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**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

**SPECIAL EDUCATION
SERVICES**

[REDACTED]
Student,

v.

Case No: 2014-0170
Patricia Marino
Impartial Hearing Officer

[REDACTED]
School District

FINAL DETERMINATION AND ORDER

JURISDICTION

This Impartial Hearing Officer (IHO) was appointed on February 24, 2014 and has jurisdiction over this matter pursuant to IDEA, 20 U.S.C. § 1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

PROCEDURAL BACKGROUND

On October 1, 2013 Parent/Family filed a due process complaint notice (DPCN), requesting an Expedited Due Process Hearing.¹ An Impartial Hearing Officer² was appointed on October 7, 2013. On October 8, 2013, District filed a Motion to Dismiss Due Process Complaint³ for lack of jurisdiction and failure to comply with Section 14-8.02b of the Illinois School Code and Section 226.655 of the Illinois Administrative Code. On October 9, 2013, Parent filed a Response to the Motion to Dismiss the Due Process Complaint⁴, citing 34 CFR § 300.534(a) and arguing that the District had knowledge "that the child was a child with a disability

¹ Pursuant to 105 ILCS 5/14-8.02b, 23 IAC § 226.655, 20 U.S.C. 1415(k)(3) and 34 CFR §§ 300.532, 300.533, 300.507, and 300.508

D-A 3 pp. Expedited Due Process Hearing Request

² The original IHO was appointed on October 7, 2013 and served as the IHO until she recused herself on February 21, 2014. See IHO Exhibit # 1

³ D-B, pp. 1-4b, Motion to Dismiss, filed 10/08/13

⁴ P-B, Response to Motion to Dismiss, filed 10/09/13

before the behavior that precipitated the disciplinary action” and thus should have been granted the same protection. On October 9, 2013 Parent filed a request for a due process hearing under standard timelines⁵ and the cases were consolidated by the previous hearing officer.⁶ On October 15, 2013, the IHO issued an Order to Dismiss Parent’s Expedited Due Process Complaint.⁷ On October 21, 2013 District filed a Response to the non-expedited DPCN.⁸

The previous Hearing Officer scheduled a pre-hearing conference for November 26, 2013⁹. On November 20, 2013, the attorney for the District sent an e-mail¹⁰, notifying the Hearing Officer that Parent’s attorney was awaiting emergency heart surgery and it would be necessary to postpone the PHC. Following a number of continuances, the PHC was rescheduled for January 30, 2014.¹¹ On January 25, 2013, Parent/Family Advocate sent an e-mail¹² indicating Parent’s attorney was not fully recovered and would need another continuance. The PHC was rescheduled for March 4, 2014. On February 20, 2014 District filed a Motion to Dismiss the Due Process Complaint¹³

Following the recusal of the initial IHO on February 21, 2014, this IHO was appointed on February 24, 2014.¹⁴ The Motion to Dismiss was pending. On February 28, 2014, Parent filed a response to District’s Motion to Dismiss¹⁵, including the issue of a new IHO; however, in the initial letter upon appointment, the IHO indicated she would not cause further delay and would be available for the PHC on March 4, 2014 and they would proceed. Ultimately, the Motion for Dismissal was denied and the Parent was given one final continuance¹⁶

A status call on March 4, 2014¹⁷ was conducted.

The PHC ¹⁸was held on March 10, 2014 via teleconference. Parent/Family opted for an open hearing and Parent identified [REDACTED] as the attorney

⁵ P-C, pp.1-3

⁶ IHO #4

⁷ IHO #5, pp. 1-6

⁸ D-C, pp. 1-5

⁹ IHO - #7, pp. 1-7, PHC Notice 10/31/13

¹⁰ D-D, pp.1-2, e-mail dated 11/20/13

¹¹ IHO 9 – PHC Notice

¹² P-D, e-mail dated 1/25/14 requesting a continuance of PHC

¹³ D-E, p. 1-5, Motion to Dismiss

¹⁴ IHO - #13

¹⁵ P-E, pp.1-3

¹⁶ The continuance of the PHC was granted for one week (March 10, 2014) and hearing dates were set for April 1, April 3, and April 4, 2014. The IHO ordered that substitute counsel be identified, who would be able to continue with the hearing, in the event Parent’s attorney’s health prevented her from participating

¹⁷ IHO #18, p. 1-3

who would be available if needed. Parent's complaint included an allegation of discrimination on the part of District by showing "deliberate indifference to his unique needs as a person with a disability". District's motion to strike was granted, as a claim of discrimination is not a cause of action under IDEA and is beyond the jurisdiction of this IHO.

Prior to the hearing, several motions were filed. Parent filed a Second Notice to Produce¹⁹, requesting the entire audiotape made by District during the Expulsion Hearing. The Motion was denied²⁰, as the stated purpose of the audiotape was to inform the IHO that Parent/Family had put District on notice of Child Find issues and testimony of the witnesses could provide the same information, without further delay. District filed a Motion in Limine, requesting an order by the IHO, barring reference to DCFS documents. The IHO granted District's motion,²¹ stating that "the DCFS report was completed over a period of eleven (11) to seventeen (17) years ago and for which there is no verifying witness, is neither reliable nor relevant". District also filed a Motion in Limine #2, seeking an order from the IHO barring any reference to Elementary or Middle School Records. The IHO denied this motion,²² stating "the District has no authority to seek records from a separate entity (DCFS). However, the exchange of information between districts is provided for in the Illinois School Code at 105 ILCS 10/6".

IDEA and its regulations, specifically 34 C.F.R. § 300.515, require a final decision to be issued in an IDEA hearing not later than 45 days after receipt of a request for a hearing. Pursuant to 34 C.F.R. § 300.532(c) an Expedited Hearing must occur within twenty (20) school days of the date the due process complaint was filed. In the Order of Consolidation, filed by the previous IHO on October 10, 2013, Parent's Motion to consider the DPCN under standard timelines, rather than expedited, was granted. The Parties concluded the Resolution Meeting process on October 31, 2013 without reaching an agreement. The 45 day deadline was December 16, 2013. A number of joint continuances, filed in response to the health status of Parent's attorney, were granted by the previous IHO. A PHC was scheduled for March 4, 2014. Over the objection of District's attorney, Parent's request for a one week continuance of the PHC was granted by this IHO, with the condition that, "if Parent's attorney becomes incapacitated or unable to proceed with the hearing process, substitute counsel will be provided.....who will be able to continue with hearing under the schedule set forth in this Order". Parent's attorney was able to proceed with the hearing dates set for April 1, April 3, and April 4, 2014. When it was not possible to complete the hearing within this time frame, Parties submitted a joint motion for continuance for the next mutually available days. The hearing

¹⁸ IHO- 21, PHC Report and Order, pp.1-6

¹⁹ P-I, pp. 1-2

²⁰ IHO #22, pp. 1-3

²¹ IHO #23

²² IHO #24, pp. 1-3

reconvened on April 21, 2014 and concluded on April 22, 2014. The 45 day deadline was extended to May 2, 2014.

BACKGROUND

Student is a 16½ year old male, completing eleventh (11th) grade. Identified with Attention Deficit Hyperactive Disorder (ADHD) in elementary school, he has never been determined to be eligible for special education services. Denial of eligibility is the basis for the due process complaint.

Student's early childhood was highly dysfunctional²³. Father testified that when his mother was six (6) months pregnant with Student, she was in a very serious car accident and tested positive for drugs. During his early years, Student lived with his mother who was both addicted to drugs and mentally ill. Father testified that there were 17 police reports and a number of DCFS complaints during that time. Father also testified that Student witnessed abuse of his mother by his step-father, and he lived in a highly volatile environment. Although DCFS took guardianship of Student, Father was not initially given custody, as he was not married to Mother when Student was born.

At the age of 4½ Father was awarded custody and has maintained custody since. The care of Student has been shared by a large, extended family. Situated on a farm, there is a single family home and a duplex. Father lives in the home, while in one unit of the duplex, Student lived with his grandparents and aunt²⁴. In the other unit of the duplex, [REDACTED] who is currently the primary caregiver, lives with her husband and adult son. Her adult daughters no longer live at home but visit often. Following the death of M, Student moved to the unit with [REDACTED] and for the first time had his own bed. One of Student's cousins is a special education teacher and was the chief spokesperson and family representative. Throughout the proceedings Parent has been referred to as Parent/Family.

Beginning with the second semester of his freshman year in high school, Parent/Family requested a special education evaluation. There were two screenings

²³ Testimony presented by father, aunt, and cousin.

²⁴ Aunt testified that Student's grandmother and [REDACTED] were the primary caregivers. [REDACTED] passed away during the summer, prior to the beginning of Student's sophomore year. His grandfather died one year later.

conducted, one on February 28, 2012²⁵, and the second on March 20, 2013²⁶. In both instances, District determined that a case study evaluation was not warranted.²⁷

On March 21, 2013 Student was suspended for trading his Adderall pills to another student in exchange for headphones.²⁸ When the District recommended expulsion²⁹, Parent/Family filed a complaint with the Office of Civil Rights (OCR), alleging that District discriminated against Student on the basis of disability when it a) "failed to properly evaluate Student...and b) subjected him to a significant change in placement by expelling Student without holding a manifestation hearing."³⁰ The OCR complaint was dismissed when the District agreed to conduct a case study evaluation.³¹

Following the case study evaluation, an eligibility meeting³² was conducted on July 29, 2013. The IEP team determined that Student "is not eligible for special education and related services".³³

The School Board had agreed to expel but hold the expulsion in abeyance if Student attended a [REDACTED] alternative school for the first semester of the 2013-2014 school year.

On August 21, 2014, following the denial of eligibility and disagreement with the [REDACTED] that was designated, Parent/Family's Advocate sent an e-mail³⁴ to the Special Education Director, indicating they would be filing a due process complaint notice (DPCN) by the end of the day. However, the complaint was not filed until October 1, 2013.³⁵

During the PHC, convened on March 10, 2014, Parent/Family indicated the hearing would be open. Although Father appeared to testify on two of the hearing

²⁵ Parent Exhibit #1, letter dated 2/28/12, determined there were inadequate grounds to merit an evaluation

²⁶ Parent Exhibit #6, letter dated 3/20/13, indicated Student's behavior did not severely impact his education and there would be no case study evaluation.

²⁷ In the first instance, District offered RtI interventions and in the second instance, a §504 Plan was recommended.

²⁸ District Exhibit #35 p.4, disciplinary letter from Assistant Principal, dated 4/04/13

²⁹ District Exhibit #35, p.1, Notice of Expulsion Hearing, 4/08/13

³⁰ District Exhibit #1, OCR Letter, dated 5/23/13

³¹ Testimony of cousin, who stated she filed the OCR complaint

³² Individuals with Disabilities Act (IDEA) 34 CFR § 300.306

³³ District Exhibit #24, p.1 Parent/Guardian Notification of Conference Recommendations

³⁴ District Exhibit #37

³⁵ P-A, p.1, Parent Admin. Document

dates, he did not remain and his designated Family members represented the Parent.

Parent, who carried the burden of proof, was represented by [REDACTED] and District was represented by [REDACTED] and [REDACTED]

Fourteen witnesses testified:³⁶

1. Student
2. Father
3. Cousin
4. Advocate
5. Aunt/Caregiver
6. Private Clinical Psychologist
7. School Social Worker
8. English Teacher (Summer 2013)
9. Biology Teacher (2012-2013)
10. Chemistry Teacher (current)
11. Special Education Director
12. English Teacher (current)
13. Special Education Teacher
14. School Psychologist

Parent introduced documents labeled P1-P35 listed in the addendum.

District introduced documents labeled D1-D48 listed in the addendum

It was agreed during the PHC that Closing Arguments would be presented orally. However, as testimony on the final day of the hearing didn't conclude until 11:00 p.m., oral closings were waived. Parties were given until midnight of the following day, April 23, 2014 to submit written closing arguments. Copies of cases to be considered by the IHO were submitted at the close of the hearing.

ISSUES

The issues to be determined are as follows:

1. **Child Find** Did District have reason to suspect Student had a disability (at least since enrollment in District)? If so, did District comply with Child Find responsibilities?
2. **Evaluation** Did District evaluate Student on a timely basis? Did District conduct an appropriate evaluation, considering all pertinent records? Did District evaluate in all areas of suspected disability,

³⁶ Names of witnesses are listed in the addendum

obtaining relevant functional, developmental, and academic information from Parent, teachers, and staff?

3. **Eligibility** Is Student a child with a disability? If so, under what educational category? If so, what special educational needs did District fail to provide?

RELIEF

Remedies requested by Parent are:

1. In independent educational evaluation (IEE) from a clinical psychologist at District expense.
2. Based on a determination of eligibility, the development and implementation of an IEP that will meet Student's special education and related service needs.
3. Based on a determination of eligibility, compensatory education as follows:
 - a) social-emotional counseling related to educational progress
 - b) tutoring to improve grades
 - c) credit recovery opportunity, which would allow Student to graduate with peers

BURDEN OF PROOF

In a special education administrative hearing, the party seeking relief has the burden of proof. *Schaffer ex. rel Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 531, 163 L.Ed2d 387 (2005). Parent is seeking relief, with a finding that District failed to comply with its Child Find responsibilities, failed to conduct an appropriate evaluation on a timely basis, and failed to identify Student as a child with a disability, thereby denying a Free and Appropriate Public Education (FAPE). Therefore, Parent carries the burden of proof.

No transcript was issued prior to the date of this decision; therefore, the testimony referenced below is based on the undersigned's memory and hearing notes. In rendering this decision, the undersigned has considered all documents entered during the hearing, testimony by parties' witnesses, the parties' closing arguments and their suggested case law, as well as independent research. This decision is issued within ten days after the hearing's conclusion, as required by Illinois law. 105 ILCS 5/14-8.02a(g55)(5)

STIPULATIONS

1. District did not conduct a case study evaluation until July 29, 2013.
2. Only 3 testing periods were part of the File Review. (See Parent Exhibit #1)

3. There was no manifestation
4. A nurse was not at the Domain Meeting
5. A nurse was not at the eligibility meeting in July 2013 and there was no excusal form.
6. District did not request medical records
7. Family was not available for the Domain earlier. District offered April 23, 2013 but Family was not available until May 15, 2013.
8. All delays have been caused by Family
9. No records from elementary district were sent to Parent's advocate
10. During screens, there was no review of elementary records.
11. February 28, 2012 - District only conducted a screening and determined that a case study evaluation was unwarranted.
12. In 9th grade, Student was passing all classes, which resulted in determination not to conduct a case study evaluation.

Advocate

Advocate testified that he expressed concern about lack of friends and social isolation. There was no IQ testing done and he wondered if Student might have a learning disability. A letter sent to Parent³⁷(2/28/12) denying a full case study indicated no review of past school (elementary) records. Witness did not consider this a thorough review.

He discussed disciplinary concerns³⁸ and reviewed the Behavioral Evaluation³⁹ completed on 3/20/13. The assessment included review of grades:

9 th	Sem 1	9th	Sem 2	10th	Sem 1	10th	Sem 2*
Alg	D	Alg	C-	Eng	F	Sm. Gas	B
Art	B-	Art	C-	Geom	C	Bio	D
Eng	C-	Eng	D+	Bio	D	Eng	F
PE	A	PE	A	Drawing	F	Food	C
Global/St	B-	Glo/St	C	Health	D	Health	B
Phys Sci	C	Phys Sci	C	Carpentr	B	Geom	D
Numeracy		Numeracy		PE	A	ProjDes	B+

* Grades in Progress

³⁷ Parent Exhibit #1

³⁸ Parent Exhibit #3 (Detention due to 6 tardies

Parent Exhibit #4 (Detention due to 1st Cell phone infraction)

³⁹ Parent Exhibit #5 (3/20/13)

Advocate testified that the only intervention he was told about was numeracy lab, with no records to indicate RtI – no documents to verify the support. And no communication with Parent. Reviewing the Behavior Rating Inventory of Executive Function (BRIEF)⁴⁰ he testified that it shows ADHD continues to be a problem for both attention and impulsivity, across settings and that his behavior is impacting performance.

The eligibility conference, where the evaluation was to be reviewed was held on July 29, 2013. When he was unavailable, he asked to participate via phone but was not called. As his e-mail was sent ½ hour before the meeting, Sp Ed Director stated she did not see it until after the meeting. He was told by Cousin that eligibility was denied and a 504 Plan⁴¹ would be developed.

Under questioning by [REDACTED], Advocate testified that he did not know if Student typically takes his medication at school. He also testified there were no other disciplinary issues besides the detention for tardies and detention for the cell phone. He described Student's discipline record as "light", not a lot of documentation that would rise to the level of suspension. The OCR complaint⁴² was filed because Parent/Family asked for an evaluation and were not satisfied with the response. The complaint was dismissed when District agreed to do a case study evaluation. Regarding the delay in scheduling the domain, Advocate testified that he was out of the country and not available until mid-May.

When asked if he requested a nurse be present at the domain meeting, he responded that he could not recall. Regarding a social worker (SW), he stated he thought Cousin asked for her presence. Advocate did not ask to reschedule the domain, although nurse and SW were not present. When asked why he felt it was necessary for the District to talk to Student's doctor (as part of the evaluation) he stated it was because of enuresis until the age of 12 and the developmental history with his mother.

Although the domain meeting was scheduled to begin at 3:00 p.m, it did not start until 3:40p.m. because Cousin was late. Reviewing the domain⁴³ it was agreed that under Academic Achievement, the Woodcock - Johnson III test would be given. Regarding Functional Performance, he stated the Family thought the ADHD was not the only problem. It was agreed that for the Social/Emotional area, three tests would be given: The Social Skills Inventory, Connors, and BASC-2. When asked if he requested any other test be given in this area, he said "yes" but he couldn't recall which. [REDACTED] asked if the Family agreed that these were the tests to be done and Advocate responded "no".

Asked if it wasn't true that Parent had to agree to the domain in order to have the OCR complaint dismissed, the witness did not agree. As Advocate testified he thought an IQ test should have been done, [REDACTED] asked why the domain page says "no concerns about his IQ". He responded that he didn't know. Advocate

⁴⁰ Parent Exhibit #5 p.2

⁴¹ Americans With Disabilities Act, § 504

⁴² District Exhibit #1

⁴³ District Exhibit #2

answered affirmatively when asked "Isn't it true that not every child who fails needs special education?" He also stated he was not given the domain and did not see it.

When asked if it was true Student is now passing all classes, Advocate stated he did not know. Referring to Student's ACT score of 21⁴⁴ ██████ asked if this indicated college readiness and Advocate responded it would depend on the school. Referring to the BRIEF, ██████ asked if all teachers showed concern, the witness testified he did not know. The witness was asked to review Student's Mid Semester Report from 3/18/14⁴⁵, which indicates:

Algebra II	D
Chemistry	C-
English III	B-
Intro. Manufact/Welding	B+
PE	A
US History	A
Numeracy Lab	

Witness was asked, based on this grade report, "what special education does he need?" He responded that the grade report is just a snapshot. When asked what special education services Parent/Family is seeking, he stated " an independent evaluation to determine whether there was a learning disability and a social/emotional evaluation.". As the Advocate testified the Social Developmental History was inadequate, ██████ referred him to the document⁴⁶ and asked which questions were not answered. The response was No. 10, family history of genetic conditions. ██████ finished her cross examination asking if the fact Father/Family completed this history would still indicate the need for an IEE.

Biology Teacher

The witness was Student's teacher during the 2012-2013 school year. Student did not complete the 2nd semester, as his two week suspension seriously impacted his grade. A decision was made, without input from the teacher, that Student would be withdrawn from biology and concentrate on passing his other classes. During the second semester, Student was non-compliant with homework and teacher contacted Aunt.⁴⁷ He reported that Student was missing assignments and peers complained about his work in group. Teacher stated he knew Student had a 504 Plan and he was given preferential seating (near teacher's desk) and was given study guides. He worked better by himself, rather than with a group and he was not a problem in the class. When asked by ██████ if was an at risk student, Teacher stated no more than any other boys in his class and that 1/3 of his

⁴⁴ District Exhibit #17

⁴⁵ District Exhibit #8

⁴⁶ District Exhibit #9

⁴⁷ District Exhibit #12

class looks like Student. He did not know if was on medication. When asked if a special education teacher would help get his homework done, Teacher said he could not answer. Regarding someone to go over his Study Guide, the response was it could help any student. He had no idea if Student had friends and did not observe any unusual behavior. Although Student sat by his desk, so did other students.

Teacher, identified himself as Teacher 2 in the Behavioral Evaluation⁴⁸ who completed the Connors-3 Rating Scale. Asked the purpose of the Connors, Teacher said he had no idea –he is not a special education teacher. This was the first time he completed such a rating scale. In response to [REDACTED] questions, Teacher stated Student's inattention could be a problem, if he was not interested in the topic and that although impulsive, he was no more so than other students. He stated he was not hyperactive.

Regarding learning problems, he identified homework completion as the problem and again compared Student to others in his class, stating that 1/3 of his students don't turn in homework. He was never aggressive and Teacher never observed problems with peers. Group members complained that he never completed his portion of the work.

[REDACTED] questioned the witness, who stated Student is very bright and that his grades were not a reflection of his ability. He is capable of learning but homework completion was the problem. Teacher reported that during the 1st semester work completion was average. Teacher stated his e-mail to Aunt⁴⁹ was to report Student was not doing homework and not doing well on tests/quizzes. If he completed assignments, grades would improve, as all kids do better when they do homework. Student also never went to teacher after school for help. [REDACTED] referred to the Rating Scale and Teacher could not explain why he rated the Student with such high scores. Student mostly remained in his seat. His off-task behavior was often drawing. Teacher explained that he rated the student high (in the clinically significant range) for peer relations because he did not complete work when working with groups. He had no other concerns.

Teacher has no concerns about Student's capability. He is given accommodations as needed but he didn't need them first semester. Student sat near teacher every day. When interested in a topic he paid attention.

Teacher is currently working with Student in the evening ACT prep class. He described a student who shows up on time, participates, sits quietly, does not talk to peers and does not draw. The class meets Wednesday evening from 6:00-9:00 p.m.

[REDACTED] asked why Teacher indicated in the Rating Scale that Student was clinically significant in all areas. "Teacher 2 feels (Student) has significant problems with his behaviors, which cause him to distract others and fail course work". Teacher responded "I never wrote any of those comments. I would not say he has significant problems...no one ever asked me if I thought he had significant problems".

⁴⁸ District Exhibit #5 (page 3of4)

⁴⁹ District Exhibit #12

Student

When asked what he had the most difficulty with, Student said "organizational skills". He shared that he is currently taking Adderall and Wellbutrin. The Adderall helps him with focus and keeps him on-task. He began Wellbutrin a few months ago but doesn't know why. He feels more calm – not as depressed. Recently, he has been doing his best to stay on the pills but sometimes "we run out". In the past, when he didn't take the pills he felt more hyper (impulsive). He started seeing the school social worker when he returned from the [REDACTED]

When speaking about the incident, Student – who was articulate and soft-spoken, seemed embarrassed and remorseful. He said he allowed a student to intimidate him to bring the pill to school, and that it was stupid of him. He said it was because of his impulsivity.

When asked how he is doing now, Student stated that he has changed, "after seeing the consequences for something as stupid as I did. I don't know what allowed me to think that was acceptable. I like talking to (SW) – she helps me a lot. Like someone to talk to". Regarding homework and organization, Student stated he'd "like to improve on these myself". He doesn't use an assignment notebook. Student discussed past grades, saying "I'm sure I have the ability but in the past follow-through was a problem. My capability is starting to show with the right motivation, I can get the job done." He said he would not like regular tutoring but prefers to go for help when he needs it. To make the point he added "On a regular basis, tutoring might result in my losing focus."

Student described his semester at the [REDACTED], somewhere he would never want to go again. "I felt horrible that what I did would bring me to a place like that." He described other students as not caring at all about school and that the level of work was not as challenging as at his home school. He felt he excelled there, and given his good behavior, other students asked why he was there. His chemistry class at the [REDACTED] was on-line and he didn't like that. While he described his time at the [REDACTED] as a "waste", he also said it was a "big help – a reality check. I was there for what I did."

[REDACTED] began her questioning asking about Student's girlfriend. He doesn't get to see her much because of where he lives and transportation problems but he gets to see her at school. He reported on his current classes, where he is doing well in U.S History and English, and he likes both classes. He also likes Chemistry and Algebra but he's not doing as well. "These two teachers are very good and help me out the most. I'm trying to catch up. My teachers make me comfortable, especially (Chemistry), who encourages me. He tells me as long as I do what he asks – I'll be fine". His Algebra teacher is also very supportive, as he is very assuring and enthusiastic. "His behavior motivates me. My teachers motivate me to do well."

Student stated he is getting caught up and described the support he is receiving. He is in both Assisted Study Hall (ASH) and Numeracy Lab and he started off the semester with all completed work. In ASH there is daily self-monitoring. He

had all A's and then a D on a math quiz brought his grade down. He wasn't ready for the quiz and didn't seek help but "for the next quiz, I did. I learned to ask for help."

Student spoke enthusiastically as he described a major project in Chemistry. He really likes labs and experiments. He worked successfully with a group and his hard work paid off, as he brought his grade up from a 60 to a 79. He was very happy.

After the incident, Student started seeing a psychologist. He doesn't get to see his father much because of father's work schedule. Also, father's current girlfriend doesn't want Student to go to the house.

Student loves sports, especially baseball. He used to be on several teams but couldn't play after the incident (consequence). He stated the consequences included no phone, no T.V. in his room, no social contacts, and no driver's license. He felt the consequences fit, they made sense, and affected his behavior. He described himself as "absolutely more mature now. As a freshman and sophomore I was probably immature. I've matured a lot."

Student said he's recently become very good with group work and in fact, in English he is helping a peer who was falling behind. He has had no discipline incident in more than one year.

Asked whether he would like help with Study Skills, Student said he prefers to ask for help, which he is learning to do. "I told my math teacher I was distracted in class and I retook the test. He goes to see (SW) who I likes to talk to. Student described the problem he had sophomore year. During the first semester, he did not have a study hall and that was problematic. (SW) encouraged him to attend [REDACTED], an after school intervention. He doesn't like to go because after school is the only time he has to socialize but he has gone and found it's more helpful than he thought. (SW) encourages him to ask for help and that is what he is doing. He stays after class to talk to his Algebra teacher and goes before school in other cases.

Ms O'Neill Austin asked Student about friends. He described his best friend as his 24 year old cousin, who is like a brother. He has not introduced his friends to his family but he said he has many, many friends at school. Even though he no longer plays sports, he still sees his former teammates and retains those friendships.

Father

Father testified about the difficult time when Student was living with his mother. He also stated that Student's early years in school were difficult. Despite recommendations, he did not put his son on medication because he is very much against them. However, his son is now on medication.

His entire family has helped raise his son. Father said he has been asking the school for help since his son was in 4th grade. Father believes his son was bullied (social bullying), wanting to have friends, explaining his reaction to the incident.

Father testified that he asked the District for a case study evaluation and they didn't do it. Instead, they waited for something bad to happen. He said his son needed an IEP and that the beginning of his sophomore year was a nightmare. Father said his son needs an IEP to follow him through college. When asked by [REDACTED]

██████████ what special education services he was requesting, he said he would leave that to his niece, upon whom he relies.

On the Health History⁵⁰ he completed for elementary school (7/31/04), Father responded "no" to all questions related to ADHD or psychological issues. On 11/11/09, ██████████ listed a diagnosis of ADHD. On 9/15/09, Father completed a Health Survey⁵¹ in which he indicated ADHD but specifically circled "no" to psychological or social issues.

There was no need for a Health Plan at his high school because he was not taking medication at school. Father testified that he didn't want him to take medication at school.

██████████ asked Father if he signed Authorization for Cousin to Exchange Information with Horizon Behavioral Health⁵² on 3/26/14 for purposes of this hearing. Father replied "I highly doubt it." On a medical form⁵³ dated 10/08/13, the doctor circled "euthymia". Father did not know the meaning of that word. ██████████ asked why two months earlier, on 8/10/13 there was the addition of "Mood Disorder" in the diagnosis⁵⁴ and whether father had shared that information with the District. Father stated he told the school counselor. ██████████ asked about the Treatment Plan and whether Student's Drivers License was an important reinforcer. ██████████ also asked about the Current Status Assessment⁵⁵ from 6/11/13, which stated "No behavior problems but many complaints re his home life. His birthday was a disappointment, father, aunt and uncle refuse him permission to get a driver's license, he was approached by 2 teams to play baseball but cannot, he works with father on projects that he was supposed to be paid for but was not, he feels coerced to sell some golf clubs for a price he feels is not fair, he is grounded from his phone so he is not seeing peers. He is reluctant to have a family session for fear it will worsen matters." Father stated that he has gotten some privileges back and will soon be getting his driver's license. ██████████ also asked if it was correct that no Mood Disorder was included as a diagnosis. Father stated he is a strict disciplinarian as he works at ██████████ and wants to keep his son out of trouble. Father also stated Student was trying to manipulate the counselor to get his privileges back. The Current Status⁵⁶ from 5/16/13 states "he was impressed by his scores..admits he could do the work but he has been disinterested...he wants to drive..we discussed academic success as the path to privileges." Father responded that he did not take Student to Horizons. He relies on the family and they have all the information.

Father testified that he e-mailed⁵⁷ the social worker telling her that Student was not always truthful - telling him he finished his homework when he had not.

⁵⁰ District Exhibit #18, page 23

⁵¹ District Exhibit #18, page 37

⁵² District Exhibit #19, page 2.

⁵³ District Exhibit #19, page 3

⁵⁴ District Exhibit #19, page 6

⁵⁵ District Exhibit #19 page 9

⁵⁶ District Exhibit #19 page 13

⁵⁷ District Exhibit #20, page 1.

From that point on, Father stopped e-mailing the school and Aunt assumed that role. Homework Haven was recommended by the school counselor.

Aunt

Aunt testified she became the primary caregiver when Student was in 8th grade. During his Freshman year, Student had trouble completing assignments, and organizing (especially math). English was a problem and he was up and down with his classes. Aunt said she was appalled that his elementary school was not giving more support but Father was afraid of medication because of the addiction of Student's mother. Student's behavior at home greatly concerned her as he was suffering from enuresis, would isolate himself in a corner, hoard food, curl under a blanket with food, etc. Behavior that concerns her now includes hoarding food, and social isolation. Aunt stated he has no friends.

Aunt testified that her greatest concern was in January 2012 when she was at her wits end about school. He was failing 3 of 3 classes and 2nd semester had just started. There was a 504 meeting but she thought it was case study evaluation. Teachers expressed concern about attention, disruption, and homework. Aunt told the social worker she thought emotional issues were affecting his schoolwork. On 2/08/12 Aunt told social worker in an e-mail⁵⁸ that she was trying to gather information for a private psychologist to do some testing. All teachers reported missing assignments. During that time, Student was experiencing a great deal of anxiety, was crying, and suffered severe stomach pains. Everything seemed over his head – he was drowning. Aunt explained that during this time, Aunt M (who had been his primary caregiver since he left his mother's care) was gravely ill and passed away.⁵⁹

Aunt testified that, on more than one occasion, the Special Education Director told her a 504 Plan was the same as an IEP.

Aunt testified that she, in preparation for the evaluation, was not interviewed by either the school nurse or psychologist. During the eligibility conference, Aunt testified that behavioral concerns were not addressed and the incident that resulted in the expulsion hearing was not discussed. Aunt testified about the Conners Comprehensive Behavioral Rating Scale Parent Rating, ⁶⁰in which Parent/Family rated Student to have clinically significant levels of maladjustment in 25 of 29 areas. Aunt expressed the belief that the District was not concerned about Student's failed classes.

Currently, Student is relieved to be back at his home school and is working very hard. He is doing much better in English, which is usually his toughest class. Chemistry is very difficult for him after taking the first semester on-line. She stated he has some very accommodating teachers.

⁵⁸ Parent Exhibit #15 page 6

⁵⁹ IHO is unclear as to the actual time of Aunt's death

⁶⁰ District Exhibit #24 page 19

██████████ asked Aunt if she disagreed with the assessment of ██████████ that Student had no behavioral problems and she stated she did disagree with him. Arrangements have been made for Student to stay after school for Homework Haven and take the late bus home but he did not like this plan.

Aunt reported that there were few nurse visits⁶¹ since Student's return from the ██████████ Student is now seeing an outside social worker and Aunt stated he has many issues to work on.

English Teacher (Current)

Student is currently in American Literature and is on time, gets right to work, and is mostly on task. He is one of the most active participants, asks and answers questions, consistently works with other students and is not disruptive. His current grade is 81%. Teacher described Student's strengths as doing well with analysis and applying literature to life. He struggles with completion of long-term assignments.

With group work, he is a good partner who has no trouble finding partners. Student is acting as a peer mentor for a student who struggles to stay on task.

Student's success in this class is impressive as Junior Literature is a very difficult class. Most students struggle with this class because it's hard to apply skills to content, as the reading is tied to American History. Teacher also co-teaches the ACT prep class in the evening and stated that he is a little less on task in the evening.

Private Clinical Psychologist

Witness testified that he did not evaluate Student. He met with him for about 15 minutes and reviewed records provided him by Parent/Family's attorney. The history suggests ADHD for quite some time. ██████████ asked the witness if he were to do an Independent Educational Evaluation (IEE) what he would be looking for. He responded with three areas of concern:

- 1) information across several domains (psychological, social history)
- 2) Adaptive behavior
- 3) Intellectual level (to determine potential)

Failing classes would concern him. He would consider classroom performance that did not match achievement scores an indication of the need for special education.

Additional areas to be considered include personality functioning (MMPI or the Milan). Regarding the incident, the witness stated it would be important to understand why it happened to prevent it from happening again.

If there is a medical diagnosis, ██████████ asked if you should have medical documents and the Psychologist responded that you "need to be aware of it". If there is an outside therapist, the witness would recommend communication as this would be valuable information.

⁶¹ District Exhibit #25

Considering the Rating Scales from the Connors⁶², Teacher 2 had very serious concerns. Teacher 1 had some marginal elevation, indicative of ADHD. The Parent Rating⁶³ had expressed many different concerns.

The Psychologist testified that, based on the history provided by the Family and what he reviewed, Student needs special education. He based this on his background, ADHD, and recent problems. When asked if accommodations under a 504 Plan would be sufficient, he responded they "would make sense". An IEP would provide more services, with goals and objectives.

On cross-examination, ██████████ asked if Family told him that his English teacher says he's on task and not distracted. They had not. She asked if Family told him his work in group is consistently positive and non-disruptive. They had not. Did he know Student is getting a high B in English? He did not. Was he aware that Student is in a very difficult English class? He was not. Was he aware of the Composite Score of 21 on the ACT?⁶⁴ He was not. ██████████ asked if he would have liked the above described information to have been provided to him and he responded that yes, the information would have been helpful.

The Psychologist testified that, with ADHD, ability to attend varies depending on the time of day. Medication is given in the morning and is less effective in the evening. ██████████ referred to Student's Mental Health Records⁶⁵ and asked the witness what the middle boxes indicate. The doctor consistently circled the word "euthymia" which means a positive mood. The reports were very difficult for the witness to read but it was clear that Adderall was prescribed and the patient's mood was described as positive. ██████████ then asked a series of questions. Did Student share that the Safe School was a reality check? No. Did Family tell you there were no discipline reports in more than one year? No. Did Family tell you Student is seeing the social worker? No, You were not provided a copy of the 504 Plan? No. Other than Section 7⁶⁶ were you provided with any other documents? No. If someone asked what records you should be sent, what would you say? Any and all records from the past 5 years. In response to the question as to whether the witness was surprised that a 504 Plan was not provided to him, he responded "it would have been helpful".

The witness reviewed the documents used in Assisted Study Hall⁶⁷ and stated they would certainly offer some of the things he recommended.

The witness submitted a letter⁶⁸ to Family's attorney and refers to an "emotional disorder. When asked "What emotional disorder?" he responded "depression and anxiety, as reported by guardians. ██████████ referred the witness to the most recent grade report⁶⁹ and asked if this report was available at the time

⁶² District Exhibit #24 p.5

⁶³ District Exhibit #24 p.7

⁶⁴ District Exhibit #17

⁶⁵ Parent Exhibit #23 pp 37-51

⁶⁶ Parent Exhibit #23

⁶⁷ District Exhibit #14

⁶⁸ Parent Exhibit #23 pp. 3-4

⁶⁹ District Exhibit #8

Family visited and he responded "yes". He further testified the grades were better than reported to him and it would have been helpful for him to have seen them,

██████████ referred to Teacher Comments, in which Teacher states concern about ability to learn because of behavior. The Psychologist believes it is necessary to have supervision at school, as with ADHD you would want as much supervision as possible. Finally, the witness stated that he stands behind his letter.

Regarding supervision, ██████████ asked if it was necessary for the staff providing supervision to be special education teachers and the witness stated he couldn't say that would be necessary.

English Teacher (Summer School)

Teacher taught Student English in summer school for credit recovery. She reported no negative behaviors and a student who smiled a lot. There is no homework given during summer school, as all assignments are completed during class. There was one instance of plagiarism and he had to redo the assignment. There were no problems with his English skills. In addition to the summer school class, ██████████ also asked about Student's current class. As the witness is a twenty year teacher and English Department Chair she testified that Student's current English class is the most difficult English course. Overall, the witness described the Student as able to contribute without distracting, able to perform, able to complete academic tasks, does fine with group assignments, has an ability to learn, and good interpersonal relationships.

Chemistry Teacher

Student is the first one in class daily. They talk everyday and have developed a very positive relationship. Student will ask "what are we doing today?" He stays as focused as most of the students at the end of the day (this is a last period class). The teacher is aware that Student has a 504 Plan but all his students get accommodations. ██████████ asked if he has had training with ADHD and he explained that he has a son with both Autism and ADHD. He does see the signs of ADHD in Student. His focus wanes and he might need to reconnect. With group work, the challenge is being able to focus when more than one person is talking at a time. Every student reacts like that.

Intellectually, Student is very bright. He struggles because he missed the first semester when he was at the ██████████ and as the work is cumulative, there are many gaps in his knowledge. He is above average for the other students in the class. This is a college prep class and Teacher stated that "internal responsibility has to be developed someplace. In chemistry and algebra is where these skills are learned." While intellectually Student is probably above average, in academic maturity he is in the average range. He stated that "the shorter the direction, the more firm the command" as a philosophy of working with all students.

The teacher stated that organizational skills can be taught to students with ADHD. A recent rigorous lab in chromatology, had as a goal a deeper understanding of forces between molecules and classification. Student earned 138/150 points, a 92%. He had no help with this lab and did all the work on his own.

Student's behavior is never an issue, as he is respectful, attentive, and focused. While his focus occasionally wanes, it does for others as well. Student engages in higher level thinking and his grade is a reflection of academic maturity, not intellectual ability. While he's making sense of content, he's still missing details from the first semester. He communicates well, both verbally and written and he's right with the majority of the class.

The teacher stated he does as much soft skills training (executive functioning) as I teach chemistry. You decide as a student, is it worth it? Do I want to work hard? Student is showing a desire to do better. There are a great number of organizational skills built into the class.

Teacher saw no signs of depression. While Student is more than capable to take Physics next year, Teacher would like to see Student take Accelerated Chemistry - to fill in the blanks.

When [REDACTED] asked if he was aware Student needs to retake Biology, Teacher recommended Advanced Biology.

Special Education Teacher

The teacher has seen Student in the halls since early in his freshman year, recognizing him because she knows his uncle. She described his behavior as "laughing, talking (often about sports), and flirting. He seems very happy and is always talking to girls".

Her experience is as a special education teacher for 13 years. She participated in both the domain meeting on May 15, 2013 and the eligibility meeting on July 29, 2013. She stated the District never refused to do IQ testing. Rather, when Family asked about IQ testing, the team members explained that, since there was no evidence of mental delay, IQ testing was not necessary. There was agreement that no IQ testing would be done. She also testified that some of the IEP team members left because the meeting started at 3:40 p.m. (scheduled for 3:00)

Teacher testified that, given Student's skills, he would get more help in Numeracy Lab and Assisted Study Hall (ASH). During the eligibility meeting, she did not think Student was eligible and she testified that Family was in agreement. The team discussed both OHI and ED. Family expressed concern about his social/emotional state. Family discussed the problems with hoarding food and not wanting to be a burden. School staff explained that there were no social/emotional concerns at school.

Teacher described this as a thorough evaluation and testified that Student did not need special education - his needs could be met with a 504 Plan. She explained that she teaches Study Skills in a special education environment but did not see that as appropriate for Student. He is in all general education classes and would receive study skills support and instruction from ASH, with general education

teachers available. Executive Functioning deficits could be addressed as an accommodation and in ASH.

School Psychologist

The School Psychologist was not a participant at the Domain and did not do the testing for the evaluation. She was hired to replace the previous psychologist, who moved out-of-state. Her role at the eligibility meeting was to review the evaluation and interpret data. She printed multiple copies so that Family could follow along as she read the report. With inconsistencies, she tried to clear up patterns of concern. She testified that it is important to avoid looking at one data point.

She testified that she went over the results and determined areas of struggle but there was no consistent pattern of substantial concerns. The team discussed OHI, ED, and a 504 Plan. In her opinion, Family did not seem confused about the difference between an IEP and a 504. In discussing ED eligibility, the team discussed a lack of commitment. She stated ASH in the general education setting was an appropriate intervention and that she did not think he needed more.

The witness testified Cousin wanted an ED eligibility so Family could understand that Student had emotional needs. Family shared outside emotional issues (lack of friends, childhood problems, etc.)

██████████ asked the witness about the eligibility meeting and Student's grades. She responded that all Student's skills are in the average range. With OHI, there were inconsistent behavioral ratings⁷⁰ and witness said she would at behavior impacting performance in multiple settings. In looking at grades, there were no failures during his freshman year. The witness testified that she would not necessarily consider a failed class as a red flag, even for a student with at least average ability.

Witness was also asked about the BRIEF⁷¹ scores and whether she had any concerns with clinically significant scores. She responded that she does not look at one set of scores in determining eligibility. Asked to look at the rating scale of Teacher #3, regarding Executive Functioning, the psychologist testified that it is information to consider but is the rating of only one teacher. The witness testified that she gives the BRIEF to all classroom teachers.

The Connors-3 Rating Scale⁷² was also considered and the witness testified that best practice is having multiple teachers complete the rating scale. The witness said she was very concerned with the significant discrepancy between ratings of Teacher 1 and Teacher 2. Teacher 1 scores were right on the border of average and might indicate the need of ASH intervention. Scores for impulsivity are significant

⁷⁰ District Exhibit #24, pp. 15-16

⁷¹ District Exhibit #24, pp. 15-16

⁷² District Exhibit #24 pp. 16-17

enough to impact school. From the testing done, the Psychologist testified that in the BASC⁷³ no teacher indicates clinically significant scores. These tests are important for both ED and OHI consideration. Student also did a Self-Report⁷⁴ which indicated at risk behavior; however, the witness testified that every student she has tested reported at risk behavior.

There was no diagnosis of depression in July 2013, when the eligibility meeting occurred. The witness was asked by [REDACTED] if a student could have straight A's and still be eligible under OHI and/or ED. Does special education only apply to academics. A student with straight A's could still be eligible - it depends on how the disability impacts him/her educationally.

Did the Psychologist consider this a full case study evaluation? Yes, as determined at the domain. She also stated the information from the nurse was what she would expect. During the domain, under the domain of "Health"⁷⁵ there is no indication that medical records were to be obtained.

The Parent Rating⁷⁶ indicates clinically significant scores for 25/28 areas, with Parent indicating a lot of major concerns, including Autism. No one on the IEP team considered the possibility of Autism. None of the behaviors reported by Parent were seen at school. If Teacher 2 doesn't see any difference among other students in class (and would rate many other students high) that questions the validity of his rating scale.

Regarding the difference between behaviors seen at school and those seen at home, the Psychologist referred to the Student Interview⁷⁷. She believes the IEP team had enough information to determine eligibility. "We had the information but it didn't show eligibility.

[REDACTED] asked if the Psychologist would have liked more testing. The witness stated that the delays caused by Family/Advocate resulted in testing during the summer when fewer teachers were available. "However; my decision is based on the fact the issue did not impact his education."

Social Worker

The social worker is the only social worker at the school and sees students both with and without an IEP. Student sees her in conjunction with his 504 Plan. She

⁷³ District Exhibit #24 p. 20

⁷⁴ District Exhibit #24, p. 20

⁷⁵ District Exhibit #2 p. 6

⁷⁶ District Exhibit #24, p.19

⁷⁷ District Exhibit #24 pp. 17-18. The lengthy interview indicates a young man who does not want to be a burden to his family and does not ask to have friends over. He stated "I love coming to school because I love friends and sports..at home I'm antisocial. Don't want to bother anyone." He also addresses the complicated issue of his medication. "When I am off meds I feel like (Student). When I am on it, I feel like productive. It turned me from one kid - a happy, carefree, athletic - to the opposite, which is focused only and I want to produce, not enjoyment."

described Student as “a typical teenager”, adding that most kids she sees have a huge deficit.

Student makes good use of his SW time. He determined that he wants to work to improve assertiveness – to get his academic needs met himself, to approach professors, bosses. He needs assertiveness skills. Student has deficits but they are not significant. They are typical for high school students with average grades. She can’t say he “needs” a 504 Plan but he is using it.

He has failed a few classes over the past two years, which she stated “is more typical than you’d guess. She identified signs of ADHD during his freshman year when his math teacher sought out her help to work with him. She did not attend the domain meeting as she was on maternity leave but was in attendance for the eligibility meeting. Aunt spoke with the social worker during the second semester of Student’s freshman year, requesting an evaluation. In preparation for her report for the July 2013 eligibility meeting, SW called Cousin and sent the Social History⁷⁸ report to her to complete. SW felt the report was complete and provided enough information. It concurred with other information we had.

Health information was included in the SW report because there is overlap between the SW and Nurse’s report. The report did not include a recommendation regarding eligibility, as that is a team decision – decided at the meeting.

SW was asked if she agreed with the letter⁷⁹ sent to Parent on February 28, 2012, detailing what had been reviewed and why there were no grounds to merit an evaluation. She stated she was in agreement. At the time she was seeing Student twice a month. SW was also asked about an e-mail⁸⁰ she received from Aunt on February 25, 2013. Aunt was seeking information to share with Student’s psychiatrist. Aunt did not indicate the name of the doctor or state why Student was seeing him.

Discussing what they are working on, SW stated his primary concern is homework and that he only goes to see her after he is caught up with homework. Since his return from [REDACTED] he is very focused and wants to go to college.

SW thinks the evaluation was complete and there was no other testing that should have been done. She offered that she didn’t know what he would get from special education – what he would utilize. She does not see him eligible for special education.

Additionally, SW testified that Student is getting the appropriate amount of social work services now to meet his needs. SW testified that the entire evaluation⁸¹ was reviewed at the eligibility meeting by the Psychologist. There was no reason to do IQ testing. The SW also stated she read her report aloud, which included the medical report. Everyone, including Parent/Family, agreed that no special education class was appropriate. The witness then responded to eligibility questions⁸²

⁷⁸ District Exhibit #23

⁷⁹ District Exhibit #30

⁸⁰ District Exhibit #31

⁸¹ District Exhibit #24 pp. 1-23

⁸² District Exhibit #24 p12

Regarding Student's current status, SW stated Student seeks her out, talks to her about his friends, and is working to become more assertive.

Asked if she is teaching him Study Skills, SW said she is not. Although she did work with him on such skills during his freshman year, he now gets that in ASH.

Grades and homework completion are issues for most freshman and sophomore boys. Inconsistent grades are normal, especially for freshmen.

Cousin

Cousin is a special education teacher, who is working toward a Master's Degree and an Administrative Certification (Type 75). As such, she has been the primary spokesperson for Parent/Family. She is also the daughter of the Primary Caregiver.

Cousin stated that the entire family has always worried about Student. She sees a young man who is anxious around others, defensive, and has no friends. He was recently identified as having a mood disorder. She described a Student whose behavior is always a concern for a majority of his teachers, with off-task behavior and an inability to work in groups.

After the Domain Meeting, Cousin thought they would be developing an IEP. Family had made arrangements for after school help. Student's math teacher was expecting him and he was a no-show. Cousin stated Student does not initiate or ask for help. He doesn't want anyone to know his deficiencies.

She objected to the 504 Plan because she doesn't think it will help with his emotional issues. "We said we were worried about social/emotional issues and they ignored us". After the incident, Cousin prepared a letter⁸³ to be read at the Expulsion Hearing. In the letter, she detailed the history of Student's educational and social/emotional problems and asks the Board to consider his problems in light of any punishment.

Cousin stated that she wanted IQ testing as part of the evaluation and expected that it was going to be done. She also told the psychologist she wanted a social worker at the Domain.

Cousin testified that the Special Education Director told her an IEP and 504 Plan were the same at the college level. The Domain meeting was very long and I thought Sp Ed Director understood my concerns. I wanted:

- 1) organization
- 2) time management
- 3) study skills
- 4) support on major projects
- 5) self-awareness
- 6) interpersonal relationships
- 7) self-advocacy

⁸³ Parent Exhibit #25 pp 1-2

██████████ asked Cousin what other behaviors there were after the incident. Cousin mentioned an issue of plagiarism, as well as e-mail from teachers about Student's performance. Since January, 2014 when Student returned to home school, Cousin was asked what other problems there were. She responded "homework and I think something about off-task".

Asked who would provide self-awareness, Cousin responded the social worker. Asked who would provide interpersonal skills, she responded the social worker. For organizational goals, she stated a special education teacher/team effort. Asked what is required for special education eligibility, Cousin stated "something effecting his learning". When told by ██████████ that a student must need special education services to get an IEP, the witness said she had never heard that.

When asked if last summer the only diagnosis was ADHD, the witness stated she "couldn't say". ██████████ referred the witness to a script⁸⁴ by Dr M written on August 27, 2013. The only diagnosis listed is ADHD. Asked if she was saying that earlier in life Student had other diagnoses, the witness said "yes". She was then asked what other diagnoses Family indicated on the Developmental History. She stated "whatever my uncle and mother said". The witness testified she was at the Domain, agreed as to what additional data was needed; and returned the developmental history. She also stated that the IEP team did not go through each domain. When asked why she didn't insist, she said "it's not my job". When the only diagnosis listed on the Domain page was ADHD, she was asked why she didn't add more information. She did not know. At the eligibility meeting there was no additional diagnosis offered.

Student completed a written explanation⁸⁵ of what occurred with the Adderall. Cousin was asked if Student's written report about the incident was consistent with what he told her. She stated it was not. Asked about the purpose of the report by a clinical psychologist⁸⁶ that was presented to the Board of Education, the witness said she did not know. She was also asked who told her Student doesn't initiate conversation or ask for help, and she responded that "He doesn't ask for help. I know that." Asked why, during the domain, she didn't request District review medical records she responded "It's not my job. I put a lot of trust.."

Cousin testified that she never received the Domain paperwork. When asked if she authorized her Advocate to file a DPCN on August 21, 2013 she stated she had; however, the DPCN was not filed until October 1, 2013 due to the illness of her attorney.

Cousin stated the SW never contacted her or sent the Social History forms to her. When witness testified that she wanted more current social assessments, she was asked about the Social Skills Improvement System (SSIS)⁸⁷ and asked if the psychologist reviewed this test at the eligibility meeting. She did not know. She also did not know if the Connors was reviewed.

⁸⁴ District Exhibit #19 p.1

⁸⁵ District Exhibit #35 pp 8-9

⁸⁶ District Exhibit #35 p.16

⁸⁷ District Exhibit #24 pp. 9-10

Asked by [REDACTED] what special education services Family is seeking for Student, Cousin stated she wanted social work services. When told this would be a related service, Cousin stated he needs a full evaluation by an outside provider and she wants the social/emotional concern looked at more closely.

When asked again what special education services were being sought, Cousin responded "more intensive services to make up for the lack of services before. Some services by a special education teacher for organizational skills, time management, tutoring (daily to help organization until he can do it independently)". She also mentioned a behavioral plan for defiance at school, as he has been told to do things and has not. Cousin thinks it is important to have goals and objectives.

[REDACTED] asked if Family signed an excusal letter for the social worker. She had not. She asked the witness if she was concerned that Sarah was not available at the eligibility meeting to explain her tests. Yes, she was. At the Domain, Cousin said she never agreed that an IQ test was not necessary. She stated the Special Education Director was not present at the Expulsion Hearing.

Special Education Director

The Special Education Director is also the 504 Coordinator, Director of the Student Support Team (SST), and RtI Coordinator. The SST team consists of a counselor, nurse Assisted Study Hall (ASH) teacher, Principal, Assistant Principal and the Spec Ed Director. The SST monitors the progress of all students, weekly reviewing the F-List. They talk about struggling students and suggest interventions.

RtI interventions.

Tier1 – Intervention within the general education setting, (i.e. move desk, redirect, comprehension check, assignment written on board.)

Tier 2 – In or out of the classroom

[REDACTED] has a maximum class size of 15, is staffed by a Gen Ed teacher, (sometimes 2 teachers), and a peer tutor. Students write personal goals, and the teacher monitors homework completion and grades.

[REDACTED] – staffed by a certified math teacher (from within the math department). Help students with specific math problems/questions. Maximum class size is 8

There is an open door policy between ASH and Numeracy Lab. Students can decide which type of help they need on a particular day

Tier 3 when no success in Tier 1 or Tier 2
more intensive services
can be interventions within general education

██████████ asked the witness what interventions Student had. As a 2nd semester freshman he was failing one class and was assigned a study hall – he didn't have one. He improved.

Regarding elementary records⁸⁸ the witness testified that the elementary district sends all files when students transition to the high school. When Parent/Family requested records, the high school only had partial records, which is what then sent. The nurse doesn't get medical information because students must complete a 9th grade physical with updated information. When asked if it is important to review past academic /health issues when considering a 504 Plan or an IEP, the witness stated that it is, adding that they get lots of information from parents. The letter⁸⁹ by Psychologist to Parent on February 28, 2012 shows what we reviewed. Asked if she was concerned about the drop in test scores⁹⁰, the witness said "no, overall he was at 64% (above average)"

In response to the question as to whether an above average student can still be eligible for an IEP, the witness stated "if the child is above average but has issues that impact education and the child is not working to ability – he/she can be eligible. We would never look just at test scores to determine eligibility"

Witness testified that Student has been benefiting from ASH⁹¹ and Numeracy Lab. Although he has the option of going to either location, he prefers Numeracy Lab, as it has fewer distractions.

Regarding the determination that the incident was not an impulsive act, the witness testified that it was a team decision. It was not considered an impulsive act because it occurred over a number of days.

Viewing the behavioral rating scales, the witness stated that Teacher 3 rating⁹² was significant for Student – in this class. In other areas, he was not exhibiting these behaviors. "We looked at his grades, we looked at the class and we asked "what does he need?"

The witness also discussed the rating scales for the Conners – 3, where Teacher 1⁹³ indicated Student was only at risk in two areas (inattention and learning problems), while Teacher 2⁹⁴ rated Student clinically at risk in all. Based on these records, witness was asked if she would expect the need for outside records. Based on how he was presenting, there was no need. He had ADHD and was being treated.

██████████ asked a number of questions related to the tests given and how that was determined. Witness explained that the team, which includes the Parents, determines which tests are given. The witness was asked if the fact that Student had failed classes should have raised a question as to IQ and a learning disability. The response was that there was no indication of a learning disability.

⁸⁸ District Exhibit #18

⁸⁹ District Exhibit #30

⁹⁰ District Exhibit #24 p.4

⁹¹ District Exhibit #14 pp. 1-10

⁹² District Exhibit #24 p.16

⁹³ District Exhibit #24 p.16

⁹⁴ District Exhibit #24, pp. 16-17

The Woodcock Johnson III⁹⁵ indicates average IQ and he had consistent scores in content areas.

██████████ asked how many students at the high school had an IEP for ADHD and wanted to know if there was an unwritten policy denying special education services to this population. The Special Education Director stated that it is based on what they can provide to serve students with special needs related to ADHD. She listed the following interventions:

1. Staff development
2. Teacher awareness
3. ██████████ (15 students)
4. ██████████ (8 students)
5. ██████████ (after school help with a late bus provided)
6. ██████████ (online monitor)
7. Guidance counselor support
8. Model peers

Asked if high school academics are more difficult for kids with ADHD, the witness responded that kids need more ownership as they go into higher grades. ADHD symptoms decrease with interest, maturity, and college aspirations. Between freshman and senior year, less support is needed as they age and mature.

Regarding college, the witness explained that there is no recognition of an IEP in college. ADHD accommodations are limited to tests and quizzes. There is no extra time for papers, as a syllabus is considered prior notice of assignments. The goal at the high school is to prepare students for college. Student is getting this support in ASH.

The witness discussed the discrepancy with grades as viewed on-line with the testimony of teachers as to his success in the classroom. Assignments are not technically due until the end of the semester. A zero might be averaged in to lower a grade and when the assignment is turned in the grade goes up. And sometimes teachers don't promptly input grades.

The witness was asked if a nurse should have requested medical records to verify ADHD. She replied that they rely on the Family to provide such information. Student was not taking medication at school and the school had his 9th grade physical on file.

When asked if Student has a Model Peer as written in his 504 Plan, the witness stated that Student is now, himself, a Model Peer.

Concerns about social/emotional needs were first mentioned after the incident and none of these were ever witnessed at school. Witness stated Student makes friends easily and has no issues with peer pressure.

Witness was asked if Family asked to reschedule the Eligibility meeting when Advocate was unable to be there. "Yes, but it was the end of July. We brought people in from summer vacation. We made the determination to go forward. (Cousin) was there. She is a special education teacher, completing her special education

⁹⁵ District Exhibit #24 pp. 18-19

administrative certification and is a highly qualified representative. (Advocate) is not an attorney. Numerous delays were due to the unavailability of Family/Advocate. A conclusion needed to be reached prior to the new school year and (Cousin) was going into Autism Training and wouldn't be available before mid-August. (Cousin) said she was concerned about social/emotional issues and I said we can put social work in his 504 Plan."

Witness described problems with the sophomore year. Student had a study hall freshman year but not during sophomore year. "We recommend Study Hall to all families. We send notes home and ask Parent to sign off. Parent's request to schedule extra electives and forego Study Hall trumps our recommendations. Parent/Family said Student didn't need Study Hall." Student had ASA second semester of his freshman year, then it was added again in the second semester of sophomore year (only 2 days before he left for ██████████). Since his return from Safe School he once again has ██████████. She further described ██████████ as a Title I initiative, where students monitor their own grades, get help with study skills and organization. ██████████ shows what tests are coming up. Classroom interventions include moving closer to students, writing assignments on a set spot, chunking assignments into smaller pieces, using math and reading strategies, and giving extended time.

Current grades are:

World ?	B+
US History	B+
English 3	C+ (Most recent assignment was 30/30)
Chemistry	C-
Algebra 2	C-
PE	A

The witness believes the request for a case study evaluation was based on homework, not impulsivity. Although Cousin testified she was not given a copy of the domain, the signed consent⁹⁶ was returned (faxed from her place of employment 2 days after the Domain Meeting). During the eligibility meeting Cousin asked witness about college. Witness testified she never said an IEP and 504 were the same. She explained that colleges do not recognize an IEP.

⁹⁶ District Exhibit #3

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

Child Find

1. Student is a child with diagnosed Attention Deficit Hyperactive Disorder (ADHD), a qualifying disability under Other Health Impairment (OHI)⁹⁷
2. Extremely different behaviors are seen in school and at home, making it seem as though two different people are being described.
3. Although Student's behavior at home⁹⁸ is indicative of potential emotional issues, none of those behaviors are witnessed at school, especially concerns about isolation, depression, or inability to make friends.⁹⁹
4. Student clearly described the difference between home and school in his Student Interview.¹⁰⁰
5. Student is very bright, with strong skills, but has demonstrated inconsistent performance. During his freshman year, he passed all classes with 2 A's, 2 B's, 6 C's and 2 D's. Sophomore year was his most difficult when he failed 3 classes. He passed all classes first semester of his junior year and is currently earning 1 A, 2 B's, and 3 C's. in very difficult classes.
6. Factors considered in comparing performance from freshman year to sophomore year are: 1) the elimination of any Study Hall in his schedule¹⁰¹ and 2) the death of his [REDACTED].¹⁰²

⁹⁷ 34 CFR § 300.8(c)(9),

⁹⁸ Testimony of Advocate, Aunt, and Cousin indicating Student has no friends, suffered from enuresis until the age of 12, hoards food, curls under a blanket with food, is anxious around others, and has a mood disorder

⁹⁹ English Teacher (current) described Student as a good partner in groups, who consistently works with other students and who is acting as a peer mentor to a student who struggles to stay on task. His summer school teacher testified that he had "good interpersonal relationships. His Chemistry teacher stated he saw no signs of depression and that he and Student had developed a very positive relationship. The Sp Ed teacher described him as "happy, talkative (in the halls) and flirtatious"

¹⁰⁰ Footnote #76

¹⁰¹ Sp Ed Director testified "We recommend Study Hall to all families. We send notes home and ask Parent to sign off. Parent's request to schedule extra electives and forego Study Hall trumps our recommendations. Parent/Family said Student didn't need Study Hall.

7. Student has consistently demonstrated inattentive, off-task behaviors. Work completion, particularly homework, has negatively impacted his grades.
8. He has never had an IEP, although he has had difficulty since the beginning of school in kindergarten.
9. Parent/Family requested a case study evaluation in February of Student's sophomore year. In response, District conducted a screening and sent a letter¹⁰³ to Parent indicating what had been reviewed and a determination there were inadequate grounds to merit an evaluation.
10. Parent/Family allege a Child Find violation because District did not seek elementary school records as part of the screening process. However, the elementary district had previously forwarded all incoming freshman records and District believed the file was complete. Not included were discipline reports Parent believed would have been important to consider. The IHO finds that District considered the information in its possession and had no reason to suspect any other concerns. Student had neither an IEP nor a 504. He did have a Individual Health Plan (IHP) because he was given medication for his ADHD at his elementary school. District did not need an IHP because Student was not taking medication during the school day.
11. District has a Child Find procedure in place through the Student Support Team. The SST meets weekly and monitors the progress of students, reviewing what is referred to as the "F-List". They discuss struggling students and suggest interventions.¹⁰⁴
12. Student's freshman math teacher contacted the social worker to ask for assistance due to concerns he had related to Student's ADHD characteristics.¹⁰⁵ Interventions were provided, including [REDACTED] and his grades improved. He passed all classes his freshman year.
13. Family¹⁰⁶ testified that Student had social/emotional issues that should have been explored by District. They allege District failed its Child Find responsibility¹⁰⁷ by not contacting the mental health professionals working

¹⁰² Testimony of Aunt was that [REDACTED] who had been acting as his mother (along with his grandmother) since the age of 4, passed away shortly before the beginning of his sophomore year. He had been removed from the custody of his biological mother by DCFS. She also explained that [REDACTED] had been gravely ill throughout Student's freshman year.

¹⁰³ District Exhibit #30

¹⁰⁴ Testimony of Sp Ed Director

¹⁰⁵ Testimony of Social Worker

¹⁰⁶ Testimony of Father, Aunt, and Cousin

with Student. However, evidence indicates that other than the diagnosis of ADHD, no one from the family indicated any other mental health concerns until after the incident.¹⁰⁸¹⁰⁹

Evaluation

1. An evaluation¹¹⁰ was conducted as the result of OCR intervention,¹¹¹ following the Expulsion Hearing.
2. In keeping with procedural requirements,¹¹² a Domain Meeting¹¹³ was held on May 15, 2013¹¹⁴ at which time the IEP team reviewed each of 8 domains¹¹⁵ to: review existing information about Student, to determine whether there are issues that render each domain relevant, to determine what additional evaluation data was needed, and the sources from which the data would be obtained. An evaluation is considered a full, or comprehensive case study when the agreed upon domain assessments have been completed.
3. At Student's Domain Meeting, it was agreed that a Woodcock-Johnson-III assessment would be completed in the area of Academic Achievement.¹¹⁶ For Functional Performance, a Social Skills Inventory, Conners, and BASC-2 would be completed.¹¹⁷ For Cognitive Functioning, existing information indicated "No concerns about IQ" and Additional Data Needed indicated "none".¹¹⁸ Communication Status was deemed "not relevant. For Health,

¹⁰⁷ Under IDEA, states must have in place policies and procedures to ensure that all children with disabilities...who are in need of special education and related services, are identified, located, and evaluated. 20 USC § 1412(a)(3)(A), 34 CFR 300.111, 23 IAC Section 226.100. This is known as the state's "child find" obligation. *M.M.v. Sch. Bd. of Miami-Dade County*, 437 F.3d 1085 n.7 (11th Cir. 2006)

¹⁰⁸ The "incident" refers to the exchange of Student's adderall pill for a headphone

¹⁰⁹ See Social Developmental History, District Exhibit#23

¹¹⁰ 20 USC 1414(a)(1)(C)(i)(I), (II); 34 CFR 300.301(c)(2)(i), (ii): to determine whether the child is a child with a disability and if so, to determine child's educational needs.

¹¹¹ District Exhibit #1, OCR Letter

¹¹² 34 CFR § 300.305

¹¹³ District Exhibit #2

¹¹⁴ District attempted to have the meeting earlier but Parent/Family/Advocate were not available until that date.

¹¹⁵ Academic Achievement, Functional Performance, Cognitive Functioning, Communication Status, Health, Hearing/Vision, Motor Abilities, and Social/Emotional Status.

¹¹⁶ District Exhibit #2 p.2

¹¹⁷ District Exhibit #2, p.4

¹¹⁸ District Exhibit #2, p.6

existing information stated "He has ADHD and takes medication for it. Additional data needed was a Nurse Update.¹¹⁹Hearing and Vision indicated a need to update screenings. Motor Abilities were not considered relevant. The Social/Emotional domain referred to the Functional Performance area. The data would be obtained by the psychologist or social worker.

4. A great deal of testimony was devoted to disagreement about what was decided at the Domain. Testimony by Advocate and Cousin was that they wanted IQ testing and thought it would be part of the evaluation. Social worker testified that Family asked about IQ testing but the team stated it was not relevant as there were no indications of a learning disability and Student had consistent scores in content area. Student also received a Composite score of 21 on the ACT.¹²⁰
5. Regarding the domains of Functional Performance and Social/Emotional, Advocate testified that, in addition to the Social Skills Inventory, Connors and BASC 2, he requested that other assessments be given but he couldn't recall which.
6. As the social worker¹²¹ was on maternity leave, the psychologist represented her as they discussed the social/emotional domain. Prior to the Domain, Cousin indicated in an e-mail¹²² to psychologist that she wanted the social worker to be present. Psychologist's response was "We could get (SW) to come off her maternity leave, if you would not like me to cover the social emotional history". While District presented this as a good faith offer, the IHO viewed it as sarcastic and unprofessional.
7. Parent/Family also object to the non-attendance of the nurse at the Domain. Testimony¹²³ presented indicated that the meeting, scheduled to begin at 3:00 p.m. did not begin until 3:40 p.m. because Cousin was late and Nurse had to leave.
8. Although Parent/Family challenged the Domain in a number of areas, the IHO finds that the documentation is indicative of a proper review of each domain. Father signed Consent for Evaluation¹²⁴and checked "I give consent to collect the evaluation data described on page 2¹²⁵ of this form. As Father was not at the Domain, Cousin was supposed to represent him at the Domain

¹¹⁹ District Exhibit #2, p.6

¹²⁰ District Exhibit #17

¹²¹ The witness testified that she was the only social worker employed by the District.

¹²²

¹²³ Testimony by Special Education Teacher and Advocate

¹²⁴ District #2 p.1

¹²⁵ Page 2 refers to the list of 8 domains with the determination

and have him sign the consent. Cousin testified she never received the Domain paperwork, which is inconsistent with the fact the signed Consent was faxed from Cousin's place of employment two days after the domain.

9. The testimony of Cousin that not all domains were properly reviewed is also questionable. The meeting lasted two hours. The participation of Cousin, who is a special education teacher, and who testified she has run such meetings, as well as an experienced Special Education Advocate would suggest they would have the knowledge to be sure their concerns were properly documented.
10. Private Clinical Psychologist is an experienced professional, well-qualified to assess an evaluation. He has been in private practice for 14 years. Although he did not evaluate Student, he met with him for about 15 minutes and reviewed the records provided to him by [REDACTED]. He testified that he would be concerned with failing grades and classroom performance that did not match achievement was an indication of the need for special education. Based on the material presented to him, he would recommend an assessment of personality functioning. Testimony elicited by [REDACTED] indicated that the documents the witness was given were both incomplete and one-sided. He was not aware of the vast improvement in Student's performance since the incident. He was not aware of the difficult classes Student is taking and his success. He was not aware of the ACT score of 21. The information provided to the psychologist provided information to show deficits but excluded the many positives. While the psychologist is well qualified, an opinion based on inadequate documentation can not be considered valid.
11. The Rating Scales¹²⁶ completed by teachers were inconsistent, with some teachers reporting mild concerns and others reporting clinically significant concerns. However; Teacher 2, who expressed the greatest concern testified this was the first time he had completed a Rating Scale and he didn't see much difference with other students. Best practice would suggest having more teachers complete the Rating Scales, but the evaluation was conducted during the summer when few teachers were available.¹²⁷
12. There were numerous delays in this case, at every step. Once the District was contacted by OCR, they were anxious to complete the Domain, as agreed to. Having the Domain in April would have provided more time to conduct the assessments. However, Family/Advocate were not available until mid-May.
13. As the eligibility meeting was in late July, the Nurse was not in attendance.

¹²⁶ District Exhibit #24 pp. 15-20

¹²⁷ Testimony of school psychologist.

Her report was included in the social work review.

14. The IEP Team discussed ED, OHI and a 504 Plan. In discussing ED eligibility, the team discussed a lack of commitment by Student.

Eligibility

1. "Child with a disability" means a child: (1) evaluated in accordance with IDEA regulations (34 CFR § 300.304-311); (2) having characteristics of one of the categorical impairments; and (3) because of the impairment(s) needs special education and related services.
2. No one disputes Student has ADHD and that it can, and has, impacted his education. However, what District witnesses all agreed to was that Student did not need special education.
3. Other than the "incident" Student's discipline record is unremarkable. He had one detention for cell phone use and another for 6 tardies. Since his return from the Safe School, Student has had no dean contact.
4. Parent/Family were unable to explain what special education services Student needs that would determine eligibility. No one, neither District staff nor Family, has ever suggested Student should be in a special education class. With each witness for Family, ██████ asked the same question several times and in different ways.
When she asked Advocate "What special education does he need?" he was non-responsive. She then asked "What special education services is Parent/Family seeking?" and the response was "an independent evaluation to determine whether there was a learning disability and a social/emotional evaluation".
When ██████ asked Father what special education services he was requesting, he said he would leave that to his niece.
When ██████ asked Aunt what Student needs, she responded "more breaks, bigger paper projects be broken down, extended time, and preferential seating". She came back to the question later, asking "What is our focus". The response was "to develop an IEP". When asked if Student needed a special education class, Aunt replied "Ask (Cousin)."
When ██████ asked Cousin what services Family was seeking, Cousin stated she wanted social work. When told this would be a related service, she said he needs a full evaluation by an outside provider and his social/emotional concern looked at more closely. When asked again what special education services were being sought, Cousin responded "more intensive services to make up for the lack of services before. Some services by a special education teacher for organizational skills, time management, tutoring, etc."

5. From all testimony, the consistent problem, and the reason for grades not reflective of his ability, was failure to turn in homework assignments. He was not defiant¹²⁸ nor disruptive but he didn't turn in his homework.
6. There is little, if any, indication of eligibility at the present time. Student was devastated by the semester he was excluded from his home school. In addition to the loss of privileges, he was isolated from all his friends. His description of it as a "reality check" was indicative of his increased maturity. The current semester has been his most successful. The IHO credits his success to 4 factors:
 - 1) maturity
 - 2) a positive response to consequences
 - 3) consistent medication compliance
 - 4) a highly effective 504 Plan.
6. Given that Student is in all General Education classes, with Chemistry, Algebra 2 and English Literature as three of the most challenging classes within the high school, a special education class is not even a consideration. In order to meet the eligibility requirement of needing specialized instruction, the only possibility would be a Resource Study. This would be staffed with a special education instructor and would eliminate his attendance at [REDACTED] and [REDACTED]. He would not have the daily availability of certified math instructors. Most importantly, the self-advocacy skills being encouraged and fostered, the decision making determination as to whether he should utilize [REDACTED] or [REDACTED], the need to approach his teachers for assistance will all be less critical. A senior preparing for college needs to acquire the independence that will be essential for his success.

CONCLUSIONS OF LAW

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

Child Find

Failure to locate and evaluate a potentially disabled child constitutes a denial of a Free Appropriate Public Education (FAPE)¹²⁹ under IDEA.¹³⁰ Of equal importance is

¹²⁸ No teacher ever suggested defiance, but in a rating scale a teacher equated not turning in homework with not following directions or doing as he was told.

¹²⁹ *Hawkins ex rel.D.C. v. District of Columbia*, 539 F.Supp.2d 108, 113-114 (D.D.C.2008)

¹³⁰ Finding of Fact, Child Find #1, p.29

avoiding the over-identification of students. IDEA requires adherence to the principle of Least Restrictive Environment (LRE)¹³¹The 7th Circuit addressed this issue in *Marshall Joint School District. C.D.*, 616 F.3d 640, stating “This is what the law strives for: giving students access to the general curriculum and keeping them from being labeled special education”.

District had a duty to adhere to its Child Find responsibility at the same time it implemented procedures to intervene when necessary - providing support to Student without unnecessarily labeling him. District utilized its Student Support Team,¹³²as a way to intervene without premature identification.

District had a responsibility to review all indications of disability and the IHO finds that they did so.¹³³District notified¹³⁴ Parent of their decision not to evaluate with a letter dated February 28, 2012, in which they list the data that was reviewed. They also explained the interventions that would be provided to help with work completion and organizational skills.

The IHO concludes that District met its Child Find obligation.

Evaluation

In keeping with the regulations¹³⁵ established in conjunction with IDEA, District conducted a Domain Meeting.¹³⁶They reviewed existing data and determined relevant domains requiring further assessment.

Parent challenges the quality of the evaluation¹³⁷, as not in keeping within the procedures established in 34 CFR § 300.304. However, the IHO concludes that the requirements under 34 CFR § 300.304 were met. A variety of assessment tools “to gather relevant functional, developmental , and academic information about the child, including information provided by the parent” were utilized.

Parent’s objection to the failure to assess IQ, as indicative of an improper evaluation, goes against the weight of evidence. An IQ test could have been done but the IEP team, which included Parent/Family determined it was not necessary.

The witness who testified for Parent/Family was a highly qualified clinical psychologist. However, the IHO must take into account the fact the witness was

¹³¹ 20 USCS § 1412(a)(5), 34 CFR § 300.114

¹³² Finding of Fact, Child Find, #11 p.30

¹³³ Findings of Fact, Child Find #1-8, 11, 12

¹³⁴ Parent Exhibit #1

¹³⁵ 34 CFR § 300.305(a)

¹³⁶ Findings of Fact, Evaluation, #2,3,4,5,6,7,8,9

¹³⁷ Findings of Fact, Evaluation, #4,5,6,7

given carefully selected material¹³⁸ by Parent/Family, which was a biased presentation, thereby diminishing the testimony.

District's evaluation is deemed appropriate and timely.¹³⁹

Eligibility

Probably the most important consideration is that which relates to eligibility. It is difficult to separate the three issues: Child Find, Evaluation, and Eligibility because the three are so interwoven. The underlying consideration in this case relates to the question as to whether Student required specialized instruction. During each phase of consideration: the two screenings, the case study/eligibility meeting no one could suggest the specific instruction that would be appropriate. A student with a medical condition which adversely affects his educational performance, must also require special education. 20 U.S.C.S. § 1401(3)(A)(ii). In this case, Student not only does not need special education¹⁴⁰, it would interfere with the mandate for LRE.

The goal set out in *Marshall Joint Sch. Dist. No.2 v. C.D.*, 616 F.3d 632 (7th Cir. 2010) is to educate students, whenever possible, within the general curriculum and to avoid labeling. The District's determination that Student was not eligible for special education is in keeping with this mandate.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. Parent/Family request for an Independent Educational Evaluation (IEE) is denied
2. Parent/Family request for a determination of eligibility is denied
3. Parent/Family request for Compensatory Education is denied.

In accordance with 105 ILCS 5/14-8.02a(h), within twenty (20) school days of receipt of this Order, the District shall submit proof of compliance to:

Illinois State Board of Education
Program Compliance Division
100 North First Street
Springfield, IL 62777-0001

¹³⁸ Finding of Fact, Evaluation, #10.

¹³⁹ Parent stipulated that all delays were the result of Parent's unavailability

¹⁴⁰ Findings of Fact, Eligibility, #2,4,6

NOTICE OF RIGHT TO REQUEST CLARIFICATION

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: May 2, 2014


Patricia Marino
Impartial Hearing Officer
1515 Ashland Avenue
River Forest, IL 60305
(708) 488-1063

APPENDIX A

██████████ v. ██████████

Case No: 2014-0170

Child	██████████
Attending School	████████████████████
Child's Parent	██████████
Cousin	██████████
Advocate	██████████
Aunt/Caregiver	██████████
Private Clinical Psychologist	██████████
School Social Worker	██████████
English Teacher (Summer)	████████████████████
Biology Teacher	██████████
Chemistry Teacher	██████████
Special Education Director	██████████
English Teacher (Current)	████████████████████
Special Education Teacher	████████████████████
School Psychologist	██████████

RECEIVED

MAY 13 2014

CERTIFICATE OF SERVICE

**SPECIAL EDUCATION
SERVICES**

The undersigned certifies that a true and correct copy of the Final Decision and Order was sent to the Parties, through their respective counsel identified below, and to ISBE via electronic and certified mail directed to:

[REDACTED]

Andy Eulass
Due Process Coordinator
Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

on May 2, 2014

[REDACTED]

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