District of Columbia
Office of the State Superintendent of Education
Student Hearing Office
1150 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 442-5556

OSSE
STUDENT HEARING OFFICE
2010 APR -6 AM 8:43

In Re the Matter of :	)	
	)	
[1]Parent on behalf of Student,	)	
	)	
Petitioner,	)	
	)	**Date of Complaint:** March 5, 2010
v.	)	**Date Decision Issued:** April 5, 2010
	)	
District of Columbia Public Schools, ("DCPS")	)	**Date of Hearing:** March 26, 2010
	)	**Hearing Room:** 6A
	)	
	)	**Student Case Number:**
Respondent.	)	**Student Identification Number:**
	)	
_____	)	**Hearing Officer:** Attorney Ramona M. Justice

HEARING OFFICERS' DECISION ("HOD")

I. BACKGROUND

The student is years of age, and a grade student at a District of Columbia Public Charter School, located in the District of Columbia. The student attended during the 2007/08 school year; during the 2008/09 school year; and during the 2009/10 school year.

Since the 2007/08 school year, the student has exhibited problematic behavior, which has had an adverse impact upon his learning; and others. According to the parent, the student was retained twice due to poor grades.

On *June 30, 2005*, at the age of years, 10 months, and a grade student at DCPS completed a *Psycho-Educational Report*. Tests administered included: Wechsler Intelligence Scale for Children, Wechsler Individual Achievement Test, Beery Developmental Test of Visual Motor Integration, and a Record Review.

[1] Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution.

The evaluator concluded that the student's general cognitive ability, was in the low average range; his verbal comprehension and perceptual reasoning abilities were also within the low average range; and therefore, processing complex visual information by forming spatial images of part-whole relationships and/or manipulating the parts to solve novel problems without using words is evenly-matched with his ability to making sense of complex verbal information and using verbal abilities to solve novel problems.

The evaluator determined that academically, the student appeared to be functioning approximately between the low-kindergarten to upper-first grade range in basic reading, below first grade in comprehension, and the beginning second grade in spelling. In arithmetic, the student's skills in applied problems fall in the beginning second grade range, with his calculation abilities filling in the beginning third grade.

The evaluator indicated that the student demonstrated relatively weak skills in Reading Comprehension; and while his intellectual profile suggests that he is a "slow learner", he was achieving markedly below age/grade expectancy in reading. The evaluator concluded recommending among others, strong consideration given to special education intervention to address the student's deficits in reading comprehension.

On *April 12, 2007*, while a grade student at the student was identified as disabled and determined eligible to receive special education services, as a student with a specific learning disability ("SLD") in reading; and DCPS developed an Individualized Education Program ("IEP") for the student. The IEP recommended 2 hours of inclusion services, 5 hours of pull out services, and 1 hour of psychological services, each week. The student's IEP reflects that the student is bright and energetic however, his impulsivity often interferes with his ability to follow adult direction.

The student's IEP includes the following two (2) goals: Academics: Reading/English Language Arts; and Social/Emotional. The IEP provides that curricular modification, accommodations and/or supplemental aids and services for the student cannot be used for a least restrictive education setting in general education; and the student was removed from the regular education classroom because he requires a small structured environment to accommodate his disabilities. The student was placed in a combination general education and resource classroom setting; and provides that the student's progress will be measured through the use of testing and progress reports. The IEP includes modifications and/or accommodations for testing.

On *February 20, 2008*, while a grade student at an IEP was developed for the student recommending 2 hours of inclusion services, 5 hours of pull out services, and 1 hour of psychological services, weekly.

The student's IEP includes one (1) goal in reading; and no social emotional goal to address his problematic behavior. The IEP provides that curricular modification, accommodations and/or supplemental aids and services for the student cannot be used for a least restrictive education setting in general education; and the student was removed from the regular education classroom because he requires a small structured environment to accommodate his-

disabilities. The IEP provides that the student's progress will be measured through the use of documented observation and progress reports. The IEP includes modifications and/or accommodations for testing.

On March 4, 2008, a MDT meeting convened to conduct an annual review of the student's IEP. The MDT meeting notes reflect that parent advised the team that the student had shown some improvement in reading since he received his reading glasses; she believed he was showing more interest in reading; however desired that he attend Summer school where he would receive special education services. The special education teacher reported that the student was showing steady progress in his reading and language arts skills; however, has difficulty following directions readily. The student's general education teacher reported that the student was making progress, however remains eligible for special education services; is showing growth in his maturity level; and attempts to avoid tantrums and situations where he will become extremely angry.

The Social Worker reported that the student performs well in his sessions with her; makes an effort to behave accordingly; however, his IEP goals would be changed to target behaviors observed by the Social Worker, when he interacts with adults. The team determined that the student remained eligible for special education services, as a student with a learning disability, would receive 5 hours of specialized instruction and 1 hour of psychological counseling; and the student's needs could be met at which parent agreed.

On *December 15, 2008*, while a grade student at an IEP was developed for the student recommending 5 hours per week of specialized instruction, out of the general education setting; *1 hour per week of behavioral support services*. The IEP includes the following two (2) goals: reading; and emotional, social, and behavioral development; and classroom accommodations to address the student's academic needs; and accommodations during testing.

In addressing the least restrictive environment for the student, the IEP provides that the student requires specialized instruction, outside general education, because his weak word attack skills impact the student's overall reading achievement; and the student is recommended for behavioral support services, outside general education because the student is often self-absorbed and fails to consider the feelings of others; and perceives himself as on the same level of adults. The IEP does not include a statement of the manner in which the student's progress will be measured.

On *October 21, 2009*, an *Educational Evaluation* was administered to the student to measure the student's academic achievement. The evaluator concluded that when compared to others at his age level, the student's academic skills, the student's ability to apply those skills, and his fluency with academic tasks are all within the low average range. The evaluator also concluded that when compared to others at his age level, the student's performance is average in math calculation skills and written expression; low average in broad reading, reading comprehension, math reasoning, and written language; and very low in basic reading skills.

On *October 30, 2009*, while a grade student at an IEP was developed for the student recommending 5 hours of specialized instruction; and 1 hour of behavioral support services, outside the general education setting, each week. The IEP includes the following two (2) goals: reading; and emotional, social, and behavioral development; and classroom accommodations to address the student's academic needs; and accommodations during testing.

The student's reading teacher commented that in reading comprehension, the student has improved 7 standard score points over the last year; is showing improved interest in reading when given a choice of text; and when compared to others in his grade level his reading comprehension (ability to comprehend connected discourse while reading) is average. The teacher also commented that the student's basic reading skills, including vocabulary, phonics, and structural analysis, are low compared to others in his grade level; his sight reading ability is also low; and his broad reading skills are at a 4.1 grade level equivalent with a standard score of 87.

The teacher concluded that the student needs to self-correct consistently when reading using phonics, language structure, contextual clues, illustrations and text organizers; and his low level of basic reading skills impedes his academic performance in Reading. In addressing the student's emotional, social, and behavioral development, the teacher indicated that the student continues to require assistance in the area of enhancing his interpersonal skills; and deficits in the areas of interpersonal skills; and impulsivity hinder his success within the learning environment.

In addressing the least restrictive environment for the student, the IEP reflects that the student requires specialized instruction because his weak word attack skills impact his overall reading achievement; and the student is often self-absorbed and fails to consider the feelings of others and perceives himself as on the same level as adults; requiring psychosocial counseling. The IEP also indicates that parent teacher conferences were the supplemental supports and services previously attempted in a general education setting.

On November 6, 2009, while a grade student at an IEP Progress Report was completed for the student. The student's reading teacher commented that the student has been making progress in his reading fluency since the beginning of the school years; however, the specifics of this goal have not been introduced. In addressing the student's emotional, social, and behavioral development goal identifies prospective behavior of the student; however, the Social Worker included no report of the student's progress in the IEP Progress Report.

On January 21, 2010, issued a "Notice of Suspension", which reflects that the student was suspended because of a threatening comment to the teacher. On January 27, 2010 a Student Evaluation Plan ("SEP") was developed for the student. The plan includes concerns regarding the student's severe behavior issues and academic performance. The plan indicates that a MDT convened to discuss the student's academic and behavioral progress; and requested comprehensive evaluations. The plan recommends an Educational Evaluation, and Clinical Psychological Evaluation. On this date, parent signed a consent form authorizing DCPS to reevaluate the student; by conducting a Psycho-educational and Clinical Psychological Evaluation.

A January 27, 2010 incident log prepared by reflects that from September 2, 2009 through January 25, 2010, the student is reported as engaging in 28 incidents of inappropriate conduct, such as: lying, threatening a teacher, talking back/interruption/not doing any work, excessive talking, failure to follow directions, late to class, making inappropriate comments (disrespectful to other students and impulsively talking out), failed to appear for detention, continuous insults of classmates, out of seat, calling across the room, singing in class, very talkative and not focused, refuse to complete class work, missing conduct logs, difficulty keeping hands to himself, walking around class requesting various things, uniform infraction, threatening comments to another student, giving word for word to teacher, advised teacher he discarded conduct logs, and rudeness.

On February 16, 2010, issued to parent notification that the student was disciplined for failure to obey a lawful order of an administrator/teacher; and indicated that before the student can be readmitted back to school/class parent may have to attend a conference scheduled at 11:30 a.m. on February 17, 2010. The bottom of the notice also includes the following hand written notation: "Student will need an escort or be recommended for an expulsion", although there is no indication of the author of this notation.

On March 1, 2010, a progress report issued by reflects the following grades during the 2009/10 school year: first advisory the student was performing very well, Reading Development (B), Math (C), Social Studies (B), English (B), Science (C), Mathematics Lab (A), and Seminar (A); second advisory grades consist of Reading Development (C), Math (B), Social Studies (B), English (B), Science (F), Mathematics Lab (A), and Seminar (A); third advisory grades consist of Reading Development (C), Math (F), Social Studies (F), English (B), Science (F), Mathematics Lab (F), and Seminar (A); and final grades consisting of: Reading Development (C), Math (I), Social Studies (F), English (B), Science (F), Mathematics Lab (I), and Seminar (P). According to the report, the student's absences have had a significant impact on his grades; and the record reflects that the decline in grades occurred during the student's absence from school from January, 2010 through March 1, 2010.

On March 4, 2010, issued parent a formal written notification that the student was being recommended for expulsion due to his actions that are in direct violation of the school's Character Education Policy. More specifically, the notice indicated that the student had accumulated over 1000 points during the 2009/2010 school year, primarily due to his inappropriate classroom behavior that resulted in threatening a teacher, outbursts in class and defying school authority.

The notice provides that as with all expulsion recommendations aggrieved parties have a right to a hearing; and a parent/guardian has 24 hours to request a hearing, by directing said request to the chair of the Board of Trustees; and delivering it to the school, addressed to Head of School. The notice also describes the hearing process, governing student expulsions.

On March 2, 2010, parent prepared a letter, address unknown, indicating that the student's unexcused absences from February 23, 2010 to the date of the letter are due to the fact that the student is not allowed in school unless he is escorted by an adult; there is not an available adult to escort the student to class on a daily basis; and parent recently began new employment.

On March 5, 2010, Petitioner, through her Attorney, filed a due process complaint, alleging that DCPS denied the student a free appropriate public education ("FAPE"), by failing to: (1) conduct and review triennial evaluations, in a timely manner; (2) conduct and review evaluations in all areas of suspected disability; (3) develop an appropriate Individualized Education Program ("IEP")for the student on December 15, 2008; (4) implement the student's December 15, 2008 IEP; and (5) provide the student an appropriate placement during the 2009/2010 school year; in violation of "The Individuals with Disabilities Education Act-("IDEA")"; reauthorized as the "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")."

Procedural Posture

On March 5, 2010, Petitioner, through her Attorney, filed a due process complaint, alleging that DCPS denied the student a free appropriate public education ("FAPE"), by failing to: (1) conduct and review triennial evaluations, in a timely manner; (2) conduct and review evaluations in all areas of suspected disability; (3) develop an appropriate Individualized Education Program ("IEP")for the student on December 15, 2008; (4) implement the student's December 15, 2008 IEP; and (5) provide the student an appropriate placement during the 2009/2010 school year; in violation of "The Individuals with Disabilities Education Act-("IDEA")"; reauthorized as the "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")."

On March 9, 2010, Petitioner filed a motion for expedited hearing and stay put protection, during the pendency of these proceedings. Respondent failed to file a response to the motion within three (3) business days from the date the motion was received, as required by the Standard Operating Procedures, §401; and its response, albeit untimely, reflected that DCPS failed to comply with the procedural safeguards provided students expelled from school, as outlined at 20 U.S.C. §1414 (j).

A prehearing conference was held on March 18, 2010; which also included a discussion of Petitioner's motion for expedited hearing and stay put protection. It was subsequently determined that DCPS received notice of Petitioner's motion, in a timely manner; however, for reasons uncertain, failed to respond in a timely manner.

On March 22, 2010, the Hearing Officer issued a prehearing order and order granting Petitioner's motion for expedited hearing and stay put protection, during the pendency of these proceedings. The Hearing Officer ordered DCPS to ensure that a manifestation determination meeting was held in accordance with 20 U.S.C. §1415 (k) (1) (E) (i); an IEP tem convened to identify and issue parent a Prior Notice of Placement, to an interim alternative educational setting where the student's IEP could be implemented and the student can receive educational benefit, during the pendency of these proceedings.

The due process hearing was held on March 26, 2010, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. This due process hearing was invoked in accordance with the rights established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25. Pursuant to the request of the Hearing Officer, written closing argument were submitted by the parties on March 31, 2010.

II. ISSUES

The following issues were identified in the March 5, 2010, due process complaint?

(1) [2]Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to timely conduct and review triennial evaluations, in a timely manner?

(2) [3]Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to conduct and review evaluations in all areas of suspected disability (i.e. Clinical Psychological and Functional Behavioral Assessment)?

(3) [4]Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to develop an appropriate Individualized Education Program ("IEP") for the student on December 15, 2008?

(4) Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to implement the student's December 15, 2008 IEP?

(5) Whether D.C. Public Schools denied the student a free appropriate public education ("FAPE"), by failing to provide the student an appropriate placement during the 2009/2010 school year?

---

[2] Prior to proceeding with a hearing on the merits of the issues in the complaint, DCPS stipulated that it failed to conduct and review triennial evaluations, in a timely manner, and upon receipt of the independent evaluations, an IEP team meeting would be convened to review evaluations, update the student's IEP, as appropriate, and discuss compensatory educations services.

[3] Prior to proceeding with a hearing on the merits of the issues in the complaint, DCPS stipulated that it failed to conduct and review evaluations in all areas of suspected disability; and upon receipt of the independent evaluations, an IEP team meeting would be convened to review evaluations, update the student's IEP, as appropriate, and discuss compensatory educations services.

[4] Prior to proceeding with a hearing on the merits of the issues in the complaint, DCPS stipulated that it failed to develop an appropriate IEP for the student on December 15, 2008; and upon receipt of the independent evaluations, an IEP team meeting would be convened to review evaluations, update the student's IEP, as appropriate, and discuss compensatory educations services.

III. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties; and whether there were any objections to the disclosures. After considering objections by the parties, the following disclosures were admitted into the record as evidence:

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE, ON BEHALF OF PETITIONER

- Petitioner's Exhibits 1 through Petitioner's Exhibits 12; and witness list dated March 23, 2010.

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE, ON BEHALF OF RESPONDENT

- [5]Respondent's Exhibits 01 through Respondent's Exhibits 7; and a witness list dated March 23, 2010.

DISCLOSURES REQUESTED BY THE HEARING OFFICER AND ADMITTED INTO THE RECORD AS EVIDENCE

- Hearing Officers' Exhibit 01identified as the student's 2009/2010 Report Card from as of March 1 2010.

IV. FINDINGS OF FACT

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

1. On June 30, 1995 DCPS completed a Psycho-Educational Report; on October 21, 2009 completed an Educational Evaluation. There is no evidence that the parent and DCPS agreed that a reevaluation was unnecessary; therefore, DCPS was required to reevaluate the student at least once every 3 years. DCPS failed to reevaluate the student by June 30, 1998; at least once every 3 years.

2. The student began exhibiting problematic behavior adversely impacting his learning, as early as the 3rd grade. The student was twice retained; is currently in the grade; and below grade level. The student's behavior has become progressively worse, resulting in the recent disciplinary action, and recommended expulsion from

[5] The Hearing Officer requested a copy of the student's February 20, 2008 IEP, which was referenced by Respondent in its response to the complaint. The Hearing Officer overruled Petitioner's objection to admitting the IEP into the record, finding that the student's February 20, 2008 IEP would not unduly prejudice Petitioner; and is admitted into the record as evidence, because of its probative value in determining whether Respondent failed to develop an appropriate IEP for the student on December 15, 2008. The student's February 20, 2008 IEP is admitted into the record and identified as Respondent's Exhibit 7.

3. The student's April 12, 2007 IEP includes one goal in reading/English language arts; and a social emotional goal; and although it includes modifications and accommodations for testing, the IEP fail to include classroom accommodations to address the student's academic needs; or positive behavioral interventions and supports, to address the students' social/emotional needs in the classroom.

   The February 20, 2008 IEP includes a goal in reading and does not include a goal to address the student's social/emotional needs. The IEP includes modifications and/or accommodations for testing; however, fail to include classroom accommodations to address the student's academic needs; or positive behavioral interventions and supports to address the students' social/emotional needs in the classroom.

   The December 15, 2008 IEP includes one goal in reading; and an emotional, social, and behavioral development goal. The IEP also includes accommodations during testing, and classroom accommodations to address the student's academic needs, however, fail to include positive behavioral interventions and supports to address the student's social/emotional needs in the classroom.

   The October 30, 2009 IEP includes the following two (2) goals: reading; and emotional, social, and behavioral development. The IEP also includes accommodations during testing, and classroom accommodations to address the student's academic needs, however, fail to include positive behavioral interventions and supports to address the student's social/emotional needs in the classroom.

4. DCPS failed to evaluate the student in all areas of suspected disability; or any assessments to address the student's social/emotional needs (i.e. a Functional Behavioral Assessment). DCPS also failed to ensure that the evaluations completed were sufficiently comprehensive to address all of the student's special education and related services needs (i.e. Clinical Psychological Evaluation).

5. DCPS failed to comply with the procedural requirements of the IDEA, in developing, reviewing and revising the student's IEPs. DCPS reviewed the student's IEP annually, however, failed to develop an appropriate IEP for the student between April 12, 2007 and December 15, 2008; by failing to ***review*** the student's IEP to determine whether the annual goals for the child are being achieved; and ***revise*** the IEP, as appropriate, to address the student's lack of expected progress toward meeting the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; *the results of any reevaluation conducted under §300.303*; information about the child provided to, or by, the parents, as intended and required by the IDEA.

   First, DCPS convened an IEP team meeting on February 20, 2008; and developed an IEP for the student, however, the goals and objectives in the February 20, 2008 IEP are identical to those in the April 12, 2007 IEP; the IEP team fail to recommend reevaluation of the student; or notify parent of reasons that additional data was not necessary to assess the student's progress towards meeting his goals, or determine his needs.

Second, the December 15, 2008 IEP failed to include a statement of the student's present levels of academic achievement and functional performance; a description of the manner in which the student's progress toward meeting the annual goals will be measured; an intervention behavioral plan; and in the case of a student whose behavior impedes his learning or that of others, such as in this instance, a statement of positive behavioral interventions to address the student's problematic behavior.

Third, the *April 12, 2007* and *February 20, 2008 IEPs*, recommend 2 hours of inclusion services, 5 hours of pull out services, and 1 hour of psychological services, weekly; however, the December 15, 2008 IEP recommends 5 hours of specialized instruction; and 1 hour of psychological services, weekly. The *December 15, 2008* IEP, reduces the student's specialized instruction services by eliminating the 2 hours of inclusion services included in the student's April 12, 2007 and February 20, 2008 IEPs.

DCPS initiated a change in the student's educational program, without reevaluating the student; and was rendered without the benefit of comprehensive evaluations, reliable data or information supporting the reduction in services. DCPS also failed to provide parent notice of this change in services and the reasons thereof, prior to initiating the change.

Fourth, the student was retained during the 2008/09 school year due to poor grades, compounded by his problematic behavior; however, on December 15, 2008, DCPS failed to recommend a Functional Behavioral Assessment, or develop an Intervention Behavioral Plan; or revise the student's IEP to address his lack of progress; social emotional needs; and the impact that his disability and behavior continued to have on his learning.

Fifth, the April 12, 2007, February 20, 2008, December 15, 2008 and October 30, 2009 IEPs are inappropriate because they were developed without the benefit of comprehensive evaluations, in all areas of suspected disability. Therefore, the student was deprived of an IEP specifically tailored to address his unique academic, developmental, and functional needs.

Based on the student's academic and behavioral history, it is evident that the student requires the use of positive behavioral interventions and supports in the classrooms; and an increase in behavioral support services. In addition, failure to adequately and effectively address the students' social emotional needs in his IEPs, has resulted in academic and behavioral regression; and an IEP that is not reasonably calculated to provide the student access to the general educational curriculum; or educational benefit. However, absent comprehensive evaluations, and an appropriate IEP; any determination regarding the appropriateness of the amount of specialized instruction and related services the student requires and failed to receive, is premature.

6. Petitioner failed to satisfy its burden of proof, by presenting evidence that DCPS failed to implement the student's April 12, 2007, February 20, 2008, December 15, 2008, or October 30, 2009 IEPs, during the 2008/2009 and 2009/2010 school years.

   The parent testified that near the end of the 2008/09 school year, during a conversation with the student's social science/science teacher advised parent that she understood that the student had a learning disability in mathematics, as opposed to reading; and as a result, it would follow that failed to implement the student's December 15, 2008 IEP. However, whether the statement was made or not is irrelevant, in determining whether the school implemented the student's IEP; unless it is demonstrated that that teacher that reportedly made the statement was directly involved in providing the student the specialized instruction services in reading, as recommended in his IEP; which has not been proven in this instance.

   Additionally, the parent testified that the student attended a reading class at which the student confirmed through testimony; and that she had no knowledge of whether the student received the services recommended in his IEPs at or and provided no follow-up with the teachers or schools to determine whether the student received the specialized instruction in reading; or related services as recommended in the student's IEP.

   The student testified that he received some assistance in class from his teachers; and the student testified that he was scheduled to receive counseling services every Wednesday, however, he failed to meet regularly with the counselor because of the counselor's sickness or attending a meeting. The student also testified that he received one on one tutoring in reading, math, and occasionally in science, in school and after school.

   The student testified that he received specialized instruction at if there was a special project, play, and he received assistance in reading, in a separate class. The student testified that he received specialized instruction via visits in his general education class; received one on one specialized instruction during tests; and received some services during the first and second weeks of January, 2010, prior to his suspension. The student testified that since the second week of January, 2010, he has been at home; and completes school work from his text books at home.

   Finally, there is no evidence that the student failed to receive the specialized instruction, behavioral support services, or accommodations recommended in his April 12, 2007 and December 15, 2008 IEPs. Absent any substantive evidence that failed to implement the student's IEPs, any such representation by Petitioner, is purely speculative.

7. The record reflects that on January 21, 2010, issued to parent a "Notice of Suspension", which provides that the student was suspended because of a threatening comment to the teacher; however, the period of suspension is not indicated. The record also reflects that the parent failed to contact the school to inquire regarding the suspension; and instead opted to have the student remain at home and not attend school.

   Although parent represents that the student failed to receive specialized instruction or related services since his suspension on January 21, 2010; the record reflects that on January 27, 2010, developed a Student Evaluation Plan ("SEP"), for the student, to address his problematic behavior. This is evidence that as of January 27, 2010, the student remained a student at and the school continued to initiate measures to address his problematic behavior, to ensure he received access to the general education curriculum; and educational benefit.

   The record also reflects that on *February 16, 2010*, issued to parent notification that the student was disciplined for failure to obey a lawful order of an administrator/teacher; and indicated that *before the student can be readmitted back to school/class parent* ***may have to attend a scheduled conference at 11:30 a.m. on February 17, 2010***. Clearly, in order for the student to be the subject of discipline, he had to attend school. This is evidence that as of February 16, 2010, the student was attending and the school did not propose suspension of the student until February 16, 2010; which is contrary to representations by parent that the student was suspended on January 21, 2010; and since that time, failed to receive specialized instruction and related services.

   Additionally, the bottom of the notice includes the following hand written notation: "Student will need an escort ***or*** be recommended for an expulsion"; although the author of the notation is unknown. Assuming arguendo the school included the handwritten notation on the notice to parent, the notice clearly provides that: (1) *before the student can be readmitted back to school/class the parent may have to attend a conference scheduled for February 17, 2010*; (2) *the student requires an escort at the conference*; and (3) *failure to attend the conference will result in the student's* ***recommended*** *expulsion.*

   According to parent's testimony, she interpreted the handwritten notation on the February 16, 2010 notice of disciplinary action, to indicate that the student could not return to to receive special education and related services, unless she accompanied the student to all classes, daily. Parent also testified that at the time of the suspension, she began new employment, and therefore, could not obtain an absence from her employment to accompany the student to all of his classes, each day; and as a result, she decided that the student would remain at his residence and not return to school.

The evidence reflects that the parent misinterpreted the handwritten notation on the February 16, 2010 notice of disciplinary action; failed to contact to clarify its meaning and intent. In addition, parent failed to attend the February 17, 2010 meeting to discuss the February 16, 2010 disciplinary notice; and failed to contact the school to inquire regarding the disciplinary notice.

As a result of parent's failure to respond to the February 16, 2010 notice is disciplinary action; attend the February 17, 2010 conference to discuss the notice of disciplinary action; or request an alternate date and time to convene a conference, if the date and time proposed was not convenient; as indicated in the February 16, 2010 disciplinary notice, proceeded with recommending the student for expulsion from school.

8. On March 4, 2010, the Director of Student Services at issued to parent a formal written notification that the student was being ***recommended*** for expulsion due to his actions that were in direct violation of the school's Character Education Policy. More specifically, the notice indicated that the student had accumulated over 1000 points during the 2009/2010 school year, primarily due to his inappropriate classroom behavior that resulted in threatening a teacher, outbursts in class and defying school authority.

   The notice provides that as with all expulsion recommendations ***aggrieved parties have a right to a hearing; and a parent/guardian has 24 hours to request a hearing, by directing said request to the chair of the Board of Trustees; and delivering it to the school, addressed to Head of School***. The notice also describes the hearing process, governing student expulsions.

   After receiving the March 4, 2010 notice ***recommending*** the student for expulsion from parent failed to request a hearing at the school, to address the recommended expulsion, as provided in the notice. According to the testimony of the student remained a student at the school, until the Hearing Officer ordered a manifestation determination meeting; and placement of the student at an interim alternative placement.

   A *recommended* expulsion from school represents a proposal, and does not represent a final decision regarding expulsion of the student from school. As a procedural safeguard, parent was provided the opportunity to request a hearing to dispute the recommended expulsion of the student from school. Parent failed to request a hearing at to dispute the student's recommended expulsion from school, as provided in the March 4, 2010 notice.

   The record reflects that as of the date of hearing, rendered no final decision regarding the student's *recommended* expulsion from school; and testified that the student remained a student at the school, until the Hearing Officer ordered a manifestation determination and an interim alternate placement for the student.

Therefore, the student was not expelled from school on January 21, 2010 as represented by parent; and DCPS was not obligated to identify an alternate interim placement for the student because the student remains a student at

Finally, the student failed to receive special education and related services from January 21, 2010 to the present because parent failed to exercise her right to attend a meeting to discuss the students' suspension; failed to request a hearing to address the student's recommended expulsion from and unilaterally decided that the student would remain at home, and not return to

The student's failure to receive the specialized instruction and related services from January 21, 2010 to the present is based solely upon parent's decision to disregard of the notice of suspension and invitation for a meeting to discuss the suspension; and disregard of the written notification of recommended expulsion, right to request a hearing. Furthermore, the parent unilaterally decided that the student would remain at home, and not return to and failed to pursue the measures necessary to ensure that the student received the special education and related services as recommended in his IEP.

9. Petitioner presented evidence that the IEP's developed for the student between April 12, 2007 and December 15, 2008 are inappropriate; and the student requires comprehensive evaluations in all areas of suspected disability, including among others, a Functional Behavioral Assessment. Petitioner also presented evidence that the student requires positive behavioral interventions and supports in his IEP, to address his social/emotional needs.

   Petitioner failed to satisfy its burden by presenting evidence that the student's placement at during the 2008/09 school year; or during the 2009/10 school year, was inappropriate. There is no evidence that or was unable to meet the student's academic, functional, or developmental needs; or the student was denied access to the general curriculum, or unable to receive educational benefit while attending the schools.

   The Special Education Coordinator (SEC) at testified that the school implemented the student's IEP, and was able to meet his needs. The SEC also testified that the school offered the student everything available to assist him academically, including tutoring Monday through Friday, by special education teachers; and offered to assist him with homework during literacy time; however, the student refused to participate. Petitioner also presented no evidence regarding the student's academic performance at except that the student was retained while attending

   Although argued, Petitioner presented no evidence that the administration at advised Petitioner that the student would be better off elsewhere for the 2009/10 school year; which served as the basis for her decision to unilaterally remove the student from and place the student at I Furthermore, if an

administrator made this statement to parent, there is no evidence that the student was expelled and precluded from returning to the 2009/10 school year; necessitating parent to identify and place the student at It is evident that parent unilaterally decided to remove the student from and transfer the student at

According to the testimony of the SEC at neither she nor a member of her team advised parent that the student could not return to school during the 2009/2010 school year; or was unable to meet the student's needs. The SEC testified that she understands that the Vice Principal may have telephoned the parent and advised her that it may be best that she consider the student attending another school to protect the student from teasing from other students; however, the student was not refused attendance at the school and it was parent's decision to transfer the student to another school.

The only evidence presented regarding the student's academic performance at is a report card for the 2009/2010 school year, which reflects that the student had behavioral difficulties impacting his learning; otherwise he was progressing academically, until removed from school by the parent in January, 2010.

Finally, on March 19, 2010, and March 25, 2010, DCPS issued a Prior Notice of Placement to parent, authorizing the student's transfer from to his neighborhood school, however, as of the date of hearing, Petitioner failed to enroll the student at

10. According to the IDEA, the child's placement is ***based on the child's IEP.*** Absent comprehensive evaluations and development of an appropriate IEP, any decision regarding the appropriateness of the student's placement at is premature; and the appropriateness of the student's placement at is a "moot" issue, because the student no longer attends and therefore, is not a claim upon which relief can be granted.

11. In developing, reviewing, and revising the student's IEPs, DCPS violated the procedural requirements of the IDEA. Specifically, since the 2007/08 school year, DCPS failed to comprehensively evaluate the student in all areas of suspected disability, conduct and review triennial evaluations, or develop an appropriate IEP for the student that sufficiently addresses his social/emotional needs. The violations occurred over such an extended period of time; and therefore, are to such an extent that they are serious; detrimentally impacting upon the child's right to a free and appropriate public education (FAPE).

V. CONCLUSIONS OF LAW

1. In developing, reviewing, and revising the student's IEPs between April 12, 2007 and December 15, 2008, DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324(a)(1) which provides that the IEP team must consider: 1) the strengths of the child; 2) concerns of the parents for enhancing the student's education; 3) results of the initial or most recent evaluation of the student; and (4) academic, developmental, and functional needs of the child.

   DCPS also failed to comply with subparagraph (a)(2)(i) of this provision which provides that in the case of a child whose behavior impedes the child's learning, as in this matter, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; which failed to occur in this instance. *See, IDEA, 34 C.F.R. §300.324.* DCPS failed to develop an appropriate IEP for the student between April 12, 2007 and December 15, 2008.

2. In reviewing and revising the student's IEP, DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324 (b), which provides that each public agency must ensure that the IEP team ***review*** the student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revised, as appropriate, to address any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; the results of any reevaluation conducted under §300.303; information about the child provided to, or by, the parents, as described under §300.305(a)(2); and the child's anticipated needs; or other matters.

3. DCPS failed to reevaluate the student annually, and at least once every three (3) years, in violation of the IDEA, 34 C.F.R. §300.303 (b) (1) and (2) which provides that a reevaluation conducted under paragraph (a) of this section may occur not more than once a year, unless the parent and the public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

   DCPS also failed to comply with the procedural requirements of the IDEA, 34 C.F.R. § 300.503(c) which provides in part that as part of any reevaluation of a student, the IEP team and other qualified professionals must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section; and if it is determined that no additional data are needed to determine the student's educational needs, the local education agency must *notify the parent of that determination and the reasons for the determination; and the right to request an assessment to determine the student's educational needs*; which failed to occur in this matter.

4. DCPS failed to assess the student in all areas related to the suspected disability; and failed to ensure that in conducting the initial evaluations, the evaluations were sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified, in violation of IDEA, 34 C.F.R. §300.304 (c) (4) and (6).

5. According to the IDEA, 34 C.F.R. §300.305, as part of an initial and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom based observations and observations by teachers and related service providers; which failed to occur in this matter.

   IDEA also provides that on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine, among others, whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum, which also failed to occur at the annual IEP team meetings.

6. DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. Section 300.503(a) (1) and (b), which provides that whenever the public agency *proposes to initiate or change*, or refuses to initiate or change the identification, evaluation, or educational placement of the child *or the provision of FAPE to the child (i.e. reduction in specialized instruction services)*; *written notice* that meets the requirements of paragraph (b) of this section must be given by the public agency to the parents of a child with a disability within a reasonable time before the proposed action.

7. Petitioner failed to satisfy its burden of proof by presenting evidence sufficient for a finding that DCPS failed to implement the student's April 12, 2007, February 20, 2008, or October 30, 2009 IEPs; in violation of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", 34 C.F.R. §300.323 (c) (2).

8. Petitioner failed to satisfy its burden of proof by presenting evidence sufficient for a finding that DCPS failed to provide the student an appropriate placement at Hardy MS, during the 2008/09 school year; and during the 2009/10 school year; in violation of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", 34 C.F.R. §300.116.

9. The student was denied a free appropriate public education because the procedural violations in this matter, are to such an extent that the violations are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE).

In addition, the IEPs developed since April 12, 2007, are not reasonably calculated to enable the student to receive educational benefit because they failed to effectively address the student's social emotional needs; and were developed without the benefit of comprehensive evaluations in all areas of suspected disability. As a result the student was deprived an individualized education program specifically designed to address his unique academic, developmental, and functional needs, resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

10. The procedural violations in this matter occurred over such an extended period of time, that they impeded the student's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the student; and caused the student a deprivation of educational benefit.

VI. ORDER

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

1. **ORDERED**, that within ten (10) school days from the date of this decision, Petitioner shall convene a meeting with and DCPS to discuss and determine the student's enrollment status at the school; and an interim alternative placement, if appropriate; and it is further

2. **ORDERED**, that DCPS shall fund independent comprehensive psychological evaluation, to include among others a "rule out" of Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder; a Functional Behavioral Assessment; and Educational Evaluation; and it is further

3. **ORDERED**, that within ten (10) school days of receipt of the final independent evaluation, DCPS shall convene an IEP team meeting, to include however, not limited to a placement specialist, to:

   i. Review all evaluations;
   ii. Review and revise the student's IEP, consistent with the findings and recommendations in the evaluations, and the IDEA, 34 C.F.R. §300.324;
   iii. Discuss and determine an appropriate placement, in accordance with IDEA, 34 C.F.R. §300.116; and
   iv. After review of the evaluations and development of an appropriate IEP for the student, discuss any compensatory education services the student may be entitled, due to any special education and related services the student may have been entitled, however, failed to receive from April 12, 2007 through March 5, 2010, the date of the complaint.

4. **ORDERED**, that DCPS shall schedule all meetings through the parent's counsel, Attorney Zachary Nahass, in writing, via facsimile at (202) 742-2098; and it is further

5. **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at Paul PCS, and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further
6. **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further

7. **ORDERED**, that this decision and order are effective immediately.

VII. NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: *April 5, 2010*

Attorney Ramona M. Justice
Hearing Officer