**DISTRICT OF COLUMBIA**
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

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Parent, on behalf of the Student,[1]

Petitioner,

v.

The District of Columbia Public Schools ("DCPS"),

Respondent.

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| Date Issued: | June 27, 2011 |
| Hearing Officer: | Ramona M. Justice |
| Case No: | |
| Hearing Rooms: | Room 2003 and Room 2007 |

2011 JUN 27 AM 10:01 STUDENT HEARING OFFICE

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# HEARING OFFICERS' DETERMINATION

## I. JURISDICTION

The due process hearing was held and the Hearing Officers' Determination is issued, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

## II. PROCEDURAL POSTURE

On April 20, 2011, the parent, through her Attorney, filed with the District of Columbia, Office of the State Superintendent of Education ("OSSE"), Student Hearing Office, an "Administrative Due Process Complaint Notice", on behalf of the student.

On April 25, 2011, the Student Hearing Office assigned the due process complaint to this Hearing Officer. On May 2, 2011, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for May 6, 2011 at 4:00 p.m.; and an Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting. On May 4, 2011, the Respondent filed a Resolution Period Disposition Form", notifying the Hearing Officer that the resolution meeting convened on May 3, 2011, without resolution.

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[1] *Personal identification information is provided in Appendix A.*

On May 6, 2011, the Petitioner filed "Petitioner's Motion to Shift Burden of Proof or of Production", requesting that the Hearing Officer shift the burden of proof, or in the alternative, shift the burden of production to the Respondent, due to the Respondent's failure to file a written response to the due process complaint.

On May 9, 2011, within three (3) business days from the date the motion was filed, the Respondent filed "District of Columbia Public School's Response to Petitioner's Motion to Shift the Burden of Production"; and a copy of a Prior Written Notice-Identification issued to the parent on January 20, 2011, representing that a response is only required if the local education agency (LEA) has not sent a prior written notice to the parent concerning the subject matter of the complaint. The Respondent further represents that the Respondent provided the parent a Prior Written Notice concerning the subject matter of the complaint on January 20, 2011, therefore a response is not required, and Petitioner's motion should be denied.

On May 9, 2011, the Hearing Officer issued an Order finding that on January 20, 2011, the Respondent issued to the parent a document entitled "Prior Written Notice-Identification" informing the parent that it refuses to identify the student with a disability under the IDEA, and the reasons thereof. The January 20, 2011 "Prior Written Notice-Identification" concerns matters which are the subject of the April 20, 2011 due process complaint; therefore, a response to the complaint is not required. The Hearing Officer denied Petitioner's motion to shift the burden of production and persuasion.

The prehearing conference was held on May 9, 2011 at 1:30 p.m., and on May 11, 2011, the Hearing Officer issued a prehearing order summarizing matters discussed during the prehearing conference, issues to be decided by the Hearing Officer, and confirming the due process hearings for May 22, 2011 and June 2, 2011, at 9:30 a.m...

On May 13, 2011, the Petitioner filed a "Notice to Appear" seeking to compel the appearance of an individual within the Respondent's employ. On May 26, 2011, an amended prehearing order was issued to correct typographical errors in the May 11, 2011 prehearing order.

The due process hearing convened on May 26, 2011, at 9:30 a.m., as scheduled, at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the parents' request. Each party was represented by an Attorney; Petitioner's Attorney provided an opening statement; and Respondent's Attorney reserved its opening statement.

During discussion of preliminary matters, the Petitioner challenged the Respondent's failure to include in disclosures the curriculum vitae for a potential witness, should the witness be offered as an expert witness. After discussion it was determined the witness would not be offered as an expert witness and a curriculum vitae was not necessary. The Petitioner also objected to the admissibility of testimony by the school Psychologist on grounds that the testimony is irrelevant. The Hearing Officer determined that the testimony is relevant and overruled Petitioner's objection, allowing the witness to testify.

The Petitioner offered into evidence Petitioner's exhibits 1-17, and the Respondent offered into evidence Respondent's exhibits 1-5. The Respondent objected to Petitioner's exhibits 1 and 3 on grounds of relevancy because the exhibit postdates the eligibility decision. After hearing argument from the parties the Hearing Officer determined that Petitioner's exhibits 1 and 3 postdated the eligibility decision and was not probative or relevant to the issues in the complaint, and excluded exhibits 1 and 3.

The Respondent objected to Petitioner's exhibits 8 and 9 on grounds that the Hearing Officer lacked jurisdiction and the authority to consider 504 evidence in deciding matters brought under the IDEA. After hearing arguments from the Attorneys the Hearing Officer determined that Petitioner's argument was not persuasive regarding the admissibility of 504 evidence and therefore Petitioner's exhibits 8 and 9 were excluded. The Hearing Officer admitted into evidence Petitioner's exhibits 2, 4-7, and 10-17; and Respondent's Exhibits 1-5.

Prior to conclusion of the hearing the Petitioner's Attorney informed the Hearing Officer that she had since identified relevant case law and authority supporting argument that 504 evidence is admissible in IDEA proceedings, and requested permission to brief the issue.

Receiving no objections from Respondent, the Hearing Officer provided both parties the opportunity to brief the issue of whether evidence obtained pursuant to Section 504 of the Rehabilitation Act of 1973 is admissible in IDEA due process hearings. On May 31, 2011, the Petitioner filed "Petitioner's Brief Supporting the Admission of 504 Evidence". The Respondent opted not to brief the issue.

The due process hearing reconvened on June 17, 2011 at 9:30 a.m., as scheduled, at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the parents' request. Each party was represented by an Attorney. Petitioner's witnesses included: parent; Investigator, Children's Law Center; and a Psychologist, Children's Health Project of D.C.. Petitioner's Psychologist was qualified as an expert in conducting Psychological Evaluations of students with disabilities. Respondent's witnesses included: Special Education Coordinator, Social Worker, Psychologist, and a Special Education Teacher.

As a preliminary matter, the Hearing Officer informed the parties that after reviewing Petitioner's brief and relevant authority the Hearing Officer determined that although the Hearing Officer lack the authority to decide 504 issues, 504 evidence is admissible in due process hearings, for the purpose of deciding IDEA issues; admitting into evidence Petitioner's exhibits 8 and 9. The Hearing Officer also determined that emails transmitting the March 11, 2011 504 meeting notes was relevant, reliable and probative of the issues in the complaint, and would be admitted as Petitioner's Exhibit 18. Finally, the Hearing Officer admitted into the record page 3 of Petitioner's exhibit 7, identified as Hearing Officer's Exhibit 1.

The hearing resumed with Respondent's Attorney cross examining Petitioner's Psychologist. After testimony of Petitioner's Psychologist, the Petitioner rested and the Respondent presented its case. The due process hearing concluded with the Petitioner and Respondent agreeing to provide written closing statements by midnight on June 21, 2011; which the Hearing Officer limited to 8 pages in length, double spaced. On June 21, 2011, the Petitioner filed a written closing statement, however, the Respondent opted not to file a written closing statement.

## III. BACKGROUND

The student is years of age; and a grade student at a District of Columbia public elementary school. On January 20, 2011, the Respondent completed a Final Eligibility Determination Report, informing the Petitioner of its decision that the student does not meet the eligibility criteria as a student with a disability under the IDEA, and does not require special education and related services.[2]

[2] Respondent's Exhibit 2.

On April 1, 2011, the Respondent determined that the student's Attention Deficit Hyperactivity Disorder (ADHD) significantly impacted the student's learning and educational performance, and developed a 504 plan for the student, pursuant to Section 504 of the Rehabilitation Act of 1973.[3]

On April 20, 2011, the Petitioner filed this due process complaint challenging the Respondent's January 20, 2011 determination that the student is ineligible to receive special education services under the IDEA.

## IV. ISSUES

The following issues are before the Hearing Officer:

(1) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to identify, locate, evaluate, and determine the student's eligibility for special education services, within 120 days of parent's October 8, 2009 request for initial evaluations, in violation of the "Child Find" provisions of the IDEA, at 34 C.F.R. §§300.111, 300.301 and 300.304(c) (4) and (6)?

(2) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because it failed to comprehensively evaluate the student in all areas of suspected disability, by conducting a Comprehensive Psychological Evaluation and Occupational Therapy Evaluation, in violation of the IDEA, at 34 C.F.R. §300.304 (c)(4)?

(3) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because in conducting the Woodcock Johnson III evaluation for the purpose of determining whether the child is a child with a disability, and the educational needs of the child, it failed to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information regarding the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under §300.8; in violation of the IDEA, at C.F.R. §300.304 (b)(1)(i)?

(4) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because it failed to consider the independent Educational Evaluation obtained by the parent, in determining whether the student is disabled and eligible to receive special education services under the IDEA, in violation of the IDEA, at 34 C.F.R. §300.502 (c)(1)?

## V. RELIEF REQUESTED

The Petitioner requests that the Hearing Officer issue an Order finding that in its favor as to each issue in the complaint; and an Order requiring the Respondent to develop an appropriate IEP, and identify an appropriate placement for the student.

The Petitioner also requests that the Hearing Officer issue an Order requiring the Respondent to provide the student compensatory education services for violations occurring during the 2009/10 and 2010/11 school years.

[3] Petitioner's Exhibits 8 and 9.

## VI. CREDIBILITY DETERMINATIONS

The testimony of the witnesses presented by the parties was credible.

## VII. 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 is years of age; and a grade student at a District of Columbia public elementary school.[4]

2. The student resides in the District of Columbia with her mother, the Petitioner; and on January 10, 2011the Respondent determined the student in eligible to receive special education services.[5]

3. The student has attended District of Columbia Public schools since pre-kindergarten; and since that time, struggled with distractibility, auditory memory, ability to process language, visual integration, visual perception, inattentiveness, requires frequent prompting and one on one attention, lack of focus, retention, recall, and remaining on task, and impulsivity.[6]

   Academically, the student struggled with mathematics and written expression.[7] The student's academic strengths are reading and verbal expression.[8] Primary areas of academic concern are cognition, spelling, writing (reversal of letters and writes phonetically), mathematic fluency and problem solving.[9]

   During the 2nd grade, the student participated in an after-care program, where she received academic tutoring.[10] During the 3rd grade the student was also in an after school program where she received math tutoring; however, the parent discontinued the tutoring because the student struggled and had difficulty completing tasks.[11] Since attending the 4th grade, the student receives academic support at home; accommodations, modifications, and supports under the 504 plan.

4. In ***October, 2009***, the parent met with the Student Support Team (SST) to discuss parent and teacher concerns regarding the student's learning and educational performance, length of time necessary for the student to complete assignments, need for additional prompting, difficulty staying on task, occasional letter reversal, and utilization of classroom and testing intervention, modifications, and supports to address identified areas of weakness.[12]

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[4] Testimony of parent.
[5] Petitioner's Exhibit 11.
[6] Testimony of parent.
[7] Id.
[8] Testimony of independent Psychologist.
[9] Testimony of parent, testimony of independent Psychologist, and Petitioner's Exhibit 2.
[10] Testimony of parent.
[11] Id.
[12] Testimony of parent, Petitioner's Exhibit 12, page 1, and Social Worker and SST Coordinator.

5. The Student Support Team (SST) agreed that the student's teachers would continue with the classroom interventions and supports; document the student's progress for several weeks; and the team would reconvene to review the data. [13] Initially, the SST did not refer the student for special education services because the classroom interventions and supports appeared effective.[14] However, after a few weeks of documenting the student's behavior, the parent and student's teachers determined that the classroom interventions were not successful, and the student required additional support.[15]

   The SST Coordinator informed the Petitioner that the interventions and supports instituted by the school were unsuccessful, and suggested that parent meet with the Special Education Coordinator (SEC) to request initial evaluation of the student for special education services.[16] In October, 2009, the parent met with the SEC to request initial evaluation of the student to determine the student's eligibility for special education services.

6. On ***December 4, 2009***, the SEC completed an initial evaluation consisting of a Woodcock Johnson III Academic Test of Achievement, and referred the student for a classroom observation, and informal dyslexia screening, to address parent concerns that the student may present with dyslexia; and determine whether the student is a student with a disability eligible to receive special education services under the IDEA.

7. In the Fall of the 2008/09 school year, pursuant to the request of the SEC, the Respondent's Psychologist completed an informal dyslexia screening.[17] The Psychologist testified that the student was generally on task, actively involved, and there were no significant findings in the tests that would support a diagnosis of dyslexia.[18] The Psychologist also testified that he did not complete a standardized assessment to determine whether the student presents with dyslexia.[19]

8. On ***December 4, 2009***, the Special Education Coordinator completed an Educational Evaluation consisting of a Woodcock Johnson III academic achievement test (Form A).[20] At the time of the evaluation the student was in the 3rd grade.[21]

   The majority of the student's scores were within the average to above average range; the student's total achievement score was 100, with a 3:7 grade equivalency; the student received a broad reading score of 106 (4:5 grade equivalency), broad math score of 99 (3:7 grade equivalency), broad written language score of 93 (3:1 grade equivalency).[22] The student's strength was in letter word identification with 4:5 grade equivalencies and above average in writing samples and story recall with grade equivalencies in the middle to high school levels.[23]

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[13] Petitioner's Exhibit 12.
[14] Id.
[15] Id.
[16] Petitioner's Exhibit 12.
[17] Testimony of school Psychologist.
[18] Id.
[19] Id.
[20] Testimony of SEC, and Petitioner's Exhibit 6, page 2.
[21] Petitioner's Exhibit 7, page 1.
[22] Petitioner's Exhibit 6, page 2.
[23] Id.

Although not considered significant (i.e. a standard deviation + or – 1.50 grades behind), the student exhibited weaknesses in broad math, broad written language, brief math, math calculation skills, math reasoning, brief writing, written expression, academic skills, academic fluency, academic applications, understanding directions, calculation, math fluency, spelling, writing fluency, passage comprehension, applied problems, word attack, spelling and punctuation.[24] The most significant weakness is reflected in math fluency.[25]

The Respondent met with the parent and determined that no significant strengths or weaknesses were found among the test scores, and that the student was ineligible for special education services; however, the parent should pursue 504 accommodations; and at parent's expense obtain a full evaluation. [26]

9. In ***February, 2010***, the Respondent completed a dyslexia observation; and at that time the student showed mild signs of dyslexia, however, nothing significant.[27] There was no evidence of consistent letter reversal, connecting thoughts, confusion with numbers, switching numbers, or difficulty reading.[28] In reviewing student writing samples included in Petitioner's disclosures, the witness was unable to offer a definitive opinion whether the samples displayed evidence of dyslexia.[29]

10. In ***August, 2010***, the student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD).[30]

11. In ***November, 2010***, the student began receiving one on one tutoring in spelling from a special education teacher; however, the student continues to struggle academically.[31]

12. On ***February 25, 2010*** and ***August 26, 2010***, the Children's National Medical Center, Pediatric Mobile Clinic, evaluated the student by completing a Comprehensive Psycho-educational Evaluation.[32] At the time of the evaluation the student was 8 years, 10 months of age, and in the 4th grade.[33]

    The evaluation included a series of tests including the Woodcock-Johnson III Tests of Achievement (Form A).[34] The student was referred for evaluation by Petitioner and the student's Pediatrician due to concerns regarding the student's academic progress and elevated activity level, specifically, the student's restlessness in class and struggling in math and spelling.[35]

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[24] Id.
[25] Id.
[26] Testimony of SEC and parent.
[27] Id.
[28] Id.
[29] Id.
[30] Id.
[31] Testimony of parent and special education teacher.
[32] Petitioner's Exhibit 2.
[33] Id.
[34] Id.
[35] Petitioner's Exhibit 2, page 10.

The Conners' Parent Rating Sale yielded markedly elevated ratings on the cognitive problems/inattention subscale, the student's 3rd grade teacher and tutor and 4th grade teacher completed the Conners' 3 Teacher Rating Scale which yielded markedly elevated ratings on the hyperactivity/impulsivity, inattention, learning problems and learning problems/executive functioning scales with moderately elevated ratings on the executive functioning scale.[36]

Both teachers endorsed that the student very frequently fidgets or squirms in her seat, is constantly moving, acts as if driven by a motor, leaves seat when she should stay seated, blurts out answers before the question has been completed, has a short attention span, is sidetracked easily, is easily distracted by signs and sounds, does not seem to listen to what is being said to her when attempts are made to refocus her behavior, has trouble keeping her mind on work or play for long, doesn't pay attention to details, and makes careless mistakes.[37] In addition, the student forgets math concepts she has already learned and her spelling is poor.[38]

The Reynolds Childhood Depression Scale was administered to ascertain self-reported symptoms of depression; and the student's responses indicated severe depressive symptoms.[39]
Results of the projective testing indicate that the student's social-emotional development has been significantly impacted by self-regulatory difficulties and perceived loss.[40] Projective testing also reveal the presence of anxiety and sadness around the student's learning challenges, behavior regulation, and the student's relationship with her father.[41]

The student's responses also generated markedly elevated ratings on the Conners' 3 Global index total, the DSM-IV-TR ADHD Cognitive testing yielded overall average intellectual ability with average verbal comprehension and perceptual reasoning, and low average working memory and processing speed skills.[42] The student's phonological processing was average for blending words and below average for manipulating sounds within words.[43] The student's immediate recall for story details fell in the superior range, while her delayed recall rose to the very superior range.[44]

The student's rapid naming skills were average for colors, low average for objects, low for numbers, and very low for letters. The student demonstrated below average visual motor integration, motor coordination and visual perceptual skills.[45] The student had difficulty distinguishing reversed letters and numbers from non-reversed letters and numbers, as well as reversed letters in words.[46] A Comprehensive Occupational Therapy Evaluation was recommended to address weaknesses in this area.[47]

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[36] Petitioner's Exhibit 2, page 8.
[37] Id.
[38] Id.
[39] Petitioner's Exhibit 2, page 9.
[40] Id.
[41] Petitioner's Exhibit 2, page 11.
[42] Petitioner's Exhibit 2, page10.
[43] Id.
[44] Id.
[45] Petitioner's Exhibit 2, page 10.
[46] Id.
[47] Id.

The student's weaknesses were in spelling (1.7 GE), writing fluency (1.8 GE), and math fluency (1.3 GE), which were below average scores of 77, equaling first grade equivalency.[48] Results of the norm-based rating scales completed by parent generated clinically significant cognitive problems and inattention.[49]

Teacher ratings indicate clinically significant hyperactivity/impulsivity, inattention, learning problems, learning problems/executive functioning.[50] The student's test scores support a finding that the student requires specialized instruction in written expression and mathematics; and extended time and accommodations to complete mathematics and written language tasks.[51]

The student's educational history, parent and teacher ratings and behavior observations during testing, supports a finding that the student meets the criteria for Attention Deficit Hyperactivity Disorder (ADHD): Combined Type.[52] Recommendations include: trial medication for ADHD to reduce symptoms; individual therapy; an Occupational Therapy Evaluation to delineate the student's difficulty with visual-motor skills and need for services; parent sharing the evaluation with the student's school and seek special education services on the basis of the student's ADHD; specialized instruction in spelling; classroom and assignment modifications; a high level of consistency; and other accommodations, modifications, and supports is recommended.[53]

13. On ***November 29, 2010***, the Respondent convened a meeting to discuss parent concerns regarding the student's academic difficulties. The team determined that the student did not qualify for special education services however qualified for accommodations under Section 504 of the Rehabilitation Act. The team agreed to conduct an Occupational Therapy Evaluation, the special education teacher would meet with the student 30 minutes a day to assist the student with spelling; and that the team would reconvene to discuss results of the evaluation[54]

14. On ***December 6, 2010***, the school Psychologist reviewed the August 26, 2010 Comprehensive Psycho-Educational Evaluation completed by the Children's National Medical Center, and reevaluated the student to determine whether the student presents with a disability and would benefit from special education services.[55] The reevaluation also consisted of a student record review, classroom observation, teacher, and parent interviews.[56]

    The student's teachers report that although accommodations are effective, there is concern that the student may require more assistance.[57] According to teacher interviews the student has difficulty with literacy, and although the student reads well from memory, she has difficulty with phonics, which is reflected in the student's spelling.[58] Both of the student's teachers report that several accommodations are given and are successful; however the student requires more assistance.[59]

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[48] Petitioner's Exhibit 2.
[49] Id.
[50] Id.
[51] Petitioner's Exhibit 2, page 10.
[52] Id.
[53] Petitioner's Exhibit 2, page 11.
[54] Testimony of parent.
[55] Petitioner's Exhibit 6.
[56] Id.
[57] Petitioner's Exhibit 6, page 3.
[58] Id.
[59] Petitioner's Exhibit 6, page 3.

Parent reported that the student has difficulty with math; and is concerned regarding the student's lack of processing, and math skills.[60] The Psychologist stated that because the student's BASC-II scores were significant in hyperactivity and impulsivity, the student will present inattentive, fidgety and restless behavior in the classroom; and because the student receives no medication for the ADHD, classroom strategies are necessary to assist the student.

The Psychologist concluded that the student's ADHD may affect the student through a lack of attention to detail when performing math (misreading the plus and minus sign), reading (not comprehending well) and writing (failing to use proper punctuation), therefore, the student will require accommodations.

The Psychologist also concluded that there is no academic impact reflected in the student's grades, test scores, or current educational testing, the academic impact is insufficient to qualify the student for special education services, and therefore, the student is not disabled or eligible to receive special education services under the IDEA.[61] The evaluator recommended a 504 plan with modifications and accommodations to address the student's ADHD and problems with handwriting.[62]

15. The Respondent's school Psychologist and SEC report that on ***December 6, 2010***, the Special Education Coordinator (SEC) at the student's school completed an Educational Evaluation, consisting of a Woodcock Johnson III Academic Test of Achievement (Form B), however, the evaluation data is not in evidence.[63]

    The SEC testified that DCPS guidelines provide that a student must score within 10 points between the full scale IQ; and within two standard deviations below the national norm to qualify for special education services, and the educational evaluations administered to this student do not reflect that the student scored two standard deviations below the national norm; therefore, the student does not qualify for special education services.[64]

    The SEC testified that the student's teachers grade the student's assignments differently to ensure that the student's spelling does not adversely impact, and reflect in the student's overall grades. The SEC also testified that pursuant to his request, the school Psychologist test the student for dyslexia; and that an Occupational Therapy Evaluation be conducted to address the students' writing.

16. On ***January 20, 2011***, the Respondent completed an "Evaluation Summary Report".[65] The student's math teacher reported that the student has difficulty with organization of materials, needs constant reminders and repetition of directions, math facts on multiplication, and division.[66] The teacher also reports that the student is passing courses however could perform better.[67]

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[60] Petitioner's Exhibit 6, page 4.
[61] Id and testimony of Psychologist.
[62] Id.
[63] Petitioner's Exhibit 6, page 2 and testimony of SEC.
[64] Testimony of SEC.
[65] Respondent's Exhibits 2.
[66] Id.
[67] Id.

The student's reading teacher reports concern regarding the student's poor spelling; phonetic ability; and excessive time to complete written assignments.[68] The student's written expression teacher reports concern that the student is relatively weak in handwriting (word spacing) and editing skills.[69] The school Psychologist reports that the student has some visual motor issues as well as spelling and writing difficulties, low self esteem and signs of depression.[70] The Occupational Therapist also report concern regarding the students' poor spelling, writing fluency, and spacing between words.[71]

17. On ***January 20, 2011***, the Respondent completed a Final Eligibility Determination Report, informing the Petitioner of its decision that the student does not meet the eligibility criteria as a student with a disability under the IDEA, and does not require special education and related services.[72]

18. On ***March 11, 2011***, the Respondent convened a 504 eligibility determination meeting.[73] A special education teacher assigned to assist the student with spelling informed the team that she has seen the student 30 minutes per day in a small group for the past ten weeks, since November, 2010.[74] The teacher reported that the student is secure in spelling high frequency words; demonstrates that she can spell phonetically regular word, however, has difficulty with low frequency words and irregularly spelled words; and requires daily practice/drill to correctly spell these words.[75]

    The student's homeroom, literacy, and social studies teacher reported that the student is a high performing reader, however, has difficulty with writing; applying spelling rules in her work, which makes it difficult for individuals unfamiliar with the student's writing to decipher the student's work.[76] The homeroom teacher reported that when working on spelling strategies and rules, the student performs well with one on one and works hard when practicing, however, is frequently unable to apply these skills when writing independently; and is unable to retain spelling skills and strategies.[77]

    The homeroom teacher also reported that the student requires consistent reminders to stay on task when writing or reading independently; it is difficult for the student to complete longer assignments within the average time frame of the class; and on assessments the student often requires extended time to complete the work.[78] The teacher concluded that strategies to support the student's writing organization are working, however, the student continue to experience "great" difficulty retaining spelling rules.[79]

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[68] Respondent's Exhibit 2, page 14.
[69] Id.
[70] Id.
[71] Petitioner's Exhibit 2, page 15.
[72] Petitioner's Exhibit 11.
[73] Petitioner's Exhibit 9, page 1.
[74] Id.
[75] Id.
[76] Id.
[77] Id.
[78] Petitioner's Exhibit 9, page 2.
[79] Id.

The student's math and science teacher reported that the student performs well with consistent and direct probing; and that although the student has a surface understanding of math concepts, once the concepts are revisited or the teacher moves on to a new topic it becomes apparent that the student does not have full mastery of the skill and cannot recall the process needed to apply the particular concept independently.[80]

The math teacher also reported that the student requires the usage of math tools while exploring a concept; and the student is unable to retain math skills and as a result is unable to master skills taught.[81] The math teacher concluded that to be successful, the student requires daily review of current math skills and skills previously taught; and most times the student requires continuous prompting from classmates or the teacher to describe the strategies and steps used to solve math problems.[82]

19. On ***March 22, 2011*** and ***March 31, 2011***, the Respondent completed an Occupational Therapy Evaluation Report, consisting of a teacher interview, classroom observation, a review of student work samples, and recommendations.[83] The Petitioner requested an Occupational Therapy Evaluation because the previous Occupational Therapy Evaluation failed to address the student's sensory needs.[84]

    The student's general education teachers reported that the student struggles in writing and math; is unable to spell words accurately and continues to spell her words phonetically; reverses letters and requires verbal cues to recognize these errors; and in math the student has difficulty writing her formula's correctly and continually reverses numbers.[85] The teachers reported that the student is unable to recognize these errors independently and requires verbal cues to correct the errors.[86]

    The teachers also reported that the student has difficulty with rudimentary skills, such as processing, recalling, and applying the information previously learned; organizational skills, such as organizing binders, thoughts during writing assignments; and requires occasional verbal cues to turn in homework or class work and requires directions repeated frequently.[87] The teachers reported that the student is unable to maintain focus for more than 15 minutes at a time and constantly fidgets; was unable to maintain an upright seated posture for a long period of time; and had difficulty distinguishing between her left and right hand.[88]

    The teachers reported use of a variety of classroom modifications, supports, and techniques including placing Velcro strips under the student's desk, preferential seating, a daily planner, allowing the student to stand during tests, and walking around in the classroom, and even with these strategies, the student continue to exhibit difficulty remaining in her seat and focused throughout the day; and using the daily planner on a daily basis.[89]

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[80] Id.
[81] Id.
[82] Petitioner's Exhibit 9, page 2.
[83] Petitioner's Exhibit 5.
[84] Id.
[85] Id.
[86] Id.
[87] Id.
[88] Petitioner's Exhibit 5, page 2.
[89] Petitioner's Exhibit 5, page 4.

The teachers also reported that in addition to these strategies, the student received 1:1 instruction with the Special Education teacher, in spelling; and that the teachers are very concerned that the student's frequent spelling errors, letter and number reversals, and problems with rudimentary skills, may be indicia of early signs of dyslexia, such as dysgraphia which may warrant further testing.[90]

20. On ***April 1, 2011***, On April 1, 2011, the Respondent determined that the student's Attention Deficit Hyperactivity Disorder (ADHD) significantly impacted the student's learning and educational performance, and developed a 504 plan for the student including classroom supports, modifications, and interventions, under Section 504 of the Rehabilitation Act of 1973.[91]

21. **Failure to Identify, Locate, Evaluate, and Determine Student's Eligibility for Special Education Services in a Timely Manner**

The Hearing Officer finds that the District of Columbia Public Schools failed in its obligation under the Child Find provisions of the IDEA, to identify, locate, evaluate, and determine the student's eligibility for special education services within 120 days of parent's October, 2009 request for initial evaluations.

*First*, since pre-kindergarten, the student struggled with inattentiveness, impulsivity, and writing and these behaviors adversely impacted the student's learning and educational performance in the classroom. The parent was also actively involved in the student's education; consistently expressed concern regarding the student's cognitive processing, retention and recall, writing and mathematics; and informed the Respondent of the family history of dyslexia, and concern that the student's academic difficulties may be attributed to dyslexia.

Therefore, the Respondent knew that the student struggled with issues of attention, impulsivity, hyperactivity, writing, and mathematics; that the student's difficulties in these areas adversely impacted the student's learning and educational performance; and that the student was suspected as a student with a disability, and in need of special education services. However, the Respondent failed to identify, locate, and comprehensively evaluate the student in all areas of suspected disability to determine the student's eligibility for special education services.

*Second,* in October, 2009, the parent met with the Student Support Team to discuss concerns regarding the student's learning and educational performance; and the SEC to request initial evaluation of the student.[92]

On December 4, 2009, the Respondent completed an initial evaluation consisting of a Woodcock Johnson III Academic Test of Achievement, a classroom observation, and informal dyslexia screening, to determine whether the student is a student with a disability eligible to receive special education services under the IDEA. However, in conducting the initial evaluations the Respondent failed to evaluate the student in all areas of suspected disability by addressing the students' ADHD and possible dyslexia; and failed to ensure that the evaluations completed were sufficiently comprehensive to identify all of the student's special education needs and determine the student's eligibility for special education services.

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[90] Id.
[91] Petitioner's Exhibit 8.
[92] Petitioner's Exhibit 12, page 1.

On January 20, 2011, the Respondent rendered a determination that the student was ineligible for special education services, based upon results of the WJ-III Academic Test of Achievement, a classroom observation, and dyslexia screening.[93] The multidisciplinary development team (MDT) determined the student ineligible for special education services, without the benefit of comprehensive evaluations, designed to assess the student's special education needs.

*Third*, the Respondent represents that the student's ADHD presents with many educational implications requiring accommodations; however the student does not qualify for special education services because there is no evidence of educational impact reflected in the student's grades, however, this argument fails for several reasons.[94]

According to the Respondent's Psychologist, the student's BASC-II scores were significant in hyperactivity and impulsivity, as a result, the student presents with inattentive, fidgety and restless behavior in the classroom.[95] The Respondent's Psychologist also reports that the student's ADHD affects the student through a lack of attention to detail when performing math, reading, and writing tasks; the student's ability to successfully hear and understand directions and information; the student struggles with multi-step directions, independent assignments, and time constraints; and the student requires frequent redirection and repeating of directions.[96]

The student's *3rd grade* report card for the *2009/10* school year, 4th advisory, reflects that the student received a final grade of (3) in reading/English language arts, science and social studies, meaning that the student produces work that meets the standard; frequently produces work of high quality; applies skills/concepts correctly.[97] The report card also indicates that the student is developing skills in each of these areas, except that in social studies, the student is secure in emphasizing the most significant differences and drawing from historical and community resources to organize the sequence of local historical events and describes how each period of settlement left its mark on the land.[98]

The student received a final grade of (2) in mathematics, meaning that the student shows a basic working knowledge of skills/concepts; produces satisfactory work; usually applies skills/concepts correctly.[99] The student also received a final grade of (4) in art, music, and health/physical education; indicating that the student is secure in these areas.[100]

The student's *4th grade* report card for the *2010/11* school year, 3rd advisory reflects that the student received a grade of (3) in reading/English language arts, science, social studies, art, and music, meaning that the student produces work that meets the standard, frequently produces work of high quality, and applies skills/concepts correctly.[101]

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[93] Petitioner's Exhibit 11.
[94] Petitioner's Exhibit 6, page 4.
[95] Petitioner's Exhibit 6, page 4.
[96] Id.
[97] Respondent's Exhibit 3, page 22.
[98] Id.
[99] Id.
[100] Id.
[101] Respondent's Exhibit 3, page 20.

Although the student's report cards for the 2009/10 and 2010/11 school years purports that the student meets the standard and produces satisfactory work, the report cards also reflect that during the last two (2) school years, the student's grades in all academic areas remained the same; the student made no academic progress; and that during the 2010/11 school year, the student regressed in all nonacademic classes such as art, music, health/physical education.[102]

Furthermore, the student's grades are not an accurate representation of the student's actual academic performance and ability, because according to the SEC, the student's teachers grade this student's assignments differently to ensure that the student's inattentiveness, and lack of attention to detail when performing math, reading and written language tasks, does not adversely reflect in the student's grades.[103] This explains how the student consistently receives passing grades, and is advanced from grade to grade, although the student continues to struggle academically; and the reason there is no evidence of academic harm reflected in the student's grades.[104]

*Fourth,* the Respondent represents that the student does not qualify for special education services because there is no evidence of educational impact reflected in the student's test scores or current educational testing, however, this argument fails for several reasons.

The student's 3rd grade DC-CAS scores for the 2009/10 school year reflect that the student scored proficient in reading, and basic in mathematics.[105] The student also scored below basic in number sense, on test A; and below basic in reading/language arts and information search, on tests P and B.[106] The student's DC-CAS scores for the 2010/11 school year reflect that the student scored proficient in reading/language arts, and basic in mathematics, however, the scores also reveal a steady decline in the number of questions the student answered correctly, in the three mathematic tests administered.[107]

The student's DIEBELS scores reveal that during the beginning of the 1st grade the student scored low risk in letter naming fluency and nonsense word fluency; and some risk by the end of the 1st grade, some risk at the end of the 2nd grade, low risk at the end of the 3rd grade, and low risk during the middle of the 4th grade, in oral reading fluency.[108]

Additionally, the DC-CAS does not assess a student's writing skills, which is the primary area of weakness and concern for this student.[109] The DC-CAS and DIEBELS test scores reveal that the student has academic deficits and that these deficits adversely impact the student's learning and educational performance.

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[102] Id.
[103] Respondent's Exhibit 3, and testimony of SEC.
[104] Id.
[105] Respondent's Exhibit 1.
[106] Respondent's Exhibit 1.
[107] Respondent's Exhibits 1, pages 4 and 5.
[108] Respondent's Exhibit 1, page 7.
[109] Respondent's Exhibits 1.

*Fifth*, according to the WJ-III Test of Achievement conducted by the Respondent on *December 4, 2009*, the student was three (3) months into the 3rd grade, however, the student's grade equivalency in the math fluency subtest was 1.9, reflecting a significant weakness in this area; and the student scored at the 2nd grade level in the majority of all other areas, including spelling (2.1) and writing fluency (2.3).[110]

According to the WJ-III Test of Achievement conducted by the independent Psychologist on *February 25, 2010 and August 26, 2010*, the student was in the 4th grade at the time of testing, however scored at the 1st grade level in math fluency; and the 2nd grade level in the majority of other areas, including spelling and writing fluency (i.e. 1.7 grade level spelling, 1.8 in writing fluency, and 1.3 in math fluency; and 2.1 in broad written language, 2.8 in word attack, and 2.9 in math calculation skills).[111]

According to the data in the December 4, 2009 evaluation the student tested below grade level in the majority of areas; and according to the data in the *February 25, 2010 and August 26, 2010* evaluation the student scored significantly below grade level in spelling, writing fluency, and math fluency.[112] This is contrary to Respondent's argument that the student does not qualify for special education services because the student failed to test more that 1.5 or 2 deviations from the norm.[113]

In comparing the WJ-III Test of Achievement scores from tests administered by the Respondent's Psychologist during the 2009/10 school year and the independent Psychologist completed in the 2010/11 school year, both tests reveal that the student exhibits academic deficits in spelling, writing fluency, and math fluency.[114]

The Respondent also represents that the independent Psychologist's use of the WJ-III Achievement Test, Form (A) consisting of the same questions, more than once in less than one year may have skewed test results and should be invalidated because of the "practice effect" (i.e. use of the same questions provides the student the opportunity to test according to memory, and not according to the student's actual knowledge and ability). However, this argument fails because there is no evidence that had a different form been used the results would have differed. In fact, if anything, use of the same test questions in a given school year would probably improve the student's test scores, however, in this instance, the student's test scores did not improve.[115]

*Sixth*, according to the student's general education teachers, classroom interventions, supports and modifications are successful, however, the student requires additional support beyond that which the student current receives in the general education setting; and the record reflects that the student continues to present with the same academic difficulties this school year, as experienced during the 2009/10 school year. [116] In addition to receiving academic support in the classroom, the student received after-school tutoring, which also proved unsuccessful.[117]

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[110] Petitioner's Exhibit 7, page 2.
[111] Petitioner's Exhibit 2, page 17.
[112] Id.
[113] Petitioner's Exhibit 6, page 17, testimony of SEC, and DCPS Psychologist.
[114] Petitioner's Exhibit 2, page 17, and 7, page 2.
[115] Testimony of independent Psychologist.
[116] Respondent's Exhibit 3.
[117] Testimony of parent.

*Seventh*, according to the special education teacher, the student began receiving tutoring in spelling at the end of December, 2010 or beginning of January, 2011, and the tutoring ended in May, 2011. The special education teacher reports that she sits next to the student and guides the student to answers using the same skills as used with special education students, however; in spelling, the student continues to forget how to spell words consistently from week to week; spells words that follow phonetics correctly, however, has difficulty spelling less high frequency words.[118]

*Eighth*, the student's writing samples clearly reflect that the student's ADHD impacts the student's learning and educational performance in the classroom; and the student continue to process information; and write phonetically.[119]

*Ninth and Final*, in October, 2009 the parent referred the student for initial evaluation, to determine the student's eligibility for special education services.[120] The 120 days deadline for conducting initial evaluations and determining the student's eligibility for special education services expired on February, 2010. On December 4, 2009, the Respondent conducted an Educational Evaluation; and on January 10, 2011 determined the student ineligible for special education services.[121]

More than one year and three months lapsed from the date the parent initially referred the student for evaluation and the date of the eligibility decision, which is far beyond February, 2010, expiration of the 120 day deadline, for conducting initial evaluations and rendering an eligibility decision.

The Hearing Officer finds that this student satisfies the eligibility criteria as a student with an Other Health Impairment (OHI), because the student exhibits a heightened alertness to environmental stimuli that result in limited alertness with respect to the educational environment that is due to acute health problems such as Attention Deficit Hyperactivity Disorder (ADHD).[122]

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[118] Testimony of special education teacher.
[119] Petitioner's Exhibits 4 and 10.
[120] Petitioner's Exhibit 12.
[121] Id.
[122] IDEA, 34 C.F.R. Section 300.8 (c) (9). Attention Deficit Hyperactivity Disorder (ADHD) is a spectrum disorder and some students may require special education if their ADHD is severe. Students with ADHD may be eligible for services under the Individuals with Disabilities Education Improvement Act, rather than solely under Section 504 of the Rehabilitation Act, however the criteria for eligibility determinations, is unclear in the law. The distinction between requirements to accommodate a student's disability under a 504 plan and special education, is also unclear. What is clear is that a student is entitled to a free and appropriate public education, whether it's under special education or a 504 plan. ADHD is not a specific disabling condition under the IDEA, although a student with ADHD may be eligible as "other health impaired," or another specific disability, by reason of the condition(s). In addition, diagnosis of ADHD, does not automatically entitle a student to special education services under the IDEIA. The ***student's disability must adversely affect the student's educational performance/learning***, which would place the student's disability, within the scope of IDEIA's "other health impairment", provision. A student with ADHD may also be eligible under Section 504 (or the ADA), even if ineligible under IDEIA. Under 504 the determining factor for eligibility is whether the student's ADHD is sufficiently severe enough to ***substantially limit*** a major life activity, such as learning or effectively participating in school activities. The LEA must consider the student's overall performance. This includes academics, testing results, day-today performance, frequency of behavioral issues, and how the ADHD related behaviors impact the student's attendance and learning. Furthermore, if a child is on medication, to address the disability, and it controls the student's behavior and he/she is able to focus, he/she would not qualify for 504 or need accommodations. A student who suffers from a substantial limitation will be unable to perform a major life activity that the average person in the general population can perform. Significantly restricted as to the condition, manner or duration under which he can perform a particular major life activity, as compared to the condition, manner or duration under which the average person in the general population can perform that major life activity. As indicated supra, ADHD is a broad disorder and certain students may require special education if their ADHD is severe. The determination is whether the student requires special education, as a result of having ADHD. Because students with ADHD spend the majority of their time in general educational settings, it is critical to ensure that teachers are using

The student's teachers grade the student's assignments and tests on a curve, to compensate for the student's academic deficits; however, the student's educational history, report cards, evaluations, standardized tests, work samples, teacher and parent reports, clearly support a finding that this student presents with ADHD, and the ADHD has had, and continues to have, an adverse impact on the student's learning and educational performance in the classroom.[123]

The student's ADHD impacts the student's ability to manage behavior, tasks that require extended memory, retrieval of information, visual perception, visual integration, fluency in math, spelling, recall and retention, and the like.[124] The Respondent erred in its determination that there is no educational impact identified in the student's grades, test scores or current educational testing, therefore, the student does not qualify for special education services.

The Hearing Officer finds that the student's educational history, report cards, evaluations, standardized tests, work samples, teacher and parent input, clearly support a finding that this student satisfies the eligibility criteria as a student with a specific learning disability in written expression and mathematics; because the student has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that manifests itself in the imperfect ability to listen, think, write, spell, and to do mathematical calculations.[125]

The Hearing Officer also finds that according to the Reynolds Childhood Depressive Scale self-test the student's responses indicated severe depressive symptoms.[126] It appears that the student may satisfy the eligibility criteria as a student with an emotional disturbance because the student exhibits one or more the following characteristics; and to a marked degree, that adversely affects the student's educational performance:

1) inappropriate types of behaviors or feelings under normal circumstances;
2) a general pervasive mood of unhappiness or depression; and
3) develop physical symptoms and fears associated with personal and school problems.[127]

Additional testing is required to rule out depression, and determine whether the student qualifies for special education services, as a student with an emotional disturbance.[128]

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current scientific information to teach these students. Students with ADHD have invisible disabilities, and appear as normal children, however, often don't have adaptive mechanisms. These children often exhibit signs of inattentiveness, hyperactivity, and impulsivity, which are all symptoms, identified in this student's behavior.

[123] Testimony of parent, independent Psychologist, Petitioner's Exhibits 2 and 6.

[124] Testimony of independent Psychologist.

[125] IDEA, 34 C.F.R. Section 300.8 (c)(10)(i).

It appears that the student has signs of dyslexic dysgraphia. Dysgraphia is a deficiency in the ability to write, primarily in terms of handwriting, however, perhaps also in terms of coherence. It occurs regardless of the ability to read and is not due to intellectual impairment. Individuals with dysgraphia usually can write on some level, and often lack other fine motor skills and may be cross dominant, finding certain tasks difficult. They can also lack basic grammar and spelling skills (for example, having difficulties with the letters p, q, b, and d), and often will write the wrong word when trying to formulate thoughts on paper. The child may inappropriately size and spaces letters, or write wrong or misspelled words despite thorough instruction. Children with this disorder may have other learning disabilities, however, have no other social or academic problems. Dysgraphia may also be diagnosed in a person with ADHD. The DSM IV identifies dysgraphia as a Disorder of Written Expression", as "writing skills that are substantially below those expected given the person's age, measured intelligence, and age appropriate education. Further testing by a Reading Specialist and Speech Language Pathologist trained in evaluating and treating dyslexic dysgraphia, is warranted to rule out dyslexic dysgraphia.

[126] Petitioner's Exhibit 2, page 8.

[127] IDEA, 34 C.F.R. §300.(c )(4)(i)(C)(D)and (E).

[128] IDEA, 34 C.F.R. Section 300.8 (c)(10)(i).

22. **Failure to Comprehensively Evaluate the Student in All Areas of Suspected Disability**

The Hearing Officer finds that in conducting initial evaluations on December 4, 2009, the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), because it failed to evaluate the student in all areas of suspected disability and failed to ensure that the evaluations were sufficiently comprehensive to identify all of the student's special education needs, by conducting a Comprehensive Psychological Evaluation to address the student's academic difficulties in writing and mathematics, and Occupational Therapy Evaluation, to address the student's writing.

*First*, it is undisputed that since pre-kindergarten the student had difficulty with retention and recall, writing and reversing letters, and mathematics. In October, 2009 the parent referred the student for evaluation to determine the student's eligibility for special education services.[129] Initial evaluations must be completed no later than February 2010, within 120 days of the date the student was referred for evaluation.

On December 4, 2009, within 120 days of the date the student was referred for evaluations, the Special Education Coordinator (SEC) completed an initial evaluation consisting of a Woodcock Johnson III Academic Test of Achievement, to determine whether the student is a student with a disability, eligible to receive special education services under the IDEA.[130] However, the Respondent failed to ensure that in completing initial evaluations, the student was evaluated in all areas of suspected disability (i.e. ADHD and learning disability); and that the evaluations completed were sufficiently comprehensive to identify all of the student's special education needs; which failed to occur.

The Educational Evaluation was the only initial evaluation completed, and there were no evaluations to assess the student's cognitive functioning to determine whether the student presents with a learning disability, or the student's social/emotional, and fine motor functioning. Instead, the Respondent recommended that the parent obtain comprehensive evaluations, independently.[131]

The Respondent also failed to ensure that the initial evaluation (i.e. WJ-III Academic Test of Achievement) was administered by an individual, professionally trained and qualified, to administer and interpret educational evaluations, for the purpose of determining a student's eligibility for special education services.

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It appears that the student has signs of dyslexic dysgraphia. Dysgraphia is a deficiency in the ability to write, primarily in terms of handwriting, however, perhaps also in terms of coherence. It occurs regardless of the ability to read and is not due to intellectual impairment. Individuals with dysgraphia usually can write on some level, and often lack other fine motor skills and may be cross dominant, finding certain tasks difficult. They can also lack basic grammar and spelling skills (for example, having difficulties with the letters p, q, b, and d), and often will write the wrong word when trying to formulate thoughts on paper. The child may inappropriately size and space letters; or writes wrong or misspelled words despite thorough instruction. Children with this disorder may have other learning disabilities, however, have no other social or academic problems. Dysgraphia may also be diagnosed in a person with ADHD. The DSM IV identifies dysgraphia as a Disorder of Written Expression", as "writing skills that are substantially below those expected given the person's age, measured intelligence, and age appropriate education. Further testing by a Reading Specialist and Speech Language Pathologist trained in evaluating and treating dyslexic dysgraphia, is warranted to rule out dyslexic dysgraphia.

[129] Testimony of parent and Petitioner's Exhibit 12.

[130] Testimony of SEC, parent, and Petitioner's Exhibit 7.

[131] Testimony of parent.

On January 10, 2011, the multidisciplinary development team (MDT) determined the student ineligible for special education services, without the benefit of comprehensive evaluations, designed to determine whether the child is a child with a disability, and the educational needs of the child.[132]

On March 22, 2011 and March 31, 2011, the Respondent completed an Occupational Therapy Evaluation.[133] However, the evaluation was completed more than one year and 3 months later, far beyond the 120 day timeline for conducting initial evaluations.[134]

*Second*, the Respondent is aware that there is a family history of dyslexia and parent consistently expressed concern that the student may present with dyslexia; and in the March, 2011 Occupational Therapy Evaluation, the student's general education teachers expressed serious concern that the student's frequent spelling errors, letter and number reversals, and problems with rudimentary skills, may be indicia of early signs of dyslexia, such as dysgraphia, warranting further testing.

In addressing parent and teacher concerns regarding dyslexia, the Respondent's Psychologist completed an informal dyslexia screening and classroom observation, however, the Respondent failed to conduct formalized testing in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, and most likely to yield valid and reliable data, to rule out dyslexia or dyslexia dysgraphia.[135] The Respondent also failed to refer the student to a Reading Specialist or Speech/Language Pathologist, trained in evaluating students exhibiting processing and writing deficits, and symptoms of dyslexia and dyslexia dysgraphia, to address these concerns. [136]

*Third and final*, the Reynolds Childhood Depression Scale self-test results indicate severe depressive symptoms; and the student's social-emotional development has been significantly impacted by self-regulatory difficulties and perceived loss. However, the Respondent failed to conduct additional testing to address the student's depression.[137]

23. **Failure to Evaluate the Student Utilizing a Variety of Assessment Tools and Strategies**

The Hearing Officer finds that in conducting initial evaluations, the Respondent failed to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information regarding the child, including information provided by the parent, to assist the Multidisciplinary Development Team (MDT) in determining whether the child is a child with a disability under the IDEA and the educational needs of the child.

The parent reports a family history of dyslexia; and the student's teachers report that the student's frequent spelling errors, letter and number reversals, and problems with rudimentary skills may be early signs of dyslexia, such as dysgraphia, which may warrant further testing.[138] The Respondent decided to conduct an informal dyslexic screening instead of formalized testing specifically designed to determine whether the student presents with dyslexia or dyslexia dysgraphia, without involving parent in this decision or evaluation process.

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[132] Petitioner's Exhibit 11.
[133] Petitioner's Exhibit 5.
[134] Petitioner's Exhibit 5.
[135] Testimony of parent.
[136] Petitioner's Exhibit 5, page 4, testimony of parent, testimony of SEC, testimony of DCPS Psychologist.
[137] Testimony of parent and independent Psychologist.
[138] Petitioner's Exhibit 5.

The Respondent also decided that the initial evaluations would consist of a WJ-III Academic Test of Achievement and not full and individual initial evaluations, sufficiently comprehensive to identify all of the student's special education needs. This decision was also made without involving parent in the decision.[139]

The Respondent failed to carefully consider information gathered from the classroom observations; and thoroughly review the students' work samples which clearly reflect that the student has serious deficits in written language and expression.[140]

The Respondent also failed to carefully consider the student's educational history, parent teacher input and reports that the student requires more support than currently received in the classroom, the students' actual classroom performance and functional needs; and the fact that although the student required and received after school tutoring, and classroom interventions, modifications, and supports which consistently prove unsuccessful.

The Respondent failed to carefully consider the findings and recommendations in the August 26, 2010 Comprehensive Psycho-Educational Evaluation; and instead relied solely upon results of the WJ-III Academic Test of Achievement completed by the SEC, the Psychologist's informal dyslexic screening and classroom observation, DC-CAS and DIEBELS test results, and in rendering the eligibility determination.[141]

The Respondent also determined the student ineligible for special education services because the academic impact was not enough to qualify the student for special education services; and the student's test scores were not 1.5 of 2.0 deviations from the national norm. These are not criteria of the IDEA in determining a student's eligibility for special education services, however, are based on eligibility guidelines established by the Respondent.

24. **Failure to Carefully Consider the Independent Educational Evaluation**

The Hearing Officer finds that in determining whether the student is disabled and eligible to receive special education services under the IDEA, the Respondent failed to carefully consider findings and recommendations in the Educational Evaluation included in the independent Comprehensive Psycho-educational Evaluation report dated October 25, 2011.

The independent Educational Evaluation reflects that although a 4th grade student, the student was functioning at the 1st grade level, and requires specialized instruction in spelling; extended time and accommodations to complete mathematics and written language tasks.[142] The student's weaknesses were in spelling (1.7 GE), writing fluency (1.8 GE), and math fluency (1.3 GE), which were below average scores of 77, equaling first grade equivalency.[143] Results of the norm-based rating scales completed by parent generated clinically significant cognitive problems and inattention.[144]

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[139] Testimony of Respondent's Psychologist.
[140] Petitioner's Exhibit 10.
[141] Testimony of SEC.
[142] Petitioner's Exhibit 2, page 10.
[143] Petitioner's Exhibit 2.
[144] Id.

Teacher ratings indicate clinically significant hyperactivity/impulsivity, inattention, learning problems, learning problems/executive functioning.[145] However, the Respondent disregarded this information; relied upon the data included in the Educational Evaluation completed by the SEC on December 4, 2009; and determined the student ineligible for special education services.[146]

The Respondent also failed to address discrepancies in the evaluation data included in the independent educational evaluation; and data included in the Educational Evaluation completed by Respondent on December 4, 2009, prior to rendering the eligibility determination.

## IIX. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as the Hearing Officer's review of governing legal authority and case law, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.[147] Under the IDEA, the Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[148]

2. The Individuals with Disabilities Education Act ("IDEA")[149] is the federal statute governing the education of students with disabilities.[150] The IDEA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. *See, 20 U.S.C. §1400(d) (I) (A)*.

3. The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State involved; and the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.[151]

   In the District of Columbia, the local education agency (LEA) must ensure that all children with disabilities, between the ages of 3 and 21, have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

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[145] Id.
[146] Petitioner's Exhibit 2, pages 6 and 7.
[147] *Shaffer v.1 Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.
[148] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review).
[149] The IDEA is reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) Public Law 108-446 and 20 U.S.C. §1400 et seq..
[150] The Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.
[151] IDEA, 34 C.F.R. §300.17(d).

25. **Failure to Identify, Locate, Evaluate, and Determine Student's Eligibility for Special Education Services in a Timely Manner**

***"Child Find".***

According to the "Child Find" provisions of the IDEA, the State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, and who are in need of special education and related services, are identified, located, and evaluated.[152] Subparagraph (c) of this provision provides that "Child find" must also include children, who are suspected of being a child with a disability under Section 300.8, or has reason to suspect that the child has a disability and needs special education services, even though the child is advancing from grade to grade.[153]

To ensure that all children residing in the State before the initial provision of special education services to a child, the agency must conduct full and individual initial evaluations. Evaluations consist of a series of tests designed to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. *See, IDEA, 34 C.F.R. §300.15.* The IDEA also provides that consistent with the consent requirements in Section 300.300, either the parent of a child or the public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.[154]

According to the recent independent Comprehensive Psycho-educational Evaluation, this student presents with ADHD, which classifies as an Other Health Impairment (OHI) disability, under IDEA. However, a diagnosis of ADHD, does not automatically entitle a student to special education services under the IDEA. The ***student's disability must adversely affect the student's educational performance/learning***, which would place the student's disability, within the scope of IDEIA's "other health impairment", provision.

A student with ADHD may also be eligible under Section 504 of the Rehabilitation Act of 1973, even if ineligible under IDEA. Under 504 the determining factor for eligibility is whether the student's ADHD is sufficiently severe enough to ***substantially limit*** a major life activity, such as learning or effectively participating in school activities.

The Hearing Officer must consider whether the local education agency (LEA) has a 504 plan in place for the student; whether the plan is meeting the educational goals and objectives of the student; or whether the student continues to struggle even with the support provided in the 504 plan, and if so whether the LEA referred the student to special education for an evaluation.

The record reflects that the LEA developed a 504 plan for the student on April 1, 2011, and the 504 plan is not meeting the educational goals and objectives of the student. During the last two (2) school years, one on one instruction with the special education teacher, accommodations, modifications, and supports provided under the 504 plan proved unsuccessful; and insufficient to meet the unique needs of this student. As a result, the student made no academic progress, requires more support than currently available under the 504 plan, and continues to struggle academically.

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[152] IDEA, at 34 C.F.R. Section 300.111.

[153] IDEA, 34 CFR 300.111.

[154] IDEA, at 34 C.F.R. §300.301(b).

The Respondent argues that there is no educational impact, or a significant amount of adverse impact reflected in the student's grades, test scores, or current educational testing, or a sufficient level of educational impact reflected in the student's grades, test scores or current educational testing, to qualify the student for special education services under the IDEA, however, these arguments are unsubstantiated; are contrary to the evidence presented in this case; and the law. There is no requirement in the IDEA that in determining a student's eligibility for special education services, there must be evidence of significant or a certain degree of adverse impact on the student's learning or educational performance, to qualify for special education services.[155]

Whether under the IDEA or 504 of the Rehabilitation Act of 1973, in determining a student's eligibility for services, the LEA must consider the student's overall performance, including the student's academic, developmental, and functional performance, test results, day to day performance, frequency of behavioral issues, the student's educational history, classroom observations, parent and teacher input, test results, evaluations, how the ADHD related behaviors impact the student's attendance and learning, and whether the student requires special education, as a result of having ADHD; which was not considered in determining this student's eligibility for services.

In this instance, the Respondent merely considered the student's academic performance in determining the student's eligibility for special education services, and failed to consider the student's overall performance, including the student's functional needs; ability to function effectively in the classroom; and whether the student requires special education, as a result of having ADHD.

The Respondent failed to dispute that since pre-kindergarten the student exhibited symptoms of ADHD and these symptoms adversely impacted the student's learning and educational performance in the classroom. Therefore, the Respondent was knew that the student struggled in the classroom, was suspected of having a disability, the ADHD harmed the student's ability to learn, however, it repeatedly failed to identify, locate, and evaluate the student to determine whether the student is a candidate for special education services. The DCPS should have acted upon the likelihood that this student had a disability, and may be entitled to special education services, however failed in its obligation under the Child Find provisions of the IDEA.

The student's ADHD adversely impacts the students' learning and educational performance, and the student requires special education services as a result of the ADHD; which places the student's ADHD disability within the scope of the IDEA's "other health impairment", provision. The LEA erred in its determination that this student is ineligible for special education services; and denying the student the services she is entitled to receive under the IDEA, deprives this student educational benefit.

***Initial Evaluations.***

The IDEA provides that consistent with the consent requirements in Section 300.300, either the parent of a child or the public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.[156]

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[155] *See, Mr. *I v. Me. Sch.Admin.Dist.No. 55, 480 F.3d 1 (1st Cir. 2007).*
[156] IDEA, at 34 C.F.R. §300.301(b).

An initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation; or if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.[157] The District of Columbia provides that initial evaluations must be completed within a reasonable period of time, however, no later than 120 days of receiving a written referral and parental consent to proceed.

The parent requested initial evaluation of the student in October, 2009, therefore, it is required that the LEA obtain parent's informed written consent and complete initial evaluation of the student within a reasonable period of time, and no later than February, 2010, within the 120 day timeframe.[158]

The Respondent completed an Educational Evaluation on December 4, 2009, in a timely manner, however, the Respondent failed to comply with IDEA's evaluation procedures, by evaluating the student in all areas of suspected disability, and ensuring that the evaluations were sufficiently comprehensive to identify all of the student's special education needs. The Respondent also completed an Occupational Therapy Evaluation on April, 1, 2011, far beyond February, 2010, the due date for completing initial evaluations.

It is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that during the 2009/10 and 2010/11 school year, the District of Columbia Public Schools failed to identify, locate, evaluate, and determine the student's eligibility for special education services within 120 days of parent's October , 2009 request for initial evaluations and an eligibility determination, in violation of the IDEA at 34 C.F.R. §§300.301(a)(b)(c)(1)(i)(ii) and (2)(i)(ii), 300.304 (c)(4) and (6), 300.111; and DCMR, Title 5, Chapter 30, §3005.2 and D.C. Code, Chapter 25B, §38-2561.02(a).

26. **Failure to Comprehensively Evaluate the Student in All Areas of Suspected Disability**

According to the "Child Find" provisions of the IDEA, the State must have in effect policies and procedures to ensure that all children with disabilities residing in the State, and who are in need of special education and related services, are ***identified, located, and evaluated.***[159]

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[157] IDEA, 34 C.F.R. § 300.301(b) and (c).

[158] The D.C. Municipal Regulation, Title 5, Chapter 30, §3005.2 provides that the IEP team shall conduct an initial evaluation of a child *within a reasonable period of time of receiving a written referral and parental consent* to proceed and within the timelines consistent with Federal law and D.C. Code §38-2501. (2006). The District of Columbia Code, Chapter 25, §38-2501 (a), entitled "Special Education and Assessment", established a 120 day timeframe within which initial evaluations and assessments must be completed for students who may have a disability and may require special education services; applicable to all students, without distinguishing between students in *public or non-public schools.* The District of Columbia repealed D.C. Code, §38-2501(a), and failed to replace the section with another section establishing a timeframe for completing initial evaluations/assessments for students in public schools. D.C. Code, Chapter 25B, which is entitled "Placement of Students with Disabilities in Nonpublic Schools" is ambiguous. The *title* of the Chapter 25B leaves readers unclear whether the Chapter and its underlying provisions, only apply to students in nonpublic schools; or whether Chapter 25B, §38-2561.02 (a) establishes the timeline for DCPS to complete initial evaluations for all students, regardless of whether a student attends a public or non-public school. However, a review of recent Federal District Court decisions provides this Hearing Officer the necessary clarification. It is clear that the Federal District Court interprets Chapter 25B, §38-2561.02 (a), as establishing the timeline for DCPS to complete initial evaluations for all students, regardless of whether the students attend public or non-public schools. It is equally clear that the Federal District Court interprets Chapter 25B, §38-2561.02 (a); as requiring DCPS to 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 is referred for an evaluation or assessment. *See, Dorros v. District of Columbia, 510 F.Supp.2d 97 (2007); Integrated Design and Electronics Academy Public Charter School v. McKinley, 570 F.Supp.2d 28 (2008); Jones ex rel. A.J. v. District of Columbia, 109 LRP 52722 (2009).*

[159] IDEA, at 34 C.F.R. Section 300.111.

Subparagraph (c) of this provision provides that ***"Child find"*** must also include children, who are ***suspected*** of being a child with a disability under Section 300.8, or has reason to suspect that the child has a disability and needs special education services, even though the child is advancing from grade to grade.[160]

To ensure that all children residing in the State before the initial provision of special education services to a child, the agency must conduct full and individual initial evaluations. Evaluations consist of a series of tests designed to determine whether a child has a disability and the nature and extent of the special education and related services the child needs. *See, IDEA, 34 C.F.R. §300.15.*

A full and comprehensive initial evaluation of a child is an integral part of developing an IEP for a student, which is the reason the IDEA at 34 C.F.R. §300.301(a) requires public education providers to conduct a full and individual initial evaluation of a child. *See, T.X. ex rel. Skrine v. District of Columbia, 2007 WL 915227 (D.D.C.)*.

It is also the reason that IDEA, 34 C.F.R. §300.304(c) (4) and (6) provides that in evaluating a child, the public agency must ensure that the child is assessed in ***all*** areas related to the ***suspected*** disability; and that the evaluations are ***sufficiently comprehensive*** to identify ***all*** of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; which failed to occur in this matter.

It is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that in conducting the initial evaluations, the Respondent failed to ensure that the student was assessed in ***all areas related to the suspected disability***, by conducting a Comprehensive Psychological Evaluation and Occupational Therapy Evaluation, in violation of the IDEA, at 34 C.F.R. §300.304 (c)(4). It is also the Hearing Officer's decision that the Petitioner satisfied its burden by proving that in conducting the initial evaluations, the Respondent failed to ensure that the evaluations were ***sufficiently comprehensive*** to identify all of the student's special education and related services needs, in violation of IDEA, 34 C.F.R. §300.304 (c) (6).

27. **Failure to Evaluate the Student Utilizing a Variety of Assessment Tools and Strategies**

It is the decision of the Hearing Officer that the Petitioner satisfied its burden by proving that in conducting the Woodcock Johnson III evaluation to determine whether the child is a child with a disability, and the educational needs of the child, it failed to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information regarding the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability under §300.8; in violation of the IDEA, at C.F.R. §300.304 (b)(1)(i).

[160] IDEA, 34 CFR 300.111.

28. **Failure to Carefully Consider the Independent Educational Evaluation**

The IDEA provides that if the parent obtains an independent educational evaluation and shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.[161]

The record reflects that the Respondent reviewed and commented on the independent Educational Evaluation, and did not dispute the diagnosis of ADHD, however, failed to adopt the findings and recommendations, because it disagreed with the data in the independent educational evaluation which scored the student lower than the data in its evaluation; which served as the basis for the evaluator's finding that the student has ADHD, the ADHD adversely impacts the student's learning, and the student presents with a learning disability in spelling requiring special education services. [162]However, prior to rendering the eligibility determination, the Respondent failed to address the discrepancies between the data in the independent educational evaluation and its educational evaluation. Instead, it relied upon the data in its evaluation, and determined the student ineligible for special education services.

The Respondent failed to consider results of the independent Educational Evaluation, as intended and contemplated by the IDEA. For these reasons it is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that the District of Columbia Public Schools failed to consider the independent Educational Evaluation obtained by the parent, in its decision of whether the student is disabled and eligible to receive special education services under the IDEA, in violation of the IDEA, at 34 C.F.R. §300.502 (c)(1).

## IX. Free Appropriate Public Education

It is the Hearing Officer's decision that Petitioner satisfied its burden of proof by presenting evidence that the Respondent failed to comply with the procedural requirements of the IDEA in evaluating the student to determine the student's eligibility for special education services; and that the violations impacted the substantive rights of the parent and student.

The procedural violations also occurred over two (2) school years, thus, they are to such an extent that the violations impeded the child's right to a free and appropriate public education; significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; and caused a deprivation of educational benefit to the student.

It is also the Hearing Officer's decision that the Respondent failed to comply with the Child Find provisions of the IDEA, representing a substantive violation, and that such violation seriously infringed upon the parent's opportunity to provide "meaningful" input in all decisions regarding the student's education, and the provision of a FAPE to the student.[163]

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[161] IDEA, 34 C.F.R.§300.502(c)(1).
[162] Testimony of SEC and DCPS Psychologist.
[163] *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

For these reasons, it is the decision of the Hearing Officer that the student was denied a FAPE; and is entitled to compensatory education services for procedural and substantive violations of the IDEA, occurring during the 2009/10 and 2010/11 school years.

## X. COMPENSATORY EDUCATION SERVICES

Compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that the student is receiving only a de minimis benefit and fails to correct the situation, as in this case. *M.C. on behalf of J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d. Cir. 1996).*

According to *Mary McLeod Bethune Day Academy PCS v. Terri Bland, Civil Action No. 07-1223 (2008)*, a compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA.

Compensatory education is also part of the court's resources in crafting appropriate relief." *See, Reid v. District of Columbia, 401 F.3d 516, 523 (D.C. Cir. 2005)*. Its purpose is to help the child make the progress that he/she would have made if an appropriate program had been available. The specific services provided the student must be tailored to the student's needs.

Under the theory of compensatory education, courts and hearing officers may award "educational services...to be provided prospectively to compensate for a past deficient program." *See G. ex rel. RG v. Fort Bragg Dependent Schs. 343 F.3d 295, 308 (4th Cir. 2003)*.

The IDEA empowers Hearing Officers with considerable discretion when fashioning a remedy. *See, 20 U.S.C. § 1415(i) (2) (C) (iii)* (the Hearing Officer "shall grant such relief as the Hearing Officer determines is appropriate.") However, a Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides him with "insight about the precise types of education services [the student] needs to progress." *Branham, 427 F.3d at 12 (2005)*.

Relevant evidence includes "the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive environment." Id. In *Nesbitt,* the Court found that an "award was not adequately individualized or supported by the record", when the Hearing Officer was not provided with any information regarding the student's current grade level of functioning.

According to *Reid* a compensatory education "award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." Reid, 401 F. 3d at 524. *(D.C. Cir. 2005)*. This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity."

The amount of compensatory education is calculated by finding the period of deprivation of special education services; and excluding the time reasonably required for the school district to rectify the problem. *M.C. v. Cent. Reg'l. Sch. Dist., 81 F.3d at 397 (3rd Cir. 1996).*

The crafting of an award of compensatory education under IDEA simply cannot be nebulous; and an arbitrary compensatory education award will never pass muster under the *Reid* standard. The Hearing Officer must engage in a fact intensive analysis that is qualitative rather than quantitative. *Branham v. D.C., 427 F.3d 7, 11 (D.C. Cir 2005); Reid, 401 F.4d at 524*.

According to *Stanton v. District of Columbia, 680 F. Supp. 2d 201 (D.C. Cir. 2010),* once a Hearing Officer finds that there was a denial of a FAPE, the Hearing Officer is obligated to craft an appropriate compensatory education award. The May 26, 2011 prehearing order required the Petitioner to include a compensatory education plan in its disclosures and present evidence of compensatory education at the hearing, however, the Petitioner failed to provide a compensatory education plan or present evidence of compensatory education. In its written closing statement, the Petitioner's Attorney request 52 hours of independent afterschool tutoring.

The Hearing Officer finds that the evidence of record is sufficient to craft an appropriate compensatory education award for this student; and the student should not be penalized for the Attorneys' failure to provide a compensatory education plan or evidence of the nature and amount of compensatory education services the student should receive should there be a finding of denial of a FAPE.

The following compensatory education award is appropriately tailored to the student's unique needs; reasonably calculated to provide the student educational benefits that likely would have accrued had the violations not occurred; and is intended to mitigate any harm the student may have suffered as a result of the violations:

**(1) Individualized Education Program (IEP)**

Within fifteen (15) school days of the date of this decision the Respondent shall convene a MDT/IEP eligibility team meeting with the parent and/or parent's representative to develop an appropriate IEP for the student to include 15 hours of specialized instruction, outside the general education setting; classroom and testing accommodations, modifications, and supports.

The student's IEP shall reflect the disability classification of Multiple Disabilities (MD) including: Other Health Impaired, specifically identified as ADHD, and Learning Disabled. The student's IEP shall include goals and objectives addressing the student's deficits in mathematics, reading/language arts, and math and writing fluency, spelling, and written expression.

**(2) Behavioral Support Services**

The student's IEP shall include two (2) hours of individual counseling, per week, to assist the student in processing her discordant feelings regarding his academic difficulties; learn effective measures to express when needed, understand how her disabilities interfere with her ability to function in the classroom; and assist the student in addressing her behavior and symptoms of depression.

**(3) Independent Tutoring Services**

The Respondent shall fund 52 hours of independent tutorial services for the student to be provided by the Lindamood-Bell Learning Center; to remediate the student's deficits in mathematics and written expression at the rate of per hour, available to the student through the end of the 2011/12 school year.

The tutorial services may be provided at the student's school, at the end of each school day; at a Lindamood-Bell Learning Center; and/or at a Summer Clinic; and the student has until the end of the 2011/12 school year, to utilize the tutorial services. The Respondent shall provide the student transportation for the student to attend the Lindamood-Bell learning center, after school tutoring, if the tutoring is not at the student's school, and/or Summer clinic.

**(4) Evaluations**

The Respondent shall fund an independent Occupational Therapy Evaluation, to address the student's difficulty with visual-motor and executive functioning skills and determine whether the student would benefit from occupational therapy services.

The Respondent shall fund an independent Speech Language Evaluation, to be conducted by a Speech Language Pathologist specifically trained to diagnose and treat dyslexia and dyslexia dysgraphia, to determine whether this student presents with these disorders.

The Respondent shall fund an independent Comprehensive Psychological Evaluation, by a professional qualified to assess the student's social emotional needs, and evaluate the student for depression.

Within ten (10) school days of receipt of the final independent evaluation, the Respondent shall convene an IEP team meeting with parent and parent's representative to review the evaluations and update the student's IEP, as appropriate, consistent with the findings and recommendations in the evaluation; discuss and determine the students' placement.

## XI. ORDER

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

1. **ORDERED** that the District of Columbia Public Schools shall implement and fund the student's compensatory education award identified on page s 29-30 of this decision; and it is further

2. **ORDERED**, that in the event of DCPS' failure to comply with the terms of this decision and order, Petitioner's Counsel will contact the Respondent's Compliance Case Manager, and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging the District of Columbia Public Schools failed to comply with this decision and order; and it is further

3. **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. The District of Columbia Public Schools shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

## XII. 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: *June 27, 2011*

*Ramona M. Justice*
Attorney Ramona M. Justice, Hearing Officer