

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened for two days on March 15, 2012, and March 23, 2012, at the OSSE Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006 and Hearing Room 2003 respectively.²

BACKGROUND AND PROCEDURAL HISTORY:

The student is age in grade attending a District of Columbia Public Schools ("DCPS") high school, hereinafter referred to as "School A." Prior to attending School A the student attended a DCPS middle school, hereinafter referred to as "School B." While attending School B during school year ("SY") 2008-2009, when the student was in seventh grade, DCPS evaluated the student and in June 2009 determined the student was not eligible for special education services. In March 2010, when the student was in eighth grade at School B the student's grandmother³ obtained an independent neuropsychological evaluation to better understand the student's academic functioning. The evaluation indicated the student had average to above average cognitive abilities and average to above average academic achievement. The grandmother did not share the evaluation with DCPS until April 2011 after the student was in ninth grade attending School A and had begun to have academic difficulties.

School A is a highly competitive academic high school that requires all students to apply for admission and maintain academic standards to remain enrolled. At the end of the student's first year at School A, SY 2010-2011, School A informed the student he could not return for SY 2011-2012. However, the student appealed to School A's principal and was allowed to re-enroll for SY 2011-2012. Upon re-enrollment in July 2011, the student's grandmother provided School A's principal another copy of the independent evaluation. DCPS convened a meeting in September 2011 to discuss the independent evaluation. DCPS provided the grandmother a list of resources she could use to address the student's academic issues and put some assistance in place for the student such as in-school tutoring. The student continued to have academic and behavior difficulties during tenth grade and on January 3, 2012, School A informed the student and his grandmother the student would not be allowed to return to School A in SY 2012-2013 because of behavior problems. On January 12, 2012, School A convened a meeting with the grandmother to discuss strategies to prevent the student from failing tenth grade.

On January 12, 2011, after leaving the meeting at School A, the grandmother, by and through counsel, filed a due process complaint alleging DCPS failed to evaluate the student after an

² Petitioner's counsel presented his case on March 15, 2012. DCPS' witness was not available that day. At DCPS' request the Hearing Officer allowed a second day of hearing for the DCPS witness to testify. DCPS presented its case on March 22, 2012.

³ The student's grandmother has provided DCPS the necessary parental authorization to act on behalf of the student's father with regard to the student's education.

alleged parental request for evaluation made at the end of SY 2010-2011 or in the alternative failed to indentify and evaluate the student under "Child Find" and failed to evaluate the student in all areas of suspected disability. Petitioner alleged DCPS should have identified the student by the end of SY 2010-2011 when the student was told he could not return to School A. Petitioner alleged the 120-day evaluation and eligibility determination timeline started at the latest in September 2011 when School A convened a meeting to discuss the independent evaluation. Petitioner seeks as relief DCPS funding of an independent comprehensive psychological evaluation and that DCPS be directed to convene an eligibility meeting after completion of the evaluation to determine the student's eligibility for special education services.

DCPS filed a written response to the complaint on January 31, 2011. DCPS asserted that the student was evaluated by DCPS in SY 2008-2009 and found ineligible and thus DCPS was not obligated to evaluate the student until DCPS was put on notice of the parent's desire for evaluation as of the filing of the due process complaint. At the hearing DCPS also asserted that School A initiated a Student Support Team ("SST") process under which interventions were attempted for the student prior to conducting evaluations and DCPS was not obligated to conduct evaluations until that process was completed on February 10, 2012, and after the parent had provided written consent, which DCPS has not yet obtained. DCPS asserted the timeline for the evaluation and eligibility determination has not yet expired.

At the January 31, 2012, resolution meeting the parties did not resolve the issues alleged in the complaint. The parties agreed that the resolution period would continue for the full thirty-days. Thus, the 45-day timeline started on February 13, 2012, and ends (and the HOD is due) on March 27, 2012. A pre-hearing conference was conducted on February 10, 2012⁴, at which the issues to be adjudicated were discussed and determined. On February 15, 2012, the Hearing Officer issued a pre-hearing order.⁵

ISSUES: ⁶

The issues adjudicated are:

1. Whether DCPS denied the student a Free and Appropriate Public Education ("FAPE") by failing to evaluate the student upon parental request made at the end of SY 2010-2011.
2. Whether DCPS denied the student a FAPE by failing to indentify and evaluate the student under "Child Find."

⁴ The pre-hearing conference was conducted on the first date that both counsel were available after the resolution meeting was held.

⁵ On February 8, 2012, the Hearing Officer issued a second pre-hearing order clarifying that March 15, 2012, was the hearing date.

⁶ The alleged violations and/or issues listed in the complaint may not directly correspond to the issues outlined here. The Hearing Officer restated the issues in the pre-hearing order and the parties agreed that these were the issues to be adjudicated.

3. Whether DCPS denied the student a FAPE by failing to evaluate the student in all areas of suspected disability.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-5 and DCPS Exhibit 1) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁷

1. The student is age _____ in _____ grade attending School A, a DCPS high school. Prior to attending School A the student attended School B, a DCPS middle school. During seventh grade at School B (SY 2008-2009) the student struggled with a few of his courses. DCPS evaluated the student for special education services. In May 2009 DCPS conducted psychological and educational evaluations. The DCPS evaluations indicated the student had high average intelligence and average academic achievement. On June 1, 2009, DCPS held an eligibility meeting at which the student was determined ineligible for special education services. (Grandmother's testimony, DCPS Exhibit 1-1, 1-2, 1-3, 1-4, 1-5)
2. In March 2010 when the student was in _____ grade at School B the grandmother had an independent neuropsychological evaluation conducted. By March 2010 the grandmother knew the student would be attending School A and was familiar with the academic rigors of the school. She had the independent evaluation conducted to better understand the student's academic functioning and help ensure his success at School A. She received the evaluation report in May 2010. The evaluation indicated that student's cognitive abilities were in the average range with a full scale IQ of 109. With regard to academic achievement the student displayed "solid academic skills in areas of reading, writing, and mathematics." His broad reading abilities were found to be average at grade equivalency 8.7. His broad writing abilities were average at grade equivalency of 7.8. His broad math abilities were above average at grade equivalency of 11.6. The evaluator diagnosed the student with Attention Deficit Hyperactivity Disorder ("ADHD") with some weaknesses in language and executive functioning. The evaluator concluded the student did not display any significant emotional difficulties and was generally a well-adjusted young man. The evaluator averred that the student "has cognitive and intellectual capacity to be successful in most any mainstream academic program," but that he would "benefit from additional structure and support so that he can compensate for his language weaknesses and executive difficulties in order to improve the consistency of his performance in academic settings." (Petitioner's Exhibit 1-4, 1-6, 1-7)

⁷ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

3. The student enrolled in ninth grade at School A at the start of SY 2010-2011. School A is a highly competitive academic high school that requires all students to apply for admission and maintain academic standards to remain enrolled. The student's grandmother did not immediately share the independent evaluation with School A because she thought if the school staff were aware of the student's weaknesses identified in the evaluation it might create a negative impression of him among staff and eventually jeopardize his ability to be successful and remain at School A. (Grandmother's testimony)
4. During ninth grade (SY 2010-2011) the student experienced academic difficulty. Despite scoring proficient in math on the independent evaluation, the student had difficulties with Algebra. In April 2011 the grandmother had conversations with the Algebra teacher and school counselor regarding the student's academic difficulties and she shared with the school counselor the independent neuropsychological evaluation in hopes the evaluation would assist the school staff in addressing the student's academic difficulties. (Grandmother's testimony)
5. In the 4th advisory of ninth grade (SY 2010-2011) the student earned failing grades in Biology and Algebra I. The student was informed by the School A principal that he could not return to School A in SY 2011-12. The student appealed to the principal and was granted permission to return to School A for tenth grade in SY 2011-2012. (Grandmother's testimony, Petitioner's Exhibit 2)
6. During SY 2010-2011 the student earned the following grades on his report card:

<u>Subjects</u>	<u>Adv.1</u>	<u>Adv. 2</u>	<u>Adv. 3</u>	<u>Adv. 4</u>	<u>Exam</u>	<u>Final Grade</u>
World History	B-	D	C-	C	C-	C
Latin I	C	D	D	D	D	D+
Biology I	C	D	D	F	D	D
English I	C	D	D	D	F	D
Algebra 1	D+	D+	C	F	C	D+
Community Lab	P	P	P	P	P	P
Citizenship	A	A	A	A	A	A
Phys Ed	C	B				B
Computer App.			B	C	B	B

(Petitioner's Exhibit 2)

7. The grandmother met with School A's principal in July 2011 when she was re-enrolling the student for SY 2011-2012 and the grandmother discussed with the principal the student's academic difficulties. The grandmother informed the principal about the independent evaluation that had been provided to the counselor in April 2011. The school counselor left at the end of the school year and was not scheduled to return to School A for SY 2011-2012. The principal could not locate the evaluation in the student's file so the grandmother provided the principal a duplicate of the evaluation. The principal stated that she would give the evaluation to the school psychologist for her to review. However, the psychologist was not working during the summer months and would return in September. The grandmother suggested that it be provided to DCPS central office so something could be done with the evaluation. However, the grandmother did not specifically request at that time that DCPS conduct an evaluation of the student to determine whether he is need of special education services. (Grandmother's testimony)
8. In September 2011, School A convened a meeting with the school counselor, school social worker, the school psychologist, the principal and the student's teachers. During the meeting the psychologist reviewed the independent evaluation and provided the grandmother a written list of resources the student's family could use to assist the student and discussed some measures that could be done at school to assist the student such as the student regularly checking in with the school counselor and in-school tutoring. The school staff did not refer to this meeting as an SST meeting during the meeting and the school did not provide the parent any notes from this meeting. During this meeting the grandmother requested the student be evaluated. (Grandmother's testimony)
9. The school had periodic parent/teacher breakfasts during the first semester of 2011-2012. The student's grandmother attended each parent/teacher breakfast and shared with the student's teachers that the student was shutting down, frustrated about his grades and displaying poor behavior as a result. She asked the student's teachers if they had any suggestions. They suggested the grandmother regularly view the student's grades on the computer based student information site (Engrade), have the student complete workbooks and attend tutoring. All the suggestions were tried yet the student's grades did not improve. (Grandmother's testimony)
10. In November 2011, the grandmother telephoned the counselor to ask for assistance in addressing the student's academic difficulties in light of the fact that he was failing and would most likely have attend a different school for SY 2012-2013. The school counselor and school social worker suggested to the grandmother that she explore a transfer to another school mid-year so the student might not fail the entire year. The counselor provided the grandmother a list of schools to which the student could transfer. The student's neighborhood school was on a 4 by 4 academic system (four classes in fall four in the spring) and the student's classes from the 1st semester at School A would not readily transfer and allow the student to earn full credits for academic year. Therefore, the grandmother chose not to transfer the student to the neighborhood school. The grandmother asked the social worker and counselor if the student could be evaluated for the ADHD condition. They stated to her that she needed to take the student to her physician for that determination. (Grandmother's testimony)

11. On January 3, 2012, School A's principal sent the grandmother a letter stating the student could not return to School A for SY 2012-2013 because of poor attendance in his Community Lab and poor behavior. (Grandmother's testimony, Petitioner's Exhibit 3-1)
12. On January 12, 2012, near the end of second advisory, School A convened meeting with the student's teachers. The grandmother attended. The purpose of the meeting was to figure out how to keep the student from failing. The DCPS psychologist had a list of things the teachers could do to help the student. The group agreed the student would regularly check in with the school counselor. However, he later did not comply with that suggestion. Once the teachers left the meeting the grandmother continued her conversation with the principal, counselor, social worker and psychologist. The grandmother expressed her frustration that she had provided the school an independent evaluation and little if anything had been done by the school to help the student. The grandmother asked the group what person was qualified to look at the independent evaluation and help the student with the language and executive functioning weaknesses that were identified. The group indicated that the school psychologist was that person. The grandmother then asked the psychologist had she met with the student and she said she had not. The grandmother was frustrated that she had talked with the school staff repeatedly about the student's academic difficulties and provided the independent evaluation and there was, what she perceived to be, little action being taken by the school staff to assist him. Immediately following the meeting the grandmother went to see her attorney and the due process complaint was filed. (Grandmother's testimony)
13. On February 10, 2012, School A convened a meeting for the student and the grandmother attended. Ms. Katrina Whitesneed, the DCPS special education specialist assigned to monitor School A, attended the meeting and told the grandmother that DCPS had 120 days to evaluate the student. The grandmother inquired whether the student could be transferred to Wilson SHS where he might not lose credits as he would if he transferred to his neighborhood school. The grandmother was informed that Wilson SHS was not available as a transfer school. The student's teachers expressed during the meeting that they believed the student could do the work and be successful at School A. The grandmother stated that the student was putting forth consistent effort in his classes and he was extremely frustrated that his efforts were resulting in failing grades. (Grandmother's testimony)
14. Thus far the student has earned the following grades on his report card for SY 2011-2012:

<u>Subjects</u>	<u>Term 1</u>	<u>Term 2</u>	<u>Term 3</u>	<u>Term 4</u>	<u>Exam</u>	<u>Final Grade</u>
English II	C	D	F			
Chemistry I	D	F	C			
Geometry	C-	F	D+			
AP World History	C	F	A			

French I	B	D	F
Community Lab 1	U	P	
Citizenship	U	U	
Phys Ed	C	C	C
Research Health/PE	P	D	D

The student received teacher comments of poor behavior in Chemistry, Geometry, and Community Lab 1. (Petitioner's Exhibits 4 & 5)

15. School A has a rigorous curriculum and requires that students be able to function independently to be successful. School A does not have a special education coordinator but has an assigned DCPS special education specialist who works with several DCPS schools to help ensure compliance with special education related requirements. The School A school social worker fulfills most of the duties related to identification and evaluation of students who might be in need of special education. The school currently has no students who are eligible for special education services. DCPS usually first tries intervention strategies in a process known as the SST before a student is referred for special education evaluation and eligibility determination. (Ms. Whitesneed's testimony)
16. The DCPS special education specialist assigned to School A, Ms. Sabrina Whitesneed, participated in the February 10, 2012, meeting. Ms. Whitesneed believed that the meeting was a part of a SST process that had been providing the student intervention in his general education classes. School A staff represented at the February 2012 meeting that it had initiated the SST process for the student and that the February 10, 2012, meeting was a follow-up. Each of the student's teachers related the student's then current performance and what the student needed to do to pass his or her course. The student's math and science teachers said he was doing okay if he turned in all his work. Two of the teachers stated that the student was failing the courses they were teaching. They spoke about interventions that had been put in place for the student: he had been allowed extra time to turn in assignments, his seating in the classroom had been changed to monitor any off-task behavior and he was given extra assistance by checking in with the school counselor. (Ms. Whitesneed's testimony)
17. When the due process complaint was filed Ms. Whitesneed checked the DCPS special education database and found that the student was found ineligible when he attended School B. There was nothing else in his record. There was no record that the independent evaluation had been provided to DCPS. However, there was no dispute that the parent had provided School A the evaluation early in SY 2011-2012. During the February 10, 2012, meeting the grandmother raised the concern that she brought the evaluation to the school during the summer 2011 and a meeting was held in the fall 2011. Ms. Whitesneed explained to the grandmother that there was no documentation in the database to reflect that she had provided the school the evaluation and requested any action be taken. The grandmother stated at the meeting that she had previously requested

of School A staff that the student be evaluated. The School A staff members did not refute this comment by the parent during the meeting but also did not confirm it. Some of the staff members who attended the previous meetings with the grandmother were not present at the February 10, 2012, meeting. (Ms. Whitesneed's testimony)

18. As of the February 12, 2012, Ms. Whitesneed began the evaluation/eligibility referral process. The next step is to obtain consent from the grandmother and for the psychologist to review the independent evaluation and update for more recent information. Ms. Whitesneed was not aware that the independent evaluation had been provided to School A prior to the date the due process complaint was filed. Had she known of the evaluation she would have initiated the DCPS evaluation and eligibility process. Ms. Whitesneed was hospitalized shortly after the February 10, 2012, meeting and as a result has not yet been able to obtain the written consent and move forward with the student's evaluation and eligibility determination. At the hearing the grandmother was given an opportunity to set an appointment with Ms. Whitesneed to provide written consent for the evaluation(s) to proceed. (Ms. Whitesneed's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive a 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.

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief.⁸ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

⁸ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the 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.

ISSUE 1: Whether DCPS denied the student a FAPE by failing to evaluate the student upon parental request made at the end of SY 2010-2011.

Conclusion: DCPS failed to promptly evaluate the student and determine his eligibility following a parental request that the student be evaluated in September 2011. Petitioner sustained the burden of proof by a preponderance of the evidence.

DCPS is required to complete evaluations of children in 120 days under the IDEA and DC law. 34 CFR § 300.301(c)(ii); D.C. Code § 38-26561.02 (2010) (DCPS shall evaluate within 120 days from the date the child was referred). Evaluation under the IDEA includes assessment procedures as well as the eligibility determination. *See* 34 CFR §§ 300.15 (definition of evaluation includes § 300.306), 300.306 (procedures for eligibility meeting and decision).

34 C.F.R 300.502(c) provides

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation--

- (1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
- (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

In this instance the student's grandmother credibly testified⁹, and the student's report cards reflect, that the student was struggling academically after he began attending School A in fall 2010 and by April 2011 was in danger of failing some of his classes. As a result the grandmother provided School A the independent evaluation in hopes it would be used by School A to develop some strategies to assist the student academically. The evidence demonstrates that nothing was done with that evaluation until September 2011 when a meeting, which a DCPS psychologist attended, was convened. The evidence demonstrates the parent was given suggestions of activities to implement with the student and the school began to institute some interventions to assist the student including in-school tutoring, change in classroom seating and regular reporting to the school counselor. These interventions proved unsuccessful.

The parent credibly testified that in the September 2011 meeting she requested of School A staff that the student be evaluated. At a subsequent meeting in November 2011 with the school counselor and social worker, rather than being informed of what could be done to help the student be successful or to move forward with evaluating the student, the grandmother was advised of schools where the student could be transferred. The grandmother was later invited to a January 12, 2012, meeting the purpose of which was to develop strategies to prevent the student from failing. The parent testified she became frustrated during the meeting that the school psychologist had not met with the student to make any assessment(s) based on the

⁹ The Hearing Officer judged the witness credible based on her demeanor and her fluency in recounting the events and meeting described in her testimony.

independent evaluation and that in her opinion the school had taken little if any action to assist the student.

On February 10, 2012, DCPS convened a meeting that it characterized as a follow-up SST meeting. The grandmother credibly testified that at that meeting she reiterated that she had requested the student be evaluated in previous meetings with the school staff in September 2011 and November 2011. Ms. Whitesneed testified that no one at the meeting, including the principal who the parent gave the evaluation to in July 2011, refuted the assertion during the meeting that the grandparent had made such a request.

Although, Ms. Whitesneed testified that the DCPS initiated a SST process, and the grandmother was aware that interventions were being tried she was apparently not aware that the SST process was a formal procedure prior to evaluations until after her complaint was filed and the February 10, 2012, meeting held. The school may have initiated a SST process but the grandmother was not presented any documentation of that SST process. Moreover, the grandmother requested the student be evaluated in September 2011. Ms. Whitesneed, who is responsible for advising School A as to its responsibilities under IDEA, clearly testified that had she been aware that the grandparent had provided the school an independent evaluation she would have initiated the evaluation and eligibility process. But no one from School A informed her about the independent evaluation prior to the filing of the due process complaint.

DCPS presented no witnesses who were present at the meeting with the parent in September 2011 or November 2011 to refute the grandmother's testimony that she requested that the student be evaluated. Based on the independent evaluation conducted in March 2010 the student has above average cognitive abilities and at least average academic abilities but his academic performance, particularly during the current school year, has been abysmal and totally contradictory to his apparent abilities. The grandmother's credible testimony reveals the student is making great effort to succeed at school but to little avail. The evidence demonstrates that rather than proceed to evaluate the student School A put more effort telling the student and grandmother that the student would not return to School A and they should consider other schools.

The Hearing Officer concludes based on her credible testimony that the grandmother made a request that the student be evaluated at the September 2011 meeting and thus DCPS should have initiated evaluation(s) and completed the evaluation process within 120 days which would have been at latest the end of January 2012.¹⁰ Consequently, the Hearing Officer concludes that Petitioner has met the burden of proving that the DCPS failed to timely evaluate and determine the student's eligibility or ineligibility for special education services and thus denied the student a FAPE. The Hearing Officer concludes based on this denial of FAPE Petitioner shall be provided a DCPS funded independent comprehensive psychological evaluation.

¹⁰ The parent did not testify as to the exact date of the September 2011 meeting. Whatever date in September 2011 the meeting was held, the 120-day period would have expired at the latest on the date of resolution meeting and prior to hearing. Thus the Hearing Officer considers it a waste of administrative resources for the issues not to be resolved in this proceeding even if hypothetically the 120-day period expired days after the complaint was filed. In addition, given that DCPS had the independent evaluation prior to the September meeting, equity requires that the issues be adjudicated sooner rather than later and that the claim should be considered ripe.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to identify and evaluate the student under "Child Find."

Conclusion: DCPS had identified the student while he was attending School B and found him ineligible. Until the parental request was made it was reasonable for DCPS to not yet evaluate the student. Petitioner did not sustain the burden of proof by a preponderance of the evidence on this issue.

The "Child Find" requirements of IDEA at 20 U.S.C. 1412 (a); 34 C.F.R. Section 300.111 require every state to effectuate policies and procedures to ensure that all children with disabilities residing in the state including wards of the state who are in need of special education and related services are "identified, located and evaluated." This Circuit in *Reid v. District of Columbia*, 401 F. 3d 516, 519 (D.C. Cir. 2005) held: "School districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction. Instead, school systems must 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.'" See also *Branham v. District of Columbia*, 427 F. 3d 7, 8 (D.C. Cir. 2005) In *Scott v. District of Columbia*, 2006 U.S. Dist. LEXIS 14900, the Court citing the above cases held: "The Circuit's holdings require DCPS to identify and evaluate students in need of special education and related services, whether or not parents have made any request, written or oral." The "Child Find" requirement is an affirmative obligation on the school system. A parent is not required to request that a school district identify and evaluate a child. In *N.G., et al. v. District of Columbia*, 556 F. Supp. 2d 11, (U.S.D.C. 2008) the Court stated: "This Court has held on numerous occasions that as soon as a student is identified as a potential candidate for special education services, DCPS has a duty to locate that student and complete the evaluation process.

The evaluation component of "Child Find" requires a district to conduct an initial evaluation of a child to determine whether he qualifies as a child with a disability within 60 days or within the time frame specified by the state (120 days as mandated by the District of Columbia) and to determine his educational needs, including the content of his IEP. 20 USC 1414(a)(1)(C); 20 USC 1414(b)(2)(A).

Petitioner has asserted an alternative claim that the student should have been identified under "Child Find" and that the student should have been identified at the end of SY 2010-2011 when he was informed he could not return to School A for SY 2011-2012. The Hearing Officer is not convinced of this argument. As stated in the conclusion above, DCPS had identified the student during SY 2008-2009 and found the student ineligible. Although the student was struggling academically and the parent provided School A a copy of the independent evaluation, there was no glaring information in the evaluation absent a request from the parent that would have put DCPS on notice that the student should be evaluated again and his eligibility readdressed. He was struggling academically even in ninth grade and that academic struggle became increasingly worse in his tenth grade year. Although as Ms. Whitesneed testified had she been aware that School A had been provided the independent evaluation she would have initiated the evaluation

ORDER:

1. DCPS shall within twenty (20) school days of the issuance of this Order fund an independent comprehensive psychological evaluation at the OSSE approved rate.
2. DCPS shall within twenty (20) school days of the issuance of this Order convene a student evaluation plan meeting and determine what if any additional assessment(s) or evaluation(s) DCPS will conduct of the student.
3. DCPS shall within fifteen (15) school days of its receipt of the independent comprehensive psychological evaluation convene an eligibility meeting to review the evaluation and determine the student's eligibility or ineligibility for special education services.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/s/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: March 27, 2012