local Education Agency ("LEA") and responsible for providing the Student a FAPE.

On June 6, 2011, this Hearing Officer held a prehearing conference to discuss the Student's status and the events that led up to his attending a school in Maryland. During the prehearing conference, counsel for Petitioner informed this Hearing Officer that the Superior Court of the District of Columbia had removed the Student from the custody of Petitioners and placed him with a foster parent in Maryland. This Hearing Officer then asked counsel for Petitioners to provide her a copy of the court order removing the Student from the custody of Petitioners as well as any orders or documents from the Child and Family Services Agency ("CFSA") regarding the Student's enrollment in a Prince George's County public school.

The parties exchanged and filed witness lists and five-day disclosures on June 1, 2011. Petitioners disclosed three documents. DCPS did not disclose any documents.

On June 7, 2011, Petitioners filed a motion seeking leave to introduce two documents that they had not disclosed with their five-day disclosures. At the outset of the due process hearing on June 8, 2011, this Hearing Officer granted the motion in part and denied it in part. [2]

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[2] This Hearing Officer denied Petitioners' request to admit into evidence their proposed Exhibit 4. Petitioners failed to show any justification for the untimely disclosure of this document, which was an April 25, 2011, letter sent to the Student's mother ("Petitioner A"), which was mailed to her at least one month before the five-day disclosure deadline. This Hearing Officer granted Petitioners' request as to Exhibit 5, which was an August 27, 2010, order of the Family Division of the Superior Court of the District of Columbia. Petitioners had obtained a copy of this order at the request of this Hearing Officer.

The due process hearing commenced on June 8, 2011. This Hearing Officer admitted into evidence Petitioners' exhibits 1,2, and 3, and Petitioner's Supplemental Exhibit 5. At this Hearing Officer's request, Petitioners also produced a CFSA report and three evaluations of the Student, which this Hearing Officer marked and admitted into evidence as Petitioners' Exhibits 6, 7, 8, and 9, respectively.[3]

At the due process hearing, Petitioners presented the testimony of five witnesses. DCPS presented the testimony of two witnesses. After the parties presented oral closing arguments, the due process hearing concluded on June 8, 2011.

III. ISSUES PRESENTED.

Based on the claims raised in the Complaint and the discussion of the parties during the prehearing conferences, this Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether DCPS denied the Student a FAPE by failing to develop an appropriate individualized educational program ("IEP") for the Student on January 25, 2011, by failing to provide him 27.5 hours per week of specialized instruction outside the general education setting;[4] and

B. Whether DCPS denied the Student a FAPE by failing to provide the Student an appropriate educational placement, i.e., a small therapeutic setting with a low student-teacher ratio.

Petitioners request relief in the form of an order requiring DCPS to develop an IEP that provides the Student 27.5 hours per week of specialized instruction outside the general education setting in a small, therapeutic environment with a low student-teacher ratio, fund the Student's enrollment at a non-public school ("Non-Public School") for the 2011-2012 school year, and provide the Student compensatory education. As an alternative to an award of compensatory education, Petitioners request that this Hearing Officer order DCPS to fund an independent compensatory education evaluation of the Student.

IV. FINDINGS OF FACT.

1. Petitioners are the parents of the -year-old child ("Student") who is the subject of the Complaint. During the 2009-2010 school year, the Student attended kindergarten at an

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[3] This Hearing Officer requested the CFSA report during the June 6, 2011, prehearing conference. At the outset of the due process hearing, this Hearing Officer also noted that Petitioners failed to include all current evaluations of the Student in their five-day disclosures. *See* 34 C.F.R. § 300.512 (b) (requiring parties to disclose to all other parties "all evaluations completed by that date").

[4] Petitioners allege that the Student's IEP team found that he requires a "full-time, therapeutic program," a low student-teacher ratio, and a small therapeutic setting.

independent charter school that serves as its own local education agency.[5] On August 1, 2010, a Superior Court of the District of Columbia ("Superior Court") magistrate judge removed the Student from Petitioners' home and committed him to the care of CFSA for a period not to exceed two years.[6]

2. On August 12, 2010, the Superior Court held a hearing regarding the status of the Student's school enrollment for the 2010-2011 school year.[7] During the hearing, the parties agreed that the Student would be enrolled in the neighborhood school near the home of his foster parent ("Foster Parent").[8] The Foster Parent enrolled the Student in a public elementary school ("Maryland School") in Prince George's County, Maryland, and provided this school the Student's IEP.[9] The Student's CFSA social worker completed CFSA enrollment forms and tuition contracts.[10]

3. The Student began attending the Maryland School on or about August 23, 2010.[11] On September 30, 2010, the Maryland School held an IEP meeting to discuss the Student's progress.[12] Members of the IEP team expressed concerns about the Student's behavioral problems but agreed that he was otherwise adjusting well to his new school.[13]

4. On November 3, 2010, the Maryland School held a meeting to review the Student's IEP.[14] No representative of DCPS was present at this meeting.[15] The IEP team developed an IEP for the Student that provided him fifteen hours per week of specialized instruction in the general education setting, thirty minutes per week of occupational therapy in the general education setting, and ninety minutes per week of speech-language therapy outside the general education setting.[16]

5. On December 15, 2010, the Maryland School convened another meeting to discuss the Student's escalating behavioral difficulties and the threat he posed to himself and other students.[17] No representative of DCPS was present at the meeting.[18] The Student's special

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[5] Petitioners Exhibit 7 at 1, 3 (May 11, 2010, Independent Comprehensive Psychological Evaluation).
[6] Petitioners Exhibit 5 at 3 (August 27, 2010, Order of Magistrate Judge Lori E. Parker, Family Division, Superior Court of the District of Columbia).
[7] Petitioners Exhibit 6 at 1 (August 13, 2010, CFSA Interim Report to the Superior Court of the District of Columbia).
[8] *Id.* On August 27, 2010, by stipulation of the parties, the Superior Court magistrate judge formally placed the Student in the home of the Foster Parent, his paternal aunt. Testimony of Guardian ad Litem; Petitioners Exhibit 5 at 4.
[9] Testimony of Foster Parent; Petitioner Exhibit 6 at 1.
[10] *Id.*
[11] Testimony of Educational Advocate, Guardian ad Litem.
[12] Testimony of Educational Advocate.
[13] *Id.*
[14] *Id.*; Petitioners Exhibit 1 (November 3, 2010, IEP).
[15] Testimony of Educational Advocate, Guardian ad Litem.
[16] Petitioners Exhibit 1 at 25.
[17] Testimony of Educational Advocate; Guardian ad Litem.

education teacher and the principal of the Maryland school informed the other meeting participants that they had tried to contact DCPS but were unsuccessful.[19]

6. On January 25, 2011, the Maryland School held a meeting to discuss the Student's continuing behavioral difficulties.[20] No representative of DCPS was present at the meeting.[21] During the meeting, the meeting participants agreed that the Student required a more supportive environment.[22] The meeting participants agreed that the Student required full-time specialized instruction outside the general education environment and discussed revisions to his IEP.[23]

7. At the January 25, 2011, meeting, the meeting participants prepared a draft IEP for the Student.[24] The draft IEP provided the Student fifteen hours per week of specialized instruction in the general education setting, thirty minutes per week of occupational therapy in the general education setting, and ninety minutes per week of speech-language therapy outside the general education setting.[25] The Maryland School never finalized this IEP.[26]

8. On April 29, 2011, the Maryland School held a meeting to discuss the status of the Student's placement and review his IEP.[27] For the first time, a DCPS representative ("Compliance Case Manager") was present at the meeting.[28]

9. CFSA never informed DCPS that the Student had been removed from his family and was attending the Maryland School.[29] DCPS learned that the Student was enrolled in the Maryland School when the Compliance Case Manager was assigned to monitor the Student's sibling after a due process complaint was filed for that student.[30] Immediately after the April 29, 2011, meeting, the Compliance Case Manager communicated this information to the DCPS Program Manager for Residential and Surrounding Counties ("Program Manager").

10. On May 15, 2011, the Maryland School held a meeting to develop a full-time, out-of-general-education IEP for the Student and to determine a placement for the 2011-2012 school year.[31] Several DCPS representatives were present at this meeting.[32] The meeting participants included the Compliance Case Manager as well as several other DCPS personnel

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[18] Testimony of Educational Advocate, Guardian ad Litem.
[19] Testimony of Educational Advocate, Foster Parent.
[20] *Id.*, Guardian ad Litem.
[21] Testimony of Educational Advocate, Guardian ad Litem.
[22] *Id.*
[23] *Id.*
[24] Testimony of Educational Advocate; Petitioner Exhibit 2 (January 25, 2011, Draft IEP).
[25] Petitioner Exhibit 2 at 25.
[26] Testimony of Educational Advocate.
[27] *Id.*
[28] Testimony of DCPS Compliance Case Manager, Educational Advocate.
[29] Testimony of Program Manager.
[30] Testimony of DCPS Compliance Case Manager.
[31] Testimony of Educational Advocate, Guardian ad Litem, Compliance Case Manager.
[32] *Id.*

including the Program Manager and the principal of the school in the neighborhood ("DCPS School") in which the Student's father lives ("Petitioner B").[33]

11. At the May 15, 2011, meeting, the Program Manager expressed opposition to a full-time, out-of-general-education placement for the Student.[34] The Maryland School participants then informed the DCPS personnel that, while they could participate in the discussion, they were not members of the Student's IEP team and would have no input on the content of his IEP.[35] The Maryland School members, Petitioners, the Foster Parent, the Educational Advocate, and the Guardian ad Litem all agreed that the Student's IEP should provide full-time specialized instruction in a therapeutic setting outside the general education environment.[36] They agreed that the IEP would take effect at the outset of the 2011-2012 school year.[37] The Maryland School did not revise the Student's IEP at this meeting.[38]

12. At the May 15, 2011, meeting, the Program Manager suggested that the Student enroll in the DCPS Neighborhood School.[39] The Program Manager and the principal of the DCPS School informed the participants in the meeting that the DCPS School could implement the Student's January 25, 2011, IEP.[40] Petitioner A responded that she did not want the Student to attend any DCPS school.[41]

13. This Hearing Officer finds that Petitioners' witnesses at the due process hearing provided credible testimony. Each of Petitioners' witnesses corroborated the testimony of the other witnesses at the hearing. The DCPS witnesses also provided credible testimony, which was uncontroverted by the testimony of Petitioners' witnesses.

V. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[42] FAPE is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability."[43] FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[44]

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[33] Testimony of Educational Advocate, Compliance Case Manager, Program Manager.
[34] Testimony of Program Manager.
[35] *Id.*
[36] Testimony of Educational Advocate, Compliance Case Manager, Program Manager.
[37] Testimony of Educational Advocate, Guardian ad Litem.
[38] *Id.* As of June 8, 2011, the Maryland School still had not finalized this IEP. *Id.*
[39] Testimony of Program Manager, Compliance Case Manager.
[40] *Id.*
[41] *Id.*
[42] 20 U.S.C. §§ 1400(d)(1)(A),1412(a)(1).
[43] 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, D.C. Mun. Reg. tit. 30 § 3001.1.
[44] *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).

DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."[45] In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEIA; and (b) whether the Student's IEP was reasonably calculated to enable the Student to receive educational benefits.[46]

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.[47] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[48]

The burden of proof is properly placed upon the party seeking relief.[49] Under IDEA, Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[50] Under the preponderance of evidence standard, he party with burden of proof must prove that the existence of a fact is more probable than its nonexistence.[51] Unlike other standards of proof, the preponderance standard allows both parties to share the risk of error in roughly equal fashion,[52] except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[53]

VI. DISCUSSION

Petitioners Failed to Prove that DCPS Denied the Student a FAPE.

Although Petitioners framed the issue as whether DCPS failed to develop an appropriate IEP for the Student, the threshold issue in this case is when DCPS knew or should have known

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[45] 34 C.F.R. § 300.101.
[46] *Rowley* at 206-207.
[47] 20 U.S.C. § 1415 (f)(3)(E)(ii).
[48] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").
[49] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[50] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[51] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[52] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).
[53] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

that the Student was a child with a disability under IDEA.[54] Only after DCPS determines that the Student has a disability under IDEA would DCPS have an obligation to develop an IEP for him and determine an appropriate educational placement in his least restrictive environment.[55]

As soon as a student is identified as a potential candidate for special education services, the Local Education Agency ("LEA") has a duty to identify the student, locate him, and complete the evaluation process.[56] This "child find" obligation extends to students who are residents of the District of Columbia but attending school in another state.[57] A child is a resident of the state in which (1) the parent or guardian legally resides, or (2) the child is a ward of the state.[58] Residency, not the physical location of the student, creates the duty to ensure that FAPE is made available to eligible children with disabilities.[59] In other words, The obligation to provide a FAPE, therefore, is triggered by a child's residency in the District, not the child's enrollment in a public school in the District.[60]

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[54] Although this Hearing Officer held two prehearing conferences and discussed both the status of the Student's living arrangements, the court proceedings, whether Petitioners had standing to bring the Complaint, and the Student's enrollment in the Maryland School, it was not until the due process hearing that it became clear that Petitioners' sole claim in this case is whether DCPS violated its "child find" obligations. The Complaint contained no child find allegation and counsel for Petitioner never raised this issue in either prehearing conference. Only through the testimony of the Educational Advocate, the first witnesses who testified at the due process hearing, did this Hearing Officer learn that DCPS had not been involved in the IEP and placement process in Maryland until April 2011. Rather, Petitioners had alleged that DCPS was involved in the entire process, including the development of the Student's January 25, 2011, IEP, and had attended each of the meetings convened by the Maryland School. (During the first prehearing conference, after counsel for DCPS insisted that DCPS had not been invited to these meetings and did not even know they had occurred, counsel for Petitioner insisted that DCPS had been present at each meeting.)

[55] FAPE is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a *child with a disability*." 20 U.S.C. § 1401(28) (emphasis added); 34 C.F.R. § 300.39 (emphasis added); D.C. Mun. Reg. tit. 30 § 3001.1 (emphasis added). *See also Rowley*, 458 U.S. at 188-89.

[56] *See District of Columbia v. Abramson*, 493 F. Supp. 2d 80, 85 (D.D.C. 2007) (explaining that once a child is identified the local educational agency is then obligated to move forward with the evaluation process and then determine whether the student is in fact a child with a disability); *Hawkins v. District of Columbia*, 539 F. Supp. 2d 108, 114 (D.D.C. 2008) (same).

[57] *Abramson*, 493 F. Supp. 2d at 82; *Hawkins*, 539 F. Supp. 2d at 115.

[58] 34 C.F.R. § 300.101 (a); *Letter to Covall*, 48 IDELR 106 (OSEP December 22, 2006). Children whose parents have placed them in a private school or facility even though FAPE was available are an exception to this rule. *Id.*; 34 C.F.R. § 300.131.

[59] *Letter to Moody*, 23 IDELR 833 (OSEP October 24, 1995). *See also Letter to Mills*, 213 IDELR 139 (OSEP May 23, 1988) (child's home school district is the district in which his parents reside and movement of child from one jurisdiction to another does not change his district of residency or shift the responsibility for providing FAPE from one public agency to another)

[60] *D.S. v. District of Columbia*, 699 F. Supp. 2d 229, 235 (D.D.C. 2010).

Regardless of whether the child is enrolled in a DCPS school, DCPS is required to "ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities residing in the District who are in need of special education and related services, including children with disabilities attending private schools."[61] Accordingly, DCPS has a fundamental obligation to provide FAPE to [each] child with a disability residing in the District of Columbia.[62] Thus, DCPS is responsible "child find" obligation for all students whose parents reside in the District of Columbia.[63]

Once a child has been referred to an IEP team for an eligibility determination, the IEP team must conduct an "initial evaluation" that "shall consist of procedures to determine whether a child is a child with a disability . . . and to determine the educational needs of such child."[64] In the District of Columbia, the LEA shall evaluate a child suspected of having a disability within 120 days from the date the student was referred for an evaluation.[65]

IDEA requires that, as part of the "initial evaluation," an IEP team shall review existing evaluations and then "identify what additional data, if any" are needed to make a disability determination.[66] On the basis of that review, and input from the child's parents, the IEP team must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child.[67]

An LEA's failure to comply with its child-find obligation may constitute a denial of FAPE.[68] This is not the end of the inquiry, however. The dispositive issue is whether the student was harmed by the LEA's failure to comply with its obligations.[69] In other words, to succeed on a procedural claim, parents must demonstrate that the school district's procedural violations affected their child's ability to receive the educational benefit that the IDEA requires.[70] If a disabled child received a FAPE in spite of a technical violation of the IDEA, the LEA has fulfilled its statutory obligations.[71]

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[61] *Id.*
[62] *Abramson*, 493 F. Supp. 2d at 84 (citation omitted); *Hawkins*, 539 F. Supp. 2d at 112-115.
[63] The U.S. Department of Education, Office of Special Education Programs, has consistently defined a child's "home school" district as the district in which his parents reside. *Letter to Moody*, 23 IDELR 833 (OSEP October 24, 1995).
[64] 20 U.S.C. § 1414 (a)(1)(C)(i).
[65] D.C. Code § 38-2561.02
[66] 34 C.F.R. § 300.305; *Hawkins*, 539 F. Supp. 2d at 116.
[67] *Id.*
[68] *Hawkins ex rel. D.C. v. District of Columbia*, 539 F. Supp. 2d 108, 113-14 (D.D.C. 2008); *District of Columbia v. Abramson*, 493 F. Supp. 2d 80, 85 (D.D.C. 2007).
[69] *Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").
[70] *Roark v. District of Columbia*, 460 F. Supp. 2d 32, 42 (D.D.C. 2006) (citing *Lesesne*, 447 F.3d at 834).
[71] *See*, e.g., *Hung Hanh Thi Nguyen v. District of Columbia*, 681 F. Supp. 2d 49, 51 (D.D.C.

Here, Petitioners failed to prove that DCPS was on notice that this Student was a child with a suspected disability under IDEA prior to April 2011. Petitioners failed to prove that either Petitioner, the Educational Advocate, the Guardian ad Litem, or the CFSA notified DCPS that the Student had been placed in a school in Maryland. Rather, the evidence shows that the Student had not attended a DCPS school the previous year as he attended an independent charter LEA.

Because Petitioners had the burden of proof, they had to show that DCPS knew or should have know that the Student had a suspected disability. Instead, the evidence at the due process hearing was that DCPS first learned of this student when Petitioners filed a complaint on behalf of his sibling in March or April 2011.

Thus, DCPS had 120 days from the date of the filing of the complaint for the Student's sibling to evaluate the Student. Even if one were to assume that complaint was filed on March 1, 2011, almost two months prior to the April 29, 2011, meeting at the Maryland School, this deadline has not yet elapsed.[72] Thus, Petitioners cannot prevail upon their child-find claim because, as a matter of law, DCPS has until the end of the 120 days to determine the Student's eligibility for IDEA services.[73]

Until DCPS conducts evaluations, whether by conducting assessments or reviewing the Student's existing evaluations and other data, DCPS cannot determine whether he is a student with a disability. Thus, Petitioners claim that DCPS failed to develop an appropriate IEP and provide the Student an appropriate placement is premature.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, it is this 19th day of June 2011 hereby

ORDERED that the Complaint is **DISMISSED WITH PREJUDICE**.

By: /s/ *Frances Raskin*
Frances Raskin

2010) (upholding hearing officer who found that, although the student suffered from depression and a mood disorder, he did not suffer an emotional disturbance because "[t]he record is, at best, inconclusive that [the student's] emotional problems adversely affect his educational performance"); *M.M. ex rel. D.M. v. Sch.* Dist., 303 F.3d 523, 533-34 (4th Cir. 2002).

[72] Petitioners failed to establish the date that this complaint was filed, even after the Compliance Case Manager testified that this was when she first learned that the Student may be a student with a disability.

[73] Nonetheless, DCPS should not ignore its child-find obligation to this Student. It should be cognizant of this timeline and evaluate the Student and determine his eligibility for specialized instruction and related services within 120 days of the date the complaint for the Student's sibling was filed.

Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).

Distributed to:

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Laura George, counsel for Respondent
Hearing Office
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