

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
June 12, 2014

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STUDENT,<sup>1</sup>  
through the PARENT,

*Petitioner,*

v.

District of Columbia Public Schools,

*Respondent.*

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Date Issued: June 7, 2014

Hearing Officer: NaKeisha Sylver Blount

**REVISED<sup>2</sup> HEARING OFFICER DETERMINATION**

**I. SUBJECT MATTER JURISDICTION**

This matter is pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

**II. 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.

A DPC was filed on March 24, 2014, on behalf of the Student, a resident of the District of Columbia, by Petitioner, the Student’s parent, against Respondent, District of Columbia Public Schools (“DCPS”).

On May 14, 2014 the undersigned was appointed as the Impartial Hearing Officer (“IHO”) as a re-assignment from a previously assigned hearing officer who had been assigned on

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<sup>1</sup> Personal identification information is provided in Appendix A.

<sup>2</sup> This Hearing Officer Determination has been revised to correct the following clerical errors in the originally issued HOD: (a) on page 10 “access her education until on or around November 20, 2014” is changed to read “access her education until on or around November 20, 2013,” and (b) references in the Order to “Petitioner’s” potential eligibility for special education services are changed to refer to the “Student’s” potential eligibility for special education services.

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March 26, 2014. On April 3, 2014, DCPS filed its timely Response, denying that Respondent denied the Student a free appropriate public education (“FAPE”).

The parties held a Resolution Meeting on March 31, 2014, but it failed to reach an agreement as to the issues in the DPC. The statutory 30-day resolution period ended on April 23, 2014.

The 45-day timeline for this Hearing Officer Determination (“HOD”) began to run on April 23, 2014 and will conclude on June 7, 2014.

The undersigned IHO held a Pre-hearing Conference (“PHC”) by telephone on May 16, 2014, at which the parties discussed and clarified the issues and the requested relief. The parties agreed that five-day disclosures would be filed by May 20, 2014 and that the Due Process Hearing (“DPH”) would be held on May 28, 2014. The PHC was summarized in the Pre-Hearing Order and Summary (the “PHO”) issued May 17, 2014. An amended PHO was issued May 20, 2014.

On May 2, 2014, Respondent filed a partial motion to dismiss as to the issue of whether DCPS denied the Student a FAPE by failing to develop an IEP and/or make placement available for the Student. On May 6, 2014, the previously appointed hearing officer issued an Order denying the motion. On May 20, 2014, Respondent filed another partial motion to dismiss as to the issue of whether DCPS denied the Student a FAPE by failing to develop an IEP and/or make placement available for the Student. On May 28, 2014, the undersigned hearing officer orally denied the motion on the record at the start of the DPH.

Petitioner’s disclosures were timely filed on May 20, 2014. Respondent’s disclosures were timely filed on May 20, 2014. At the DPH, the following documentary exhibits were admitted into evidence without objection:

**Petitioner’s Exhibits:** P-1 through P-33

**Respondent’s Exhibits:** R-4, R-5 and R-6 through R-13

The following exhibits were admitted over Petitioner’s objection on the basis of relevance:

**Respondent’s Exhibits:** R-1 through R-3 and R-4.

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

- (a) Special Education Coordinator of School A;

The parties gave oral closing arguments.

### III. ISSUES

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH.

- (1) Whether DCPS denied the Student a free and appropriate public education (“FAPE”) by failing to identify the Student as eligible for special education services pursuant to DCPS’ child find obligations under IDEA
- (2) Whether DCPS denied the Student a FAPE by failing to conduct initial evaluations of the Student pursuant to DCPS’ obligations pursuant to 34 CFR Section 300.301, which requires evaluations to be completed within 120 days of referral
- (3) Whether DCPS denied the Student a FAPE by failing to develop an IEP and/or make a placement available for the Student

### IV. RELIEF REQUESTED

Petitioner has requested the following relief:

- (1) a finding that the DCPS denied the Student a FAPE
- (2) an Order identifying the Student as eligible for special education services an Order that DCPS develop an IEP that provides for placement in a residential program as the Student’s LEA
- (3) an Order that DCPS continue placement of the Student at the private school identified by the Parent
- (4) an Order that DCPS reimburse the Parent for out of pocket expenses for the private residential facility where the Student currently attends
- (5) an Order that DCPS continue to fund the Student’s current residential placement for the remainder of the 2013/2014 school year

### V. FINDINGS OF FACT

Upon consideration of all the evidence, as well as the arguments of both counsel, this Hearing Officer’s findings of fact are as follows:

- (1) The Student is a resident of the District of Columbia, as is her parent, the Petitioner.<sup>3</sup>
- (2) The Student was enrolled in and attended Private School A, a private school in the District of Columbia, until early on in the 2013/2014 school year.<sup>4</sup>

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<sup>3</sup> Testimony of the Parent.

<sup>4</sup> Testimony of the Parent.

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- (3) On or around November 5, 2014, the Student was admitted for short term, intensive residential treatment at RTC A.<sup>5</sup>
- (4) The Student's neighborhood school in November 2013 was School A.<sup>6</sup>
- (5) By November 20, 2013, the Parent had completed and submitted a registration form for the Student at School A.<sup>7</sup>
- (6) On November 20, 2013, Petitioner's counsel<sup>8</sup> emailed a letter addressed to "Principal A, Principal and/or Special Education Coordinator; School A; District of Columbia Public Schools" ("the November 20 letter") to Special Education Coordinator at School A.<sup>9</sup>
- (7) Special Education Coordinator at School A received the November 20 letter emailed from Petitioner's counsel.<sup>10</sup>
- (8) Petitioner's counsel also faxed the November 20 letter to DCPS' Private and Religious Office ("PRO") on November 20, 2013 to the attention of Janis Bryant. Ms. Bryant serves as Case Manager of the PRO. The fax transmission indicated that three pages were successfully sent.
- (9) Petitioner's counsel also faxed the November 20 letter to DCPS' Office of Special Education ("OSE") on November 20, 2013. The fax transmission indicated that three pages were successfully sent.<sup>11</sup>
- (10) The November 20 letter indicates that the Student was in a residential psychiatric facility for inpatient treatment for next 45-60 days, that the Student had been attending private school prior to entering inpatient treatment, and that the Student would not be returning to private school upon completing residential placement. It further indicated that the Parent was requesting DCPS to convene a multidisciplinary team meeting to address the Student's eligibility for special education services, as well as to discuss placement following the Student's discharge from residential placement.<sup>12</sup>
- (11) The November 20 letter included contact information for Petitioner's educational counsel, Roberta Gambale, and Petitioner's educational advocate, Mia Long.<sup>13</sup>
- (12) The November 20 letter stated that an outside psychological evaluation the Parent had obtained for the Student, as well as referral forms the Parent had completed for the DCPS Private and Religious Office were included with the letter; however, based on the fax transmittal forms showing that three pages were transmitted, no other attachments were included with the November 20 letter emailed to School A or faxed to the PRO or OSSE.<sup>14</sup>
- (13) On January 3, 2014, the Parent's educational advocate emailed to a number of DCPS personnel, including Janis Bryant of the DCPS PRO, Benjamin Persett, Program

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<sup>7</sup> P-1.

<sup>9</sup> P-2.

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<sup>11</sup> P-1.

<sup>12</sup> P-1.

<sup>13</sup> P-1.

<sup>14</sup> P-1.

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- Manager of the DCS Office of Specialized Instruction and Principal A of School A a request for an MDT to determine whether the Student was eligible for special education services based on independent evaluations the Parent had obtained and/or to discuss what additional evaluations DCPS believes are needed. The email indicated that the Student previously attended a private school in the District of Columbia, that she was currently hospitalized, that the Student was expected to return home soon, and upon her discharger she could not return to her private school and would need a more restrictive setting than the neighborhood school could provide, and proposing several dates and times for meetings regarding the Student's placement.
- (14) On January 8, 2014, the Parents educational advocate received an email from Benjamin Persett, indicating that the Student's local school should serve as point of contact for the Parent's request for an MDT and would be in the best position to facilitate the process.<sup>15</sup>
  - (15) On January 9, 2014,<sup>16</sup> Petitioner's counsel faxed a letter dated January 9, 2014 addressed to "Principal A, Principal and/or Special Education Coordinator; School A; District of Columbia Public Schools" ("the January 9 letter") to the attention of Principal A or the special education coordinator at School A. The fax transmission indicated that three pages were successfully sent.<sup>17</sup>
  - (16) On January 9, 2014, Petitioner's counsel faxed the January 9 letter to the OSE. The fax transmission indicated that three pages were successfully sent.<sup>18</sup>
  - (17) The fax transmission indicated that three pages were successfully sent.
  - (18) On January 9, 2014, Petitioner's counsel faxed the January 9 letter to the PRO. The fax transmission indicated that two pages were successfully sent.<sup>19</sup>
  - (19) The January 9, 2014 letter indicated that the Student had been attending private school prior to entering inpatient psychiatric hospitalization. It renewed the request that DCPS convene a multidisciplinary team meeting to address the Student's eligibility for special education services, as well as to discuss placement following the Student's discharge from residential placement. It stated that the Parent had obtained an outside psychological evaluation that recommended the Student be identified as a student with a disability and be provided with an Individualized Educational Plan. It indicated that the Parent was willing to consent to any additional evaluations DCPS believed were necessary, and that the Parent would make arrangements to have the Student available for such evaluations. It stated that Petitioner's counsel had received an email from Benjamin Persett with the DCPS OSE advising that the Student's neighborhood school should be responsible for scheduling the requested MDT meeting. It indicated that the Student's treatment facility was not recommending that the Student be returned to her neighborhood school upon discharge, but that the

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<sup>15</sup> P-20.

<sup>17</sup> P-4.

<sup>18</sup> P-4.

<sup>19</sup> P-4.

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- Student would need a residential placement to access her education. The letter indicated that if DCPS failed to convene a meeting to identify the Student as eligible and/or offer an appropriate placement prior to the Student's discharge, the Parent intended to unilaterally place the child, at least on an interim basis, in a private placement and seek reimbursement from DCPS, and that the Parent had identified RTC B as a possible placement for the Student.<sup>20</sup>
- (20) On January 10, 2014, Principal A, Principal at School A replied to the educational advocate's January 3, 2014 email acknowledging receipt of the Parent's request for a meeting and stating that, according to policy, the Student would not be considered a student at School A until her registration packet was received and she attended, and that only after the Student's start date at School A was determined would an MDT be scheduled.<sup>21</sup>
- (21) On January 10, 2014, counsel for Petitioner responded to Principal A's email, stating that the Parent completed the registration form at School A in November 2013, that the Student's doctors recommended against placing her at the neighborhood school upon discharge, due to her fragile mental health status, and that the Parent was requesting an immediate meeting to discuss the situation and available options.<sup>22</sup>
- (22) On January 13, 2014, Principal A emailed to Parent and the Parent's counsel indicating that the meeting request should go through the PRO, and that the PRO welcome packet should be completed and returned to the PRO. The PRO program manager was copied on the email.<sup>23</sup>
- (23) On January 13, 2014, Paris Adon, Program Manager of DCPS' PRO emailed the Parent and the Parent's counsel stating that there was no record of the Parent returning a PRO packet, and asking that the packet be submitted directly to his attention.<sup>24</sup>
- (24) On January 14, 2014, counsel for the Parent emailed a form to Mr. Adon, and stating that the same form, along with independent evaluations diagnosing the Student with a disability had been provided with the November 20 letter.<sup>25</sup>
- (25) On January 14, 2014, Mr. Adon emailed counsel for the Parent stating that the forms she had sent were not the correct forms, and that the PRO welcome packet should be completed and returned. Later that same day, Mr. Adon emailed the PRO packet to counsel for the Parent.<sup>26</sup>
- (26) On January 21, 2014, counsel for the Parent emailed the completed PRO welcome packet to Mr. Adon at the PRO.<sup>27</sup>
- (27) On January 29, 2014, Lucy Mends-Brobbeey, Case Manager of the PRO, emailed counsel for the Parent to state that PRO would not be the appropriate office to assist the Student because she had been hospitalized for 30 days or more, and that the DCPS Home/Hospital Instruction Program would be the correct program to handle the

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<sup>20</sup> P-4.

<sup>21</sup> P-19.

<sup>22</sup> P-19.

<sup>23</sup> P-18.

<sup>24</sup> P-18.

<sup>25</sup> P-17.

<sup>26</sup> P-17.

<sup>27</sup> P-15.

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- Parent's inquiries. Accordingly, Ms. Mends-Brobby indicated that she would be closing out the Student's referral in the PRO database.<sup>28</sup>
- (28) Upon discharge from RTC A on or around January 23, 2014, the Parent unilaterally placed the Student at RTC B.<sup>29</sup>
  - (29) RTC B is not included on the list of DCPS Approved Nonpublic Residential Treatment Centers, as of September 12, 2013.<sup>30</sup>
  - (30) A RSM occurred on March 31, 2014. DCPS indicated that it had agreed to move forward with the eligibility process by authorizing evaluations for the Student. Through counsel, the Parent indicated that DCPS could proceed with the initial eligibility process, but that the Parent would not withdraw the DPC.<sup>31</sup>
  - (31) On May 20, 2014 the DCPS Office of Specialized Instruction emailed to counsel for the Parent a Parent/Guardian Letter of Invitation inviting the Parent to attend a meeting on June 10, 2014 at School A to discuss the educational needs of the Student.<sup>32</sup>
  - (32) The Student experiences significant symptoms of PTSD stemming from past abuse. The Student experiences impaired executive functioning related to anxiety.<sup>33</sup> The Student's social-emotional functioning is impaired. She experiences emotions very strongly and has limited ability to modulate them.<sup>34</sup>
  - (33) The Parent obtained an independent psychological evaluation of the Student dated August 22 – September 18, 2013.<sup>35</sup>
  - (34) The Parent obtained an independent neuropsychological evaluation of the Student dated April 4 – 11, 2011.<sup>36</sup>
  - (35) The Parent obtained an independent Speech and Language Assessment of the Student dated November 10 – December 3, 2010.<sup>37</sup>
  - (36) At RTC B, the Student is in a full-inclusion classroom with a 1:5 teacher student ratio. The total class size ranges from 9-12 students. A licensed special education teacher is present for part of the school day, and the Student has a therapist/case manager available to her. Therapeutic supports are integrated across academic and program settings in an effort to mimic "real life," so return to a less restrictive environment will become achievable.<sup>38</sup>
  - (37) The Student's fourth quarter 2013-2014 progress report from RTC B indicates that the Student earned two "As," three "Bs" and one "C."<sup>39</sup>

## VI. CONCLUSIONS OF LAW

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<sup>28</sup> P-12.

<sup>30</sup> R-1.

<sup>31</sup> R-10.

<sup>32</sup> R-13.

<sup>33</sup> January 10, 2014 letter from RTC A.

<sup>35</sup> P-6.

<sup>36</sup> P-7.

<sup>37</sup> P-8.

<sup>38</sup>

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“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the 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).

### **I. Whether DCPS denied the Student a free and appropriate public education (“FAPE”) by failing to identify the Student as eligible for special education services pursuant to DCPS’ child find obligations under IDEA**

Pursuant to 34 C.F.R. 300.111, 300.131, DCPS is responsible for identifying, locating and evaluating all children with disabilities who reside in the District of Columbia, including children with disabilities who are attending private schools, regardless of the severity of their disability, and who are in need of special education and related services.

DCPS’ Child Find obligations are triggered as soon as a child is identified as a potential candidate for services. *Long v. District of Columbia*, 56 IDELR 122 (D.C.D.C. 2011). Receipt of a referral for an initial evaluation triggers certain procedural safeguards or requirements for DCPS to follow. Among them is the requirement that DCPS provide Petitioner with notice about the identification and evaluation process, the right of Petitioner to receive notice of the school’s refusal of a request for pre-placement evaluation, the requirement that DCPS take steps to obtain informed written consent from Petitioner in order to begin the initial evaluation process, and the requirement that DCPS review existing evaluation data that includes input from Petitioner and classroom-based observations. 34 C.F.R. 300.300, 300.305, 300.503.

There was no evidence in this record that DCPS took any of the procedural steps required under the IDEA until the March 31, 2014 resolution session meeting when DCPS informed the Parent that it would proceed with evaluation process. This initial affirmative action by DCPS occurred approximately seven days after DCPS was required to have completed the initial evaluation process. DCPS’ failure to comply with its statutory obligation to evaluate Student within 120 days of the initial referral was a procedural violation of the IDEA.

A hearing officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. See 34 C.F.R. 300.513(a). In this case, DCPS’ evaluation data, or agreement to rely on the independent evaluations the Parent had obtained, was needed to determine whether or not the Student would be eligible for special education services in the form of a program tailored to Student’s unique needs and reasonably calculated to enable her to

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receive educational benefits cannot be developed.<sup>40</sup> Therefore, Petitioner has met Petitioner's burden that there was a denial of FAPE as to this issue.

### **II. Whether DCPS denied the Student a FAPE by failing to conduct initial evaluations of the Student pursuant to DCPS' obligations pursuant to 34 CFR Section 300.301, which requires evaluations to be completed within 120 days of referral**

At a parent's request, a public agency must conduct a full and individual initial evaluation to determine if the child is a child with a disability. 34 C.F.R. 300.301. DCPS must conduct this initial evaluation within 120 days from the date that the Student was referred for an evaluation or assessment. 34 C.F.R. 300.301(c), D.C. Code 38-2561.02(a). If the child attends a D.C. public school or is enrolling in a D.C. public school, the referral must be made in writing to the building principal of the Student's home school on a form to be supplied to the parent by the home school at the time of the parent's request. 5 D.C.M.R. E-3004.1(a)-(c). If the child to be referred does not attend a D.C. public school and is not enrolling in a D.C. public school, the Parent shall submit the referral to a site designated by the Superintendent on a form to be supplied to the parent by that site at the time of the parent's request. 5 D.C.M.R. E-3004.1(d). Petitioner's informed consent must be obtained in writing prior to DCPS conducting the initial evaluation. 34 C.F.R. 300.300.

The evidence in this case shows that the Parent submitted a registration form to the Student's home school, School A, by November 20, 2013, and that on November 20, 2013, counsel for the Parent submitted a written request to School A that an MDT team be convened to consider eligibility based on independent evaluations that had already been conducted, and the DCPS conduct any additional evaluations it deemed necessary. The November 20 letter was addressed to the principal of School A as well as the special education coordinator. While the record does not contain a fax confirmation sheet demonstrating successful transmittal to School A by fax, it does include an email sent on November 20, 2013 from the office of counsel for the Parent to the special education coordinator at School A. During her testimony at the DPH, the special education coordinator confirmed that she received the November 20 letter, which was addressed to the principal as well as to her. Therefore, the November 20 letter was at least constructively received by the principal of School A.

School A took the position that the child was not enrolled at School A, even though the Parent had completed a registration form, because the child had not yet attended School A. Even if this policy position could be supported by law, the record reflects that the Parent, through counsel, also faxed the November 20 letter to the PRO and OSE on November 20, 2013. The letter included contact information for the Parent's attorney and educational advocate. If the request needed to be made on a special form, the law specifies DCPS is responsible for provide the Parent with the appropriate form at the time of the request. The 120 day period began to run on November 20, 2014, and concluded on March 20, 2014. At this time, DCPS has agreed to proceed with the evaluation process, but the evaluations had not yet occurred as of the filing of the DPC on March 24, 2014. Therefore, Petitioner has met Petitioner's burden that there was a denial of FAPE as to this issue.

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<sup>40</sup> See *Long v. District of Columbia*, 56 IDELR 122 (D.C.D.C. 2011).

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### **III. Whether DCPS denied the Student a FAPE by failing to develop an IEP and/or make a placement available for the Student**

DCPS has an obligation to ensure that an IEP meeting for a student is conducted within 30 days of a determination that the child needs special education and related services, and that special education and related services are made available to the child in accordance with the child's IEP as soon as possible following the development of the child's IEP. 34 CFR 300.323(c)(1)-(2). In this case, the latest that evaluations for the Student should have been completed was March 20, 2014. Allowing 30 days for the IEP team to convene after the evaluations were completed, assuming the child was determined eligible, would mean that an IEP should have been in place for the Student no later than April 19, 2014.

If the child were determined eligible, special education services should have begun as soon as possible after that, which this Hearing Officer will construe in this instance to mean within ten school days after the date by which the IEP team should have met. Therefore, had the Student been determined eligible, the placement indicated in the IEP would have needed to have been effective by May 2, 2014. Both the date by which the IEP should have been developed if the Student had been found eligible, and the date special education services should have begun if the Student had been found eligible were after the DPC was filed on March 24, 2014. While DCPS' child find obligations are affirmative in nature, the record does not support a conclusion that DCPS should have been on notice that the Student may be a student with a disability requiring special education services in order to access her education until on or around November 20, 2013. Therefore, Petitioner has not met Petitioner's burden that there was a denial of FAPE as to this issue.

### **Order**

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

1. No later than June 10, 2014, Respondent shall convene a meeting of a Multidisciplinary Team ("MDT") or Individualized Education Program ("IEP") Team, with all necessary members, including Petitioner, to (a) review the results of the independent evaluations provided by the Parent as well as an evaluations conducted by DCPS, (b) review any other information regarding the Student's academic performance, behavior, and suspected disabilities including any disability asserted by Petitioner, and (c) determine whether the Student is eligible for special education.
2. If the Team determines that the Student is eligible for special education, then the Team shall proceed at that time to develop an IEP for the Student, including determination of placement and location of services; provided, that the Team may reconvene at a later date as long as all of these tasks are completed no later than June 30, 2014.
3. All written communications from Respondent to Petitioner concerning the above matters shall include copies to Petitioner's counsel by facsimile or email.

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4. Any delay caused by Petitioner or Petitioner's representatives (e.g., absence or failure to attend a meeting, or failure to respond to scheduling requests within one business day) shall extend Respondent's deadlines under this Order by the same number of days.

Petitioner's other requests for relief are DENIED.

**IT IS SO ORDERED.**

Date: June 7, 2014

/s/ NaKeisha Sylver Blount  
Hearing Officer

**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 U.S.C. §1415(i).