

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

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
January 28, 2016

<i>Student</i> , ¹)	Date Issued: 1/28/16
through his <i>Parent</i> ,)	
<i>Petitioner</i> ,)	Case No.: 2015-0379
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Date: 1/19/16
("DCPS"),)	Hearing Location: ODR Room 2003
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s grandfather, filed a due process complaint alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because DCPS did not satisfy its Child Find requirements by evaluating Student in a timely manner prior to Petitioner’s request. DCPS responded that it had not denied Student a FAPE because he was evaluated and found not eligible in 2012 and is being evaluated now based on Petitioner’s request, but that DCPS had no reason to evaluate him at any other time.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”) and 38 D.C. Code 2561.02.

¹ Personally identifiable information is provided in Appendix A, including terms initially stated in italics.

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Procedural History

Following the filing of the due process complaint on 11/30/15, the case was assigned to the undersigned on 12/2/15. DCPS's response to the complaint was timely filed on 12/1/15 and did not challenge jurisdiction.

The Resolution Session Meeting ("RSM") took place on 12/15/15, but the parties neither settled the case nor terminated the 30-day resolution period, which ended on 12/30/15. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination ("HOD") by 2/13/16.

The due process hearing took place on 1/19/16. The hearing was closed to the public. Petitioner was represented by *Petitioner's Counsel*. DCPS was represented by *Respondent's Counsel*. Counsel did not discuss settlement at the beginning of the hearing. Petitioner was present at the hearing.

Neither party objected to the testimony of witnesses by telephone. The parties agreed on no stipulations.

Petitioner's Disclosure statement, filed on 1/12/16, consisted of a witness list of 5 witnesses and documents P1 through P33, which were admitted into evidence without objection.

Respondent's Disclosure statement, filed on 1/7/16, consisted of a witness list of 5 witnesses and documents R1 through R15, which were admitted into evidence without objection.

Petitioner's Counsel presented 2 witnesses in Petitioner's case-in-chief (*see Appendix A*):

1. *Educational Advocate*, who was qualified without objection as an expert in Special Education Administration
2. Parent

Respondent's Counsel presented only *Special Education Coordinator* ("SEC") at *Public School* as a witness in Respondent's case (*see Appendix A*).

Petitioner's Counsel did not call any rebuttal witnesses.

Credibility Determinations – The weight given Petitioner's testimony was impacted by his difficulty keeping facts straight between the various school years and not always directly answering questions put to him even by his own counsel. Petitioner's case was also weakened by Petitioner not being able or willing to state the facts of his case as definitively as Petitioner's other witness and supporters did, including such things as whether *Prior Public School* told Petitioner that special education testing would be done,

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whether Student was diagnosed with ADHD, and whether Petitioner gave the fetal alcohol spectrum disorder report to Prior Public School, which Petitioner or his supporters said was given during enrollment for 2014/15² (according to DCPS's RSM summary), even though the report was not prepared until late November 2014. Petitioner's credibility was also weakened somewhat by his assertions that Student had serious behavioral issues at school but not at home, and then testifying about his concern that Student might attack him while he is sleeping. Finally, Petitioner's misunderstanding about whether Student had an IEP while at Prior Public School raises some question about whether other key facts may have been misunderstood.

As for the other two witnesses, much of the testimony from Educational Advocate was based on information she obtained from Petitioner, so was impacted to some degree by the concerns about his credibility discussed above. The testimony of SEC was highly credible in general and given significant weight, apart from a slight discounting of her testimony on the impact reports of fetal alcohol spectrum disorder or ADHD ought to have.

Issue – The issue to be determined in this Hearing Officer Determination is:

Whether DCPS denied Student a FAPE by failing to comply with its affirmative Child Find obligations on a timely basis by identifying, comprehensively evaluating, determining eligibility, and developing an IEP, where Student (a) is significantly below grade level in reading and writing, below proficient in math, and requires constant reminders and support in the classroom; (b) had numerous and worsening behavioral issues in the 2014/15 school year, and ongoing complaints by school to Parent in the 2015/16 school year; (c) was the subject of discussions about special education testing with the staff psychologist and principal in the 2014/15 school year; (d) has difficulty with fine motor skills; (e) had speech therapy 2 years ago; and (f) was diagnosed with fetal alcohol spectrum syndrome in 2014.

Relief – Petitioner seeks the following relief:

1. A finding that Student was denied a FAPE.
2. DCPS shall conduct or fund (a) a Functional Behavioral Assessment; (b) a speech and language evaluation; and (c) an occupational therapy evaluation; along with any recommended follow up assessments.³
3. DCPS shall convene a Multidisciplinary Team (“MDT”) meeting within 15 days following completion of all evaluations listed in the previous paragraph to review the results, determine eligibility and, if found eligible, develop an appropriate IEP and Behavioral Intervention Plan based on the FBA.

² All dates in the format “2014/15” refer to school years.

³ Petitioner's Counsel formally withdrew a request for a “comprehensive neuropsychological evaluation” at the due process hearing.

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4. Compensatory education for any denial of FAPE is reserved until completion of Student's evaluations, with compensatory education to be discussed at the MDT meeting to develop the IEP if Student is found eligible.
5. Any other relief that is just and reasonable.

Oral opening statements and closing statements were made by Petitioner's Counsel and Respondent's Counsel. The parties were permitted to submit legal citations after the hearing, but did not do so.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁴ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's grandfather and adoptive Parent.⁵ Student is *Age* and in *Grade* at Public School; in 2014/15 he was in Prior Public School, and in different schools each of the 2 years before that.⁶ Student has had a variety of adults in his life prior to his adoption less than 15 months ago, including parents, foster parents, social workers, and a guardian ad litem.⁷

2. Student was initially evaluated in July 2012 and found not eligible for services based on educational, speech/language, psychological and occupational therapy evaluations.⁸ A Development Evaluation of Student on 3/28/12 recommended that Student's visits with his mother cease as long as she was incarcerated, as they could be "quite detrimental" to Student's emotional wellbeing.⁹

3. Parent, through counsel, requested on 11/20/15 that Student be evaluated for special education services due to ongoing academic and behavioral difficulties.¹⁰ DCPS initiated the process and issued a Prior Written Notice concerning evaluations on 12/16/15.¹¹ All evaluations are expected to be completed by the end of January 2016, after which the

⁴ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁵ Parent.

⁶ Parent; Educational Advocate.

⁷ R9; R14-2; P27-1; Parent.

⁸ P14-2; P21-1; P22-1.

⁹ P4-4.

¹⁰ P3-1.

¹¹ R2-1.

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multidisciplinary team will come together to determine eligibility and, if Student is eligible, develop an IEP.¹²

4. In 2014/15, Student's report card showed that he received a rating of Basic on all subjects in the first term; he had some improvement over the year, moving from Basic to Proficient in both reading and math.¹³ Student did not receive a rating of Below Basic in any subject during 2014/15.¹⁴ In rating Student as Beginning, Developing or Secure in dozens of different academic elements, Student was mostly Developing and showed improvement over the year.¹⁵

5. A Genetics Consultation on 11/21/14 determined that Student had a fetal alcohol spectrum disorder, with behavior problems typical of the condition but only some of the physical features.¹⁶ Student's prenatal history involved daily use of alcohol, cocaine and crack for an undetermined portion of the pregnancy.¹⁷ The cover sheet for the report listed ADHD along with fetal alcohol spectrum disorder.¹⁸ Parent provided the fetal alcohol spectrum disorder diagnosis to Prior Public School.¹⁹

6. Student has had behavioral issues for years.²⁰ At Prior Public School, Student would scream in the middle of the room, punch, kick, and urinate on himself.²¹ Prior Public School would call Parent frequently and ask him to come back to school to pick up Student, often shortly after Parent dropped him off.²²

7. Parent thought that Student had an IEP at Prior Public School and was disappointed in November 2015 when he found out that Student did not.²³ Student's social worker from Child & Family Services noted that she attended an introductory school visit at Prior Public School with Parent at the beginning of 2014/15 and that school staff was in the process of scheduling "a series of meetings."²⁴ Parent thought that social worker talked to Prior Public School principal and that testing for special education would occur, but it never happened.²⁵ Parent was told by Prior Public School that testing would be done and believed Student

¹² SEC.

¹³ P19-1.

¹⁴ *Id.*

¹⁵ P19-2.

¹⁶ P13-2.

¹⁷ P13-1.

¹⁸ P12-1.

¹⁹ R14-2.

²⁰ Parent.

²¹ *Id.*

²² Parent; Educational Advocate.

²³ Parent; Educational Advocate; R14-3.

²⁴ P27-1.

²⁵ Parent.

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would receive an IEP without Parent having to do anything else.²⁶ Prior Public School had no record of a request or meeting with Parent regarding a request for special education.²⁷

8. In 2015/16, Public School has been concerned about Student's behavior and academics.²⁸ Student's behavior impacts his learning, so Public School has been using the Response to Intervention ("RTI") process with Student, trying interventions to see whether there is a positive response.²⁹ The interventions being used with Student appear to be working as there has been a reduction in disciplinary office referrals, along with progress in reading and math.³⁰ Along with RTI, Public School is using token chart goals and behavior cue cards with Student.³¹ Parent has been very supportive of the behavior management system that Public School is using and consults with Student's teacher very consistently.³²

9. If DCPS had received information about a prior diagnosis of fetal alcohol spectrum disorder and ADHD it would not have led to an evaluation of Student more quickly, but would have been information to consider along with RTIs, which are most important in determining how to proceed.³³

10. Absent the request for evaluation of Student that Public School received in late November 2015, Public School would have made its determination in about mid-January whether the interventions were working sufficiently that Student did not need to be evaluated for special education.³⁴ If research-based RTIs were not working sufficiently, then Public School would have proceeded with an evaluation.³⁵ Here, the interventions appeared to be working well with Student, but he is being evaluated because of the request from Parent.³⁶

11. Student's report card from term 1 of 2015/16 showed that Student was Proficient in 4 subjects, Basic in math and 3 other subjects, and Below Basic in reading and writing & language.³⁷ In rating Student as Beginning, Developing or Secure in dozens of different academic elements, he was found Developing in all, except for demonstrating motor skills in which he was rated Secure.³⁸ On 10/13/15, Student was found Below Proficient by

²⁶ Educational Advocate.

²⁷ R14-3.

²⁸ SEC.

²⁹ *Id.*

³⁰ *Id.*

³¹ R3-8.

³² R14-3.

³³ SEC.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ P17-1.

³⁸ P17-3.

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Public School in reading, writing and math, and Proficient only in science/social studies.³⁹ At Public School, Student is receiving a “double dose” of guided reading.⁴⁰

12. Student received 4 office discipline referrals at Public School early in 2015/16 for physical altercations involving hitting, punching and scratching peers or school staff.⁴¹ Student began receiving support from the DC Department of Behavioral Health (“DBH”) with school-based group counseling in October 2015 and individual counseling in November 2015 (although unofficially Student began getting help sooner), which resulted in a noticeable decrease in problematic behaviors and the elimination of disciplinary referrals.⁴² The DBH provider checks in with Student in the mornings, and Student is able to go to her if he needs support.⁴³ In addition, Student was in a large class at Public School at the beginning of 2015/16 which split in half, so now Student is in a class of about 20, and is doing much better behaviorally.⁴⁴

13. Student received some speech therapy beginning in 2012, which ended when Student no longer needed therapy.⁴⁵

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that “all children with disabilities 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.” 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA “aims to ensure that every child has a meaningful opportunity to benefit from public education”).

“[T]o further Congress’ ambitious goals for the IDEA, the Supreme Court has focused on the centrality of the IEP as ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988).

Once a child who may need special education services is identified, evaluated and found eligible, DCPS must devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable

³⁹ P16-1.

⁴⁰ SEC.

⁴¹ R3-7.

⁴² R3-7; R14-3; Educational Advocate; SEC.

⁴³ Educational Advocate.

⁴⁴ *Id.*

⁴⁵ P32-4; P13-1.

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of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. Congress, however, "did not intend that a school system could discharge its duty under the [Act] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights.

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5-E D.C.M.R. § 3030.3. The burden of proof is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005).

Issue: *Whether DCPS denied Student a FAPE by failing to comply with its affirmative Child Find obligations on a timely basis by identifying, comprehensively evaluating, determining eligibility, and developing an IEP, where Student (a) is significantly below grade level in reading and writing, below proficient in math, and requires constant reminders and support in the classroom; (b) had numerous and worsening behavioral issues in the 2014/15 school year, and ongoing complaints by school to Parent in the 2015/16 school year; (c) was the subject of discussions about special education testing with the staff psychologist and principal in the 2014/15 school year; (d) has difficulty with fine motor skills; (e) had speech therapy 2 years ago; and (f) was diagnosed with fetal alcohol spectrum syndrome in 2014.*

Petitioner did not meet his burden of proving that DCPS failed in its affirmative Child Find obligation to identify and evaluate Student in the period between the evaluation of Student in 2012 (when Student was found not eligible for special education and related services) and the formal request for evaluation made by letter of 11/20/15 from Petitioner's

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counsel, after which DCPS began the evaluation process that is to be completed within a few days of this HOD.

The basic legal framework of 34 C.F.R. 300.311 was explicated by U.S. District Judge Lamberth in *DL v. Dist. of Columbia*, 302 F.R.D. 1, 6-7 (D.D.C. 2013), as follows:

[T]he IDEA requires that states and the District of Columbia “establish policies and procedures to ensure ... that free appropriate public education [FAPE] ... is available to disabled children.” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005) (internal quotations omitted); *see also* 20 U.S.C. § 1412(a)(1)(A). Under the IDEA, “[s]chool districts may not ignore disabled students’ needs, nor may they await parental demands before providing special instruction.” *Reid*, 401 F.3d at 518. Instead, the IDEA imposes an affirmative obligation on school systems to “ensure that all children with disabilities residing in the State ... regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated.” *Id.* at 519 (internal quotations omitted); § 1412(a)(3)(A). The District’s laws implementing the IDEA require that once a potential candidate for special education services is identified, the District must conduct an initial evaluation and make an eligibility determination within 120 days. D.C. Code § 38–2561.02(a). The duties to identify, evaluate, and determine eligibility for disabled children are collectively known as the “Child Find” obligation.

Here, there was no claim or evidence that Parent or others working with Student requested an evaluation of Student during the period in issue. In the absence of such a “parental demand,” the issue is whether DCPS should have identified and evaluated Student based on the information it had about Student. In support of his Child Find allegations, Petitioner focused on the academic and behavioral challenges that Student faced in 2014/15 and 2015/16.⁴⁶

As for 2014/15, Parent thought that Student had an IEP at Prior Public School and was disappointed when he found out that Student did not, in November 2015, well after leaving Prior Public School. Student’s social worker from Child & Family Services explained in a recent email that she had attended an introductory school visit at Prior Public School with Parent at the beginning of 2014/15 and that school staff was in the process of scheduling “a series of meetings,” but she did not state that an evaluation was under way or even contemplated. Prior Public School had no record of a request or meeting with Parent regarding a request for special education.

Academically at Prior Public School in 2014/15, the record evidence indicates that Student performed acceptably. Student’s 2014/15 report card showed that he received a

⁴⁶ There was only passing mention of 2013/14 at the hearing and in the disclosures; any issues relating to 2012/13 would be barred by the 2-year statute of limitations. 34 C.F.R. 300.511(e).

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rating of Basic on all subjects in the first term, and did not receive a rating of Below Basic in any subject the entire year. Student showed some improvement over the year, moving from Basic to Proficient in both reading and math. In rating Student as Beginning, Developing or Secure in dozens of different academic elements, Student was mostly Developing and also showed improvement on those ratings over the school year.

Student's behavioral issues during 2014/15 at Prior Public School were more problematic, as Student would scream in the middle of the classroom, punch, kick, and even urinate on himself, resulting in frequent calls to Parent to come back to school to pick up Student. Student was found to have fetal alcohol spectrum disorder in late November 2014, with behavior problems that are typical of the condition.⁴⁷ However, the report did not indicate the seriousness of the disorder and the recommendations suggested behavior therapy at home or school, but did not mention evaluation for special education or related services. While no one from Prior Public School appeared, SEC testified for DCPS that such a diagnosis need not result in DCPS concluding that an evaluation was required, but would simply be one factor – presumably an important factor – to take into account.

Nor are the other allegations in Petitioner's complaint persuasive. Student did have speech therapy (in the absence of an IEP), but it was discontinued when the therapist concluded it was no longer needed. While the complaint lists concern about Student's fine motor skills, there was little evidence at the hearing and his 1st term report card in 2015 singles out Student's motor skills as the single element that is Secure (the highest rating) out of dozens of other elements which are only Developing. Further, any discussions that occurred with the staff psychologist and principal are in no way dispositive. *See, e.g., G.G. ex rel. Gersten v. Dist. of Columbia*, 924 F. Supp. 2d 273, 275 (D.D.C. 2013) (parents meeting with principal and others from the school to discuss their concerns was not sufficient to trigger Child Find obligations).

This Hearing Officer concludes that notwithstanding Student's behavior, the full measure and scope of which was hard to ascertain in the absence of documentation and additional witnesses, Student's report card shows that he was making some educational progress in 2014/15, such that Petitioner has not met his burden of showing that it was a denial of FAPE for Prior Public School not to identify and evaluate Student during 2014/15. *See D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3rd Cir. 2012) ("Child Find does not demand that schools conduct a formal evaluation of every struggling student. . .").

Turning next to 2015/16, Public School was concerned about Student's behavior and academics. In mid-October Student was found Below Proficient by Public School in reading, writing and math, and Proficient only in science/social studies. In addition, Student received 4 office discipline referrals early in 2015/16 for hitting, punching and scratching peers or school staff. As a result, Public School began using the RTI process, trying various

⁴⁷ Along with fetal alcohol spectrum disorder, the cover sheet for the report listed "ADHD," which was emphasized by Petitioner's counsel during the due process hearing, but may well have been an error, as there was no discussion of ADHD in the report.

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interventions to see if there would be positive responses from Student. Student also began receiving support from the Department of Behavioral Health with both school-based group counseling and individual counseling, which resulted in a noticeable decrease in problematic behaviors and the elimination of disciplinary referrals. Further, Student's large class was divided in two, so Student is in a class of about 20, which is helpful, as is receiving a "double dose" of guided reading.

The credible testimony of SEC was that the interventions being used with Student appear to be working, as there has been progress in reading and math as well as a reduction in disciplinary office referrals. Public School is also using token chart goals and behavior cue cards with Student. Parent has been very supportive of the behavior management system that Public School put in place for Student. Had Parent not requested an evaluation of Student in late November 2015, the RTI process would have resulted in Public School making a decision around the January 2016 timeframe concerning whether the interventions were working sufficiently or whether Student needed to be evaluated for special education. Information about a prior diagnosis of fetal alcohol spectrum disorder or ADHD would have been considered along with the RTI results, which SEC views as the most important information in determining how to proceed with Student.

Thus, this Hearing Officer concludes that in 2015/16 there was no denial of FAPE by failing to identify and evaluate Student prior to November 2015, as Public School was using RTIs to help Student and to determine what course of action would be best for him, while providing both group and individual counseling and extra reading support. The law does not impose *per se* or automatic liability on a school district for failing to identify and evaluate every child who might be suspected of having a disability, even if later found eligible. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245, 129 S. Ct. 2484, 2495, 174 L. Ed. 2d 168 (2009) (parents must have a remedy if school district "unreasonably" fails to identify a child with disabilities); *Bd. of Educ. of Fayette County, Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007) (claimant "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing"). In sum, Petitioner did not meet his burden of showing that DCPS acted unreasonably or negligently in not identifying and evaluating Student between July 2012 and the formal request for evaluation in November 2015.

ORDER

Petitioner has failed to meet his burden of proof on the issue in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**. This Order is without prejudice to Parent's remedies under the IDEA if he disagrees with the outcome of the evaluation of Student that is currently being completed, or any eligibility determination following that evaluation.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

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Keith L. Seat, Esq.
Hearing Officer

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).

Copies to:

Counsel of Record (Appendix A, by email)

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