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Office of Review and Compliance  
Student Hearing Office  
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**Confidential**

<b>STUDENT, through the legal guardian<sup>1</sup></b>	)	
	)	
<b>Petitioner,</b>	)	
	)	Complaint Filed: March 23, 2009
<b>v.</b>	)	
	)	Hearing Dates: April 27, 2009
<b>THE DISTRICT OF COLUMBIA</b>	)	May 1, 2009
<b>PUBLIC SCHOOLS</b>	)	
	)	Closing Arguments Submitted: May 6, 2009
<b>Respondent.</b>	)	
	)	

**HEARING OFFICER DETERMINATION**

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STUDENT HEARING OFFICE

<sup>1</sup> Personal identification information is provided in Attachment A.

## Jurisdiction

This hearing was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

## Introduction

Petitioner is the parent/guardian of a \_\_\_\_\_-year-old student ("Student") attending a District of Columbia Public High School. On March 23, 2009, Petitioner filed a Due Process Complaint Notice ("Complaint") alleging that the District of Columbia Public Schools ("DCPS") denied the Student a free, appropriate, public education ("FAPE") because DCPS failed to: (1) identify the Student as a student with a disability pursuant to its "child find" obligations under IDEIA; (2) review evaluations submitted by Petitioner to the Student's school and/or further evaluate the Student in all areas of his disability; (3) develop an individualized education program ("IEP") for the Student for the 2007-2008 and 2008-2009 school years; (4) develop a transition plan for the Student for the 2007-2008 and 2008-2009 school years; and (5) provide appropriate special education services and an appropriate placement for the Student during the 2007-2008 and 2008-2009 school years.

The remedies Petitioner sought include an order requiring DCPS to immediately convene an IEP meeting to: (1) review the Student's evaluations; (2) develop an IEP with appropriate specialized instruction; (3) develop a transition plan for the Student; and (4) determine appropriate related services for the Student. Petitioner also requested (1) an independent vocational assessment and a speech and language evaluation at DCPS expense; (2) compensation by DCPS for the evaluations that Petitioner obtained at her own expense; and (3) compensatory education in the form of post-secondary placement and/or support services and accommodations.

Counsel for DCPS filed a Response on April 2, 2009. The Response asserted that DCPS held a meeting of the Student Support Team ("SST") on September 22, 2008, at which the team developed academic instructional strategies to assist the Student with math and remembering concepts; and (2) the instructional strategies have been successful in allowing the Student to pass his math class with a grade of D+. The Response admitted that DCPS did not identify the Student as a child with a disability as defined by IDEIA and that no IEP was developed for the Student. The Response asserted that the Student was able to access the high school curriculum as evidenced by his completion of all of the requirements for obtaining a high school diploma, and thus the Student was not in need of special education and related services. Finally, the Response asserted that DCPS did not deny the Student a FAPE and the Student is not a child with a disability under IDEIA.

A prehearing conference took place on April 14, 2009. This Hearing Officer issued a prehearing order on April 27, 2009. The due process hearing was scheduled for 9:00 a.m. on April 27, 2009.

At the outset of the hearing, all exhibits were admitted, with the exception of Petitioner's Exhibits 6-7, letters to the Student's middle school written in 2004. These two documents were later admitted as corroborative evidence that Petitioner and the Student's physician notified DCPS of the Student's disability in 2004. The hearing was continued to May 1, 2009, for the conclusion of testimony. Counsel for Petitioner requested a continuance to provide written closing arguments, which was granted in a written order. Counsel for Petitioner and counsel for DCPS submitted their written closing arguments on May 6, 2009.

### **III. RECORD**

Due Process Complaint Notice, filed March 23, 2009;  
DCPS Response, filed April 2, 2009;  
Parent's Motion for Notices to Appear, filed April 8, 2009;  
Prehearing Order, issued April 27, 2009;  
Petitioner's Five-Day Disclosure, filed April 20, 2009 (Exhibits 1-19);  
DCPS Five-Day Disclosure, filed April 20, 2009 (Exhibits 1-6);  
Petitioner's Supplemental Disclosure, filed April 21, 2009 (Exhibit 20);  
Compact Disc of Hearing conducted on April 27, 2009;  
Petitioner's Letter Motion for Continuance, filed April 28, 2009;  
Interim Order on Continuance, issued May 1, 2009;  
Petitioner's Letter Motion for Continuance, filed May 1, 2009;  
Petitioner's Letter Motion for Continuance, filed May 1, 2009;  
Interim Order on Continuance, issued May 8, 2009;  
Compact Disc of Hearing conducted on April 27, 2009; and  
Compact Disc of Hearing conducted on May 1, 2009.

### **IV. ISSUES PRESENTED**

1. Whether DCPS denied the Student FAPE by failing to identify the Student as a student with a disability pursuant to its "child find" obligations under IDEIA;
2. Whether DCPS denied the Student FAPE by failing to review evaluations submitted by Petitioner to the Student's school and/or further evaluate the Student in all areas of his disability;
3. Whether DCPS denied the Student FAPE by failing to develop an individualized education program ("IEP") for the Student for the 2007-2008 and 2008-2009 school years;
4. Whether DCPS denied the Student FAPE by failing to develop a transition plan for the Student for the 2007-2008 and 2008-2009 school years; and
5. Whether DCPS denied the Student FAPE by failing to provide appropriate special education services and an appropriate placement for the Student during the 2007-2008 and 2008-2009 school years.

## V. FINDINGS OF FACT

1. The Student is a \_\_\_\_\_-year-old, \_\_\_\_\_ grade, general education student who attends a District of Columbia senior high school.<sup>2</sup> Both the Student and Petitioner reside in the District of Columbia.<sup>3</sup> The Student is due to graduate from high school with a diploma in June 2009. The Student has earned sufficient Carnegie units to earn a diploma.

2. The Student has attended his current high school since January 2006.<sup>4</sup> When the Student was in middle school, he refused to speak in class and his teachers thought he was not motivated to learn.<sup>5</sup> The real problem was that the Student had difficulty concentrating in the noisy classes.<sup>6</sup>

3. On June 10, 2004, Petitioner hand-delivered a letter to the DCPS counselor at the Student's middle school.<sup>7</sup> The letter requested psycho-educational testing of the Student.<sup>8</sup> The middle school principal assured Petitioner that DCPS would test the Student.<sup>9</sup> When the evaluations had not been conducted by the beginning of the following school year, the middle school special education coordinator ("SEC") instructed Petitioner to obtain the evaluation at her own expense.<sup>10</sup>

4. On September 21, 2004, upset about the refusal by DCPS to order evaluations for the Student, the Student's pediatricians wrote a letter to the middle school.<sup>11</sup> The letter requested an evaluation to determine whether the Student had a learning disability.<sup>12</sup> DCPS still refused to evaluate the Student.<sup>13</sup>

5. The Student's pediatrician, \_\_\_\_\_ referred the Student to a psychiatrist for an evaluation because he was so withdrawn.<sup>14</sup> The evaluator diagnosed the Student with attention deficit disorder and depression.<sup>15</sup>

6. The Student enrolled in high school in the fall of 2005.<sup>16</sup> He had difficulties adjusting to high school because he was not socially comfortable, his classes were loud and the

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<sup>2</sup> Testimony of Petitioner; Student.

<sup>3</sup> Testimony of Petitioner.

<sup>4</sup> *Id.*; Petitioner Exhibit 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Testimony of Petitioner.

<sup>10</sup> *Id.*

<sup>11</sup> Testimony of Petitioner; Petitioner Exhibit 7.

<sup>12</sup> Petitioner Exhibit 7.

<sup>13</sup> Testimony of Petitioner.

<sup>14</sup> Testimony of Petitioner.

<sup>15</sup> Petitioner Exhibit 14.

<sup>16</sup> Testimony of Petitioner.

students disruptive.<sup>17</sup> The Student had no friends or social life; he went straight to school and came straight home.<sup>18</sup> The Student also missed a lot of school.<sup>19</sup>

7. In the 2005-2006 school year, the Student's -grade year, the Student received five failing grades, five Ds, three Cs, and only one B, which was in health and physical education.<sup>20</sup> His grade point average that year was a 0.74 on a four-point scale.<sup>21</sup>

8. Petitioner discussed the Student's poor grades with the school counselor and the Student's teachers.<sup>22</sup> The teachers promised Petitioner that they would seek further action, but they never followed up with Petitioner.<sup>23</sup>

9. In November 2007, the Student's private Psychologist conducted a clinical psychological evaluation.<sup>24</sup> The psychologist diagnosed the Student with Asperger disorder (an autistic spectrum disorder), dysthymic disorder (mild, chronic, clinical depression), and a learning disorder not otherwise specified (likely in the areas of receptive, expressive, and written language).<sup>25</sup>

10. The 2007 evaluation by the Psychologist recommended that the Student be referred for psychological, educational, and language evaluations to further assess and elucidate "handicapping conditions" in these areas of academic performance.<sup>26</sup> The evaluation further recommended that a 504 plan be implemented to include the following: (a) reduction in workload for in-class and home-based assignments; (b) preferential seating in close proximity to the teacher and blackboard for near-point viewing, cueing, prompting, encouragement, and support; (c) option [sic] for undertaking alternative format assignments; (d) untimed and/or extended time for completion of tests and assignments; (e) one-to-one proctoring of testing for completion of tests and assignments in an external study area as necessary and appropriate; (f) provision of periodic tutorial support by the diagnostic and prescriptive teacher; (g) implementation of a behavioral management plan to, among other things, encourage regular and punctual attendance at school, continued presence throughout the full school day, adequate academic effort, critical self-monitoring, and self confidence as a learner, social peer, and student recipient of adult instruction and socialization, enhanced skill and motivation for establishing relationships with and resolving routine conflict among both peers and authority figures, and improved capability for coping with tension, stress, and change to include both incentives, rewards, and appropriate disciplinary or academic consequences.<sup>27</sup> The evaluation also recommended that the Student continue participation in family and individual therapy, and that

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> DCPS Exhibit 6 (school transcript showing 26.5 absences in the 2005-2006 school year).

<sup>20</sup> DCPS Exhibit 6.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Petitioner Exhibit 14.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

the Student be referred for pediatric and psychiatric evaluations to explore feasible medical intervention.<sup>28</sup>

11. Petitioner provided the 2007 clinical psychological evaluation by the Psychologist to the school counselor at the Student's current school.<sup>29</sup> The counselor promised to review the evaluation and discuss it with the SEC.<sup>30</sup>

12. During the 2007-2008 school year, the Student became more withdrawn and was unable to cope in his classes and in social situations.<sup>31</sup> The Student did not want to go to school and told his mother that he did not believe the school cared about his difficulties.<sup>32</sup> Nonetheless, the Student had a good attendance record, missing only seven days of school the entire year.<sup>33</sup> The Student's grades that year three Fs, five Ds, one C, and one B, for a 1.0 grade average.<sup>34</sup>

13. At the end of the 2006-2007 school year, after receiving no word from the counselor about the 2007 clinical psychological evaluation, Petitioner asked the counselor to evaluate the Student.<sup>35</sup> The counselor informed Petitioner that DCPS does not evaluate students just because their parents request evaluations.<sup>36</sup> The counselor informed Petitioner that a student with Asperger disorder graduated from the high school the previous year.<sup>37</sup>

14. During the 2007-2008 school year, the Student became more withdrawn and frustrated.<sup>38</sup> He had no friends at school.<sup>39</sup> The Student regularly attended school but sometimes skipped classes and went home early.<sup>40</sup> The Student told Petitioner that he wanted to drop out of school.<sup>41</sup>

15. The Student's grades improved during the 2007-2008 school year.<sup>42</sup> He earned three As, two Bs, one C+, three Cs, and only one F, for a 2.92 grade point average.<sup>43</sup> The Student did not have any math classes that year.<sup>44</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> Testimony of Petitioner.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Testimony of Petitioner, DCPS Exhibit 6.

<sup>34</sup> DCPS Exhibit 6.

<sup>35</sup> Testimony of Petitioner.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> DCPS Exhibit 6.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

16. In the current school year, the Student is at risk of failing math.<sup>45</sup> The Student's math teacher is working with the Student to try to improve his grade.<sup>46</sup>

17. During the 2007-2008 school year, Petitioner discussed the Student's depression with some of his teachers, especially his Spanish teacher.<sup>47</sup> During a conversation on back to school night, the Student's Spanish teacher asked Petitioner if the Student ever spoke because he never speaks in class.<sup>48</sup> When Petitioner informed the Spanish teacher that Duane had Asperger disorder, the Spanish teacher replied she had suspected that the Student had Asperger disorder because he was displaying that type of the behavior.<sup>49</sup> It was then that Petitioner learned that neither the school counselor, who had promised to review the Student's clinical evaluation, nor the special education coordinator had informed the Student's teachers of his Asperger diagnosis.<sup>50</sup>

18. At end of the Student's 11th grade year (2007-2008), Petitioner again asked the school counselor to evaluate the Student.<sup>51</sup> When her request was ignored, she obtained an independent psychological evaluation from the Student's Psychologist.<sup>52</sup>

19. This psychological evaluation, reported on September 4, 2008, reconfirmed that the Student's major diagnosis is Asperger disorder.<sup>53</sup> This disorder is a neurological disorder that manifests cognitively and socially.<sup>54</sup> It essentially presents as a significant impairment in social functioning based on student's age and intellectual functioning.<sup>55</sup> People with Asperger generally are oblivious to non-verbal social cues.<sup>56</sup> They generally have a significant paucity of social relationships both among peers and family.<sup>57</sup>

20. The Student is hyper-sensitive to social interaction.<sup>58</sup> In addition to his lack of social relationships at school and among his peers, the Student has an intermittent relationship with Petitioner.<sup>59</sup>

21. The Student also had a distant relationship with his teachers.<sup>60</sup> He did not feel comfortable in large group settings, including his classrooms.<sup>61</sup> He had difficulty concentrating

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<sup>45</sup> Testimony of Petitioner, Student.

<sup>46</sup> Testimony of Student.

<sup>47</sup> Testimony of Petitioner.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Petitioner Exhibit 15.

<sup>54</sup> Testimony of Psychologist.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

in class because of all the movement and noise in the classrooms at his high school and, as a result, was overwhelmed in the classroom setting.<sup>62</sup> The Student also avoided the school cafeteria because he could not concentrate due to the high level of noise and commotion.<sup>63</sup>

22. He would not eat during school.<sup>64</sup> After school, the Student refused to eat his mother's cooking, which was highly nutritious, insisting on eating only fast food or take out.<sup>65</sup> This restricted diet affected his ability to perform in school because he became lethargic and low energy.<sup>66</sup> In the 2008 psychological evaluation, the Psychologist diagnosed the Student with an eating disorder, not otherwise specified.<sup>67</sup>

23. In the 2008 psychological evaluation, the Student's secondary diagnosis was dysthymia, which is a mild to moderate clinical depression.<sup>68</sup> This contributed to the Student's refusing to go to school or get up in morning.<sup>69</sup> He was socially isolated, in a despondent mood, sad, distressed, and emotionally pained.<sup>70</sup> He has refused to go to family gatherings because he gets overwhelmed by gaiety and expression of emotions.<sup>71</sup> The Student was more depressed in this evaluation than in the 200 evaluation.<sup>72</sup>

24. At the time of the evaluation, the Student had recently lost a lot of weight.<sup>73</sup> He may have been malnourished due to his highly restricted diet.<sup>74</sup> He also has morbid thoughts of death and dying, which are risk factors for self-injury and suicide.<sup>75</sup> Morbid thoughts also are risk factors associated with Asperger disorder when people with this diagnosis mature without receiving any intervention and treatment.<sup>76</sup>

25. Finally, the 2008 evaluation found that the Student has a learning disorder not otherwise specified (nonverbal learning disorder) and a mathematics disorder (specific learning disability in mathematics).<sup>77</sup> His verbal IQ is 111.<sup>78</sup> However, his performance scale IQ is 89, and his full scale IQ is 101, which is in the fifty-third percentile.<sup>79</sup> The Student's verbal

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*; Petitioner Exhibit 15.

<sup>69</sup> *Id.*; Petitioner Exhibit 15.

<sup>70</sup> *Id.*; Petitioner Exhibit 15.

<sup>71</sup> *Id.*; Petitioner Exhibit 15.

<sup>72</sup> Testimony of Psychologist.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Petitioner Exhibit 15.

<sup>78</sup> Petitioner Exhibit 15, testimony of Psychologist.

<sup>79</sup> *Id.*



comprehension is quite well expressed with evidence of very superior knowledge of social conventions, and superior word knowledge, both relative strengths.<sup>80</sup> Abilities for verbal concept formation are in the high average range, while fund of information and numerical reasoning skills are in the average range.<sup>81</sup> These findings validate the Student's potential for well above-average academic performance and achievement in language-based subjects.<sup>82</sup>

26. The Student's memory skills are generally below expectations based on his overall level of cognitive functioning.<sup>83</sup> Speed of processing information similarly is below expectations and indicative of impaired visual perceptual organizational abilities.<sup>84</sup> The probability of this outcome increases when tasks are timed, expectations are unclear, a personally salient context is not readily evident, and competing and distracting stimuli from other students is perceived.<sup>85</sup> These factors affect his planning and organizational performance.<sup>86</sup>

27. The Student's reading skills are commensurate with his overall ability level and in the average range (53rd percentile).<sup>87</sup> His reading skills appear to reflect the level of performance across the verbal comprehension domain and are at the upper limits of the average range (73rd percentile).<sup>88</sup> Word recognition was at the upper limits of the average range, reading comprehension was soundly in the average range, and facility for phonetic decoding of "pseudo-words" was relative strength at the upper limits of the high average range.

28. The Student's mathematical skills are notably below the expected level of performance and in the low average range (13th percentile).<sup>89</sup> Numerical operations is a relative weakness in the low average range as are math reasoning skills.<sup>90</sup>

29. Petitioner hand carried the 2008 psychological evaluation to the guidance counselor at the Student's school.<sup>91</sup> The Guidance Counselor told Petitioner to take the evaluation to the SEC.<sup>92</sup> Petitioner left a copy of the evaluation with the SEC.<sup>93</sup> The SEC already had a copy of the Student's 2007 clinical psychological evaluation.<sup>94</sup> The SEC told

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Testimony of Petitioner, Psychologist.

<sup>92</sup> Testimony of Petitioner.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

Petitioner that the school psychologist would review the 2008 evaluation and that DCPS would hold a meeting to discuss it.<sup>95</sup>

30. On September 16, 2008, the Psychologist sent a fax to the school Principal requesting that a formal IEP meeting be convened to review both of the evaluations he had conducted of the Student.<sup>96</sup> In the fax, the Psychologist stated that the Student has multiple educational handicaps.<sup>97</sup> The Psychologist received no response to this fax.<sup>98</sup>

31. DCPS held an SST meeting on September 22, 2008.<sup>99</sup> The School Psychologist did not attend the meeting.<sup>100</sup> The team members present at the meeting -- two teachers, a counselor, and the Guidance Counselor -- asked Petitioner what she thought was wrong with her son.<sup>101</sup> Petitioner asked if any of the team members present at the meeting had read the Student's evaluations.<sup>102</sup> They all responded that only the psychologist had reviewed it.<sup>103</sup>

32. The only solutions presented at the SST meeting was that the Student's math teacher would help him with math.<sup>104</sup> Petitioner informed the team that the Student had social and learning disabilities that needed to be addressed but the team did not respond.<sup>105</sup> She told them that she was not satisfied with the meeting, did not understand that focus was only on math.<sup>106</sup>

33. The Math Teacher offered to writing out the notes for the math class so that the Student would not have to take notes.<sup>107</sup> The Student told Petitioner that, although the teacher wrote out the notes for the Student in math class, that this did not help his performance.<sup>108</sup>

34. On September 29, 2009, the Psychologist sent another fax to the Principal expressing his displeasure that DCPS held an SST meeting without all the required participants and without adhering to proper procedure.<sup>109</sup> He again requested "redress of these matters in a most expeditious manner."<sup>110</sup> The Psychologist never received a response from the Principal.<sup>111</sup>

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<sup>95</sup> *Id.*

<sup>96</sup> Petitioner Exhibit 8; Testimony of Psychologist.

<sup>97</sup> *Id.*

<sup>98</sup> Testimony of Psychologist.

<sup>99</sup> *Id.*, DCPS Exhibit 2.

<sup>100</sup> Testimony of Petitioner.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Petitioner Exhibit 9.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* The Principal testified that he never received the faxes.

35. On November 13, 2008, a representative of the DCPS Chancellor's Office emailed the Principal and the school psychologist requesting a response to Petitioner's request for a 504 plan for the Student.<sup>112</sup> The Chancellor's Office representative emailed the Principal again on November 21, 2008, requesting a response and stating that Petitioner did not receive a response from the Principal to the last email.<sup>113</sup> The Principal never responded to Petitioner.<sup>114</sup>

36. The Principal never read the notes from the SST meeting, and had no knowledge of the Student's evaluations until he met with Petitioner in fall 2008.<sup>115</sup> He was not aware that Petitioner had called him numerous times in the fall.<sup>116</sup> He did not remember receiving emails from the representative from the Chancellor's Office.<sup>117</sup> He also did not know that the Student's evaluations were not reviewed until he was questioned at the due process hearing.<sup>118</sup>

37. is a behavior analyst and former special education teacher certified in Virginia.<sup>119</sup> She is the founder and director of Alternative Behaviors, LLC.<sup>120</sup> She has worked with people with Asperger since the mid-1990s.<sup>121</sup> She taught kids with Asperger disorder as a teacher in Virginia and was a supervisor for Asperger students in Fairfax County, Virginia. In those capacities, she also developed IEPs for kids with Asperger disorder.<sup>122</sup>

38. Alternative Behaviors LLC offers social skills groups to assist people with Asperger disorder in developing social skills.<sup>123</sup> The programs provide coaching and mentoring for college students with Asperger disorder.<sup>124</sup> also works with teachers to be prepared to deal with a student with Asperger disorder and obtain accommodations for Asperger students in their college classes.<sup>125</sup>

39. leads a small a group of young men with Asperger that would be appropriate for the Student.<sup>126</sup> The group focuses on social skills and currently contains three young men between the ages of 17 to 25.<sup>127</sup> The group meets every other week and charges an hour for each participant.<sup>128</sup> The Student is interested in joining this group, and is confident it will help address his lack of social skills and teach him to develop

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<sup>112</sup> Petitioner Exhibit 10.

<sup>113</sup> Petitioner Exhibit 11.

<sup>114</sup> Testimony of Petitioner.

<sup>115</sup> Testimony of Principal.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Testimony of Molina, Petitioner Exhibit 19.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

relationships with peers, family, and teachers. It also will help the Student develop self-advocacy skills.<sup>129</sup>

## VI. CREDIBILITY DETERMINATIONS

This Hearing Officer found the testimony of all of the witnesses credible.

## VII. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.<sup>130</sup> Under IDEIA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.<sup>131</sup>

IDEIA requires DCPS to assure a "free appropriate public education" ("FAPE") for all disabled children.<sup>132</sup> A free, appropriate public education "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."<sup>133</sup> DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."<sup>134</sup>

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.<sup>135</sup> In other words, an IDEA claim is viable only if those procedural violations affected the student's substantive rights. *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Krivant v. District of Columbia*, 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").<sup>136</sup>

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<sup>129</sup> *Id.*; Testimony of Student.

<sup>130</sup> *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

<sup>131</sup> 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

<sup>132</sup> 20 U.S.C. § 1412(1).

<sup>133</sup> *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).

<sup>134</sup> 34 C.F.R. § 300.101.

<sup>135</sup> 20 U.S.C. § 1415 (f)(3)(E)(ii).

<sup>136</sup> *See also, C.M. v. Bd. of Educ.*, 128 Fed. Appx. 876, 881 (3d Cir. 2005) (per curiam) ("[O]nly those procedural violations of the IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable."); *M.M. ex rel. D.M. v. Sch. Dist.*, 303 F.3d 523, 533-34 (4th Cir. 2002) ("If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory

## VIII. DECISION

### A. Petitioner Established by a Preponderance of the Evidence Only that DCPS Violated Its Child Find Obligations Under IDEIA, Failed to Provide the Student Appropriate Specialized Instruction, and Failed to Develop a Transition Plan for the Student.

IDEIA requires DCPS to assure a "free appropriate public education" ("FAPE") for all disabled children. 20 U.S.C. § 1412(1). A free, appropriate public education "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1982) (citation omitted).

Among the specific conditions a state must satisfy is the requirement that it demonstrate that "all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated." 20 U.S.C. § 1412(2)(C). *See also* 20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. §§ 300.128(a)(1) and note 1, 300.220 and note, 300.300 note 3. This is known as the "child find" duty.

A public agency must ensure that an evaluation of each child with a disability is conducted if the child's parent or teacher requests an evaluation. 34 C.F.R. § 300.301 (b). The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301 (c).

Reevaluations should be conducted in a "reasonable period of time," or "without undue delay," as determined in each individual case. *Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 259 (D.D.C. 2005) (upholding hearing officer's determination that four-month delay in reevaluating a student with a current IEP was not unreasonable) (citations omitted). The parent of a child with a disability has the right to obtain an independent educational evaluation ("IEE") at public expense if the parent disagrees with the evaluation obtained by the public agency. 34 C.F.R. § 300.502 (b)(1).

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obligations."); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (en banc) ("[P]rocedural flaws do not automatically render an IEP legally defective") (citations omitted); *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992) (rejecting the proposition that procedural flaws "automatically require a finding of a denial of a FAPE"); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990) (rejecting an IDEA claim for technical noncompliance with procedural requirements because the alleged violations did not result in a "substantive deprivation" of student's rights); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990) (refusing to award compensatory education because procedural faults committed by Board did not cause the child to lose any educational opportunity).

As part of an initial evaluation and as part of any re-evaluation, the IEP team and other qualified professionals, as appropriate, must (1) review existing evaluation data on the child, including evaluations and information provided by the parents of the child. 34 C.F.R. § 300.305. On the basis of that review, and input from the child's parents, the IEP team must identify what additional data, if any, are needed to determine whether the child is a child with a disability and the educational needs of the child. *Id.* The IEP team for each child with a disability must include the parents of the child, not less than one regular education teacher of the child, not less than one general education teacher of the child, and an individual who can interpret the instructional implications of evaluation results. 34 C.F.R. § 300.321.

Here, DCPS ignored Petitioner's repeated requests for evaluations and finally she was forced to obtain two evaluations at her own expense. Petitioner timely provided both those evaluations to DCPS and repeatedly requested a 504 meeting to address her child's disabilities – Asperger disorder, dysthymia, non-specific learning disability, and mathematics learning disability. DCPS received two faxes from the Psychologist, a letter from [REDACTED] the Student's physician, and two emails from the DCPS Chancellor's Office, yet steadfastly refused to hold a properly constituted meeting to review the Student's evaluations.

When DCPS finally held an SST meeting, it failed to include the school psychologist or anyone else competent to interpret the evaluations. No one else on the team had even reviewed the evaluations. Thus, DCPS failed to convene a proper team.

Moreover, DCPS failed to conduct evaluations requested by Petitioner and recommended by the Student's psychologist. Finally, the team failed to take any action to address the Student's multiple disabilities. Counsel for DCPS admitted in her Response that DCPS had failed to develop an IEP for the Student. As a result, the Student foundered in school, developing ever more severe depression due to the failure of DCPS to address his disabilities and his mother's repeated requests for assistance.

As a result of DCPS's intransigence, the Student struggled through high school without an IEP, without specialized instruction, and without accommodations that would have assisted him in compensating for his disabilities. Moreover, DCPS failed to develop a transition plan for the Student. Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE.

The failure by DCPS to address this Student's disabilities has left him socially inept and isolated, unable to self-advocate, and unprepared to enter the adult world. Thus, this Hearing Officer finds that the Student is entitled to sixty hours of services from Alternative Behaviors LLC to prepare him for college. This is not compensatory education but services that DCPS should have provided the Student in his IEP.

Counsel for Petitioner presented no evidence that the Student's placement was inappropriate, other than DCPS's failure to develop an IEP. IDEA requires that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. 34 C.F.R. § 300.116 (c). In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on

the quality of the services that he or she needs. 34 C.F.R. § 300.116 (d). A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum. *Id.* at (e).

To the maximum extent appropriate, children with disabilities, including children in public or private institutions with other care facilities, are to be educated with children who are nondisabled. 34 C.F.R. 300.114 (2) (i). This requirement also applies to non-academic and extracurricular services and activities such as recess, meals, athletics, counseling, groups, and clubs. 34 C.F.R. § 300.117.

In a perfect world, Petitioner would receive one-on-one instruction and a multitude of services to address her suspected disabilities. However, IDEIA does not require DCPS to “maximize the potential” of this Student. *McKenzie*, 882 F.2d at 886 (noting that the Supreme court stressed the lack of any such requirement four separate times in *Rowley*, 458 U.S. at 189, 197 n. 21, 198, 199). Rather, it only has to provide a “basic floor of opportunity.” 882 F.2d at 886. Here, the root of the problem is that Petitioner has refused to make any effort to access the educational opportunities offered at her school.

Unfortunately, counsel for Petitioner failed to present any evidence that would support an award of compensatory education. Counsel for Petitioner neither disclosed nor presented a compensatory education plan. See *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). 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.” *Reid*, 401 F.3d at 518, 523. 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. In *Reid*, the Court rejected “cookie-cutter” or mechanical remedies, such as awarding one hour of compensatory instruction for each hour that the student was denied FAPE, and stressed that the Hearing Officer must take into account individual assessments of the student and focus on the student’s individual needs. 401 F.3d at 523-24. An arbitrary compensatory education award will never pass muster under the *Reid* standard. *Mary McLeod Bethune Day Academy Public Charter School v. Bland*, Civil Action No. 07-1223 (D.D.C Feb. 20, 2008) at \*9 (citing *Reid* at 525).

Finally, requiring the Student to stay in high school for one more year when he has earned all of his Carnegie units required to graduate makes no sense and would unfairly prolong the Student’s suffering. This Hearing Officer finds this request to be ill advised.

### ORDER

Upon consideration of Petitioner’s request for a due process hearing, the response thereto, and the testimony and exhibits presented at the due process hearing, this 16th day of May 2009, it is hereby

**ORDERED** that the DCPS shall hold an IEP meeting to find the Student eligible for special education with a disability classification of multiply disabled, review the student's evaluations, develop an IEP that addresses all of the Student's disabilities, and develop a transition plan within ten (10) calendar days;

**IT IS FURTHER ORDERED** that DCPS shall ensure the participation of Petitioner and, at the request of Petitioner, any professionals who conducted the Student's evaluations, at every meeting at which DCPS plans to review the Student's evaluations or review or revise the Student's IEP, including the meeting required by this Order, and

**IT IS FURTHER ORDERED** that DCPS shall receive one day of delay for every day of delay caused by Petitioner, her counsel, or her educational advocate; and

**IT IS FURTHER ORDERED** that DCPS shall reimburse the Student for sixty (60) hours of services from [REDACTED] LLC, to include social skills training and assistance with obtaining special education and accommodations at the college level, at a rate not to exceed \$65 and hour; and

**IT IS FURTHER ORDERED**, that this Order is effective immediately.

/s/

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Frances Raskin  
Hearing Officer

**Notice of Right to Appeal Hearing Officer's Decision and Order**

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision 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 of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

Copies to:  
Donna Wulkan, counsel for Petitioner  
Linda Smalls, counsel for Respondent  
Student Hearing Office