District of Columbia
Office of the State Superintendent of Education
Student Hearing Office
1150 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 442-5556

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STUDENT HEARING OFFICE
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In Re the Matter of :	
[1]Parent on behalf of Student,	
Petitioner,	
v.	**Date of Complaint:** February 4, 2010 **Date Decision Issued:** March 29, 2010
District of Columbia Public Schools, ("DCPS")	**Dates of Hearings:** March 9, 2010 March 10, 2010, and March 19, 2010 **Hearing Rooms:** 6A, 6B, and 7A **Student Case Number:**
Respondent.	**Student Identification Number:**
	Hearing Officer: Attorney Ramona M. Justice

HEARING OFFICERS' DECISION ("HOD")

I. BACKGROUND

The student is years of age, and an grade student at the a private day school, located in the District of Columbia. Prior to attending the the student attended and the closed its operations in May, 2008; and during the 2009/2010 school year, the parent enrolled the student at the The student has struggled academically and behaviorally since the grade; was diagnosed with a learning disability in the grade; and repeated the and grades, while attending the

[1] Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution.

[2] is a private day school committed to fostering academic excellence in students challenged by language-based learning difficulties. The program is designed to assist high school students with mild to moderate learning needs who are experiencing inconsistencies between their academic achievement and intellectual abilities in one or more academic areas. The school provides students with a diploma-based, college preparatory program with courses, activities, and technical skills that will prepare them for transition to college or the work world. has the Certificate of Approval from the District of Columbia State Education Agency, to serve students with specific learning disabilities and Attention Deficit Hyperactivity Disorder ("ADHD").

On October 15, 2009, Petitioner, through her Attorney, filed a due process complaint, alleging that DCPS denied the student a free appropriate public education ("FAPE"), by failing to: (1) comply with a Hearing Officers' Decision issued on December 29, 2008; (2) develop an appropriate Individualized Education Program ("IEP") for the student; and (3) provide the student an appropriate placement. A prehearing conference was held in this matter; and on November 17, 2009, the parties reached an understanding, resolving the issues in the October 15, 2009 complaint. Pursuant to the request of the parties, on November 25, 2009 the Hearing Officer issued an Order of Dismissal, dismissing the due process complaint; and incorporating the terms agreed upon by the parties, which ordered the parties to initiate certain actions.

On November 3, 2009, an Interim IEP was developed for the student, classifying the student as Other Health Impaired ("OHI"); and on January 13, 2010, DCPS exited the student from special education and related services.

On February 4, 2010, Petitioner through her Attorney, initiated a due process complaint, alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a free and appropriate public education ("FAPE"), by failing to: (1) comply with the terms of the November 25, 2009 Order of Dismissal; (2) reevaluate the student prior to determining the student ineligible for special education services; (3) provide the student an appropriate Individualized Education Program ("IEP"); (4) classify the student as emotionally disturbed and other health impaired; (5) determine an appropriate placement for the-student; (6) comply with the procedural requirements of the IDEA, in determining the student's placement; (7) and ensure that the Psychiatric Evaluation was reviewed by a qualified individual; in violation of "The Individuals with Disabilities Education Act ("IDEA")"; reauthorized as the "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")."

On February 17, 2010, Respondent filed "District of Columbia Public School's Amended Response and Motion to Dismiss Parent's Administrative Due Process Complaint"; and on February 20, 2010, the Hearing Officer issued an Order denying "without prejudice" Respondents' request to dismiss the complaint, due to Respondent's failure to file the motion to dismiss, in accordance with the Standard Operating Procedures, §401 (C) (1).

A prehearing conference was held in this matter on February 23, 2010, and a prehearing conference order issued on February 25, 2010. The due process hearings were held on March 9, 2010, at 9:00 a.m.; March 10, 2010 at 9:00 a.m.; and March 19, 2010, at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

On March 12, 2010, Petitioner filed a motion to continue the March 10, 2010 hearing to March 19, 2010, at 9:00 a.m., to provide the parties the opportunity to present its case. On March 16, 2010, the Hearing Officer issued an Interim Order on Continuance Motion, granting Petitioner's motion to continue the hearing to March 19, 2010. The hearing reconvened on March 19, 2010, at 9:00 a.m., as scheduled. The hearings were closed to the public.

This due process hearing was invoked in accordance with the rights established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25.

II. ISSUES

The following issues are before the court for decision?

(1) [3]Whether D.C. Public Schools denied the student a free appropriate public education, by failing to comply with the November 25, 2009 "Order of Dismissal"; requiring review of the student's Psychiatric Evaluation, at the January 13, 2010 MDT meeting?

(2) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to comply with the November 25, 2009 "Order of Dismissal"; requiring revision of the student's Individualized Education Program ("IEP")?

(3) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to comply with the November 25, 2009 "Order of Dismissal"; requiring a determination regarding the student's placement?

(4) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to comply with 34 C.F.R. §300.305(e) of the IDEA, requiring reevaluation of a student prior to determining the student ineligible for special education services?

(5) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to provide the student an appropriate IEP?

(6) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to determine the student eligible for special education services, under the disability classification of emotionally disturbed and other health impaired?

(7) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to determine an appropriate placement for the student?

(8) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to comply with the procedural requirements of the IDEA, in determining the student's placement?

(9) Whether D.C. Public Schools denied the student a free appropriate public education, by failing to ensure that the student's Psychiatric Evaluation was reviewed by a qualified individual?

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[3] Prior to proceeding with a hearing on the merits, Petitioner withdrew issue 1 of the complaint.

III. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties; and whether there were any objections to the disclosures. After considering objections by the parties, the following disclosures were admitted into the record as evidence:

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF PETITIONER

- Petitioner's Exhibits 28, 35, 36, 37, 38, 42, 54, 55, 63 through Petitioner's Exhibits 99; and witness list dated March 2, 2010; and Petitioner's Exhibits 28 and 35.

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF RESPONDENT

- Respondent's Exhibits 01 through Respondent's Exhibits 20; and a witness list dated March 2, 2010.

IV. FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER

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

Findings of Fact

1. The student completed through grade at where he began exhibiting off task and problematic behavior. He then transferred to where he repeated the grade due to failing grades; and difficulty remaining focused and on task. The parent was dissatisfied with the academic standard at transferred the student to where he repeated the grade.

   In the and grades the spent the majority of his time in school, in detention because he was easily distracted and drawn into off task behaviors causing him to fall behind in his academic work; and because the student was expected to complete the majority of his work outside the classroom and without the assistance of teachers, his performance and test scores deteriorated.

   In October, 2007, while a student at the student continued to exhibit off task and inappropriate behavior (lack of focus, and/or slow rate of work); significantly impacting his availability for academic functioning; and resulting in numerous suspensions from school. As a result of the behavior and its impact on his learning, on March 18, 2008, the school decided that because the student was unable to function in the Social Adjustment Class, he was not able to function in regular classes; and placed the student on a part-time schedule; where he remained until parent transferred the student to the

2. The Parent then transferred the student to the a private day school, where he continued to struggle academically and behaviorally. A Functional Behavioral Assessment and Intervention Behavior Plan were developed for the student on March 20, 2008.

3. On May 5, 2008, Diagnostic Consultants-DiCon, LLC completed a Social Work Evaluation Report. The evaluator recommended a Functional Behavioral Assessment, and Intervention Behavioral Plan to focus on specific behaviors in order to create a more suitable learning environment for the student.

4. On May 6, 2008, Diagnostic Consultants-DiCon, LLC completed an Educational Evaluation Report . The evaluator determined that the student's oral language skills are average when compared to others at his age level; his overall level of achievement is average; his fluency with academic tasks is low average; and his academic skills and ability to apply those skills are both within the average range. The evaluator also concluded that when compared to others at his age level, the student's performance is average in broad reading, mathematics, math calculation skills, written language, and written expression. No discrepancies were found among the student's achievement areas.

5. On May 12, 2008, Diagnostic Consultants-DiCon, LLC completed a Confidential Cognitive/Clinical Evaluation to assess the student's cognitive, social, and emotional functioning to assist with educational planning. The student was diagnosed with Academic Problem, and a "rule out" was recommended for Attention Deficit Hyperactivity Disorder (ADHD), Predominantly Inattentive Type.

   The student's cognitive ability as estimated by the WISC-IV, is in the average range (FSIQ=93); verbal comprehension and perceptual reasoning abilities were also both in the average range, suggesting that his ability to think with words is comparable to his ability to reason without the use of words. On his verbal reasoning domain, the student achieved his best performance on comprehension subtest; the student's general working memory abilities are in the average range, and general processing speed abilities are in the borderline range.

   The student's sub-average processing speed abilities constitute the areas of most pronounced weakness and suggest that he will experience difficulty with being able to mentally process simple or routine information without making errors. The evaluator concluded that despite the student's cognitive strengths, he struggles with underlying feelings of insecurity and inadequacy; has a strong desire to be seen by others as composed, charming, and appealing; and fail to respond well to rejection and criticism.

   The evaluator recommends a nurturing, supportive, non-punitive classroom setting; indicating that the student required additional time to complete routine tasks; opportunities to participate in structured recreational activities of his interest to promote his self efficacy/self esteem, increase level of social activity, as well as decrease his boredom.

6. On October 1, 2008, an Addendum to the May 12, 2008 Psychological Evaluation was completed to clarify diagnostic, educational and treatment needs of the student; and recommendations; in light of information not available at time of the initial evaluation. The evaluator determined that according to the Cumulative Student Conduct Log for the student, it was replete with citations for disruptive behaviors and numerous suspensions, which is consistent with a diagnosis of ADHD. The evaluator reasoned that the student's behavioral difficulties may be reflective of underlying affective disturbance, as such behaviors are commonly seen in children and adolescents with emotional difficulties.

   The evaluator concluded that the student meets the criteria for a definitive diagnosis of ADHD, predominantly the inattentive type. The evaluator determined that the student met the criteria for special education services and thus was in need of increased academic and social support. The evaluator also concluded that in light of the *seriousness* of the student's problematic behavior, particularly as they significantly impact his academic functioning, the student is clearly in *need of a more structured educational program that incorporates interventions for behavioral and emotional issues.*

   The evaluator determined that the student would function best in a small student to teacher ratio classroom setting; as opposed to his current class of 20 students at
   The evaluator opined that apparently the student's placement at was unsuccessful; and the student is unhappy with this placement as he is embarrassed by the fact that he is repeating the grade, placing him two grades behind his peers.

7. On November 10, 2008, Petitioner through her Attorney, initiated a due process complaint alleging that D.C. Public Schools, denied the student a free appropriate public education by failing to: (1) complete the Psychiatric Evaluation, in violation of 34 C.F.R. §300.304 (c) (4) and 30 DCMR §3005.9(g); and (2) reconvene the student's MDT meeting to review the findings and recommendations of the Psychiatric Evaluation.

   A due process hearing was held in this matter on December 11, 2008, at 9:00 a.m.; and on December 29, 2008, the Hearing Officer issued a decision finding that although the Barbara Jordan PCS had determined the student eligible for services, it failed to comprehensively evaluate the student in all areas of suspected disability; and failed to include parent in all decisions regarding the student's education and the provision of a FAPE. The decision required, among others, *that within ten (10) school days of receipt of the independent Clinical Evaluation, DCPS must reconvene the student's MDT/IEP team meeting to review the findings of all evaluations, develop an appropriate IEP for the student, and issue a Prior Notice of Placement to an appropriate special education program, as appropriate.*

   As of the date of this decision, DCPS has disregarded the Hearing Officers' decision and order, by failing to develop an appropriate IEP for the student, based upon his disability of ADHD, under the disability classification of Other Health Impaired ("OHI"); and failed to issue a Prior Notice of Placement, to an appropriate special education program, as ordered by the Hearing Officer on December 29, 2008.

8. On February 11, 2009, DiCon, LLC completed a Confidential Psychiatric Evaluation of the
student, to "rule out" ADHD. The evaluator concurred with the diagnosis of ADHD, given the combination of the student's history, testing results, and clinical presentation on interview. The evaluator indicated that behavioral issues such as disruptiveness, impulsivity, and disregard for rules, are often associated with ADHD. Executive problems such as self-direction and organization are also part of the syndrome. The evaluator indicated that a *medication trial is warranted*; and that the student would be best served by *small classrooms, high teacher/student ratio, a structured classroom environment and incentives to stay on task and complete his work.*

The evaluator also recommended accommodations such as sitting near the teacher's desk, one-on-one assistance, extra time to complete tasks; and psycho educational support and/or psychological therapy to develop and reinforce organization skills, self-control, impulse management, avoidance of distractions and otherwise coping with ADHD would also be beneficial.

9. On April 22, 2009, Petitioner through her Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a Free Appropriate Public Education ("FAPE"), by failing to: (1) provide the student an appropriate Individualized Education Program (IEP); and (2) provide the student an appropriate placement.

10. On May 28, 2009, while attending the the parent obtained independent evaluations of the student; and an IEP was developed for the student, however, the IEP merely included 45 minutes of individual, and 1 hour of group counseling weekly; and no specialized instruction services. The IEP also failed to include present levels of academic and functional performance, or academic goals and objectives. The student's disability classification was identified as Other Health Impaired ("OHI"); without indicating the specific disability, under the classification of OHI.

11. On August 31, 2009, Petitioner initiated a due process complaint alleging that DCPS denied the student a FAPE, by: (1) failing to comply with the December 29, 2008 Hearing Officer's Decision, by failing to develop an appropriate IEP; (2) failing to develop an appropriate IEP for the student at the April 17, 2009 and May 28, 2009 MDT meetings; and (3) failing to provide the student an appropriate placement. The due process hearing convened on October 14, 2009, at 9:00 a.m., as scheduled. Neither Petitioner nor Petitioner's Attorney appeared for the hearing. On October 15, 2009, the Hearing Officer issued a decision dismissing the complaint "without" prejudice, due to Petitioner's failure to prosecute the complaint.

12. On September 30, 2009 and October 1, 2009, Learning Solutions completed a "Functional Behavioral Assessment", to determine whether the student exhibits any behaviors that interfere with his academic and social interactions with both peers and adults as well as determine if such behaviors directly impact his academic achievement.

The evaluation methods and data collection tools included records review and analysis, interviews with the student's teachers, school visit/classroom observation, Motivation Assessment Scale (MAS), Behavior Assessment System for Children, Second Edition (BASC-II) Teacher Rating Scales-Adolescent, ABC Chart, and Scatter-plot data. The evaluator also considered the student's developmental history, academic history, previous report cards from from 8/2008-4/2009, previous evaluations (Psycho-educational, Psychiatric, cognitive/clinical evaluations administered in May, 2008).

The evaluator concluded that the student is keeping up with his peers, however, *his behavior is frequently off task; and historically the student had struggled since grade, both academically and behaviorally at the and prior placements*. The evaluator determined that based on the data collected in the evaluation, *it appeared that the student exhibits behaviors that impact his availability for learning*. Results of interviews demonstrated elevated concerns in the area of impulsivity and attention seeking tendencies.

According to the evaluation, additional data suggested off task or inappropriate behaviors (lack of focus and/or slow rate of work) that are relatively severe in intensity, occur frequently, and are major in duration and therefore appear to warrant formal behavioral interventions; which are consistent with the student's previous diagnosis of ADHD and appear to be a manifestation of his disability.

The evaluation included several recommendations, including however not limited to consultation with a pediatrician/psychiatrist to consider the merits and usefulness of psycho-pharmaceutical intervention to afford the student an opportunity to be available in the learning environment; indicating that his ADHD traits can be better managed with both therapy and psycho-pharmaceutical intervention.

13. On October 9, 2009, the Superior Court of the District of Columbia, Family Court, Court Social Services Division, Child Guidance Clinic, completed a "Confidential Psychological Evaluation", on behalf of the student.

    The record reflects that the evaluator was a *psychology extern,* conducting the evaluation under the supervision of Dr. Mitchell Hugonnet, a licensed psychologist at the Clinic; and the documents reviewed were limited to documents provided by DCPS, including the D.C. Superior Court, Court View Documents, Order for Psychological Evaluation; and the procedures administered included a Wechsler Intelligence Scale for Children-Fourth Edition, Wechsler Individual Achievement Test-Second Edition, Personality Assessment Inventory, and Thematic Apperception Test.

    The evaluation reflects that background information regarding the student was gathered via the clinical and collateral interview with the student, and a review of documents noted above.

The evaluator concluded that the student has a *Mathematics Disorder*; recommending the student receive extra time on exams as his performance is likely to benefit if he has more time to process and problem solve; tutoring in the area of mathematics, which will result in the requisite skills for his grade level; and individual therapy to allow him the space and support to articulate and process his feelings and resentment. The fact that this evaluation was completed by a psychological extern and not a licensed psychologist, presents query regarding its reliability.

The evaluation was completed without the benefit of parent and teacher interviews, student's educational records, historical information regarding grade retention and problematic behavior, or prior evaluations diagnosing the student with a math disorder and ADHD.

14. On October 15, 2009, Petitioner through her Attorney, initiated a due process complaint alleging that DCPS denied a free appropriate public education (FAPE); by failing to comply with the December 29, 2008 Hearing Officers' Decision, requiring development of an appropriate Individualized Education Program (IEP); and that the May 28, 2009 IEP completed by the is inappropriate because it is not reasonably calculated to provide the student educational benefit.

15. On October 19, 2009, pursuant to an order of the D.C. Superior Court, Family Division, the Government of the District of Columbia, Department of Mental Health completed a Psychiatric Evaluation, at the Harambee Youth Shelter House, where the student resided. The report was based on results of an interview with the student, and review of the following relevant documents: D.C. Superior Court, Family Court, Court Social Services Division, Child Guidance Clinic, Psychological Evaluation dated October 9, 2009; Harambee House for Your Shelter House Court Report; and Social Study Report dated September 17, 2009, submitted by the student's Probation Officer.

The Education History included in the report reflects among others, that during the sixth grade, the student was tested and diagnosed with a *learning disability;* which the parent indicated actually occurred while the student was in the grade. The evaluator diagnosed the student with *dysthymic disorder, adolescent disruptive behavior, cannabis abuse, mathematics disorder, and a rule out of ADHD.*

The evaluator recommended individual therapy, to assist the student in understanding his maladaptive defenses and the self-destructive nature of his antisocial behaviors; family therapy if he returned home to his mother; participation in a substance abuse program; and periodic urine drug testing to continue. The evaluator concluded that the student fail to require treatment with psychotropic medication at that time, however, if the student's *depression* worsens or fails to improve, he may require referral to a qualified Child and Adolescent Psychiatrist, for possible treatment with antidepressant medication.

The evaluator indicated that further evaluation is necessary, to determine whether the student actually suffers from ADHD, and could benefit from treatment with stimulant medications. The evaluator concluded that educational recommendations should be based on results of the Psychological Evaluation completed through the Child Guidance Clinic.

The evaluator also recommended that the student be allowed to reside in the community, with community based intervention and multi-systemic therapy. With respect to placement recommendations, the evaluator recommended *much structure and supervision* to function at an appropriate level; and considered for *placement in a well-structured and supervised group home, preferably a therapeutic group home, where the recommendations can be implemented.*

The evaluation was completed without the benefit of parent and teacher interviews, student's educational records, historical information regarding grade retention and problematic behavior, or prior evaluations diagnosing the student with a math disorder and ADHD.

16. On November 3, 2009, DCPS convened a resolution meeting; and issued parent an independent educational evaluation letter authorizing parent to obtain an independent Functional Behavioral Assessment. Additionally, on this date, the convened a MDT/IEP team meeting, including the parent, education advocate, DCPS, the student's special education teacher, and the special education coordinator, among others. MDT meeting notes reflect that the purpose of the meeting was to discuss the December 29, 2008 Hearing Officers' Decision, requiring development of an appropriate IEP for the student.

    DCPS advised the team that it was in agreement that an inappropriate IEP was developed for the student while attending the and at that time, it was of the position that the student was not eligible for special education services, due to his cognitive scores. DCPS also represented that the team failed to consider the fact that the student was twice retained; and although it acknowledged the student's placement at the it could not make the final decision regarding the student's placement.

    The team agreed that based on three (3) years of failure and two (2) retentions, the student cannot succeed in a general education setting. The student's teacher stated that the student could benefit from *one-on-one instruction, which would assist him in staying focused, emphasize the necessity of remaining calm when frustrated, and provide him the attention he requires rather than constantly draining the teacher's attention from other students*. The student's teacher also prepared a narrative which recommends placing the student on a bus to ensure his timely attendance, and a Psychiatrist to diagnose the ADHD and other treatment options.

    According to the meeting notes, the team was prepared to develop a final IEP for the student; however DCPS and the parent agreed not to sign off on the IEP until after review of the Psychological and Psychiatric evaluations ordered by the D.C. Superior Court. As a result, the MDT developed an Interim IEP for the student, recommending 27.5 hours of specialized instruction and 1 hour of counseling services, weekly.

    The IEP identified the students' disability classification as Other Health Impaired ("OHI"), however, the specific disability is not indicated. DCPS signed the cover page of the IEP as "present only".

The MDT also agreed to complete an independent Functional Behavioral Assessment, and once completed, an intervention behavior plan would be developed for the student. DCPS authorized and an independent FBA was completed, however, DCPS failed to develop an appropriate IEP for the student, which incorporates a IBP to address the student's attention and off task behavior, truancy, and problematic behavior.

17. On November 4, 2009, Petitioner through her Attorney, filed a due process complaint alleging that DCPS denied the student a FAPE, by failing to provide the student an appropriate placement. On November 17, 2009, the parties reached an understanding regarding resolution of the issues in the November, 4, 2009 due process complaint, and requested incorporation of the terms of that understanding in an Order.

    On November 19, 2009, the Hearing Officer issued a prehearing conference order consolidating the due process complaints filed on October 15, 2009, and November 4, 2009; and administratively closing the due process complaint filed on November 4, 2009.

18. On November 22, 2009, Petitioner, through her Attorney, filed with the Student Hearing Office and Hearing Officer, "Petitioner's Voluntary Withdrawal, Without Prejudice, of the Administrative Due Process Complaint Notices Filed on October 15, 2009 and November 4, 2009", withdrawing the due process complaints, "without" prejudice; based on the understanding reached by the parties in resolving the issues in both complaints.

19. On November 23, 2009, Petitioner's Attorney forwarded; and the DCPS Office of Special Education, Legal Unit/Resolution Team received a copy of the student's independent Functional Behavioral Assessment. On December 31, 2009 DCPS issued a notice confirming a meeting with parent on January 13, 2010, at 1:30 p.m., at the Educational Center, with the to participate via telephone.

    The notice reflects that the purpose of the meeting is to develop and review the student's IEP, review evaluation information, discuss documented levels of service, discuss placement, discuss eligibility, and compensatory educations services. According to the January 13, 2010 MDT meeting notes, the purpose of the meeting was to review the student's Psychiatric and Psychological Evaluations, and Functional Behavioral Assessment; review and revise the student's IEP, *if* appropriate, in accordance with the November 25, 2009 Hearing Officers' Order.

20. On November 25, 2009, the Hearing Officer issued an amended Order, granting Petitioner's request to withdraw the October 15, 2009 due process complaint, "without prejudice"; incorporating the following terms agreed upon by the parties:

    (1) **ORDERED**, that Petitioner shall forward to Respondent's Attorney a copy of its proposed compensatory education plan, no later than noon on November 25, 2009; and it is further

    (2) **ORDERED**, that Petitioner shall forward to Respondent's Attorney copies of the Psychiatric and Psychological evaluations ordered by D.C. Superior Court, and referenced by Petitioner during the pre-hearing conference, within two (2) days prior to Respondent convening the IEP team meeting referenced in subparagraph (5) of this Order; and it is further

(3) **ORDERED**, that Respondent shall reimburse parent the cost of the students' attendance at the Monroe School, pending a final decision on the instant complaint; and upon receipt of the Functional Behavioral Assessment, Respondent shall reconvene an IEP team meeting to review the Psychiatric Evaluation, Psychological Evaluation, and Functional Behavioral Assessment; review and revise the student's IEP, as appropriate, and determine placement; and it is further

21. **DCPS failed to comply with the November 25, 2009 "Order of Dismissal"; requiring review of the student's Psychiatric Evaluation at the January 13, 2010 MDT meeting.**

The November 25, 2009 "Order of Dismissal" representing the understanding of the parties; ordered in part, that upon receipt of the independent Functional Behavioral Assessment, DCPS shall reconvene an IEP team meeting to review the court ordered Psychiatric and Psychological evaluations, and independent Functional Behavioral Assessment; review and revise the student's IEP, as appropriate, and determine placement; which failed to occur.

On January 13, 2010, DCPS convened an IEP team meeting with parent, to review the October 19, 2009 court ordered Psychiatric Evaluation, October 9, 2009 court ordered Psychological Evaluation, and independent Functional Behavioral Assessment. The meeting included two (2) teams, specifically a team from the Educational Center; and a team from the The DCPS team at the included: the Special Education Coordinator, school Social Worker, special education teacher, Department of Mental Health Clinical Psychologist, Psychologist, school counselor, a regular education teacher, and DCPS.

The Court ordered Psychiatric and Psychological evaluations were reviewed by the DCPS Psychologist. According to the meeting notes, DCPS relied on the most recent Psychiatric assessment completed by D.C. Mental Health, which provided a rule out of ADHD, in determining the student ineligible for special education services; acknowledged that it had not reviewed the court ordered Psychological Evaluation, and determined that the student fail to meet the qualifications for OHI. According to the MDT meeting notes, DCPS stated that it was required to accept the most recent clinical information at face value.

indicated that the student's behavior warrants a residential placement; and despite their interventions, the student continues to exhibit problematic behavior in class. The Clinical Consultant from the indicated that the student's drug abuse is a significant issue, and the team is beyond behavioral management; and the student requires a *more contained setting.* reported that when the student was at the Harambee House, a group home, his attendance and performance improved, however, once release to the custody of his mother, his attendance dropped and behaviors worsened.

During this meeting, DCPS indicated that although it cannot explain the *discrepancy between the most recent and prior evaluations* regarding the ADHD diagnosis, and although it agrees that the student has behavioral issues; based on substance abuse, as well as the rule out of ADHD in the recent assessment, it cannot agree that the student continues to meet the criteria for a student with OHI. DCPS reasoned that given the student's poor attendance, truancy, - continued drug use (and history of drug use), as well as the fact that his academic performance is sufficient, an emotionally disturbed classification is inappropriate.

DCPS concluded that given that the student fails to qualify for services as a student with OHI or ED, he is no longer eligible for receive services, and was exited from special education services. On January 13, 2010, DCPS issued a "Completion of Services Form" exiting the student from counseling and specialized instruction services, based on review of the October 9, Psychological Evaluation; and October 19, 2009 Psychiatric Evaluation; rule out of ADHD; WISC-IV (FISQ-97, WIAT II; Reading (95); Written Language (91), and Math (92). Parent disagreed with the termination of special education and related services.

First, IDEA requires that in developing a child's IEP, the IEP team must consider the strengths of the child; concerns of the parents for enhancing the education of the child; and results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child; as well as consider special factors in cases such as this where the child's behavior impedes the child's learning; and consider the use of positive behavioral interventions and supports, and other strategies to address that behavior; which failed to occur in this matter.

Second, the purpose of the review of the evaluations ordered by the Hearing Officer was to provide additional information to assist the team in developing an appropriate IEP; and was not intended as an eligibility determination meeting; providing DCPS an opportunity "second guess" the Hearing Officers' prior decision in this matter or prior diagnoses of ADHD; and exit the student from services.

Third, in reviewing the October 19, 2009, Government of the District of Columbia, Department of Mental Health Psychiatric Evaluation, DCPS disregarded the fact that the evaluation was conducted without the benefit of vital information regarding the student's academic and behavioral history, grade retentions, prior evaluations diagnosing the student wherein the student was diagnosed with a mathematics disorder and ADHD; and merely consisted of results of an interview with the student, and review of the following documents: Psychological Evaluation dated October 9, 2009; Harambee Youth Shelter House Court Report; and Social Study Report dated September 17, 2009, submitted by the student's Probation Officer.

Therefore, the evaluator's rule out of ADHD is not reliable; and should not have served as the primary basis for DCPS' decision to terminate the student from special education services, particularly since the evaluator was unaware that the student was previously diagnosed with ADHD, and another Psychiatrist confirmed the prior diagnosis of ADHD; and the diagnoses was made without the benefit of information regarding the student's academic and behavioral history.

Fourth, DCPS failed to review the student's IEP as ordered, and instead relied solely upon the finding in the Psychiatric Evaluation, which ruled out ADHD; while disregarding the evaluator's recommendation for further evaluations to determine whether the student actually presents with ADHD.

Fifth, although it is DCPS' practice that a Psychologist review Psychiatric Evaluations, on January 13, 2010, according to the testimony of at least two (2) licensed Clinical Psychologists, a Psychologist is not qualified to review a Psychiatric Evaluation. Therefore, the DCPS Psychologist was not qualified to review and interpret the instructional implications of the October 19, 2009 Department of Mental Health Psychiatric Evaluation findings and recommendations; or refute the diagnoses rendered by the Clinical Psychologists and Psychiatrists.

Sixth, according to the IDEA, §300.306, (c) in interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, *and the educational needs of the child*, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical consideration, social or cultural background, and adaptive behavior; and ensure that the information obtained from all of these sources is documented and carefully considered; which failed to occur at the January 13, 2010 meeting.

Seventh, during testimony, the DCPS Psychologist testified that although she was aware of prior evaluations diagnosing the student with ADHD, and a learning disability, and that he was twice retained; and the evaluation recommended a therapeutic group home for the student; she failed to deem it necessary to review prior evaluations completed on the student which diagnosed the student with ADH D and a learning disorder, and only reviewed the evaluations available at that time; and that she failed to conduct additional testing; consult with the evaluators of the court ordered evaluations; or rule out ADHD as recommended by the D.C. Department of Mental Health Psychiatrist; because the student's performance was within normal limits and in the average range for his age; and grade level is not a good determinative for assessing a student's performance.

Eighth, on May 29, 2009, DCPS issued a "Prior to Action Notice", changing the student's placement from the to On January 13, 2010, DCPS recommended that the student attend his neighborhood school; the Completion of Services and MDT meeting forms identifies as the student's school; and having very limited familiarity with the student, convened the MDT meeting on DCPS' behalf.

Ninth, based on the evidence presented, it is evident that at the January 13, 2010 MDT meeting, DCPS had no interest in reviewing and revising the students' Interim IEP developed on November 3, 2009; or carefully considering information regarding the student from the Monroe School, parent, prior evaluations, or the various sources as required by the IDEA.

DCPS had no interest in carefully considering the recommendations in the D.C. Department of Mental Health Psychiatric Evaluation, wherein the evaluator although ruling out ADHD, recommended further evaluations to make certain the student did not present with ADHD. DCPS also was not interested in carefully considering the same evaluation which also diagnosed the student with a dysthymic disorder; or the Psychological Evaluation which confirmed that the student presents with a specific learning disability in mathematics.

Finally, based on the evidence and testimony presented, it is clear that prior to convening the January 13, 2010 MDT meeting to review the evaluations, DCPS unilaterally decided to exit the student from special education services, and place the student at the
denying parent the opportunity to provide meaningful input in the placement decision, and all decisions regarding the provision of a FAPE to the student.

22. **DCPS failed to comply with the November 25, 2009 "Order of Dismissal"; requiring revision of the student's Psychiatric Evaluation at the January 13, 2010 MDT meeting.**

First, on January 13, 2010 DCPS failed to revise and finalize the student's November 3, 2009 Interim IEP based upon its review of all the evaluations, including the court ordered Psychological and Psychiatric evaluations, while carefully considering the diagnoses and recommendations in each; and information from the various sources.

DCPS also failed to finalize the IEP by ensuring that it included, among others, a statement of the child's present levels of academic achievement and functional performance, including how the student's disability affects his involvement and progress in the general education curriculum; a statement of measurable annual goals, including academic and functional goals; a description of the how the student's progress toward meeting the annual goals will be measured; and a statement of special education and related services; an explanation of the extent to which the student will not participate with nondisabled students; a statement of any individual appropriate accommodations, and a IBP to address the student's behavior.

Second, DCPS failed to consider the May 10, 2008, Confidential Cognitive/Clinical Evaluation which assessed the student's cognitive, social, and emotional functioning; and diagnosed the student with an Academic Problem, and a "rule out" was recommended for Attention Deficit Hyperactivity Disorder (ADHD), Predominantly Inattentive Type; and the May 12, 2008, Addendum to the Psychological Evaluation which the evaluator concluded that the student meets the criteria for a definitive diagnosis of ADHD, predominantly the inattentive type.

DCPS failed to consider additional findings in this evaluation, wherein the evaluator determined that the student met the criteria for special education services and thus *was in need of increased academic and social support*; and concluded that in light of the *seriousness of the student's problematic behavior*, particularly as they *significantly impact his academic functioning*, the student is clearly in need of a more structured educational program that incorporates interventions for behavioral and emotional issues.

Third, DCPS failed to consider the findings and recommendations of the February 11, 2009, DiCon, LLC Confidential Psychiatric Evaluation, conducted to "rule out" ADHD; wherein the evaluator *concurred with the diagnosis of ADHD*, indicating that given the combination of the student's history, testing results, and clinical presentation on interview.
The evaluator explained that behavioral issues such as disruptiveness, impulsivity, and disregard for rules, are often associated with ADHD. Executive problems such as self direction and organization are also part of the syndrome. The evaluator indicated that the student appears to have all of these problems.

DCPS disregarded findings by this evaluator that a *medication trial is warranted*; and that the student would be best served by small classrooms, high teacher/student ratio, a structured classroom environment and incentives to stay on task and complete his work. According to the evaluator, accommodations such as sitting near the teacher's desk, one-on-one assistance, extra time to complete tasks; and psycho educational support and/or psychological therapy to develop and reinforce organization skills, self-control, impulse management, avoidance of distractions and otherwise coping with ADHD would also be beneficial.

Fourth, DCPS disregarded findings in the most recent, and court ordered Psychological Evaluation wherein the student is diagnosed with a specific learning disability in mathematics; which confirms the grade diagnosis of a specific learning disability in mathematics.

Fifth, DCPS disregarded findings in the most recent, and court ordered Psychiatric Evaluation wherein the student was diagnosed with *dysthymic disorder, adolescent disruptive behavior, mathematics disorder, and recommended further evaluations to actually determine whether the student presents with ADHD.* Instead, DCPS decided that review and revision of the student's IEP to address these diagnoses, was not necessary because the Psychiatric evaluation ruled out ADHD, and diagnosed the student with *cannabis abuse; which it* deemed as a sufficient basis for exiting the student from special education services.

Sixth, the DCPS Psychologist testified that according to the IDEA, under the disability classification of emotionally disturbed, a student only need to meet 1 of the 5 criteria to be eligible for services; and the behavior must occur over a marked period of time, of approximately 2-9 months. The record reflects that for approximately six (6) years, this student has met 4 of the 5 eligibility criteria for ED, which impacts his learning, as well as, suffered two grade retentions; however, DCPS determined him ineligible for services under the disability classification of ED.

Seventh, although the student is performing within normal limits and in the average range for his age, the student is not performing within normal limits for his grade level. Therefore, DCPS' argument that because the student is performing in the average range academically, and therefore, any disability is not adversely impacting his learning is flawed. Courts have repeatedly held that the fact that a student is advancing from grade to grade does not relieve the LEA of its obligation to provide the student a FAPE; and in this instance, does not relieve DCPS of its obligation to address the student's diagnosis of ADHD, specific learning disability in mathematics, and ED.

Eighth, at the January 13, 2010 MDT meeting, the student's teachers at the reported that even with the interventions and supports provided the student, it is unable to provide the student the structure, support, supervision, and behavioral support he requires to access the general curriculum, particularly in view of the increase in his oppositional behavior and the impact on his learning, compounded by his use of

recommends a more structured educational program that incorporates interventions for behavioral and emotional issues; small classrooms, high teacher/student ratio, a structured classroom environment and incentives to stay on task and complete his work; accommodations ; and psycho educational support to develop and reinforce organization skills, self control, impulse management, avoidance of distractions and coping with ADHD.

The Clinical Consultant/tutor, Boston Mental Health Services, advised the team that because of the student's difficulties in the community and at school, and the frequency and severity of his behaviors, *he appears to exhibit behaviors consistent with oppositional defiant disorder*; however, DCPS disregarded this information; and proceeded to exit the student from special education services.

Ninth, teacher input and evaluations reflect that the student's behavior is frequently off task and inappropriate (lack of focus, and/or slow rate of work) that are relatively severe in intensity, occur frequently, and are major in duration and therefore, appear to warrant formal behavioral interventions; which are consistent with the student's previous diagnosis of ADHD, and appear to be a manifestation of his disability; which DCPS also disregarded and failed to consider at the January 13, 2010 MDT meeting.

Finally, DCPS failed to revise the student's IEP to address the student's diagnoses of ADHD, specific learning disability in mathematics, dysthymic disorder, emotional disability, and adolescent disruptive behavior.

23. **DCPS failed to comply with the November 25, 2009 "Order of Dismissal"; requiring a determination regarding the student's placement.**

First, the evidence reflects that although cognitively the student is capable of performing the class work, his ADHD, specific learning disability in mathematics, dysthymic disorder, and adolescent disruptive behavior NOS, significantly impair his ability to learn.

Second, prior and recent evaluations support a finding that the nature and severity of the student's disabilities are such that the student requires a more structured educational program in a therapeutic environment, where he can receive one-on-one instruction; and receive a program that incorporates interventions and supports to address his academic, behavioral and emotional difficulties; which is necessary for the student to access the general curriculum and receive educational benefit.

Third, the October 1, 2008 Addendum to the May 12, 2008 Psychological Evaluation provided that in light of the seriousness of the student's problematic behavior, particularly as they significantly impact his academic functioning, the student is clearly in need of a more structured educational program that incorporates interventions for behavioral and emotional-issues. The evaluator also determined that the student would function best in a small student to teacher ratio classroom setting, as opposed to his current class of 20 students at and the student was two grades behind his peers; which DCPS failed to consider.

Fourth, the February 11, 2009 Confidential Psychiatric Evaluation indicated that the student would be best served by small classrooms, high teacher/student ratio, a structured classroom environment and incentives to stay on task and complete his work.
The evaluator also recommended accommodations such as sitting near the teacher's desk, one-on-one assistance, extra time to complete tasks; and psycho-educational support and/or psychological therapy to develop and reinforce organization skills, self-control, impulse management, avoidance of distractions and otherwise coping with ADHD; which DCPS disregarded.

Fifth, the October 19, 2009 court ordered Psychiatric Evaluation recommends much structure and supervision to function at an appropriate level; and consideration for placement in a well structured and supervised group home, preferably a therapeutic group home, where the recommendations can be implemented; which DCPS disregarded.

Sixth, at the January 13, 2010 MDT meeting DCPS disregarded this Hearing Officers' prior determination that the student was eligible for services under the disability classification of OHI, identified as ADHD, which was based on reliable evaluation data and information; and order to determine (identify) an appropriate placement for the student.

DCPS also informed the parent that because the court ordered Psychiatric Evaluation ruled out ADHD, the student was no longer eligible for special education services, and would be exited from such services; and that the student could attend his neighborhood school.

Seventh, at the January 13, 2010 meeting, DCPS indicated that it could not render a final decision regarding the student's placement, however, it would explore whether bus transportation to the would be funded by DCPS; and whether such transportation could be made a part of the student's compensatory education plan. The only reservation voiced by DCPS and the parent was not signing the IEP, until after review of the D.C. Superior Court, Psychological Evaluation; and D.C. Mental Health Psychiatric Evaluation. This is evidence that DCPS did not oppose or disagree with the recommendation by the that the student required a more structured supervised placement, in a therapeutic environment, where he can receive the one on one instruction he requires.

Eighth, DCPS represents that the student's needs can be met at the with a 504 Plan and appropriate interventions and supports, however, failed to present evidence demonstrating that the can provide a structured, supervised, therapeutic environment where the student can receive one on one instruction; receive behavioral interventions and supports, and with a small student to teacher ratio; as recommended in the evaluations.

24. **DCPS failed to comply with IDEA, 34 C.F.R. §300.305(e); requiring reevaluation of the student in accordance with §§300.304 through 300.311 *before* determining that a child is no longer a child with a disability, at the January 13, 2010 meeting.**

First, the court ordered October 19, 2009 Psychiatric Evaluation and a prior evaluation recommended a medication trial; which DCPS disregarded.

Second, if DCPS decided not to reevaluate the student, it could have reviewed and carefully considered the diagnoses in the prior evaluations and information from the various sources regarding the students' academic, behavioral, and functional performance, as required by the IDEA; which also failed to occur.

Third, although DCPS indicated at the January 13, 2010 meeting that there were discrepancies in the diagnoses rendered in the Psychiatric and Psychological evaluations completed by the court, and those indicated in prior evaluations that could not be explained, it failed address the discrepancies, or complete the additional evaluations prior to exiting the student from special education services.

Fourth, although the Psychiatric Evaluation completed by the D.C. Department of Mental Health ruled out that the student presented with ADHD, it recommended further testing to rule out ADHD; and confirmed the prior diagnosis of a specific learning disability in mathematics, which the student began exhibiting during the grade. However, DCPS disregarded this information and proceeded with exiting the student from special education and related services.

Fifth, the DCPS Psychologist testified that although she disagreed with the findings and recommendations in the FBA, she failed to consult with the evaluator or recommend another FBA, to address any concerns; because she opined that it was not necessary.

The DCPS Psychologist also testified that she and the team disagreed with the diagnosis of a mathematical disorder; and believed the court ordered Psychological Evaluation, Wechsler Individual Achievement Test, reflecting that the student scored zero ("0") in the percentile rank in mathematics, was an error; however, she failed to contact the evaluators to discuss their findings, or dispel any uncertainty the team may have had regarding the test results, because she determined it was not necessary.

The Psychologist also testified that although the student's teachers indicated the student exhibited attention and behavioral issues she opined that additional testing was not warranted; and that once the student's drug issue is addressed then the team can determine the cause of the student's behavior, and address his needs at that time.

Sixth, at the January 13, 2010 MDT meeting DCPS relied upon the court ordered Psychiatric evaluation finding which ruled out ADHD, disregarding all other findings in this evaluation, and prior evaluations, and test results in the court ordered Psychological Evaluation; although DCPS was aware that both evaluations were completed without the benefit of valuable-

information from the parent and teachers familiar with the student, classroom observations, review of the student's educational record, review of prior evaluations, or review of the student's academic and behavioral history.

Most importantly, although IDEA, requires the LEA to reevaluate a student prior to exiting a student from services, DCPS failed to reevaluate the student; and instead relied solely upon evaluations from D.C. Superior Court; and input from individuals at the which is totally unfamiliar with the student; in deciding to exit the student from special education services.

Seventh, DCPS also relied upon input in deciding to exit the student from special education services, although aware that was not familiar with the student, had no information regarding the student's prior academic and behavioral history, had not reviewed prior evaluations and diagnoses, had not evaluated or observed the student, and merely reviewed the student's Psychiatric and Psychological evaluations completed by the court. The placement decision and decision regarding ineligibility for services were made by individuals who were not familiar with the student; and the evaluations were reviewed by individuals unfamiliar with the student.

Eighth, according to the DCPS, on January 13, 2010 it exited the student from special education and related services, because the student's problematic behavior and academic difficulties are due to his daily use of and poor attendance, and once the student is free of drugs, it would then reevaluate the student to determine his needs. However, at the meeting, the team did not have information which supported a finding that the student no longer required the special education services; and presented no evidence at the hearing to substantiate these allegations. Absent substantive evidence to support these assertions, DCPS' decision to exit the student from services was made based purely on speculation, and represents a deliberate disregard of the court's prior decision and order in this matter, as well as, prior and current evaluation findings and diagnoses.

At the January 13, 2010 meeting, the student's teacher reported that the student has come to school "high and/or smelling of marijuana *on several occasions*"; which is contrary to DCPS' representation that the student used drugs daily and attended school "high" everyday. DCPS failed to carefully consider the student's academic and behavioral history; where it is well documented that the student began experiencing attention, off task and problematic behavior, and academic difficulties as early as the grade, was diagnosed with a learning disability in the grade, and was retained in the and grade, predating the student's reported drug usage, which reportedly began at the age of

DCPS decided to exit the student from services without the benefit of reliable data and information regarding the extent of the student's usage and its impact, if any, upon his learning; and which supported a finding that the student no longer required special education and related services.

Additionally, it is reported that at the time of the court evaluations, the student was in the group home, the Harambee House, under court supervision; attending school regularly; and not under the influence of Therefore, it is likely that the data in the evaluations is reliable; and DCPS' argument that the student used drugs daily; and must be free of drugs prior to evaluations and a determination regarding his educational needs, is flawed.

Sixth, the team also made the decision to exit the student from the special education program without the benefit of reliable data and information regarding the impact that such marijuana usage, has upon the student who also presents with dysthymic disorder, an emotional disability, a specific learning disorder, ADHD, and an adolescent disruptive behavior disorder. No additional evaluations were recommended by the team.

Seventh, witness testimony provides that a student diagnosed with cannabis abuse, can also present with ADHD, ED, and SLD. DCPS' reasoning that given the student's poor attendance, truancy, continued drug use (and history of drug use), as well as the fact that his academic performance is sufficient, fail to satisfy the procedural and substantive requirements of the IDEA, in determining a student ineligible for special education services.

Ninth, DCPS failed to carefully consider information from various sources as required by the IDEA; and failed to apply IDEA' eligibility criteria for specific learning disability, other health impaired, and emotionally disturbed, in determining the ineligible for special education services, as required by the IDEA.

25. **On January 13, 2010, DCPS failed to provide the student an appropriate IEP, reasonably calculated to provide the student a FAPE.**

First, DCPS disregarded information from various sources in developing an appropriate IEP for the student, as required by the IDEA; which addressed the diagnoses of ADHD, the recent rule out of ADHD; the recent diagnosis of dysthymic disorder, adolescent disruptive behavior, and a specific learning disability in mathematics; and the student's history of academic and behavioral difficulties, significantly impacting his learning.

Second, according to the October 4, 2009 Functional Behavioral Assessment, the student's behaviors are consistent with his previous diagnosis of ADHD and appear to be a manifestation of his disability; however, DCPS disregarded this information and failed to develop an IEP for the student that incorporates an IBP, with appropriate behavioral interventions and supports, to address the behavior.

Third, DCPS disregarded the fact that on November 3, 2009, DCPS agreed that an inappropriate IEP was developed for the student while attending the and that the team failed to consider that the student was twice retained; the team determined that based on three (3) years of failure and two (2) retentions, the student is unable to succeed in a general education setting. The November 3, 2009 team reported that there were additional needs that were not accounted for ("ADHD"); which DCPS failed to address in an IEP for the student.

Fourth, according to the MDT meeting notes, DCPS participated in the November 3, 2009 MDT meeting, although the DCPS Compliance Case Manager testified, and it is indicated on the IEP that he was only present.

DCPS also voiced no objections to the matters discussed regarding development of an appropriate IEP for the student, and a determination regarding placement for the student; the Interim IEP developed for the student by the or the team's agreement to reconvene to finalize the student's IEP at a time when the court ordered assessments would be reviewed.

Fifth, prior and recent evaluations reflect that the student requires accommodations and supports such as tutoring in mathematics; sitting near the teacher's desk, one on one assistance, and extra time to complete tasks and exams; and individual counseling to address the dysthymic disorder, reinforce organization skills, self control, assist he student in comprehending his maladaptive defenses and the self destructive nature of his antisocial behaviors; impulse management, avoidance of distractions, and coping with ADHD; and family therapy to assist the Petitioner in being more effective in providing the student the necessary structure, support, guidance, limit setting and supervision for the student.

DCPS failed to develop an appropriate IEP for the student, providing the student the interventions, accommodations and supports necessary to access to general curriculum and receive educational benefit.

Sixth, DCPS represents that the student's needs can be met at the with a 504 Plan and appropriate interventions and supports, however, failed to present information at the January 13, 2010 MDT meeting, or evidence at the hearing, demonstrating that the can provide the student a program specifically designed to address his unique educational needs, in a structured, supervised, therapeutic environment where the student can receive one on one instruction; receive behavioral interventions and supports, and there is a small student to teacher ratio; as recommended in the evaluations.

Finally, DCPS failed to develop an appropriate IEP for the student in accordance with IDEA, 34 C.F.R. §300.320; that is reasonably calculated to provide the student educational benefit and access to the general curriculum.

26. **DCPS failed to determine the student eligible for special education services under the disability classification of *emotionally disturbed.***

First, a review of the student's academic and behavioral history, prior and current evaluations support a finding that the student satisfies four (4) of the five (5) eligibility criteria under the IDEA,§300.8 (4)(i), as a student with an emotional disturbance, because he demonstrates: (1) an ***inability to learn*** that cannot be explained by intellectual, sensory, or –

health factors; (2) an ***inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances;*** and ***(4) a general pervasive mood of unhappiness and is diagnosed with depression;*** over a long period of time and to a marked degree that such behavior adversely affects the student's educational performance.

Second, on October 19, 2009, pursuant to an order of the D.C. Superior Court, Family Division, the Government of the District of Columbia, Department of Mental Health completed a Psychiatric Evaluation. The report was based on results of an interview with the student, and review of the following documents: D.C. Superior Court, Family Court, Court Social Services Division, Child Guidance Clinic, Psychological Evaluation dated October 9, 2009; Harambee House for Your Shelter House Court Report; and Social Study Report dated September 17, 2009, submitted by the student's Probation Officer.

The court ordered Psychiatric Evaluation was completed without the benefit of parent and teacher interviews, student's educational records, historical information regarding grade retention and problematic behavior, or prior evaluations diagnosing the student with a math disorder and ADHD, however, based merely on the limited information provided the evaluator by DCPS, and interview with the student, the evaluator diagnosed the student with *dysthymic disorder, adolescent disruptive behavior, cannabis abuse, mathematics disorder, and a rule out of ADHD.*

DCPS disregarded the dysthymic disorder diagnosis and recommendations for individual therapy, to assist the student in understanding his *maladaptive defenses and the self-destructive nature of his antisocial behaviors.*

Third, DCPS disregarded findings that although the evaluator determined that the student fails to require treatment with psychotropic medication **at that time**, she also indicated, **however**, if the student's **depression** worsens or fails to improve, he may require referral to a qualified Child and Adolescent Psychiatrist, for possible treatment with antidepressant medication.

Fourth, DCPS also disregarded input at the January 13, 2010 MDT meeting from individuals familiar with the student who indicated that the student's behavior appear to be consistent with oppositional defiant disorder ("ODD"); the who commented that the student does meet the criteria under OHI; and has concern that the student's behavior has become increasingly more severe, impacting his learning.

Fifth: at the January 13, 2010 MDT meeting, DCPS indicated that it disagreed with the ED disability because of the student's attendance, drug use, tardiness, current evaluations, and lack of availability for learning; which is not the IDEA criteria for determining a student eligible for special education services under the disability classification of ED.

27. **DCPS failed to determine the student eligible for special education services under the disability classification of *other health impairment.***

First, the diagnosis of ADHD, does not automatically entitle the student to special education services under the IDEIA. ADHD is not a specific disabling condition under the IDEA, although a student with ADHD may be eligible as "other health impaired," or another specific disability, by reason of the condition(s). In this matter, the ***student's disability adversely affects his educational performance/learning***, placing his disability, within the scope of IDEIA's "other health impairment", provision.

ADHD is a spectrum disorder and some students may need special education if their ADHD is severe. Students with ADHD may be eligible for services under the Individuals with Disabilities Education Improvement Act, rather than solely under Section 504 of the Rehabilitation Act, however the criteria for eligibility determinations, is unclear in the law. The distinction between requirements to accommodate a student's disability under a 504 plan, and special education, is also unclear. What is clear is that a student is entitled to a free and appropriate public education, whether it's under special education or a 504 plan.

The determination is whether the student requires special education, as a result of having ADHD. Because students with ADHD spend the majority of their time in general educational settings, it is critical to ensure that teachers are using current scientific information to teach these students. Students with ADHD have invisible disabilities, and appear as normal children, however, often don't have adaptive mechanisms. These children often exhibit signs of inattentiveness, hyperactivity, and impulsivity, which are all symptoms, identified in this student's behavior.

Second, according to prior and recent evaluations, and as articulated in the Hearing Officer's prior decision, the student is diagnosed with ADHD, and is eligible to receive special education services under the disability classification of OHI, under IDEIA; because the student has limited strength, vitality and alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that that is due to his ADHD; and it adversely affects his educational performance and learning. Additionally, the student has a specific learning disability in mathematics.

Third, in a prior decision, the Hearing Officer determined that based on reliable data and information received from prior evaluations, the student was eligible for services under the disability classification of OHI, because of the diagnosis of ADHD; and that which remained was a review of the court ordered Psychiatric and Psychological evaluations; review and revision of the student's Interim IEP, based upon the Hearing Officers' findings, and the prior evaluations; and identification of an appropriate special education program and placement for the student.

Fourth, the November 25, 2009 decision and order was clear in its directive and did not indicate nor intend that during DCPS' review of the court ordered Psychiatric and Psychological Evaluations, that it should disregard the Hearing Officers' prior findings and-

decision; prior evaluations and diagnoses of ADHD and a specific learning disability in mathematics; and a recent diagnosis of dysthymic disorder, adolescent disruptive behavior, mathematics disorder, and a rule out of ADHD; two (2) grade retentions; history of academic and behavioral difficulties since the grade; the grade diagnoses of a learning disability; or evaluation recommendations that the student is placed in a small structured therapeutic, structured, and controlled environment, to access the general educational curriculum; and exit the student from special education services.

Fifth: at the January 13, 2010p MDT meeting commented that it disagreed with the OHI diagnosis, however, was not familiar with the student, had not met, evaluated, or observed the student, spoken with the student's parent or teachers, or was familiar with the student's educational or academic history, therefore, it was not a qualified member of the team, or provide input regarding development of an appropriate educational program for the student's. input should have been limited to responding to questions the team may have had regarding its educational program.

Finally, it is evident that DCPS deliberately disregarded the prior HOD, as well as, findings and directives in the November 25, 2009 Order; and instead unilaterally interpreted the language "as appropriate" in paragraph 5 of the order, as providing it an opportunity to exit the student from special education services, because of his reported cannabis use.

28. **DCPS failed to determine an appropriate placement for the student; and failed to comply with the procedural requirements of the IDEA, in determining the student's educational placement, on January 13, 2010.**

First, DCPS failed to comply with the procedural and substantive requirements of the IDEA, in determining the student's placement.

Second, on May 29, 2009, DCPS issued a "Prior to Action Notice", changing the student's placement from the to On January 13, 2010, DCPS recommended that the student attend his neighborhood school; the Completion of Services and MDT meeting form identify as the student's school.

DCPS relied upon the input of the with regard to the students' placement; and disregarded input from the student's teachers at the and the parent; because it had already decided to exit the student from special educations services and recommend the student attend the

Third, DCPS provided the the court ordered Psychologist and Psychiatrist very limited information regarding the student's academic and behavioral history, and these individuals were unfamiliar with the student; and although DCPS was aware that these individuals had very limited information when conducting the evaluations, and providing input regarding the student's placement at the it relied on that information in deciding to exit the student from special education; and recommend as the student's placement.

Fourth, based on the evidence and testimony presented, it is evident that at the January 13, 2010 MDT meeting, DCPS was not interested in carefully considering prior evaluation findings and recommendations, or the recommendations of the D.C. Department of Mental Health Psychiatric Evaluation wherein the evaluator recommended a rule out of ADHD, and diagnosed the student with a dysthymic disorder; or the Psychological Evaluation which confirmed that the student presents with a specific learning disability in mathematics; or considering input from the student's teachers or parent.

Finally, based on the evidence and testimony presented, prior to convening the January 13, 2010 MDT meeting, DCPS consulted with providing the school very limited information regarding the student, and requested that the school review that information and determine whether it would accept the student at the school; decided to exit the student from special education services; and unilaterally decided to place the student at the denying parent the opportunity to provide meaningful input in the placement decision, and all decisions regarding the provision of a FAPE to the student.

29. **DCPS failed to ensure that on January 13, 2010, a qualified individual was on the team to review the D.C. Department of Mental Health, Psychiatric Evaluation.**

First, although DCPS represents that the Psychologist who reviewed the court ordered Psychiatric Evaluation was qualified; that a Clinical Psychologist was also a member of the team; and the Education Advocate failed to object to the qualifications of the Psychologist to review the Psychiatric Evaluation, until after the meeting, IDEA places the responsibility for ensuring that an IEP team includes qualified individuals to interpret the instructional implications of evaluation results on the LEA, not the parent.

Furthermore, although the Clinical Psychologist was a member of the team, it failed to review the evaluation; and the evaluation was reviewed by the Psychologist; who is not qualified to interpret instructional implications of evaluation results developed by a Psychiatrist.

Second, according to the DCPS Psychologist's testimony, she has a Masters degree and not a doctorate degree in psychology; and is certified in advanced graduate studies at Howard University.

A psychologist is a social scientist who *studies behavior and mental processes*, generally in a research or clinical setting; and a Clinical Psychologist is a professional specializing in *diagnosing and treating* diseases of the brain, *emotional disturbance, and behavior problems*. A Psychiatrist is a professional specializing in *diagnosing and treating* diseases of the brain, *emotional disturbance*, and *behavior problems*. A Psychologist can only use talk therapy as treatment; you must see a psychiatrist or other medical doctor to be treated with medication.

The Department of Mental Health Psychiatrist diagnosed the student with dysthymic disorder, among others, indicating that although it did not seem that the student required psychotropic medication at that time; if his depression worsened or failed to improve, it may-

be necessary to refer him to a qualified Child and Adolescent Psychiatrist for possible treatment with antidepressant medication. This diagnosis and recommendation required review and interpretation by an individual qualified to do so, which was not the DCPS Psychologist.

Although it is DCPS' practice that a Psychologist review Psychiatric Evaluations, on January 13, 2010, according to the testimony of licensed Clinical Psychologists at the hearing, a Psychologist is not qualified to review a Psychiatric Evaluation. Therefore, the DCPS-Psychologist was not qualified to review and interpret the instructional implications of the October 19, 2009 Department of Mental Health Psychiatric Evaluation; or challenge the evaluation findings and recommendations.

Additionally, although a DSM IV diagnosis does not automatically qualify a student for special education services under the disability classification of emotionally disturbed, the DCPS Psychologist was not qualified to interpret or refute the diagnoses rendered by the Clinical Psychologists and Psychiatrists; which offered a DSM IV diagnosis.

Finally, DCPS failed to ensure that an individual was a member of the team on January 13, 2010, qualified to review the October 19, 2009 Psychiatric Evaluation, as required by the IDEA.

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. DCPS failed to comply with the November 25, 2009 Hearing Officers' Order, requiring review of the student's October 19, 2009 Psychiatric Evaluation; review and revision of the student's IEP; and determination of a placement for the student.

2. DCPS failed to comply with IDEA, 34 C.F.R. §300.305 (e) which provides that except as provided in paragraph (e)(2) of this section, prior to determining that a child is no longer a child with a disability, ***the Local Education Agency (LEA) must*** evaluate a child with a disability in accordance with §§300. 304 through 300.311.

3. In determining the student's eligibility and educational needs, DCPS failed to comply with the IDEA, 34 C.F.R. §300.306 (c) which provides that in interpreting evaluation data for the purpose of determining if a child with a disability under §300.8, and the educational needs of the child, each public agency must *draw upon information from a variety of sources*, including aptitude and achievement tests, parent input, and teacher-recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and *ensure that the information obtained from all of these sources is documented and carefully considered*; which failed to occur in this matter.

4. DCPS failed to comply with the IDEA, 34 C.F.R. §300.324 (b), which requires a ***review*** of the child's IEP to determine whether the annual goals for the child are being achieved; and ***revises*** the IEP, as appropriate, to address any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; *the results of any reevaluation conducted under §300.303*; information about the child provided to, or by, the parents, as described under §300.305(a)(2); and the child's anticipated needs; or other matters.

5. DCPS failed to develop an appropriate IEP for the student, in violation of the IDEA, 34 C.F.R. §300.320; and the IDEA, 34 C.F.R. §300.324(a)(2)(i) and 34 C.F.R. §300.324(a)(3)(i), which provides that if the child's behavior impedes his learning or the learning of others, the IEP team must include in the IEP strategies, including positive behavioral interventions, supports, and other strategies to address that behavior.

   In developing, reviewing, and revising the student's IEP, DCPS failed to consider: 1) the strengths of the child; 2) concerns of the parent and teacher for enhancing the student's education; 3) results of the initial or most recent evaluation of the student; and 4) academic, developmental, and functional needs of the child; in violation of §300.324.

6. DCPS failed to comply with the IDEA §300.8 (c)(4)(i), in determining the student's eligibility for special education services, as a student with an emotional disturbance, because he exhibits four of the five (5) eligibility criteria, specifically, demonstrates an ***inability to learn*** that cannot be explained by intellectual, sensory, or health factors; an ***inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness and is diagnosed with depression;*** over a long period of time and to a marked degree that such behavior adversely affects the student's educational performance.

7. DCPS failed to comply with the IDEA §300.8 (c)(9), in determining the student's eligibility as a student with a disability of ADHD, under the classification of other health impaired; because based on the evidence presented, while at school, the student demonstrates limited strength, vitality and alertness, including a heightened alertness to environmental stimuli, resulting in limited alertness with respect to the educational environment, that is due to ADHD; and it adversely impacts his educational performance.

8. DCPS failed to comply with the IDEA §300.309, in determining the student's eligibility as a student with a specific learning disability in mathematic calculation and problem solving, because the student fail to achieve adequately for his age, when provided with learning experiences and instruction appropriate for his age, and because of the adverse impact that his behavior is having upon his learning.

9. DCPS failed to comply with the DCPS failed to comply with the ***Least Restrictive Environment (LRE)*** requirements of the IDEA, 34 C.F.R. §300.116, in determining the educational placement of the student; failed to carefully consider evaluation findings and recommendations for placement, and information from classroom observations; teacher input regarding placement; discuss with the parent placement options. DCPS denied parent the opportunity to provide meaningful input in the placement decision.

10. DCPS failed to comply with the **IDEIA, 34 C.F.R. Section 300.321(a)** which provides in pertinent part that the public agency must ensure that the IEP Team for each child with a disability includes, among others, ***an individual who can interpret the instructional implications of evaluation results***, who may be a member of the team described in paragraphs (a)(2) though (a)(6) of this section.
    DCPS fail to ensure that on January 13, 2010, the MDT included individuals qualified to interpret the instructional implications of the October 19, 2009 Psychiatric Evaluation results; in violation of IDEA, 34 C.F.R. §300.321 (a)(5).

11. According to ***Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982)***, a child is deprived of a free and appropriate public education:

    (a) If the LEA violated the IDEA's procedural requirements to such an extent that the violations are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE), or
    (b) If the IEP is not reasonably calculated to enable a child to receive educational benefits.

12. DCPS' failure to: (1) review and revise the student's IEP, consistent with the Hearing Officer's November 25, 2009 Order and the IDEA; (2) determine the student's placement, in accordance with the LRE requirements of the IDEA; (3) reevaluate the student prior to exiting the student from special education and related services, as required by the IDEA; (4) develop an appropriate IEP for the student which addresses his ADHD, ED, and specific learning disability, based upon information from various sources; (5) providing parent "meaningful" input in the placement decision, and all decisions regarding the provision of a FAPE to the student; and (6) initiate measures necessary to address the student's academic and behavioral difficulties, over such an extended period of time, are to such an extent that the violations are serious, having a detrimental impact upon the child's right to a free and appropriate public education (FAPE).

13. The FAPE requirement under the IDEA is applicable to procedural and substantive violations, which may result in a denial of a FAPE. The 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, if the inadequacies:
    (I) impede the child's right to a free and appropriate public education;

(II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or

(III) caused a deprivation of educational benefit."

The Hearing Officer finds that the procedural violations in this matter, impede the student's right to a FAPE; significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the student; and deprives the student the educational benefit he is entitled to receive under the IDEA.

The procedural violations also result in substantive harm to the parent and student because the procedural violations in question seriously infringe upon the parent's opportunity to participate in the decision making process, and the provision of a FAPE to the student; and as a result, deprives the student an individualized education program specifically designed to address his unique academic and functional needs; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

V. ORDER

Based on the aforementioned, it is hereby:

(1) **ORDERED**, that no later than April 2, 2010, DCPS shall issue parent a Prior Notice of Placement returning the student to the Monroe School, with tuition and transportation funded by DCPS; and it is further

(2) **ORDERED**, that DCPS shall reconvene an MDT/IEP team meeting at the Monroe School, within ten (10) school days from the date of this decision, with individuals qualified to interpret the instructional implications of the results of all of the student's evaluations including among others, a Psychiatrist; and individuals familiar with the student.

The team shall review all evaluations of record, review and revise the student's Interim IEP developed on November 3, 2009; to provide for a full-time special education program with related services, interventions, supports, and modifications; identifying the student as disabled and eligible to receive special education services under the disability classifications of emotionally disturbed, specific learning disability in mathematics, and other health impaired, identified as ADHD.

The team shall also develop and include in the student's IEP an Intervention Behavioral Plan, based on the findings and recommendations in the November 23, 2009 independent FBA; and it is further

(3) **ORDERED**, that at the MDT meeting, DCPS shall develop a compensatory education plan to compensate the student for services the student failed receive due to DCPS' failure to develop an appropriate IEP for the student from November 25, 2009 through the date of this decision, including among others, tutoring in mathematics; discuss with parent the importance of utilizing a collaborative approach in addressing the student's academic, functional, and developmental needs, through an appropriate education, the continuation of a substance abuse program, a medication trial to address the student's ADHD, family counseling, and referral of the student to a qualified Child and Adolescent Psychiatrist, for possible antidepressant medication; and it is further

(4) **ORDERED**, that at the MDT meeting the team shall discuss and identify an appropriate placement for the student, consisting of a small, structured, therapeutic program for the student, in a supervised environment, with a high teacher/student ratio, where the student can receive one on one instruction; and a program that incorporates interventions to address the student's behavioral and emotional needs; and it is further

(5) **ORDERED**, that the student shall remain at the pending parent's identification of an appropriate placement for the student, where his IEP can be implemented; and it is further

(6) **ORDERED**, that upon parent identifying an appropriate placement for the student, DCPS shall be responsible for funding the student's transition and placement into the program; with tuition paid by DCPS, if any; and the student's transportation to attend school; and it is further

(7) **ORDERED**, that DCPS shall develop and fund a compensatory education plan for the student to compensate the student for special education and related services he failed to receive from November 25, 2009 through the date of this decision and order, including however not limited to tutoring in mathematics; and it is further

(8) **ORDERED**, that DCPS shall schedule all meetings through the parent's counsel, Attorney Domiento Hill, in writing, via facsimile at (202) 742-2098; and it is further

(9) **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at the and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

(10) **ORDERED**, that any delay in meeting any of the deadlines in this Order because of

Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives.
DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further

(11) **ORDERED**, that this decision and order are effective immediately.

VI. NOTICE OF RIGHT OF APPEAL RIGHTS

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 USC §1415(i).

Date: *March 29, 2010*

Ramona M. Justice
Hearing Officer

cc: Attorney Harsharen Bhuller, Office of the Attorney General
Attorney Domiento C.R. Hill: Fax: 202-742-2098