

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

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

OSSE  
Student Hearing Office  
August 05, 2013

Parent,<sup>1</sup> on behalf of,  
Student,\*

Petitioner,

Date Issued: August 2, 2013

Hearing Officer: Melanie Byrd Chisholm

v.

Case No:

District of Columbia Public Schools,

Respondent.

Hearing Date: July 24, 2013

Room: 2004

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND PROCEDURAL HISTORY**

The student is a fourteen ( ) year old male, who is currently a rising <sup>h</sup> grade student attending School A. The student is currently a general education student and has not been identified as a student with disabilities eligible for special education and related services.

On May 24, 2013, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by failing to identify, locate and evaluate a student with a suspected disability, or in the alternative, failing to timely identify, locate and evaluate a student with a suspected disability; and failing to evaluate a student upon parental request, or in the alternative, failing to timely evaluate the student upon parental request. As relief for this alleged denial of FAPE, Petitioner requested for DCPS to fund independent comprehensive psychological, occupational therapy, a functional behavioral assessments, and any other assessments/evaluations that the independent assessments/evaluation recommend, at market rate; and DCPS to convene an individualized education program (IEP) Team meeting (or two) within 15 days of receiving the final independent evaluation, to review all independent evaluations, discuss and determine the student's eligibility for special education services, and develop an appropriate IEP, including an appropriate behavior intervention plan (BIP).

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

\*The student is a minor.

On June 4, 2013, Respondent filed its Response to the Complaint. In its Response, Respondent asserted that DCPS is willing to evaluate the student.

On June 6, 2013, the Petitioner filed a Motion to Strike and/or Motion for a More Definite Statement arguing that DCPS' June 4, 2013 Response failed to respond to the Petitioner's alleged violations and factual allegations.

On June 12, 2013, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement. The parties did not agree in writing to end the resolution period. Accordingly, the parties agreed that the 45-day timeline started to run on June 24, 2013, following the conclusion of the 30-day resolution period, and ends on August 7, 2013. The Hearing Officer Determination (HOD) is due on August 7, 2013.

On June 18, 2013, the Respondent filed a Response to Parent's Motion for a Legally Sufficient Response from DCPS. The Respondent argued that DCPS' response complied with the requirements set forth in 34 CFR §300.508(e) by explaining that DCPS was willing to perform the action requested by Petitioner.

On June 18, 2013, Petitioner filed a Motion to Strike DCPS' Response to Petitioner's Motion for a More Definite Statement and Motion to Limit DCPS' Defenses arguing that DCPS' Response to Petitioner's motion was not filed within three (3) business days of Petitioner's Motion to Strike and/or Motion for a More Definite Statement in accordance with the Student Hearing Office Appropriate Standard Practices §401(c)(5).

On June 21, 2013, Hearing Officer Melanie Chisholm Hearing convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer also discussed Petitioner's June 6, 2013 Motion to Strike and/or Motion for a More Definite Statement and June 18, 2013 Motion to Strike DCPS' Response to Petitioner's Motion for a More Definite Statement and Motion to Limit DCPS' Defenses with the parties. The Hearing Officer explained the "notice pleading" nature of this proceeding and asked the Respondent to articulate the totality of possible defenses during the prehearing conference. Respondent's counsel provided detailed information regarding DCPS' position regarding the allegations and a list of DCPS' possible defenses.

On June 24, 2013, the Respondent filed an Amended Response to Petitioner's Due Process Complaint "should [the Hearing Officer] be inclined to order DCPS to file an additional response." DCPS' filing of an Amended Response rendered the Petitioner's June 6, 2013 and June 18, 2013 motions moot.

The Hearing Officer issued the Prehearing Order on June 25, 2013. The Prehearing Order clearly outlined the issues to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the Hearing Officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order. On June 28, 2013, the Petitioner clarified that the requested relief regarding compensatory education was asked in the alternative.

On July 17, 2013, Petitioner filed a Disclosure cover letter which included the names of four (4) witnesses.<sup>2</sup> On July 18, 2013, Petitioner filed Disclosures including thirty-seven (37) exhibits. On July 17, 2013, Respondent filed Disclosures including four (4) exhibits and two (2) witnesses.

On July 18, 2013, the Respondent filed Objections to Petitioner's Disclosures. The Respondent generally objected to Petitioner's exhibits because Petitioner did not file the Disclosures by the Disclosure deadline listed in the June 25, 2013 Prehearing Order and specifically objected to Petitioner's Exhibits 1-7, 12 and 15.

The due process hearing commenced at approximately 10:00 a.m. on July 24, 2013 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2004. The Petitioner elected for the hearing to be closed.

Although Respondent generally objected to Petitioner's Disclosures based on the untimely filing, Petitioner's Exhibits 8-37 were admitted without specific objection. Petitioner's Exhibits 1-6 were not admitted because they are duplicative of the record. Petitioner's Exhibit 7 was admitted, over Respondent's objection, because it was found to be relevant, and although duplicative of the record, admitted in order to ensure a complete record. Respondent's Exhibit 1 was admitted, over Petitioner's objection, because discussions held during the Resolution Meeting are not confidential, authentication of the document is not required in these proceedings and the document is relevant. Respondent's Exhibit 2 was admitted, over Petitioner's objection, because the document was found to be relevant, with the acknowledgement that the dates included on the document help determine the weight of the document. Respondent's Exhibit 3 was admitted, over Petitioner's objection to pages 6 and 7 because although partially duplicative of Petitioner's Exhibit 27, the exhibit also contained an additional document developed following the January 2012 Section 504 meeting. Respondent's Exhibit 4 was admitted, over Petitioner's objection, because the document was found to be relevant.

The hearing concluded at approximately 1:19 p.m. on July 24, 2013, following closing statements by both parties.

### Jurisdiction

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

### ISSUES

The issues to be determined are as follows:

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

1. Whether DCPS failed to identify, locate and evaluate the student May 24, 2011 – June 2011, January 2012 – June 2012 or during the 2012-2013 school year?
2. Whether DCPS failed to timely evaluate the student upon the parent's written request on January 7, 2013?

### **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 not currently identified as a child with a disability. (Mother's Testimony)
2. In December 2007, the student was evaluated to determine his eligibility for special education and related services by LEA 1. (Petitioner's Exhibit 32; Mother's Testimony)
3. The LEA 1 evaluator's opinion was that the student did not qualify for special education and related services. (Petitioner's Exhibit 32)
4. The student was evaluated for special education and related services in 2009 by LEA 2. (Petitioner's Exhibits 33 and 34; Mother's Testimony)
5. In 2009, the student presented with ADHD and ODD. (Petitioner's Exhibits 33 and 34)
6. The 2009 evaluator's opinion was that the student did not qualify for special education and related services for a classification of emotionally disabled (ED) but could qualify to receive services with the classification of Other Health Impaired (OHI) based on his ADHD diagnosis. (Petitioner's Exhibits 33 and 34)
7. The 2009 evaluator indicated that the student appeared to be eligible for Section 504 services. (Petitioner's Exhibits 33 and 34; Mother's Testimony)
8. Following the conclusion of the March 2009 evaluation, LEA 2 developed a Section 504 Plan for the student. (Petitioner's Exhibit 19; Mother's Testimony)
9. LEA 2 determined that the student was not eligible for special education and related services. (Mother's Testimony)
10. At the end of the 2010-2011 school year, the student resided in LEA 3. (Mother's Testimony)
11. LEA 3 is not within the District of Columbia. (Petitioner's Exhibit 29)
12. The student reenrolled in DCPS in January 2012. (Petitioner's Exhibits 27; Respondent's Exhibit 3; Mother's Testimony)
13. Upon the student's enrollment at School A, the parent provided School A with a copy of the student's last report card and a copy of the student's 504 Plan from LEA 3 and requested that a meeting be held to review the student's 504 Plan. (Mother's Testimony)
14. The grades which appear on the student's School A 2011-2012 report card for the first two quarters of the 2011-2012 school year, are grades the student received while at LEA 3. (Mother's Testimony)
15. On January 20, 2012, School A convened a meeting to review the student's 504 Plan. (Petitioner's Exhibits 27; Respondent's Exhibit 3; Mother's Testimony)

16. On or about January 20, 2012, the student displayed distractible, defiant, immature and disruptive behaviors. (Petitioner's Exhibit 27; Respondent's Exhibit 3)
17. On or about January 20, 2012, the student was often out of his seat and often did not complete assignments. (Petitioner's Exhibit 27; Respondent's Exhibit 3)
18. The student's behaviors improved when the student took prescribed medication. (Petitioner's Exhibits 27 and 35; Respondent's Exhibit 3)
19. The January 20, 2012 meeting took place on the last day of the 2<sup>nd</sup> quarter. (Judicial Notice by agreement of the parties)
20. The student's grades improved upon his entry into School A. (Petitioner's Exhibit 30; Mother's Testimony)
21. The student's mother believed the student's behaviors during January 2012 to be typical of a student adjusting to a new school. (Mother's Testimony)
22. Toward the end of the 3<sup>rd</sup> quarter of the 2011-2012 school year, the parent spoke with a School A assistant principal regarding her concerns about the student's grades. (Mother's Testimony)
23. At the end of the 3<sup>rd</sup> quarter of the 2011-2012 school year, School A implemented additional services for the student, including assigning the student to a small class for math and English. (Mother's Testimony)
24. The 3<sup>rd</sup> quarter ended on March 30, 2012. (Judicial Notice by agreement of the parties)
25. Following the schedule change implemented by School A, the student earned a "C" average for the 4<sup>th</sup> quarter of the 2011-2012 school year. (Mother's Testimony)
26. For the 2012-2013 school year, the student was enrolled in inclusion classes. (Mother's Testimony)
27. For the 2012-2013 school year, the student received "D's" and "F's" in English, math, Advisory and World History. (Petitioner's Exhibit 31)
28. During the first quarter the student received a "C" in science however maintained a "D" average for the remainder of the school year in this class. (Petitioner's Exhibit 31)
29. In November 2012, the student's teachers suggested that the student be evaluated for special education and related services. (Mother's Testimony)
30. On January 7, 2013, the parent sent an electronic message to the School A principal, a School A assistant principal, a School A counselor and the person the parent believed to be the special education coordinator requesting for the student to be evaluated for special education and related services. (Petitioner's Exhibits 8, 9, 10, 11 and 12; Mother's Testimony)
31. On January 7, 2013, the School A counselor, assistant principal and school psychologist acknowledged receipt of the parent's request for School A to evaluate the student for special education and related services. (Petitioner's Exhibits 9, 10 and 11; Mother's Testimony)
32. On January 10, 2013, the School A principal acknowledged receipt of the written request. (Petitioner's Exhibit 12; Mother's Testimony)
33. As of the date of the hearing, the student was not yet evaluated. (Mother's Testimony)

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

### Burden of Proof

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

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seq., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Id.*; *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

### Issue #1

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

The standard for triggering the Child Find duty is suspicion of a disability rather than actual knowledge of a qualifying disability. *See Regional School District Board of Educ. v. Mr. and Ms. M. ex rel. MM*, 15 IDELR 8 (D. Conn. 2009); *Torrance United School District v. E.M.*, 51 IDELR 11 (M.D. Calif. 2009); *District of Columbia Public Schs*, 111 LRP 25929 (SEA DC March 25, 2011). However, the LEA must have a reason to suspect that a student has a disability. *See E.J. by Tom J. and Ruth J. v. San Carlos Elementary Sch. Dist.* 803 F. Supp. 2d 1024 (N.D.Cal. 2011) (allegations that a California district knew about a student's anxiety

disorder for years before it referred her for an evaluation were not enough to show that the district violated its child find obligation because the student's teachers had no reason to believe she needed special education services); *J.G. v. Douglas County Sch. Dist.* 552 F.3d 786, 803 (9th Cir. 2008) (although the parents requested initial evaluations in May 2003 and attended the district's child find day in June 2003, the district had no reason to suspect that the students had autism until it was contacted by the twins' private service provider); *Long v. District of Columbia*, 780 F. Supp. 2d 49 (D.D.C. 2011) (the district's child find duty was triggered when a private psychologist diagnosed the student with a learning disability). To establish a procedural violation of "child find," a parent must show school officials overlooked clear signs of disability. *Board of Educ. of Fayette County, Kentucky v. L.M.*, 47 IDELR 122 (6th Cir. 2007).

In the present case, the student was evaluated for special education and related services by LEA 1 in 2007. The LEA 1 evaluator gave the opinion to LEA 1's MDT that the student did not qualify for special education and related services. The student was again evaluated for special education and related services in 2009 by LEA 2. In 2009, the evaluator indicated that the student presented with ADHD and ODD and stated that the student did not appear to qualify for special education and related services for a classification of ED but could qualify to receive services with the classification of OHI based on his ADHD diagnosis. The evaluator clearly indicated that the student appeared to be eligible for Section 504 services. Following the conclusion of the March 2009 evaluation, LEA 2 determined that the student was not eligible for special education and related services and developed a Section 504 Plan for the student.

The Petitioner argued that DCPS' Child Find duty for the student should have been triggered May 24, 2011-June 2011, January 2012-June 2012, and during the 2012-2013 school year.

#### *May 24, 2011 – June 2011*

The District of Columbia regulations at 5 DCMR §E-3002.1(d) expressly state that DCPS "shall ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities that *reside* in the District who are in need of special education and related services..." (emphasis added). 5 DCMR §E-3002.3(a), states that "the LEA shall ensure that procedures are in place to identify, locate and evaluate children with disabilities residing in the District or children who are wards of the District." Both of these regulations address the IDEA regulations which state that all children with disabilities residing in the State, including children who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. 34 CFR §300.111.

The Mother testified that at the end of the 2010-2011 school year while the student attended School B, she was residing in LEA 3 and chose to enroll the student in a LEA 3 school for 6<sup>th</sup> grade because the assistant principal at School B informed her that "[School A] is not a good school to send [the student] to." LEA 3 is not within the District of Columbia.

The District of Columbia and Federal regulations ensure Child Find protections to students residing in the District of Columbia. During May 24, 2011 through June 2011, the Petitioner failed to establish that the student resided in the District of Columbia. Although the

parent chose to enroll the student in a District of Columbia school, the regulations extend Child Find to students in private schools in a state but do not extend to students who parents enroll them in a public school in the state without being a resident of the state.

*January 2012 – June 2012/2012-2013 School Year*

The Mother testified that she transferred the student back to a DCPS school in January 2012 because she believed she “got better results from [Section] 504 in DCPS” than in LEA 3. The Mother explained that in late December 2011 she also physically moved back to the District of Columbia, once again becoming a resident of the District of Columbia.

The Mother further testified that the behaviors that the student exhibited upon arriving at School A, were behaviors typical of a student being in a new school and that the student’s grades improved upon his arrival at School A. The Mother indicated that the grades which appear on the student’s School A 2011-2012 report card for the first two quarters, are grades the student received while at LEA 3 rather than at School A. Upon the student’s enrollment at School A, the parent provided School A with a copy of the student’s last report card and a copy of the student’s 504 Plan from LEA 3 and requested that a meeting be held to review the student’s 504 Plan.

On January 20, 2012, School A convened a meeting to review the student’s 504 Plan. During the meeting, three of the student’s teachers noted the student’s distractible, defiant, immature and disruptive behaviors. The teachers highlighted that the student was often out of his seat and often did not complete assignments. It was noted that the student’s behaviors improved when the student took prescribed medication. The January 20, 2012 meeting took place on the last day of the 2<sup>nd</sup> quarter. At that point, the student had not attended School A for a sufficient amount of time to earn 2<sup>nd</sup> semester grades from School A. The record does not contain persuasive evidence which suggests that DCPS should have suspected that the student was in need of special education as a result of his ADHD on January 20, 2012. The Mother testified that the student’s grades improved during this time and the student’s behaviors were typical of a student adjusting to a new school.

Toward the end of the 3<sup>rd</sup> quarter of the 2011-2012 school year, the parent spoke with a School A assistant principal regarding her concerns about the student’s grades. School A implemented additional services for the student, including assigning the student to a small class for math and English. While the parent referred to the class as a “special education class,” the Mother testified that the other student’s “appeared to be all special education students.” The Hearing Officer concludes that the record is insufficient to support the contention that the class was a “special education” class. The 3<sup>rd</sup> quarter ended on March 30, 2012. Following the schedule change implemented by School A, the student earned a “C” average for the 4<sup>th</sup> quarter.

For the 2012-2013 school year, the student was enrolled in inclusion classes. Even with this level of support, the student received “D’s” and “F’s” in English, math, Advisory and World History during the 2012-2013 school year. During the first quarter the student received a “C” in science however maintained a “D” average for the remainder of the school year in this class. The Mother testified that the regular education teachers and the special education teachers in the student’s classes suggested that the student be evaluated for special education and related services in November 2012.

When a child is identified as potentially requiring special education services, the LEA has a duty to complete the evaluation process and failure to complete the process constitutes a denial of a FAPE. 20 U.S.C. § 1414(b)(2)(A)(i); *see also N.G. v. Dist. of Columbia*, 556 F. Supp. 2d 11 (D. D.C. 2008). 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. The timeframe does not apply if the parent of a child repeatedly fails or refuses to produce the child for the evaluation. 34 CFR §§300.301(c), (d). The District of Columbia has established a 120-day timeline. *See* D.C. Code §38-2561.02.

The Hearing Officer concludes that DCPS' Child Find obligation was triggered on March 30, 2012. On March 30, 2012, School A had data regarding the student's academic progress, had recently had a conversation with the student's parent regarding his academic functioning and enrolled the student in a small class for math and English. At this point, DCPS should have suspected that the student was in need of special education. DCPS did not present any evidence contrary to the Hearing Officer's conclusion that DCPS should have suspected that the student had a disability and was in need of special education on March 30, 2012. Even had DCPS presented evidence to the contrary, DCPS' Child Find obligation was clearly triggered in November 2012, when the student's teachers suggested to the parent that the student should be evaluated. Therefore, the Hearing Officer concludes that DCPS failed to take affirmative steps to locate, identify and evaluate the student pursuant to its Child Find obligation, and that this failure constitutes a denial of a FAPE for the student.

The Petitioner met its burden with respect to Issue #1.

#### Issue #2

Under the IDEA, a state must, *inter alia*, identify and evaluate children with disabilities, and develop an "individual education program" for each child with a disability. *See* 20 U.S.C. §§1412(a)(3)(A),(a)(4). 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. The timeframe must include the procedures to determine if the child is a child with a disability under §300.8 and to determine the educational needs of the child. *See* 34 CFR §300.301(c). The District of Columbia has established a 120-day timeline. *See* D.C. Code §38-2561.02. The 120-day period for evaluation in the District of Columbia is the period for evaluation and determination of eligibility. *D.L. v. District of Columbia*, 845 F. Supp. 2d 1, 05-1437 (RCL) (D.D.C. November 16, 2011).

The Petitioner alleged that DCPS failed to timely evaluate the student upon the parent's written request on January 7, 2013. The facts in this case regarding evaluation following the parent's written request on January 7, 2013 are uncontested. On January 7, 2013, the parent sent an electronic message to the School A principal, a School A assistant principal, a School A counselor, and the person the parent believed to be the special education coordinator requesting for the student to be "evaluated/tested for Special Education for an IEP." On January 7, 2013, the School A counselor, assistant principal and school psychologist acknowledged receipt of the parent's request for School A to evaluate the student for special education and related services.

On January 10, 2013, the School A principal acknowledged receipt of the written request. As of the date of the hearing, the student was not yet evaluated.

Based on the date of the parent's request for an evaluation, the 120-day timeline was triggered on January 7, 2013 and DCPS should have conducted the evaluation and determined if the student is a child with a disability by May 8, 2013. DCPS did not complete the evaluation procedures within 120 days as required by 34 CFR §300.301 and D.C. Code §38-2561.02.

Although the student has not yet been determined to be a student with a disability, because an evaluation and eligibility determination is a prerequisite to preparing an IEP, DCPS' failure to timely evaluate the student or determine his eligibility by the May 8, 2013 deadline ensured that he would not receive a timely IEP, thus, denying him a FAPE. *G.G. v. District of Columbia*, 60 IDELR 183, 113 LRP 7373 (D.D.C. February 20, 2013); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008) (school district's failure to adequately evaluate student was a procedural error that effectively prevented development of an IEP "reasonably calculated to provide [student] with a meaningful educational benefit," and thus constituted denial of a FAPE); *K.I. ex rel. Jennie I. v. Montgomery Pub. Sch.*, 895 F. Supp. 2d 1283, 1294 (M.D. Ala. 2011) (school district falling short of properly evaluating student procedurally violated the IDEA and effectively meant the failure to provide an adequate IEP, thereby denying her of a FAPE); *Blackman v. District of Columbia*, 277 F. Supp. 2d 71, 79 (D.D.C. 2003) (failure to provide a timely eligibility determination creates a substantive harm and constitutes a denial of a FAPE); *Bush ex rel. A.H. v. District of Columbia*, 579 F. Supp. 2d 22, 32 (D.D.C. 2008).

The Petitioner met its burden with respect to Issue #2.

### Requested Relief

IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* ". . .the inquiry must be fact-specific and . . . the ultimate 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 v. District of Columbia*, 401 F. 3d 516 at 524, 365 U.S. App. D.C. 234 (D.C. Cir 2005) citing *G.ex. RG v Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir. 2003).

The Petitioner requested independent comprehensive psychological, occupational therapy and functional behavioral assessments/evaluations and any other assessments/evaluations that are recommended by the independent assessments/evaluations at market rate; within 15 days of the completed assessments/evaluations for DCS to convene a multidisciplinary team meeting to review the assessments/evaluations, determine the student's eligibility, develop an IEP, develop a BIP and to discuss and determine appropriate compensatory education; or in the alternative for DCPS to fund and independent evaluation to determine compensatory education.

IDEA regulations at 34 CFR §300.304(c)(4) require a student to be "assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor

abilities.” In this matter, the record indicates that DCPS should have suspected that the student was in need of special education and related services based on his poor academic performance and ADHD behaviors. A comprehensive psychological evaluation provides assessments related to the student’s social and emotional status, general intelligence and academic performance. A functional behavioral assessment is an educational evaluation. *See Harris v. District of Columbia*, 561 F. Supp. 2d 63 (D.D.C. 2008). A comprehensive psychological evaluation and a functional behavioral assessment were needed to address the areas related to the student’s suspected disability. While the Petitioner requested an independent occupational therapy evaluation, the record does not contain evidence which suggests that an occupational therapy assessment would relate to the area of the student’s suspected disability.

Since DCPS should have evaluated the student to determine his eligibility for special education and related services by July 28, 2012 and DCPS did not conduct the evaluation necessary to determine if the student is eligible for special education and related services by July 28, 2012, it is equitable for DCPS to provide independent assessments/evaluations for the student. The Petitioner requested that the independent evaluations be provided at market rate however the record does not contain evidence which supports the contention that the rate set by the Office of the State Superintendent for Education (OSSE) is insufficient.

The Petitioner also requested that either DCPS be ordered to discuss and determine compensatory education for the student or DCPS fund an independent evaluation to determine compensatory education. At this point, the student has not been determined to be eligible for special education and related services therefore the issue of compensatory education is not yet ripe. However, should the student be found eligible for special education and related services, the student’s IEP Team should discuss the student’s needs in relation to the time period he was without services.

### **ORDER**

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

1. Within 5 business days of the date of this Order for DCPS to issue an authorization letter to fund independent comprehensive psychological and functional behavioral assessments/evaluations, at OSSE’s established rate for this service. The independent evaluations must be completed within 50 days of the date of this Order.
2. Within 10 school days of the completed independent evaluations, DCPS to convene a multidisciplinary team meeting to review the results of the independent assessments/evaluations to determine whether the student is eligible for special education and related services. If the student is eligible for special education and related services, develop an IEP for the student, specifically addressing the needs of the student given DCPS’ failure to provide services to the student beginning August 27, 2012.<sup>3</sup>
3. All other relief sought by Petitioner herein is **denied**.

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<sup>3</sup> Approximately 150 days from the date that DCPS’ Child Find obligation was triggered.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: August 2, 2013

  
Hearing Officer