

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

Student Hearing Office  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
February 18, 2014

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ADULT STUDENT,<sup>1</sup>

Petitioner,

Date Issued: February 16, 2014

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

Student Hearing Office,  
Washington, D.C.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Student's mother (MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Mother alleged that Respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by failing to identify a school for Student to attend, following a November 9, 2013 Hearing Officer Determination, and by not following IDEA procedures in

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<sup>1</sup> Personal identification information is provided in Appendix A.

making changes to Student's IEP in September 2013. During the pendency of this case, Student reached the age of majority and was substituted as Petitioner in place of Mother.<sup>2</sup>

Student, an AGE young man, is a resident of the District of Columbia. Mother's Due Process Complaint, filed on December 6, 2013, named DCPS as Respondent. Concurrent with filing her complaint, Mother filed a motion for an expedited due process hearing, which was opposed by DCPS. The undersigned Hearing Officer was appointed on December 11, 2013. By Order of December 17, 2013, I denied Mother's request for an expedited hearing. The 45-day deadline for issuance of this Hearing Officer Determination began on January 6, 2014. On January 14, 2014, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was convened before the undersigned Impartial Hearing Officer on February 4, 2014 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Student, who was not present, was represented by PETITIONER'S COUNSEL. DCPS was represented by Compliance Case Manager 1 and DCPS COUNSEL. At the beginning of the hearing, DCPS made an oral motion to continue the hearing date or dismiss the complaint because the adult Student was not present. After speaking with Student on a speaker telephone, with only the attorneys present, I determined that Student did not object to my holding the hearing without his attending. Further, after Student responded to my questions about his understanding of the due process proceeding, I did not find that Student's capacity to maintain the due process proceeding was called into question. Accordingly, in my discretion, I denied DCPS' motion to continue the hearing date or dismiss the complaint. On motion of DCPS, witnesses, including Mother, were

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<sup>2</sup> Prior to the due process hearing, Petitioner's Counsel represented that he had been retained by the Student to continue to prosecute this case on his behalf.

excluded from the hearing room.

On January 30, 2013, Petitioner's Counsel filed a motion *in limine* to exclude numerous witnesses identified in DCPS' five-day disclosures. After hearing argument by counsel, I denied the motion, without prejudice to Petitioner's right to reassert the objection when DCPS called the respective witnesses. (Ultimately, none of the witnesses, to whom Petitioner had objected, was called to testify.)

Petitioner called as witnesses Compliance Case Manager 1, OCCUPATIONAL THERAPIST, EDUCATIONAL ADVOCATE, CLINICAL PSYCHOLOGIST, EDUCATIONAL ADVISOR, and S/L PATHOLOGIST. DCPS recalled, as its only witness, Compliance Case Manager 1. Petitioner's Exhibits P-5 through P-85 were admitted into evidence without objection. Exhibits P-1 through P-3 were admitted over DCPS' objections. Exhibit P-4 was not offered. DCPS' Exhibits R-4 through R-6 were admitted without objection. Exhibits R-1 and R-2 were admitted over Petitioner's objections. Exhibit R-3 was not offered.

Petitioner's Counsel made an opening statement. Counsel for both parties made oral closing arguments. Neither party requested leave to file a post-hearing memorandum. By email filed February 6, 2013, Petitioner's Counsel submitted a "partial guide to the relevance" of Petitioner's email exhibits.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

### **CALENDAR YEAR 2013 HEARING OFFICER DETERMINATIONS**

The instant case is the most recent of a series of due process cases and judicial appeals concerning the provision of FAPE to this student. At the January 14, 2014 Prehearing

Conference, counsel for the parties agreed that I may adopt findings of fact, as I determine relevant to this case, from the prior 2013 Hearing Officer Determinations (HOD). These included an May 1, 2013 HOD issued by Hearing Officer Kimm Massey in Case No. 2013-0090 (May 1, 2013 HOD), Exhibit R-5; a July 26, 2013 HOD issued by the undersigned Hearing Officer (July 26, 2013 HOD), Exhibit R-6; and a November 9, 2013 HOD issued by Hearing Officer Coles B. Ruff (November 9, 2013 HOD), Exhibit R-4. In all three of the prior due process hearings, as in the present case, Mother alleged, *inter alia*, that DCPS had failed to offer Student suitable educational placements, alternative to parent's preferred program at INTERNET SCHOOL.

#### **THE NOVEMBER 9, 2013 HOD**

In her August 26, 2013 due process complaint in Case No. 2013-0487, Mother asserted that DCPS failed to provide Student a school to attend for the 2013-2014 school year and requested, *inter alia*, that DCPS fund Student's continued enrollment at Internet School. DCPS responded that a determination of a placement/location of services for Student had been attempted and was being frustrated by Mother. In his Conclusions of Law in the November 9, 2013 HOD, Hearing Officer Ruff found that DCPS had failed to designate an appropriate school as Student's school placement for the 2013-2014 school year. Hearing Officer Ruff ordered, *inter alia*, that DCPS fund Student's participation at Internet School for an additional two months to be completed by January 31, 2014. Hearing Officer Ruff also ordered DCPS to convene an IEP meeting by November 25, 2013 (within ten school days of the HOD) to review Student's most recent evaluation(s), review and update Student's IEP as appropriate, and propose a placement and location to implement the IEP for the remainder of the 2013-2014 school year. Hearing Officer Ruff further ordered Mother to attend the IEP meeting and, if any

school were proposed by DCPS, to make reasonable and prompt efforts to comply with any request for Student to visit the school. Exhibit R-4.

### **ISSUES AND RELIEF SOUGHT**

This issue to be determined in the instant case is:

- Whether, following issuance of the November 9, 2013 HOD, DCPS denied Student a FAPE by failing to identify a school for Student to attend.

A second issue, whether DCPS denied Student a FAPE and failed to comply with the IDEA by inappropriately changing his IEP in September 2013, was withdrawn, after DCPS' representative testified at the due process hearing that the September 2013 IEP was only a draft document for discussion and was never finalized.

For relief, Petitioner seeks an order for DCPS to fund and place Student at Internet School and to fund the provision of cognitive skills coaching and related services for Student through the rest of the 2013-2014 school year. In addition, Petitioner requests a compensatory education award, as compensation to Student for educational harm resulting from DCPS' alleged failure to provide him an appropriate educational program after the November 9, 2013 HOD was issued.

### **FINDINGS OF FACT**

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

1. Student, an AGE adult, resides with Mother in the District of Columbia.

#### **Testimony of Mother.**

2. Student is eligible for special education and related services under the primary disability classification, Multiple Disabilities ("MD"). His underlying diagnoses – current or by history – include, *inter alia*, cerebral palsy, hydrocephalus, epilepsy, autism, non-verbal learning

disability, dysgraphia, and dysplasia. July 26, 2013 IEP.

3. Pursuant to previous HODs, Student received instruction through Internet School during the 2012-2013 school year and for 2013 Extended School Year (ESY). November 9, 2013 HOD. Following issuance of the November 9, 2013 HOD, Student received instruction from Internet School, as compensatory education services, through January 31, 2013. Testimony of Educational Advisor.

4. The IEP in effect for Student, as of the October 4, 2013 due process hearing, was finalized by DCPS and Mother on May 28, 2013, and prescribed 25 hours of specialized instruction and several hours of related services each week. November 9, 2013 HOD. The specialized instruction was 20 hours in reading, math and written language and 5 hours in cognitive skills. The present levels of performance (PLOP) section of the IEP stated that Student required accommodations for math, reading and written expression that includes, *inter alia*, immediate feedback and paraphrasing every 10 minutes and that the teacher orally preview text with Student for meaning and content. The May 28, 2013 IEP also provided Student ESY services for summer 2013. November 9, 2013 HOD.

5. On June 7, 2013, Mother filed a due process complaint alleging, *inter alia*, that the location DCPS proposed for Student's ESY services was inappropriate. Following a due process hearing in that case, the undersigned Hearing Officer determined case that the school where DCPS proposed to implement Student's ESY was inappropriate and ordered, as compensatory education, that DCPS fund 60 hours of additional instruction at Internet School. July 26, 2013 HOD.

6. In late July and August 2013, DCPS and the Petitioner's Counsel conducted email communications attempting to schedule an MDT meeting at which evaluations would be

reviewed and a placement location for Student for School Year 2013-2014 could be determined.

November 9, 2013 HOD.

7. DCPS sent referral packets to a number of private schools for Student to be considered for admission. One of the schools under consideration, SCHOOL B, believed it could implement Student's IEP but required that Student attend the school for two school days before the school could offer him acceptance. Mother, through counsel, made written inquiries of the private school about its ability to implement Student's IEP. Because Mother was not assured through the correspondence that School B could implement the IEP, because of Mother's concerns about whether Student's medical conditions would be exacerbated during such a visit, and because Student could not visit School B prior to the start of School Year 2013-2014, Student did not visit School B and no final admission to School B was ever obtained. November 9, 2013 HOD.

8. On August 26, 2013, Mother filed her due process complaint in Case No. 2013-0487, asserting that DCPS failed to provide any proposed school for Student to attend for School Year 2013-2014. Although an IEP meeting was attempted after the due process complaint was filed, the parent did not attend the meeting and sought to cancel it because all of the evaluations, which Mother believed were required pursuant to the previous HOD, had not been completed. Mother believed that the May 28, 2013 IEP should stay in effect until those evaluations were completed. November 9, 2013 HOD.

9. For the regular school year, DCPS is not able to implement the May 28, 2013 IEP in a public school. July 26, 2013 HOD.

10. Educational Advisor consults for Internet School. Internet School offers an on-line curriculum, in coordination with independent facilitators, like Educational Advisor, who

provide one-on-one instruction to enrolled students. Educational Advisor is the owner of a private company, ADVISOR FIRM, which primarily provides school placement and educational services to special needs students. Internet School has no school campus or physical classrooms. July 26, 2013 HOD.

11. The enrollment fee at Internet School is \$5,000 for the regular school year and \$1,600 for the summer session. Educational Advisor charges an additional \$85.00 per hour for her one-on-one instruction services as a facilitator for Internet School. Testimony of Educational Advisor. Internet School does not have a current Certificate of Approval from the D.C. Office of the State Superintendent of Education (OSSE). Hearing Officer Notice.

12. Educational Advisor started working with Student, beginning July 2011. She instructs Student on a one-on-one basis at her office. As of July 2013, she had instructed Student, working with the Internet School curriculum, since the spring of 2013. During this period, Student attended sessions at Educational Advisor's office, for 1 to 2 hours per session, 2 to 3 days a week. In the May 1, 2013 HOD, Hearing Officer Massey ordered DCPS to reimburse Mother for Student's enrollment at Internet School beginning in February 2013 and ordered DCPS to fund Student's continued enrollment through the end of the 2012-2013 school year. Those sessions ended at the end of June 2013. July 26, 2013 HOD.

13. Educational Advisor also provided 2013 ESY services to Student and has provided him 175 to 200 hours of services in the 2013-2014 school year, including some 160 hours of instruction awarded as compensatory education in the November 9, 2013 HOD.

Testimony of Educational Advisor.

14. Educational Advisor is not certified as a special education teacher. She has passed the National Teachers Exam, which confers a nationwide teaching certification.

Testimony of Educational Advisor.

15. Following issuance of the November 9, 2013 HOD, DCPS convened an IEP team meeting for Student on November 21, 2013, which Mother attended. The IEP team did not complete its review and update of Student's IEP at the meeting and it was agreed that the team would reconvene after the DCPS vision teacher reviewed a vision assessment of Student, which Mother provided at the meeting, and DCPS reviewed a vocational report of Student which was underway. Exhibit R-2, p. 34. After the November 21, 2013 meeting, DCPS made an extended, and fruitless, effort to convince Mother to attend a follow-up IEP team meeting to complete the review and update of Student's IEP, and to propose a placement and location to implement the updated IEP, as required by the November 9, 2013 HOD.

16. After the November 21, 2013 IEP meeting, DCPS and Petitioner's Counsel engaged in extensive email communications, set out below, concerning reconvening the IEP team.<sup>3</sup>

**– November 21, 2013 12:34 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

Today we did not move forward with reviewing all the recent assessments since we do not have all of them. Instead, all parties agreed to reconvene once the vision teacher reviews the vision assessment (mom gave me a copy this morning) and DCPS receives the vocational report and has a chance to review that. I am hoping we can do all of this and meet before Christmas break.

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<sup>3</sup> These emails provide a "real time" record of the communications between DCPS and Mother's representative. Except for omitting content regarding scheduling a resolution team meeting and correcting typographical errors, I have endeavored to reproduce, verbatim, the substantive parts of these emails (and a letter from DCPS to Mother). Copies of the original communications were received into evidence. See Petitioner's Exhibit P-5 through P-85 and Respondent's Exhibit R-2.

Attached is the draft IEP for Student. This is the IEP we will be reviewing when we reconvene next time. Please let me know if you have any questions.

**– November 26, 2013 12:37 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

Please see the attached vocational assessment I received today from [ASSESSMENT PROVIDER] [IEP TEAM MEMBER] will review this assessment at our next meeting. We are only waiting on the vision teacher to complete her review of the vision assessment we received from mom last week. However, I am expecting that everything should be reviewed and ready to go by December 11th. Please provide DCPS with dates after the 11th and before the 20th to reconvene our IEP meeting. Thank you in advance. Please let me know if you have any questions.

**– December 2, 2013 5:29 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Thanks for the assessment.

As I understand it, DCPS still has not completed (or started) the assistive technology assessment. It was determined necessary at the May [2013] meeting and discussed in several emails since. Please let me know. More pressingly, my understanding is that DCPS agreed at the meeting to fund [Student] at his placement/setting at [Internet School] unless and until another school is identified. Would you please give me written confirmation of that so the provider can bill?

**– December 3, 2013 11:34 AM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

I understand that an [Assistive Technology (AT) assessment] was recommended in one of the assessments that was completed for [Student]. DCPS is not opposed to discussing the recommendation and making a determination at that time. This can surely be discussed at our upcoming meeting where all of the providers will be in attendance. Additionally, the HOD states (and I reiterated) that DCPS will continue to provide transportation to his current school until we provide a location of services.

Per the request in my previous email, we would like to move forward with the meeting as soon as possible so if you can provide us with dates after the 11th and before the 20th we can move forward before the Christmas holiday. Thank you and please let me know if you have any questions!

**– December 3, 2013 1:09 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

We do have a question, the urgent question of whether you can confirm in writing that DCPS will fund [Student] at [Internet School] and with his private related service providers unless and until another school is determined, as you said at the November meeting. He cannot attend without that confirmation, b/c even with confirmation DCPS has a bad payment history with the school. If you cannot provide the confirmation, we will litigate again immediately, this time likely in federal court.

Re the AT assessment, it may have been recommended in a recent assessment as well, but DCPS explicitly said at the May meeting that it needed to be done. There are also emails back to August or earlier in which I remind DCPS of the need, including at least one to you in September. I'm sure you understand that [Mother] and others do not want to needlessly attend multiple meetings, especially after DCPS was unprepared last time.

Please tell me DCPS' position regarding [Student's] current schooling.

**– December 3, 2013 1:08 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

Maybe I wasn't clear or I misstated the HOD at the meeting in November, however, the 11.09.13 HOD states that DCPS will continue to fund transportation to [Internet School] until DCPS determines a LOS. My apologies if that wasn't clear to your client and the advocate. Regarding the AT evaluation, I spoke to the previous case manager and she explained to me that it was never stated that DCPS would do an AT, only that it was recommended in one of the evaluations that was reviewed at that meeting.

Thus, DCPS would like to move forward as soon as possible with a meeting to review all of the evaluations, finalize an appropriate IEP, and determine an appropriate LOS. Please provide DCPS with dates between the 11th and the 20th so that we may meet prior to Christmas break. Thank you!

**– December 3, 2013 3:54 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Your statements about [Internet School] have confused me more. Did you mean to refer only to transportation? – it would be strange if DCPS were funding transportation but not the placement. Will finance take just an HOD and an email from you? – my understanding was that they only took more formal letters these days.

If DCPS is not funding the instruction and services, then I'll just file in the next day or two for the failure to identify a school again.

I'll forward the multiple emails about the AT since the May meeting. I might not be able to forward them until tomorrow. Additionally, I hope DCPS will consider that it is silly to have a dispute based on my three witnesses saying that the assessment was determined necessary and your one witness saying it wasn't, when there's no dispute about the more recent emails.

**– December 4, 2013 8:52 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

I just forwarded you some of the emails re the AT assessment from the last several months. There are others.

**– December 5, 2013 1:02 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

Thank you for those emails. Again, I cannot solely make a decision to authorize an AT assessment, the IEP team needs to discuss whether there is a need for it. We can discuss this at the upcoming meeting. The school is working on getting dates to offer for the meeting and I will provide those to you as soon as possible.

**– December 6, 2013 12:00 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

My understanding from your emails regarding the assistive technology assessment is that DCPS is refusing to conduct a necessary and requested assessment.

My understanding from your total failure to respond to my questions regarding current instruction and services is that DCPS refuses to provide for [Student]'s current instruction and services needs.

If you do not do something meaningful to correct my understanding, [Mother] will take new legal action.

As you know, DCPS failed to comply with the last HOD by failing to staff the IEP meeting, thereby wasting the time of the parent and her agents and [Student's] providers. [Mother] will not participate in an IEP meeting before all necessary assessments are complete. [Mother] objects to the creation of any IEP outside of her presence and objects to the creation of any IEP without all assessments complete. By the way, though both you and your attorney have stated

that there is an IEP from September 2013 (developed without the parent and without all necessary assessments), it remains the case that neither [Mother] nor any agent of hers has ever seen such a document.

**– December 6, 2013 12:26 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

Your understanding is not correct. Attached is the September IEP. As well as the recent draft IEP that was provided to you via email already. DCPS has not refused to conduct an AT assessment. Instead, DCPS has repeatedly stated we are willing to discuss the need for it when the entire IEP team is able convene. I have asked you for dates to hold this meeting per the parent's permission at the last meeting on 11.21.13 to reschedule once the vision teacher is able to review the assessment and all the evaluators are able to come to the table. At this time DCPS is ready to move forward to discuss all of your concerns/issues. Please provide a date in which you and your client are available.

**– December 9, 2013 2:03 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

I will go ahead and authorize an IEE for the AT assessment. However, we need to move forward with the IEP meeting to review all of the current evaluations and review and revise the draft IEP provided to you and your client. I will provide you and your client with dates from the school to see if you all are available to move forward at that time. Please let me know if parent/student needs any assistance with completing the IEE (Transportation, child care reimbursement, scheduling, or etc.). Also, please let me know if the student will need interim services while evaluation is being completed.

**– December 9, 2013 6:19 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

As I have informed you countless times, [Student] does need instruction and services - not "interim" but always, as the law entitles him - per his last valid IEP, from May.

**– December 11, 2013 2:49 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

DCPS is proposing to move forward on, December 19, 2013 @ 1:30pm, to hold the IEP meeting for [Student]. At this meeting DCPS will review all current evaluations, review and revise the

draft IEP provided to you and your client on 11.21.13. Please advise on your and your client's availability for the proposed meeting.

**– December 12, 2013 12:13 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

Please see the attached completed Eye Exam review completed by the DCPS vision teacher. Additionally, please follow up with me regarding the proposed 12.19.13 IEP meeting date as soon as possible.

**– December 13, 2013 8:08 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

I am still checking on availability. I will let you know when I do.

**– December 16, 2013 2:32 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Sorry it took me a few days to get back to you. [Mother] has another legal matter at that time, so it won't work for her.

**– December 17, 2013** (Letter, postmarked December 20, 2013)

To: Mother  
From: Compliance Case Manager 1

This letter serves to inform you of the numerous attempts DCPS has made to schedule an IEP meeting to review all of the assessments, per our agreement on 11.21.13.

- November 26, 2013, initial email for request for dates sent. No response regarding IEP meeting dates.
- December 3, 2013, follow-up email for request for dates sent. No response regarding IEP meeting dates.
- December 5, 2013, another follow-up email for request for dates sent. No response regarding IEP meeting dates.
- December 6, 2013, another follow-up email for request for dates sent. No response regarding IEP meeting dates.
- December 11, 2013, DCPS sent a proposed IEP meeting date for December 19, 2013 via email.

[Mother], per your directive, all of these communications were through your counsel, [Petitioner's Counsel].

Regarding the most recent proposal of December 19th by DCPS, [Petitioner's Counsel] sent DCPS an email on December 16th indicating that you had another legal matter at that time and it would not work for you. At this time, DCPS would like to offer the following dates for the IEP meeting: January 24, 2014 @ 2 pm and January 31, 2014 @ 2 pm. Please note that you may participate in a meeting by telephone if that will allow you to accept a proposed date. Please contact me at (202) \_\_\_\_\_ if you have any questions regarding this matter.

**– December 27, 2013 6:14 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

[Mother] has received your letter dated December 17. (Based on [Mother]/s receipt of the letter/ I conclude that it was sent later than that date/ as typically done by DCPS, but I'll have to check the postmark.)

Your statements to [Mother] are false and misleading, as you know. We have responded to every communication from you that called for a response. As you know, since you took responsibility regarding [Student] months ago, you have regularly ignored direct questions repeatedly asked by me. Your predecessor did the same for about one month before that.

These communications will be in the record of a hearing, as they have been in each of the several hearings in which DCPS has been found to have violated [Student's] rights, so your efforts to rewrite or distort history will be unavailing. They just waste our time.

I'll now try to address your many false or misleading statements. Please do not take my failure to address any one as agreement with the statement.

I am not sure to what you refer as "our agreement on 11.21.13." On that date, when DCPS's failure to perform all necessary assessments and failure to staff the IEP team prevented the development of an IEP, [Mother] agreed only to extend the HOD timeline for revising [Student's] IEP until all assessments were complete, on the important condition that there be no delay in providing a publically funded school for [Student].

If you mean to suggest that [Mother] has ever agreed to develop an IEP for [Student] without a full evaluation based on all necessary assessments, that is false. As you know, [Mother] has been reminding DCPS for several months of DCPS' failure to complete all necessary assessments.

I responded to your emails of 11/26, 12/3, and 12/5 by reminding you, among other things, of outstanding necessary assessments still not completed by DCPS. As you know, we had a fairly long exchange about that issue, culminating in DCPS authorizing an independent assistive technology assessment, though only after [Mother] filed her present due process complaint.

You did not request a meeting date on December 6. To the contrary, you said, "The school is working on getting dates to offer for the meeting and I will provide those to you as soon as possible."

Regarding your most recent invitation, [Mother] does not agree to any IEP meeting until all assessments are complete. As you know, DCPS only completed the vocational a few weeks ago, and more recently DCPS authorized [Mother] to obtain the assistive technology assessment independently, rather than complete that assessment itself. I will be writing under a separate heading with a question about that independent assessment.

As I said, your efforts to paper the record with false or misleading statements waste everyone's time, and therefore DCPS' money - in your salary and my bills - as well. As you may know, the United States District Court recently upbraided DCPS for its wasteful litigiousness regarding [Student] in particular. Everyone's interests will be served if we can keep our communications simple and constructive in the future.

**– December 27, 2013 6:16 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Please provide the names of some qualified independent evaluators who can perform the assistive technology assessment at the rate authorized.

**– December 30, 2013 1:19 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

I have attached the Parent Guide for you and your client with the contact information of independent providers who have completed Assistive Technology assessments for parents in the past. Below is their contact information as well:

Per your request, DCPS will wait until we receive the completed AT evaluation before moving forward with the IEP meeting to review all evaluations. With that being said, please let me know if parent/student needs any assistance with completing the IEE (Transportation, child care reimbursement, scheduling, etc.). I have also attached the brochure for you and your client in case you have any questions regarding assistance.

Please keep me posted with the status of the AT evaluation.

**– January 2, 2014 8:25 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Please be aware that it continues to be the case that [Mother] is available and eager to discuss a school for [Student] to attend ASAP, as DCPS has still not provided him with a school for this school year.

**– January 8, 2014 11:15 AM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

I understand your position. However, please note that DCPS has been trying to hold an IEP meeting to finalize the IEP so that our [location of services (LOS)] team will be able to appropriately determine a location for [Student]. We currently have a draft IEP waiting to be finalized by [Student's] IEP team. Per our last conversation, you expressed that you would like for DCPS to wait for the independent AT assessment to be completed before we move forward with the meeting to finalize the IEP and discuss LOS. If you do not wish to wait on the completion of the AT evaluation and want to proceed with the IEP meeting, please let me know as soon as possible.

**– January 9, 2014 1:17 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Are you suggesting that you can't determine a school without changing the rest of the IEP? If so, please explain why that is so.

If you are suggesting that you have to determine the school in a meeting with [Mother] – which DCPS has refused to do during the last few years – then we are happy to meet for that purpose. We have made it perfectly clear to you that [Mother] is eager to get a school for [Student] and is happy to engage in any discussion for that purpose. You can pretend otherwise, but the record is clear.

Again: [Mother] is and has always been eager to determine a school to provide [Student] FAPE, and has always been willing to discuss appropriate schools.

Multiple adjudicators have determined that DCPS has been responsible for the absence of FAPE for [Student] since 2010, but you continue to contend that [Mother] is responsible. Currently, you suggest that [Mother] is interfering with the IEP development.

First, [Student] has a current, valid IEP developed through agreement of DCPS and [Mother].

Re any possible IEP changes, [Mother] has always insisted that DCPS develop any new IEP in the appropriate manner, as explicitly defined in the statute and regulations. That includes assessing [Student], meeting with the parent, and soliciting the input of knowledgeable personnel, all of which DCPS has failed to do. We can only conclude from DCPS' practices over the last several months that DCPS has been trampling procedures because it wants to push IEP changes through in order to fit the IEP to some school convenient to DCPS. [Mother] will

continue to insist, through litigation when necessary, that [Student's] IEP fit his individual needs.

Your reference to a “draft IEP waiting to be finalized” further exposes DCPS’ railroading. DCPS – almost certainly only one individual, actually – wrote this draft without any discussion with [Mother] or [Student’s] current providers, and now DCPS is champing at the bit to finish the formal rubber stamping.

The multiple reasons there hasn’t been an IEP meeting are:

- 1) DCPS has failed to complete necessary assessments for several months;
- 2) DCPS (you personally) failed to respond to communications in September;
- 3) DCPS failed to staff the meeting ordered in the last HOD.

As I noted in an earlier email, your attempts to rewrite history only force work on me in responding to you, for which work I will later seek fees from DCPS. I again refer you to the recent federal fee decision reviewing the waste caused by DCPS’ litigiousness regarding [Student] in particular.

**– January 13, 2014 3:39 PM**

To: Petitioner’s Counsel  
From: Compliance Case Manager 1

Please provide me with possible dates to hold a meeting to determine an appropriate location of service for [Student]. I will need a few dates so that I can make sure I have the appropriate parties at that meeting so that we are able to accomplish stated goal. Thank you in advance for your cooperation.

**– January 14, 2014 7:28 AM**

To: Compliance Case Manager 1  
From: Petitioner’s Counsel

I’m getting dates for you, It’s difficult for [Mother] because she has to get [Student] all of his compensatory education before the end of the month.

We may be able to agree to a school without a meeting, We would like [Internet School]. Would you please tell me what school or schools DCPS has in mind?

Please note that as DCPS considers [Student’s] “placement” to be the description of the school in his IEP, we have asserted “stay-put” rights regarding the changes to that “placement” in the September IEP DCPS did without [Mother]. That means that the school description in the final May [2013] IEP controls until litigation over the September IEP is concluded. Please let me know if you need a copy of that final May IEP, (I emphasize “final” because it unfortunately is dated the same as an earlier draft.)

I’ll get back to you soon with dates.

**– January 19, 2014 5:20 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

Unfortunately, [Mother] can't meet for any reason until after 1/23. What dates/times to you have for next week?

Can you please let us know what school(s) DCPS is considering? [Mother] would like [Internet School], as before, but she is happy to hear alternatives that can meet [Student's] needs. If you can tell us what DCPS is considering, we can investigate the school(s) before the meeting, and possibly agree to a school in writing without the need for a meeting.

**– January 19, 2014 5:21 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

The [AT ASSESSOR] will do the evaluation. [Mother] is waiting for word back from them for a date.

**– January 22, 2014 3:21 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

DCPS is available to meet on January 29, 2014 @ 1:00pm. I will try and have a Location of services team representative at the meeting. I am not sure at this time if we will be able to provide you with any information regarding a location prior to the meeting. However, I will try my best to see if we can.

**– January 23, 2014 12:19 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

I think that will work, but I'm confused – are you not sure whether DCPS will be able to discuss schools?

**– January 23, 2014 2:41 PM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

For next week's meeting, DCPS would like to also finalize the IEP based on the current evaluations we have. Since all parties are available to meet on the 29th we need to get as much done as possible then reconvene once the AT is completed. I received correspondence from [AT

STAFF MEMBER] of [AT Assessor] who explained that the AT has yet to start. At this point waiting on the completion of the AT will cause an undesired delay.

**– January 24, 2014 10:26 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

You did not answer my question regarding your proposed meeting: will DCPS be prepared to discuss schools at a meeting on 1/29?

Please note that we have not yet agreed to that meeting date and time, primarily because you have declined to answer that clear, specific question. When we are prepared to agree to a meeting date and time, I will specifically state so.

Regarding IEP revisions, I have very clearly expressed [Mother's] position. I will try to save DCPS money by not rewriting it all, other than to reiterate that [Mother] (and now [Student]) will continue to assert the right to an appropriate IEP based on a full evaluation and assessments.

Please refer to my recent emails on the subject.

If you believe that [Mother] is currently causing any delay in assessment, please let me know immediately.

**– January 24, 2014 10:46 AM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

As I stated before [Petitioner's Counsel], I am working towards having a location of service representative at the meeting next week. I will be able to confirm that with you in the beginning of the week. Additionally, I have a question about the compensatory education from the May HOD where DCPS was required to authorize 150 hours of online instruction through the WECA electrician trainee program. The last time [FORMER COMPLIANCE CASE MANAGER] followed up with you, it was expressed that you all wanted to postpone it. Can you update me on the status of the comp ed at this time, please?

**– January 27, 2014 6:37 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

I'm not sure that you've answered my question, but my understanding of your statements so far is that you don't know yet whether DCPS will be prepared to discuss possible appropriate schools for [Student] at a meeting on 1/29. Please correct me if I misunderstand.

Once you know a date and time when DCPS will be prepared to discuss possible appropriate

schools, please let us know and we will respond to an invitation. As always, please let us know ASAP of any school DCPS thinks may be appropriate, as it is possible the parties could agree on a school without the need for formalities. [Mother's] top priority remains to get [Student] into an appropriate publicly funded school.

Re your comp ed question, those hours were always intended to be used after [Student's] graduation, so he has not used any of them yet. Please be aware that DCPS has not complied with various other terms of that HOD, including comp ed term; please refer to my multiple emails on the subject to [Former Compliance Case Manager] (and possibly to you – I don't recall).

**– January 27, 2014 6:41 AM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

My earlier statements regarding IEP changes remain in effect, but I also want to clarify something, though I think it has always been understood and has been ordered: [Mother] requests a reevaluation of [Student] before any changes are made to the May 2013 IEP.

**– January 27, 2014 10:57 AM**

To: Petitioner's Counsel  
From: Compliance Case Manager 1

DCPS will be prepared to move forward on Wednesday, January 29th @ 1pm at [City High School]. There will be a representative from the Location of service team, as well as all related service providers to review evaluations and discuss any concerns and requests for reevaluations.

**– January 27, 2014 3:37 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

I've read your statement that a "representative from the Location of service team" will be present, but I'm concerned that we've been talking past each other, so I want to make sure: will DCPS be prepared to discuss possible appropriate schools at a 1/29, 1 pm meeting?

If so, would you please tell me what school(s) DCPS plans to discuss? If you personally don't know, would you please get that information?

**– January 28, 2014 3:12 PM**

To: Compliance Case Manager 1  
From: Petitioner's Counsel

We have waited about 24 hours for confirmation that DCPS would in fact be prepared to discuss

an appropriate school or appropriate schools tomorrow, or better yet the identity of any school(s) under consideration.

[Mother] and [Student] are busy tomorrow with instruction and services and an appointment regarding another legal matter. It is now too late to change those appointments. I doubt that other providers and experts can attend on this short notice.

[Mother] remains eager to hear about appropriate schools. I believe that it would be most efficient for DCPS to at least tell us of any schools DCPS is considering.

In the absence of that, we will need more notice when DCPS is ready to discuss schools. You gave us only two days' notice that "a representative of the Location of service team" would be present, and so far less than 24 hours notice of whether DCPS would actually be prepared to discuss any proposed school.

Please note that I will likely be difficult to reach for the remainder of the day.

Compiled from Exhibits P-5 through P-85 and R-2.

17. Notwithstanding the January 28, 2013 email from Petitioner's Counsel advising that Mother would be busy on January 29<sup>th</sup>, on January 29, 2013, DCPS reconvened the IEP meeting at City High School. Student, Mother and Petitioner's Counsel did not attend the IEP meeting. Compliance Case Manager 1 telephoned Mother on January 29<sup>th</sup> to ask if she would participate. Mother stated that she would not and also told Compliance Case Manager 1 that Student had been notified. Testimony of Compliance Case Manager 1. The IEP team, without Mother, Student or their representatives, developed a revised IEP for Student. Stipulation of Petitioner's Counsel. The January 29, 2014 IEP was not offered into evidence at the due process hearing in this case.

## **CONCLUSIONS OF LAW**

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

### BURDEN OF PROOF

The burden of proof in a due process hearing is the responsibility of the party seeking

relief – the adult Student in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006). *See, also, Hinson ex rel. N.H. v. Merritt Educational Center*, 579 F.Supp.2d 89, 95 (D.D.C.2008) (Plaintiff, as the party challenging the IEP, had the burden of proof to show that the plan was inappropriate, citing *Schaffer v. Weast, supra*, 546 U.S. at 62.)

### ANALYSIS

#### Did DCPS deny Student a FAPE by failing to identify a school for him attend following issuance of the November 9, 2013 HOD?

The only issue before me in this case is whether, after the November 9, 2013 HOD was issued, DCPS denied Student a FAPE by failing to identify a school for Student to attend. In her due process complaint, Mother complained that DCPS proposed no school for Student after the HOD was issued. DCPS responded that any delay in identifying a location of services for Student has been caused by the parent, who has refused to cooperate with the completion of Student's IEP and his enrollment in a location of services.

With regard to Student's ongoing placement, Hearing Officer Ruff ordered in the November 9, 2013 HOD that:

DCPS shall, within ten school days of the issuance of this Order, convene and the parent shall attend an IEP meeting to review the student's most recent evaluation(s) and review and update the student's IEP as appropriate and propose a placement and location to implement the IEP for the remainder of SY 2013-2014.

If any school is proposed the parent shall make all reasonable and prompt efforts to comply with any request(s) that the student visit the proposed location of services.

Exhibit R-4. In a note to the HOD, Hearing Officer Ruff added that any delay in DCPS' meeting the timelines in his order, which were the result of action or inaction by Mother, would extend the timelines on a day for day basis. *See* Exhibit R-4, n. 9. Counsel represented at the February

4, 2013 due process hearing that the November 9, 2013 HOD has not been appealed.

On November 15, 2013, Compliance Case Manager 2 offered three dates to Mother for the IEP meeting ordered by Hearing Officer Ruff. After several rounds of emails, DCPS and Petitioner's Counsel agreed to hold the IEP meeting on November 21, 2013. When Student's IEP team convened on November 21, 2013, the review of Student's IEP was not completed. The parties agreed to reconvene, following DCPS' review of a new vision assessment which Mother provided at the meeting, and of a vocational report which was then in process. Following the November 21, 2013 IEP meeting, DCPS made numerous attempts to schedule another IEP meeting to complete the review and update of Student's IEP. Mother never agreed to a date to reconvene. Finally, on January 29, 2013, DCPS reconvened the IEP team meeting without the participation of Mother or Student.

I find that DCPS is not responsible for the delay in updating Student's IEP and placement, as ordered in the November 9, 2013 HOD. Upon receipt of the November 9, 2013 HOD, DCPS promptly acted on the order to convene an IEP meeting. In his November 14, 2013 email to Petitioner's Counsel, Compliance Case Manager 2 wrote:

A meeting needs to be held by November 25, 2013 to review student's most recent evaluations and review and revise student's IEP as appropriate and propose a placement and location to implement student IEP for the remainder of the 2013-2014 school year. Please confirm if parent needs any assistance with getting to the IEP meeting once confirmed . . .

After the IEP team met on November 21, 2013, Compliance Case Manager 1 provided Petitioner's Counsel a draft revised IEP for Student, which she stated would be reviewed when the IEP team reconvened.

On November 26, 2013, Compliance Case Manager 1 requested Petitioner's Counsel to provide DCPS with dates between December 11 and December 20, 2013 to reconvene the IEP meeting. As shown in the lengthy compilation of the email communications between DCPS and

Petitioner's Counsel in the above Findings of Fact, DCPS was unable to convince Mother to attend another IEP meeting to complete the revision of Student's IEP. In a December 3, 2013 email, Petitioner's Counsel appeared to require that DCPS complete an Assistive Technology (AT) assessment of Student before the IEP team reconvened. "I'm sure you understand that [Mother] and others do not want to needlessly attend multiple meetings, especially after DCPS was unprepared last time." Compliance Case Manager 1 responded that DCPS had not agreed that an AT assessment was necessary and reiterated that DCPS was ready to move forward as soon as possible with a meeting to review all of the evaluations, finalize an appropriate IEP, and determine an appropriate location of services. Petitioner's Counsel wrote Compliance Case Manager 1 on December 6, 2013 that Mother would not participate in an IEP meeting before all necessary assessments, including an AT assessment, were completed. On December 9, 2013, Compliance Case Manager 1 wrote Petitioner's Attorney that DCPS would authorize an independent AT assessment of Student and again stated the need to move forward with the IEP meeting to review current evaluations and review and revise the draft IEP.

On December 11, 2013, Compliance Case Manager 1 proposed to reconvene the IEP team meeting on December 19, 2013. Petitioner's Counsel responded on December 16, 2013 that Mother had "another legal matter at that time." In a December 17, 2013 letter to Mother, Compliance Case Manager 1 proposed new dates, January 24 or January 31, 2014, to reconvene the IEP meeting. She invited Mother to participate by telephone, if that would allow Mother to accept the proposed dates. By email of December 27, 2013, Petitioner's Counsel informed Compliance Case Manager 1 that Mother would not agree to any IEP meeting until all assessments, including the AT assessment were complete.

On January 14, 2014, Compliance Case Manager 1 again emailed Petitioner's Counsel to request that he provide possible dates "to hold a meeting to determine an appropriate location of

service” for Student. Petitioner’s Counsel responded on January 19, 2014 that Mother could not meet for any reason until after January 23, 2014 and asked for DCPS’ available dates for the following week. Compliance Case Manager 1 responded on January 22, 2014 that DCPS was available to meet on January 29, 2014.

Two days before the proposed meeting date, on January 27, 2014, Petitioner’s Counsel wrote that Mother requested a reevaluation of Student before any changes were made to his May 2013 IEP. Compliance Case Manager 1 responded that DCPS was prepared to move forward with the IEP meeting on January 29, 2014, and that a representative of DCPS’ Location of service team and all related service providers would be present to review evaluations and discuss any concerns and requests for reevaluations. On January 28, 2014, Petitioner’s Counsel emailed Compliance Case Manager 1 that Mother and Student would be “busy tomorrow with instruction and services and an appointment regarding another legal matter.” DCPS proceeded to hold the IEP team meeting on January 29, 2014, without the attendance of Student, Mother or their representatives, and the IEP team developed a revised IEP for Student.<sup>4</sup>

I find that Mother’s responses to DCPS’ efforts to reconvene Student’s IEP team after the November 21, 2013 meeting is comparable to the conduct of the parents described in *Doe ex rel. Doe v. Hampden-Wilbraham Regional School Dist.*, 715 F.Supp.2d 185 (D.Mass.2010). In that case, the due process hearing officer had noted that the local education agency (LEA) had set up IEP meetings on March 21, May 23, August 31, and September 17 of 2007, all of which the parents failed to attend. The Court upheld the hearing officer’s finding that the parents were

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<sup>4</sup> On February 3, 2014, Petitioner’s Counsel filed a new due process hearing request on behalf of the adult Student, in which it is alleged, *inter alia*, that DCPS denied Student a FAPE by illegally and inappropriately changing his May 2013 IEP at the January 29, 2014 IEP meeting. Hearing Officer Notice. Before opening the February 4, 2013 due process hearing, I inquired of the attorneys if there would be an interest in consolidating the new case with the present case so that they could be heard together. Petitioner’s Counsel demurred.

responsible for the IEP team's failure to meet before the school year started and its failure to develop an IEP for the student, and agreed with the hearing officer that an LEA may be relieved of its obligations to have an IEP in place if the parents are responsible for obstructing the process. *Id.*, 715 F.Supp. at 193. *See, also, MM ex rel. DM v. School Dist. of Greenville County*, 303 F.3d 523, 535 (4<sup>th</sup> Cir. 2002) (Improper to hold School District liable for the procedural violation of failing to have the IEP completed and signed, when that failure was the result of the parents' lack of cooperation;) *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 27 (1st Cir.2008) (Delays which "plagued" the signing of IEP were the product of her "mother's own intransigence." Those delays, in turn, justified the court in exonerating the School District with respect to the IEP's late implementation. "The interactive process constructed by Congress was not intended to deal a trump card to parents bent on prolonging IEP negotiations indefinitely." *Id.*); *Hawkins v. District of Columbia*, 692 F.Supp.2d 81, 84 (D.D.C.2010) (Affirming hearing officer's finding that evidence did not support the allegation that DCPS was primarily responsible for the failure to develop an IEP and to determine a placement for student;) *AW ex rel. Wilson v. Fairfax County School Bd.*, 372 F.3d 674, 683 n. 10 (4<sup>th</sup> Cir.2004) (Right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions.)

In the present case, DCPS convened an IEP team meeting to review and revise Student's IEP within eight school days of the issuance of the November 9, 2013 IEP. After the IEP was not completed at the meeting, DCPS made written requests, at least ten times, to Petitioner's Counsel (including one letter to Mother) to reconvene the IEP meeting. DCPS both requested Mother to provide her available dates and offered specific meeting dates for December 19, 2013 and January 14, 29 and 31, 2014. Mother neither proposed a meeting date, nor accepted any of the dates offered by DCPS, to reconvene the IEP meeting.

It appears that the principal reason that Mother did not agree on a date to reconvene the IEP meeting was that she wanted Student to continue to receive services from Internet School and DCPS would not identify a location of services for Student before the IEP team reconvened. In his emails to Compliance Case Manager 1, Petitioner's Counsel repeatedly requested DCPS to identify, before the IEP team met, what schools DCPS was considering for Student. (*See* Petitioner's Counsel's emails to Compliance Case Manager 1, sent on January 14, 19, 27 and 28, 2014.) Mother's request to DCPS to identify a school location for Student, *before* the IEP team met to revise his IEP, was at odds with the requirements of the IDEA. Under the Act, "the general rule is that placement should be based on the IEP." *Spielberg by Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 -259 (4<sup>th</sup> Cir.1988). *See, also*, 34 C.F.R. Part 300, Appendix A-Notice of Interpretations, 64 Fed.Reg. 12,473 (1999) (IEP objectives must be written before placement.) The current IDEA implementing regulations provide, *inter alia*, that the placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; is made in conformity with the IDEA's least restrictive environment provisions; and is "*based on the child's IEP*". *See* 34 CFR § 300.116 (emphasis supplied). Because the November 9, 2013 HOD required DCPS to convene an IEP team review and update, as appropriate, Student's May 2013 IEP, it would not have been proper for DCPS to identify a school for Student to attend before the IEP team completed its review of his IEP. *See, e.g., Spielberg*, 853 F.2d at 259 (LEA violated EHA procedures when it resolved to educate student at predetermined school and then developed an IEP to carry out their decision. ) Moreover, the IDEA's provision for parental input in placement decisions does not require parental participation in site selection. "Educational placement", as used in the IDEA, means educational program—not the particular institution where that program is implemented." *White ex rel. White v. Ascension Parish School*

*Bd.*, 343 F.3d 373, 379 (5<sup>th</sup> Cir. 2003). *See, also, James v. District of Columbia*, 949 F.Supp.2d 134, 137-138 (D.D.C.2013) (While the IDEA requires a student’s parents to be part of the team that creates the IEP and determines the educational placement of the child, it does not “explicitly require parental participation in site selection.” *Id.*, quoting *White, supra.*)

The other reasons mounted by Petitioner’s Attorney for not agreeing on a date to reconvene the IEP meeting – that Student’s AT assessment was not completed and that Mother wanted Student reevaluated before his IEP was changed – were, likewise, examples of parental overreaching. In the November 9, 2013 HOD, Hearing Officer Ruff ordered a review of “student’s most recent evaluation(s)” at the required IEP meeting. The order does not contemplate that Student would be reevaluated before the IEP team met to review and update his IEP. Further, while in some circumstances, an LEA must conduct additional assessments when requested by a child’s parent, *see* 34 CFR § 300.303, the IDEA does not set a time period for conducting a reevaluation and there is nothing in the Act that allows a parent to insist that the IEP review process be held in abeyance until the additional evaluations are completed. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005) (In light of the lack of statutory guidance, reevaluations should be conducted in a “reasonable period of time,” or “without undue delay,” as determined in each individual case.)

In summary, I find that the delay in the IEP team’s completion of its review and update of Student’s IEP in this case was the result of the parent’s lack of cooperation in scheduling the follow-up IEP meeting in December 2013 and January 2014. I conclude that Petitioner has not shown that DCPS has denied Student a FAPE by not identifying a school for him to attend subsequent to the issuance of the November 9, 2013 HOD. Therefore, I find that Student is not

entitled to the prospective nonpublic school placement<sup>5</sup> and compensatory education relief requested by Petitioner in the due process complaint.

**ORDER**

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

- All relief requested by the Petitioner in this matter is denied.

Date: February 16, 2013

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**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).

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<sup>5</sup> This is not to suggest that Student does not require a nonpublic placement. Student's educational placement must be determined by his IEP team in accordance with 34 CFR § 300.116. I make no findings on what would be an appropriate educational placement or suitable location of services for Student.