BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]	:	
Plaintiff,	:	
	:	
v.	:	**Docket No.:**
	:	**OSAH-DOE-SE-1220336-126-Howells**
GRIFFIN-SPALDING COUNTY SCHOOLS,	:	12-270296
	:	
Defendant.	:	

FINAL DECISION AND
ORDER GRANTING INVOLUNTARY DISMISAL

Plaintiff [redacted] by and through his parent, filed a due process request ("Complaint") pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, against Defendant Griffin-Spalding County Schools ("Defendant" or "District"). Plaintiff's original Complaint was received by the Office of State Administrative Hearings on January 17, 2012. On January 25, 2012, the District filed a Notice of Insufficiency. As a result, the undersigned ordered Plaintiff to amend his Complaint to address specific areas of insufficiency. Plaintiff filed an amended due process hearing request ("Amended Complaint") on February 6, 2012. Because Plaintiff filed an Amended Complaint, the timelines for resolution of this matter were reset and the hearing that was originally scheduled for February 22, 2012, was reset for March 27-28, 2012.

On February 28, 2012, Plaintiff requested a continuance of the hearing due to a conflict with another court appearance. This Tribunal granted Plaintiff's request for a continuance and the hearing was reset for April 30, 2012 and May 1, 2012. On April 30, 2012, Defendant presented, out of turn, the testimony of Grayson Walles. Mr. Walles is the principal of Plaintiff's current school, Tech High School. Thereafter, Plaintiff presented the testimony of Plaintiff's mother, [redacted] Additionally, [redacted] Plaintiff's father, testified. At the close of Plaintiff's

evidence, Defendant moved for involuntary dismissal. The undersigned called a recess of the hearing and directed Defendant to file a written motion for involuntary dismissal by May 11, 2012. Plaintiff was granted until May 18, 2012 to file a response to Defendant's motion.[1] For the reasons stated below, Defendant's motion for involuntary dismissal is **GRANTED**.

Plaintiff's Amended Complaint

Plaintiff's Amended Complaint consists of the Due Process Hearing Request form used by the District, as well as multiple attached documents. On the form, Plaintiff's parent checked the following boxes to indicate the reasons why he was requesting a due process hearing:

> √ Identification (related to the identification of the child's disability)
>
> √ Free Appropriate Public Education. There are five (5) common basic principles of FAPE under IDEA:
>
> (1) FAPE is available to all children without regard to severity of disability (zero reject principle).
> (2) FAPE is provided without cost to parents.
> (3) FAPE consists of individualized programming and related services.
> (4) FAPE provides an education that is appropriate, but not the best possible.
> (5) FAPE provided in the least restrictive environment (LRE).

(Amended Complaint, p.2.) In addition to the checked boxes, Plaintiff described the following problem:

> 2/15/2011 [redacted] my wife and [redacted]s mother[,] requested thru a[n] email that [redacted] be placed back under his IEP that was implemented by the Clayton County School System on 12/17/08[.] [T]he request was made to Mrs. Riddick[,] the school counselor at Spalding High School where [redacted] attended[.] [redacted] gave all the documents of the IEP to Mrs. Riddick twice. On 3/18/2011[,] Mrs. [redacted] emailed Mrs. Riddick[.] [I]n the email she stated that a Lenora Clarkson would set up a meeting to address the IEP. [redacted] informed Mrs. Riddick she would be available 3/28/2011[.] [redacted] was never contacted[,] nor would Mrs. Riddick respond to emails or phone calls. After my wife alerted me about the IEP was not implemented[,] I tried to contact Mrs. Riddick after concerning the matter

[1] Defendant timely filed its written Motion for Involuntary Dismissal on May 11, 2012. Plaintiff filed a response on May 20, 2012. Although Plaintiff's response was untimely, the undersigned has read and considered it.

in August and September by phone and leaving voice mails with no response. On September 30, 2011, I tried to speak with Ms. Reddick in the conselors (sic) office at Spalding High School concerning the IEP and notes[.] I was told she was not available[.] I asked the person at the main desk in conselors (sic) office would she contact her[.] I was denied. I tried to contact Ms. Clarkson by phone to discuss the IEP and the emails in September of 2011[.] I did receive a return phone call from Ms. Clarkson on September 13, 2011 that I missed[.] I left a voice message and there was no response from her. [redacted] was Tribunaled twice[.] My son suffers from ADHD[.] [I]t is documented in his IEP and [he] is under medication for it. I requested the notes and cummunications (sic) Mrs. Riddick has about [redacted's] IEP[.] I believe she was ether (sic) negligent or she was stopped by the Administration because someone drop the ball. I did request that information before the Tribunal Hearing Appeal and during the Hearing in September 2011 and was denied by [] Mr. Jones the School Superintindent (sic) and the School Lawyer Mr. Sheppard. After being denied the notes[,] I made an OPEN RECORDS REQUEST on November 4, 2011 and was denied. The School was aware of the IEP and did nothing[.] [M]y son [redacted] suffered thru Disciplinary Hearings, Suspensions and Academic failer (sic). The [Disciplinary] Officer, Mr. Tom Ison for Griffin Spalding stated in [his] decision on September 7, 2011 that [redacted] receive guidance, counseling, and response intervention services when and where appropriate[.] [I]t gave me concern after reading it if the IEP had been implemented by the School [redacted] would have received the services provided under the IEP. Because of his statement I decided to take this course of action.

Under Code IDDF (6) 160-4-7-.06 INDIVIDUALIZED EDUCATION PROGRAM, there should have been a request made from Spalding to the previous School concerning the records and documents of the IEP when it was brought to the attention of Mrs. Riddick and Ms. Clarkson that the IEP existed.

Concerning the notes and cummunications (sic) according to Georgia Code-Education-Title 20, Section 20-2-720 I am entitled. Under code IDDF9(4) 160-4-.04 Evaluations and Reevaluation, [redacted's] IEP was good for three years. Because of the School refusal to implement the IEP he was not afforded his rights under CODE IDDF (10) 160-4-7-.10 Discipline.

(Amended Complaint, p.2.)[2] Plaintiff's parent described the action that Defendant could take to resolve the problems as follows:

I want the Griffin Spalding School System to remove certain events from his School Record. I would also like those responsible to be held accountable for their negelience (sic)[.] Due to the suspensions [redacted] is behind academically and

[2] Consistent with federal regulation, the subject matter of the hearing was limited to the issues raised in Plaintiff's Amended Complaint. 34 C.F.R. § 300.511(d).

> will require 500 hrs of tutoring by an outside [entity] selected by the Parents and that Griffin Spalding bare (sic) the cost of it.
>
> I would like for the Court to order an investigation into the School District[.] [I]t seems to me if they will not comply to state and federal laws children and parents are being denied their rights.

(Amended Complaint, p. 3.)

Findings of Fact

1.

[redacted] attended Mundy's Mill Middle School during the 2008-2009 school year. (Ex. P-9.) For the first part of that school year, he was receiving special education services pursuant to an Individualized Education Program ("IEP") dated May 21, 2008.[3] (*Id.*) On December 17, 2008, [redacted] IEP was amended, to change his placement to the Ash Street Program for 45 days. (Ex. P-6.) The December 17, 2008 IEP appears to be the last effective IEP. (*See* Exs. P-6, P-9.)

2.

While [redacted] was still attending Mundy's Mill Middle School, the IEP team convened a meeting on May 12, 2009. (Ex. P-9.) The purpose of the meeting was to discuss the parent's intent to revoke consent for special education services. (*Id.*) During the meeting, [redacted]'s mother explained that she was revoking consent for special education services because she felt that [redacted] needed "to be more independent" and "accountable for his behavior." (Exs. P-6, P-9.)

3.

Also during the May 12, 2009 meeting, Mrs. Shoemaker, the Division of Exceptional Students Coordinator, explained to [redacted] that once [redacted] was dismissed from special education services, he would have to go through the entire referral process again before services could be

[3] Based on the evidence in the record, it appears that [redacted] was first determined to be eligible for special education services on May 30, 2007, under the category of Other Health Impairment ("OHI"). (Ex. P-11.) His eligibility was based on his diagnosis of ADHD and a psychological evaluation conducted on April 24, 2007. (Ex. P-10.) The April 24, 2007 evaluation was [redacted] last evaluation. (Tr. 149-151.)

offered and that he would no longer be entitled to the rights and protections provided by IDEA. (Ex. P-6.) [redacted] stated that she had reservations and that she understood that she was taking a risk, but that she was willing to work with [redacted] (*Id.*) Thereafter, [redacted] signed forms refusing special education services and a re-evaluation of [redacted] (Exs. P-6, D-17.)

4.

On May 26, 2009, Tamera Foley, the Secondary Director of the Division of Exceptional Students for Clayton County Public Schools, sent [redacted] a letter. (Ex. D-2.) In that letter, Ms. Foley reiterated the cautionary information provided by Mrs. Shoemaker. (*Id.*) Specifically, she informed [redacted] that once consent for special education services is revoked, [redacted] is considered a general education student and that any parental rights under special education are terminated. Further, if [redacted] were to be involved in any major disciplinary situations, he would no longer be afforded any of the protections available to students with disabilities. (*Id.*) Finally, the letter informed [redacted] that she could, in the future, request an initial evaluation to determine if [redacted] was a child with a disability. (*Id.*)

2010-2011 School Year

5.

On July 29, 2010, [redacted] enrolled [redacted] as a student at Spalding High School ("SHS").[4] (Ex. D-5; Tr. 184-85.) At the time that she enrolled [redacted] in SHS, [redacted] had a conversation with Assistant Principal Dexter Sands regarding [redacted] previous disciplinary problems.[5] She explained that she wanted a fresh start for [redacted] (Tr. 187.) Upon enrollment, [redacted] and [redacted] signed a Chronic Discipline Contract. (Ex. D-5; Tr. 187.) Additionally, [redacted] and Mr. Sands discussed the possibility of assigning [redacted] a mentor. (Tr. 188-89.) [redacted] did not, however,

[4] SHS is within the Griffin-Spalding school district. (*See* Exs. P-1, P-5.) Prior to attending SHS, [redacted] attended Mundy's Mill High School in Clayton County for the 2009-2010 school year, where he apparently did not receive special education services. (Ex. D-17; *see* Tr. 184, 190.)

[5] [redacted] had an extensive discipline record while attending Clayton County Public Schools. (Ex. D-17.)

mention anything to Mr. Sands about special education or a 504 plan. (Tr. 190.) [redacted] did not feel like [redacted] needed special education services at that time. (Tr. 190.)

6.

Subsequently, [redacted] had a meeting with [redacted] teachers in September of 2010, in which she requested that [redacted] be provided an extra set of text books. (Tr. 190-91.) [redacted] was having problems in class, and she felt that an extra set of text books at home would help because [redacted] was forgetful about his homework. (*Id.*) [redacted] teachers honored her request. (Tr. 191.)

7.

[redacted] did not mention anything to [redacted] teachers about having [redacted] evaluated for special education, or being put back on special education or a 504 plan. (Tr. 191.) She did not feel that [redacted] needed to be placed back in special education at that time. (*Id.*) Rather, she felt that extra help from his teachers and the extra text books would be sufficient. (Tr. 191-92.)

8.

Unfortunately, [redacted] discipline problems continued at SHS. (Ex. D-11.) Prior to February 11, 2011, [redacted] had six disciplinary referrals resulting in multiple days of in school suspension ("ISS") and out of school suspension ("OSS"). (Ex. D-11.) The behavior that was the subject of these disciplinary actions ranged from disrespect of teachers to hitting other students. (*Id.*)

9.

On February 11, 2011, [redacted] was involved in another disciplinary incident where he used profanity toward a teacher and engaged in otherwise aggressive behavior toward the teacher. (Ex. D-11.) Because of this incident [redacted] was given 5 days of OSS, to be followed by 5 days of ISS. The OSS began on February 14, 2011. (*Id.*; Tr. 176-80.)

10.

On February 15, 2011, [redacted] emailed Cheryl Reddick, a school counselor, at SHS. In the email, [redacted] stated, "I need to talk to you about putting [redacted] back under article 504 (I feel that he needs to be in collabrative (sic) classes)."[6] (Ex. P-18; Tr. 121.)

11.

Ms. Reddick contacted [redacted] via telephone to discuss her request. She apparently told [redacted] that if she obtained a copy of [redacted] plan from Clayton County that SHS could expedite the process. [redacted] provided Ms. Reddick with copies of documents from Clayton County School District on or about February 18, 2011.[7] (Tr. 122-23, 145-46; Ex. P-18.) Thereafter, an exchange of emails ensued between SHS personnel, concerning whether [redacted] meant an IEP when she said 504 plan. (Ex. P-18.)

12.

On March 17, 2011, [redacted] was involved in another disciplinary incident and was placed on 10 days OSS pending a disciplinary tribunal. (Ex. D-11.) On March 18, 2011, [redacted] father, [redacted] met with Assistant Superintendent of Schools, Mrs. Denise Burrell, and verbally agreed to waive [redacted] rights to a tribunal hearing and for [redacted] to finish the 2010-2011 school year at the alternative school, Taylor Street Achievement Academy ("TSAC").[8] (Tr. 222.) During the meeting with Mrs. Burrell, [redacted] did not discuss special education or a 504 plan. Nor did he request an evaluation for [redacted] (*Id.*)

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[6] At the hearing, [redacted] acknowledged that she did not mention special education services or a 504 plan to anyone at Spalding High School prior to February 15, 2011. (Tr. 190-92.)

[7] The documents included an IEP from Mundy's Mill Middle School, as well as [redacted]'s revocation of consent for special education services for [redacted] (*See* Exs. P-6, P-9.) [redacted] had not been under a 504 plan while in Clayton County School District. Rather, he had received special education services while in middle school. (*Id.*)

[8] Although [redacted] verbally agreed to sign the Alternative Placement Agreement & Tribunal Waiver on March 18, 2011, he did not actually sign it until April 4, 2011. (Tr. 222-232; Ex. D-8.)

13.

Also on March 18, 2011, [redacted] sent an email to Ms. Reddick questioning why [redacted] had not been "placed back under article 504."[9] (Ex. P-18.) Shortly thereafter, Ms. Mincey contacted [redacted] to schedule a meeting. According to [redacted] the purpose of the meeting was to discuss the difference between special education services and a 504 plan. (Tr. 162-63; Ex. P-18.) [redacted] refused to attend the meeting because, in her opinion, the school waited too long (i.e., until after [redacted] was "tribunaled") and she knew the difference between special education and a 504 plan.[10] (Tr. 162-64.) After [redacted] refused to attend the meeting with Ms. Mincey, she never again discussed the subject of special education services or a 504 plan with anyone at the District. (Tr. 170-72.)

14.

Although [redacted] admits that he agreed to sign the Alternative Placement Agreement and Tribunal Waiver on March 18, 2011, [redacted] parents did not enroll him in TSAC until April 8, 2011. (Tr. 222-232.) [redacted] finished the 2010-2011 school year at TSAC. Thereafter, he attended summer school at SHS and enrolled at SHS for the 2011-2012 school year. (Tr. 171-172.)

2011-2012 School Year

15.

At the beginning of the 2011-2012 school year, on August 31, 2011, [redacted] was involved in a fight with another student and was suspended from school for 10 days pending a disciplinary tribunal hearing, which was held on September 7, 2011. (Ex. D-11.) As a result of the tribunal hearing, [redacted] was expelled from SHS for the remainder of the 2011-2012 school year, with the

[9] It is clear that even after obtaining the special education documents from Clayton County School District [redacted] did not understand the difference between a 504 plan and special education services.

[10] Although a tribunal hearing was scheduled for the March 17, 2011 incident, it did not actually take place because [redacted] parents waived the tribunal hearing and agreed for [redacted] to attend TSAC. (Tr. 173-74.)

option to attend TSAC through the on-line program. (*Id.*) [redacted] withdrew [redacted] from the District, and enrolled him in another school district on September 13, 2011. (Ex. D-18.) On September 19, 2011, [redacted] appealed the September 7, 2011 tribunal decision. In the appeal letter, [redacted] raised the issue of a 504 plan, for the first time. (*Id.*)

16.

[redacted] remained a student at Tech High School, a charter school in the Atlanta Public School District, from September 13, 2011 until the date of the hearing.[11] (Tr. 254-255.) Between September 13, 2011 and early April 2012, neither [redacted] nor [redacted] made any request for [redacted] to be evaluated for special education services or a 504 plan at Tech High School.[12] (Tr. 252, 256-60.)

Conclusions of Law

1.

Appeals before this Tribunal are *de novo* proceedings, and the standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(3), (4). As the party bringing this hearing request and seeking relief, Plaintiff bears the burden of proof as to all issues for resolution. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005).

2.

In this case, Plaintiff asserts that the District failed to identify [redacted] as a child with a disability and failed to provide him with a free appropriate public education ("FAPE"). In the narrative portion of Plaintiff's Amended Complaint, Plaintiff alleges that the District failed to implement an Individualized Education Program ("IEP") that had previously been implemented by the Clayton County School District on December 17, 2008.

[11] [redacted] current status at Tech High School is unknown. As of the date of the hearing, [redacted] had been suspended and was awaiting a tribunal hearing. (Tr. 254.)

[12] At the hearing, [redacted] testified that he recently made a request to the Tech High School counselor to evaluate [redacted] for special education services. (Tr. 252, 256-60.)

Failure to Implement Previous IEP

3.

As noted above, Plaintiff's last IEP was created in December of 2008 while he was attending Mundy's Mill Middle School. Plaintiff asserts that SHS should have implemented this IEP. For the reasons that follow, this Tribunal disagrees.

4.

When a student with an IEP *in effect* transfers from one school to another school within the same state, *during* a school year, the new school, after consulting with the parents, must provide a FAPE to the student "(including services comparable to those described in the [student's] IEP from the previous [school])," until the new school either adopts the child's previous IEP or develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(e). This provision is inapplicable under the facts of this case.

5.

Here, [redacted] transferred to SHS from Mundy's Mill High School, where there was no IEP in effect. The last IEP that had been in effect was at Mundy's Mill Middle School and [redacted] subsequently revoked consent for special education services. Therefore, the December 2008 IEP was no longer in effect.[13] Furthermore, his transfer was during the open enrollment at SHS, not during a school year.

6.

Moreover, schools must develop, review, or revise a student's IEP on at least an annual basis. 34 C.F.R. § 300.324. [redacted] last IEP was developed while he was in middle school and was more than two years old when [redacted] brought it to the attention of SHS personnel. It had

[13] When a parent revokes consent for special education services and later requests that his or her child be re-enrolled in special education, the school "must treat this request as a request for an initial evaluation." 73 Fed. Reg. 73,006, 73,014 (Dec. 1, 2008).

not been reviewed or revised since its creation. Thus, it was outdated. Finally, the December 2008 IEP was based on an evaluation that was conducted in April of 2007. At the time [redacted] provided SHS personnel with a copy of the IEP, the evaluation was outdated, as it was more than three years old.[14]

7.

For the reasons stated, SHS was not required to automatically implement [redacted]'s previous IEP. Instead, SHS was required to treat [redacted] request as a request for an initial evaluation.

Alleged Child Find Violation

8.

Under the "Child Find" provisions of the IDEA and its implementing regulations, "'[s]chool districts have a continuing obligation . . . to identify and evaluate all students who are reasonably suspected of having a disability.'" *Ridley Sch. Dist. v. M.R.*, 2012 U.S. App. LEXIS 9908, at *23 (3rd Cir. May 17, 2012), *quoting P.P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3rd Cir. 2009); *see* 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a)(1). This obligation persists even in situations where parents have previously revoked consent for special education services.[15] "Neither the IDEA, [nor] its implementing regulations . . . establish a deadline by which children who are suspected of having a qualifying disability must be identified and evaluated."[16] *Ridley Sch. Dist.*, 2012 U.S. App. LEXIS 9908, at *24. Thus, courts have inferred a reasonableness standard. *Id.* Stated differently, school districts must identify and evaluate a

[14] As a general proposition, reevaluations of children with disabilities must occur every three years. 34 C.F.R. § 300.303.

[15] *See* 73 Fed. Reg. 73,006, 73,012 (Dec. 1, 2008). "A parent who previously revoked consent for special education and related services may continue to refuse services; however, this does not diminish a State's responsibility under § 300.11 to identify, locate and evaluate a child who is suspected of having a disability and being in need of special education and related services." *Id.*

[16] The IDEA implementing regulations do contain a 60-day deadline within which a school district must conduct an initial evaluation. *See* 34 C.F.R. § 300.301(b). The 60 days are measured from the date the school district receives consent for the evaluation from the parent. *Id.* In this case, Plaintiff has not alleged that the District failed to timely evaluate [redacted] Rather, Plaintiff alleged that the District failed to timely "identify" [redacted] as a child with a disability. Accordingly, section 300.301 is inapplicable.

student suspected of having a disability "within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability." *Id.*

9.

Plaintiff asserts that the District failed to timely identify [redacted] as a child with a disability. Plaintiff has not alleged, nor has he presented evidence that the District should have identified [redacted] as a child with a disability prior to [redacted]s February 15, 2011 email to Mrs. Reddick.[17] Instead, Plaintiff complains about the delay between [redacted]s February 15, 2011 request and any action on the part of SHS personnel. Plaintiff further alleged that after a follow up email from [redacted] on March 18, 2011, the SHS personnel did not contact her and took no action. This allegation is factually inaccurate. At the hearing, [redacted] acknowledged that Ms. Mincey did, in fact. contact her about a meeting near the end of March 2011. Furthermore, internal emails indicate that SHS personnel began acting on [redacted]s request almost immediately after her February 15, 2011 email. However, upon receiving the IEP documents from [redacted] on February 18, 2011, SHS personnel realized that [redacted] had not been under a 504 plan, as stated in Mrs. M's email. Rather, he had received special education services. Given [redacted]s previous revocation of special education services in Clayton County and her confusion about special education services and a 504 plan, it was reasonable for the District to schedule a meeting to discuss these matters. Furthermore, upon [redacted]s refusal to meet with Ms. Mincey to discuss

[17] To establish a violation of a school district's obligation to identify children with disabilities, "Plaintiff must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate." *Clay T. v. Walton County Sch. Dist.*, 952 F. Supp. 817, 823 (M.D. Ga. 1997); *see also Bd. of Ed. of Fayette County v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007) (adopting the standard articulated in *Clay T.*). Here, upon enrolling [redacted] at SHS, [redacted] had a conversation with Mr. Sands about [redacted] previous disciplinary problems, she and [redacted] signed a Chronic Disciplinary Contract, and she said nothing to Mrs. Sands about special education or a 504 plan. Further, Plaintiff presented no evidence that SHS was aware of [redacted]'s previous ADHD diagnosis prior to February 15, 2011. Finally, Plaintiff presented no evidence that [redacted] specific behavior problems at SHS were clearly attributable to a disability, as opposed to willful misbehavior, and that such behavior should have been an indication to the school district that [redacted] may have a disability.

the difference between a 504 plan and special education services, it was reasonable for the District to suspend its efforts to determine [redacted] eligibility for special education services.

Plaintiff's FAPE Claim

10.

Under the Individuals with Disabilities Education Act students with disabilities are entitled to a free appropriate public education ("FAPE"). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.101. "The purpose of the IDEA generally is 'to ensure that all children *with disabilities* have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living . . . ." *C.P. v. Leon County Sch. Bd.*, 483 F.3d 1151, 1152 (11th Cir. 2007) (emphasis added) (quoting 20 U.S.C. § 1400(d)(1)(A).

11.

Plaintiff has presented no evidence that [redacted] is currently "a child with a disability." It is true that [redacted] was previously diagnosed with ADHD and determined to be a child with a disability under IDEA. However, [redacted] was diagnosed with ADHD when he was 11 years old. Furthermore, a diagnosis alone does not guarantee that a child is disabled. *See* 20 U.S.C. § 1401(3)(A) (providing that to qualify as a "child with a disability" under IDEA, the child must, have a listed condition, and "by reason thereof, need[] special education and related services"). Since [redacted] initial eligibility determination in 2007, [redacted] revoked consent for [redacted] special education services. Thus, in order to be considered a child with a disability, [redacted] would have to, at a minimum, go through a new eligibility determination. Based on the evidence in the record, [redacted] has not been evaluated since 2007, and there has been no eligibility determination subsequent to [redacted]s revocation of consent for services. Finally, as noted above, [redacted]s

refusal to attend the meeting with Ms. Mincey thwarted any new eligibility determination. Therefore, there is insufficient evidence that [redacted] is a child with a disability under IDEA.[18]

12.

Because Plaintiff failed to establish that the District violated its "Child Find" obligation and because Plaintiff failed to establish that [redacted] is qualified as a "child with a disability" under IDEA, Plaintiff has failed to prove that the District denied him a FAPE.

13.

Notwithstanding, even if this Tribunal were to conclude that the District violated its "Child Find" obligation, which it has not, Plaintiff would have to establish that [redacted] suffered harm as a result of that violation. *Weiss v. Sch. Bd. of Hillsborough County*, 141 F.3d 990, 996 (11th Cir. 1998) (to prove a denial of FAPE, plaintiff must show harm *as a result of* the alleged procedural violation). Plaintiff failed to present any evidence that [redacted] suffered harm *as a result* of the District's alleged failure to comply with its obligations. In his Amended Complaint, Plaintiff alleged that [redacted] is behind in school because of disciplinary actions taken against him by the District. However, Plaintiff failed to present any evidence that he would not have received any discipline or any OSS, or he would not have been behind, if he had been reevaluated for special education services.[19] Nor has Plaintiff presented any evidence that the reason [redacted] is "behind" in school is due to the disciplinary actions taken by the school, as opposed to some other reason. Plaintiff simply presented no evidence to support his allegation. Accordingly, Plaintiff failed to prove that the District denied him a FAPE.

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[18] The undersigned notes that this conclusion is not intended to be an affirmative finding or conclusion that [redacted] is not disabled due to his previous ADHD diagnosis. Rather, it is merely a conclusion that there was a lack of evidence of current disability.

[19] In fact, there is evidence in the record that even while [redacted] was receiving special education services in Clayton County he continued to be disciplined and continued to receive OSS. (*See* Ex. D-17.)

Decision

For the foregoing reasons, this Tribunal finds that Plaintiff has failed to prove that the District inappropriately delayed identifying [redacted] as a child with a disability or that the District denied [redacted] a FAPE. Accordingly, Plaintiff's prayers for relief are denied.

SO ORDERED, this 14th day of June, 2012.

STEPHANIE M. HOWELLS
Administrative Law Judge

Volume: _____ Page: _____