

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
1150 Fifth Street, S.E.
Washington, DC 20003

Parent on behalf of)
STUDENT,¹)
)
Petitioner,)
)
v.)
)
THE DISTRICT OF COLUMBIA)
PUBLIC SCHOOLS,)
)
Respondent.)

Case Number:
Hearing Date: January 3, 2011
Hearing Room 2009
Hearing Officer: Frances Raskin

OSSE
STUDENT HEARING OFFICE
2011 JAN 19 AM 9:29

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act of 2004 (“IDEA”), codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; the federal regulations at 34 C.F.R. §§ 300.1 *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

II. BACKGROUND

Petitioner is the parent of a -year-old student (“Student”) with a disability. On November 18, 2010, Petitioner filed a Due Process Complaint (“Complaint”) against the District of Columbia Public Schools (“DCPS”) pursuant to the Individuals with Disabilities Education Act (“IDEA”). This Hearing Officer was appointed to preside over this case on November 19, 2010.

Because Petitioner is contesting the Student’s recent forty-five-day suspension and alleging that DCPS failed to follow IDEA procedures in implementing this suspension, this

¹ Personal identification information is provided in Attachment A.

Hearing Officer placed this case on an expedited due process hearing timeline.² The twenty-school-day, expedited due process hearing timeline began on November 19, 2010.³

The parties participated in a resolution meeting on November 23, 2010. The parties were unable to resolve the Complaint and agreed to proceed to a due process hearing. Respondent DCPS filed a response to the Complaint on November 30, 2010.

On November 30 2010, this Hearing Officer held a prehearing conference. Roberta Gambale, counsel for Petitioner, and Daniel McCall,⁴ counsel for DCPS, participated in the prehearing conference. This Hearing Officer issued a Prehearing Conference Summary and Order ("Prehearing Order") that same day.

In the Prehearing Order, this Hearing Officer certified the following issues for adjudication at the due process hearing:

1. Whether DCPS denied the Student a free, appropriate, public education ("FAPE") after it suspended the Student for forty-five days on November 1, 2010, by failing to conduct an appropriate manifestation determination review ("MDR") in failing to ensure that Petitioner participated in the MDR;

2. Whether DCPS denied the Student a FAPE when it failed to provide him the services required by his IEP after suspending him for forty-five days on November 1, 2010, and removing him from his current location of services;

3. Whether DCPS denied the Student a FAPE when failed to conduct a functional behavioral assessment ("FBA") and provide him behavior intervention services and modifications after suspending him for forty-five days on November 1, 2010;

4. Whether DCPS denied the Student a FAPE when failed to develop an appropriate individualized educational program ("IEP") for the Student on March 4, 2010, by failing to address the Student's emotional and behavioral issues, i.e., by failing to provide sufficient hours of counseling and failing to provide the Student a full-time, out of general education, therapeutic setting where he would have no interaction with non-disabled peers; and

5. Whether DCPS denied the Student a FAPE by failing to implement his IEP since the beginning of the 2010-2011 school year by failing to provide him the counseling services required by his IEP.

Petitioner requests relief in the form of an order requiring DCPS to terminate the Student's suspension and allow him to return to school, conduct an FBA and develop a behavior intervention plan ("BIP"), fund the Student's enrollment in a non-public school for the remainder of the 2010-2011 school year with transportation, and fund Petitioner's compensatory education plan, i.e., tutoring and mentoring services for the Student.

² See 34. C.F.R. § 300.532.

³ 34 C.F.R. § 300.532 (c)(2).

⁴ Attorney Harsharen Bhuller represented DCPS at the due process hearing. Ms. Bhuller had just returned from a leave of absence.

The due process hearing convened on January 3, 2011, the twentieth school day.⁵ Present at the due process hearing were Petitioner, Roberta Gambale, counsel for Petitioner, Petitioner's Educational Advocate, and Harsharen Bhuller, counsel for DCPS. At the outset of the hearing, this Hearing Officer asked counsel for Petitioner whether she planned to call any witnesses who were not present at the hearing and would testify by telephone. Counsel for Petitioner informed this Hearing Officer that the only witness she planned to call in addition to Petitioner and the Educational Advocate was a representative from the non-public school.

This Hearing Officer then queried whether Petitioner was prepared to proceed on all of the claims she had certified for the hearing. After counsel for Petitioner responded that Petitioner planned to proceed on all the certified claims, this Hearing Officer questioned whether Petitioner would be able to meet her burden of proof on these claims. This Hearing Officer informed the parties that she had reviewed the documents the parties submitted in their five-day disclosures, and that it was her opinion that these documents do not provide adequate insight into the nature of the Student's emotional disturbance, therapeutic needs, or behavior management problems.

This Hearing Officer explained that Petitioner had failed to produce witnesses qualified to testify about the Student's emotional issues, including whether the conduct that led to the suspension was a manifestation of his disability and whether his IEP meets his social-emotional needs. She explained that neither Petitioner nor the Educational Advocate were qualified to testify about these issues because they had no background in psychology, social work, or other relevant fields.⁶ This Hearing Officer stated that, in light of the limited witnesses from whom Petitioner planned to solicit testimony, it was her opinion that Petitioner would be unable to prevail on of the claims certified for hearing.⁷

Considering this lack of evidence, this Hearing Officer stated that it was doubtful that Petitioner would be able to prove that (1) the Student's behavior that led to his suspension was a manifestation of his disability; (2) the Student's IEP is inappropriate because it fails to address his emotional needs; or (3) DCPS denied the Student a FAPE by failing to provide him the counseling services required by his IEP. This Hearing Officer further explained that, although Petitioner may prevail on her claim that DCPS failed to implement the Student's IEP after

⁵ This Hearing Officer originally scheduled the due process hearing for December 14, 2010. However, this Hearing Officer was extremely ill and hospitalized on that date. After consulting with the parties, this Hearing Officer reschedule the hearing to January 3, 2011.

⁶ This Hearing Officer informed the parties that, that Educational Advocate has previously testified that her training and experience are in education, not social work or psychology.

⁷ This Hearing Officer informed the parties that, after reviewing of the documents submitted by both parties, and viewing the evidence in the light most favorable to Petitioner, it appeared that Petitioner may prevail on her claim that DCPS failed to make good faith effort to ensure Petitioner participated in the MDR following the Student's suspension. This Hearing Officer further explained that, because Petitioner bears the burden of proof on this claim, she would withhold judgment until after she heard the testimony of both parties' witnesses.

suspending him for forty-five days, she would be waiving any relief for that denial of FAPE because she failed to disclose a compensatory education plan.⁸

This Hearing Officer reminded DCPS of its obligation to conduct an FBA following a long-term suspension. DCPS then authorized Petitioner to obtain an independent FBA and an independent psychological evaluation at DCPS expense.

After the parties discussed the fact that the Student has not been enrolled in school since November 21, 2010, this Hearing Officer noted that DCPS has an affirmative obligation to provide the Student an interim alternate setting during his suspension. This Hearing Officer stated that she was considering ordering DCPS to fund the Student's tuition at a non-public school on an interim basis. Counsel for DCPS objected to this proposal and this Hearing Officer responded that DCPS always has the option to place the Student at another DCPS school. The parties then agreed that DCPS would enroll the Student in an interim location of services ("Interim School") for sixty days beginning on January 10, 2010. The parties also agreed that DCPS would provide transportation for the Student as soon as possible.

After consulting with her client, counsel for Petitioner informed this Hearing Officer that Petitioner was withdrawing all of her claims except for the allegation that DCPS denied the Student a FAPE by failing to provide Petitioner an opportunity to participate in the manifestation determination review after it suspended him for forty-five days. For the reasons explained below, this Hearing Officer finds that Petitioner prevailed on this claim.

Even though Petitioner withdrew the remaining claims, she established that DCPS denied the Student a FAPE by failing to provide him educational services during the suspension. Nonetheless, Petitioner is entitled to no remedy on this claim because she failed to prepare and disclose a compensatory education plan.

IV. ISSUE PRESENTED

Whether DCPS denied the Student a FAPE by failing to provide Petitioner an opportunity to participate in the manifestation determination review after it suspended the Student for forty-five days, and by failing to implement his IEP during this suspension.

⁸ Counsel for Petitioner was quite reluctant to concede that she had failed to adequately prepare for the hearing and repeatedly asserted that Petitioner wanted to proceed on all claims. Because counsel for Petitioner made this decision without first consulting with Petitioner, this Hearing Officer suggested that they take a break so that she could consult with her client. Counsel for Petitioner twice insisted that Petitioner was ready to proceed immediately. This Hearing Officer reminded counsel that she had an ethical duty, pursuant to the District of Columbia Rules of Professional Conduct, to confer with her client before proceeding with claims on which she had a slim chance of prevailing and for which she may be forfeiting all relief. *See* Rules 1.2 (Scope of Representation), 1.3 (Diligence and Zeal), and 1.4 (Communication) of the D.C. Rules of Professional Conduct. Counsel for Petitioner failed to heed these warnings until this Hearing Officer announced that they would recess the hearing for twenty minutes and essentially order counsel for Petitioner to confer with her client.

V. FINDINGS OF FACT

1. The Student's IQ is 76, which is at the fifth percentile of his same-age peers and in the borderline range.⁹ However, this score may not be reflective of his overall cognitive ability.¹⁰ His nonverbal reasoning abilities are in the low average range, while his verbal reasoning abilities are in the borderline range.¹¹ His perceptual abilities are in the low average range.¹² The Student's working memory is in the borderline range.¹³ However, his processing speed is in the average range.¹⁴ The Student currently functions significantly below grade level in most academic subjects.¹⁵

2. The Student displays atypical behavior in the classroom, including opposition, cognitive problems, inattention, and hyperactivity.¹⁶ He is more likely than other children to break rules, have problems with authority, and exhibit an inability to comply with directives.¹⁷ He appears to have great difficulty meeting the physical demands of the classroom environment, and does not demonstrate the skills needed for effective classroom learning.¹⁸ He is demonstrating considerable behavior management problems as well.¹⁹

3. The Student's IEP team developed his current IEP on March 16, 2010.²⁰ Petitioner attended the meeting at which the team developed this IEP.²¹ The IEP provides that the Student is to receive twenty-six hours per week of specialized instruction and thirty minutes per week of behavioral support services outside the general education environment.²² Petitioner does not contest the appropriateness of this IEP.²³

4. On November 1, 2010, the Student's teacher called Petitioner to inform her that the Student was disruptive in class, paced around the classroom while using profanity, banged on

⁹ Hearing Officer Exhibit 1 at 3 (February 12, 2009, Report of Comprehensive Psychological Evaluation).

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 7.

²⁰ DCPS Exhibit 1 at 1 (March 16, 2010, IEP).

²¹ *Id.*

²² *Id.* at 5.

²³ Testimony of Petitioner.

desks, and then walked out of the classroom.²⁴ The same day, DCPS suspended the Student for spitting on an adult staff member.²⁵

5. On November 2, 2010, Petitioner went to the Student's school and discussed the suspension with the Dean of Students and the Assistant Principal.²⁶ The Dean and Assistant Principal informed her that the Student was suspended for forty-five days.²⁷ The Assistant Principal then informed Petitioner that the Student would be attending _____ and promised to contact Petitioner to inform her how to enroll the Student there.²⁸

6. DCPS issued a Notice of Final Disciplinary Action ("Notice") dated November 1, 2010, and addressed to Petitioner.²⁹ The Notice stated that the Student would be suspended from school from November 1, 2010, through January 22, 2011.³⁰ The Notice further stated that "the Student will be attending _____ for the duration of his off-site, long-term suspension."³¹

7. Neither the Assistant Principal nor any other DCPS employee ever contacted Petitioner to instruct her on how to enroll the Student at _____. When Petitioner attempted to enroll the Student at _____ the staff at _____ refused to enroll him because they had no information about his suspension.³² The Student has remained at home since November 1, 2010.³³

8. On November 10, 2010, counsel for Petitioner faxed a letter to the Dean of Students at the Student's school informing him that Petitioner had retained the services of her firm and requesting an MDR meeting.³⁴ In the letter, counsel for Petitioner requested that DCPS contact her office, rather than Petitioner, to schedule meetings.³⁵ Counsel requested that the

²⁴ *Id.*; DCPS Exhibit 5 at 11 (Contact Details for November 1, 2010, phone call between DCPS personnel and Petitioner).

²⁵ Petitioner Exhibit 1 (November 1, 2010, Notice of Final Disciplinary Action); Testimony of DCPS Assistant Principal.

²⁶ *Id.*; Testimony of Assistant Principal.

²⁷ Testimony of Petitioner.

²⁸ *Id.*

²⁹ Petitioner Exhibit 1.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Testimony of Petitioner.

³⁴ Petitioner Exhibit 2 at 1, 3 (November 10, 2010, letter from Roberta Gambale to Dean of Students and fax confirmation).

³⁵ *Id.* at 3.

Student be allowed to return to school immediately.³⁶ She further requested that DCPS immediately conduct an FBA and develop a BIP.³⁷

9. The Special Education Coordinator (“SEC”) at the Student’s school attempted to contact Petitioner by phone on November 5, 2010, November 8, 2010, and November 10, 2010, to invite her to an MDR meeting.³⁸ The SEC was unable to contact Petitioner but spoke to her daughter on one occasion and left his name and number for Petitioner to return his call.³⁹ and did not leave any messages on her voicemail.⁴⁰ The SEC did was unaware of the letter Petitioner’s counsel sent to the Dean of Students and was not aware that he should schedule the meeting through her office.⁴¹ The SEC did not send a letter of invitation to Petitioner.⁴² The SEC usually sends letters of invitation to parents for MDR meetings.⁴³

10. On November 18, 2010, DCPS convened an IEP team meeting to discuss the Student’s behavior that resulted in the suspension.⁴⁴ Present at the meeting were three special education teachers, two special education coordinators, a psychologist, and a social worker.⁴⁵ Petitioner was not present at the meeting.⁴⁶

11. At the November 18, 2010, MDR meeting, the IEP team concluded that the Student’s behavior that resulted in his suspension was not caused by and did not have a direct relationship to the Student’s disability.⁴⁷ The team also concluded that the conduct in question was not the direct result of a failure by DCPS to implement the Student’s IEP.⁴⁸ Thus, the team concluded that the behavior was not a manifestation of the Student’s disability.⁴⁹

VI. CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses at the due process hearing provided credible testimony. If all or part of a witness’s testimony are not incorporated in the findings of fact herein, it is because this Hearing Officer gave this testimony less weight than the testimony of the other witnesses.

³⁶ *Id.*

³⁷ *Id.*

³⁸ DCPS Exhibit 5 at 12-14; Testimony of SEC.

³⁹ Testimony of Special Education Coordinator (“SEC”).

⁴⁰ Testimony of Petitioner, SEC.

⁴¹ Testimony of SEC.

⁴² *Id.*

⁴³ Testimony of Assistant Principal.

⁴⁴ Petitioner Exhibit 3 at 1 (November 18, 2010, MDR Meeting Notes).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

VII. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education (“FAPE”).⁵⁰ FAPE “consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.”⁵¹ The individualized educational program (“IEP”) is the centerpiece of special education delivery system.⁵²

In deciding whether DCPS provided Petitioner a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether Petitioner’s IEP is reasonably calculated to enable Petitioner to receive educational benefit.⁵³

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.⁵⁴ In other words, an IDEA claim is viable only if those procedural violations affected the student’s *substantive* rights.⁵⁵

The burden of proof is properly placed upon the party seeking relief.⁵⁶ Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.⁵⁷

VIII. DISCUSSION

Petitioner Proved that DCPS Denied the Student a FAPE By Failing to Provide Her an Opportunity to Participate in the Manifestation Determination Review Following His Forty-Five-Day Suspension.

School personnel may remove a child with a disability who violates a code of student conduct from his current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days and for additional

⁵⁰ 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

⁵¹ *Rowley*, 458 U.S. at 188-89 (citation omitted).

⁵² *Honig v. Doe*, 484 U.S. 305, 311 (1988).

⁵³ *Rowley*, 458 U.S. at 206-207.

⁵⁴ 34 C.F.R. § 300.513 (a)(2).

⁵⁵ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

⁵⁶ *Schaffer*, 546 U.S. at 56-57.

⁵⁷ 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement.⁵⁸

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability (as described below), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children with disabilities.⁵⁹ However, the local educational agency ("LEA") must provide services to the student so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.⁶⁰ As appropriate, the LEA also must conduct a functional behavioral assessment of the student and provide to the student behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.⁶¹

If a local educational agency ("LEA") decides to make a removal that constitutes a change the placement of a student with a disability because of a violation of a code of student conduct, the LEA must immediately notify the parents of that decision and provide the parents a procedural safeguards notice.⁶² Within 10 school days of any decision by the LEA to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA must convene a meeting of manifestation determination review ("MDR") team, which must include the parent and relevant members of the child's IEP team.⁶³ The MDR team must review

⁵⁸ 34 C.F.R. § 300.530 (b)(1). The term "educational placement" refers to the type of educational program prescribed by the IEP. *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted). "Educational placement" refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school. *Id.* In contrast, a transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location only. See, e.g., *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 753-54 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980). In other words, simple changes in location are not generally viewed to be a change in placement where there are no significant changes to the student's IEP. *Letter to Flores*, 211 IDELR 233. See also *A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs).

⁵⁹ *Id.* at § 300.530 (c).

⁶⁰ 34 C.F.R. §§ 300.530 (a)(2), 300.530 (d)(1)(i). The LEA may provide these services in an interim alternative educational setting. *Id.* at § 300.530 (d)(2).

⁶¹ *Id.* at § 300.530 (d)(iii).

⁶² 34 C.F.R. § 300.530 (h).

⁶³ *Id.* at § 300.530 (e).

all relevant information in the student's file, including the student's IEP, to determine whether the conduct in question was a manifestation of the student's disability.⁶⁴

The MDR team must determine whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability or if it was the direct result of the LEA's failure to implement the IEP.⁶⁵ If the MDR team answers either of these questions in the affirmative, the team must find that the conduct in question was a manifestation of the student's disability.⁶⁶

If the MDR team finds that the conduct was a manifestation of the student's disability, the IEP team must either conduct a functional behavioral assessment ("FBA") of the student, unless the LEA had previously conducted an FBA, and implement a behavioral intervention plan ("BIP").⁶⁷ If the student already has a BIP in place, the IEP team must review the BIP and modify it as necessary to address the behavior. The IEP also must return the student to the placement from which the student was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.⁶⁸

Here, DCPS failed to follow its own procedures for inviting a parent to an MDR meeting, which includes sending a letter of invitation to the parent. Although the SEC made three phone calls to Petitioner's home, he failed to send a letter of invitation to her or her attorney. Then, without ever reaching Petitioner, DCPS proceeded to hold the MDR meeting, albeit eight days after the mandatory deadline established by IDEA.

As stated above, IDEA highlights the importance of including the parent in the manifestation determination review. Here, Petitioner may have provided valuable insight into the Student's behavioral problems had she been invited to participate in the November 18, 2010, MDR meeting. By failing to provide Petitioner an opportunity to participate in the meeting, DCPS reached its determination that the Student's conduct in question was not a manifestation of the Student's disability without considering all the requisite information. Thus, its manifestation determination is invalid.

Moreover, DCPS failed to ensure the Student continued to receive educational services to enable him to continue to participate in the general education curriculum, although in an alternate setting, as required by IDEA. Instead, DCPS denied the Student a FAPE by allowing him to languish at home since November 1, 2010. However, because Petitioner did not disclose a compensatory education plan, this Hearing Officer cannot grant any relief for this claim.

⁶⁴ *Id.* School personnel may remove a student to an interim alternative setting for not more than forty-five days without regard to whether the behavior is determined to be a manifestation of the student's disability if, at school, on school premises, or at a school function, the student (1) carries a weapon to or possesses a weapon; (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or (3) has inflicted serious bodily injury upon another person. *Id.* at § 300.530 (g).

⁶⁵ *Id.* at § 300.530 (e) (1).

⁶⁶ *Id.* at § 300.530 (e) (2).

⁶⁷ *Id.* at § 300.530 (f)(1)(i).

⁶⁸ *Id.* at §§ 300.530 (f)(1)(ii), 300.530 (f)(2).

Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to provide her an opportunity to participate in the MDR meeting following his November 1, 2010, suspension.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, it is this 19th day of January 2011 hereby:

ORDERED that on or before January 28, 2011, DCPS shall enroll the Student at DCPS Interim School, with transportation;⁶⁹

IT IS FURTHER ORDERED that the Student shall remain at the DCPS Interim School until the end of the 2010-2011 school year or until the Student's IEP team determines that the Interim School is not an appropriate setting for the Student;

IT IS FURTHER ORDERED that Petitioner shall ensure that the Student's independent functional behavioral assessment and psychological evaluation are completed on or before February 16, 2011;

IT IS FURTHER ORDERED that Petitioner shall provide copies of the independent functional behavioral assessment and psychological assessment, along with all accompanying reports, to DCPS by February 18, 2011; and

IT IS FURTHER ORDERED that DCPS shall convene a meeting of the Student's IEP team on or before February 28, 2011, to review the independent functional behavioral assessment and psychological evaluation, review and revise the Student's IEP, develop a behavior intervention plan, if warranted, and develop a compensatory education plan to place the Student in the position he would have been but for the November 1, 2010, suspension.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the 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).

⁶⁹ This Hearing Officer hopes that DCPS already enrolled the Student at the Interim School and provided transportation.

Distributed to:

Roberta Gambale, counsel for Petitioners
Harsharen Bhuller, counsel for Respondent
Hearing Office
dueprocess@dc.gov