

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

Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

OSSE
STUDENT HEARINGS OFFICE
2012 FEB 22 AM 9:06

HEARING OFFICER DETERMINATION

**BACKGROUND AND
PROCEDURAL HISTORY**

Student is a _____ year old female, who will turn _____ in less than a month. She currently attends _____ grade at a DCPS senior high school.

On January 6, 2012, Petitioner filed a Complaint, alleging the following claims against Respondent DCPS: Alleged failure to evaluate pursuant to Child Find; alleged failure to timely conduct an initial evaluation within 120 days; alleged failure to conduct expedited evaluations pursuant to 34 C.F.R. § 300.534; alleged failure to evaluate in all areas of suspected disabilities pursuant to 34 C.F.R. § 300.304; alleged failure to timely determine eligibility by failing to convene a meeting within a reasonable time after receipt of the independent evaluations; and alleged failure to hold a manifestation determination meeting pursuant to 34 C.F.R. § 300.530 once Student was suspended for more than 11 days. As relief for these alleged denials of FAPE, Petitioner requested findings in its favor; funding for independent evaluations, including psychiatric, functional behavior, social history, vocational II, and any other warranted assessments; an eligibility meeting within 10 days; and an order requiring DCPS to develop a compensatory education plan for Student.

On January 27, 2012, DCPS filed its Response, which primarily asserted that Parent was previously advised Student would have to go through the SST process and a meeting was scheduled for February 16, 2012; a Behavior Intervention Plan ("BIP") was developed for Student, DCPS issued an independent educational evaluation ("IEE") letter in September 2011 authorizing independent comprehensive psychological and functional behavior assessments, but

DCPS still had not received the independent psychological assessment; DCPS has not been able to fully assess Student due to her failure to attend school consistently; upon information and belief, an MDR meeting was held; and Student is not entitled to compensatory education.

The parties concluded the Resolution Meeting process by participating in a resolution session on January 8, 2012. No agreement was reached. The expedited hearing for this case was scheduled for February 2, 2012, with an HOD due date ten school days later on February 21, 2012.

By their respective letters dated January 30, 2012, Petitioner disclosed twenty-seven documents (Petitioner's Exhibits 1 – 27) and DCPS disclosed ten documents (Respondent's Exhibits 1 – 10).

The hearing officer convened the final two-day due process hearing on January 25 and 25, 2012, as scheduled.¹ All documents disclosed by both parties were admitted into the record without objection. Thereafter, the hearing officer received opening statements, testimonial evidence, and closing statements from both parties prior to concluding the hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

The issues to be determined are as follows:

1. Did DCPS fail to identify, locate, and evaluate pursuant to Child Find within the 2-year period from January 6, 2010 and January 6, 2012?
2. Did DCPS fail to timely conduct an initial evaluation within 120 days of Parent's requests on March 30, 2011 and May 12, 2011?
3. Did DCPS fail to conduct expedited evaluations pursuant to 34 C.F.R. § 300.534, with the obligation arising as of September 1, 2011 once Student had been suspended for ten days?
4. Did DCPS fail to evaluate in all areas of suspected disabilities pursuant to 34 C.F.R. § 300.304 because Student needs a vocational assessment, which was previously requested but not awarded with the other IEEs, and an FBA, which has not been completed pursuant to the IEE letter because, accordingly to Petitioner, DCPS has refused to allow the independent evaluator into the school?

¹ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

5. Did DCPS fail to timely determine eligibility by failing to convene a meeting within a reasonable time after receipt of Student's independent evaluations on December 19, 2011?
6. Did DCPS fail to hold a manifestation meeting pursuant to 34 C.F.R. § 300.530 once Student was suspended for more than 11 days on or about September 15, 2011?

FINDINGS OF FACT²

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

1. Student is a year-old female, who will turn years old in less than one month. She currently attends grade at a DCPS senior high school.³
2. Student initially attended grade in SY 2009/10, and she was retained in grade at the end of the year after earning six grades of "F" and three grades of "D." Student earned ten grades of "F" while attending grade during SY 2010/11 and was retained at the end of that year as well. Hence, SY 2011/12 represents Student's third year in grade.⁴
3. Student has attended three different DCPS senior high schools in the last three years. Student began at one high school at the start of SY 2009/10, but Parent transferred Student to another high school for safety reasons after Student got involved in a big fight numerous girls. Student got into fights constantly at the second high school and was absent frequently during SY 2010/11, often because either she was on suspension or they would turn her away from the school at the front door. After Parent complained about Student being turned away at the door, DCPS allowed Parent to choose another school for Student. Parent chose Student's current high school, which Student began attending in the spring of SY 2010/11.⁵
4. DCPS's records indicate that Student was absent for 123.5 days of instruction and present for 52.5 days during SY 2009/10; she was absent for 82.5 days of instruction and present for 95.5 days during SY 2010/11; and as of January 25, 2012, Student had been absent for 61.5 days of instruction and present for 33.5 days during SY 2011/12.⁶
5. Student's October 28, 2011 Progress Report reveals that she earned four grades of "F" for the first advisory of SY 2011/12.⁷

² To the extent that the hearing officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer's determinations of the credibility and/or lack of credibility of the witness(es) involved..

³ See Complaint.

⁴ See Petitioner's Exhibits 11-12.

⁵ Testimony of Parent.

⁶ Petitioner's Exhibit 11; Respondent's Exhibit 3.

⁷ Petitioner's Exhibit 10.

6. Student received the following four documented suspensions during SY 2010/11: (i) an off-site long-term suspension for 43 days from September 7, 2010 through November 10, 2010 for participating in a group fight that was planned, caused major disruption to school, or resulted in substantial bodily injury; (ii) an off-site short-term suspension for 3 days beginning on January 5, 2011 through January 7, 2011 for an “incident involving a Documented pattern of persistent Tier 2 behavior”; (iii) an off-site short-term suspension for 5 days from January 11, 2011 through January 19, 2011 for another “incident involving a Documented pattern of persistent Tier 2 behavior”; and (iv) an off-site medium-term suspension from February 2, 2011 through February 14, 2011 for causing a disruption.⁸
7. During SY 2011/12, Student received documented off-site suspensions for 9 school days from August 31, 2011 through September 13, 2011 for inciting others to violence or disruption; for 5 school days from September 14, 2011 through September 20, 2011 for interfering with school authorities or participating in a major disruption; and for 9 school days from December 9, 2011 through December 21, 2011 for an incident involving a weapon. Student was subjected to documented in-school disciplinary actions on September 26 and 27, and on October 11, 2011 for using profanity or obscene gestures toward staff, refusing to present identification upon request, and leaving school without permission.⁹
8. In addition to the documented disciplinary actions and off-site suspensions during SY 2011/12, Student also received several informal suspensions in the form of being sent home approximately twice, and Student received several off-site short-term suspensions that were not documented.¹⁰
9. On December 14, 2011, DCPS conducted a manifestation determination meeting concerning the December 2011 incident where Student brought a weapon to school. The meeting participants were Student, one of Student’s teachers, the school social worker, the Dean of Students, and Parent participated by phone. The team determined that Student’s conduct was not a manifestation of her disability.¹¹
10. Petitioner included in the administrative record for this case two written requests for an initial evaluation of Student but failed to provide documentary or testimonial proof that the documents were actually sent to DCPS. One of the letters, dated March 20, 2011, is addressed to the SEC at Student’s current DCPS high school, but DCPS provided testimony from the SEC indicating that she has not received any requests for an initial evaluation of Student. The other letter, dated May 12, 2011, is addressed to the SEC at Student’s current school, but there is no evidence that the letter was ever sent to or received by DCPS. As a result, the undisputed evidence demonstrates that DCPS never received one of the written evaluation requests, and given the lack of proof that the

⁸ Petitioners’ Exhibits 5 through 8.

⁹ Petitioner’s Exhibits 9 and 13; Respondent’s Exhibit 3; testimony of Student.

¹⁰ Testimony of Student; testimony of Parent.

¹¹ Respondent’s Exhibit 10 at 6-7; *see* Respondent’s Exhibit 9at 2.

second letter was transmitted or received, there is insufficient evidence to support a finding of fact that Petitioner actually submitted the second written request to DCPS.¹²

11. Right before Parent had Student transferred to her current DCPS high school, which took place in March of April of 2011 during SY 2010/11, Parent asked an administrator at Student's previous DCPS high school to test Student to determine whether she is eligible for special education services.¹³
12. DCPS included in the administrative record for this case a series of emails indicating that an FBA was completed for Student. However, DCPS failed to include the FBA in the record or introduce testimony by anyone regarding the existence, contents of and/or use of the FBA. Hence, there is insufficient record evidence to support a finding of fact that DCPS conducted an FBA for Student.
13. On or about September 9, 2011, Petitioner filed a Complaint against DCPS, alleging a failure to evaluate and determine Student eligible. At the September 30, 2011 resolution meeting held in connection with that Complaint, DCPS provided a letter authorizing an independent comprehensive psychological evaluation and a functional behavior assessment for Student.¹⁴
14. Student's December 15, 2011 independent comprehensive psychological evaluation report revealed that Student has an IQ score of 72, which is in the Low range of functioning; she is performing at the 4th to 5th grade level in reading, math and written language; and she has been diagnosed with Mood Disorder Not Otherwise Specified, Attention Deficit/Hyperactivity Disorder, Combined Type, and Major Depressive Disorder, Moderate, Single Episode (by history).¹⁵
15. The evaluator for Student's independent comprehensive psychological evaluation attempted to obtain the participation of Student's current teachers in connection with the social emotional testing included in the evaluation, but given the short 3-day timeframe the evaluator allowed the teachers to complete the teacher scales, together with Student's failure to attend school frequently enough for her teachers to become familiar with her, the evaluator was unable to obtain reliable data that could be included in the evaluation results.¹⁶
16. Petitioner's independent evaluator was unable to prepare an FBA for Student because the SEC at Student's current DCPS high school failed to respond to the evaluator's request for a series of appointments to come into the school and observe Student.¹⁷

¹² See Petitioner's Exhibits 14-15; testimony of SEC.

¹³ Testimony of Parent.

¹⁴ See Complaint at 3; Respondent's Exhibits 1-2.

¹⁵ Petitioner's Exhibit 4; testimony of licensed clinical psychologist.

¹⁶ Testimony of licensed clinical psychologist; see Petitioner's Exhibit 21.

¹⁷ Testimony of licensed clinical psychologist; see Petitioner's Exhibit 21.

17. The school psychologist at Student's current DCPS school has been assigned to review Student's independent comprehensive psychological evaluation. The psychologist plans to reject the evaluation because the cognitive instrument used did not use the full 7 tests and only used 4 of the tests. Also, there is no assessment of Student's organizational difficulties and no information regarding how Student is performing in the classroom.¹⁸
18. On December 19, 2011, which was within approximately one day of the start of DCPS's Winter Break, Petitioner provided DCPS with a copy of Student's independent psychological evaluation.¹⁹
19. On January 6, 2012, Petitioner filed the Complaint that initiated this action.
20. On or about January 17, 2012, DCPS sent Petitioner a Letter of Invitation to a meeting on February 16, 2012 to review Student's evaluation results.²⁰
21. DCPS included in the administrative record for this case a behavior intervention plan ("BIP") for Student. However, the BIP is undated, it includes no signature page confirming that the BIP was reviewed by an IEP team, and it does not address Student's absenteeism issue.²¹

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. Child Find

IDEA requires the District of Columbia to have policies and procedures in effect to ensure that all children with disabilities residing in the District, and who are in need of special education and related services, are identified, located and evaluated. 34 C.F.R. § 300.111(a)(1). Child find also must include children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade. 34 C.F.R. § 300.111(c)(1). Hence, "[s]chool districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction. Instead, school systems must ensure that all children with disabilities residing in the State . . . who are in need of special education and related services, are identified, located, and evaluated." *Branham. v. District of Columbia*, 427 F.3d 7 (D.C. Cir. 2005) (citations and internal quotations omitted).

In the instant case, Petitioner argues that within the two years preceding the filing of the Complaint, DCPS's obligations under Child Find were triggered, such that DCPS had an obligation under Child Find to identify, locate and evaluate Student to determine whether she is

¹⁸ Testimony of DCPS school psychologist.

¹⁹ Petitioner's Exhibit 19; see Respondent's Exhibit 4 at 2.

²⁰ Respondent's Exhibit 6; Respondent's Exhibit 9 at 1.

²¹ See Respondent's Exhibit 8.

eligible for special education and related services. DCPS argues that it has policies and procedures in place to ensure the identification, location and evaluation of children with disabilities residing in the District, which fully satisfies its Child Find obligations. However, the clear and unambiguous language of *Branham, supra*, demonstrates otherwise.

The evidence in this case fully supports Petitioner's contentions, as Student is currently repeating the 9th grade for the third time, she has made nothing but failing grades for the last two years, she has been suspended repeatedly at each of the schools she attended during the two year period, and she has a significant absenteeism issue. This evidence paints a picture of a student who was struggling in school both academically and behaviorally. Hence, the hearing officer is persuaded that DCPS was obligated to identify Student as a child suspected of having a disability, locate Student, and conduct an initial evaluation of Student to determine whether she has a disability and is in need of special education and related services. Accordingly, the hearing officer concludes that Petitioner has met its burden of proof on this claim.

2. Failure to Conduct Initial Evaluation Within 120 Days

Under IDEA and District of Columbia law, DCPS must complete initial evaluations within 120 days of receipt of a referral. *See* 34 C.F.R. § 300.301(c)(1) (initial evaluation must be completed within 60 days of receiving parental consent, unless the State establishes a timeframe for the evaluation); D.C. Code § 38-2561.02 (DCPS must evaluate a student who may have a disability within 120 days from date of referral). Either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. 34 C.F.R. § 300.301(b). For these purposes, the public agency's initial evaluation must consist of procedures to determine if the child is a child with a disability under § 300.8, and to determine the educational needs of the child. 34 C.F.R. § 300.301(c)(2).

In the instant case, Petitioner argues that DCPS had an obligation to evaluate Student within 120 days of Petitioner's March 20, 2011 and May 12, 2011 written requests for an initial evaluation. However, Petitioner has failed to prove that Parent actually submitted to DCPS, and/or that DCPS ever received, the written requests for an initial evaluation of Student that are included in the administrative record. As a result, Parent has failed to prove that DCPS's obligation to conduct an initial evaluation within 120 days was triggered in this case. Hence, Petitioner has failed to meet its burden of proof on this claim.

3. Failure to Conduct Expedited Evaluations

IDEA provides that if a request is made for an evaluation of a child during the time period when the child is subjected to disciplinary measures under 34 C.F.R. § 300.530, the evaluation must be conducted in an expedited manner. 34 C.F.R. § 300.534(d)(2)(i).

In the instant case, Petitioner argues that DCPS's obligation to conduct an expedited initial evaluation of Student arose on or about September 1, 2011 during SY 2011/12, once Student had been suspended for 10 days. However, there is no evidence that Petitioner made a request for an evaluation of Student during the time period in September 2011 when Student was suspended, which was required to trigger the obligation on DCPS's part to conduct expedited evaluations.

Moreover, although Petitioner filed a Complaint against DCPS on September 9, 2011, alleging, *inter alia*, a failure to evaluate Student, the evidence proves that DCPS held a resolution session for that Complaint on September 30, 2011, at which time it provided Petitioner with a letter authorizing certain independent evaluations for Student. Hence, to the extent that expedited evaluations were required, DCPS had provided Petitioner with the means to obtain same. In any event, Petitioner has not asserted, and the hearing officer is not persuaded, that the filing of an administrative due process complaint constitutes a request for an evaluation within the meaning of 34 C.F.R. § 300.534(d)(2)(i). As a result, the hearing officer concludes that Petitioner has failed to prove that DCPS's obligation to conduct expedited evaluations was triggered, and therefore, Petitioner has failed to meet its burden of proof on this claim.

4. Alleged Failure to Evaluate in All Areas of Suspected Disabilities

Under IDEA, a public agency conducting an evaluation must, *inter alia*, use a variety of assessment tools and strategies to gather information about the child, ensure that the child is assessed in all areas related to the suspected disability, and ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. 34 C.F.R. § 300.304(b)-(c).

In the instant case, Petitioner argues that DCPS has failed to evaluate Student in all areas of suspected disabilities because Student needs an FBA and vocational assessments. DCPS maintains that a BIP has already been prepared so there is no need for another FBA, and the request for a vocational assessment is premature because Student has not yet been identified as a child with a disability.

The evidence in this case suggests but does not conclusively prove that DCPS conducted an FBA for Student. The evidence is clear, however, that although DCPS authorized Petitioner to obtain an independent FBA for Student, Petitioner's independent evaluator has not been able to conduct the FBA because DCPS has not provided the evaluator with the necessary opportunities to observe Student in the school environment. Hence, the hearing officer will order DCPS to either produce a completed FBA for Student or conduct an FBA for Student. The hearing officer is aware that Petitioner has requested an independent FBA, but Petitioner has already been provided with authority to conduct an independent FBA and has been unable to do so. As the responsibility for conducting assessments ultimately rests upon DCPS, the hearing officer has determined to order DCPS to either fulfill that responsibility or demonstrate that it has already done so. *See* 34 C.F.R. § 300.304 (setting forth the responsibilities of the public agency in connection with evaluations).

With respect to Petitioner's desire for a vocational assessment, the hearing officer is persuaded by DCPS's argument that the request is premature because Student has not yet been determined eligible for special education services, and if it is determined that she is ineligible for such services there will be no need for vocational assessment. *See* 34 C.F.R. § 300.320(b) (transition plans must be included in a disabled child's IEP by or before the time the child turns 16 years old). Hence, the hearing officer will decline to order DCPS to conduct such an assessment prior to a determination of Student's eligibility.

Finally, the hearing officer notes that the evidence in this case demonstrates that DCPS's school psychologist who has been assigned to review Petitioner's independent evaluation(s) has determined to reject the independent comprehensive psychological evaluation because the cognitive instrument utilized did not use the full 7 tests and only used 4 of the tests, there is no assessment of Student's organizational difficulties, and there is no information regarding how Student is performing in the classroom. To avoid unnecessary delay in determining Student's eligibility for special education and related services, the hearing officer will also order DCPS to administer a full and valid cognitive assessment to Student, to administer an assessment that addresses Student's organizational difficulties, and to issue an update to Student's independent comprehensive psychological evaluation that includes the results of these assessments, as well as information about Student's performance in the classroom. *See Letter to Armstrong*, 28 IDELR 303 (O.S.E.P. June 11, 1997) (hearing officers must have the power to order any necessary relief).

5. Alleged Failure to Timely Determine Eligibility After Independent Evaluations

As noted in subsection (2) above, under IDEA and District of Columbia law, DCPS must complete an initial evaluation within 120 days of receipt of a referral, and the initial evaluation must include procedures to determine if the child is a child with a disability and the educational needs of the child. *See* 34 C.F.R. § 300.301(c)(1); D.C. Code § 38-2561.02; 34 C.F.R. § 300.301(c)(2).

In the instant case, Petitioner argues that DCPS has failed to convene an eligibility meeting for Student within a reasonable time after receiving Student's independent evaluation. However, the evidence in this case demonstrates that Petitioner forwarded its independent evaluation to DCPS on December 19, 2011, which was within approximately one day of the start of DCPS's Winter Break, and then Petitioner filed its Complaint on January 6, 2012. Taking into account that DCPS schools were closed for Winter Break, which included the Christmas and New Year holidays, it is clear that Petitioner allowed DCPS only approximately one week to convene the eligibility meeting for Student prior filing its Complaint. Under these circumstances, the hearing officer concludes that Petitioner did not allow DCPS sufficient time to schedule and convene the eligibility meeting prior to filing its Complaint, and therefore, Petitioner cannot prevail on this claim. As a result, the hearing officer declines to consider whether Student is eligible for special education and related services and will allow DCPS the opportunity to make that determination in the first instance.

6. Alleged Failure to Hold a Manifestation Meeting

IDEA provides that within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP team must determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability and was, therefore, a manifestation of the child's disability. 34 C.F.R. § 300.530(e). If it is determined that the conduct was a manifestation of the child's disability, the IEP team must either (i) conduct an FBA, unless one has already been conducted, and implement a BIP, or (ii) if a BIP has already been developed, review the BIP and modify it as necessary to address the behavior; and return

the child to his or her educational placement unless certain special circumstances are applicable. 34 C.F.R. § 300.530(f). For purposes of these provisions, a change of placement occurs if a removal for disciplinary reasons is for more than 10 consecutive days or the child has been subjected to a series of removals that constitute a pattern. 34 C.F.R. § 300.536(a). Moreover, if a parent requested an evaluation of his or her child prior to the occurrence of the child's behavior that precipitated the disciplinary action, then that child is entitled to assert the protection of the provisions governing manifestation determination meetings. *See* 34 C.F.R. § 300.534(a)-(b).

In the instant case, Petitioner argues that DCPS violated IDEA by failing to convene a manifestation meeting for Student after Student had been suspended for more than 11 days on or about September 15, 2011. DCPS points out that it held a manifestation meeting on December 14, 2011. However, the evidence in this case demonstrates that Student was suspended for 9 school days from August 31, 2011 through September 13, 2011, and for 5 school days from September 14, 2011 through September 20, 2011, which totaled more than 10 consecutive school days. As Parent had already requested an evaluation of Student in March or April of 2011, Student was entitled to the protections of IDEA's provisions governing manifestation meetings, and DCPS was obligated to conduct a manifestation meeting for Student within 10 school days of its decision to suspend Student from September 14 – 20, 2011. The December 14, 2011 manifestation meeting, which DCPS convened during Student's suspension for an additional 9 school days from December 9, 2011 through December 21, 2011 was held much too late to satisfy this obligation. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proof on this claim. Therefore, the hearing officer will order DCPS to convene another manifestation meeting for Student to determine whether the behavior that resulted in her suspension from August 31 – September 20, 2011 was a manifestation of her suspected disability. If the team determines that Student's behavior was a manifestation of her suspected disability, then the team shall, at the team's option, either review the existing BIP for Student and modify it as necessary to address the behavior, or given the uncertainty surrounding that BIP, create a new BIP for Student to address the behavior.

7. Compensatory Education

Under the theory of compensatory education, courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. 2005). In every case, however, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Id.* at 524.

In the instant case, Petitioner argues that Student is entitled to compensatory education to compensate for DCPS's violations of IDEA in this case. However, unless and until Student has been determined eligible for special education services, it would be impossible to calculate the compensatory education services Student requires to compensate her for "special education services the school district should have supplied in the first place." Nevertheless, because Petitioner has proven several violations of IDEA in this case, and the hearing officer has determined to allow DCPS an opportunity to determine Student's eligibility in the first instance,

the hearing officer will dismiss without prejudice Petitioner's request for compensatory education to allow Petitioner the opportunity to reassert that claim at a later time if appropriate.

ORDER

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

1. DCPS shall produce its completed FBA for Student within 3 days of the issuance of this Order. Should DCPS fail to produce its completed FBA within 3 school days, then DCPS shall be allowed an additional 10 school days to complete an FBA for Student.
2. Within 15 school days of the issuance of this Order, DCPS shall administer a full and valid cognitive assessment to Student, administer an assessment to Student that addresses her organizational difficulties, and issue an update to Student's independent comprehensive psychological evaluation that includes the results of these two assessments, as well as information about Student's performance in the classroom.
3. Within 20 school days of the issuance of this Order, DCPS shall convene an eligibility meeting for Student to determine whether Student is a child with a disability, and if so, to create an IEP that addresses Student's special education and related services needs and determine an appropriate location of services to implement that IEP.
4. Within 10 school days of the issuance of this Order, DCPS shall convene a manifestation meeting for Student to determine whether the behavior that resulted in Student's suspensions from August 31 – September 20, 2011 was a manifestation of her suspected disability. If the team determines that Student's behavior was a manifestation of her suspected disability, then the team shall, at the team's option, either review the existing BIP for Student and modify it as necessary to address the behavior, or given the uncertainty surrounding the existing BIP, create a new BIP for Student to address the behavior. The revised or newly created BIP must be provided to Petitioner within 5 school days after the manifestation meeting.
5. Petitioner's request for compensatory education is **DISMISSED WITHOUT PREJUDICE**.
6. All other claims and requests for relief in Petitioner's January 6, 2012 Complaint are **DENIED** and **DISMISSED WITH PREJUDICE**.

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).

Date: 2/21/2012

/s/ Kimm Massey
Kimm Massey, Esq.
Hearing Officer