

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

Student Hearing Office  
810 First Street, N.E.  
Washington, D.C. 20002

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STUDENT HEARING OFFICE  
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<b>Parent, on behalf of STUDENT,<sup>1</sup></b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Due Process Hearing: March 9, 2012</b>
	)	
<b>THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,</b>	)	
	)	
<b>Respondent.</b>	)	<b>Hearing Officer: Frances Raskin</b>

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**HEARING OFFICER DETERMINATION**

**I. JURISDICTION**

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

**II. BACKGROUND**

Petitioner is the parent of a \_\_\_\_\_-year-old student ("Student") who attends a public charter school ("Charter School") in the District of Columbia. On January 17, 2012, Petitioner filed a due process complaint ("Complaint") against the District of Columbia Public Schools ("DCPS") alleging violations of the Individuals with Disabilities Education Act ("IDEA").

On January 18, 2012, this Hearing Officer was assigned to preside over this case. On January 26, 2012, Respondent DCPS filed a timely response to the Complaint.<sup>2</sup>

On February 2, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties agreed to continue to work to resolve the Complaint through the end

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

<sup>2</sup> Respondent did not challenge the sufficiency of the Complaint.

of the resolution session. Thus, the resolution period ended on February 16, 2012. The parties agreed that the forty-five day, due process hearing timeline began on February 17, 2012.

This Hearing Officer issued a prehearing conference summary and order on February 29, 2012.

The due process hearing commenced on March 9, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits, Respondent's proposed exhibits, and the parties' joint exhibits.<sup>3</sup> Petitioner testified and presented three witnesses on her behalf, the Student; the educational advocate ("Advocate"), and a psychologist ("Psychologist"). Respondent presented two witnesses, a compliance manager ("Compliance Manager") and the Student's prior physics teacher ("Teacher"). After the parties presented oral closing arguments, the due process hearing concluded on March 9, 2012.

### **III. ISSUE PRESENTED.**

This Hearing Officer certified the following issue for adjudication at the due process hearing:

Whether Respondent denied the Student a free, appropriate, public education ("FAPE") on August 29, 2011, by failing to find him eligible for specialized instruction and related services in light of his attention deficit hyperactivity disorder.

Petitioner requests relief in the form of an order finding the Student eligible for specialized instruction and related services as a student with an other health impairment; requiring Respondent to develop an individualized educational program that contains ten hours per week of specialized instruction in reading, written language and mathematics, one hour per month of individual counseling services, and goals and objectives to address his difficulties with organization, distractibility, and other deficits in the area of executive functioning; fund independent psychiatric and functional behavior assessments, and create a behavior implementation plan for him. Petitioner also seeks an order requiring Respondent to provide the Student compensatory education.

### **IV. FINDINGS OF FACT**

1. The Student is a \_\_\_\_\_-year-old young man who in the \_\_\_\_\_ grade at a public charter school ("Charter School") in the District of Columbia.<sup>4</sup> He has a very close relationship

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<sup>3</sup> This Hearing Officer admitted into evidence Petitioner's exhibits 1-29, inclusive, and Respondent's exhibits 1-12 inclusive. Neither party objected to the admission of the other party's exhibits.

<sup>4</sup> Testimony of Petitioner, Student; Petitioner Exhibit 8 at 1 (May 18, 2011, Report of Confidential Comprehensive Psychological Evaluation).

with Petitioner, who adopted him when he was five years old after he was neglected by his biological mother and placed in foster care.<sup>5</sup>

2. Petitioner has multiple medical problems, including diabetes, congestive heart failure, and lung and kidney problems.<sup>6</sup> These medical problems result in frequent visits to the doctor, multiple emergency room visits, and surgeries.<sup>7</sup> When Petitioner is not feeling well, the Student awakens in the middle of the night to check on her and does not go to bed until she is provided with her medicine and other necessities.<sup>8</sup> The Student becomes extremely upset and unsettled when Petitioner is hospitalized or has to undergo a medical procedure.<sup>9</sup> He has difficulty with daily tasks and routines when Petitioner has a medical reversal.<sup>10</sup>

3. The Student received a diagnosis of attention deficit hyperactivity disorder (“ADHD”) in June 2008.<sup>11</sup> He has difficulty maintaining attention and concentration.<sup>12</sup> He is poorly organized and easily distracted.<sup>13</sup> He experience depression, is sometimes withdrawn, and becomes upset when Petitioner is ill.<sup>14</sup> He also exhibited symptoms of anxiety in 2010 after he robbed at gunpoint by three unknown males.<sup>15</sup>

4. The Student’s current level of intellectual functioning, as measured by his full-scale IQ of 99, is low average and in the twenty-fist percentile of his same-age peers.<sup>16</sup> His verbal comprehension and processing speed are low average.<sup>17</sup> His perceptual reasoning is average.<sup>18</sup> His working memory, i.e., ability to sustain attention, concentrate, and exert mental control, is average.<sup>19</sup> Due to his below average processing speed, he requires more time to complete assignments.<sup>20</sup>

5. Academically, the Student is performing comparably to his same-age peers and grade expectancy.<sup>21</sup> In broad reading and broad written language, the Student performs in the average range.<sup>22</sup> He performs in the average range in broad math, academic skills, and academic

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<sup>5</sup> Petitioner Exhibit 8 at 3-4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* Petitioner was last hospitalized in March 2011 due to respiratory difficulties. *Id.*

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

<sup>9</sup> *Id.* at 9.

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

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 13.

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

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

<sup>19</sup> *Id.* at 16.

<sup>20</sup> Testimony of Psychologist.

<sup>21</sup> Petitioner Exhibit 8 at 30.

<sup>22</sup> *Id.* at 17.

fluency.<sup>23</sup> His only area of relative weakness is passage comprehension, which is in the low average range.<sup>24</sup>

6. At the Charter School, the Student does not exhibit behavioral or emotional problems.<sup>25</sup> He does not display anger, aggression, acting-out behaviors, hyperactivity, inattention, or conduct problems.<sup>26</sup> He does seem to demonstrate school-related difficulties that include academic underachievement.<sup>27</sup> He has a high level of distractibility, forgetfulness, and difficulties with focusing and sustaining attention.<sup>28</sup> He also has problems with adjustment.<sup>29</sup> These are all elements of ADHD and an indication of poor executive functioning.<sup>30</sup>

7. At the Charter School, the Student engages in a number of behaviors that might be adversely impacting other children in the classroom.<sup>31</sup> At times, he is restless, impulsive, and has difficulty maintaining self-control.<sup>32</sup> He has positive relationships with peers, sufficient social skills, and exhibits adequate expressive and receptive language skills.<sup>33</sup> He does not appear to exhibit symptoms of depression, anxiety, or somatic complaints in the classroom.<sup>34</sup>

8. The Student exhibits a moderate degree of hyperactivity in the classroom.<sup>35</sup> He has problems regulating attention, inhibiting responses, and employing self-monitoring.<sup>36</sup> He has difficulties sitting still, remaining on task for an extended period of time, and regulating his impulsive behavior.<sup>37</sup> He seems to have limited coping skills and he tends to react on the basis of his immediate impulses.<sup>38</sup> He has difficulty managing his emotions, particularly anger, which he often displays through verbal and physical aggression.<sup>39</sup> He is likely to be easily frustrated and respond in a maladaptive manner when completing academic tasks.<sup>40</sup>

9. The Student's greatest difficulty is in the area of metacognition.<sup>41</sup> This reflects his ability to initiate, plan, organize, self-monitor, and sustain working memory.<sup>42</sup> He has difficulties

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

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 20-21.

<sup>26</sup> *Id.* at 21.

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

<sup>28</sup> *Id.* at 22.

<sup>29</sup> *Id.*

<sup>30</sup> Testimony of Psychologist.

<sup>31</sup> Petitioner Exhibit 8 at 23.

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 26.

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

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

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

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

<sup>41</sup> *Id.* at 27.

<sup>42</sup> *Id.*

in solving problems and in planning.<sup>43</sup> He has poor organizational skills and difficulties in short-term memory.<sup>44</sup>

10. He has significant weaknesses in keeping track of his belongings, having his materials readily available for projects and assignments, and locating his possessions when needed.<sup>45</sup> As a result, he experiences academic challenges due to his persistent failure to be prepared for class.<sup>46</sup> He fails to complete in-class and homework assignments and school projects.<sup>47</sup>

11. The Student has marked difficulty setting realistic goals, planning a course to obtain goals, and sequencing events.<sup>48</sup> He may underestimate the amount of time it takes to complete tasks.<sup>49</sup> He may procrastinate in beginning a lengthy school assignment and may have trouble carrying out the actions needed to reach his goals.<sup>50</sup> He likely encounters difficulties in approaching tasks in an efficient manner.<sup>51</sup> He may get caught up in the details, miss the “big picture,” and thereby feel overwhelmed when faced with large amounts of information.<sup>52</sup>

12. He has a documented history of attention deficits, a high level of distractibility, failure to complete school assignments and homework, and an inability to stay on task.<sup>53</sup> At home, he receives assistance with and monitoring of his homework, which he generally completes each evening.<sup>54</sup> However, when he gets to school, he forgets to turn in the homework he completed the night before.<sup>55</sup> He has been disciplined in school for failing to turn in his homework, being late to class, and acting silly and playful in class.<sup>56</sup>

13. These problems have prevented him from performing optimally in the classroom environment.<sup>57</sup> His school performance is primarily impacted by his failure to complete academic tasks.<sup>58</sup>

14. At the Charter School, the Student works with a social worker on school to improve his organizational skills and address his distractibility.<sup>59</sup> He also should see a

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

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

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

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

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

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

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

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

<sup>53</sup> *Id.* at 30.

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

<sup>55</sup> *Id.*, testimony of Student.

<sup>56</sup> Testimony of Petitioner.

<sup>57</sup> Petitioner Exhibit 8 at 30.

<sup>58</sup> Petitioner Exhibit 8 at 27.

<sup>59</sup> Testimony of Psychologist, Student.

psychiatrist because he may be in need of medication to manage his ADHD symptoms.<sup>60</sup> This would increase his learning potential in the classroom.<sup>61</sup>

15. The Charter School is academically rigorous.<sup>62</sup> The academic curriculum is more rigorous than other DCPS Schools.<sup>63</sup> Students are expected to pay attention and they receive homework every night.<sup>64</sup> The school assesses demerits to students who do not turn in their homework.<sup>65</sup> At the Charter School, the Student rarely gets in trouble except for failing to turn in his homework.<sup>66</sup>

16. The Student passed all of his classes in the 2010-2011 school year.<sup>67</sup> He received a C+ in English 1; a C- in world history and geography; a B+ in physical education; a B- in art; a C- in speech and composition; a C- in conceptual physics; and a C in algebra 1.<sup>68</sup> He was able to perform grade-level work without assistance.<sup>69</sup> If a Student receives a C grade in a class at the Charter School, this grade indicates that he was able to perform grade-level work.<sup>70</sup> A D is a failing grade.<sup>71</sup> Thus, the Student's grades at the end of the 2010-2011 school year were in the low average range.<sup>72</sup> This is commensurate with his cognitive ability.<sup>73</sup>

17. At the Charter School, the Student receives a testing accommodation that provides him extended time on assignments, tests and quizzes, as well as small group testing.<sup>74</sup> He also receives preferential seating in the classroom and accommodations for organization, which include the sessions with the social worker.<sup>75</sup>

18. On August 29, 2011, the Charter School convened a meeting of an eligibility team to review the Student's recent evaluations and his progress at school, determine whether he is eligible for special education services, and to address any recommendations in the evaluation reports.<sup>76</sup> Petitioner and the Educational Advocate attended this meeting.<sup>77</sup> The eligibility team included the Physics teacher, the Student's social worker, the Charter School special education

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<sup>60</sup> Testimony of Psychologist.

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

<sup>62</sup> Testimony of Compliance Manager.

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

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

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

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

<sup>67</sup> Petitioner Exhibit 9 at 2 (August 29, 2011, MDT Meeting Notes).

<sup>68</sup> *Id.*

<sup>69</sup> Testimony of Compliance Manager.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

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

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

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

<sup>76</sup> Petitioner Exhibit 9 at 1.

<sup>77</sup> *Id.*

coordinator, and the Charter School compliance manager.<sup>78</sup> Also participating in the meeting were a DCPS representative, a DCPS psychologist, and a DCPS speech and language pathologist.<sup>79</sup>

19. At the meeting, the Physics Teacher reviewed the Student's grades from the 2010-2011 school year and her observations of the Student in her class during that year.<sup>80</sup> The Physics Teacher reported that the Student's performance varied.<sup>81</sup> Sometimes he was on-task, performed well, complied with all instructions, and mastered the material.<sup>82</sup> At other times, he would be distracted, distracted others, did not complete his homework, and was withdrawn.<sup>83</sup>

20. The Physics Teacher reported that the Student passed all of his classes in the 2010-2011 school year without medication or additional support.<sup>84</sup> She also reported that the Student was proficient on the 2010 DC CAS and as basic in reading.<sup>85</sup>

21. The eligibility team discussed the fact that the Student currently had a 504 plan pursuant to which he receives thirty minutes per week of counseling to work on his organizational skills and help him develop coping skills, improve his focus in class, and learn more about his ADHD.<sup>86</sup>

22. The DCPS Psychologist reviewed the Student's most recent comprehensive psychological assessment, which was administered on April 29, 2011, May 2, 2011, and May 5, 2011.<sup>87</sup> The DCPS Psychologist reported that the Student is able to function academically when he is able to focus.<sup>88</sup> She reported that he is able to learn on grade-level with no supports.<sup>89</sup> She concluded that he is functioning where he should be given his cognitive ability.<sup>90</sup> She agreed that he requires support to improve his organizational skills, strategies for maintaining focus.<sup>91</sup> She found that the assessment data did not support providing the Student specialized instruction in core academic areas.<sup>92</sup>

23. The eligibility team reviewed the disability worksheet for other health impairment.<sup>93</sup> The team considered the criteria for other health impairment: limited strength,

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<sup>78</sup> *Id.*

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

<sup>80</sup> *Id.* at 2.

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

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

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

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

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

<sup>86</sup> *Id.* at 3.

<sup>87</sup> *Id.* at 2 (referring to Petitioner Exhibit 8).

<sup>88</sup> *Id.* at 3.

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

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

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

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

vitality, and alertness; and chronic or acute health problems or disease that requires on-going medical intervention.<sup>94</sup>

24. The Educational Advocate suggested that the Student's ADHD was having an educational impact because he was not on grade level in all areas of reading fluency and comprehension.<sup>95</sup> The DCPS Psychologist responded that the Student was not performing as well as he could have been due to poor organizational skills, his failure to regularly turn in his homework, and his lack of consistent medication to address his ADHD.<sup>96</sup>

25. The eligibility team discussed whether the Student's ADHD was impacting his educational performance.<sup>97</sup> They discussed that he received passing grades in all of this college preparatory academic areas, despite failing to turn in a number of homework assignments.<sup>98</sup> The team also discussed the fact that he performed on grade level in reading, writing, and math.<sup>99</sup> They agreed that he continued to need support around organization, which was being addressed in the general education setting through his 504 plan.<sup>100</sup>

26. The Charter School members of the eligibility team determined that the Student did not qualify for special education services as a student with other health impairment.<sup>101</sup> The Charter School members of the team agreed that the Student's 504 plan addressed the recommendations of the report on the April-May 2011 independent psychological assessment.<sup>102</sup>

27. Petitioner and the Educational Advocate disagreed with the Charter School's eligibility determination.<sup>103</sup>

28. Petitioner was a credible witness. She testified forthrightly about the Student's challenges and about his failure to turn in his homework. She had an in-depth understanding of his difficulties concentrating, hyperactivity, and distractibility.

29. The Educational Advocate was a credible witness on the facts of this case. However, his opinions that the Student had academic deficits and an impairment that required the eligibility team to find him eligible for special education services was not consistent with the evidence, including the data in the May 2011 independent psychological assessment.

30. The Student was a credible witness. He admitted that he often fails to turn in his homework, has difficulty with organization, and often is late to class.

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

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

<sup>96</sup> *Id.*

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

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

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

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

<sup>103</sup> *Id.*; testimony of Educational Advocate, Petitioner.

31. The Physics Teacher was a credible witness. Her testimony was corroborated by the documentary evidence, including the notes of the August 29, 2011, eligibility meeting. She recalled the Student's performance in her class during the 2010-2011 school year and was forthright about his organizational difficulties and inconsistent effort.

32. The Progress Manager was a credible witness. She provided forthright testimony about the Student's struggles with ADHD and discussed in detail the accommodations he received under his 504 plan. Her testimony was corroborated by the documentary evidence in this case.

## V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."<sup>104</sup> Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.<sup>105</sup> FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)."<sup>106</sup>

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.<sup>107</sup> In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.<sup>108</sup>

The burden of proof is properly placed upon the party seeking relief.<sup>109</sup> Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.<sup>110</sup> The preponderance of evidence standard simply requires the trier of fact to find that the existence of a

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<sup>104</sup> *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

<sup>105</sup> *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

<sup>106</sup> 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

<sup>107</sup> 34 C.F.R. § 300.513 (a)(2).

<sup>108</sup> *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

<sup>109</sup> *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

<sup>110</sup> 20 U.S.C. § 1415 (i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

fact is more probable than its nonexistence.<sup>111</sup> In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.<sup>112</sup> Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,<sup>113</sup> except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.<sup>114</sup>

## VI. DISCUSSION

### **Petitioner Failed to Prove that DCPS Denied the Student a FAPE by Failing to Find Him Eligible for Specialized Instruction and Related Services.**

The IDEA defines a “child with a disability” as a child with a listed disorder or “specific learning disabilities” who, “by reason thereof, needs special education and related services.”<sup>115</sup> To determine whether a child has a disability that would enable him to receive special education services, the local education agency, in this case DCPS, must conduct an initial evaluation.<sup>116</sup> The purpose of an evaluation is to determine whether the child has a disability and the nature and extent of his educational needs.<sup>117</sup>

The LEA should not merely administer assessments designed to provide a single general intelligence quotient.<sup>118</sup> It must assess the child 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.<sup>119</sup>

In conducting the evaluation, the LEA must use a variety of tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, to determine whether the child is eligible and, if the child is found eligible, the content of the child’s individualized educational program (“IEP”).<sup>120</sup> The

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<sup>111</sup> *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).

<sup>112</sup> *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), aff'd, 512 U.S. 246 (1994).

<sup>113</sup> *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).

<sup>114</sup> *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

<sup>115</sup> 34 C.F.R. § 300.8.

<sup>116</sup> An LEA must conduct a full and individual initial evaluation, in accordance with 34 C.F.R. § 300.305 and 34 C.F.R. § 300.306, before the initial provision of special education and related services to a child with a disability. 34 C.F.R. § 300.301(a).

<sup>117</sup> 34 C.F.R. § 300.301 (c)(2).

<sup>118</sup> *Id.* at § 300.304 (c)(2).

<sup>119</sup> *Id.* at § 300.304 (c)(4).

<sup>120</sup> *Id.* at § 300.304 (b)(1).

evaluation must identify all of the child's special education and related services needs, regardless of whether they are commonly linked to his suspected disability category.<sup>121</sup>

Upon completion of the assessments and other evaluation measures, a group of qualified professionals, including the parent(s) of the child, must determine whether he is a child with a disability.<sup>122</sup> They must also determine the child's educational needs.<sup>123</sup> In interpreting evaluation data to determine eligibility and educational need, the LEA must draw upon information from a variety of sources, including parent input and teacher recommendations.<sup>124</sup> The LEA must ensure that information obtained from all of these sources is documented and carefully considered.<sup>125</sup>

If the LEA determines that the child has a disability and needs special education and related services, it must develop an IEP for the child.<sup>126</sup> An LEA may deny special education services to a child with a disability if it determines, through an appropriate evaluation, that the child only needs related service(s) and not special education.<sup>127</sup>

Here, Petitioner does not allege that Respondent failed to fully evaluate the Student in all areas of suspected disability. Rather, Petitioner takes issue with the August 29, 2011, decision of Charter School that the Student is not eligible for specialized instruction under the disability classification of other health impairment.

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<sup>121</sup> *Id.* at § 300.304 (c)(6).

<sup>122</sup> *Id.* at § 300.305 (a).

<sup>123</sup> *Id.* at 300.305 (a)(2)(1)(A).

<sup>124</sup> 34 C.F.R. §§ 300.306 (c)(1).

<sup>125</sup> 34 CFR § 300.306 (c). The LEA must provide the parent a copy of the evaluation report and the documentation of determination of eligibility at no cost. *Id.* at § 300.306 (a)(2); D.C. Mun. Reg. tit. 5-E § 3006.7. Each assessment report must include (1) the date of assessment and the date of the report; (2) a description of the child's performance in each area assessed, including specific strengths and weaknesses; (3) information relevant to (i) whether the child has a particular category of disability or, in the case of a reevaluation of a child, whether the child continues to have such a disability; (ii) the present levels of performance and educational needs of the child; (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum; (4) instructional implications for the child's participation in the general curriculum; (5) if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions; and (6) the signature and title of the qualified examiner(s) who administered the assessment procedure and who wrote the report. D.C. Mun. Reg. tit. 5-E § 3006.2.

<sup>126</sup> 34 C.F.R. § 300.306(c)(2).

<sup>127</sup> *Parker v. Friendship Edison Pub. Charter Sch.*, 577 F. Supp. 2d 68, 74 n.4 (D.D.C. 2008) (citing 34 C.F.R. § 300.7 (a)(2)(i)). However, if the state considers the related service as special education rather than a related service, the child would be determined to be a child with a disability. 34 C.F.R. § 300.8(a)(2)(ii).

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or ADHD . . . and adversely affects a child's educational performance.<sup>128</sup> There is no doubt that the Student suffers from ADHD. He is hyperactive at times, has difficulty concentrating, and has poor organizational skills. Thus, the question is whether the Student's ADHD adversely impacts his educational performance.

The Student's grades at for the 2010-2011 school year were in the low average range. As the DCPS Psychologist noted at the Student's August 29, 2011, eligibility meeting, his academic performance is commensurate with his cognitive ability.

Additionally, the Student's below average grades at the end of the 2010-2011 school year are due, in part, to the fact that he regularly forgot to turn in his homework. Petitioner's illness also weighs heavily on him, and may interfere with his motivation in school. Yet, he performed on grade level in an academically rigorous, college prep school.

Thus, Petitioner has not shown that the Student requires specialized instruction to access the general education curriculum.

As stated above, the IDEA does not require an LEA to "maximize the potential" of a student.<sup>129</sup> Rather, it only has to provide a "basic floor of opportunity."<sup>130</sup> This Hearing Officer finds that the Charter School, through providing the Student the accommodations he requires to achieve at his grade level, has provide the Student a basic floor of opportunity. For this reason, this Hearing Officer finds that Petitioner did not prevail on this claim and will deny the relief Petitioner has requested.

### ORDER

Based upon the findings of fact and conclusions of law herein, it is this 31st day of March 2012 hereby ordered that the Complaint is dismissed with prejudice.

By: /s/ Frances Raskin  
Frances Raskin  
Hearing Officer

### NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is a final determination on the merits. 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

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<sup>128</sup> 34 C.F.R. § 300.8.

<sup>129</sup> *McKenzie*, 882 F.2d at 886 (noting that the Supreme court stressed the lack of any such requirement four separate times in *Rowley*, 458 U.S. at 189, 197 n. 21, 198, 199).

<sup>130</sup> 882 F.2d at 886.

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).