

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALEX K., et al., : CIVIL ACTION
Plaintiffs :
v. :
WISSAHICKON SCHOOL DISTRICT :
Defendant : NO. 03-854

MEMORANDUM AND ORDER

McLaughlin, J.

February 12, 2004

Alex K. is a minor who currently attends public school in the Wissahickon School District ("District") and receives special education and related services under the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1400 et seq. The plaintiffs, Alex K. and his parents, allege that the District failed to identify and locate Alex, and failed to provide him with a Free Appropriate Public Education ("FAPE") from the 1996-1997 school year until May 2002. Alex attended private school during this period, and the plaintiffs seek compensatory education and tuition reimbursement for that period.

Both parties have filed motions for summary judgment. The defendant has filed a motion for disposition on the administrative record. The Court will grant the defendant's motion for summary judgment, deny the plaintiff's motion for

summary judgment, and grant the defendant's motion for disposition on the administrative record.

This case raises questions about the interpretation of the "child find" provisions of the IDEA and the Pennsylvania Code that govern a school district's obligation to find and evaluate disabled children. Alex K. initially attended private school at Germantown Academy for kindergarten and first grade. During the 1996-1997 school year while Alex was in the first grade, Germantown Academy informed his parents that he was having learning problems. Alex's parents had him tested. They visited various schools, looking for alternative placements for Alex. They visited Shady Grove Elementary School, met with the principal, and toured the facility. They ultimately decided to send Alex to the private Woodlynde School and enrolled him there in 1997. In 2001, Alex's parents requested a due process hearing, seeking tuition reimbursement and compensatory education. Alex enrolled in public school in the Wissahickon District in the Fall of 2002.

The plaintiffs do not complain about Alex's treatment at public school in the Wissahickon District. The crux of their complaint is that the District should have conducted an evaluation of Alex during the period 1996-2001 and offered him an appropriate Individual Educational Plan ("IEP").

I. Background and Procedural History

A. Due Process Hearing

A Due Process Hearing was held before Dr. Gregory J. Smith, Hearing Officer, on September 23 and October 22, 2002. The plaintiffs sought compensatory education and tuition reimbursement for the 1997-1998 through 2001-2002 school years when Alex K. attended the private Woodlynde School. All of the parties put on witnesses at the hearing. The testimony related to two topics: general child find efforts of the District; and the District's efforts with respect to Alex.

1. General Child Find Evidence

Denise Fagan, the Director of Special Education in the District from 1999, testified about how the District notified the public about its special education services. She stated that in 1997, pamphlets developed by the special education department were available and visible in the front office of every school in the District, including Shady Grove Elementary School. The pamphlets explained how to access special education and how to have a child identified for special education services, discussed what special education programs were offered within the school district, provided information on the confidentiality of student records, and indicated that a parent could request an evaluation for a student.

The District, according to Denise Fagan, also provided information on its special education services on its website from at least October 1997. Information on special education services was available in the school district offices and was advertised on the cable TV network. Child find notifications were placed in local newspapers from at least 1996. From 1998, information on the District's special education programs was sent to private schools in the district, which stated that parents could request an evaluation of their child for these services via a written request to the District.

Denise Fagan also testified that the Montgomery County Intermediate Unit cannot provide information on non-public students receiving their services without a parental release. The District does not receive information from the Department of Transportation regarding which students are bussed to non-public schools.

The plaintiffs asked to call Thomas Worrilow and Inge Webster to testify about finding children. Prior to the hearing, both parties' attorneys held a conference call with the Hearing Officer, in which the Hearing Officer listened to the offer of proof for both potential witnesses.¹ The Hearing Officer did not

¹ The defendant argued that Det. Worrilow's area of expertise was in missing persons and criminal investigations. The defendant argued that Dr. Webster was not qualified to testify about appropriate child find procedures under state and federal
(continued...)

allow the two witnesses to testify, stating that Mr. Worrilow would discuss methods that could be used in finding individuals in general and that Dr. Webster would discuss methods that could be used in child find activities. The Hearing Officer found that although the witnesses might make helpful suggestions as to what school districts could do to identify individuals, their testimony would not be probative in determining what the school district must do under the law to comply with child find requirements.

2. Evidence Relating to the Plaintiffs

Regarding Alex K., Denise Fagan testified that she never received a letter from Alex's parents requesting an evaluation of Alex before leaving her position to become an elementary school principal in August, 2001.

Frank Musitano, Director of Special Education in 2001, testified that he received a letter dated September 10, 2001 from Alex K.'s mother ("Mrs. K.") requesting an evaluation. The District issued a Permission to Evaluate on September 14, 2001. The District received the permission form from Mrs. K. on December 17, 2001. The District issued an evaluation report for

(...continued)
regulations.

Alex K. on April 25, 2002. An Individual Education Plan ("IEP") was then issued for Alex.

Mrs. K. testified at the hearing. She stated that she and her husband visited a number of schools during the 1996-1997 school year looking for a proper placement for Alex. They met with Gary Bundy, the principal of Shady Grove Elementary School, at some point during the 1996-1997 school year. She told Mr. Bundy that she and her husband were in the process of having Alex tested and were just beginning to understand that Alex had learning disabilities. A woman took them on a tour of the school and showed them a special education classroom. Mrs. K. did not recall sharing independent tests or evaluations of Alex with the District. She did not ask Mr. Bundy to evaluate Alex. She was "pretty certain" that he did not tell her to put a request for an evaluation in writing. She did not follow up with the school. She only followed up with the schools that impressed her. She also testified that she sent a letter to the District in February of 2001 requesting an evaluation for Alex. No signed copy of this letter was produced.

Gary Bundy, the principal of Shady Grove in the fall of 1996, testified about his meeting with Mrs. K. He recalled meeting with Mrs. K. in 1996. She told him that she believed that her son had a learning disability. He told her that if she would like the Wissahickon School District to evaluate Alex, she

should put the request in writing. He also stated that there was a special education pamphlet on display in two visible places—in the outer office and the principal's office—at the time of the meeting. He did not recall whether he handed the pamphlet to the K.'s.

Mr. John Rogers testified for the plaintiffs. He served as the head of Woodlynde School, when Alex K. attended Woodlynde from 1997 until 2001. His testimony described Alex K.'s education and performance at the Woodlynde School.

Finally, the Hearing Officer received written briefs and heard oral arguments from the parties regarding whether Alex K.'s claims for tuition reimbursement and compensatory education were barred by a statute of limitations.

B. Decision of the Hearing Officer

In November 2002, the Hearing Officer issued a decision. The Hearing Officer made the following findings of fact. Alex K. attended Germantown Academy for kindergarten and first grade (the 1995-1996 and 1996-1997 school years). In April 1996, Alex was evaluated by a speech and language therapist from the Montgomery County Intermediate Unit, and the evaluator recommended speech and language therapy. This evaluation was not shared with the District. Alex also had an independent neuropsychological assessment and an independent speech and

language evaluation. These evaluations were not shared with the District.

During the 1996-1997 school year, Alex K.'s parents visited Shady Grove Elementary School and met with Mr. Gary Bundy. They informed Mr. Bundy that Alex was a student with learning difficulties and that they were in the midst of having him independently evaluated. They informed Mr. Bundy that they were looking at potential placements for Alex. Mr. Bundy informed Alex K.'s parents that if they would like the District to evaluate Alex and consider him for special education they should put that request in writing. Alex's parents enrolled him in the Woodlynde School in 1997.

On September 10, 2001, Alex's parents requested that the District evaluate Alex. The District issued a permission to evaluate form on September 14, 2001. Alex's parents signed the form on December 10, 2001, giving their permission for the evaluation to begin. The District received the form on December 17, 2001. An evaluation was completed and an evaluation report was sent to Alex's parents on April 26, 2002, 79 school days after the District received the signed permission to evaluate form. An IEP was developed for Alex on May 14, 2002. On June 7, 2002 Alex's parents approved the recommended placement. They requested a due process hearing in July, 2002.

Regarding the District's child find obligations, the Hearing Officer found that child find notices explaining the availability of special education services and how to request those services were published in local newspapers every year from 1996-1997 through the 2001-2002 school year. From the 1996-1997 school year through the present, the District provided a pamphlet in District buildings explaining the availability of special education services and how to request those services. Since at least the fall of 1997 the District provided information on its internet web site describing the availability of special education services and how to request those services. Since at least 1998, the Montgomery County Intermediate Unit in collaboration with the Montgomery County school districts, published a legal notice in local newspapers explaining the availability of special education services and how to request those services. Since at least 1998 this information was sent directly to non-public schools.

The Hearing Officer then concluded that the District met its child find obligations during each of the years in question. The District fulfilled the requirement to try to find students through its various publishing activities. The Hearing Officer then found that Alex's parents first notified the District of Alex's need for special education in September, 2001.

The Hearing Officer found that Mr. Bundy told Mrs. K. to put a request for an evaluation in writing, finding Mr. Bundy's testimony more credible.² Mr. Bundy complied with title 22, section 14.25(b) of the Pennsylvania Code, by telling the K.'s to put their request in writing. He also found Ms. Fagan's testimony that she did not receive a copy of a request for an evaluation in February of 2001 credible and convincing.³

The Hearing Officer concluded that the District completed the evaluation report in April 2002, which exceeded the time limit required under Pennsylvania law, but that District's delay was harmless error. He noted that in the Commonwealth of Pennsylvania, an evaluation must be completed within sixty school days of receipt of permission to evaluate. The District took seventy-nine school days to issue an evaluation report, nineteen school days longer than required by law. However, because an IEP team meeting must be held within thirty days of completion of the evaluation, and the IEP must be implemented within ten school days of its' completion, the IEP should have been implemented on

² The Hearing Officer found that Mr. Bundy's recollection of the meeting with Mrs. K. was clear, while Mrs. K. was only pretty certain that Mr. Bundy had not instructed her to put a request for an evaluation in writing.

³ The Hearing Officer noted that Mrs. K. printed the unsigned copy of the purported February, 2001 letter from her computer at her attorney's request. He also noted that her September, 2001 letter did not reference any prior requests for an evaluation.

May 15, 2002. 34 C.F.R. § 300.343(b)(2); 22 Pa. Code §§ 14.123(b), 14.131(a)(2) (adopted June 8, 2001). The Hearing Officer found it highly unlikely that Alex's parents would have removed him from Woodlynde for the last three or four weeks of the school year. He concluded that the delay was harmless error.

Regarding the statute of limitations argument, the Hearing Officer found that the one-to-two year statute of limitations was not applicable for either tuition reimbursement or compensatory education.

On January 10, 2003, the Special Education Due Process Appeals Review Panel of the Commonwealth of Pennsylvania affirmed the Hearing Officer's order. The Panel noted that there was insufficient evidence to conclude that the District failed to offer to conduct a multidistrict evaluation or that the District failed to respond to a written parental request for an evaluation in February, 2001. The Panel also found that the District was not on notice that Alex K. was receiving speech and language services from the Intermediate Unit, and that the provision of these services did not mean that Alex was in need of special education. Finally, the Panel noted that the provision of transportation by the District would not mean that Alex K. was in need of special education.

C. The Federal Litigation

On February 11, 2003, the plaintiffs brought this suit against the District. The complaint alleges violations of Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the IDEA.

The plaintiffs and the defendant have filed cross motions for summary judgment. The defendant also has filed a motion for disposition on the administrative record. The Court held oral argument on the motions on October 28, 2003.

II. Statutory Background

Federal funding for state education programs is contingent on the states providing a "free and appropriate education" to all disabled children in their jurisdiction. 20 U.S.C. § 1412. Congress ensures that states follow this mandate through the IDEA. A free, appropriate public education consists of education designed to meet the unique needs of the handicapped child, supported by such services as are necessary to allow the child to benefit from the instruction. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 264 (3d Cir. 2003) (citing Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 756 (3d Cir. 1995)). Schools provide a child with a free and appropriate education through an Individualized Education Program ("IEP"). Id.

Under the IDEA, a state must demonstrate that all children residing in the State who are disabled, "regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services." 20 U.S.C. § 1412(a)(3)(A). See also 34 C.F.R. § 300.125. This is known as the "child find" duty.⁴

Pennsylvania fulfills its IDEA obligations, including its child find obligations, through a statutory and regulatory scheme codified at 22 Pa. Code Chapters 14 and 15. The Pennsylvania Code was amended in June, 2001, and the pre-June 2001 version of the code is relevant in this case. Pennsylvania school districts' child find obligations were governed by title 22, sections 14.21-14.25 of the Pennsylvania Code and implemented by sections 342.21-342.25.

Pennsylvania law required a district to conduct activities to inform the public of its early intervention and

⁴ Section 504 similarly requires public schools receiving federal financial assistance to annually undertake to identify every qualified handicapped person residing in their jurisdiction who is not receiving a public education. 29 U.S.C. § 794; 34 C.F.R. § 104.32(a). There appear to be few differences, if any, between the duties imposed by the IDEA and Section 504. W.B. v. Matula, 67 F.3d 484, 492-93 (3d Cir. 1995). The Court will analyze these claims together.

special education services and the manner by which to request these services. The school districts also had to annually notify the public of child identification activities. 22 Pa. Code § 14.22 (reserved June, 2001).

The code specifically provided that:

A school district shall provide for distribution printed information regarding available special education services and programs and rights to due process. The printed material shall be provided, upon receipt of inquiry about special education, by the building principal in each school building as well as by the appropriate administrator in the school district office. The printed material shall include standard information provided by the Department for that purpose.

22 Pa. Code § 342.22(c) (reserved June, 2001).

Pennsylvania law also described procedures for schools to follow when parents requested an evaluation of their child.

It specified:

Parents who suspect that their child is exceptional may request a multidisciplinary evaluation of their child at any time. The request shall be in writing. If a parental request is made orally to school personnel, the personnel shall inform the parents that the request shall be made in writing and shall provide the parents with a form for that purpose.

22 Pa. Code § 14.25(b) (reserved June, 2001).

The Third Circuit has interpreted the child find requirement. Children who are suspected of having a qualifying disability must be identified and evaluated within a reasonable time after school officials are on notice of behavior that is

likely to indicate a disability. Ridgewood Board of Education v. M.E. 172 F.3d 238, 253 (3d Cir. 1999) (citing Matula, 67 F.3d at 501). The Matula court emphasized the school officials' first hand knowledge and personal observation of the child's behavioral difficulties when determining that the school officials were on notice of such behavior. Id.

III. Standard of Review

A federal district court reviewing factual findings from the administrative proceedings conducts a modified de novo review. The court is required to defer to the administrative body's factual findings unless it can point to contrary non-testimonial extrinsic evidence on the record. S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 270 (3d Cir. 2003). Where the district court hears additional evidence, it is free to accept or reject the agency findings depending on whether the findings are supported by the new record and whether they are consistent with the IDEA's requirements. Id. (citing Oberti v. Board of Educ. of the Borough of the Clementon Sch. Dist., 995 F.2d 1204, 1220 (3d Cir. 1993)).

In the Third Circuit, whether or not a district court hears additional evidence is left to the discretion of the trial court. S.H., 336 F.3d at 270. The word additional is construed as meaning supplemental. The Third Circuit has upheld a district

court's decision to exclude evidence as cumulative and as an improper embellishment of testimony previously given at an administrative hearing. Susan N. v. Wilson Sch. Dist., 70 F.3d 751, 759 (3d Cir. 1995) (citing Bernardsville Board of Educ. v. J.H., 42 F.3d 149, 161 (3d Cir. 1994)).

IV. Analysis

The Court will discuss the defendant's motion for disposition on the administrative record, and then the cross-motions for summary judgment.

A. Motion for Disposition on Administrative Record

The plaintiffs ask the Court to deny this motion so that they may present the testimony of Mrs. K. and Mr. Bundy, who testified at the due process hearing, and the three witnesses whom the hearing officer excluded from the hearing. Because Mrs. K. and Mr. Bundy would simply repeat their hearing testimony, the Court will exercise its discretion to exclude the testimony. The Court agrees with the Hearing Officer that the testimony of the other three witnesses is inadmissible.

The plaintiffs argue that they have gathered through discovery evidence relating to Mr. Bundy's performance as a principal since 1997 that undermines Mr. Bundy's credibility. Because the hearing officer made a credibility determination when

he accepted Mr. Bundy's testimony about the meeting between Mrs. K. and Mr. Bundy in 1996-97, the plaintiffs argue that the Court should listen again to the testimony of two witnesses so that they may impeach Mr. Bundy with this new information.

Even if it were appropriate to repeat testimony from a due process hearing in the federal court litigation, the new material would not be admissible because it does not impeach Mr. Bundy's credibility. The plaintiffs offer this evidence to show that Mr. Bundy was reprimanded for over-enrolling classes, received low ratings for his personality and technique, and contributed to low morale among teachers. This information does not relate to Mr. Bundy's truthfulness or lack thereof so it would not be admissible to impeach his credibility.

The three new witnesses do not have knowledge of relevant facts. Det. Worrilow is a detective specializing in finding missing persons. Dr. Webster is a psychologist working in another school district. Dr. Hess is a school psychologist whose report addresses standard accepted practices of school districts, not legal obligations under the IDEA. Their testimony is not necessary and does not assist the Court in making a determination as to whether the District satisfied its legal obligations under federal and state law.

B. The Summary Judgment Motions

There are two distinct time periods involved in the plaintiffs' claims: 1996-2001; and 2001-2002. The issue with respect to the earlier period is did the District comply with its child find obligations. The issue with respect to the later period is was the District's admitted delay in completing the evaluation report of Alex harmless error.

1. 1996-2001

The plaintiffs argue that the District violated the IDEA during the 1996-1997 school year when it failed to evaluate Alex after his parents met with Mr. Bundy. They also claim that the District violated its general child find obligations during the period 1996-2001. The Court will discuss these issues in turn.

With respect to their claim for the 1996-1997 school year, the plaintiffs primarily rely on title 22, section 14.25(b) of the Pennsylvania Code, which provides in pertinent part:

Parents who suspect that their child is exceptional may request a multidisciplinary evaluation of their child at any time. The request shall be in writing. If a parental request is made orally to school personnel, the personnel shall inform the parents that the request shall be made in writing and shall provide the parents with a form for that purpose.

22 Pa. Code § 14.25(b) (reserved June, 2001).

The plaintiffs argue that Mr. Bundy violated this section when he failed to "provide the parents with a form" to request an evaluation of their child. The District argues that this section was not triggered because the parents did not request an evaluation of Alex and if it was triggered, Mr. Bundy substantially complied with it when he told the parents to put any request for an evaluation in writing.

There is no dispute that the parents did not specifically request an evaluation of Alex. Tr. of Sept. 23, 2002 Due Process Hr'g at 171. The issue is whether the discussion that did occur between the parents and Mr. Bundy amounted to a request within the meaning of 14.25(b). The Court finds that it did not.

As the Court described in the statutory background section above, section 14.25 is part of a larger statutory and regulatory scheme through which Pennsylvania fulfills its child find duty. See 22 Pa. Code §§ 14.21-.25, 342.21-.25 (reserved June, 2001). Section 14.22 governed "Public Awareness" activities and required schools to inform the public of its early intervention and special education services and its child identification activities. The corresponding implementing regulation required that a school district conduct public awareness activities and provide annual public notification of child identification activities. It also required that a school

district provide printed information regarding special education services and rights to due process. This material was to be provided, upon receipt of inquiry about special education, by the building principal and the appropriate administrator. 22 Pa. Code §§ 14.22, 342.22.

When the two sections are read together, it appears that section 14.22 governed parental inquiries about special education services and section 14.25 governed parental requests for an evaluation of their child. The Court concludes that section 14.22 was triggered by the conversation between Mrs. K. and Mr. Bundy, not 14.25. Mrs. K. visited Shady Grove and a number of other schools to find a proper placement for Alex. She told Mr. Bundy that Alex had learning disabilities and that he was being tested. She inquired about the school's services, including special education services. She never requested an evaluation of Alex.

Although the plaintiffs did not specifically argue that section 14.22 was violated, the Court has considered that question in view of its decision that the operative section was 14.22 and not 14.25. When Mrs. K. met with Mr. Bundy, she was shown special education classes at the school. The school district's special education brochure was on display in two visible places in and near his office at the time of the meeting. Mr. Bundy informed the K.'s that if they would like the District

to evaluate Alex and consider him for special education, they should put that request in writing.⁵ Under all the circumstances, the Court concludes that the District did not violate section 14.22.

The Third Circuit has also explained the contours of a district's child find obligations. Children who are suspected of having a qualifying disability must be identified and evaluated by the District within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. Ridgewood, 172 F.3d at 253.⁶ In Alex's case, the District never personally observed Alex's behavior. The District's only notice regarding Alex's behavior came from Mrs. K.'s statements to Mr. Bundy during the 1996-1997 school year. The District was not on notice that Alex K. was receiving speech and language services from the Intermediate Unit and no

⁵ The Court defers to the Hearing Officer's finding that Mr. Bundy told Mrs. K. to put a request for an evaluation in writing. There is no contrary non-testimonial extrinsic evidence on the record. See S.H., 336 F.3d at 260. Mrs. K.'s recollection of her meeting with Mr. Bundy was unclear, whereas Mr. Bundy testified unequivocally that he instructed Mrs. K. to request an evaluation in writing. Furthermore, Mrs. K. gave conflicting testimony as to when the meeting occurred. The evidence in the record supports the Hearing Officer's credibility determination.

⁶ In addition, a child is only entitled to compensatory education where a school district knows or should know that a child is receiving an inappropriate IEP or a de minimis educational benefit. M.C. v. Central Regional Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996).

evaluations of Alex were shared with the District. The District was not "on notice" of behavior that is likely to indicate a disability.

The District also satisfied its child find obligations to provide public notice. From 1996-1997, the District published child find notices in local newspapers every year and provided a pamphlet in District buildings explaining the availability of special education services and how to request them. From at least 1997, the District provided this information on its internet site. From at least 1998, the District collaborated with the Montgomery County Intermediate Unit to publish a legal notice on special education services in local newspapers, and this information was sent directly to non-public schools. The Hearing Officer found that the District fulfilled its child find obligations. The Court agrees.

Pennsylvania fulfilled its child find publication duties by requiring that the District provide annual public notification of child identification activities and conduct activities to inform the public of available special education services and how to request those services. 20 U.S.C. § 1412(a)(3); 22 Pa. §§ 14.22, 342.22. The law did not require Districts to conduct targeted outreach. Pennsylvania law later changed to require each school district to adopt and use a public outreach awareness system to locate and identify children thought

to be eligible for special education. 22 Pa. Code § 14.121 (adopted June 8, 2001). However, the District's various publications in newspapers, pamphlets, mailings to private schools, and on the internet satisfied its child find obligations from the 1996-1997 to the 2000-2001 school years.

2. 2001-2002

The District promptly issued a permission to evaluate form on September 14, 2001 after receiving Alex's parents' request for an evaluation on September 10, 2001.⁷ Under the regulations governing timelines, the District was required to complete Alex K.'s evaluation report on April 1, 2002, sixty school days after the District received the signed permission to evaluate form, and was required to complete his IEP on May 1, 2002. 22 Pa. Code § 14.123(b); 34 C.F.R. § 300.343(b)(2). The District completed the IEP on May 14, 2002, nine school days after the IEP completion deadline, and issued a notice of recommended educational placement the same day. Alex K.'s

⁷ There is no non-testimonial extrinsic evidence on the record undermining the Hearing Officer's finding that Mr. K. first sent a written request for an evaluation of Alex on September 10, 2001. Denise Fagan testified that she never received a letter from Alex K.'s parents requesting an evaluation of Alex in February, 2001. Mrs. K.'s September letter did not reference any previous evaluation requests and there was no signed copy of the alleged February letter. The Court accepts the Hearing Officer's finding on this point. See S.H., 336 F.3d at 270.

parents did not approve the recommended placement until June 7, 2002.

The minor delay by the District did not impact Alex's educational program during the 2001-2002 school year. It is highly unlikely that Alex K.'s parents would have withdrawn him from Woodlynde for the last few weeks of the school year. The District's delay was harmless error. The District appropriately evaluated Alex K., developed an IEP, and offered him FAPE, and Alex K. attended public school in the District with an IEP in the 2002-2003 school year.

Because the District did not violate its child find obligations, and because the District appropriately developed an IEP for Alex K. when his parents requested an evaluation in 2001, the Court does not have to decide whether Alex K. was disabled under the IDEA prior to 2002 or whether the statutes of limitations bar his claims. For all of the above reasons, the defendant's motion for summary judgment and motion for disposition on the administrative record are granted, and the plaintiffs' motion for summary judgment is denied.

An appropriate Order follows.

