

DOCKET NO. 053-SE-1109

3. Petitioner claims that Respondent has failed to provide Student with an appropriately trained, designated one-on-one aide.

4. Petitioner claims that Respondent has failed to evaluate Student for special education services even though Student lacks social skills, listening skills and concentration.

5. Because of such failures by the Respondent, the Student has been denied a Free Appropriate

As relief in this due process hearing, Petitioner requests that Respondent be ordered to do the following:

1.

2. Educate Student i

3. Provide appropriate evaluations to Student.

4. Provide appropriately implemented services which are effective, goal oriented and educationally beneficial.

5. Provide one year of compensatory educational services, or an amount of compensatory services deemed appropriate by the Hearing Officer.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

## II. Findings of Fact

1. On September 13, 2009



issues. The Teacher noted that Student is a very polite student, and interacts appropriately with others, follows directions, and works cooperatively.

9. I problems, hyperactivity, or inattentiveness in

15. Th



The procedures for determining impairment are already prescribed. Rule 34 CFR §300.301 states the need for the initial evaluation and the party that can request it. The first two subsections of §300.301 provide:

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §300.305 and §300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation process. Consistent with the consent requirements in §300.300, *either a parent of a child or a public agency may initial a request for an initial evaluation* to determine if the child is a child with a disability. 34.CFR §300.301(a) and (b) (emphasis supplied)

The language of 34 CFR §300.301 uses the phrase as a combination of the n §300.8(a) (cited herein); the proper procedures and standards for evaluation tools set out in §300.304 [Evaluation Procedures]; and the actual determination of the [Determination of Eligibility]. T nt, teachers, school officials and perhaps, diagnosticians,

IDEIA. Maybe this is because of the medication prescribed for the Student, or maybe it is because the

This record does not contain information on why the Student is able to cope with ADHD. But the fact that the Student can function in school is no more than the ability to perform in school is why eligibility determination process requires an entire *group* of stakeholders and not simply a doctor diagnosis



## V. Conclusions of Law

1. Petitioner is a student who resides within the boundaries of the School District.
2. Student has made educational progress in the current general education placement and curriculum. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) and *Cypress Fairbanks v. Michael F.*, 118 F. 3d 245 (5<sup>th</sup> Cir. 1997) 0 0 1 361.75 724.44 TmS0nFs2ey,

