BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF ALABAMA

D. D. ) Special Education No. 14-160

Petitioner, )

v. )

Madison City )
Board of Education )

Respondent. )

DUE PROCESS DECISION

I. Procedural History

This matter came before the undersigned pursuant to a due process request filed on December 2, 2014 by the Honorable Charles Clyde Tatum, Jr. on behalf of Mr. [redacted], parent and legal guardian of D. D. ("Petitioner"), a student in the Madison City School District. Thereafter, pursuant to a letter dated same December 2, 2014 issued by the State Superintendent of Education, the undersigned was appointed to serve as the Impartial Hearing Officer in this proceeding.

The undersigned issued correspondence dated December 10, 2014 setting a status conference for December 10, 2014. The status conference was conducted on December 11, 2014 (re-set to accommodate respective schedules). The Honorable Rodney C. Lewis appeared
on behalf of the Respondent District. At that time the parties reported the Resolution Meeting was scheduled for December 15, 2015 and they anticipated that at that time they would be conducting a referral meeting for both IDEA and 504. Another status conference was set for January 12, 2015. The parties agreed to a setting for the due process hearing schedule in the event the parties could not resolve the matter by agreement. This schedule was confirmed in correspondence issued by the undersigned on December 15, 2014.

The Resolution Session was conducted on December 14, 2014. As reported via email correspondence from counsel for the Respondent, consent was obtained from the parent for an evaluation of the student to determine eligibility for IDEA services.

A status conference was next conducted on January 13, 2015 in anticipation of the then hearing schedule. During the conference the parties conferred and agreed that the issue remained for hearing is the one identified in the Complaint, mainly that of child find, with the possible questions of eligibility. The Respondent confirmed that various evaluations were underway with some scheduled to begin on the 15th of January. The parties also confirmed that they may seek mediation, though they acknowledged that the hearing date of February 17, 2015 was set. With the permission of the Petitioner, the deadline for a decision was extended to allow for an agreement to be reached or for the taking of testimony in mid-February. This was confirmed in correspondence issued by the undersigned on January 14, 2015.

The Pre-hearing Conference was conducted on February 5, 2015. The parties discussed that they are continuing to wait on some information back from evaluations and they may now want to seek mediation. The parties then advised the undersigned that mediation had been scheduled and they jointly asked to adjust the hearing schedule. Accordingly, the undersigned
issued correspondence on February 16, 2015 summarizing the status and confirming an adjusted Due Process Hearing schedule as follows: mediation set with Ms. Dorothea Walker on March 4, 2015 and if not resolved, a Due Process Hearing set for March 18, 2015. With the permission of the Petitioner, the deadline for a decision was extended to allow for the mediation process to take place, an agreement reached, or for the taking of testimony in mid-March. An additional Pre-hearing Conference was set.

The additional Pre-hearing Conference was conducted on March 5, 2015. The undersigned confirmed the status of the matter in correspondence dated same. The parties advised that the scheduled mediation did occur and they had set an eligibility meeting as a result, and hoped that the matter could be resolved. With correspondence of March 16, 2015 the undersigned confirmed the status, and set an additional status conference to follow up their efforts to settle.

This status conference was conducted on March 25, 2015. The parties had finally obtained the various data needed to have a referral meeting and this occurred earlier in March. The parties anticipated an eligibility meeting would then be set and stated that they continued to think the matter could be settled. An additional status conference was set and then was conducted on April 28, 2015. Counsel for the Respondent District participated and reported the IEP team met on April 27, 2015 and the proposed IEP had been sent to counsel for the Petitioner for review. It was anticipated that the plan within the IEP could be incorporated into a settlement agreement. By agreement, the parties determined to re-convene the status conference on May 5, 2015. This was confirmed in correspondence issued by the undersigned on May 1, 2015.
A status conference was conducted on May 5, 2015. The parties reported they were continuing to review the latest edited suggestions in a proposed agreement. The status conference was again re-set for May 12, 2015 and confirmed in correspondence issued by the undersigned on May 6, 2015.

A status conference was attempted on May 12, 2014. It appeared that the final drafts of the settlement agreement were being passed back and forth and the parties anticipated resolution shortly; however, obtaining signatures would require the deadline be extended. An additional status conference was set in the event the final agreement was not received by the undersigned by the deadline decision.

A status conference was again conducted on May 21, 2015. The parties continued to seek a way to incorporate certain language from the agreement into an IEP, to be approved by the team that would reflect an implementation strategy for the child. Also, they advised that it appeared this would take a few more weeks to finalize. With the permission of the Petitioner, the deadline for a decision was extended. This was confirmed in correspondence issued by the undersigned on May 22, 2015.

A follow up status conference was conducted on June 11, 2015. The parties reported they were finalizing one detail and expected to execute the agreement shortly. (See HO correspondence dated June 11, 2015).

The Pre-hearing Conference was conducted on June 26, 2015. The issue remained the question raised by the Petitioner in the Complaint, namely that of child find. A hearing date of July 10, 2015 was set (date to be confirmed). This was confirmed in correspondence dated June 26, 2015 issued by the undersigned.
A subpoena request for the production of records was requested by counsel for the Respondent on June 29, 2015. An Order for Documents was issued by the undersigned on June 30, 2015.

A Response of Respondent with witness list was filed by counsel for the Respondent on June 30, 2015.

A telephonic conference was conducted on July 8, 2015. The respective parties had earlier reported via email that personnel needed at the hearing were not available on that date. The hearing dates were adjusted to August 20 and 21, 2015. This was confirmed in correspondence issued by the undersigned on July 8, 2015.

On August 13, 2015, a telephonic conference was conducted with the remaining issues discussed, the timing of the disclosures, and the possible concern of Petitioner’s counsel related to his client’s position on going forward with this hearing. In correspondence dated August 14, 2015, counsel for the Petitioner requested the hearing be continued.

In correspondence dated August 15, 2015, the undersigned issued correspondence and confirmed the issues discussed on August 13, 2015 and noted the receipt of the request for continuance. An additional telephonic conference was set.

A telephonic conference was conducted on August 17, 2015. In correspondence dated same August 17th, the undersigned agreed the request for a continuance was reasonable based on the circumstances explained and continued the hearing. The deadline for a decision was extended to allow time for the resolution of issues and conduct the hearing if necessary. A status conference time was set.

The status conference was conducted on September 3, 2015. The Petitioner’s counsel
appeared on behalf of the Petitioner and advised that his client intended to re-open discussions in an effort to finalize the agreement that could settle the matter. He also confirmed that the parents had removed their child from the Respondent School System and placed the child in a [BLANK] setting, resulting in an elimination of the question of current services. Both parties agreed that they both needed to further discuss with their respective clients how the matter might be settled at this point. The parties agreed to re-set a status conference with the understanding that by that point in time, should the matter not be clearly settled, the hearing would be re-scheduled. This was confirmed in correspondence issued by the undersigned on September 8, 2015.

In correspondence dated September 25, 2015 and October 5, 2015, the undersigned issued correspondence requesting specific information to monitor the progress and what action was needed to resolve the matter. With no formal response, the undersigned issued correspondence on October 12th, 2015 setting the due process hearing schedule. On October 27, 2015, the undersigned issued correspondence regarding disclosures.


On November 16, 2015, counsel for the Petitioner filed [BLANK] v. Madison City Board of Education Special Education Case # 14-160/Petitioner’s Amendment to the Petitioner for Due Process. On November 20, 2015, via email correspondence, counsel for the Respondent informed the undersigned that the Respondent District did not object to the amended complaint.
In an Order signed November 20, 2015, the undersigned outlined the adjusted time-lines in light of the amended complaint, confirming the amended complaint. On December 1, 2015, Counsel for the Respondent confirmed the parties’ agreement to waive the Resolution Session. In correspondence dated December 3, 2015, the undersigned outlined the adjusted time-line based on Respondent’s agreement to waive the Resolution Session. Counsel for the Respondent filed Response of Respondent to Amended Complaint on same December 3, 2015.

The parties again proceeded to take testimony on the 16th of December under the amended complaint. Following that day of testimony, the undersigned issued correspondence confirming the status of the matter on December 17, 2015 noting: at the parties request, the due process hearing was continued for the day, three additional dates for hearing were set, and the deadline for a decision was extended. On December 17, 2015, Counsel for the Petitioner requested subpoenas for the production of records. The Order for Documents were issued by the undersigned on December 21, 2015.


On February 10, 2016, in email correspondence, counsel for the Petitioner requested an adjustment to the hearing dates. Following emails and discussions, the undersigned issued correspondence dated February 16, 2016 confirming the adjusted hearing dates. The parties proceeded with the taking of testimony on February 17th and 18th.

Following two days of taking testimony, on March 1, 2016 a scheduling conference was
held and the undersigned issued correspondence confirming the next dates for the taking of testimony. The undersigned later issued correspondence on April 12, 2016 confirming/reminding the dates. Counsel for the Petitioner requested an additional subpoena for appearance and the order was issued on April 15, 2016.

Following three days of taking testimony on April 19, 20, and 21, 2016, the undersigned issued correspondence and reviewed emails for the next dates of taking testimony. In correspondence dated May 10, 2016, the undersigned confirmed the dates and time for the taking of testimony.

Following two days of taking testimony on May 18 and 19, 2016, the undersigned issued correspondence on May 27, 2016 confirming June 24, 2016 as the last day for the taking of testimony. Thereafter, pursuant to the parties ongoing discussions about post hearing briefs, the undersigned issued correspondence dated July 21, 2016, July 25, 2016 and August 29th, details and deadlines for filing post-hearing briefs were adjusted and confirmed. Summary of the case history is provided in the ‘Case History Timeline’ attached as H.O. Ex 1.

*Summary of Issues as stated in the complaint:*

In their complaint filed on November 24, 2014, the Petitioner had alleged that the Respondent failed to provide the Petitioner with a free, appropriate public education (FAPE) by failing to: implement “...appropriate procedures after being put on notice that [ ] may be a child in need of special education and related services”; “…timely refer [ ] for evaluation under IDEA and by not providing a full comprehensive evaluation addressing [ ]’s known and/or suspected (disabilities)”; In essence, the Petitioner alleged that the District violated the
provisions of ‘Child Find’ within IDEA. [See Complaint]

In the Petitioner’s Amendment to the Petitioner for Due Process filed on November 16, 2015, the Petitioner contended “...that the LEA failed to fully and comprehensively evaluate and (challenged) the 2015 determination by the LEA that [redacted] was ineligible for special education services”. Additionally, the Petitioner contended “in evaluating [redacted], the LEA failed to conduct evaluations on [redacted] sufficiently comprehensive to identify all of [redacted]’s special education and related services needs...” and “failed to use technically sound test instruments to assess the relative contribution of behavioral factors to [redacted]’s disability and need for services”. Furthermore, “…after completing their evaluations and assessments, the LEA convened an eligibility meeting on [redacted] wherein the LEA wrongfully and arbitrarily decided, over the parents’ objections, and despite the results of the behavioral test, the behavioral observations, and the consensus of [redacted]’s teachers that [redacted] consistently exhibited significant behavioral problems in the education setting, that [redacted] did not qualify for special education services”. [See Amended Complaint]

The Hearing eventually comprises eleven (11) days of testimony, with testimony provided on November 12 and 13, 2015; December 16, 2015; February 17 and 18, 2016; April 19, 20, 21, 2016; May 18, 19 & June 24, 2016. Sixty-five (65) exhibits were submitted. Testimony from 13 people was obtained within the 11 days of hearing comprising 2557 pages of hearing transcript. All exhibits were kept in the possession of the undersigned as the hearing proceeded and were reviewed again at the conclusion of the hearing.

At the conclusion of the Hearing, the parties filed post hearing briefs in conformity with an agreement as to length and type, with the parties agreeing that the Petitioner was provided
additional time to submit his brief. With continual agreement of the Petitioner, the deadline for a decision in this matter was extended several times to allow the completion of the hearing process, specifically to take all testimony sought by the parties, extension of the deadline for briefs requested jointly by the parties and to allow for final review by the undersigned of such post hearing briefs filed by the parties.

During the course of each of the 11 days of the hearing, each party presented evidence and offered the testimony of witnesses in support of their respective positions, and were allowed to cross examine witnesses as provided for under the applicable rules. The Hearing was conducted as a closed hearing, with both parties represented by their counsel. The Petitioner was represented by the Honorable Charles C. Tatum, Jr. with either Mr. or Mrs. [parents of the Petitioner], or both, present during the entire process except for a short period of time where they indicated Mr. Tatum was to proceed without them. The Respondent was represented by the Honorable Rodney C. Lewis and the Honorable Brad Chynoweth, with Dr. [Special Education Director] serving as the corporative representative for the District.

II. **Exhibits & Witnesses**

Below is a list of the Exhibits admitted to evidence including 41 Exhibits presented by the Petitioner, hereinafter referred to as [P _] and 24 Exhibits presented by the Respondent hereinafter referred to as [R _].

**PETITIONER'S Exhibits:**

Pet Ex 1: [Eligibility Report]

Pet Ex 2: [PST Meeting]
Pet Ex 3: Notice of Proposed Meeting
Pet Ex 4: [Redacted] Report
Pet Ex 5: [Redacted] Addendum Report
Pet Ex 6: Office of Special Education and Rehab Services Section of Regs
Pet Ex 7: OSEP March 14, 1994 Letter to Williams
Pet Ex 8: [Redacted] E-mail Stream
Pet Ex 9: Multi-Rater Report of [Redacted] (Teacher)
Pet Ex 10: Test Manual for [Redacted]
Pet Ex 11: Psychological Report
Pet Ex 12: [Redacted] E-mail
Pet Ex 13: [Redacted] E-mail
Pet Ex 14: August [Redacted] to [Redacted] E-mail
Pet Ex 15: [Redacted] Notes
Pet Ex 16: Discipline Reports
Pet Ex 17: [Redacted] Letter
Pet Ex 18: Behavior Log
Pet Ex 19: Behavior Plan
Pet Ex 20: [Redacted] Response to Instruction
Pet Ex 21: [Redacted] Revised Behavior Plan
Pet Ex 22: Portion of Transcript for Due Process Hearing (not admitted)
Pet Ex 23: [Redacted] Response to Instruction Intervention Plan
Pet Ex 24: Summary of Discipline Reports

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Pet Ex 25: E-mail
Pet Ex 26: Referral for Evaluation
Pet Ex 27: Observations
Pet Ex 28: Informal Observations
Pet Ex 29: Notes
Pet Ex 30: Teacher’s Input Survey
Pet Ex 31: Teacher Input Survey
Pet Ex 32: E-mail Chain
Pet Ex 33: Email Chain
Pet Ex 34: E-mail Stream
Pet Ex 35: e-mail Stream
Pet Ex 36: WebMD
Pet Ex 37: Google Article on
Pet Ex 38: INow Documents
Pet Ex 39: Doctor’s Excuse
Pet Ex 40: November E-mails
Pet Ex 41: Alabama Psychological Services File (with redactions)

RESPONDENT’S Exhibits:

R Ex 1: PST Referral
R Ex 2: Intervention Plan
R Ex 3: Behavior Support Plan (DRAFT)
R Ex 4: SST Meeting
R Ex 5: Conference Notes
R Ex 6: SST Meeting
R Ex 7: PST Referral
R Ex 8: Special Education file
R Ex 9: Timeline
R Ex 10: Typed Summary of Petitioner's Exhibit 18
R Ex 11: Parent Input Document
R Ex 12: IEP Data Collection
R Ex 13: Special Education Rights
R Ex 14: Special Education Rights
R Ex 15: Notice of Proposed Meeting/Consent for Agency Participation
R Ex 16: Referral for Evaluation
R Ex 17: Notice and Consent for Initial Evaluation
R Ex 18: Notice for Proposed Meeting/Consent for Agency Participation
R Ex 19: Notice and Eligibility Decision Regarding Special Education Services
R Ex 20: Notice and Consent for the Provision of Special Education Services
R Ex 21: IEP
R Ex 22: Special Education Rights page 1
R Ex 23: Notice of Proposed Meeting
R Ex 24: IEP
HEARING OFFICER'S Exhibits

HO Ex 1: Case History Timeline

WITNESSES: (13 total, in order of initial appearance)

- [Name], EDD, Director of Special Education, Madison City Schools
- [Name], School Counselor, [Name] School, Madison City Schools
- [Name], School Psychologist, Madison City Schools
- [Name], EDD, Principal, [Name] School, Madison City Schools
- [Name], Assistant Principal, [Name] School, Madison City Schools
- [Name], District Behavior Specialist, Madison City Schools
- [Name], Teacher, [Name] School, Madison City Schools
- [Name], Teacher, [Name] School, Madison City Schools
- [Name], Grade Teacher, [Name] Grade, Madison City Schools
- [Name], Special Education Teacher, [Name] School, Madison City Schools
- [Name], father of Petitioner
- [Name], mother of Petitioner

The exhibits submitted have been kept and maintained by the undersigned during the course of this hearing. Also during the course of the hearing the undersigned communicated...
information about the exhibits to date such that counsel for both parties were continually updated as to the list of exhibits having been offered and maintained by the undersigned. The testimony taken was transcribed by the same court reporter throughout the hearing who attended each day and attentively took down all testimony and dialogue. Subsequently the undersigned was able to review the transcript in the consideration of, and in the drafting of, the decision set out below. Finally, the various post hearing briefs submitted by the parties at the completion of the hearing were also taken into account by the undersigned.

III. **Issues Presented**

The issues for which the undersigned has jurisdiction and which are the subject of this hearing, are as follows:

**Issue 1:** Was a FAPE denied due to the Respondent District’s failure to properly identify and comprehensively evaluate pursuant to Child Find?

**Issue 2:** Was a FAPE denied the Petitioner due to eligibility process with the Respondent District’s determination on [redacted] 2015 that the [redacted] was ineligible for services under IDEA?

IV. **Facts Summary:**

**Background Facts:**

At the time of the Complaint was filed with the State Department of Education on December 2, 2014, [redacted] was a student in the [redacted] grade at [redacted] School in the Madison City School District. [See Complaint] In the Summary section of the Individual
Assessment Report, [redacted] described [redacted] as an [redacted] student, in the [redacted] School. This evaluation was requested by Mr. and Mrs. [redacted] parents, based on behavioral difficulties [redacted] is showing at school. The [redacted] have seen a noted increase in off-task behaviors including [redacted]. [redacted]'s teachers have seen similar classroom concerns along with [redacted] showing difficulty in [redacted]. Ms. [redacted] reviewed [redacted]'s medical history during the referral meeting that [redacted] has [redacted] and suffers from [redacted]. No other medical diagnosis was discussed during the referral meeting conducted on [redacted].

[Pet Ex 11]


[Pet Ex 4]
When Madison City Schools asked about an important event in his life, he told about "..."
was born in... to a...

[R Ex 9]

... was evaluated for an... disorder and found eligible for services on... [R Ex 19]... received... for two years from... [R Ex 20] and in his... grade year through... grade year, from... pursuant to an IEP. [R Ex 24] Following exit of... in... was not found to be eligible for services during the balance of... grade year. A review of the discipline reports do show various behavior issues but there does not appear to be a disagreement about what those meant until early in the following year, the grade year. Then a review of the notes from his visits with a counselor indicates... experienced... while involved with a...

However, this reference to... reporting... is not referenced in the final report of... [R Ex 41 pg1 of...]

During the beginning of the school year into late fall of... the child has some seemingly significant behavior issues. There appears to be a serious disagreement between the parents and some District staff as to what the behavior means, and how that behavior should be handled. Later in fall of his... grade year, in... this comes to a head and the parents file a request for a due process hearing, through counsel, against the District. Thereafter, at the request of the parties, the parties, through their counsel, attempt to resolve the matter and...
move through evaluations of the child, mediation efforts, and the eligibility process, repeatedly advising the undersigned that they are close to a settlement. As well, during this time frame the parents continue with some counseling for the child and obtain an evaluation in the , which is updated in of with further diagnosis though it is unclear how much the parents communicated to the District about the ongoing counseling effort and when they provide specifics of the diagnosis. Eventually the matter moves to hearing, but after the parties advise that the parents of the child removed from the District and placed him in a setting in of for his grade year.

The presentation of evidence encompassed a large number of documents, including exhibits that were discussed in detail, and some exhibits that were not referenced as much in the testimony by the witnesses. The below cited exhibits are briefly recited or summarized as they appeared to be key exhibits, providing insight into the issues. They were not the only exhibits utilized, but they inform as to the facts since a substantial portion of the testimony put on by the parents appear to at times conflict with the testimony provided by the Respondent's witnesses. Further, these particular exhibits provide a wealth of information relative to the child's behavior and reviews of the child by professionals. The title of the exhibit/document is provided followed by the summary of the data in the exhibit, and then the reference as to the actual submitted exhibit.

Likewise, the testimony provided covered a great deal of ground, and time frame including classroom experiences occurring after the filing of the initial request for due process. Some of the testimony seemed to focus more as to the issues and relevant facts, and to that end, the below referenced portions of testimony appear to the undersigned to be particularly
significant to understanding the facts as they relate to both the issues, as well as the arguments made by respective counsel.

*Recitation of selected exhibits:*

Referral to SST submitted [redacted] signed by teacher [redacted]

Academic Concerns: none checked

Behavioral Concerns: [redacted]

Does this student receive medication at school and/or home? [redacted]

Does this student have any medical concerns? [redacted]

Weekly Behavior log begin week [redacted] was attached

[R Ex 1]

[redacted] Intervention Plan [redacted]
[R Ex 2]

Note from 

[Pet Ex 17]

Behavior Support Plan
[Pet Ex 26]

**Discipline Report**
[Pet Ex 24 and Pet Ex 16 "Notes"]

Initial Eligibility - [Redacted]

The following assessments and scores were reported on "Notice and Eligibility Decision"
Recitation of certain Testimony:

[TR pages 1174-1175]

(Tatum in Direct Examination)
[TR pages 1253 and 1254]

(Lewis in Further Cross-Examination)

[TR page 1316]

(Tatum in Further Direct Examination)

[TR pages 1317-1318]
(Tatum in Direct Examination)
(Hearing Officer question interjected)

[TR pages 2203-2204]

(Tatum in direct examination)

[TR page 2206]

(Lewis in Cross Examination)

[TR pages 2230-2231]

(Hearing Officer questioned)

[TR page 2235]
(Lewis in Cross Examination)

(Tatum in Direct Examination)
The evidence and testimony recited above was selected due to the sense that some of this seemed to be central to the questions raised in the complaint for due process. However, by setting forth these certain portions of the record the undersigned does not mean to construe that other portions of the record was not considered as important or not considered. Rather, this was an effort to single out portions of the record that appears to be on point as to how the issues were to be sorted out relative to the following discussion, including the arguments put forth by the parties in their post hearing briefs.
V. Discussion

Introduction:

The Individuals with Disabilities Education Act (the “IDEA” or “Act”) established certain basic entitlements, including a free, appropriate public education (“FAPE”), for children between the ages of three and twenty-one years old with specified disabilities. 20 U.S.C. §§ 1400, 1412(a)(1)(A) (2004). Now called the IDEIA (Individuals with Disabilities Improvement Act), the act defines “free appropriate public education” (FAPE) as “special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate pre-school, elementary or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title” 20 U.S.C. § 1401 (18).

In order to be eligible for Federal financial services under IDEA, a state must therefore assure that “all children with disabilities who are between the ages of three and twenty-one receive a Free Appropriate Public Education (FAPE).” Further, IDEIA’s entitlements extend to all students with disabilities and a “zero reject policy” is inherent within the statute. Timothy W. v. Rochester, N.H. School District, 875 F.2d 954 (1st Cir. 1989) (cert. denied) 493 U.S. 983 (1989); Honig v. Doe, 484 U. S. 305 (1988).
The point of service whereby a FAPE is provided to children eligible for services, is at the local level, the school district or Local Educational Agency, where a child resides. With this matter the Madison City Schools is this Local Educational Agency. The State of Alabama implements this law via the directives found in the Rules of the Alabama State Board of Education, State Department of Education, Special Education Services, codified in The Alabama Administrative Code § 290-8-9-.00 et seq. Additionally, the Federal Regulations that provide guidance for the implementation of IDEIA are found in the Code of Federal Regulation, 34 CFR 300.101, et seq.

Accordingly, essential to the process whereby a Local Educational Agency (LEA) is to provide a FAPE is the evaluation process wherein the child is to be evaluated for all suspected disabilities. IDEIA requires that each student be comprehensively evaluated in all areas of suspected disabilities. Ala. Administrative Code §§ 280-8-9-.02 Evaluations. “Public Agencies must develop and implement procedures to evaluate those children suspected of having a disability that adversely affects their educational performance and who may need special education (specifically designed instruction) and related services.”

The parties both provided post hearing briefs that contained their respective arguments as to how the facts are due to be viewed in light of the law. The following is an effort to set forth a summary of the most significant portions of these arguments that relate to the issues in this hearing. Thereafter, the undersigned attempts to discuss these issues and analyze these arguments and reach a conclusion as to the questions raised with the Petitioner’s due process complaint.

Legal Arguments of the parties:
As to Issue 1: Was a FAPE denied due to the Respondent District’s failure to properly identify and comprehensively evaluate pursuant to Child Find?

With regard to the question of Child Find, in the Petitioner’s Post Trial Brief, counsel argues the school district’s child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (Timothy O. v. Paso Robles Unified Sch. Dist. (9th Cir. 2016) ___ F.3d. ___, 2016 WL 2957215, *10-12; Department of Educ., State of Hawaii v. Cari Rae S. (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194) The threshold for suspecting that a child has a disability is relatively low. (Cari Rae S. at p. 1195.) A school district’s appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (Ibid.) Thus, Petitioner’s counsel suggest that operative question is, at what point did the LEA first have “reason to suspect” a disability and “reason to suspect” that special education services may be needed to address that disability.

Petitioner’s counsel suggest that this was in [redacted]. He suggest that the various behavior problems were due to have been interpreted by the District as indicator of a problem and resulted in a referral. Further, he suggests that the referral process inherent with the Child Find obligations of the District can flow concurrent with the statutory guidelines of Response to Intervention (RTI) [See AL Admin. Code. 290-8-9-.01(4)], which for the District could be their Problem Solving Team (PST). [See Petitioner’s brief at pg. 6] To that end, Petitioner’s counsel urges that the referral by [redacted] in [redacted] to the PST, was too late and in effect, denied the Petitioner his rights under the District’s obligations under Child Find as set out within
the IDEA.

The District’s counsel argues that the Petitioner misconstrues the law regarding the issue of RTI. He urges that the Petitioner fails to recognize the role (as mandated by IDEA 2004) of “response to intervention” strategies/programs as a component of the IDEA child find process. The District states suggest ‘a school district has met the child find obligation of IDEA upon commencing pre-referral interventions.’ And, urges that ‘contrary to Petitioner’s argument, child find does not require that a child be immediately referred for an IDEA evaluation even when the school district has a suspicion that the child has a disability and is in need of special education services.’ [See District’s brief at pg. 3]

The District urges that the child find mandate of IDEA requires that a school district identify and evaluate within a reasonable time children who are suspected of having a qualifying disability and suspected of being in need of special education services. W.B. v. Matula, 67 F.3d 484 (3rd Cir. 1995). A school district violates the child find provisions of the IDEA only if it has overlooked clear signs of the disability and is negligent in failing to evaluate, or when there is no rational justification for not deciding to evaluate at the time. Bd. Of Educ. Of Fayette Co. KY v. L.M., 478 F.3d 307,313 (6th Cir. 2007), Clay T. v. Walton Co. BOE, 952 F.Supp. 817, 823 (M.D. Ga. 1997). Moreover, Ala. Admin. Code 290-8-9-.01 provides the following mandate upon school districts prior to initiating an immediate referral for an IDEA evaluation. Finally, as for the timing of the referral to the PST, the District points out that the parents caused some of the delay. [District’s brief at pg. 5] And, the District’s counsel points out that the District had, as early as [redacted], begun implementing some steps to provide behavior responses and in effect rewarding good behavior.
Issue 2: Was a FAPE denied the Petitioner due to eligibility process with the Respondent

District’s [redacted] determination that the [redacted] was ineligible for services under IDEA?

As for the Second issue, Petitioner’s counsel urges in their post hearing brief that the District failed to properly evaluate D and as a result denies him a FAPE. He states that ‘despite being on notice that [redacted] may have [redacted] or [redacted], especially after receiving the [redacted] evaluation results, the LEA failed to obtain or conduct evaluations sufficient to determine whether [redacted] in fact, suffered from [redacted] or [redacted].’ [See Petitioner’s brief pg. 16] He questions the thoroughness of the evaluation process, pointing out that 20 U.S. Code § 1414 (a)(1)(A) of the IDEA requires that a local educational agency shall conduct a full and individual initial evaluation to determine whether a child is eligible for services under the IDEA.

Specifically, the Petitioner argues that under the Alabama Code and the IDEA, whether a child in fact has a disability, in this case, [redacted] or [redacted], is a threshold question and despite the regulatory requirements of a full evaluation, the evaluations conducted by the district failed to answer this important and necessary question. Though it is not clear where specifically this testimony was provided, Petitioner urges that the district evaluators admitted that they were not qualified to answer the question of whether [redacted] suffered from a disability. Further, the Petitioner urges an interpretation of the testimony as evidence that the district employees refused to opine as to whether [redacted] suffered from [redacted] on or prior to [redacted]; and that the district employees admitted that they were not qualified to say whether [redacted]’s behavioral problems were caused by [redacted] or [redacted]. Petitioner’s point out that [redacted] stated that OHI was rejected, based on not having the medical diagnosis beyond his medical condition of
Petitioner's brief suggests that the testing conducted by the district and [redacted] behaviors leading up to [redacted] demonstrated that [redacted] had a "high level of [redacted] and [redacted] skills'. And, the Petitioner's brief posits that the district's failure to have a qualified individual to answer these questions, and address services needed to address [redacted]'s disability, violated the requirements set out above and denied [redacted] a FAPE. [See Petitioner's brief at pg.12]

Additionally, Petitioner argues that the parents did inform the District of their efforts to obtain private therapy for their child. This argument is based upon the fact that 'the parents provided the district with at least one absentee excuse from [redacted]'s [redacted] during [redacted] of [redacted], after the request for due process had been filed, and prior to the [redacted] eligibility meeting' and that [redacted]'s homeroom teacher filled out a behavioral rating scale for [redacted]'s [redacted] and mailed the form directly to the [redacted] a few days prior to [redacted] [See Petitioner's brief pg. 13]

Last, though the specifics are not cited, Petitioner states that the District's position regarding [redacted]'s progress with his SST [redacted] Intervention Plan at the eligibility meeting in [redacted] under PST supervision, was not supported by the facts. To this argument the Petitioner adds that the only information different for the eligibility team from the [redacted], [redacted] determination of ineligible to the [redacted] eligibility meeting where [redacted] was found eligible, was the report by [redacted] However, Petitioner urges in his brief that the District already had the information contained in [redacted]'s report back at the time of the [redacted].
eligibility meeting.

The District first urges in its brief, correctly, that the burden of proof is upon the Petitioner, and that but for [redacted]’s testimony, the Petitioner failed to provide any evidence that might impune the evaluative process of the District in determining whether or not [redacted] was eligible in [redacted]. Then, the District points out in its brief that despite this rule of law, during the course of the hearing the District presented supportive evidence as to the correctness of their evaluative process. Finally, the District reminds the undersigned that ‘IDEA administrative law judges should afford great deference to opinions of school district school personnel requiring educational expertise and reviewing tribunals should be reluctant to second guess the educational opinions and decisions provided by professional educators who had served as IEP team members’. *Draper v Atlanta Indep. Sch. Sys.*, 518 F.3d 1275 (11th Cir. 2007); *Devine v Indian River County Sch. Bd.* (11th Cir. 2001).

*Analysis:*

What follows is a brief follow up discussion of the two general issues raised and identified by the parties during this Due Process Hearing in light of the applicable law, set against the points made by opposing counsel with their post hearing briefs. Of course, as background to these happenings and as a backdrop to the respective briefs of the parties, the undersigned has to take notice from the record that between [redacted] and [redacted] the parties were advising the undersigned that they had resolved the matter, had mediation in [redacted]
and had met in [ ] to develop an IEP that they advised the undersigned would resolve the matter. [See H.O. Ex 1]

In this discussion it is important to confirm that the point made by the Respondent regarding the burden of proof is correct. As put forward in his brief, the District’s Counsel correctly sets forth that the applicable preponderance of the evidence standard refers to evidence that “out-weighs or overbalances” the opposing evidence. *White v. Arn*, 788 F.2d 338 (6th Cir. 1986). Thus, where the evidence presented is equally divided, the party bearing the burden of proof must loose. *Turpin v. Merrell Dow Pharmaceuticals, Inc.*, 959 F.2d 1349 (6th Cir. 1992). Also see *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 52 (2005). Accordingly, as the matter is reviewed, the Petitioner has the burden to demonstrate with evidence to this standard that the District failed with regard to its duty under law and that the Petitioner was thereby denied a FAPE.

As acknowledged by the District, the child find mandate of IDEA requires that a school district identify and evaluate within a reasonable time children who are suspected of having a qualifying disability and suspected of being in need of special education services. *W.B. v. Matula*, 67 F.3d 484 (3rd Cir. 1995). A school district violates the child find provisions of the IDEA only if it has overlooked clear signs of the disability and is negligent in failing to evaluate, or when there is no rational justification for not deciding to evaluate at the time. *Bd. Of Educ. Of Fayette Co. KY v. L.M.*, 478 F.3d 307,313 (6th Cir. 2007), *Clay T. v. Walton Co. BOE*, 952 F.Supp. 817, 823 (M.D. Ga. 1997).

As also pointed out by the District, found within the Alabama Administration Code are provisions calling for intervention strategies in the general education classrooms. *The Ala.*
Admin. Code 290-8-9-.01 provides the following directive to school districts prior with regard to initiating a referral for an IDEA evaluation.

**Child Identification**

(4) **Intervention Strategies in the General Education Class**

Before a child is referred for special education evaluation or concurrently during the evaluation process, intervention strategies must be implemented in the general education program and monitored by the Problem Solving Team for an appropriate period of time (a minimum of eight weeks), and be determined unsuccessful.

*Ala. Admin. Code 290-8-9-.01.*

Further, the Office of Special Education and Rehabilitation Services (OSEP) has concluded that pre-referral intervention strategies and programs are indeed is a tool for school districts to utilize in meeting its IDEA child find obligations. *Letter from OSEP*, 47 IDELR 196 (2007). As suggested by the Respondent, neither the IDEA nor its implementing regulations provide an exact time period as to how long a school district is required to provide interventions prior to conducting an IDEA evaluation.

However, it appears that the directive in the law does not prevent a concurrent referral while RTI proceeds. In other words, the point made by the Petitioner that the delay until [redacted] to [redacted] was unnecessary since, according to the Petitioner, the District had sufficient information to merit a referral for evaluation by [redacted] could be accurate. However, a review of the evidence at hearing reveals that there appeared to be some push back from the parents at the very least, or perhaps even serious misunderstanding of the child’s behavior issues which [redacted] sought to communicate.

A review of the emails between the parents and [redacted] reveals a sense of [redacted] on the part of the parents with respect to [redacted] observations about their
child’s behavior and attitude of [Redacted] as opposed to concern about how their child might need to be disciplined or at least how his misbehavior could be addressed. Further, the various testimony by both the district employees and the parents about incidents during this time would lead the undersigned to understand that the parents, not the school, were the ones failing to see their child’s propensity for bad behavior. To that end it is clear that these emails, anecdotal notes in the record about conferences with the parents, and then the testimony about the emails and time frame, indicates that, for example, [Redacted] from mid- [Redacted] forward was asking for the parents to cooperatively work with him to sort out the [Redacted] attitude the child exhibited towards teachers. However, the parents interpreted this as mishandling their child, despite the clear examples of [Redacted] pattern of [Redacted] to some teachers, examples of [Redacted] ongoing actions that to an extent appear nothing more than [Redacted] desire to gain attention and fit in with [Redacted] fellow students. [See Ex P-12, P14 & P 15]

Essentially, as demonstrated by their testimony, while the teachers were trying to sort out how to best encourage and guide [Redacted] into better behavior, the parents appeared to approach the issue from a different perspective, explaining that perhaps [Redacted] medicine made [Redacted]. Gradually, as [Redacted] poor behavior continued into [Redacted] and the District tried further strategies, the start of a referral to the Problem Solving Team (PST) was commenced, but delayed by the appearance of the parents dragging their feet to participate in a meeting. The parents were approached in [Redacted] about the possibility of a behavior plan but said they thought it premature. [TR page 954] Essentially, the parents seemed more focused on their frustration with the rules in play, than with the fact that their child’s teachers were trying to find ways to work with [Redacted] and encourage positive behavior. [See Ex P 32, 33, 34 & 35]
While the Petitioner’s now, through counsel, urge that a referral should have been made earlier than [redacted], and even though the District could have done both, made a referral for evaluations for special education services and implemented a referral to PST, it is clear that the behavior was not as out of control or destructive to warrant such an immediate referral. Further, it is also abundantly clear that the parents were not cooperating nor really listening to the teachers or administration with regard to communications about their child’s [redacted] attitude and antics that, from the undersigned’s perspective, the parents overlooked at best, or condoned at worse. As an example the testimony of [redacted] clearly indicates that in late [redacted] or early [redacted] she offered to the parents to bring in a third party to observe the classroom situations involving [redacted] but the parents indicated they did not want that to happen. [TR pages 946-947] In fact, [redacted]’s testimony reflects her perception that the parents’ focus was on what ‘precipitated’ their child’s behavior, demonstrating their propensity to ignore or disregard [redacted] behavior and instead look at their child as the victim. Another example was when advised that [redacted] (and [redacted] another student) the mother’s response was that her [redacted] was merely emulating the fact that the teachers throw things in class. [TR page 951-952] From this confusion the child carried on and the District staff attempted to make a referral to the PST by later in [redacted] and did so at the first of [redacted] to the PST.

With the [redacted] referral to a PST the District proceeded to seek to sort out the behavior, implement steps that were in line with RTI and conceivably, move the child to a special education referral should that referral thereafter be warranted. This is in fact what happened though the Petitioner’s filed their request for due process less approximately 21 days or so after the District referring the child to the PST. To that end, there is very little evidence to
support a finding that the District failed to notice and take action about the child and in essence fail under their ‘Child Find’ duty. Reviewed in light of the evidentiary burden upon the Petitioner, the Petitioner has clearly failed to offer evidence to support the contention that the District violated its obligations under the legal provisions of the IDEA setting out a LEA’s duty under Child Find.

The next issue is the one involving the Petitioner’s contention that the evaluation process utilized by the District in their eligibility determination, was faulty and denied a FAPE. In sum, the Petitioner first urges that the information on hand by the eligibility team as of was almost no different from the information they had when in the same eligibility team found the child eligible. The Petitioner then makes the argument that since the team found the child eligible in with very little different information, that this would imply that the initial review in was faulty and the child should have been found eligible during that initial review.

Petitioner’s counsel opens this narrative with the following statement: ‘Despite being on notice that or especially after receiving the evaluation results, the LEA failed to obtain or conduct evaluations sufficient to determine whether in fact, suffered from or.’ To the contrary, as the Respondent urges, the evaluation process was rigorous and utilized numerous methods to assess the child in an effort to determine if was eligible, and specifically, what to make of the behavior that had exhibited. Further, in making this argument the Respondent points to the number of District staff involved in the evaluation process and their qualifications.
The data compiled and utilized by the District in its evaluation of [ ] does reflect an effort to be thorough that would indicate appropriate steps were taken in compiling an eligibility report to be considered as part of the eligibility determination process. To start with the eligibility team had the records obtained from the several months of PST involvement, including the Referral to SST [R Ex 1], the Intervention Plan [R Ex 2] and the Behavior Support Plan [R Ex 3]. The team had access to the log of [ ]'s behavior kept by [ ], one teacher. This log is set out herein above. [R Ex 10 or P Ex 18] The team also had access to the results of the [ ] and the Individual Assessment Report prepared by [ ], the School Psychologist. [P Ex 11] And, testimony was provided by several teachers regarding their completion of the [ ] used in completing the [ ], indicating that they sincerely believed that [ ] was capable of succeeding in the general education setting without the need of special education services. [TR pages 1348-1349; pages 1573-1574] Both [ ] and [ ] acknowledged the need for work on [ ]'s behavior, but neither sensed that the behavior was such that in impeded [ ] access to the curriculum, something that [ ] had been trying to get across to [ ]'s parents since the beginning of the year. Finally, despite rigorous and quite thorough examination and cross examination continued to maintain that he felt [ ] had made some progress by means of the behavior plans in place under the PST, in effect defending his position taken at the eligibility meeting on [ ]

Additionally, the eligibility team had access to the observations of [ ], a Behavior Specialist and the interview with [ ] by [ ], School Psychologist. [R Ex 9 & P Ex 11] The team had [ ] present to explain details and interpret test during the eligibility team meeting. Testimony provided during the hearing supported the contention that
the evaluation process was undertaken with integrity and in an effort to truly sort out the question of eligibility of the child. There is evidence that the parents were asked to provide information, were asked about the name of the therapist that had seen, had their [redacted]'s on considered by the team as part of the evaluation process and were invited to provide any additional data. Unfortunately, they did not appear as forthcoming as the rest of the team and despite the fact that they had met on [redacted] with a local [redacted] following a [redacted] meeting with a therapist for [redacted] they did not reveal the details or their intentions of this process to the team. [P Ex 41] However, this is the pattern that appeared during the hearing where the parents were not candid, and frankly, uncooperative with their testimony at hearing illustrating a continued defensiveness as to their child’s behavior seeking to explain [redacted] behavior as results of other causes, not something [redacted] could or perhaps even be expected to control.

For example, the testimony by the mother as to the cause of her child’s behavior.
Later, in response to questions posed by the undersigned following questions revolving around an incident where the child alleges [redacted] yelled at [redacted] and threatened [redacted] then took away a pop tart, the father explains his belief in [redacted] story. As the father explains that his [redacted] had secured a tape recording of the ‘incident’ the father’s testimony also reveals his acceptance of a clear lie fostered on the father at lunch [redacted] only lunch choice had been a pop tart due to [redacted].

After several efforts to question the father, the undersigned finally confirms that the [redacted] likely had choices, only [redacted] did not want the other choices hence [redacted] statement to [redacted] father that [redacted] only had a pop tart available for lunch, and when [redacted] came to class with the pop tart and acted up, was reprimanded and then [redacted] pop tart withheld by [redacted] got upset and mad. [TR pages 1902-1905]

The eligibility team was composed of the parents, [redacted] one of [redacted] general education teachers, both [redacted] and [redacted] two administrators who had much experience with [redacted] and had interacted with [redacted] parents on many occasions, [redacted] who provided the Individual Assessment Report [P Ex 11], [redacted] Director of Special Education, [redacted] Behavior Specialist and a few others, including [redacted] the case manager. According to [redacted] testimony, the team thoroughly discussed aspects of [redacted] possible eligibility. [TR page 37-38;53] Her testimony indicates that the data was carefully considered, including the [redacted] scores and the behavior that such scores measured. [TR pages 47-52] They also reviewed the anecdotal information. [TR pages 62-63] Further, as they reviewed the information about [redacted] they considered various types of eligibility. [TR pages 65-67] And, she explained that the District normally does not require people to do anything, but request
that if they have a medical diagnosis, say for [redacted], that they provide it to the team. [TR page 70]

Additionally, [redacted] explained that the team sought to review the question of possible [redacted] with the Petitioner, and to do this would necessarily consider the requirements under the law in establishing eligibility. As she explained, they would have pointed out to the parents that there was no medical diagnosis of [redacted] of record during the [redacted] meeting and to that end, such information would have made an impact, [TR pages 82-83] while the Petitioner sought to suggest that the parents would not have understood this. However, since both parents had multiple experiences with IEP team meetings for [redacted] during [redacted]'s prior school years and since both parents hold at least [redacted]'s degrees in their fields, it is hard for the undersigned to believe that they simply did not know they should have offered up information about the ongoing testing and evaluations they were obtaining for their child. In fact, the undersigned is convinced of the opposite: that the parents elected not to tell for some reason, following the pattern they demonstrated with their continued reluctance to be candid with the District employees, failure to respect the experience that such District employees hold nor accept at face value the comments by District employees when they explained their observations about [redacted]. In short, the evidence supports a conclusion that all participants at the eligibility meeting, with the exception of the parents, demonstrated integrity in their efforts to determine if [redacted] was eligible for special education services.

Nonetheless, the process of determination of eligibility is one where the data and information is set out against the requirements under the law. As explained by [redacted] in evaluating whether or not [redacted] would qualify due to his behavior which appeared to point to [redacted]
or the team was required to consider the guidelines set forth in the law. For example, she explained that one of the requirements would be that the child needed special education services in order to access and participate in the general education curriculum, and she explained that the data did not support that conclusion. [TR page 175]

290-8-9.03(9) **Other Health Impairment.**

(a) **Definition.** Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome. If a medical diagnosis is presented, the medical diagnosis alone is not enough to justify being identified in the area of other health impairment. The impairment must adversely affect the educational performance of the child.

(b) **Criteria for Other Health Impairment.**

1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
2. Evidence of a health impairment.
3. Performance measures that document how the child’s disability affects his or her involvement and progress in the general education curriculum, or for preschool children, how the disability affects the child’s participation in age-appropriate activities.
4. A statement providing evidence that the health impairment adversely affects the educational performance of the child and, for initial evaluation for special education services only evidence of interventions/accommodations that have been tried in regular education class(es) or the natural environment (for preschool children) but were deemed unsuccessful.

(c) **Minimum Evaluative Components for Other Health Impairment.**

2. Documentation of the health impairment (medical diagnosis/statement).
3. Performance measures such as developmental scores, individual and/or group intelligence scores, individual and/or group education achievement and/or diagnostic tests(s) scores, classroom observations, motor assessments, criterion-referenced tests, curriculum-based assessments, review of child’s existing records, (i.e. attendance, health).
4. A statement of how the impairment adversely affects the educational performance of the child and, for initial evaluations for special education services only, documentation of interventions/accommodations must include a written
description of all interventions/accommodations that have been tried in the regular class(es) or the natural environment (for preschool children) but were deemed unsuccessful. Interventions/accommodations may be documented through teacher interview(s) that are specific to the child's disability, classroom observations(s) that are specific to the child's disability, health records, anecdotal records, therapy evaluations, and intervention strategies.

Criteria for Other Health Impairment—Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity (ADHD).
1. Evidence that vision/hearing screening results are satisfactory prior to proceeding with evaluations.
2. Evidence that the health impairment adversely affects the educational performance of the child.
3. Standard scores (total or composite) on two out of three of the same norm-referenced scale designed specifically to determine the presence of ADD or ADHD must be at least two standard deviations above or below the mean (70, depending on the rating scale). Ratings from three or more scales must be obtained from at least three independent raters, one of whom may be the parent.
4. For initial evaluations only, evidence of interventions/accommodations that have been tried in regular education class(s) or the natural environment (for preschool children) but were deemed unsuccessful.

Minimum Evaluative Components for Other Health Impairment—ADD or ADHD.
2. A statement of how the health impairment adversely affects the educational performance of the child and documentation of performance measures such as individual and/or group intelligence scores, individual and/or group education achievement and/or diagnostic test(s) scores, classroom observations, criterion-referenced tests, curriculum-based assessments, review of child's existing records, (i.e. attendance, health, discipline).
3. Administration of three of the same norm-referenced behavior rating scale, ADD or ADHD scale by three or more independent raters who have had knowledge of the child for at least six weeks. One of the raters may be the parent of the child. If a self-report is used, it must be a version of the same behavior rated scale, ADD or ADHD scale.
4. For initial evaluations for special education services only, documentation of interventions/accommodations must include a written description of all interventions/accommodations that have been tried in the regular education class(s) or the natural environment (for preschool children) but were deemed unsuccessful. Interventions/accommodations may be documented through teacher interview(s) that are specific to the child's disability, classroom observations(s) that are specific to the child's disability, health records, anecdotal records, therapy evaluations, and intervention strategies.
As urged by the District in their counsel’s post hearing brief, ‘the abundance of 
undisputed testimony and documents presented by the Board at hearing established the 
appropriateness of the IEP team’s evaluation and eligibility determination 
included (but was not limited to) the clear-cut testimony of [ ]’s general education and special 
education teachers, doctorate and master’s level school administrators, a doctorate level special 
education administrator, a certified school psychologist who had evaluated [ ] as well as a school 
behavioral specialist who had evaluated and provided services to [ ]’ Further, as the District’s 
counsel notes, IDEA administrative law judges should afford great deference to opinions of 
school district school personnel requiring educational expertise and reviewing tribunals should 
be reluctant to second guess the educational opinions and decisions provided by professional 
educators who had served as IEP team members. Draper v Atlanta Indep. Sch. Sys., 518 F.3d 
1275 (11th Cir. 2007); Devine v Indian River County Sch. Bd. (11th Cir. 2001). To that end, 
contrary to the position espoused vigorously and thoroughly by counsel for the Petitioner, the 
undersigned does not see sufficient evidence supporting a finding of fault with the eligibility 
process that culminated in the decision finding that [ ] was not eligible for 
special education services.

VI. Conclusion

The issues properly before the undersigned hearing officer in this due process hearing are 
due to be reviewed in the manner provided for under 20 U.S.C. §1415 (f)(3)(E). Further, 
Congress directs that any decision of the undersigned is limited in this Final Order to a decision: 

(i) [Made] on substantive grounds based on a determination of whether the child received 
a free appropriate public education. 
(ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may
find that a child did not receive a free appropriate education only if the procedural inadequacies—
(I) impeded the child’s right to a free appropriate public education
(II) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent’s child; or

As indicated above, the undersigned has reviewed the issues in light of the fact that the burden of proof in a due process hearing rests upon the Petitioner. Finally, in completing a review in this matter the undersigned is mindful that it is not the job of the hearing officer to substitute his judgment for those of the educational professionals involved in the decisions made for the child. As cited to by the Respondent, the standard as to such review does arise through the decision in Board of Education Hendrick-Hudson v. Rowley, 458 U.S. 176, 206 (1982).

With that in mind the undersigned has reviewed the facts as set forth in the testimony and evidence, providing the due weight to the information provided by the Petitioners and Respondent alike. The discussion above purports to examine what the undersigned found was not only relevant to an understanding of the facts in this hearing, but the facts that were germane to an understanding of how the law would apply to the questions posed by the Petitioner’s complaint and allegations.

After review of the record and evidence put forward, analysis of such confirms for the undersigned the weight of the evidence does not support the Petitioner’s contention that the District failed to timely and properly identify [as a child due evaluation as would be called for under provisions of IDEA known as ‘Child Find’]. Further, after weighing the information put forward by both parties, including the testimony of the parents, the District employees, and the expert presented by the Petitioner, the undersigned is not convinced that the eligibility process
leading to the [redacted] eligibility decision was faulty. To that end, there is not sufficient information that would lead to a conclusion that the eligibility team should revisit their determination process nor that they had in any way denied [redacted] a FAPE, even when the same team reviewed the data again in [redacted] and determined that [redacted] was then eligible. While this is perhaps confusing, there appeared no evidence to find any lack of integrity on the part of the District with the [redacted] eligibility determination.

VII. Specific Findings

As for Issue 1: A FAPE was not denied the Petitioner due to the Respondent District’s not having made a referral for evaluation before the Petitioner’s filing of the Due Process Complaint, nor does the undersigned find evidence that the Respondent District failed to comply with requirements of the provisions known as ‘Child Find’ set out in the IDEA?

As for Issue 2: A FAPE was not denied the Petitioner by the District’s eligibility determination process, including the eligibility team’s failure to determine [redacted] as a child eligible for special education services under the IDEA in [redacted].

VIII. Notice of Appeal Rights

Any party dissatisfied with the decision may bring an appeal pursuant to 20.U.S.C. § 1415(e)(2) and/or Alabama Administrative Code 290-8-9.08(9)(c)(15) and must file notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) days of the filing of
the notice of intent to file a civil action.

DATED this the 15th day of November, 2016.

Steve P. Morton, Jr.
Due Process Hearing Officer

cc: [redacted] (via email)

A copy of this Order has been forwarded to the Honorable Charles Clyde Tatum, Jr. and the Honorable Rodney C. Lewis via email and standard US mail postage prepaid.