

**District of Columbia
Office of the State Superintendent of Education**

Office of Dispute Resolution
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OSSE
Office of Dispute Resolution
August 19, 2014

<p>STUDENT¹, By and through PARENT,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>DISTRICT OF COLUMBIA PUBLIC SCHOOLS,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Impartial Hearing Officer: Charles M. Carron</p> <p>Date Issued:</p> <p>August 19, 2014</p>
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HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND

This is a Due Process Complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed June 24, 2014, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student’s Parent, against Respondent, District of Columbia Public Schools (“DCPS”).

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

On June 25, 2014 the undersigned was appointed as the Impartial Hearing Officer.

On June 25, 2014 Respondent filed its Response, stating, *inter alia*, that Respondent has not denied the Student a free appropriate public education (“FAPE”).

A Resolution Meeting was held on July 11, 2014 but it failed to resolve the DPC. The statutory 30-day resolution period ended on July 24, 2014.

The 45-day timeline for this Hearing Officer Determination (“HOD”) started to run on July 25, 2014 and will conclude on September 7, 2014.

The undersigned held a Prehearing Conference (“PHC”) by telephone on July 16, 2014, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by August 5, 2014 and that the Due Process Hearing (“DPH”) would be held on August 12 and 18, 2014. The undersigned issued a Prehearing Conference Summary and Order (“PHO”) on July 16, 2014.

On July 23, 2014, Respondent filed a motion to limit Petitioner’s requested relief.

On July 24, 2014, the parties agreed to change the second day of the DPH from August 18, 2014 to August 14, 2014.

On July 28, 2014, Petitioner filed an opposition to Petitioner’s motion to limit relief. On August 4, 2014, the undersigned denied the motion for the reasons explained in the Order issued that date.

At the DPH, the following documentary exhibits were admitted into evidence without objection: Petitioner's Exhibits P-1 through P-31 and Respondent's Exhibits R-1 through R-17.²

The following witnesses testified on behalf of Petitioner at the DPH:

- (a) Petitioner³;
- (b) the Student⁴;
- (c) the Student's Brother;
- (d) Psychologist, who was admitted, without objection, as an expert in clinical psychology;
- (e) General Education Teacher, who testified by telephone over Respondent's objection that she should not be permitted to testify because she did not have access to Petitioner's and Respondent's disclosures as required by the PHO;
- (f) Educational Advocate, who testified as a fact witness;
- (g) Compensatory Education Expert, who was admitted, over Respondent's objection, as an expert in the development and implementation of compensatory education plans for children who have been denied FAPE; and

² Respondent's five-day disclosure cover letter forwarding proposed exhibits stated that Respondent did not wish these documents to be in evidence unless and until Respondent sought their admission. However, Paragraph 27 of the PHO stated that unless a party objected to the opposing party's proposed exhibits within two business days of their disclosure, the exhibits "will be considered admitted by consent of the parties." Consistent with that provision of the PHO, the undersigned considered Respondent's proposed exhibits to be admitted. Respondent's counsel took exception to this ruling.

³ Much of Petitioner's testimony related to events years prior to the June 9, 2014 meeting that is at issue in the instant case. Only her testimony relevant to the instant case is summarized in this HOD.

⁴ The Student's testimony was not probative of any disputed facts in the case; accordingly, her testimony has not been summarized in this HOD.

(h) School Psychologist #3, who was admitted over Respondent’s objection as an expert in school psychology as it relates to eligibility and behavioral interventions.

The following witnesses testified on behalf of Respondent at the DPH:

(a) School Psychologist #2, Public School (“School Psychologist #2”), who was admitted over Petitioner’s objection as an expert in appropriate behavioral interventions and strategies for dealing with students with behavioral issues;

(b) Social Worker #1, Public School (“Social Worker #1”)⁵; and

(c) Special Education Coordinator/Local Educational Agency Representative (“LEA Rep.”).

The parties gave oral closing arguments and did not file written closing arguments or briefs.

II. JURISDICTION

The DPH was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA’s implementing regulations, 34 C.F.R. §300.511, and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§5-E3029 and E3030. This decision constitutes the HOD pursuant to 20 U.S.C. § 1415(f), 34 C.F.R. §300.513, and §1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures*.

⁵ Social Worker #1’s title and responsibilities changed after the events at issue in the instant case.

III. CIRCUMSTANCES GIVING RISE TO THE COMPLAINT

The circumstances giving rise to the DPC are as follows:

The Student is female, Current Age. During School Year (“SY”) 2013-2014, the Student attended Grade X at Public School. After SY 2013-2014, the Student enrolled in Charter School for summer school and for SY 2014-2015. Respondent is the Local Educational Agency (“LEA”) responsible for special education of children attending Public School and Charter School.

Petitioner asserts that the Student should have been determined to be eligible for special education and related services as a child with a disability under the IDEA as set forth in more detail in Section IV *infra*.

IV. ISSUE

As confirmed in the PHO, the following issue was presented for determination at the DPH: “Did Respondent deny the Student a FAPE on June 9, 2014,⁶ by determining the Student to be ineligible for special education, and failing to develop an Individualized Education Program (‘IEP’) for the Student?”

⁶ The DPC stated that this eligibility meeting occurred on June 10, 2014. At the PHC counsel continued to refer to that date. From the documents introduced into evidence and the testimony of the witnesses, it appears that the meeting occurred on June 9, 2014.

V. RELIEF REQUESTED

Petitioner requests the following relief:⁷

- (a) a finding in Petitioner's favor on the issue, *i.e.*, that the Student is eligible for special education under IDEA;
 - (b) that the Hearing Officer develop an IEP for the Student or order Respondent to do so;
 - (c) compensatory education;
 - (d) an order that all meetings be scheduled through Petitioner's counsel;
- and
- (e) such other relief as deemed appropriate.

VI. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the

⁷ In the DPC, Petitioner also requested the following relief that the undersigned determined to be inappropriate: (a) a request for attorney's fees and costs, which only a court can award; (b) a request for a finding that the parent is the prevailing party, which only a court can find; (c) an Order that Respondent file a Response within 10 calendar days of the filing of the DPC and an Order that if Respondent failed to file a timely Response, the arguments and facts averred by the Parent be deemed true and accurate and act as a waiver, on the part of Respondent, of the desire to have a Resolution Session Meeting and that the timeline of the DPH be accelerated accordingly, which is moot because Respondent filed a timely Response; and (d) an Order that Respondent, within 15 calendar days of receiving the DPC, file any Notice of Insufficiency and an Order that if Respondent fails to file a Notice of Insufficiency within 15 calendar days of receiving the DPC, that this constitute a waiver on the part of Respondent to make such an argument subsequently, which is moot because Respondent did not file a Notice of Insufficiency.

Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

VII. CREDIBILITY

Petitioner was not credible. She testified repeatedly that she never was offered Student Support Team (“SST”) interventions.⁸ This testimony was contradicted by the testimony of School Psychologist #2, Social Worker #1, and [Petitioner’s] Educational Advocate. School Psychologist #2 credibly testified that at a meeting with Petitioner on October 15, 2013, she recommended that they consult with the SST to develop interventions and that the Student receive counseling services from a Department of Mental Health counseling specialist who was located at Public School; however, Petitioner declined, stating that she would follow the advice of her attorney (who was present at the meeting). School Psychologist #2 credibly testified that the offer of SST intervention was repeated after the October 15, 2013 meeting, but Petitioner indicated that Petitioner did not want to take part in that process. Social Worker #1 credibly testified that Petitioner refused SST intervention in May and June 2014. Educational Advocate’s notes of a meeting on June 9, 2014 (P-20) documented a discussion of the offer(s) and rejection (“SST Team attempted to develop a Response to Intervention Plan, Parent refused”). Educational Advocate also testified to this discussion. Surely if Petitioner never had been offered or rejected SST interventions, she or Educational Advocate would have spoken up at that meeting to deny it. To the contrary, the testimony of the other witnesses and Educational Advocate’s notes indicate that there was no such

⁸ Petitioner testified that she knows what the SST is.

denial. Petitioner's repeated testimony that she never was offered SST intervention appears to be a deliberate attempt to mislead the undersigned.⁹ Similarly, after General Education Teacher had testified that she began math instruction at 9:05 a.m. each day, Petitioner testified that math was not the first subject of the day; rather, "warm-ups" were the first subject, in an attempt to convince the undersigned that the Student did not miss math class by being less than an hour tardy. However, documentation of an observation (*see*, Finding of Fact 110 n.19, *infra*) established that the "warm-ups" began at 9:00 a.m. and ended at 9:05 a.m., undercutting Petitioner's credibility.

Psychologist, although apparently honest, did not have a substantial clinical basis for his diagnoses of the Student, and was unaware of the current diagnostic requirements for Specific Learning Disability ("SLD"), as discussed in detail in Section VIII *infra*.

School Psychologist #3, who testified as an expert witness for Petitioner, was entirely credible. However, because his practice has been limited to other jurisdictions, he acknowledged his lack of knowledge of District of Columbia regulations specifying the level of statistical significance required to find an SLD based upon a disparity between a child's intelligence and academic functioning; accordingly, his concurrence with Psychologist's finding that the Student has SLD is based upon a faulty premise.

The remaining witnesses were credible.

⁹ School Psychologist #2 credibly testified that Petitioner's attorney was present at the October 15, 2013 meeting. Accordingly, Petitioner's attorney was aware of the offer and refusal of SST intervention. Petitioner's attorney called Petitioner as a rebuttal witness in the instant case and asked her to repeat her testimony that she never refused SST services. School Psychologist #2 did not state whether the attorney who accompanied Petitioner at the October 15, 2013 meeting is the same attorney who represents Petitioner in the instant matter. If so, calling Petitioner to repeat under oath testimony known to be false would be a serious ethical violation, subornation of perjury.

VIII. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a female of Current Age. R-12-1.¹⁰
2. The Student resides in the District of Columbia. *Id.*

June 3, 2013 Psychological Evaluation

3. On June 3, 2013, School Psychologist #1 conducted a psychological evaluation of the Student, issuing a report dated June 12, 2013. P-17-1.

4. The Student was reported to have mild asthma. P-17-2.

5. School Psychologist #1 could not reach Petitioner to perform an interview and gather relevant background information because the three numbers provided for her were not operational. *Id.*

6. The report stated that, at a meeting in April 2013, Petitioner had stated that she did not feel the Student's behavior matched that of a student with ADHD [Attention Deficit Hyperactivity Disorder] and stated "that she did not intend to obtain a formal diagnosis of ADHD from her pediatrician or other provider." *Id.*

7. The Student's teacher informed School Psychologist #1 that the Student tended to have difficult interactions with peers, was often disrespectful to peers and staff, talked back, found it difficult to complete tasks, was performing below grade level, failed to

¹⁰ When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

follow necessary steps in math, had difficulty comprehending what she was reading, and failed to use punctuation correctly. P-17-2 and -3.

8. School Psychologist #1 observed the Student in the classroom. The Student initially was engaged in the assignment, but began to talk and play with peers, was redirected by the teacher, became agitated and talked back to the teacher under her breath when she was corrected, pouted, and made no further attempts to complete her work. P-17-3.

9. After testing the Student on the Reynolds Intellectual Assessment Scales (“RIAS”), School Psychologist #1 found the Student to have a Composite Intelligence Index (“CIX”) score of 87, which is in the below average range, and a Composite Memory Index (“CMX”) of 108, which is in the average range. P-17-4.

10. Such a discrepancy between CIX and CMX exists in about 16 percent of the general population. P-17-5.

11. Similarly, the difference in scores the Student obtained on the CMX subtests exists in about 32 percent of the general population. P-17-4.

12. Neither of these discrepancies is indicative of a psychopathological condition. P-17-4 and -5.

13. The Student’s scores were significantly discrepant on the subtests of verbal and non-verbal memory domains—a difference that exists in less than four percent of the general population. P-17-5.

14. School Psychologist #1 noted that the Student functions “at a significantly higher level when asked to recall or engage in working memory tasks that are easily

adapted to verbal linguistic strategies, as opposed to tasks relying upon visual-spatial cues and other nonverbal memory features.” *Id.*

15. The Student’s academic skills as measured by the Woodcock-Johnson III Tests of Achievement (“WJ III ACH”) fell in the Average range on Oral Language, Brief Writing, Written Expression and Academic App[lication]s; the Low range on Math Calc[ulation] Skills and Academic Fluency; and the Low Average range on all other subjects. P-17-6 and -7.

16. School Psychologist #1 concluded that the Student’s oral language skills were average, her overall level of academic achievement was low average, her ability to apply academic skills was in the average range, her academic skills were in the low average range, and her fluency with academic skills was in the low range. P-17-7.

17. School Psychologist #1 noted that the Student likely would have increased difficulties in mathematics and instruction above her then-current grade. *Id.*

18. School Psychologist #1 concluded that the Student did not have an SLD because she was performing no more than one grade level below her then-current grade and appeared to be capable of performing at a higher level if she put forth more effort. P-17-8.

19. The Student’s behavioral problems were attributed to social maladjustment rather than Emotional Disturbance (“ED”). *Id.*

June 13, 2013 Functional Behavior Assessment

20. Social Worker #2 issued a report styled “Functional Behavior Assessment,” dated June 13, 2013 (P-18-1) and signed June 21, 2013 (P-18-8).

21. The report identified the Student's behavior that interfered with learning as being disrespectful to her teacher and participating in frequent arguments with peers, occurring at any time of the day, daily, and lasting for five to 10 minutes. P-18-1.

22. The report was based upon an interview of the Student's teacher, clinical observations, a "problem pathway analysis," and a review of school disciplinary records. P-18-7.

23. Because the Student had only received one disciplinary referral during SY 2012-2013, Social Worker #2 concluded that the Student's behavior, "while requiring frequent redirection and in-class consequences, has not interfered with the learning environment to such an extent that it would warrant more frequent punitive consequences such as in-school suspension or out-of-school suspension." *Id.*

December 5, 2013 Disciplinary Action

24. On December 5, 2013, the Student engaged in an incident ("involving Causing disruption on school properties or at any DCPS-sponsored or supervised activity") for which she was suspended for one day. P-14-1.

January 31, 2014 Comprehensive Psychological Evaluation

25. On January 31, 2014, Clinical Psychologist and Psychologist conducted a "comprehensive psychological evaluation" of the Student, issuing a report on February 14, 2014. R-1-1.

26. This evaluation was conducted at Respondent's expense as a result of an HOD in a prior case. Testimony of Psychologist, testimony of Petitioner.

27. Petitioner selected the evaluators with the assistance of her counsel.

Testimony of Petitioner.

28. Clinical Psychologist and Psychologist understood their task to be to assess the Student's current level of intellectual, academic and social-emotional functioning.

R-1-1. Psychologist referred to this as the "referral questions that were asked at that time." Testimony of Psychologist.

29. Clinical Psychologist and Psychologist did not observe the Student in the classroom or seek to do so. *Id.*

30. Psychologist was unable to contact Petitioner despite three attempts. R-1-1.

31. The Student's intelligence, as measured by the Wechsler Intelligence Scale for Children – Fourth Edition ("WISC-IV") was found to be in the Average range with a Full Scale IQ ("FSIQ") of 92. R-1-2.

32. A score of 92 is the lowest point on the Average range, which runs from 92 to 109 (Testimony of Psychologist), so the Student's FSIQ tested barely above Low Average.

33. The FSIQ score of 92 means that there is a 95 percent likelihood that the Student's actual FSIQ falls between 87 and 97. R-1-10, Sum of Scaled Scores to Composite Scores Conversions, last column, last line.

34. In other words, any FSIQ score between 87 and 97 is "the same score," and the difference between the Student's CIX of 87 and FSIQ of 92 is "not anything to fight over."¹¹ Testimony of Psychologist.

¹¹ Thus, Psychologist's conclusion that the Student has a learning disability because some of her achievement test scores are 14 or more points below her FSIQ (*See*, Finding of Fact 53, *infra*) is undercut by his own acknowledgment that the discrepancy may be five

35. The Student's scores on various intelligence sub-tests were consistent. R-1-3.

36. The Student's perceptual motor functioning was found to be in the Low Average range. *Id.*

37. The Student's academic functioning was measured through administration of the Wechsler Individual Achievement Tests – Third Edition (“WIAT-III”). R-1-1.

38. The Student was found to be in the Below Average range for Reading, with her score on the “Pseudoword Decoding” task in the Extremely Low range. R-1-4.

39. The Student scored in the Below Average range for Mathematics, with her score on the Math Problem Solving subtest in the Extremely Low range. *Id.*

40. The Student scored in the Below Average range for Oral Language and Written Expression skills with no significant variation among the subtests. R-1-5 through -6.

41. With regard to social-emotional functioning, the Student was not engaged in the tests, rushed, did not maintain attention and did not complete the tests, “thus impacting her scores.”¹² R-1-6 and -7.

42. The only other information assessed by Clinical Psychologist and Psychologist related to the Student's social-emotional functioning was an interview of General Education Teacher. R-1, testimony of Psychologist.

43. Neither General Education Teacher nor the evaluators filled out the Behavior Assessment System for Children – Second Edition (“BASC-2”) Teacher Rating Scale

points less if the Student's FSIQ is, in fact, five points higher.

¹² The undersigned finds that due to these factors, the tests were not a reliable basis for any diagnosis.

(Testimony of Psychologist) even though that Teacher Rating Scale is referred to and relied upon in the February 14, 2014 report of the comprehensive psychological evaluation (R-1).

44. According to Clinical Psychologist and Psychologist, the interview of General Education Teacher “revealed at-risk¹³ scores in the areas of behavioral symptoms, externalizing problems, adaptability and leadership” and “clinically significant concerns ... suggest some behaviors impacting [the Student’s] overall functioning in the areas of social skills and functional communications.” R-1-7.

45. No BASC-2 reports were completed by any other teachers, school staff, relatives, or others. R-1, testimony of Psychologist.

46. The Student’s BASC-2 report indicated only one “at risk” area—attitude towards teachers. R-1-6 and -7, testimony of Psychologist.

47. Based upon the failure of Psychologist and Clinical Psychologist actually to administer the BASC-2 to General Education Teacher, or to any other adults, the undersigned finds that any conclusions drawn by Psychologist and Clinical Psychologist were not supported by the BASC-2.

48. Clinical Psychologist and Psychologist did not administer the Conner’s Rating Scales, the Behavior Rating of Executive Functioning (“BRIEF”)¹⁴ or any other test of ADHD because they considered evaluation for ADHD to be beyond the “referral

¹³ “At risk” means an issue that should be monitored and *possibly* addressed in the future. R-1-6 and -7.

¹⁴ Both School Psychologist #2 and School Psychologist #3—the latter being *Petitioner’s* expert witness, testified that the BRIEF and the Conner’s are specifically designed to diagnose ADHD.

questions,” even though the referral for evaluation comprised assessing the Student’s intellectual, academic and social-emotional functioning. R-1, testimony of Psychologist.

49. Psychologist did not “pick up” any indication of ADHD from the testing he conducted. Testimony of Psychologist.

50. School Psychologist #3, *Petitioner’s* expert, did *not* testify that the Student has ADHD. He did testify that if symptoms of ADHD occur only in one setting, the symptoms are likely “environmental,” and not an area of significant concern. Testimony of School Psychologist #3.

51. School Psychologist #3 further testified that the Student exhibited no significant behaviors of concern outside of the school environment, *e.g.*, in the home and community. *Id.*

52. Clinical Psychologist and Psychologist diagnosed the Student with Disruptive Behavior Disorder NOS [Not Otherwise Specified] and Learning Disorder NOS. R-1-7.

53. Psychologist testified that the diagnosis of a learning disorder was based largely upon the discrepancy of 14 or more points between the Student’s FSIQ and her standard scores on some WIAT-III achievement tests. Testimony of Psychologist.

54. Psychologist did not explain why he considered a 14-point disparity significant. The report of the evaluation contains no mention of a 14-point standard. R-1.

55. Rather, the report of the evaluation states that the Student’s academic achievement scores were “more than one standard deviation” below what would be expected given her FSIQ. R-1-6.

56. The undersigned construes “more than one standard deviation” to mean between one and one and a half standard deviations, and certainly less than two standard deviations.

57. The undersigned disregards Psychologist’s testimony regarding the significance of a 14-point difference between FSIQ and standard scores on achievement tests because this was not set forth in the report and was not available to Respondent when determining the Student’s eligibility.

58. Psychologist did not use age or grade equivalents to determine whether the Student had a learning disability, because he considers standard scores to be more reliable. Testimony of Psychologist.

59. The evaluation report does not rely upon age equivalents in finding the Student to have a learning disability. R-1.

60. Psychologist does not know whether the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-5”) requires six months of observed learning difficulties despite the provision of extra help, support or intervention, to diagnose an SLD.¹⁵ Testimony of Psychologist.

¹⁵ Both School Psychologist #2 and School Psychologist #3—the latter being *Petitioner’s* expert witness—testified that the DSM-5 has such a requirement. Further, School Psychologist #3 testified that such “Response to Intervention” (“RTI”) should be implemented *before* determining special education eligibility, and a formal assessment is warranted only if monitoring determines that a child does not respond to such interventions. Psychologist #3 testified that the initial period of RTI should be six to eight weeks, but if it was not working, either because it was not correctly designed or was not implemented as designed, the RTI would be revised and monitored for additional weeks. A child who needed additional assistance would move up “tiers” to more intensive interventions. There is no evidence in the record that the Student had any such monitored RTI, although General Education Teacher did provide her with some additional assistance in the form of tutoring, that was not research-based or monitored to determine the Student’s response. The fact that the Student had poor grades for SY 2013-2014 is

61. Clinical Psychologist and Psychologist made no finding that the Student had a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. R-1.

62. Clinical Psychologist and Psychologist made no finding that the Student has perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia or developmental aphasia. *Id.*

63. Clinical Psychologist and Psychologist did not diagnose the Student with ADHD (R-1-7); in fact, there was no indication that anyone suspected the Student had ADHD (Testimony of Psychologist).

64. None of the testing indicated that the Student had ED. *Id.*

65. Because of the paucity of information upon which the diagnoses of Disruptive Behavior Disorder and Learning Disorder were based (*see*, Findings of Fact 29, 30, 41 through 47, and 53-62, *supra*), the undersigned finds that these diagnoses have insufficient clinical basis.

March 12, 2014 Eligibility Meeting

66. On March 12, 2014, a meeting was held to determine the Student's eligibility for special education. R-3-1.

67. The attendees concluded the meeting without determining the Student's eligibility and agreed to reconvene after receiving additional data. R-3-4, -5.

not probative of her response to tutoring or what her response to other interventions would have been if Petitioner had agreed to the interventions recommended by School Psychologist #2.

March 17, 2014 Assessment

68. On March 17, 2014, School Psychologist #2 administered the Behavior Rating of Executive Functioning (“BRIEF”) to General Education Teacher. R-2-3.

69. General Education Teacher’s BRIEF indicated that the Student had some difficulty with executive functioning, particularly her ability to inhibit impulsive responses, and that she may have problems with working memory, a profile consistent with ADHD, Combined Type. *Id.*

April 1, 2014 Assessment

70. On April 1, 2014, School Psychologist #2 administered the BRIEF to Petitioner. *Id.*

71. Petitioner’s BRIEF indicated the same difficulty with inhibiting impulsive responses that was indicated by General Education Teacher’s BRIEF, but no problems with working memory. R-2-3 and -4.

72. Based upon the inconsistent BRIEF reports, School Psychologist declined to diagnose the Student with ADHD. *Id.*

April 2014 Observations

73. On April 23, 2014, a social work intern observed the Student in the classroom for over an hour at the beginning of a school day and including math instruction. R-5-3. The Student was observed to be following instructions, participating without prompting, focused, attentive, cooperating effectively with peers, contributing to group discussion,

and working independently with no need for redirection and without displaying any behavioral issues. *Id.*

74. On or about April 23, 2014, School Psychologist #2 observed the Student in the Library. R-5-4. She was observed to be well mannered and cooperative, although she needed to be redirected to her “station” several times and had difficulty remaining on task. *Id.*

75. On or about April 23, 2014, Social Worker #1 observed the Student at lunch. R-5-5. She was observed to be orderly and interacted appropriately with her peers. *Id.*

April 24, 2014 Functional Behavior Assessment

76. On April 24, 2014, Social Worker #1 issued a report styled “Functional Behavior Assessment.” R-5-1.

77. The report identified the Student’s behavior of concern as defiance and noncompliance, typically occurring in the classroom during instructional time when her teacher asked her to “get on task and complete assignments,” lasting from an hour to the remainder of the day, and occurring less frequently than at the beginning of the school year. R-5-2 and -3.

78. The notes of the observations incorporated into the report did not, however, include examples of defiance or noncompliance. R-5-3 through -5.

79. The report stated that, according to the Student’s teacher, particularly when the Student is corrected, cannot have her way, is given consequences, or is not given individual attention, she has “extreme outbursts of defiance and destruction,” including

ripping paper off the wall, throwing pencils, refusing to leave the classroom, and on at least one occasion becoming physically aggressive toward the teacher. R-5-5.

80. Social Worker #1 observed no serious educational deficits. R-5-6.

May 27, 2014 Assessment

81. On May 27, 2014, School Psychologist #2 administered the BASC-2 to Petitioner. R-2-3. Petitioner indicated clinically significant concerns about the Student in the areas of hyperactivity, aggression, and conduct problems. *Id.*

Undated Review of Independent Evaluation Report

82. On some date after May 27, 2014, School Psychologist #2 issued a report styled “Review of Independent Educational Evaluation.” R-2.

83. In this report, School Psychologist #2 noted that the Student had made academic gains in all subject areas (R-2-5) and therefore did not meet the criteria for eligibility for special education as a child with Other Health Impairment (“OHI”) (R-2-7).¹⁶

84. School Psychologist #2 concluded that the Student’s academic difficulties were not primarily the result of, *inter alia*, ED. R-2-6.

85. School Psychologist #2 noted that the Student had been absent 11.5 days and late 42 days. R-2-5.

¹⁶ Eligibility for special education is not based upon a child making *zero* academic progress; accordingly, the undersigned gives no weight to this conclusion.

86. School Psychologist #2 concluded that it was premature to consider the SLD classification because the DSM-5 “mandates at least six months of response to intervention (RTI),” which the Student had not received. R-2-6.

87. School Psychologist #2 concluded that the Student did not have ADHD because “there is no medical documentation with a diagnosis and treatment plan to support the perceived symptoms. Thus, there is no evidence to support whether or not the identified behaviors significantly impact [the Student’s] availability for learning, if proper medical diagnosis, treatment and interventions had been implemented and monitored for an adequate period of time.”¹⁷ R-2-7.

The Student’s SY 2013-2014 Report Card

88. The Student’s grades in Reading, Writing & Language, Speaking & Listening, Math and Art declined from the beginning to the end of SY 2013-2014, ending at a grade of 1 (“Below Basic”). R-13-1 and -2.

89. The Student’s grades in Science and Music rose from the beginning to the end of SY 2013-2014, ending at a grade of 3 (“Proficient”). R-13-1 and -3.

¹⁷ Respondent’s counsel asserted at the DPH that Petitioner was entitled to a medical evaluation at public expense to determine whether the Student has ADHD and that Respondent had offered to pay for such an evaluation. While Respondent made an offer to fund an independent comprehensive psychological evaluation to rule out ADHD, that offer was made at the Resolution Session Meeting in the instant matter, held July 11, 2014, after the June 9, 2014 eligibility meeting that is at issue in the instant matter. Moreover, that offer and was part of a settlement that would have required Petitioner to withdraw the instant DPC. Whether Respondent should have offered to pay for such an evaluation earlier is beyond the scope of the issue in this case. Whether Respondent should have offered to pay for such an evaluation without requiring Petitioner to withdraw the DPC is beyond the scope of the issue in this case. Whether Respondent has a continuing obligation to pay for such an evaluation is beyond the scope of the issue in this case.

90. The Student's grades in Social Studies (2, "Basic"), Health & Physical Education (3) and World Languages (2) remained the same from the beginning to the end of SY 2013-2014. *Id.*

91. The Student's work habits, personal and social skills improved from the beginning to the end of SY 2013-2014 in the following areas: Follows directions; Completes class work on time; Completes and returns homework; Participates in class discussion; Makes an effort; Follows classroom rules; Follows playground rules/school rules and Listens while others speak. R-13-1.

92. The Student's work habits, personal and social skills declined from the beginning to the end of SY 2013-2014 in the following areas: Uses time wisely and Practices self-control. *Id.*

93. The Student's work habits, personal and social skills remained the same from the beginning to the end of SY 2013-2014 in the following areas: Works well with others/ cooperates and Respects the rights/property of others. *Id.*

94. As of Term 4 of SY 2013-2014, the Student rarely used time wisely, rarely respected the rights/property of others, and rarely practiced self-control. *Id.*

The Student's Attendance Record During SY 2013-2014

95. The Student was absent 20 days during SY 2013-2014. R-12-1.

96. There were 179 "Membership Days" (*i.e.* days when students were expected to be at school) during SY 2013-2014. *Id.*

97. Accordingly, the Student was absent 11 percent of the days she should have attended school.

98. Six of these absences occurred during September through December 2013; the remaining 14 occurred from January through June 2014. R-12-1 and -2.

99. The last day of school in SY 2013-2014 was June 20, 2014. Testimony of General Education Teacher.

100. Allowing for a week of winter break in January 2014 and a week of spring break in March or April 2014, the undersigned calculates that there were approximately 115 "Membership Days" from January through June 2014.

101. Accordingly, the Student was absent 12 percent of the days she should have attended school from January through June 2014, the period when her grades declined (*see* R-13).

102. The Student was late to school 42 times during SY 2013-2014. R-12-1.

103. Accordingly, the Student was late 23 percent of the days she attended school.

104. 26 of those tardies occurred from August through December 2013; the remaining 16 tardies occurred from January through June 2014. R-12-1 and -2.

105. Accordingly, the Student was late 14 percent of the days she attended school from January through June 2014.

106. General Education Teacher took roll at 9:00 a.m. each day, and sent the list to the office at 9:05 a.m.; a student arriving after 9:05 a.m. would be marked as late by the office. Testimony of General Education Teacher.

107. If General Education Teacher had seen a student in the hallway prior to 9:05 a.m., he or she would not be marked late. *Id.*

108. The Student's Brother testified that he took the Student to school by 9:05 a.m. Testimony of Student's Brother. However, he testified that he only took the

Student to school “sometimes,” and that he ceased doing so in December 2013. *Id.*

Accordingly, his testimony does not contradict the Student’s official attendance record.

109. Each day beginning at 9:05 a.m., General Education Teacher instructed the class in math.¹⁸ Testimony of General Education Teacher.

110. Accordingly, each day that the Student was late, she missed some of her math instruction.¹⁹

111. Combining the instances of absence and the instances of tardiness, the Student missed some or all of her math instruction on approximately 34 percent (a third) of the “Membership Days” in SY 2013-2014.

112. Combining the instances of absence and instances of tardiness, the Student missed some or all of her math instruction on approximately 26 percent (a fourth) of the “Membership Days” from January through June 2014.

113. The undersigned finds that the Student’s absences and tardiness caused her

¹⁸ Petitioner testified that the school day started with “warm-ups” rather than math instruction, which she knew because she had visited the class. Petitioner did not testify how long the “warm-ups” lasted. Documentary evidence in the record states that the “morning workout routine” started at 9:00 a.m. and concluded at 9:05 a.m. R-5-4. This is another indication of Petitioner’s lack of candor.

¹⁹ Petitioner testified that she knew the Student “never arrived past the 9:00 hour,” meaning, apparently, that the Student never was later than 10:00 a.m. When confronted with the fact that she did not routinely take the Student to school, Petitioner testified that when the Student’s Brother took the Student to school, he would text Petitioner and she therefore knew what time the Student arrived at school. It strains credulity for Petitioner to assert that through these methods she knew what time the Student arrived at school each and every day. In any event, whether the Student missed 15 minutes of instruction, or 30 minutes, or 55 minutes, or more, her arrival while the math instruction was already in progress likely interfered with her ability to access the curriculum.

to miss a material amount of academic instruction, particularly in math.²⁰

114. The Student had a number of in-school suspensions (“ISSs”). Testimony of General Education Teacher; testimony of LEA Rep.

115. Regardless of the reason, frequency or duration of the ISSs, they caused the Student to miss academic instruction.

June 2, 2014 Disciplinary Action

116. On June 2, 2014, the Student lied or gave misleading information to school staff, for which she was suspended for six days.²¹ P-15-1.

General Education Teacher’s Perspective

117. General Education Teacher is concerned that the Student is “not quite where she needs to be” and is not prepared for the next grade. Testimony of General Education Teacher.

118. The Student oftentimes was not in class, was tardy, and was unprepared to learn. *Id.*

119. Although the Student made improvements in math and reading during SY 2013-2014 she needs to work on motivation and comprehension. *Id.*

²⁰ School Psychologist #3 testified that he considered 20 to 30 minutes of tardiness not to be significant, but missing half of a math class would be significant in the area of math. Testimony of School Psychologist #3. He considered missing 20 or more school days in a school year to be significant. *Id.*

²¹ General Education Teacher testified that the six-day suspension was for stealing a phone. The reason for the suspension is not material to determination of the issues in the instant case.

120. The Student demonstrated inappropriate reactions to not getting her way—“shutting down,” making angry outbursts, ripping up papers, etc. *Id.*

121. The Student “stomped on” General Education Teacher’s foot because she was angry, and on another occasion threatened General Education Teacher by saying she would have her mother beat her up. *Id.*

122. The Student stole another teacher’s phone and put a passcode on it. *Id.*

123. General Education Teacher signed a “behavior sheet” each day documenting the Student’s behavior and awarding her points for appropriate behavior that could be exchanged for rewards. *Id.*

124. For three months starting in January 2014, the Student was placed with 10 other students in a select small class. *Id.*

125. The Student performed in the upper half of the small class, and helped some of the other students (“when she wanted to, she could explain things”), but her inappropriate behavior continued. *Id.*

126. The Student often came to General Education Teacher’s classroom after the end of the school day for tutoring. *Id.*

127. The Student usually would complete her homework if she did it in General Education Teacher’s classroom, otherwise she usually would not complete her homework or would rush through it just to have something written down. *Id.*

128. The Student demonstrated a good working memory, but difficulty recalling instruction from previous weeks, probably due to insufficient practice (“not set deep enough for her to remember”). *Id.*

LEA Rep.'s Perspective

129. LEA Rep. observed the Student in classrooms with several teachers, in the hallways, and in her office. Testimony of LEA Rep.

130. LEA Rep. observed the Student to be engaged and respectful. *Id.*

131. In a Reading class taught by a teacher other than General Education Teacher, LEA Rep. observed the Student to be engaged, reading along, answering questions, and not needing redirection. *Id.*

132. That teacher informed LEA Rep. that she did not have problems with the Student's engagement in her class. *Id.*

June 9, 2014 Eligibility Meeting

133. At a meeting held on June 9, 2014, the Student was found not to be eligible for special education. R-6-1.

134. Although the Student was found not to be making age- and grade-appropriate progress in written expression and basic reading, Respondent determined her not to have an SLD because the discrepancy was less than two years below her chronological age and less than two standard deviations below her cognitive ability, her attendance may have had an impact on her academic performance, and there was not enough documentation to support SLD. R-6-1 and -2.

135. The Student was found not to meet the criteria for OHI because there was no documentation of an acute health problem diagnosed by a medical doctor, the symptoms of ADHD that she displayed could also be attributed to other factors, and more information was needed to determine if the Student had OHI. R-7-2.

136. Petitioner declined to have the Student medically evaluated for ADHD or OHI.²² R-14-1.

Compensatory Education Proposal

137. Petitioner's Compensatory Education Proposal (P-28) recommends 300 hours of specialized tutoring in reading, math and written expression (P-28-5) and 52 hours of behavior support services (P-28-6).

138. Petitioner proposes this tutoring and behavior support services to compensate for services that Petitioner asserts should have been provided from August 26, 2013 to December 15, 2013 (111 days) and from April 1, 2014 to June 19, 2014 (P-28-4).

139. Petitioner's Compensatory Education Proposal does not identify the Student's specific educational deficits allegedly resulting from the failure to receive specialized instruction and/or related services during either of these two periods. P-28.

140. The only issue in the instant case is whether Respondent denied the Student a FAPE *on June 9, 2014* by determining the Student to be ineligible for special education, and failing to develop an Individualized Education Program ("IEP") for the Student. *See* Section IV, *supra*.

²² Petitioner testified that her reason for declining was that her other children had been determined to be eligible for special education due to ADHD or Attention Deficit Disorder ("ADD") without being evaluated by their primary care physicians, and that the Student's current and previous primary care doctors had informed her that they did not evaluate patients for ADHD. Testimony of Petitioner. Whether this is accurate is not material to deciding the issue in this case.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended “(A) 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 [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected...” 20 U.S.C. §1400(d)(1), *accord*, DCMR §5-E3000.1.

FAPE

2. The IDEA requires that all students be provided with a free appropriate public education (“FAPE”). FAPE means:

special education and related services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also*, 34 C.F.R. §300.17 and DCMR §5-E3001.1.

Eligibility Determination

3. Once a child has been evaluated,

a group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (c) of this section and the educational needs of the child

34 C.F.R. § 300.306(a)(1).

Child with a Disability

4. The IDEA defines a child with a disability as a child—

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.

20 U.S.C. § 1401(3)(A).

5. “Child with a disability” is further defined in 34 C.F.R. § 300.8(a) as a child evaluated

as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

“Special education” means:

specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability including—

- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (B) instruction in physical education.

20 U.S.C. §1401(29); *accord*, 34 C.F.R. §300.39.

“Specially designed instruction” means

adapting, as appropriate to the needs of the eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child’s disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 C.F.R. §300.39(b)(3).

6. DC ST §38-2561.01(14) and DCMR §5-E3001.1 include in the definition of “student with a disability” the following: deaf-blindness, a developmental delay, multiple disabilities, a severe disability, a traumatic brain injury, or any other condition, disability, or impairment described in 29 U.S.C. §706(8).

Specific Learning Disability

7. “Specific Learning Disability” is defined in 34 C.F.R. §300.8(c)(10) as follows:

Specific learning disability—(i) *General*. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) *Disorders not included*. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Accord, DCMR §5-E3001.1.

8. “Specific Learning Disability” includes such conditions as (a) perceptual disabilities, (b) brain injury, (c) minimal brain dysfunction, (d) dyslexia, and (e) developmental aphasia. DCMR §5-E3006.4(b).

9. In determining whether a child has an SLD, an LEA must not require the use of a severe discrepancy between intellectual ability and achievement. 34 C.F.R. §300.307(a)(1).

10. There is no evidence in the record that Respondent improperly *required* the use of a severe discrepancy to determine whether the Student has an SLD; rather, the experts that *Petitioner* selected to conduct the independent comprehensive psychological evaluation asserted such a discrepancy as the principal basis for finding an SLD. *See*, Findings of Fact 53 and 55.

11. The discrepancy measured by Psychologist and Clinical Psychologist, “more than one standard deviation,” is not “severe” under DCMR §5-E3001, which requires a difference of at least two standard deviations.²³ Moreover, the Student’s discrepancy may have been even less due to the fact that IQ scores are not precise. *See*, Findings of Fact 33 and 34.

12. In determining whether a child has an SLD, an LEA must permit the use of, and may use, a process that determines if the child responds to scientific, research-based intervention (“RBI”) as a part of the evaluation procedures. 34 C.F.R. §300.307(a)(2) (“must permit the use of”) and DCMR §5-E3006.4(d) (“may use”).²⁴

²³ DCMR §5-E3001 defines “severe discrepancy” in the alternative as a difference “of at least two years below a child’s chronological age.” However, Psychologist—who was one of the co-evaluators of the January 31, 2014 comprehensive psychological evaluation—disavowed “age equivalences” as a measure of a learning disability, stating that standard scores were much more reliable. The undersigned will not draw inferences from the Student’s age-equivalent scores on the achievement tests administered by Psychologist that he was unwilling to draw.

²⁴ This is consistent with the DSM-5 requirement of six months of observed learning difficulties despite the provision of extra help, support or intervention to diagnose a learning disability.

13. There is no evidence in the record that RBI was used to determine whether the Student has an SLD.

14. In determining whether a child has an SLD, an LEA may permit the use of other alternative research-based procedures. 34 C.F.R. §300.307(a)(3).

15. There is no evidence in the record that any other research-based procedure was used to determine whether the Student has an SLD.

16. In view of the relatively minor discrepancy between the Student's FSIQ and her academic achievement, the variability of IQ scores, and the lack of any other evidence of an SLD, the undersigned concludes that Petitioner has not met her burden of proving by a preponderance of the evidence that the Student has an SLD.

17. Even if there were evidence supporting the finding of an SLD, the regulations implementing IDEA provide that a child must not be determined to be a child with a disability if that determination is based upon a lack of appropriate instruction in reading or math. 34 C.F.R. §306(b).

18. In the instant case, the Student missed a substantial amount of instruction overall, and particularly in math (Findings of Fact 111 and 112), making it impossible to determine how much of the Student's academic difficulty was due to missed instruction.

19. Conclusions of Law 16 and 18 *supra* do not mean that the Student does *not* have an SLD, only that an SLD has not been established by the preponderance of evidence in this case, due to (a) the incomplete evaluation conducted by Psychologist and Clinical Psychologist, (b) the lack of six months of observation of learning difficulties while the Student is provided extra help, support or intervention (sometimes referred to as Response to Intervention or "RTI"), and (c) the Student's incidents of absence and

tardiness. Future evaluations and/or RTI during a six month period when the Student has good attendance and on-time arrival at school, may support a finding that the Student has an SLD if she still fails to make adequate academic progress.

Emotional Disturbance

20. “Emotional disturbance” is defined in 34 C.F.R. § 300.8(c)(4) as

(i) ... a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behaviors or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

Accord, DCMR § 5-E3001.1.

21. There is no evidence in the record that the Student has any of the conditions enumerated in 34 C.F.R. § 300.8(c)(4)(i) or schizophrenia. Behavior problems and academic difficulties by themselves do not constitute ED, particularly as they may be caused by social maladjustment in the absence of any disability.

Other Health Impairment

22. “Other Health Impairment” is defined in 34 C.F.R. § 300.8(c)(9) as
- having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—
- (i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- (ii) Adversely affects a child's educational performance.
23. Although the Student has mild asthma (Finding of Fact 4), there is no evidence in the record that the Student’s asthma causes her to have limited strength, vitality, or alertness.
24. Although the Student exhibits behaviors that *may* indicate she has ADHD (Findings of Fact 69 and 71), the Student has not been medically evaluated to determine whether she in fact has ADHD, and there is no evidence that *any* professional has diagnosed her as having ADHD.
25. Psychologist and Clinical Psychologist failed to evaluate the Student for ADHD because Petitioner did not inform them of her concern that the Student might have ADHD. Finding of Fact 48.
26. In any event, alleged failure to evaluate in all areas of suspected disability is not an issue in the instant case.
27. Based upon the entire record, the undersigned concludes that Petitioner has not met her burden of proving by a preponderance of the evidence that the Student has ADHD or any other health problem causing her to have limited strength, vitality or alertness that adversely affects her educational performance, *i.e.*, OHI.

28. Conclusion of Law 27, *supra*, does not mean that the Student does *not* have ADHD or some other condition that would qualify as OHI, only that an OHI has not been established by the preponderance of evidence in this case. Future assessments may support a finding that the Student has ADHD or some other condition that qualifies as OHI.

When an IEP is Required

29. The requirement of an IEP applies once “a determination is made that a child has a disability and needs special education and related services” 34 C.F.R. §300.306(c)(2). *See also*, DCMR §5-E3007.1 (“The IEP team shall meet and develop an IEP for a child with a disability within thirty days of a determination that a child needs special education and related services.”)

30. Because the Student properly was found not to have a disability under IDEA, the requirement of an IEP was not triggered.

Summary

31. Respondent did not deny the Student a FAPE on June 9, 2014 by determining the Student to be ineligible for special education.

32. Because the Student properly was determined to be ineligible for special education based upon the information available as of June 9, 2014, Respondent did not deny the Student a FAPE by failing to develop an IEP for her.

X. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby
ORDERED:
Petitioner's DPC dated June 24, 2014, is dismissed in its entirety, with prejudice.

Dated this 19th day of August, 2014.



Charles Carron
Impartial Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the findings and decision of the Impartial Hearing Officer shall have 90 days from the date of the decision of the Impartial Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).