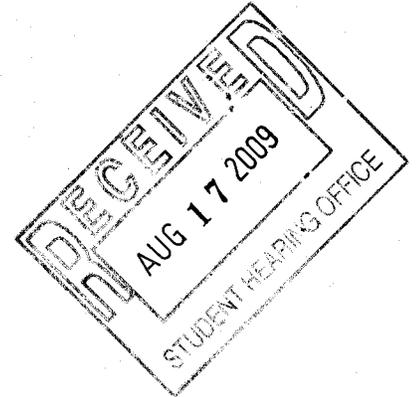


**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
Student Hearing Office

1150 5th Street, SE  
Washington, DC 20003  
Tel: 202-698-3819  
Fax: 202-698-3825



**Confidential**

<p>STUDENT<sup>1</sup>, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools</p> <p>Respondent.</p>	<p>HEARING OFFICER'S DETERMINATION</p> <p>July 15, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Chike Ijeabuonwu, Esq.</p> <p>Counsel for DCPS: Blair Matsumoto, Esq.</p> <p><u>Hearing Officer:</u> Kimm H. Massey, Esq.</p>
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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

## I. JURISDICTION

The Due Process hearing was convened and this Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C. §§ 1400 et. seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

## II. PROCEDURAL BACKGROUND

On June 1, 2009, Petitioner filed an Administrative Due Process Complaint Notice (“Complaint”) against the District of Columbia Public Schools (“DCPS”), alleging a total of ten claims against DCPS. Although Petitioner asked the hearing officer to issue ten separate findings that DCPS denied Student a FAPE, the only substantive form of relief requested in the Complaint was that DCPS be required to perform all necessary evaluations and take appropriate action(s) thereon.

The Student Hearing Office (“SHO”) issued a Due Process Hearing Notice that scheduled a due process hearing for 9:00 a.m. on August 5, 2009.

On June 15, 2009, DCPS filed District of Columbia Public School’s Response to Petitioner’s Due Process Complaint. In its Response, DCPS primarily asserted that it had administered an educational evaluation to Student, held a meeting, and determined Student ineligible for special education and related services, at which point Parent indicated that she did not want further testing. DCPS also asserted that it had repeatedly attempted to work with the family and even made several home visits, but Parent nevertheless failed to show up for meetings or otherwise cooperate, and Student is consistently truant.<sup>2</sup>

On July 22, 2009, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. The hearing officer determined that Petitioner’s Complaint raised only the following two claims: (1) Child Find/inappropriate eligibility determination, and (2) Alleged failure to grant Parent’s counsel access to records. On July 27, 2009, the hearing officer issued a Pre-Hearing Order that summarized the proceedings at the prehearing conference.

By their respective disclosure statements dated June 16, 2009, DCPS disclosed four potential witnesses and thirteen documents (hereinafter DCPS-01 through DCPS-13), and Petitioner disclosed three potential witnesses and twelve documents (hereinafter Petitioner’s Exhibits 1 – 12).

The hearing officer convened the due process hearing on August 5, as scheduled, and the parties’ disclosed documents were admitted into the record without objection. During the course of the hearing, Petitioner withdrew its claim regarding records.

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<sup>2</sup> DCPS also asserted a defense to Petitioner’s claim regarding records, but that claim ultimately was withdrawn.

### III. ISSUE(S)

1. Did DCPS deny Student a FAPE by failing to comply with Child Find and/or making an inappropriate eligibility determination for Student?

### IV. FINDINGS OF FACT

1. Student is \_\_\_\_\_ years old, and he repeated \_\_\_\_\_ grade for the second time during the 2008/09 school year.<sup>3</sup>
2. Student began having academic and behavior problems in school in second grade. During Student's second grade year, Parent asked the school social worker who testified at the due process hearing in this case ("the social worker") for special education testing for Student. Parent learned of special education testing when one of the school social workers told Parent that Student probably was not eligible for special education but he could be tested if Parent wished. Despite Parent's request, however, Student was not evaluated for special education in second grade. Instead, the school referred Student to the Student Support Team ("SST") and held a series of SST meetings to address Student's academic and behavior concerns. Parent attended many of the meetings. A decision was made to give Student extra help in school, and near the end of his second grade school year, Student's academic performance began to improve.<sup>4</sup>
3. In third grade, however, Student continued having behavior and academic problems at school. His reading and writing were not at an appropriate level, he was not completing his work, and he was getting into fights, throwing items across the room, and not remaining in his seat. Student entered the SST process again in SY 2007/08. The social worker was the SST chairperson, and she referred Student for counseling services as part of the SST process. As a result, Student received "mental health services" in the form of weekly therapy from October 4, 2007 through June 5, 2008. Moreover, ADHD was identified as a possible concern for Student, and the SST Notes for Student reveal the team had ongoing concerns about his academic performance and behavior."<sup>5</sup>
4. On February 14, 2008, Parent signed a consent form granting DCPS permission to conduct an educational evaluation of Student. The social worker explained at the due process hearing that the Woodcock-Johnson III Tests of Achievement ("WJ-III") is sometimes used as the first step in the evaluation process. If the scores come back showing the child performed well, then no further testing is done.<sup>6</sup>
5. The WJ-III was administered to Student on February 21, 2008. Student's performance on

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

<sup>4</sup> Testimony of Parent; DCPS-05; DCPS-09; DCPS-11.

<sup>5</sup> Testimony of the social worker; Petitioner's Exhibits 2 and 11; DCPS-09.

<sup>6</sup> DCPS-5; Testimony of the social worker.

the assessment resulted in the following grade equivalencies (“GE”) for the overall/cluster areas: math calculations skills – 3.1 GE, and academic skills – 2.8 GE. However, Student also received grade equivalencies for the subtests he took, and the evaluation score report reveals that his GE was 1.6 for the Picture Vocabulary subtest, 2.5 for reading fluency, 2.6 for spelling, 2.7 for letter word identification, 2.9 for math fluency, and 3.2 for calculation. The evaluator concluded that Student’s academic skills were in the Low Average range compared with others at his grade level, and his math calculation skills were Average when compared with others at his grade level.<sup>7</sup>

6. On March 3, 2008, DCPS shared the results of Student’s educational evaluation with Parent. The speech pathologist reported that Student’s low score on the Picture Vocabulary subtest may have been due to limited exposure to terminology, and she recommended a list of twelve different strategies that Student’s classroom teacher could use to help him. The meeting notes reflect that Parent and Student’s teacher were both pleased with Student’s progress, but both also noted that Student was sometimes inattentive and needed redirection regarding staying focused. The meeting notes also indicate that parent did not want additional testing at that time. However, Parent is not familiar with special education testing. She has no children who are in special education, and she has no knowledge of the various tests that can or should be administered. Hence, to the extent that Parent indicated that she did not want additional testing, it was because (i) she had repeatedly been told that Student did not need special education, and (ii) she was under the impression that all testing had already been administered.<sup>8</sup>
7. Upon the conclusion of the March 3, 2008 meeting, Student was referred back to the SST process. Thereafter, however, he was retained in the third grade. At one of the SST meetings held the following school year, during SY 2008/09, the team stated that Student was “deficient” in all his academic subjects and that he completes tests but fails all of them.<sup>9</sup>
8. Student continues to exhibit behavior and academic problems in school. He received a number of suspensions during both of the academic years he spent in third grade. Suspension records in the administrative record for this case reveal that Student was suspended for 12 days beginning May 13, 2008, for 2 days beginning January 7, 2009, and for 1 or more days on or about May 20, 2009. On each occasion, the reason for the suspension was Student’s “repeated failure to comply.”<sup>10</sup>
9. Student is not capable of independently completing his homework. Parent has to “stay on him,” or she sometimes has to actually sit down at the table with Student to get him to do his homework.<sup>11</sup>

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<sup>7</sup> DCPS-4.

<sup>8</sup> DCPS-04; DCPS-06; Testimony of Parent.

<sup>9</sup> DCPS-04; DCPS-05; DCPS-09.

<sup>10</sup> Testimony of Parent; DCPS-07.

<sup>11</sup> Testimony of Parent.

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10. The SST team has repeatedly attempted to work with Student and Parent during the past three school years. The record reveals that Parent initially attended many of the SST meetings, but her attendance at those meetings ceased during SY 2008/09. Hence, during SY 2008/09, the social worker and others from Student's school made home visits in an attempt to connect with Parent, and they also called and sent letters to Parent to no avail. During a portion of SY 2008/09, Parent did not respond to the school's outreach efforts because she was pregnant and sick. On at least one occasion during SY 2007/08, Parent did not attend the meeting because she felt that she could simply deal with Student's behavior at home.<sup>12</sup>

## V. CONCLUSIONS OF LAW

The sole issue to be determined in this case is whether DCPS denied Student a FAPE by failing to comply with Child Find and/or making an inappropriate eligibility determination for Student. As the party seeking relief in this action, Petitioner bears the burden of proof. *See* 5 D.C.M.R. § 3030.3; *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

Under the Child Find provision of IDEIA, DCPS must have in effect policies and procedures to ensure that all children with disabilities residing in the District of Columbia, and who are in need of special education and related services, are identified, located, and evaluated. *See* 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111. Moreover, either a child's parent, an SEA, an LEA, or another State agency may initiate a request for an initial evaluation to determine whether the child is a child with a disability. 20 U.S.C. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b).

An "initial evaluation" shall consist of procedures to determine whether the child is a child with a disability, and to determine the educational needs of such child. 20 U.S.C. § 1414(a)(1)(C)(i); 34 C.F.R. § 300.301(c)(2). In conducting an evaluation of a student, DCPS must use a variety of assessment tools and strategies to gather relevant information about the child, and DCPS must not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability. *See* 20 U.S.C. § 1414(b)(2)(A)-(B); 34 C.F.R. § 300.304(b)(1)-(2).

Finally, IDEIA requires DCPS to make "reasonable efforts" to obtain informed consent from a child's parent prior to conducting an initial evaluation of that child. *See* 20 U.S.C. § 1414(a)(1)(D)(i)(1); 34 C.F.R. § 300.300(a)(1). IDEIA further provides that "consent" means, *inter alia*, that the parent has been fully informed of all information relevant to the activity for which consent is sought, and the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought. 34 C.F.R. § 300.9(a)-(b).

The evidence in this case demonstrates that Student began exhibiting academic and behavior problems during his second grade year. Parent requested special education testing for Student, but DCPS did not evaluate Student and chose instead to refer Student to the SST. Student's performance began to improve near the end of his second grade year. However, in third grade, Student's academic and behavior problems reappeared, and he was once again referred to the

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<sup>12</sup> Petitioner's Exhibit 11; testimony of the social worker; testimony of Parent.  
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SST. ADHD was mentioned as a possible concern for Student, and based on the SST's referral, Student received weekly therapy for the majority of the 2007/08 school year.

On February 14, 2008, Parent signed a form that granted DCPS permission to conduct an educational evaluation of Student. No request was made at that time for permission to conduct a full initial evaluation of Student because of DCPS's policy (at least at the school at issue) of using the WJ-III as an initial screening tool to determine whether additional evaluations are warranted.

The results of Student's WJ-III revealed, *inter alia*, that he was performing in the Low Average and Average ranges in academics and mathematics, respectively. As a result, DCPS determined that further evaluations were not warranted,<sup>13</sup> and based on that determination, Parent stated that she did not wish to have additional testing administered to Student. Prior to making this decision, Parent was not informed that a full initial evaluation had not been conducted, that no testing had been administered to explore Student's behavior problems, and that Student had only received a single educational assessment prior to DCPS's determination that he did not require special education services.

Student was then referred back to the SST process. However, he was thereafter retained in third grade for an additional year. Student continued to exhibit behavior and academic problems during his second year in third grade, and at one of the SST meetings held that year, the SST stated that he was deficient in all of his academic subjects. Nevertheless, DCPS never recommended a full initial evaluation for Student and/or sought to obtain Parent's informed consent for a full initial evaluation of Student.

As outlined herein, the evidence in this case proves that DCPS violated IDEIA by failing to conduct a full initial evaluation of Student that included a variety of assessment tools and strategies, by failing to use "reasonable efforts" to obtain Parent's informed consent for a full initial evaluation of Student (as opposed to an educational assessment only), and by improperly relying upon a single assessment (the WJ-III) as the sole criterion for determining whether Student is a child with a disability. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving that DCPS denied Student a FAPE by failing to comply with Child Find, which contemplates a full initial evaluation, and by rendering an inappropriate eligibility determination that was based solely on a single assessment. Hence, the hearing officer will order DCPS to conduct a full initial evaluation of Student, which shall consist of a comprehensive psychological evaluation and a speech and language evaluation. Moreover, if DCPS fails to conduct the initial evaluation within 30 days of the start of the coming school year, Parent shall have the right to obtain an independent initial evaluation for Student.

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<sup>13</sup> It should be noted that DCPS did not determine that a speech/language evaluation was warranted despite Student's score on the Picture Vocabulary subtest of the WJ-III, which revealed that he was functioning at a 1.6 grade level in that area.

## VI. SUMMARY OF DECISION

The hearing officer determined that Petitioner met its burden of proof and is entitled to have a complete initial evaluation of Student.

## VII. ORDER

1. DCPS shall conduct a full initial evaluation of Student, which shall consist of a comprehensive psychological evaluation and a speech and language evaluation.
2. Should DCPS fails to conduct a full initial evaluation of Student within 30 days of the start of the 2009/10 school year, Parent shall have the right to obtain independent comprehensive psychological and speech/language evaluations for Student.

/s/ Kimm H. Massey

Kimm H. Massey, Esq.  
Impartial Due Process Hearing Officer

Dated this 15th day of August, 2009.

### NOTICE OF APPEAL RIGHTS

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision may appeal to a State court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. § 1415(i)(2).