

provide educational benefit without family therapy included; and that DCPS offered and remains willing to conduct the requested assessments and revise the IEP as needed upon their review.

On November 10, 2011, the parties held a resolution meeting, which did not resolve the Complaint. The parties also did not agree to end the statutory 30-day resolution period early. The resolution period therefore ended November 23, 2011, and the 45-day timeline for issuance of the Hearing Officer Determination (“HOD”) originally was to expire on January 7, 2012. The due process hearing was provisionally scheduled for December 8, 2011.

On November 29, 2011, a Prehearing Conference (“PHC”) was held to discuss and clarify the issues. At the PHC, the parties agreed to allow DCPS the opportunity to complete educational evaluations in the specific areas requested by Petitioner – *i.e.*, a clinical psychological evaluation and a functional behavior assessment (“FBA”) – prior to the due process hearing. The parties therefore agreed to reschedule the hearing for January 9, 2012, and to request a 10-day continuance of the 45-day HOD timeline to and including January 17, 2011.

The Hearing Officer subsequently granted Petitioner’s unopposed motion for continuance and issued a Prehearing Order scheduling the due process hearing for January 9, 2012. The 45-day timeline was extended to January 17, 2012. *See Interim Order on Continuance Motion* (Dec. 8, 2011); *Prehearing Order* (Dec. 8, 2011). The parties filed their five-day disclosures, as agreed, on January 3, 2012.

The Due Process Hearing was held in hearing room 2006 on January 9, 2012, at 9:30 A.M. Petitioner elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner’s Exhibits: P-1 through P-34.

Respondent’s Exhibits: R-1 through R-6.

In addition, the following Witnesses testified on behalf of each party:

Petitioner’s Witnesses: (1) Student; (2) Parent-Petitioner; (3) Educational Advocate (“EA”); and (4) Admissions Director, Private School.

Respondent’s Witnesses: DCPS presented no witnesses.

Written closing arguments were submitted by both parties thereafter.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* 5-E DCMR §§ 3029, 3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("SOP"). The statutory HOD deadline is January 17, 2012.

III. ISSUES AND REQUESTED RELIEF

The following issues were presented for determination at hearing:

(1) Failure to Evaluate. — Did DCPS deny the Student a FAPE by failing to evaluate him in all areas of suspected disability — specifically, a functional behavior assessment ("FBA") and a clinical psychological evaluation in a timely manner, as his behaviors and emotional problems escalated during the 2009-10 school year?

Specifically, Petitioner alleges that an FBA should have been conducted at least by October 24, 2009 (two years prior to the filing of the Complaint), and that an updated clinical evaluation or reevaluation should have been conducted by September 2010. Petitioner further alleges that DCPS' procedural violations substantively harmed the Student.

(2) Failure to Provide an Appropriate IEP/Placement. — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP and ensure an appropriate educational placement that addressed his unique learning problems associated with his Attention Deficit Disorder (ADD) and inattention issues?

Specifically, Petitioner alleges that the March 8, 2011 IEP (and any other IEPs in effect since 10/24/2009) lacked appropriate goals, strategies and interventions to address these needs. *Complaint*, p. 6.

(3) Failure to Provide Related Services (Family Therapy) — Did DCPS deny the Student a FAPE by failing to provide him with related services in the form of family therapy or parent/family counseling?

Petitioner requests that the Hearing Officer: (a) order DCPS to convene an MDT/IEP Team meeting to review evaluations, review/revise the IEP, and provide an appropriate educational placement; and (b) award appropriate compensatory education for the period of any missed services. The parties agreed at the PHC that Petitioner's request that DCPS be ordered to perform necessary evaluations was now moot, in light of their agreement to allow DCPS to complete the FBA and clinical psychological evaluations prior to hearing.

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above. 5-E DCMR §3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Petitioner also had the burden of proposing a well-articulated plan for compensatory education, in accordance with the standards of *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

IV. FINDINGS OF FACT

Based upon the evidence presented at the due process hearing, this Hearing Officer makes the following Findings of Fact:

1. The Student is a -year old student who is a resident of the District of Columbia. Petitioner is the Student's mother. *P-1; Parent Test.*
2. The Student has been determined to be eligible for special education and related services as a child with a disability under the IDEA. *P-1; P-12; Parent Test.* His primary disability is Specific Learning Disability ("SLD"). *Id.*²
3. The Student attends Middle School, which is his neighborhood DCPS school. This is his third year there, and he is currently in the grade. *P-1; Parent Test.*
4. On or about March 8, 2011, DCPS developed an IEP for the Student. *P-12.* The 03/08/2011 IEP provides: Five (5) hours per week of Specialized Instruction in Mathematics in a General Education setting; five (5) hours per week of Specialized Instruction in Reading in an Outside General Education setting; five (5) hours per week of Specialized Instruction in Written Expression in an Outside General Education setting; 30 minutes per week of Behavioral Support Services in a setting Outside General Education; and 60 minutes per month of Speech-Language Pathology Services in a setting Outside General Education. *P-12-9.* Parent signed the IEP, and she testified that she agreed with the IEP at the time it was developed. *Parent Test.*

² The Student's eligibility for special education services is discussed in DCPS' January 25, 2009 Confidential Psychological Report, which found that that he continues to meet the criteria to receive special education services as a student with a learning disability. *P-21, p. 22.* The Student's general cognitive ability, as estimated by the WISC-IV, was found to be in the Extremely Low range. *Id., p. 21.* The findings in the report also "suggest that [Student] is having significant difficulty in the areas of attention, focus, and self-control," and note that he was on prescribed psychotropic medications at the time of the evaluations. *Id., pp. 21-22.* The report concludes that "[s]hould [Student's] mother opt to discontinue administering his medication, an updated review of his emotional functioning may be warranted which may result in the change of his disability category from learning disabled to emotionally disturbed." *Id., p. 22.*

5. During the 2010-11 school year, the Student experienced significant behavioral issues, *Parent Test*. He was “sometimes distracted, frustrated, annoyed or angered by peer pressures.” *P-12* (3/8/2011 IEP), p. 8. In June 2011, he also received failing grades in his core academic courses, including English 7, Mathematics 7, Science 7, and World History and Geography. *P-31-2*. The comments under each subject noted (*inter alia*) that the Student had “Excessive Absences.” *Id.*; *see also R-3; R-6-1* (noting current attendance record as of Dec. 2011).
6. During the beginning of the 2011-12 school year (approximately August to October 2011), the Student continued to engage in negative behaviors, including disruptive verbal behaviors, leaving the classroom without permission, unauthorized presence in hallways during class time, and fighting. *See Parent Test.*; *P-1; P-23 -- P-29*. He is very oppositional and disrespectful and has great difficulty following school rules. *R-6, p. 2*. He often uses profanity to express himself when he is asked to do something he does not want to do, such as go to class. *Id.* As Student’s negative behaviors have escalated, his behavior has become a major concern for teachers and administrators, and he has incurred numerous suspensions. *P-16, pp. 1-2; P-30; see also Parent Test*.
7. The Student does not know why he engages in these negative behaviors, other than that he says he likes to talk with his friends and play in hallways. *See Student Test*. When asked to go to class on at least one occasion, he stated that “I hate this damn school, and I’m going to get my lawyer.” *R-6, p. 5. See also Parent Test*.
8. On November 3, 2011, DCPS stated in its Response that it was willing to conduct the two assessments requested by Petitioner – *i.e.*, a functional behavioral assessment (“FBA”) and an updated clinical psychological evaluation of the Student – and to revise the Student’s IEP as needed upon their review. *Response* (Nov. 3, 2011), p. 1.
9. On or about November 10, 2011, a resolution meeting was held for the instant Complaint. DCPS again offered to conduct the two evaluations requested in the Complaint. *P-7-1*. Petitioner stated that the evaluations should have been performed earlier, but she consented to the evaluations and requested that they be expedited. *Id.*; *see Parent Test*.
10. In December 2011, prior to the five-day disclosures and due process hearing, DCPS completed the following evaluations of the Student: (a) Comprehensive Re-Evaluation Psychological Assessment dated 12/08/2011; (b) Educational Evaluation dated

12/12/2011; (c) Comprehensive Speech & Language Evaluation dated 12/20/2011; and (d) FBA dated 12/21/2011. *See P-15; P-16; P-17; P-18; R-6.*

11. The December 2011 psychological re-evaluation conducted by a DCPS School Psychologist finds that the Student continues to qualify for special education services based on a classification of Multiple Disabilities. *P-16, p. 20.* The evaluation further indicates that the Student requires a setting that is conducive to his needs, in light of the testing results and his multiple impairments. In the evaluator's opinion, Middle School "does not have the programs that can address his needs and the setting is too vast for him to handle given his limited functioning." *Id.* The evaluator recommends that a "smaller structured environment with a behavior modification approach can meet his educational, emotional, ADHD and behavioral needs." *Id.*
12. DCPS has not yet convened an MDT/IEP Team meeting to review the results of the December 2011 evaluations. At the outset of the January 9, 2012 due process hearing, DCPS indicated its agreement to convene an MDT/IEP Team meeting to review these assessments, review and revise (as appropriate) the Student's IEP, and to determine an appropriate educational placement and/or location of services.³

V. DISCUSSION AND CONCLUSIONS OF LAW

For the reasons discussed below, the Hearing Officer concludes that Petitioner has failed to prove by a preponderance of the evidence that DCPS has denied the Student a FAPE⁴ as alleged under Issues 1, 2, or 3.

1. Failure to Evaluate

As part of either an initial evaluation or re-evaluation, DCPS must ensure that the child "is assessed in all areas related to the suspected disability," and that the evaluation is

³ Petitioner was unwilling to enter into such an agreement in lieu of prosecuting her claims at hearing, so the Due Process Hearing went forward as scheduled.

⁴ Under the IDEA, FAPE means "special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..." 20 U.S.C. § 1401(9); *see* 34 C.F.R. § 300.17; DCMR 5-E3001.1.

“sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. §300.304 (c) (4), (6); *see also Harris v. DC*, 561 F. Supp. 2d 63, 67-68 (D.D.C. 2008). Thus, evaluations are to be conducted to determine both a child’s disabilities and the content of the child’s IEP. 34 C.F.R. §300.304 (b) (1). Moreover, where an IEP team determines that additional data is not needed, parents have a right to request particular assessments to determine whether their child has a disability and the child’s educational needs. *See, e.g.*, 34 C.F.R. 300.305 (d); *see also Herbin v. District of Columbia*, 362 F. Supp. 254, 43 IDELR 110 (D.D.C. 2005).

(a) FBA

Petitioner first claims that DCPS should have conducted an FBA of the Student by October 24, 2009 (*i.e.*, two years prior to the filing of the Complaint) as the behaviors impacting his learning escalated. As courts have recognized, “[t]he FBA is essential to addressing a child’s behavioral difficulties, and, as such, it plays an integral role in the development of the IEP.” *Harris v. DC*, 561 F. Supp. 2d 63, 68 (D.D.C. 2008).

Here, the evidence (including Petitioner’s own testimony) indicates that the Student’s behavior was not a major concern during the 2009-10 school year and for the most part in the 2010-11 school year. But at some point after the 3/8/2011 IEP, DCPS was on notice that the Student’s behavior was likely to be impeding his learning. Certainly, this was true by the beginning of the 2011-12 school year, when his behavior had escalated and he was incurring multiple disciplinary suspensions during August-September, 2011. *See Findings*, ¶6. At that time, DCPS should have conducted an FBA to determine the causes and concomitant consequences of that behavior. *See Harris, supra*; 34 C.F.R. 300.324(a) (“the IEP team must, in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior”). However, DCPS took no action until after Petitioner filed her complaint in October 2011.

Under the circumstances of this case, however, I conclude that a few months delay in initiating an FBA was a procedural violation that did not affect the Student’s substantive rights. *See Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006). Even without an FBA, the IEP team developed an IEP in March 2011 that included behavioral goals and strategies to

address many of the Student's problematic behaviors. *See P12-8* (annual goals included short-term objectives regarding staying on task with minimal verbal reminders and addressing situations in which he lacked self-control). Moreover, as noted above, Petitioner agreed with the IEP at that time, and Petitioner has not alleged or demonstrated what additional behavioral interventions and supports should have been included in that IEP. Nor has she shown that DCPS denied her right to participate meaningfully in the development of the Student's IEP. *Cf. Smith v. District of Columbia*, Civ. Action No. 08-2216 (RWR) (D.D.C. Nov. 30, 2010), slip op. at 10-12 (analyzing failure to timely re-evaluate). Finally, unlike the situation in *Harris*, the record does not reveal any parental request for an FBA (independent or otherwise) before the filing of the Complaint in this matter. *See P7-1* (11/28/2011 correspondence). This is in sharp contrast with the "intransigence of DCPS" in failing to act on a request for an independent FBA for over two years, found to constitute a deprivation of FAPE in *Harris*. 561 F. Supp. 2d at 69.

Accordingly, I conclude that Petitioner has not proved by a preponderance of the evidence that any procedural delay in conducting an FBA has impeded the Student's right to a FAPE, or significantly impeded Petitioner's opportunity to participate in the decision-making process regarding the provision of a FAPE to her child, or caused a deprivation of educational benefit. *See* 34 C.F.R. 300.513 (a) (2) (i), (ii). Nevertheless, ***DCPS agrees that the IEP team must now review the results of the recently completed FBA and review and revise, as appropriate, the terms of the March 8, 2011 IEP in light of such FBA. Such review should be undertaken forthwith.*** If Petitioner is not satisfied with the results, she may file a further due process complaint on that issue. *See* 34 C.F.R. 300.513 (c).

(b) Psychological Re-evaluation

Petitioner next claims that DCPS should have conducted an updated clinical psychological evaluation or re-evaluation by September 2010 "so that there would be appropriate information available as to what [Student's] academic, emotional, and adaptive functioning levels were." *Petitioner's Closing Argument*, p. 1. The Hearing officer concludes that Petitioner did not prove by a preponderance of the evidence that DCPS failed to conduct such assessment in a timely manner.

The IDEA and its implementing regulations provide that a public agency "must ensure that a reevaluation of each child with a disability is conducted ... (1) if the public agency

determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or (2) if the child's parent or teacher requests a reevaluation." 34 C.F.R. §300.303 (a). The regulations further provide (as a "Limitation") that such a reevaluation: "(1) *may occur* not more than once a year, unless the parent and the public agency agree otherwise; and (2) *must occur* at least *once every three years*, unless the parent and the public agency agree that a reevaluation is unnecessary." *Id.* §300.303 (b) (emphasis added).⁵ The reevaluation must be conducted in accordance with §§300.304 through 300.311, which include the requirement that the evaluation be "sufficiently comprehensive to identify all of the child's special education and related services needs...." §300.304(c) (6). *See, e.g., Herbin v. District of Columbia*, 362 F. Supp. 254, 43 IDELR 110 (D.D.C. 2005) (giving effect to clear statutory language, without triggering conditions); *Letter to Tinsley*, 16 IDELR 1076 (OSEP June 12, 1990) (triennial reevaluation "must be a complete evaluation of the child in all areas of the child's suspected disability....").

In this case, the Student received assessments to determine his cognitive and social-emotional functioning, as well as academic achievement, in January 2009. *See P-19; P-21*. DCPS then completed another Comprehensive Psychological Re-Evaluation in December 2011 (along with an educational evaluation and FBA). *P-16; P-17; P-18*. Again, the record does not reveal any parental request for a new psychological before the filing of the Complaint in this matter. *See P7-1* (11/28/2011 correspondence). Petitioner also has not shown that such assessment was otherwise warranted for the Student earlier than December 2011.⁶ Moreover, the re-evaluation was completed within the mandatory three-year period specified in 34 C.F.R. §300.303 (b) (2). Accordingly, the Hearing Officer concludes that Petitioner has not met her burden of proof on this claim.

⁵ "IDEA and its implementing regulations do not set a time frame within which an LEA must conduct a reevaluation after one is requested by a student's parent." *Smith v. District of Columbia, supra*, slip op. at 6. In light of the lack of statutory guidance, *Herbin* concluded that "[r]e-evaluations should be conducted in a 'reasonable period of time,' or 'without undue delay,' as determined in each individual case." 362 F. Supp. 2d at 259 (quoting *Saperstone*, 21 IDELR 1127, 1129 (OSEP 1995)).

⁶ The Hearing Officer notes that Petitioner's five-day disclosures identified a clinical psychologist witness who was to "testify about her review of the student's files and why a psychological and functional behavioral assessment were warranted for this student earlier than December, 2011." *Letter from Petitioner's counsel* (Jan. 3, 2012), p. 2. However, this witness was not presented.

2. Inappropriate IEP/Placement Claim

Under Issue 2, Petitioner claims that “DCPS deprived [Student] of a FAPE by failing to construct an appropriate IEP and placement reasonably constructed to allow [Student] to achieve educational benefits.” *P-1, p. 5*. The Hearing Officer concludes that Petitioner failed to prove this claim by a preponderance of the evidence.

The “primary vehicle” for implementing the goals of the IDEA is the IEP, which the statute “mandates for each child.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). An IEP is a comprehensive written plan that must include, among other things: (1) “a statement of the child’s present levels of academic achievement and functional performance, including ... how the child’s disability affects the child’s improvement and progress in the general education curriculum”; (2) “a statement of measurable annual goals, including academic and functional goals, designed to ... meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum...and meet each of the child’s other education needs that result from the child’s disability”; (3) “a description of how the child’s progress toward meeting the annual goals...will be measured”; (4) “a statement of the special education and related services and supplementary aids and services ...and a statement of the program modifications or supports for school personnel that will be provided for the child”; and (5) an explanation of the extent, if any, to which the child will not participate with non-disabled children in any regular classes. 20 U.S.C. 1414(d)(1)(A)(i) (emphasis added). *See also* 34 C.F.R. 300.320; DCMR 5-E3009.1.

To be sufficient to provide FAPE under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.” *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176,200,207 (1982); *see also* *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988). Judicial and hearing officer review of IEPs is “meant to be largely prospective and to focus on a child’s needs looking forward; courts thus ask whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’” *Schaffer v. Weast*, 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207). And the issue of whether an IEP is appropriate is a question of fact for

hearing. *See, e.g., S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003).

Educational placement, in turn, must be “based on the child’s IEP.” 34 C.F.R. 300.116 (b) (2). Under the IDEA, “[d]esigning an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes *offering placement in a school that can fulfill the requirements set forth in the IEP.*” *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (emphasis added). Moreover, D.C. law mandates that DCPS place a student with a disability in “an appropriate special education school or program” in accordance with the IDEA. D.C. Code 38-2561.02. *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005), *citing McKenzie v. Smith*, 771 F.2d 1527, 1534-35 (affirming “placement based on match between a student’s needs and the services offered at a particular school”) (emphasis added); *Jenkins v. Squillacote*, 935 F. 2d 303, 305 (D.C. Cir. 1991) (“If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school.”). In addition, DCPS must ensure that its placement decision is in conformity with the Least Restrictive Environment (“LRE”) provisions of the IDEA. *See* 34 C.F.R. §§ 300.114-300.116.

In this case, Petitioner alleges that the March 8, 2011 IEP is inappropriate because it is “devoid of any annual goals or other goals, interventions, and strategies to address [Student’s] inattention, ADD, and difficulty maintaining focus.” *P-1*, p. 6; *see Prehearing Order* ¶ 5(2). Petitioner also claims that DCPS has failed to ensure an appropriate placement because Middle School cannot provide him the educational programming he needs, and he has not made progress there. *See Petitioner’s Closing Argument*, p. 2. Neither assertion has merit.

Viewing the 09/26/2011 IEP “as a snapshot, not a retrospective,” *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008), Petitioner must prove that the IEP was not “reasonably calculated” to confer educational benefits on the Student *at the time it was created*. Thus, her concerns that the Student has not made educational progress since then or that the IEP is inadequate to address needs documented in the December 2011 psychological evaluation (*Pet’s Closing Argument*, p. 2) do not establish that the IEP lacked educational benefit in March 2011. In fact, the 03/08/2011 IEP does contain goals, interventions, and strategies to address the Student’s difficulties in the areas of attention, focus and self-control. *See P-12*, p. 8.

Moreover, Petitioner conceded at hearing that she agreed with the 3/8/2011 IEP at the time it was developed. *Parent Test*. She also failed to demonstrate what the Student's IEP should have contained.

With regard to placement, Petitioner failed to prove that DCPS cannot implement an appropriate IEP at Middle School or an alternative DCPS location. There is no evidence that Middle School cannot provide all of the required services in the required settings, as set forth in the current IEP, or that it cannot provide all accommodations therein. While Petitioner argues that the Student could learn and control his behavior better at Private School (*Pet's Closing Argument*, p. 2), and the Student testified that he thought Private School has "better teachers" (*Student Test.*), such assertions (even if true) would not suffice to meet Petitioner's burden. As the U.S. District Court for the District of Columbia has explained: "It is irrelevant that [Private School] may be better suited to serve [Student] than [DCPS school]. The IDEA 'does not necessarily guarantee the child [with a disability] the best available education.' Nor does it guarantee that the child will receive the education that the parent thinks is best." *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 51 IDELR 9 (D.D.C. 2008) (citations omitted), slip op. at 17.

3. Family Therapy as a Related Service

Petitioner also failed to present evidence that would prove any denial of FAPE under Issue 3. Her claim rests entirely on a recommendation made in the 2009 psychological evaluation report, in which Student's family was "encouraged to consider family counseling to help resolve possible family issues that may be causing stress for [Student]." *P-21*, p. 22. The IEP Team was not bound by this evaluator recommendation; nor does it even appear that the recommendation was addressing services to be provided in school. Petitioner also offered no evidence to prove that such services were required to assist the Student to benefit from special education. *See* 34 C.F.R. §300.34 (a), (c) (8). Accordingly, DCPS was not required to include family or parent counseling/training as a "related service" in the March 2011 IEP.

* * * * *

Before the hearing began, DCPS indicated its willingness to convene an IEP meeting to review the new assessments, review and revise the IEP as appropriate, and determine an appropriate placement/location of services. The Hearing Officer agrees that this is the most appropriate course of action under the circumstances.

DCPS is obligated to update and revise the Student's IEP (and placement) "in response to new information regarding the child's performance, behavior, and disabilities," *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010); 34 C.F.R. §300.324 (b), and "information gleaned from the assessment[s] is central to formulating an IEP tailored to the needs of [Student]." *Harris*, 561 F. Supp. 2d at 68. But DCPS must be allowed a reasonable opportunity to do so.⁷ Petitioner cannot point to the results of new evaluations just completed during the course of a due process complaint proceeding (and not yet reviewed by the IEP Team) to prove that prior DCPS actions were unreasonable or unlawful under the IDEA. Nor would it be appropriate for a hearing officer to preempt the judgments of the IEP Team as to what programming and/or placement may be warranted in such circumstances.

VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Petitioner's requests for relief in her Due Process Complaint filed October 24, 2011 are hereby **DENIED**; and
2. The Complaint is **DISMISSED, With Prejudice**.

IT IS SO ORDERED.

Dated: January 17, 2012



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).

⁷ The Hearing Officer notes that the psychological assessment could have been completed sooner, had Petitioner not previously insisted on obtaining an independent assessment before agreeing to allow DCPS to conduct the assessment after the prehearing conference. *See P-16, p. 1*. The December 2011 evaluation report also indicates that as of the date of the report (12/21/2011), Petitioner had yet to return completed Clinical Behavior Assessment forms, despite the evaluator's follow up measures. *Id., pp. 6, 19*