DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

STUDENT HEARING OFFICE
2012 NOV -7 AM 8:58

[redacted], on behalf of
[redacted]

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

Respondents.

Hearing Officer: Kimm Massey, Esq.

Case No: 2012-0574

HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

Student is a [redacted], who presently attends a DCPS middle school. On August 23, 2012, Petitioner filed a Complaint against DCPS, alleging that DCPS failed and refused to provide FAPE to Student by failing to conduct a triennial evaluation that included Parent, failing to reevaluate Student in all areas of suspected disability every three years, failing to reevaluate in all areas of suspected disability upon parental request, failing to provide related services contained in the IEPs, classifying Student as autistic without any testing or factual data to support the classification, finalizing Student's IEPs without parental participation, and failing to provide Petitioner a complete copy of Student's educational records. As relief for these alleged violations of IDEA, Petitioner requested funding for the following independent evaluations: educational, clinical psychological, ADHD, autism, speech/language, occupational therapy, assistive technology, and functional behavior assessment, as well as any other evaluations recommended by the independent evaluators.

On September 4, 2012, DCPS filed its Response, which asserted the following defenses: (i) Parent signed a Consent for Reevaluation on 1/10/11, an educational assessment was administered on 1/25/11, a speech/language reassessment was conducted on 1/31/11, and the MDT met to review the evaluations on 3/11/11 and Parent attended the meeting; (ii) Student received behavioral support services and speech/language services as required by the IEP; (iii) At Student's triennial reevaluation on 3/11/11, the team reviewed the recent evaluation data and agreed his disability classification continued to be Autism spectrum disorder. The IEP team also convened on March 8, 2012, and Parent and team agreed to the classification; (iv) IDEA does not

require an LEA to obtain permission from parents to enter student data into its record system; (v) The current DCPS middle school is unaware of any records requests made by Petitioner, but DCPS will make Student's records available to Parent on a mutually agreed upon date.

The parties concluded the Resolution Meeting process by participating in a resolution session on September 7, 2012. No agreement was reached, but the parties agreed not to shorten the 30-day resolution period. Therefore, the 45-day timeline began on September 23, 2012 and will end on November 6, 2012, which is the HOD deadline.

On September 20, 2012, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, relief requested, and other relevant topics. The hearing officer issued a Prehearing Order on September 25, 2012.

By email dated October 12, 2012, Petitioner's counsel designated an array of IEPs dating back to 2008 as the IEPs at issue in this matter. Also by email dated October 12, 2012, DCPS indicated its objection to the hearing officer's consideration of IEPs dated from 2008 to 2010, on the ground that those IEPs are beyond the statute of limitations.

By their respective letters dated October 16, 2012, Petitioner disclosed fifteen documents (Petitioner's Exhibits 1-15), and DCPS disclosed fifteen documents (Respondent's Exhibits 1-15).

On October 17, 2012, Petitioner filed a Motion to exclude a February 2011 psychological evaluation report from the record. On October 18, 2012, Petitioner filed its Objections to Respondent's witnesses and proposed exhibits.

The hearing officer convened the due process hearing on October 23, 2012.[1] As an initial matter, Petitioner withdrew from consideration its fourth claim alleging DCPS's failure to provide related services listed in the IEP. Thereafter, the hearing officer undertook consideration of the preliminary issues raised by DCPS's objection to the 2008-1010 IEPs, and Petitioner's motion to exclude evidence and objections to DCPS's witnesses and exhibits. Upon Petitioner's representation that the 2008-2010 IEPs were not being contested, DCPS withdrew its objection to consideration of same. The hearing officer then denied Petitioner's motion to exclude the 2011 psychological report, but ruled that the fact that critical portions of the report appeared to be missing would be weighed in Petitioner's favor. Later during the hearing, however, it became apparent that the entire report had been disclosed in the Evaluation Summary contained in Respondent's Exhibit 3.

With respect to the parties' disclosed documents, all of Petitioner's documents were admitted without objection. Respondent's Exhibits 1, 7-8, 10, 12 with the exception of pages 51-57, and 13-15 were admitted without objection. DCPS withdrew Respondent's Exhibits 4, 9, and 11, and pages 51-57 of Exhibit 12 in light of Petitioner's objections. Respondent's Exhibits 2, 3, 5 and 6 were admitted over Petitioner's objections. Finally, with respect to Petitioner's objections to two of DCPS's proposed witnesses, DCPS represented that the DCPS school psychologist would not be offered as an expert witness, which mooted Petitioner's objection, and the hearing officer

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

overruled Petitioner's objection to the testimony of the special education teacher at Student's current school on the ground that Student did not begin attending the school until after the Complaint was filed, because the hearing officer determined that it would be helpful to the finder of fact to hear testimony from Student's current teacher.

After all preliminary matters had been determined, the hearing officer received Petitioner's opening statement, DCPS reserved its opening statement to the start of its own case without objection from Petitioner, Petitioner and DCPS presented testimonial evidence, and the hearing officer received closing statements from both parties prior to bringing the hearing to a close.

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

ISSUE(S)

The issues to be determined are as follows:

1. Did DCPS fail to conduct a triennial evaluation of Student that included Parent?
2. Did DCPS fail to reevaluate Student in all areas of suspected disability every three years?
3. Did DCPS fail to reevaluate Student in all areas of suspected disability upon parental request?
4. Did DCPS deny Student a FAPE by classifying Student as autistic without any testing or factual data to support the classification?
5. Did DCPS deny Student a FAPE by finalizing Student's IEP without parental participation?
6. Did DCPS fail to provide Parent a complete copy of Student's educational records?

FINDINGS OF FACT[2]

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

1. Student is a [redacted], who currently attends a DCPS middle school.[3]

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

2. Student's March 8, 2012 IEP identifies his primary disability as Autism Spectrum Disorder (known as Autism), and it requires Student to receive a total of 7 hours per week of specialized instruction, 2 hours per month of speech-language services, 30 minutes per week of behavioral support services, and 1 hour per week of consultation services for specialized instruction.[4]

3. Student's June 22, 2011 IEP identifies his primary disability as Autism Spectrum Disorder, and it requires Student to receive a total of 8 hours per week of specialized instruction, 4 hours per month of speech-language services, and 2 hours per month of behavioral support services. The administrative record also includes March 7, 2011 and March 10, 2011 IEPs for Student that list the same primary disability and number of hours of specialized instruction and related services.[5]

4. On January 10, 2011, DCPS convened an IEP meeting for Student. Parent was in attendance at the meeting. The Meeting Notes indicate that Student was due for a reevaluation in September and his annual IEP was due in March. The Notes further indicate that Student had begun exhibiting certain behavioral concerns, including outbursts, anger, and not wanting to do what was asked of him. The team determined to test Student for academic skills, and to administer speech/language and cognitive testing to Student.[6]

5. Also on January 10, 2011, Parent signed a Consent form authorizing DCPS to evaluate Student to determine if he continued to be eligible for special education and to determine his educational needs.[7]

6. On January 25, 2011, DCPS administered an Educational Evaluation to Student. Student was [redacted] at the time, and he was in [redacted] The evaluation report indicates that Student's Oral Language, Broad Written Language, Broad Reading, Listening Comprehension, and Mathematics Reasoning scores were in the Low Range. Student's Broad Math, Written Expression and Math Calculation skills were in the Very Low Range. However, Student's Oral Expression skills were in the Low Average range. In terms of Grade Equivalencies ("G.E."), Student's scores in the areas listed herein were primarily on a second grade level, ranging from a 2.2 G.E. to a 2.9 G.E., except that his Oral Expression skills were at a 3.3 G.E.[8]

7. On February 15, 2011, DCPS conducted a Social Work Assessment of Student by interviewing Parent. Parent reported that Student mastered his developmental milestones within the normal age range, including walking, speaking and being potty trained. Although Student had extreme tantrums as a toddler, the tantrums subsided

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[3] *See* Complaint at 1.
[4] Petitioner's Exhibit 8.
[5] Petitioner's Exhibit 5-7.
[6] Respondent's Exhibit 9.
[7] Respondent's Exhibit 10.
[8] Respondent's Exhibit 8; Petitioner's Exhibit 10.

after the death of Student's father when Student was 2½ years old, and Student became withdrawn. At the time of the assessment, Student was very quiet and displayed no behavioral issues at home, he was independent with all of his activities of daily living and very responsible at home for his age, and he enjoyed playing outside with friends/family and had no problem making friends. However, at school, Student would scream out loud when angry or frustrated and had on occasion walked out of the classroom, and he could also be mischievous and easily distracted, but he was easily redirected.[9]

8. On February 17, 2011, DCPS issued a Comprehensive Speech-Language Reevaluation report for Student. During the evaluation, Student was able to express his wants and needs using complete sentences, he could ask and answer questions appropriately and was able to converse for an appropriate period of time. The evaluator also noted that Student was able to maintain and initiate conversation during interactions with adults and peers with ease, his turn-taking skills were appropriate for interaction, eye contact was generally appropriate, and he demonstrated that he was able to use appropriate social mannerisms and greetings. Student's receptive and expressive vocabulary skills were average to low average. Student's performance on the Clinical Evaluation of Language Fundamentals ("CELF-4") was in the below average range on all subtests administered; however, this may have been due, in part, to his observed lack of effort on the assessment. [10]

9. On February 24, 2011, DCPS issued a Confidential Psychological Reevaluation report for Student. The reevaluation was conducted as a triennial evaluation and due to the concerns of Parent and Student's special education teacher that his classification of Autism is not appropriate. Although the evaluator was unable to secure an interview with Parent for the evaluation, Parent completed the Behavior Assessment System for Children, Second Edition ("BASC-2") Parent scale and the Parent and Teacher PDD Behavior Inventory ("PDDBI") Parent scale as part of the evaluation.

   Student's performance on the Reynolds Intellectual Assessment Scale ("RIAS") indicates that his overall level of intellectual functioning is below average. Although several of Student's scores on the Parent and Teacher PDDBI scale were in the range indicative of autistic-like symptoms, no score is listed for the Autism Composite due to too many missing items. Nevertheless, the evaluator ultimately concluded that Student continues to meet the criteria for special education as a student with autism, and that autistic-like behaviors are negatively impacting Student's academic achievement.[11]

10. Student's previous Psychological Evaluation was conducted by DCPS in May of 2008.[12]

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[9] Petitioner's Exhibit 11.
[10] Petitioner's Exhibit 12; Respondent's Exhibit 7.
[11] Respondent's Exhibits 6 and 3.
[12] *See* Petitioner's Exhibit 9; Respondent Exhibit 12.

11. On March 10, 2011, DCPS convened an MDT meeting for Student. Although DCPS sent Parent an eligibility meeting notice letter on February 11, 2011, Parent did not receive actual notice of the MDT meeting until right before the meeting when an administrator from Student's school called her. Parent explained that she was in the grocery store and would not be able to come to the meeting. DCPS called Parent back so that she could participate in the meeting by phone. Parent participated in at least some portion of the meeting by phone, but she was unable to fully participate while shopping at the grocery store.

    During the meeting, the team reviewed Student's recent assessments, reviewed and revised Student's IEP, and determined that Student's classification of Autism continued to be appropriate.[13]

12. Although Parent testified in detail on direct examination about being called while she was in the grocery store to participate in Student's March 10, 2011 IEP meeting, she also testified on direct examination that she never received a form or a phone call about a meeting for Student in the spring of 2011, and she testified on cross-examination that she did not recall participating in the March 2011 meeting by phone. As a result, Parent's testimony will be accorded significant weight only when it is corroborated by other evidence presented at the hearing.

13. Approximately two days after the March 10, 2011 MDT meeting for Student, Parent went in to the school to address a concern about one of her other children and DCPS attempted to conduct another IEP meeting right then and there with Parent. However, only one administrator was available, and the teachers and other team members were unable to participate. The administrator gave Parent a copy of the IEP to take home and sign. Parent did not sign and return the IEP, so later in June 2011, DCPS mailed the IEP to the home of Parent's mother-in-law, where Student and his siblings were living at the time. The mother-in-law advised DCPS that Parent was out of town but she would send the IEP to Parent. The mother-in-law ultimately gave the IEP to Parent, who took the IEP into the school over the summer and signed it there. Although the office secretary told Parent that someone from the school would call her, Parent never received a call.[14]

14. Parent has experienced some challenges with her living situation that rendered her living situation less than stable. Parent and her children lived in a shelter for approximately one month during the time period at issue in this matter, but then they were relocated to northeast DC. Parent later moved her children in with her mother-in-law. Around this time, Parent advised DCPS that she would be moving to North Carolina, but it is unclear whether and/or for how long she was in North Carolina or otherwise out of town.[15]

15. Autism is a significant social impairment that includes communication issues and rigid and repetitive behaviors. The autistic behavior has to have been observed before

[13] Testimony of Parent; Petitioner's Exhibit 14; Respondent's Exhibits 2-5; *see* testimony of Academic Dean.
[14] Testimony of Parent.
[15] Testimony of Parent; *see* testimony of Academic Dean.

age 3, and there has to be a communication and social deficit before age 3, especially in play. The preferred testing for autism consists of a clinical interview using a tool such as the autism diagnostic interview inventory revised or a tool that asks similar questions, an observation using the autism diagnostic observation schedule or a similar instrument, and a communication evaluation by a speech/language pathologist experienced in working with children with developmental delays. An array of other evaluations, including occupational therapy, cognitive, educational, alternative technology, and psychiatric or social/emotional evaluations, may also be appropriate depending upon the child.[16]

16. The evaluations administered to Student in January and February of 2011 were insufficient to diagnose, or to confirm Student's existing diagnosis of, autism. For example, the PDDBI conducted as part of the psychological reevaluation is missing data for the expressive social communication abilities composite, the receptive/expressive social communication abilities composite and the overall autism composite. Similarly, the speech/language evaluation did not include an in-depth examination of the cardinal features of autism, such as social communication and pragmatic language. Moreover, the preferred diagnostic tools for autism were not utilized in the reevaluation.[17]

17. The evaluation data obtained during Student's January-February 2011 reevaluations, together with information supplied by Parent and Student's teachers, do not support a diagnosis of autism. The data reveals that Student is a sociable child with lots of friends who has no problems making and keeping friends, there are no deficiencies in terms of repetitive and ritualistic behaviors, there is no indication of social pragmatic problems, there is no sign of delay with respect to developmental milestones, and there is no indication of pragmatic language problems.[18]

18. Student's current IEP does not contain goals to address social communication and social interaction deficits, which are two of the cardinal features of autism. Hence, there are no goals to address rigid or repetitive behavior or restricted interest. Instead, Student's emotional/social/behavioral goals address his issues with anger, frustration, anxiety, and inattention, while his communication goals address topics such as "wh" questions and understanding word classes.[19]

19. Student's IEP contains reading, math and written language goals to address his deficits in those academic areas. The goals could be appropriate for an autistic child, but they are not goals that would only be appropriate for an autistic child.[20]

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[16] Testimony of Clinical Psychologist.
[17] Testimony of Clinical Psychologist; *see* Petitioner's Exhibit 12; Respondent's Exhibits 3, 6, 7.
[18] Testimony of Clinical Psychologist; testimony of Parent; *see* Petitioner's Exhibit 12; Respondent's Exhibits 3, 6, and 7.
[19] Testimony of Clinical Psychologist; *see* Petitioner's Exhibit 8.
[20] Testimony of Clinical Psychologist; *see* Petitioner's Exhibit 8.

20. Student is exhibiting behavior problems in school, but there is no evaluation/ assessment data indicating what is the cause of the behavior problems.[21] Student needs a functional behavior assessment ("FBA") to examine the underlying cause(s) of his behavior problems and determine how best to treat those problems.

21. From Parent's perspective, Student is not performing very well at his present school. He brings home homework that he cannot complete because it is too difficult for him to understand. Parent is also concerned about Student's grades, which are in the D to F range.[22]

22. The SEC at Student's current school has emailed all of Student's educational records that are in his possession to Petitioner's counsel; he has allowed Petitioner's counsel to come into the school and make copies of some of the documents he had already sent her; and he also sent documents to Petitioner's counsel by mail. Altogether, during the first month of the current school year, the SEC mailed approximately 90 documents to Petitioner's counsel and emailed approximately 60-70 documents to Petitioner's counsel. These documents consisted of documents from DCPS's electronic system called SEDs, as well as Student's entire cumulative file. Moreover, at the resolution session meeting for this case, Petitioner's counsel was provided with additional documents from Student's previous school.[23]

23. The SEC from one of Student's former schools also faxed to Petitioner's counsel documents consisting of Student's special education progress report, attendance information. The SEC attempted to obtain other documents concerning Student from another school and even went so far as to physically go to that school to obtain the documents, but it appeared that the documents had been misplaced and have not since been found.[24]

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. Alleged Failure to Conduct a Triennial Evaluation that Included Parent

IDEA provides that a reevaluation of each child with a disability must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2); *see also Laster v. District of Columbia*, 569 F.Supp.2d 5, 9 (D.D.C. 2009). Such reevaluations are to be conducted by the IEP Team and other qualified professionals, as appropriate. *See* 34 C.F.R. § 300.305(a). In turn, the IEP Team must include the disabled child's parents. 34 C.F.R. § 300.321(a)(1). Moreover, each public agency must

[21] Testimony of Clinical Psychologist.
[22] Testimony of Parent.
[23] Testimony of SEC at current school.
[24] Testimony of SEC from previous school.

take steps to ensure that one or both parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.322(a).

In the instant case, Petitioner contends that DCPS denied Student a FAPE by failing to include Parent in the triennial evaluation process for Student. In particular, Petitioner argues that although Parent signed a Consent Form in January 2011 authorizing a reevaluation for Student, thereafter she was never advised that the evaluations were being conducted and she was not invited to or told about the March 2011 MDT meeting. DCPS disagrees with Petitioner's contentions and asserts that Parent actually attended the March 2011 MDT meeting by telephone.

A review of the evidence in this case reveals that Parent participated in the reevaluation process for Student by providing data for the Social Work Assessment and the Psychological Reevaluation, and by attending at least some portion of the March 2011 MDT meeting by phone. There is also evidence that DCPS attempted to ensure Parent's participation in the MDT meeting by sending her an invitation to the meeting and calling her to participate by phone at the start of the meeting. Although these efforts on DCPS's part were not as extensive as they could have been under ideal circumstances, there is also evidence that during the time period at issue Parent was experiencing challenges with her living situation that resulted in several moves and may have made it more difficult for DCPS to communicate with Parent. In any event, based on the evidence demonstrating that Parent provided information for Student's reevaluations and participated in a portion of the MDT meeting by phone, the hearing officer concludes that Petitioner failed to meet its burden of proof on this claim.

2. **Alleged Failure to Evaluate in All Areas of Suspected Disability Every Three Years and Upon Parental Request**

Under IDEA, a public agency conducting the evaluation of a disabled child must ensure that a variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. *See* 34 C.F.R. § 300.304(b)(1). The public agency must also ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4).

In the instant case, Petitioner argues that DCPS denied Student a FAPE by failing to conduct enough assessments, as well as the types of assessments needed, to determine whether Student actually has autism and what his educational needs are. DCPS disagrees and asserts instead that the reevaluations administered to Student in early 2011 produced sufficient data for the team to determine that Student continues to qualify for special education and related services as a child with the disability of autism.

A review of the evidence in this case reveals that the assessments conducted during Student's triennial reevaluation in early 2011 were insufficient to diagnose autism, or even to confirm Student's existing diagnosis of autism, due to missing data in critical areas, the failure to focus

on the cardinal features of autism, and the failure to utilize preferred diagnostic tools for autism. Moreover, although Student has exhibited behavior problems in the school environment, no FBA was conducted to determine the underlying causes of the behavior problems and how to address those problems. As a result of these deficiencies in Student's triennial reevaluation, it is unclear exactly what are Student's educational and related services needs and whether his current programming is appropriate to meet those needs. This is especially so in light of the behavioral problems Student is exhibiting in school and the fact that his grades are in the D to F range. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving that DCPS denied Student a FAPE by failing to evaluate Student in all areas of suspected disability during his triennial reevaluation and upon Parent's request for a reevaluation. *See e.g., Suggs v. District of Columbia,* 679 F.Supp.2d 43, 51-52 (D.D.C. 2010) (failure to conduct recommended assessments may be deemed a denial of FAPE where it appears that IEP is not reasonably calculated to provide educational benefit).

As relief for DPCS's denial of FAPE in this regard, Petitioner has requested an array of independent evaluations, including clinical psychological, ADHD, autism, occupational therapy, and assistive technology evaluations, as well as independent speech language and educational evaluations even though those evaluations were administered to Student in 2011 and there is no contention that those evaluations were deficient or otherwise inappropriate. The hearing officer is not persuaded that the extensive battery of evaluations requested by Petitioner is required to fill the gaps in the evaluative data that is available for Student. Therefore, the hearing officer will order DCPS to provide Petitioner with funding for an independent clinical interview using a tool such as the autism diagnostic interview inventory revised or a tool that asks similar questions, an independent observation using the autism diagnostic observation schedule or a similar instrument, and an independent FBA. DCPS will further be ordered to convene a meeting to review the results of these assessments, together with existing data for Student, and (1) determine what, if any, additional assessments are indicated for Student, and (2) review and revise Student's IEP as appropriate.

3. Alleged Autism Classification Without Supportive Testing or Factual Data

IDEA defines autism as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. 34 C.F.R. § 300.8(c)(1)(i). Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. *Id.*

In the instant case, Petitioner argues that DCPS improperly readopted Student's autism classification at the March 2011 MDT meeting, because the classification was unsupported by testing or factual data. DCPS disagrees, arguing that the evaluative data obtained from Student's reevaluations supported the continuation of Student's autism classification.

A review of the evidence in this case reveals that the most recent evaluation data and data obtained from Parent and Student's teachers do not support a diagnosis of autism, because the data reveal that Student is a sociable child with lots of friends who has no problems making and

keeping friends, he does not exhibit repetitive and ritualistic behaviors, social pragmatic and pragmatic language problems, and he does not have a history of developmental delays. Hence, the evidence supports Petitioner's assertion that Student's autism classification is not supported by the available evaluation and factual data. However, this fact, in and of itself, is insufficient to support a finding of a denial of FAPE. *See Suggs v. DC, supra*, 679 F.Supp.2d at 49-50 (to succeed on an IDEA claim a party must prove that the school district denied the child a FAPE by depriving him of educational benefits to which he is entitled).

In this case, Petitioner has failed to establish how the use of an unsupported autism classification for Student has resulted in harm to Student. Hence, the evidence demonstrates that despite Student's autism classification, Student does not demonstrate social communication and social interaction deficits, two of the cardinal features of autism, and Student's IEP does not address those deficits. Instead, Student's IEP addresses his issues with anger, frustration, anxiety and inattention, as well his deficits in the areas of reading, written language, and math. Although, as noted above, Student's current programming as reflected in his IEP may not be wholly appropriate to meet his educational and related service needs because the lack of sufficient evaluation data creates uncertainty as to what exactly Student's needs are, the possible deficiencies in the IEP are unrelated to Student's unsupported autism classification. Under these circumstances, the hearing officer concludes Petitioner has failed to meet its burden of proving a denial of FAPE in connection with this claim.

4. **Alleged Finalization of IEP Without Parental Participation**

IDEA provides that a disabled child's IEP is to be revised periodically, but not less than annually, by the IEP Team. *See* 34 C.F.R. § 300.324(b)(1)(i). Moreover, as noted above, the IEP Team must include the disabled child's parents. 34 C.F.R. § 300.321(a)(1).

In the instant case, Petitioner argues that DCPS finalized Student's March 10, 2011 IEP without parental participation. DCPS denies that Parent did not participate in the finalization of the IEP, relying upon her signature on the IEP as evidence of her participation. A review of the evidence in this case reveals that Parent participated in at least a portion of the MDT meeting at which the IEP was developed and she was given a copy of the IEP a couple of days after the IEP meeting, but she failed to sign and return the IEP. Several months later, DCPS mailed a copy of the IEP to Parent's mother-in-law after making arrangements for the mother-in-law to get the IEP to Parent, and this ultimately proved successful because Parent signed and returned the IEP to DCPS over the summer of 2011. Under these circumstances, the hearing officer concludes that DCPS did not finalize the IEP without parental participation. Hence, Petitioner has failed to meet its burden of proof on this claim.

5. **Alleged Failure to Provide a Complete Copy of Educational Records**

IDEA requires public agencies to provide parents of a child with a disability with an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and provision of FAPE to the child. 34 C.F.R. § 300.501(a).

In the instant case, Parent asserts that all educational records have not been provided because some of the records are missing. DCPS counters that it has provided access to and copies of every document it has, and it has done so on more than one occasion. The evidence in this case proves that some of Student's records are missing, but DCPS has provided access and multiple copies of all of the documents it has. Moreover, there is no evidence that the absence of the missing records have created deficiencies in the record in this case or interfered with Petitioner's ability to prove its case. *Compare Sykes v. District of Columbia*, 518 F.Supp.2d 261 (D.D.C. 2007) (DCPS's failure to provide key documentation rendered the record deficient, so hearing officer deferred to plaintiff's position in every instance where record was deficient). Although the hearing officer is unwilling to order DCPS to produce records that it has been unable to locate, the hearing officer will order DCPS to conduct another search for Student's missing records and to either provide Petitioner with access to the missing records if they are located or certify to Petitioner the nature of the search that was conducted and the unsuccessful results thereof.

ORDER

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

1. Within 10 calendar days of the issuance of this Order, DCPS shall provide Petitioner with funding for an independent Clinical Interview using the Autism Diagnostic Interview Inventory Revised or a tool that asks similar questions, an independent Observation using the Autism Diagnostic Observation Schedule or a similar instrument, and an independent Functional Behavior Assessment.

2. Within 20 calendar days of receipt of the results of the independent assessments ordered above in Paragraph 1, DCPS shall convene an IEP/MDT meeting for Student to review the results of the independent assessments, as well as the existing evaluation data for Student, and (i) determine what, if any, additional assessments are required for Student, and (ii) review and revise Student's IEP as appropriate.

3. Within 20 school days of the issuance of this Order, DCPS shall conduct a search for Student's missing records and either (i) provide Petitioner with access to the missing records if they are located, or (ii) certify to Petitioner the nature of the search that was conducted and the unsuccessful results thereof.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety

(90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Date: 11/6/2012 /s/ *Kimm Massey*

Kimm Massey, Esq.
Hearing Officer