

BACKGROUND AND PROCEDURAL HISTORY:

The student is a regular education student attending "School A," a DCPS high school. The student has a disease that qualified him for eligibility under Section 504¹ of the Rehabilitation Act of 1973 ("504"). The student is physically frail and his symptoms include joint pain, limited range of motion and difficulty in grasping items with his hands.

The student was initially diagnosed with the disease and provided a 504 plan² in 2010 while he was attending ("School C"), a DCPS middle school.

The student's family relocated during school year ("SY") 2010-2011 to another section of the city and the student attempted to transfer to School B, another DCPS middle school. The student was initially not allowed to enroll in School B and spent the remainder of SY 2010-2011 not attending school at all. The student, however, enrolled at School B for SY 2011-2012 for eighth grade. School B was aware of the student's 504 eligibility and 504 plan.

At the start of SY 2012-2013 the student enrolled at his current school, School A, for ninth grade. At School A, however, the student's 504 plan was not implemented and many of the School administrators were not aware the student had a 504 plan until informed by the student's parent in April 2013 following the student's suspension for bringing a weapon to school.

The student was placed on suspension for the April 2013 incident. DCPS conducted a manifestation review meeting under 504 and determined the student's behavior was not a manifestation of his disability and placed the student on long term suspension. The student did not attend school for the remainder of SY 2012-2013

On June 4, 2013, Petitioner filed this due process complaint alleging DCPS failed to evaluate the student following parental requests that the student be evaluated under IDEA in October 2011 at School B and in October 2012 at School A. Petitioner also alleged that the student should have been identified by DCPS under "child find" by October 2012 and as a result the student's was due protections under IDEA including an alternative placement after he was placed on long term suspension in April 2013.

Petitioner seeks as relief an order directing DCPS to fund independent evaluations including comprehensive psychological, occupational therapy, physical therapy and

² 34 C.F.R. § 104.33(b): The provision of regular or special education and related aids and services that "are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met."

This standard supports and reinforces the nondiscrimination directive of 34 CFR 104.4. Section 504 regulations at 34 CFR 104.33(b)(2) state that one means of meeting the FAPE standard of 34 CFR 104.33(b)(1)(i) is implementation of an individualized education program developed in accordance with the IDEA.

social history, and convene a meeting to review the evaluations and determine the student's eligibility.

DCPS filed a timely response the complaint on June 17, 2013. DCPS denied all alleged denials of a FAPE to the student and specifically stated that DCPS is unaware of any request for evaluation for the student subsequent to his enrollment at School B during SY 2011-2012 and unaware of any request for evaluation during SY 2012-2013 at School A. DCPS also asserted the following: the student is not eligible for protections under the IDEA as a student with a disability; the student was suspended on April 25, 2013, after bringing a knife to school and following this suspension DCPS was informed by the parent that the student has a 504 Plan and at the parent's request, DCPS convened an MDR meeting. The student's behavior falls within the exceptions that allow the student to be suspended for up to 45 days for carrying a weapon on school premises.

The parties did not waive the resolution meeting. However, no resolution meeting was held. Because Petitioner alleged the student was entitled to protections under IDEA including those pursuant to 34 C.F.R. §300.530 et seq., the hearing was conducted on an expedited time frame pursuant to 34 C.F.R. § 300.532(c). The Hearing Officer's Determination ("HOD") following the expedited hearing will be rendered within ten (10) school days of the hearing: on or before July 17, 2013.³

On July 2, 2013, the Hearing Officer convened the hearing on all issues raised in the complaint including those subject to expedited hearing.

THE ISSUES ADJUDICATED: ⁴

The issues adjudicated are:

1. Whether DCPS denied the student a free and appropriate public education ("FAPE") by failing to timely evaluate the student in all areas of suspected disability and determine his eligibility following two separate parental requests (October 2011 and October 2012) and/or under "child find" as result of DCPS' notice and/or knowledge of the impacts of the student's physical disability on the student's education at School A as of October 2012.
2. Whether DCPS denied the student a FAPE by failing to comply with 34 C.F. R. §300.530 et seq. when it conducted the May 13, 2013, MDR by

³ The July 2, 2013, hearing date is within the required 20 school days. A review of the DCPS calendar reveals that no school was held until summer school began July 1, 2013. School days resumed and were counted from July 1, 2013. Thursday, July 17, 2013, therefore is the mandated HOD due date.

⁴ The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

failing to conduct evaluations of the student and provide the student an alternative placement.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-9 and DCPS Exhibit 1-9) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁵

1. The student is a regular education student attending School A, a DCPS high school. The student has a disease that qualifies him for eligibility under 504. He is physically frail and his symptoms include joint pain, limited range of motion and difficulty in grasping items with his hands. (Parent's testimony, Petitioner's Exhibit 4-16, 4-17)
2. The student was initially diagnosed with the disease and provided a 504 plan in 2010 while he was attending School C. The disease destroys muscle tissue and there is no cure. The student is subject to blood clots if he falls. He has food restrictions due to possible damage to his esophagus. He is currently taking steroid medication that has stabilized the condition and slowed the deterioration of his muscle tissue. He has trouble writing and becomes dehydrated easily and thus needs continual hydration. His condition also causes him insomnia. Consequently, he doses easily and can't sit in a class without some physical movement. (Parent's testimony)
3. In April 2010 when the student was attending School C, DCPS conducted an annual review of his eligibility under 504 and updated his 504 plan. The 504 team determined that the student's physical impairment limited the following life functions: walking, bending, lifting and performing manual tasks. The team determined the impairment impacted the student's ability to participate in district-wide testing, required that he be provided transportation services to and from school and accommodations including flexible scheduling, constant mobility in the classroom, extended time to complete tasks, extended time to travel through the school building, use of the elevator and regular hydration. (Parent's testimony, Petitioner's Exhibit 3-1, 3-2, 3-5, 3-6, 3-9)
4. The student's family relocated during SY 2010-2011 to another section of the city and the student attempted to transfer to School B that school year. The student

⁵ 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.

was initially not allowed to enroll in School B and spent the remainder of SY 2010-2011 not attending school at all. The student, however, enrolled at School B for SY 2011-2012 for eighth grade. School B was aware of the student's 504 eligibility and his 504 plan. (Parent's testimony, Respondent's Exhibit 5)

5. A community mental health services organization evaluated the student's behavior prior to his admission to School B and developed a behavior plan that was discussed with the School B administrators and the parent at the time the student began attending School B.⁶ The parent also informed the administrators of the student's medical condition and medications he was to take during school hours. (Parent's testimony)
6. DCPS records indicate that the student began attending School B on November 18, 2011. (Respondent's Exhibit 7-1)
7. At School B when a parent requests that a student be evaluated for special education the parent would ordinarily be asked to come to school and sign a consent form for a student to be evaluated and then the matter would be referred to the school psychologist for initial evaluations. The special education coordinator ("SEC") at School B is not familiar with the student, never heard the student's name before and did not have a conversation with the parent or receive a request from the parent for the student to be evaluated for special education services. (Witness 1's testimony)
8. At the start of SY 2012-2013 the student enrolled at his current school, School A, for ninth grade. At School A, however, the student's 504 plan was not implemented and many of the school administrators were not aware the student had a 504 plan until informed by the student's parent in April 2013 following the student's suspension discussed below in Finding of Fact ("FOF") #21. (Witness 3's testimony)
9. When the student attended class sometimes his hands would cramp from writing and he would be allowed to take a break. Consequently, half of the time he could not complete assignments because of this. The student was allowed additional time in preparation for tests and some teachers would allow him additional time to complete assignments. However, he once asked for additional time on a class assignment and the teacher said she could not allow additional time because it would cause the rest of the class to be held back. (Student's testimony)

⁶ The parent testified that the School B special education coordinator ("SEC") participated in this meeting and that the parent later met with the SEC and requested that the student be evaluated for special education. Also the parent testified that the student was admitted to School B during the 2nd week of September and was told DCPS would not evaluate him because he had a 504 plan. However, the School B SEC contradicted the parent's testimony and testified that she never participated in such a meeting, never met or spoke with the parent and did not know the student or even his name prior to the due process complaint being filed. The Hearing Officer did not credit this portion of the parent's testimony.

10. On September 19, 2012, the School A ninth grade guidance counselor met with the student about a class scheduling issue and an incident that occurred in the student's ROTC class. (Witness 2's testimony)
11. During SY 2012-2013 the student was repeatedly absent from school and when he did attend school he regularly missed classes. (Respondent's Exhibits 1, 2)
12. Although the student says he felt good attending School A and went into school regularly, he frequently did not go to class. When he did go to class and had a problem he would leave class. Most of the time the student walked the halls or hid out in the school building and then left the building because he felt unsafe. Once students chased him home from school over his shoes. During one lunch period some boys started to bother him so he and his friend both left the school. The student's way of handling his problems at school would be to leave school. Sometimes he felt afraid at school. The student never told anyone he was having problems and never asked any of the teachers or administrators to help him. The student wants to attend school and would if he felt safe. (Student's testimony)
13. From the time the student began attending School A the student's parent always drove and/or accompanied the student to school and observed him walk into the school building. The parent did not become aware that the student was actually going into school and then leaving and/or not attending his classes regularly until she was asked to meet with the attendance counselor on November 14, 2012. (Parent's testimony)
14. Following the November 14, 2012, meeting the student was placed on an attendance progress sheet. The student had to have an attendance sheet signed by his teachers to keep track of his class attendance. The November 14, 2012, meeting notes indicate that DCPS was aware the student had a 504 plan.⁷ (Respondent's Exhibit 3-25)
15. Because of an incident that occurred in December 2013 when the student ran from the schools dean of students ("DOS") when he and a friend were walking the halls, the student was required to bring his parent in order to return to school. The student and his parent thought he was under suspension but there was no suspension documentation. The student's parent met with the DOS in early January 2013 and the student returned to school. (Parent's testimony, Student's testimony)
16. The student's attendance continued to be sporadic and after he had accumulated 27 unexcused absences School A referred him to D.C. Superior Court for truancy. (Respondent's Exhibit 3-1, 3-4, 3-5, 3-32)

⁷ There is no evidence that School A actually had the 504 plan in November 2012.

17. As a result of his absences the student was failing classes by December 2012. (Respondent's Exhibit 3-9, 3-10)
18. During SY 2012-2013 the parent received calls from School A only about the student's attendance, with the exception of one call in February 2013 regarding the student's math class that resulted in a class change. Otherwise, during SY 2012-2013 the parent never attended parent/teacher conferences, and never spoke to any of the student's teachers or the School A SEC about the student being evaluated. She, however, had conversations with the Dean of Students ("DOS") and the student's guidance counselor.⁸ (Parent's testimony)
19. Other than the September 19, 2013, conversation with the parent regarding the student's schedule, the guidance counselor does not recall any conversation with or communication to or from the parent about the student until she telephoned the parent on June 5, 2013, about the student not reporting to his alternative placement. The parent abruptly ended that call and the counselor did not call back. Had there been any other conversations the counselor would have made notes as she keeps a log of all conversations with parents and noted the conversations with the parent on September 19, 2013, and June 5, 2013. She had no other conversations with the parent recorded in her log. (Witness 2's testimony)
20. The guidance counselor does not recall the parent making any request to her that the student be evaluated for special education services. If there is ever a request made to her by a parent or teacher about a student being evaluated at School A the School procedure and policy is for the school's SEC to be contacted about the request. The SEC is the first line of contact and she would refer them to the special education coordinator. She also received no referrals for the student from any of the student's teachers for discipline or academics issues – his attendance was the sole problem. Prior to the April 2013 disciplinary issue she was not aware the student had any physical disability or physical limitations. (Witness 2's testimony)
21. On April 24, 2013, the student was involved in an altercation at School A with another student that involved the student bringing a knife to school and threatening the other student with it. An administrator found a knife on the student's person following a search. The student was arrested. The student admitted to pulling the knife on the other student allegedly to obtain money from the other student for a hat the student claimed the other student took from him earlier in the school year. (Petitioner's Exhibit 4-6, 4-11, 4-12, 4-13, 4-14)

⁸ The parent testified that she had a conversation in October 2012 with the School A guidance counselor in which she discussed the student's medical condition and requested that the student be evaluated for special education. However, the parent did not remember the counselor's name or the date of the conversation. The Hearing Officer did not credit this portion of the parent's testimony because it was contradicted by credible testimony by the guidance counselor.

22. On May 2, 2013, DCPS notified the parent that a long-term (38 day) suspension was being proposed for the student because of an incident that occurred on April 24, 2013, involving the use or transfer of a weapon and that if the proposed suspension was upheld by the Instructional Superintendent she would be contacted to schedule a hearing. (Petitioner's Exhibit 4-1)
23. On May 9, 2013, DCPS convened a manifestation determination review ("MDR") meeting under 504 with the School A social worker, school psychologist, SEC and the DOS. The parent and student did not appear for the meeting. The DOS explained the incident and the team searched for documentation of the student's disability and 504 plan but were unable to locate it and hoped to obtain it from the student's parent. The team concluded based on the nature of the incident involving a weapon the suspension would be upheld. (Petitioner's Exhibit 4-8, 4-9)
24. On May 13, 2013, DCPS reconvened the MDR meeting under 504 with the parent and student present and determined the student's behavior was not a manifestation of his disability and placed the student on long term suspension. (Parent's testimony, Petitioner's Exhibit 4-15, 4-16, 4-17, 4-18)
25. The School A SEC first became familiar with the student when he was suspended in April 2013. Following the incident and the student's suspension the parent requested a MDR and stated the student had a 504 plan. The School A SEC is not aware that anyone at School A was aware the student had a disability or a 504 plan. The school social worker shared with the SEC that they did not have a copy of the 504 and did not know that the student had been identified as a student having a disability by a doctor. The SEC was never aware of any request or referral for the student to be evaluated and received no information about any request from the parent or any of the student's teachers about issues that would have put them on notice that the student should have been evaluated. The student's attendance was the greatest issue. The parent did not make a request for evaluation at the MDR meeting. At that meeting academic issues were not discussed by the parent. There was some mention about bullying by the parent during the meeting but the student did not mention any bullying. (Witness 3's testimony)
26. The student's 504 plan was not an indication that the student should be evaluated. Rather, it was indication that the student simply needs accommodations to be able to access the general education curriculum. (Witness 3's testimony)
27. During the MDR meeting there was discussion of the accommodations that would be made for the student going forward including an elevator pass and extended time on testing and assignments. There was no determination that the student needed anything other than the accommodations or that there was a need for evaluations. The student's attendance problems were noted. However, the team did not determine that his attendance difficulties were related to his disability.

The team made certain the 504 plan was current with current dates and the names of persons who would be working with the student to administer the plan. The team did not find the student eligible for an IDEA disability and did not suspect that he had a disability under IDEA at the meeting. (Witness 3's testimony)

28. School A has a student support team ("SST") process that provides students interventions prior to a student being evaluated for special education. It is not generally first presumed that the student is in need of evaluation. This was the case with this student. (Witness 3's testimony)
29. At the MDR meeting School A administrators explained to the parent that the student would be placed on long-term suspension and the student would receive his educational services at Academy. She was also told that DCPS would conduct a suspension hearing. During the meeting the team discussed the student's accommodations and updated his 504 plan. (Petitioner's Exhibit 4-12, 4-13, 4-14)
30. The parent never received notification of a suspension hearing. The student did not attend school for the remainder of SY 2012-2013. (Parent's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made 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 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. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

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.⁹ *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.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

Issue 1: Whether DCPS denied the student a FAPE failing to timely evaluate the student in all areas of suspected disability and determine his eligibility following two separate parental requests (October 2011 and October 2012) and/or under “child find” as result of DCPS’ notice and/or knowledge of the impacts of the student’s physical disability on the student’s education at School A as of October 2012.

Conclusion: The evidence does not support a finding that that the parent made a request of School A or School B staff that the student be evaluated for eligibility for special education services or that the student should have been identified under “child find.” Petitioner did not sustain the burden or proof by a preponderance of the evidence.

Congress passed the IDEA 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." 20 U.S.C.§1400(d)(1)(A). The IDEA provides funding to assist states in implementing a "comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families." 20 U.S.C.§1400(d)(2).

Under the IDEA, all states, including the District of Columbia, receiving federal education assistance must establish policies and procedures to ensure that "[a] free appropriate public education [FAPE] is available to all children with disabilities residing in the State." 20 U.S.C. § 1412(a)(1)(A).

A parent may initiate a request for an initial eligibility for special education benefits and services. 34 C.F.R. §300.301 (b). However, in the District of Columbia, such a request, termed a "referral," is to be made in writing. DCMR Title 5E, §3004(a).

The parent alleges that she made verbal requests to the SEC at School B and the guidance

⁹ 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.

counselor at School A in October 2011 and October 2012 respectively. The Hearing Officer did not credit this portion of the parent's testimony. The testimony was contradicted by the testimony of both the individuals to whom she claimed she made the requests.¹⁰ The SEC at School B credibly¹¹ testified that prior to the complaint being filed she did not know the student and had not heard the student's name. In addition, the DCPS attendance records demonstrated that the student did not enroll at School B until the month following when the parent claimed she made the request.¹² Consequently, the Hearing Officer did not credit the parent's testimony regarding this request.

As to her alleged request to the School A guidance counselor the Hearing Officer found the Witness 2 more credible than the parent in this regard. The guidance counselor had kept a log of meetings with parent and noted from the log the two specific dates she had conversations with the parent. The log did not include any meeting in October 2012 as the parent alleged.¹³ In addition, and by contrast, the parent could not even remember the guidance counselor's name. Consequently, the Hearing Officer did not credit the parent's testimony regarding this request at School A.

In addition, neither of the alleged requests for the student's to be evaluated was in writing.¹⁴ Prior, the student's suspension in April 2013, the parent had not attended the student teacher conferences, had not had any conversation with the student's teachers except for a single instance regarding a class change, and did not inquire as to whether the student's 504 plan was being implemented.¹⁵ The parent did not request the student be evaluated even during the MDR meeting.¹⁶

Child Find is DCPS' affirmative obligation under the IDEA: "As soon as a child is identified as a potential candidate for services, DCPS has the duty to locate that child and complete the evaluation process. Failure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." N.G. v. District of Columbia, 556 F. Supp. 2d 11, 16 (D.D.C. 2008). DCPS must conduct initial evaluations to determine a child's eligibility for special education services "within 120 days from the date that the student was referred [to DCPS] for an evaluation or assessment." D.C. Code § 38-2561.02(a).

"DCPS child-find obligations [to evaluate the student] are triggered 'as soon as a child is identified as a potential candidate for services,'" Long, 780 F. Supp. 2d at 57 (citing N.G. v. District of Columbia, 556 F. Supp. 2d 11, 16 (D.D.C. 2011)). Integrated Design and Elec. Acad. Pub. Charter Sch. v. McKinley, 570 F. Supp. 2d 28, 34 (D.D.C. 2008) (a

¹⁰ FOF #s 7, 19, 20

¹¹ The witness was unhesitant and emphatic in her testimony.

¹² FOF # 6

¹³ FOF #s 19, 20

¹⁴ The Hearing Officer is not, however, basing the conclusion of no denial of a FAPE on the failure of the alleged request(s) to be in writing as that is not a clear requirement under IDEA. Rather, the conclusion is based on the credibility finding of fact that the request(s) were not made.

¹⁵ FOF #18

¹⁶ FOF #25

school is obligated to evaluate a student once that student is "suspected of having a disability").

The student clearly has a disability that qualifies him for a 504 plan that was apparently implemented while he attended School B. It is clear from the evidence School A was on notice as of the November 2012 attendance meeting that the student had a 504 plan, however, there is no indication that it was being implemented.¹⁷ Nonetheless, Petitioner did not allege, and this Hearing Officer does not have jurisdiction to remedy, a failure to implement a 504 plan.

Petitioner alleges that School A and thus DCPS was on notice that the student was a student with a suspected disability under IDEA based upon the student's poor attendance at School and that he was being bullied and thus not attending school because of his 504 disability. However, the student testified that although he had concern for his safety at School A he never requested any help or shared with any staff member his concern such that they would be on notice.¹⁸ The parent raised the concerns about bullying only at the MDR meeting but the student did not substantiate those claims during that meeting.¹⁹

On the other had, the student stated that he almost always avoided classes and just hung in the hallways but gave no specific testimony that he had safety concerns in his classes, rather the incidents seemed to occur during lunch or afterschool.²⁰ Which does not seem a valid reason for him being absent from his class and earning failing grades.²¹ He actually gave no reason for his failure to attend classes. Rather, he testified that some teachers, on the occasions he did go class, allowed him extra time to complete assignments.²² The Hearing Officer was not convinced by the parent's testimony or that of the student that the student's disability under 504 was a cause for his failure to attend school and his consequential academic failure.

On the other hand, as Witness 3 aptly pointed out, a 504 plan is indication that a student is in need of accommodations rather than special education services. The accommodations that the student might have benefitted from were not being provided. If DCPS should have been notice of anything it should have been on notice (because School B, thus DCPS, had the 504 plan) to provide the accommodations²³ that were in the 504 plan that may have made a difference in the student's class attendance and/or academic performance.

Based on the evidence of this case, the Hearing Officer does not conclude that DCPS was on notice that the student was a child with a suspected disability under IDEA and did not violate its "child find" obligations with respect to this student. Therefore, the Hearing

¹⁷ FOF #s 8, 9, 25

¹⁸ FOF # 12

¹⁹ FOF # 25

²⁰ FOF # 12

²¹ FOF # 17

²² FOF # 9

²³ FOF # 3

Officer concludes that the student was not due protections under IDEA pursuant to 34 C.F.R. §300.534 and thus, this due process hearing under IDEA is not a proper forum to Petitioner claim that the student was not provided an alternative placement or evaluated under IDEA following his suspension in April 2013. Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof.

While the due process complaint can be deemed a request for an evaluation, because Respondent has 120 days to complete an evaluation and there is no indication the parent has provided written consent for evaluation, Respondent cannot be deemed to have violated the statute since the complaint was filed on June 4, 2013. The 120-day timeframe has yet to expire. See D.C. Statute §38-2561.02(a).

Issue 2: Whether DCPS denied the student a FAPE by failing to comply with 34 C.F. R. §300.530 when it conducted the May 13, 2013, MDR by failing to conduct evaluations of the student and provide the student an alternative placement.

Conclusion: The evidence does not support a finding that the student is entitled to the protections under IDEA.

Pursuant to 34 C.F.R. §300.534:

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to Sec. Sec. 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

As discussed above the evidence of this case does not support a finding that there was a request that the student be evaluated or that DCPS was on notice that the student was a child with a suspected disability under IDEA and DCPS did not violate its “child find” obligations with respect to this student. Therefore, the Hearing Officer concludes that the student was not (pursuant to 34 C.F.R. §300.534) due protections under IDEA, including those under 34 C.F. R. §300.530 et seq., and thus, this due process hearing under IDEA is

not the forum to pursue a claim that the student was not provided an alternative placement or evaluated under IDEA following his suspension in April 2013. Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

ORDER:

The claims raised in the due process complaint are hereby dismissed with prejudice and all requested relief is denied.

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: July 17, 2013