DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT, **By and through PARENT,**[1] ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** ***Respondent.***	)))))))))))	**Case No.** **Bruce Ryan, Hearing Officer** **Issued: June 7, 2011**

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HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed March 24, 2011, on behalf of a -year old student (the "Student") who has been determined to be eligible for special education and related services as a child with a disability under the IDEA. The Student currently attends a D.C. public charter school (the "Charter School"), for which DCPS acts as the local educational agency ("LEA"). Petitioner is the Student's grandmother.

Petitioner claims that DCPS has denied the Student a free appropriate public education ("FAPE") by (a) failing to conduct timely re-evaluations, and (b) failing to provide an appropriate individualized education program ("IEP") and placement at the March 18, 2011 team meeting. The IEP developed at the 03/18/2011 meeting provides for 11 hours per week of specialized instruction in a General Education (inclusion) setting, with no related services.

DCPS filed its Response on April 7, 2011, which asserts that (a) DCPS authorized an independent functional behavior assessment ("FBA") on April 7, and is in the process of

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

completing a comprehensive psychological assessment, and (b) the IEP is appropriate and will be reviewed further once the independent evaluations are received.

A resolution session was also held on April 7, 2011, which did not resolve the Complaint, and the statutory 30-day resolution period ended as of April 23, 2011. A Prehearing Conference ("PHC") was then held on May 10, 2011.

The parties filed five-day disclosures on May 19, 2011; and the Due Process Hearing was held on May 26, 2011. Petitioner elected for the hearing to be closed.

At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-23.

Respondent's Exhibits: R-1 through R-8.

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

Petitioner's Witnesses: (1) Parent-Petitioner; and (2) the Student's educational advocate ("EA").

Respondent's Witness: Special Education Coordinator ("SEC"), Charter School.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. The statutory HOD deadline is June 7, 2011.

III. ISSUE AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

(1) Triennial Reevaluations. — Did DCPS deny the Student a FAPE by failing to conduct timely triennial re-evaluations of the Student by February 2011?

(2) **Inappropriate IEP and Placement.** — Did DCPS deny the Student a FAPE by failing to provide an appropriate IEP and placement at the March 18, 2011 MDT meeting? Petitioner's objections to the IEP and placement are set forth on page 9 of the Complaint (subparagraphs a-f).

Specifically, Petitioner alleges that the IEP fails to provide: (a) sufficient hours of instruction in an outside general education setting; (b) sufficient therapeutic interventions to address his social, emotional, and behavioral needs, including an FBA and counseling; (c) the small student-teacher ratio that he requires; (d) placement in a full-time educational setting, which is alleged to be the least restrictive environment ("LRE") for the Student; and (e) adequate transition statements, as the Student will turn 16 before the IEP expires; and the IEP (f) is not based on current evaluations.

Petitioner originally requested the following relief in her Complaint: (a) that the IEP be amended to provide for a "full-time outside general education" program and to include a behavior intervention plan ("BIP"); (b) that DCPS fund the private placement of the Student with transportation; (c) that DCPS fund independent evaluations to include vocational, comprehensive psychological, neuropsychological, and FBA; and (d) appropriate compensatory education.

Prior to commencing the hearing, Petitioner withdrew the private placement relief requested under paragraph (b) above. She also limited the requested independent evaluation relief in paragraph (c) above to the neuropsychological, in light of DCPS' recent authorization of the other requested independent evaluations. *See R-3* (05/17/2011 IEE authorization for psychological and vocational); *R-4* (05/03/2011 IEE authorization for FBA).

In addition, at the outset of the due process hearing, DCPS' counsel stated that DCPS was willing to add counseling services to the Student's IEP, thus effectively mooting that aspect of Issue 2 and the requested relief thereunder.

IV. FINDINGS OF FACT

1. The Student is a -year old student who has been determined to be eligible for special education and related services under the IDEA as a child with a disability. His primary disability is Other Health Impairment ("OHI"). *R-1.*
2. The Student currently attends the Charter School, and DCPS acts as the LEA for the Charter School. *See Complaint & Response; Parent Testimony.* The Charter School operates on a "full inclusion" model for special education. *See SEC Testimony.*

3. The Complaint alleges that on or about April 9, 2010, Petitioner sent to DCPS (through counsel) a written request for re-evaluations of the Student to be conducted. However, Petitioner did not present a copy of any such written request as evidence in this proceeding, *see P-10* (containing only fax cover sheets and transmission reports dated 04/09/2010); the educational advocate who testified had only been involved in the matter since June 2010; and Petitioner's testimony was not specific with regard to either the date or scope of the alleged written request. *See Parent Test.* Nevertheless, there are other documents referencing a letter dated 04/09/2010 requesting an FBA, a neuropsychological evaluation, and a vocational evaluation of the Student, *see, e.g., P-7* (MDT 06/14/2010 meeting notes), and this fact was not disputed by DCPS. Accordingly, the Hearing Officer finds that Petitioner did submit such a written request to DCPS on or about April 9, 2010.
4. On or about June 14, 2010, DCPS convened a meeting of the Student's MDT/IEP team. At this meeting, Petitioner indicated concerns about the Student's behavior and requested that counseling services be added to the Student's IEP. *P-7; Parent Test.* The IEP team also discussed Petitioner's request for an FBA, a neuropsychological evaluation, and a vocational evaluation of the Student. *Id.* The team agreed to have comprehensive evaluations completed "to bring evals. up to date" when the 2010-11 school year began. *P-7, p. 3.* Specifically, DCPS agreed to conduct a psycho-educational evaluation, an FBA, and a vocational career assessment. However, the team decided that it did not need to complete a neuropsychological evaluation at that time. *Id.* It was felt that the psychological evaluation would help determine the need for a further neuropsychological evaluation. *See EA Test. See also P-8* (06/14/2010 Student Evaluation Plan, noting that "MDT agreed to comprehensive psycho-educational assessment to address grandmother's concerns related to behavior and academic problems during school year").
5. On or about October 29, 2010, DCPS convened a meeting of the Student's MDT/IEP team for his annual IEP review. This appeared to be a "rush meeting" designed to comply with annual review requirements since the prior IEP was about to expire. *EA Test.* [2] Petitioner and the EA again requested that updated evaluations and/or triennial re-evaluations be conducted, and the team again agreed that updated evaluations were appropriate. *See P-6;*

[2] Petitioner's Complaint does not challenge the timeliness of the annual IEP review, however.

EA Testimony. The Charter School asked to wait for the results of the evaluations to identify areas of need, and thus the team decided to maintain the same level of services with updated goals in the IEP at that time. *P-6, p. 4.*

6. On or about March 18, 2011, DCPS convened another meeting of the Student's MDT/IEP team to review and update the IEP, and review the Student's grades and credits. *R-1, p. 11.* The team discussed that the Student was on track for having enough credits for a 10th grader, but that his GPA is only 1.9. *Id.*[3] There were no attendance issues, but teachers reported issues of distractibility. *Id.* It was also reported that the Student continued to take medication for his ADHD issues. *Id. See also P-3.*
7. At the March 18, 2011 meeting, Petitioner and the EA expressed concern regarding the Student's academic progress. They requested a smaller class size and a less distracting setting than the inclusion setting in which the Student was presently placed. *R-1, p. 11; P-3; P-4; EA Test.* Petitioner also again requested to have psychological counseling added to the IEP. *Id.* The Charter School stated that it wanted to add counseling services, but felt it could not do so without an updated psychological evaluation. *P-4, p. 7; EA Test.*
8. The Student's IEP developed at the March 18, 2011 meeting provides for 11 hours per week of specialized instruction in the General Education (inclusion) setting, with no counseling or other related services. *R-1, p. 5.* The IEP also includes a Post-Secondary Transition Plan for the Student that purports to begin on 10/30/2010 and end on 06/15/2011. *Id., p. 9.* The Student's previous IEP was dated October 30, 2009. *P-11.*
9. On or about April 7, 2011, apparently as a result of the resolution process, DCPS authorized an independent FBA, which Petitioner accepted on May 3, 2011. *R-4.*
10. On or about May 17, 2011, following the PHC in this case, DCPS authorized (a) an independent psychological evaluation (to include clinical, educational, and social component), and (b) an independent vocational assessment of the Student. *R-3.*
11. On or about May 18, 2011, a day before the disclosures were filed in this case, DCPS developed a new Draft IEP (dated 05/24/2011). *R-2.* The Draft IEP was not the product of any IEP team meeting and provides identical services in the same general education (inclusion) setting. *Id.; see EA Test.; SEC Test.*

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[3] At the time of this IEP meeting, the Student was failing Geometry and Biology. *See P-12; P-13; R-5.*

12. On May 18, 2011, Petitioner also obtained an independent FBA report. *P-21.*

V. DISCUSSION AND CONCLUSIONS OF LAW

A. Summary

The Hearing Officer concludes that Petitioner met her burden of proving that DCPS failed to complete the Student's required triennial re-evaluations in a timely manner. However, Petitioner failed to meet her burden of proving that the March 18, 2011 IEP and placement were not reasonably calculated to confer educational benefits on the Student. Petitioner also failed to prove any educational harm from DCPS' delay in completing the triennial reevaluations beyond February 2011, sufficient to support entitlement to compensatory education, or met her burden of proposing a well-articulated plan for compensatory education in accordance with *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). Other appropriate equitable relief is awarded.

B. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer* v. *Weast,* 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to evaluate and failures to develop an appropriate IEP. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-E3030.3. The recognized standard is preponderance of the evidence. *See, e.g., N.G.* v. *District of Columbia,* 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw* v. *District of Columbia,* 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

C. Issues/Alleged Denials of FAPE

Petitioner claims that DCPS denied the Student a FAPE by (1) failing to conduct timely and appropriate re-evaluations, and (2) failing to develop an appropriate IEP and placement at the March 18, 2011 team meeting. The IDEA requires that all students be provided with a Free Appropriate Public Education ("FAPE"). FAPE means:

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

For the reasons discussed below, the Hearing Officer concludes that Petitioner has met her burden of proof on Issue 1, but has failed to meet her burden of proof on Issue 2.

1. Triennial Re-Evaluations

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

Petitioner claims that DCPS denied the Student a FAPE by failing to conduct timely re-evaluations of the Student in certain specified areas (namely, psychological, vocational, and FBA). Petitioner alleges that triennial reevaluations should have been completed by no later than February 2011. *See Complaint, p. 7.* [4] Petitioner requested the specified reevaluations as early as April 2010, and the team discussed and agreed with most of her request at IEP meetings held in June and October 2010, and again in March 2011. DCPS recognized the need for such re-evaluations, but then never conducted them. Instead, after the Complaint was filed in this case, DCPS finally authorized Petitioner to obtain independent evaluations covering all but the requested neuropsychological evaluation. At the time of the due process hearing, the independent FBA had just been completed, and the other independent evaluations were still outstanding.

[4] The February 2011 triennial reevaluation date appears to be derived from the date of the Student's prior psychological evaluation report dated 02/05/2008 (*P-18*), and DCPS has not disputed this date.

Petitioner has shown by a preponderance of the evidence that DCPS should have conducted an updated psychological, a vocational evaluation, and FBA as part of a triennial comprehensive reevaluation of Petitioner by approximately February 2011. DCPS did not even begin the process by issuing IEE letters authorizing independent evaluations in these areas until April and May 2011. While DCPS should be permitted a reasonable period of time to complete a triennial re-evaluation, *see Herbin, supra,* the Hearing Officer concludes that it has not acted in a timely manner in this case.

The failure to act on a request for independent evaluation or re-evaluation is not a "mere procedural inadequacy"; "such inaction jeopardizes the whole of Congress' objectives in enacting the IDEA." *Harris v. DC,* 561 F. Supp. 2d 63, 68-69 (D.D.C. 2008). Accordingly, the Hearing Officer concludes that DCPS' failure to conduct re-evaluations on a timely basis constitutes a denial of FAPE to Petitioner. Alternatively, the Hearing Officer would conclude that DCPS' procedural violation has impeded the child's right to a FAPE in this regard. *See* 34 C.F.R. 300.513 (a) (2); *Lesesne v. District of Columbia,* 447 F. 3d 828 (D.C. Cir. 2006).

2. Failure to Provide an Appropriate IEP and Placement

The "primary vehicle" for implementing the goals of the IDEA is the IEP, which the statute "mandates for each child." *Harris v. District of Columbia,* 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (*citing Honig v. Doe,* 484 U.S. 305, 311-12 (1988)). An IEP is a comprehensive written plan that must include, among other things: (a) "a statement of the special education and related services and supplementary aids and services ...and a statement of the program modifications or supports for school personnel that will be provided for the child"; and (b) an explanation of the extent, if any, to which the child will not participate with non-disabled children in any regular classes. 20 U.S.C. 1414(d)(1)(A)(i). *See also* 34 C.F.R. 300.320; DCMR 5-E3009.1.

To be sufficient to provide FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Anderson* v. *District of Columbia,* 109 LRP 18615 (D.D.C. 2009), slip op. at 6,

quoting Board of Education v. *Rowley,* 458 U.S. 176,200,207 (1982).[5] Judicial and hearing officer review of IEPs is "meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was 'reasonably calculated to enable the child to receive educational benefits.'"[6] Moreover, DCPS must periodically update and revise an IEP "in response to new information regarding the child's performance, behavior, and disabilities."*Maynard v. District of Columbia,* 54 IDELR 158 (D.D.C. 2010), *slip op. at* p. 6.; *see* 34 C.F.R. 300.324.

The issue of whether an IEP is appropriate is a question of fact for hearing. *See, e.g., S.H.* v. *State-Operated School Dist. of Newark,* 336 F. 3d 260, 271 (3d Cir. 2003). "Ultimately, the question ...is whether or not [the] defects in the ...IEP are so significant that [DCPS] failed to offer [the Student] a FAPE." *N.S. v. District of Columbia,* 2010 WL 1767214, Civ. Action No. 09-621 (CKK) (D.D.C. May 4, 2010), p. 20).

Petitioner claims that the Student requires an IEP and placement in a setting wholly outside general education, with full-time specialized instruction and a small student-teacher ratio.[7] However, Petitioner has not shown by a preponderance of the evidence that the 03/18/2011 IEP should have included these program elements, based on the information available at the time the IEP was developed, or that the Student requires a more restrictive, full-time placement. The evidence also shows (*inter alia*) that the Charter School has provided accommodations and modifications to the inclusion setting to address the Student's attention issues, including preferential classroom seating to minimize distractions, extended time on tests and assignments, and examinations in the SEC's office. *See SEC Test.* In addition, while some of the Student's grades have declined this year, his DC-BAS scores have increased from Below Basic to Basic to Proficient in Reading/Language Arts and from Below Basic to Basic in Mathematics. *Id.; see R-6.* Thus, Petitioner has failed to prove that the March 18, 2011 IEP was not "reasonably calculated" to confer educational benefits on the Student when it was created.

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[5] *See also Kerkam v. McKenzie,* 862 F. 2d 884 (D.C. Cir. 1988); *J G. v. Abington School,* 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit. ").

[6] *Schaffer* v. *Weast,* 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley,* 458 U.S. at 207); *see also Fuhrmann* v. *East Hanover Bd. of Educ.,* 993 F.2d 1031, 1040 (3d Cir. 1993) (whether an IEP is appropriate "can only be determined as of the time it is offered for the student, and not at some later date").

[7] Petitioner also claims that the 03/18/2011 IEP lacks an adequate post-secondary transition plan. *See* Complaint, p. 9. However, Petitioner failed to present any evidence at hearing as to how the transition plan was inadequate to meet the Student's needs.

Since DCPS has recently authorized several independent evaluations, moreover, it makes little sense to try to revise the Student's IEP before collecting such information. *See* 34 C.F.R. 300.324 (a). As the Licensed Clinical Psychologist who conducted the independent FBA notes, while the Student "has a primary disability of Other Health Impaired ..., there is no documentation to verify a diagnosis of ADHD." *P-21, p. 7.* She thus recommends that a "Comprehensive Psychological Evaluation would assess whether or not [the Student] meets the criteria for ADHD ....[and] will also determine if he is a young man with learning or emotional difficulties." *P-21, p. 8.* This, in turn, may well inform the team's judgment concerning the nature and amount of specialized instruction and related services the Student requires. Similarly, the independent vocational assessment will provide additional relevant information for the IEP team to consider in making any changes to the transition plan. Hence, DCPS should promptly reconvene the IEP team to review the results of these independent evaluations, and then review and revise the IEP as warranted, as soon as they are received. Of course, the IEP must drive the nature of the educational placement, and not vice versa. *See* 34 C.F.R. 300.116 (b) (2).

D. <u>Requested Relief</u>

The IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.,* 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter,* 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia,* 401 F.3d 516, 521-24 (D.C. Cir. 2005). In this case, the Hearing Officer has ordered appropriate equitable relief for the above denial of FAPE, as set forth in the Order issued below. DCPS is ordered to convene an IEP team meeting within 30 calendar days of receiving the results of the authorized independent evaluations to (a) review the evaluations, and (b) review and revise the Student's IEP, as appropriate.

Petitioner's request to order the funding of an independent neuropsychological evaluation is denied, since the evidence shows that the yet to be completed comprehensive psychological will help determine the need for a neuropsychological assessment. This ruling is without prejudice to Petitioner's renewing such request with DCPS based on the results of the independent psychological evaluation.

With respect to Petitioner's request for compensatory education relief, the Hearing Officer concludes that Petitioner has failed to prove any educational harm from DCPS' delay in

completing triennial reevaluations beyond February 2011 – either for the approximately one-month period to the date of the Complaint, or the approximately three-month period to the date of hearing. Nor has Petitioner met her burden of proposing a well-articulated plan for compensatory education, in accordance with the standards of *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005), as discussed at the prehearing conference, *see Prehearing Order*, ¶ 7.

In fact, Petitioner's compensatory education proposal is premised on a time period (April 2010 to March 18, 2011) that is significantly over-inclusive with respect to the denial of FAPE found herein. This HOD does not find that DCPS denied a FAPE to the Student beginning on the date of Petitioner's first request for re-evaluations (April 2010), or 60 days thereafter (*i.e.,* mid-June 2010, as is also suggested in the proposal). *See P-22.* The HOD finds only that DCPS should have completed the requested re-evaluations by no later than February 2011, the triennial date alleged in the Complaint. As reflected in the discussion under Issue 1 above, the Hearing Officer does not construe Section 300.303 of the IDEA regulations as ***requiring*** DCPS to conduct a specific re-evaluation requested by a parent sooner than once every three years. The regulations expressly provide that a re-evaluation requested by a parent "may occur not more than once a year" (absent agreement), and that it "must occur at least once every 3 years ...." 34 C.F.R. 300.303 (b) (containing "Limitation" regarding a "reevaluation conducted under paragraph (a)" of Section 300.303).

The Hearing Officer notes that this determination is without prejudice to Petitioner's claiming a need for compensatory education services in any further proceedings before the IEP team, or in any due process complaint that may be filed after DCPS reviews the completed independent evaluations and reviews and revises (as appropriate) the Student's IEP. If the results of the delayed evaluations can establish the need for additional or different services in the IEP, then at that time Petitioner may well be able to demonstrate educational harm and propose a compensatory education plan that is "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place" had it re-evaluated the Student in a timely manner. *Reid, supra,* 401 F.3d at 524. [8]

[8] Such claims should not be precluded by principles of *res judicata,* since they would necessarily be based on actions or inactions by DCPS occurring after the date of the current Complaint and HOD (*i.e.*, review of independent evaluations, further delayed completion of the Student's triennial re-evaluation, and review and revision of the IEP).

VI. ORDER

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

1. Within **20 calendar days** of this Order, DCPS shall convene a meeting of the Student's MDT/IEP Team for the following purposes: (a) to revise the 03/18/2011 IEP to include at least 60 minutes per week of behavioral support services (*i.e.*, counseling); and (b) to review the recently completed independent FBA and develop a behavior intervention plan ("BIP") based on the FBA.

2. Within **30 calendar days** of DCPS' receipt of the final report of the remaining independent evaluations authorized by DCPS, DCPS shall convene a meeting of the Student's MDT/IEP Team for the following purposes: (a) to review the results of the independent evaluations; (b) to reviewing and revise, as appropriate, the Student's IEP, based on the results of the independent evaluations, as well as academic and behavioral performance to date; (c) to discuss and determine an appropriate educational placement and setting that can meet the Student's unique needs and implement the revised IEP for the 2011-12 school year; and (e) to discuss and determine whether any additional evaluations of the Student are needed at this time, including a neuropsychological evaluation.

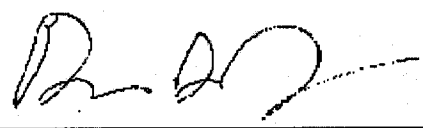
3. At the meeting convened pursuant to paragraph 2 above, the MDT/IEP team may also, in its discretion, discuss and determine if any additional services are warranted to compensate for the delay in completing the Student's triennial reevaluation. Petitioner shall also have the right to bring a due process complaint requesting compensatory education relief for any denials of FAPE occurring hereafter, including any continued delay in completing the Student's triennial reevaluation and/or developing a revised IEP.

4. Any delay in meeting any of the deadlines in this Order caused by Petitioner or Petitioner's representatives (*e.g.,* absence or failure to attend a meeting, or failure to respond to scheduling requests) shall extend the deadline by the number of days attributable to such delay.

5. All other requests for relief in the Due Process Complaint filed March 24, 2011, are **DENIED.**

6. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.



Dated: June 7, 2011

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia court of competent jurisdiction or in a District Court of the United States, without regard to the amount in controversy, within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).