District of Columbia
Office of the State Superintendent of Education

Office of Dispute Resolution
810 First Street, N.E., Suite 2001
Washington, DC 20002

STUDENT[1], **By and through PARENT,** ***Petitioner,*** **v.** **PUBLIC CHARTER SCHOOL,** ***Respondent.***	Date Issued: March 5, 2015 Impartial Hearing Officer: Charles M. Carron

HEARING OFFICER DETERMINATION

I. BACKGROUND

The Student is male, Current Age, and attends Current Grade at Public Charter School, which is the Respondent in this matter. The Student has been determined to be eligible for special education and related services as a child with a disability under the

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

Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*

Petitioner claims that Respondent denied the Student a Free Appropriate Public Education ("FAPE") because the Student's evaluation and determination of eligibility for special education and related services were untimely, as described in more detail in Section IV *infra.*

Respondent asserts that it timely evaluated the Student and timely determined his eligibility.

II. SUBJECT MATTER JURISDICTION

This is a Due Process Complaint ("DPC") proceeding pursuant to the IDEA. The Due Process Hearing ("DPH") was held pursuant to the IDEA, 20 U.S.C. §1415(f); IDEA's 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 and E3030. This decision constitutes the Hearing Officer Determination ("HOD") pursuant to 20 U.S.C. §1415(f), 34 C.F.R. §300.513, and §1003 of the *Special Education Office of Dispute Resolution Due Process Hearing Standard Operating Procedures.*

III. PROCEDURAL HISTORY

The DPC was filed January 7, 2015, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student's Parent, against Respondent, Public Charter School.

On January 7, 2015, the undersigned was appointed as the Impartial Hearing Officer.

On January 16, 2015, Respondent filed its Response, styled "Answer to Complaint," stating, *inter alia*, that Respondent had not denied the Student a FAPE.

A Resolution Session Meeting ("RSM") was held on January 22, 2015 but it failed to resolve the DPC. The statutory 30-day resolution period ended on February 6, 2015.

The 45-day timeline for this HOD started to run on February 7, 2015 and will conclude on March 23, 2015.

The undersigned held a Prehearing Conference ("PHC") by telephone on January 26, 2015 at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by February 20, 2015 and that the DPH would be held on February 27, 2015. The undersigned issued a Prehearing Conference Summary and Order ("PHO") on January 26, 2015.

On February 13, 2015, Petitioner filed a motion to compel witness testimony, which the undersigned denied by Order the same date, for the reasons stated in that Order.

Later on February 13, 2015, Petitioner filed a Request for a Notice to Appear to compel the attendance and testimony of the Student's General Education Teacher. Later on February 13, 2015, Petitioner filed a Corrected Notice to Appear, which the Chief Hearing officer signed the same day.

On February 18, 2015 Petitioner filed her five-day disclosures, comprising a cover letter with lists of witnesses and documents, and 35 proposed exhibits numbered P-1 through P-35.

On February 19, 2015, Respondent filed its five-day disclosures, comprising a cover letter with lists of witnesses and documents, and seven proposed exhibits numbered R-1 through R-7.

No other motions were filed by either party and the DPH was held on February 27, 2015 from 9:32 a.m. to 2:48 p.m. at the Office of Dispute Resolution, 810 First

Street, NE, Room 2006, Washington, DC 20002. Petitioner elected for the hearing to be closed.

Petitioner participated in the DPH in person.

At the DPH, the following documentary exhibits were admitted into evidence because no timely[2] objection was asserted: Petitioner's Exhibits: P-1 through P-35 and Respondent's Exhibits R-1 through R-7.

Petitioner and Licensed Clinical Psychologist testified on behalf of Petitioner at the DPH.

Petitioner also sought to call General Education Teacher as a witness. General Education Teacher had been served properly with a Notice to Appear; however, on the day of the DPH, she was traveling on leave from work and when contacted by telephone from the hearing room, she declined to testify. General Education Teacher stated that she had been willing to testify earlier in the day but could not do so at the time she was contacted, or at any time later that day. Respondent had not opposed the issuance of the Notice to Appear, and had not sought to quash the Notice to Appear or to limit its applicability to any particular time on the day of the DPH. Accordingly, the undersigned asked Petitioner's counsel to make a proffer of the testimony that she would have elicited

[2] Petitioner's proposed exhibits were served on Respondent on Wednesday, February 18, 2015. On Monday, February 23, 2015, Respondent objected to P-2, P-3, P-6, P-7 and page 7 of P-28. However, paragraph 26 of the PHO stated that if a party had an objection to the admissibility of any of the other party's proposed exhibits, the party must "email its objections to the other party and [the undersigned] by 6:00 p.m. on the second business day after service of the proposed exhibits, stating the objection succinctly." Paragraph 27 of the PHO stated, *inter alia*, that if a party did not serve objections by the above deadline, "the other party's proposed exhibits will be considered admitted by consent of the parties." Because Respondent missed the deadline of 6:00 p.m. on Friday, February 20, 2015 (the second business day after service of the proposed exhibits), Petitioner's exhibits were considered admitted by consent of the parties. Although all of the exhibits were admitted, in deciding how much weight to give each exhibit, the undersigned has considered their relevance to the issues in this case.

from General Education Teacher, which the undersigned has accepted as though General Education Teacher had so testified.[3]

Special Education Director ("SED") testified on behalf of Respondent at the DPH.

The parties gave oral closing arguments and did not file written closing arguments or briefs.

IV. ISSUES

As discussed at the PHC and confirmed in the PHO, the following issues were presented for determination at the DPH:

(a) From on or about August 26 to October 9, 2014, did Respondent violate (i) its "child find" obligations under IDEA by failing to identify the Student for eligibility for special education and related services and/or (ii) its obligations under DCMR §5-E3019.5(c) by failing to complete the evaluation process that was begun by the Student's previous Local Educational Agency ("LEA")?

(b) Since August 26, 2014, has Respondent denied the Student a FAPE by failing timely[4] to convene a Multidisciplinary Team ("MDT") to review the results of the comprehensive psychological evaluation of the Student conducted by his previous LEA and to determine what additional evaluations were required, and to reconvene the MDT as appropriate?

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[3] In this HOD, facts established by Petitioner's proffer are cited as "Proffered testimony of General Education Teacher."

[4] Subsequent to the PHC, on February 4, 2015, the MDT was convened, reviewed the evaluation conducted by the previous LEA and Respondent's own evaluation, and found the Student eligible for special education and related services. Accordingly, the remaining dispute is over the *timeliness* of the evaluation and eligibility determination.

V. RELIEF REQUESTED

Petitioner requests the following relief:[5]

(a) a finding that Respondent denied the Student a FAPE;

(b) an Order that Respondent fund an evaluation to address what if any compensatory education should be provided to the Student for denials of FAPE; and

(c) an Order that all meetings be scheduled through Petitioner's counsel.

VI. BURDEN OF PROOF

In a special education DPH, the burden of persuasion is on the party seeking relief. DCMR §5-E3030.3; *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008).

[5] In the DPC, Petitioner also requested (1) attorney's fees and costs, which the undersigned struck because only a court can award that relief; (2) a finding that the Student is eligible for special education services, which, as stated in Paragraph 9 of the PHO, became moot when the Student was found eligible; and (3) an Order that Respondent develop an Individualized Education Program ("IEP") for the Student, which is now moot because, on February 19, 2015, the Student's IEP Team met and developed an initial IEP for him. R-7. Neither the appropriateness of the IEP nor its implementation is an issue in the instant case. Accordingly, the undersigned has not summarized in this HOD the documentary evidence or testimony regarding the contents or implementation (or failure to implement) the IEP. Any challenge to Respondent's actions or failure to act regarding the Student's IEP must be raised in a new DPC.

VII. CREDIBILITY

SED and Licensed Clinical Psychologist were entirely credible.

Petitioner was not credible, as demonstrated by the following examples: (a) Petitioner asserted that meetings occurred on certain dates, and upon further questioning admitted that she did not recall the dates. (b) On Respondent's Enrollment Contract form, Petitioner checked "no" in response to the question whether the Student had an IEP, yet on direct examination she testified that the Student had an IEP earlier that month, and on cross-examination she said the Student did not have an IEP. (c) Petitioner testified that she did not discuss the Student's special needs with Enrollment Coordinator, then testified that she told Enrollment Coordinator that the Student had an IEP earlier that month. (d) Petitioner testified on direct examination that before SY 2014-2015, the Student "always loved school," yet on the Previous School withdrawal survey, she checked boxes for "Felt like I did not belong" and "Felt unsafe." When asked about this by the undersigned, Petitioner testified that Previous School's decision not to promote the Student would have led his peers to laugh at him, rendering Previous School "unsafe, unsafe, unsafe." The undersigned finds this explanation for Petitioner's inconsistency to be contrived. (e) Petitioner testified that she received the report of Previous School's evaluation of the Student via email the first or second week of September 2014 but deleted it by mistake, yet Petitioner never mentioned the evaluation to any representative of Respondent until SED discussed it with her when he received a copy in early October 2014—a sequence of events that the undersigned finds implausible.

Although not directly related to credibility, Petitioner's mistaken understanding that "Individualized Education Program" and the acronym "IEP" mean an assessment or

evaluation led to confusion—in the school setting when she told Respondent's representatives that the Student had an IEP at Previous School when she meant he had been assessed by Previous School, in communications with her own counsel that led to the filing of the DPC, and also at the DPH.

For all of the above reasons, when Petitioner's testimony conflicted with that of SED, the undersigned has credited the latter.

VIII. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a male of Current Age. R-7-1.[6]

2. The Student resides in the District of Columbia. R-1-4.

3. On February 19, 2015, the Student was determined to be eligible for special education and related services under the IDEA as a child with Autism Spectrum Disorder (known as Autism) (R-7-2) and Emotional Disturbance ("ED") (Testimony of Petitioner, testimony of SED).

The Student's Academic Performance at Previous School During SY 2013-2014

4. During the five grading periods of SY 2013-2014 at Previous School, the Student earned mostly As and Bs (with the exception of Math, in which he earned mostly Ds). P-4-1.

[6] When citing exhibits, the third range represents the page number within the referenced exhibit, in this instance, page 1.

The Student's Mental Health Treatment in May 2014

5. On May 7, 2014, the Student was admitted to Children's National Medical Center ("CNMC") because he had told Petitioner he was hearing voices telling him he was worthless and to hurt himself. P-1-1, P-30-2.

6. CNMC diagnosed the Student with Anxiety Disorder NOS ("Not Otherwise Specified") and Depressive disorder with psychotic features. *Id.*

7. The Student was discharged from CNMC either May 9, 2014 (P-1-2 and -3) or May 13, 2014 (P-2-1).

8. CNMC made no recommendation regarding special education for the Student. P-1, P-2.

9. As of May 14, 2014, the Student was receiving the following (outpatient) mental health services: psychological assessment, community support worker, medication management, and individual counseling. P-3-1.

The Student's Comprehensive Examinations and Retention at Previous School

10. The Student earned mostly Ds and Fs on his comprehensive exams, resulting in a final average of 72.75. P-4-1.

11. Because the Student failed his comprehensive exams in Latin and Physics (*Id.*), he did not meet the requirements for promotion (P-4-2).

12. Previous School gave the Student the opportunity to seek conditional promotion status and to retake the comprehensive examinations that he had failed. *Id.*

13. On June 26, 2014, Petitioner requested conditional promotion of the Student. P-6-1.

14. On August 23, 2014, Petitioner wrote to Previous School's headquarters requesting that the Student be promoted without retaking the comprehensive exams. P-7.

15. The Student retook the comprehensive exams, failed them, and was denied promotion (*i.e.*, he was "retained") by Previous School. Testimony of Petitioner.

Evaluation of the Student by Previous School

16. On June 27, 2014, Petitioner signed a Consent for Initial Evaluation/ Reevaluation form, authorizing Previous School to evaluate the Student to determine whether he was eligible for special education and to determine his educational needs. P-5-1.

17. Previous School referred the Student for a "Confidential Combined Psychological and Psychoeducational Evaluation" (the "Combined Evaluation"). P-9-1.

18. The Combined Evaluation was conducted on July 25 and August 4, 2014. *Id.*

Withdrawal from Previous School and Enrollment at Respondent, Public Charter School

19. On August 26, 2014, Petitioner met with Respondent's Enrollment Coordinator to enroll the Student, advising Enrollment Coordinator that she wanted to enroll the Student because Previous School wanted to retain him (in the same grade as SY 2013-2014) because he had failed his comprehensive exams in Physics and Latin. Testimony of Petitioner, R-1-5.

20. Enrollment Coordinator instructed Petitioner to go to Previous School to withdraw the Student, which Petitioner did the same day, informing Previous School that the Student was transferring to Respondent. P-8-1.

21. Petitioner returned to Respondent to complete the Student's enrollment later on August 26, 2014. R-1-5.

22. At the time of enrollment at Respondent, Petitioner stated to Enrollment Coordinator that the Student had done well academically at Previous School, but Previous School had refused to promote him because he failed two comprehensive exams, which Petitioner explained had resulted from his mental health incident, as documented by the CNMC discharge form[7] that she showed to Enrollment Coordinator. Testimony of Petitioner.

23. To convince Respondent that the Student was academically capable of handling Current Grade work, Petitioner provided Enrollment Coordinator the Student's report card from Previous School, demonstrating his generally high grades prior to the mental health incident and his subsequent failure of two comprehensive exams. *Id.*

24. Based upon Petitioner's explanation of the reason Previous School had declined to promote the Student, Respondent agreed to accept the Student and promote him to Current Grade. *Id.*

25. Petitioner did not state to Enrollment Coordinator or any other representative of Respondent that the Student required any specialized instruction. *Id.*

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[7] Petitioner and her counsel apparently believe that a child with a serious medical diagnosis necessarily has, or should be suspected of having, a disability requiring special education and related services. This is a *non sequitur*. A diagnosed medical condition does not necessarily have an impact upon a child's ability to access the general education curriculum, particularly if the child is under treatment for the medical condition.

26. At the time of enrollment at Respondent, Petitioner left blank the portion of the Parent/Student Enrollment Contract (the "Enrollment Contract") that asked if the Student had any existing health concerns. *Id.*, R-1-4.

27. At the time of enrollment at Respondent, Petitioner answered "yes" to the following question on the Enrollment Contract: "Has your child ever had an IEP or been evaluated for Special Need Services?"; however, she answered "no" to the following question: "Does your child have an Individualized Education Program (IEP)?" R-1-4.

28. The undersigned finds that Petitioner's answers to these questions led Enrollment Coordinator on August 26, 2014 to conclude that the Student had in the past been evaluated but had been found *ineligible* for special education services, and therefore did not have an IEP.

29. Based upon the entire record, the undersigned finds that Petitioner led Respondent to conclude that the Student did not need special education services by (a) her failure to identify any existing health concern of the Student on the Enrollment Contract, (b) her assurances to Enrollment Coordinator that the Student could do Current Grade work and only failed the comprehensive exams because of the May 2014 mental health incident, and (c) her failure to state that the Student required any specialized instruction or related services (or, without using those terms, that he had special needs).[8]

30. Petitioner's reason for transferring the Student from Previous School to Respondent was to obtain the Student's promotion to Current Grade, thereby avoiding ridicule by his peers that she predicted he would suffer if he remained at Previous School

[8] Whether Petitioner intentionally or unintentionally misled Respondent is not material to deciding the issues in the instant case.

and was retained in the same grade as during SY 2013-2014, a result that Petitioner characterized as "unsafe, unsafe, unsafe." Testimony of Petitioner.

31. Based upon the entire record, the undersigned finds that Petitioner was not motivated to enroll the Student at Respondent by a desire to obtain special education services for him, and did not express such a desire at the time of enrollment.

The Events of August 27 and 28, 2014

32. On the Student's first day at Respondent, August 27, 2014, which was not the first day of Respondent's school year, the Student was "called out" as "the new kid" by a peer, which embarrassed and upset the Student. Testimony of Petitioner.

33. Petitioner characterized this event as bullying. *Id.*

34. Petitioner attributed this event to the Student not yet having his full school uniform. *Id.*

35. Petitioner, the Student, and various officials of Respondent met on August 28, 2014. *Id.*

36. Petitioner asserts that SED attended this meeting. *Id.*

37. SED did not recall attending this meeting, which he would not have had a reason to attend because his responsibilities do not extend to conduct or disciplinary matters unless the matter involves a child with a disability receiving special education, or a child suspected of a disability who was being evaluated for special education, and as of August 28, 2014, SED was not aware that the Student was such a child. Testimony of SED.

38. According to Petitioner, at the August 28, 2014 meeting she informed Respondent's representatives that the Student was dealing with depression, had sad feelings, got upset, and had ED. Testimony of Petitioner.

39. According to Petitioner, at the August 28, 2014 meeting, SED asked Petitioner if the Student had an IEP and Petitioner said that he had been evaluated by and had an IEP at Previous School[9], to which SED responded that he would obtain that IEP. *Id.*

40. In view of the purpose of the meeting—to discuss the incident of August 27, 2014 that Petitioner characterized as bullying[10]—and given Petitioner's mistaken recollection that SED attended the meeting and her confusion over the meaning of "IEP," the undersigned finds that Petitioner's memory of the August 28, 2014 meeting is inaccurate and that no discussion of depression, ED, evaluation, or IEP occurred.

SED's Actions Upon and Subsequent to the Student's Enrollment

41. Whenever a child enrolls at Respondent, SED reviews the enrollment materials and accesses the Special Education Data System ("SEDS") database maintained by the Office of the State Superintendent of Education ("OSSE") to determine whether the child was eligible for special education services. Testimony of SED.

42. "Lots" of students in the SEDS database had been evaluated and found not to be eligible. *Id.*

[9] This testimony was in direct conflict with the Enrollment Contract that Petitioner had completed the previous day stating that the Student did not have an IEP. R-1-4.

[10] Petitioner testified that she "didn't want [the Student] to be messed with."

43. When SED first accessed SEDS to review the Student's data, the Student did not appear in the system, apparently because he still was coded as enrolled at Previous School, which precluded Respondent from seeing his records in the system. *Id.*

44. Sometime in mid-September to late September 2014, the Student "showed up" in SEDS, at which time SED requested the Student's special education records from OSSE. *Id.*

SED's Discussion with Petitioner in Mid-September 2014 and SED's Actions Based Upon that Discussion

45. Sometime in mid-September 2014, SED heard from the school counselor that the Student was having "a lot of incidents" with other students. Testimony of SED.

46. SED met with Petitioner when she came to school to pick up the Student.[11] *Id.*

47. SED walked down the street with Petitioner and the Student. *Id.*

48. SED and Petitioner discussed the Student's diagnosis of depression. *Id.*

49. Petitioner informed SED that the Student had an IEP, and provided the name of a person at Previous School who could provide information to SED about the IEP. *Id.*

50. SED replied that he would contact Previous School about the IEP. *Id.*

51. Based upon the entire record, the undersigned finds that during this conversation in mid-September 2014, Petitioner led SED to believe that the Student already had been evaluated, had been determined eligible, and had an IEP; accordingly, Respondent had no reason to initiate an evaluation of the Student at that time.

[11] Petitioner testified that no such conversation occurred. As discussed in Section VII, *supra*, the undersigned credits SED's version.

52. SED asked Enrollment Coordinator whether any additional releases were required for SED to contact Previous School, and Enrollment Coordinator stated no additional releases were required. *Id.*

53. SED called Previous School and was informed that the Student did not have an IEP, and that an evaluation had been "done" but was not complete. *Id.*

Petitioner's Emails with Respondent's Chief Academic Officer on September 22, 2014

54. On September 22, 2014, Petitioner emailed Respondent's Chief Academic Officer ("CAO") complaining that peers had been bullying the Student, and requesting a meeting with those children's parents. R-2-2 and -3.

55. Within an hour, CAO replied, stating that Petitioner could not speak directly with other children's parents, while inviting Petitioner to join a parents' committee and confirming a September 26, 2014 meeting for Petitioner and Respondent's staff. R-2-1.

Petitioner's Failure to Request Evaluation or Special Education Services Prior to October 9, 2014

56. Petitioner admitted upon questioning by the undersigned that at no time prior to October 9, 2014 did Petitioner ask Respondent to provide special education services to the Student. Testimony of Petitioner,

57. Based upon the entire record, the undersigned finds that Petitioner's sole focus during the period August 27 to October 9, 2014, was to stop what she characterized as bullying of the Student by his peers, rather than to obtain special education or related services (or an evaluation for those services).

The Student's Academic Performance Between August 27 and October 9, 2014 [12]

58. Petitioner did not receive any grades or comments from teachers about the Student's performance in school from August 27 to October 9, 2014. Testimony of Petitioner.

59. The Student's work in his English Language Arts class from September 2 through September 23, 2014, earned him mostly As and two Cs. P-28-2.

60. The Student's work in his English Language Arts class from September 24 through October 6, 2014, earned him one B and the remainder Fs. *Id.*

61. The Student's work in his Life Science class from August 29 through September 29, 2014, earned him an equal number of As and Fs. P-28-3.

62. The Student's work in his Pre-Algebra class from August 27 through September 4, 2014, earned him all As. P-28-4.

63. The Student's work in his Pre-Algebra class from September 5 through October 7, 2014, earned him five As, three Cs, and 16 Fs. *Id.*

64. The Student's work in his STEM Literacy class from the beginning of SY 2014-2015 through September 26, 2014 earned him four As, one C, and three Fs. P-28-5. The Student's STEM Literacy teacher's proffered testimony included that he had not

[12] Petitioner introduced documentary evidence of the Student's academic difficulties after October 9, 2014 (P-22-1, P-26-1 and P-27-1) to demonstrate that the Student suffered educational harm from Respondent's allegedly unlawful delay in evaluating the Student. Respondent introduced documentary evidence (R-4-1) of the Student's academic success, to rebut the assertion of educational harm. Because the undersigned has found that the Student's evaluation was timely (*see,* Conclusions of Law 8 through 11, *infra*), and in any event the Student's initial IEP was developed timely (*see,* Conclusion of Law 17, *infra*), the Student's academic performance after October 9, 2014 is not relevant to determination of the issues in the instant case.

been completing his work in a timely manner despite interventions she attempted. Proffered testimony of General Education Teacher.

65. The undersigned finds that the Student's academic performance between August 27 and October 9, 2014 was inconsistent, as could be expected from a child with or without a disability who changed schools and matriculated after the beginning of the school year.

66. The undersigned finds that the Student's grades on his class work between August 27 and October 9, 2014 did not put Respondent on notice that the Student had a suspected disability requiring specialized instruction and related services.

The Student's Behavior Between August 27 and October 9, 2014

67. The Student did not engage in any misconduct at school from August 27 to October 9, 2014. Testimony of Petitioner.

68. Since the beginning of SY 2014-2015, the Student had difficulty with peers and "shutting down." Proffered testimony of General Education Teacher.

69. The Student did not have any in-school suspensions or out of school suspensions from August 27 to October 9, 2014. R-5-1, and *see* key to abbreviations at R-5-3.

70. There is no evidence in the record that the Student received any disciplinary referrals from August 27 to October 9, 2014.

71. The fact that the Student had expressed interest in seeing the school counselor prior to September 15, 2014 (R-3) was not a "red flag" indicating that he needed special

education; children may seek to see the counselor because of problems adjusting to a new school or problems with other students or siblings. Testimony of SED.

72. Based upon the entire record, the undersigned finds that the Student likely sought the school counselor to address what he perceived to be mistreatment by peers.

73. Based upon the entire record, the undersigned finds that despite one teacher's report that since the beginning of the school year the Student had been having difficulty with peers and shutting down, the Student's behavior between August 27 and October 9, 2014 and his request to see the school counselor did not put Respondent on notice that the Student had a suspected disability requiring specialized instruction and related services.

SED's Initiation of Respondent's Evaluation of the Student

74. By October 9, 2015, SED had not received the evaluation from Previous School, and made the decision to proceed to have Respondent evaluate the Student. Testimony of SED.

75. On October 9, 2014, Petitioner signed a Consent for Initial Evaluation/ Reevaluation form provided to her by SED, authorizing Respondent to evaluate the Student to determine whether he was eligible for special education and to determine his educational needs. P-1-4.

SED's Review of Previous School's Evaluation of the Student

76. On or about October 10, 2014, SED received the report of the Combined Evaluation from Previous School. Testimony of SED.

Petitioner's Email Exchange and Conversation about Previous School's Evaluation

77. On October 10, 2014, Petitioner sent an email to SED stating, *inter alia*, that the Student was not doing well, was not at school, and needed an evaluation as soon as possible. P-10-1.

78. Within the hour, SED replied, stating, *inter alia*, that Respondent would initiate the Student's evaluation "as soon as possible," and that the evaluation "should not require much as he has had an evaluation already but I want to make sure it is most comprehensive and looks at all possible difficulties so we can offer the right kind of help." *Id.*

79. Petitioner spoke with SED about the Combined Evaluation. Testimony of Petitioner.

80. SED stated that the Combined Evaluation was not sufficient because it only covered "one area," and that he wanted to conduct an additional evaluation[13] of the Student to rule out autism. *Id.*

Previous School's Evaluation of the Student

81. Previous School's Combined Evaluation of the Student had been conducted on July 25 and August 4, 2014 and a report had been issued on September 9, 2014. P-9-1.

82. The evaluators were unable to determine the Student's Full Scale IQ ("FSIQ") score because of large discrepancies in the component indexes. P-9-5.

[13] Petitioner referred to this evaluation as an "IEP." *Id.*

83. The evaluators found that the Student's understanding of social situations was low and that he showed significant weaknesses in processing speed and ability to analyze, synthesize, and reason with visual information. *Id.*

84. Overall, the Student's academic achievement was found to be in the average range although he had relative weaknesses in Reading Fluency, Writing Fluency, Broad Math, Oral Language, Applied Problems and Understanding Directions. P-9-5 and -6.

85. With regard to social-emotional functioning, based solely upon reports by Petitioner and the Student (because teachers were unavailable due to the summer vacation), the evaluators found significant concerns regarding anxiety and depression. P-9-7 and -8.

86. The evaluators opined that the Student met the criteria for special education services under the category ED "due to a pervasive mood of unhappiness or depression in addition to an inability to build or maintain satisfactory interpersonal relationships…." P-9-8.

87. The evaluators also opined that the Student met the criteria for special education services under the category Specific Learning Disability ("SLD") because he presented with "significant delays in processing speed and an ability to analyze, synthesize, and reason with visual information." *Id.*

Correspondence Between Petitioner's Counsel and Respondent from October 16, 2014 through January 15, 2015

88. On October 16, 2014, Petitioner's counsel sent an email to Respondent's counsel stating, *inter alia*, that the Student attended Previous School the previous year, that he had an IEP, that he had been identified as a student with ED, that he had been

diagnosed with Anxiety Disorder and Depressive disorder with psychotic features, that the Student was being bullied at school, that Respondent had a copy of the Student's IEP but indicated that it needed to be revised, and that no meeting dates had been proposed; and Petitioner's counsel requested a psychological reevaluation and an FBA. P-11-1.

89. Contrary to Petitioner's counsel's email, there is no evidence in the record that Previous School had determined the Student's eligibility as a child with ED or any other disability, and the Student did not have an IEP.[14] R-1-4.

90. On October 17, 2014, Petitioner's counsel wrote to Respondent's "Principal and/or SEC," with a copy to Respondent's counsel, requesting an MDT meeting to discuss the Student's educational needs. P-12-1.

91. Also on October 17, 2014, Petitioner's counsel wrote to Respondent's "Principal and/or SEC," with a copy to Respondent's counsel, requesting a copy of the Student's educational records. P-12-7.

92. On October 30, 2014, Petitioner's counsel sent an email to Respondent's counsel stating, *inter alia*, that no meeting had been scheduled, that the Student continued to be bullied, that the Student was emotionally fragile, that the Student should be receiving special education supports "based on the information contained in his recent evaluation and medical reports and also provided by the parent to the school when he was initially enrolled at [Respondent] at the start of the school year." P-13-2 and -3.

93. Minutes later, Respondent's counsel replied, stating, *inter alia,* that Petitioner had consented to the evaluation on October 9, 2014, and that Respondent had 120 days to evaluate the Student. P-13-2.

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[14] Apparently Petitioner's counsel was misled by Petitioner, whether intentionally or unintentionally. This reinforces Petitioner's unreliability as a source of information.

94. Minutes later, Petitioner's counsel replied, stating, *inter alia*, that Respondent's "child find" obligation "commenced upon enrollment of the student at the school, since at that time the school was provided with information that should have put them on notice that this was a potential student with a disability…. It is our position that the child find/evaluation/identification process should be completed by no later than December 2014." *Id.*

95. Minutes later, Respondent's counsel replied, stating, *inter alia,* that the Student was new to Respondent, that "child find" did not apply from the first day of the school year, and that the evaluation was an initial evaluation. P-13-1.

96. Minutes later, Petitioner's counsel replied, stating, *inter alia*, that prior to enrollment, Petitioner met with Respondent to explain the Student's history and his mental health condition and its impact on him at school; that Respondent had an evaluation recommending the Student be found eligible; and that the Student was being bullied, was struggling, and needed help. *Id.*

97. On November 19, 2014, Petitioner's counsel sent an email to Respondent's counsel stating, *inter alia,* that she had heard nothing from Respondent regarding the Student's evaluations or the requested meeting. P-14-1. Petitioner's counsel repeated some of the information in her prior emails and requested an update on the status of the evaluations and meeting dates, concluding as follows: "Given the information that was provided to the school at the time of enrollment, it is our position that any evaluations that [the] school intends to conduct and his eligibility meeting should take place prior to the 2014 winter break." *Id.* Petitioner's counsel proposed dates for the meeting. *Id.*

98. On December 3, 2014, Petitioner's counsel sent an email to Respondent's counsel stating, *inter alia*, that she still had received no response to her request for a status update on the Student's evaluations or a meeting to address eligibility, and that she had received only a portion of the Student's educational records that she had requested. P-17-1.

99. On December 10, 2014, SED sent an email to Petitioner, stating, *inter alia*, that a psychologist would observe the Student on December 16, 2014 and would determine whether additional testing was required. P-18-1.

100. There is no evidence in the record as to whether a psychologist observed the Student on December 16, 2014.

101. On January 15, 2015, Respondent's counsel sent an email to Petitioner's counsel forwarding a "prior notice" for a meeting on January 22, 2015. P-24-3.

102. An hour later, Petitioner's counsel replied, stating her understanding that January 22, 2015 was the date of the RSM. P-24-2 and -3.

103. Minutes later, Respondent's counsel responded that both the IEP Team meeting and the RSM would be held on January 22, 2015. P-24-2.

The January 22, 2015 Resolution Session Meeting

104. On January 22, 2015, the RSM was held. *See,* P-31. Respondent informed Petitioner and her representatives that Respondent had not completed its evaluation of the Student and Respondent declined to address the Student's eligibility based on the Combined Evaluation (P-25-1) because Respondent wanted to test the Student for autism (P-31-1).

105. At the January 22, 2015 meeting, the parties agreed to reconvene on February 4, 2015, provided that Respondent had completed its evaluations and had provided copies of the evaluation reports to Petitioner's counsel by February 2, 2015. P-25-1.

Correspondence of January 30, 2015

106. On January 30, 2015, SED sent an email to Petitioner and Petitioner's counsel stating that the psychologist wished to observe the Student that day but the Student was not at school, and asking whether he would be available later that day or on February 2, 2015. P-24-2.

107. Later on January 30, 2015, Petitioner's counsel replied, asking why Petitioner had not been notified in advance of the observation as had been agreed at the RSM, and stating, *inter alia*, that the Student was ill that day and had a doctor's appointment on February 2, 2015. P-24-1.

108. Later on January 30, 2015, Petitioner's counsel sent another email to Respondent's counsel stating that Petitioner had rescheduled the Student's doctor's appointment so that he could be available for the observation the entire morning of February 2, 2015. *Id.*

Respondent's Evaluation of the Student

109. On February 2, 2015, the Student was screened for autism spectrum disorder. P-30-1.

110. The Student's teachers reported that he "mostly puts his head down in class and refuses to complete any academic work. He does not interact with peers and oftentimes does not even speak when adults or peers address him." P-30-2.

111. According to Petitioner, the Student recently refused to attend Boy Scout activities and meetings. *Id.*

112. The examiner observed the Student in his English Language Arts classroom and found him sitting alone at a table, with his head down, not interacting with peers, not completing any work, and not responding to his teacher's prompting to complete his classwork. P-30-2 and -3.

113. The examiner interviewed the Student and administered the Behavior Assessment System for Children, Second Edition ("BASC-2") to Petitioner and one of the Student's teachers. P-30-3.

114. Both Petitioner and the teacher rated the Student "Clinically Significant" on Depression, Atypicality, Withdrawal, Internalizing Problems, and Behavioral Symptoms Index. *Id.*

115. Petitioner also rated the Student "Clinically Significant" on Anxiety, and the teacher rated the Student "Clinically Significant" on School Problems and Learning Problems. *Id.*

116. The examiner administered the Adaptive Behavior Assessment System [Second Edition] ("ABAS-II") to Petitioner, who rated the Student in the Extremely Low range on practical and social skills. P-30-4.

117. The examiner administered the Gilliam Autism Rating Scale-Second Edition ("GARS-2") to Petitioner and the same teacher that had rated the Student on the BASC-2. P-30-5.

118. Petitioner rated the Student in the Borderline[15] range for autism, while the teacher rated the Student in the High Probability range. *Id.*

119. Both Petitioner and the teacher rated the Student in the High Probability range for Asperger's Disorder. *Id.*

120. The examiner rated the Student on the Childhood Autism Rating Scale, Second Edition, High-Functioning Version ("CARS-2-HF") based upon observation, and found him to be in the Mild to Moderate Symptoms range. P-30-6.

121. The examiner administered the Developmental Neuropsychological Assessment, Second Edition ("NEPSY-II") to the Student. *Id.*

122. On the NEPSY-II, the Student demonstrated Average ability to identify basic feelings of children's faces, but he performed Below Expected Level on the Theory of Mind subtest, had difficulty identifying facial expressions of a child that was displayed in various situations, and had difficulty understanding figurative language and in understanding the perspectives of others in stories. P-30-6 and -7.

123. The examiner concluded that the Student was on the high-functioning end of the Autism Spectrum Disorders (previously referred to as Asperger's Disorder). P-30-7.

124. The examiner noted that the Student appeared to be

> struggling to navigate and understand the social world (*particularly social cues, nuances, and codes of conduct*) and making close connections with

[15] The report of the evaluation stated that Petitioner rated the Student in the High Probability Range; however, the score actually fell in the Borderline range. P-30-5, P-32-3.

> same-aged peers. As a result he has completely isolated himself from his peers and has developed social anxiety, a very low self-esteem, and an overall aversion to peer interaction in general. Due to their challenges and unique way of thinking about the world, individuals with Autism Spectrum Disorder often face increased stress, greater difficulty with relationships, difficulty managing their own emotions, and often fewer skills for dealing with these problems. Without appropriate support they are prone to developing depression and suicidal thoughts. It should also be noted that a very high percentage (80% approximate) of children with an Autism Spectrum Disorder also experience intense anxiety symptoms. When anxiety symptoms are untreated, they can further interfere with a child's quality of life. Children with both Autism and Anxiety Disorders experience a more limited social world than children with only one disorder. They may have difficulty in adapting at home and in school by avoiding opportunities to make friends, join social activities, and break their usual rituals to try something new.
>
> The severity of [the Student's] depressive symptoms is alarming given his current medication regimen. Furthermore, the reports that he was hearing command voices suggest that he may also be suffering from some form of psychosis. There were no obvious signs of this during the current observations…. However, counselors and the psychiatrist working with [the Student] should closely assess his symptom presentation to determine if he also meets the diagnostic criteria for Major Depressive Disorder with Psychotic Features and/or early onset Schizophrenia.

P-30-7 and -8.

125. The examiner diagnosed the Student with Autism Spectrum Disorder and Unspecified Depressive Disorder and recommended that he be considered for special education services under the classification of Autism Spectrum Disorder or ED. P-30-8.

126. The examiner recommended a highly structured and intensely therapeutic educational environment, where the Student would receive intensive counseling services, consistent behavior supports in the classroom, small classrooms with low student-teacher ratio, and specialized instruction as needed. *Id.*

127. The examiner also recommended that the Student participate in individual and group counseling, a small social skills group with a peer buddy in therapy,

counseling outside of school, a structured activity outside of school, and frequent interaction with peers. P-30-8 and -9.

128. On February 3, 2015, Petitioner's counsel sent an email to Respondent's counsel stating, *inter alia*, that she had not received Respondent's evaluation reports, and requesting that those reports be provided by February 9, 2015 and that the meeting be rescheduled for February 12, 2015. P-25-1.

February 4, 2015 Eligibility Determination

129. On February 4, 2015, the Student's MDT found him eligible for special education and related services as a child with Autism Spectrum Disorder (known as Autism) (R-7-1) and ED (Testimony of SED, testimony of Petitioner, proffered testimony of General Education Teacher).

130. At the MDT meeting on February 4, 2015, General Education Teacher asked the autism screening examiner whether Respondent would be an appropriate setting for the Student, and he replied that it would not. Proffered testimony of General Education Teacher.

131. The entire MDT agreed that Respondent was not appropriate for the Student. *Id.*, stipulation of Respondent's counsel on the record at the DPH.

132. Because autism was not identified by the Combined Evaluation conducted by Previous School (P-9), the undersigned finds that the additional evaluation conducted by Respondent was material in determining the Student's disability classification and educational needs, including placement.

Development of the Student's Initial IEP

133. The Student's IEP Team met on February 19, 2015 and developed his initial IEP. R-7.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

1. The IDEA is intended "(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living [and] (B) to ensure that the rights of children with disabilities and parents of such children are protected…" 20 U.S.C. §1400(d)(1), *accord*, DCMR §5-E3000.1.

FAPE

2. The IDEA requires that all students be provided with a free appropriate public education ("FAPE"). FAPE means:

> special education and related services that –
>
> > (A) have been provided at public expense, under public supervision and direction, and without charge;
> >
> > (B) meet the standards of the State educational agency;
> >
> > (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
> >
> > (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. §1401(9); *see also,* 34 C.F.R. §300.17 and DCMR §5-E3001.1.

Child Find

3. The IDEA imposes an affirmative obligation on the States that receive federal funding (including the District of Columbia, which is a State for purposes of IDEA (20 U.S.C. §1401(31)), to ensure that "all children with disabilities residing in the State, including … children with disabilities attending private schools … and who are in need of special education and related services, are identified, located, and evaluated …" 20 U.S.C. §1412(a)(3)(a). *See also,* 34 C.F.R. §300.111(a)(1)(i) and DCMR §5-E3002.3(a).

4. Petitioner has not met her burden of proving that Respondent was on notice, prior to October 9, 2014, that the Student was suspected of having a disability that might require special education and related services. Findings of Fact 25-29, 56, 58, 65, 66, 69, 70 and 73. In these circumstances, Respondent's Child Find obligations were not triggered prior to October 9, 2014.

Evaluation

5. A parent may initiate a request for evaluation to determine if the child is a child with a disability. 34 C.F.R. §300.301(b).

6. An initial evaluation must be conducted within 60 days of receiving parental consent for evaluation unless the State establishes a different timeframe within which the evaluation must be conducted. 34 C.F.R. §300.301(c)(1).

7. The District of Columbia has established its own timeframe. Under DC ST §38-2561.02(a), "DCPS shall assess or evaluate a student who may have a disability and

who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment."[16]

8. There is no statutory or regulatory time limit on an LEA making an eligibility determination. However, the U.S. District Court for the District of Columbia has interpreted the 120-day period for evaluation as the period for evaluation and determination of eligibility. *D.L. v. District of Columbia*, 845 F. Supp. 2d 1 (D.D.C. 2011).

9. In the instant case, the referral was made on October 9, 2015 when Petitioner signed the Consent to Evaluate/Reevaluate (Finding of Fact 75). Accordingly, Respondent had 120 days—until February 6, 2015—to evaluate the Student and determine his eligibility.

10. The DPC in the instant case was filed a month before the February 6, 2015 deadline, and therefore was premature. *Jones ex rel. A.J. v. District of Columbia*, 646 F. Supp. 2d 62 (D.D.C. 2009) ("DCPS still had 95 days left . . . when Jones filed her administrative action. Therefore, Jones' administrative complaint was premature, and this Court affirms that complaint's dismissal, albeit on different grounds.").[17]

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[16] Apparently realizing that 120 days is an unreasonable wait for a child with a suspected disability to be evaluated, the Council of the District of Columbia has amended DC ST §38-2561.02(a) to reduce the time period for evaluation to the shorter of 60 days from the date of parental consent or 90 days from the date of referral for evaluation or assessment. However, this amendment does not take effect until July 1, 2017. Even though Respondent could easily have conducted its additional evaluation (the autism screening) prior to February 2, 2015 (almost four months after the referral), which would have accelerated the eligibility determination, development of the Student's initial IEP and appropriate placement, the undersigned cannot hold Respondent to a deadline shorter than the applicable statute currently provides.

[17] If an LEA is not in the process of providing the Student a FAPE when the DPC is filed, the defense of prematurity is unavailable. *G.G. v. District of Columbia*, 924 F. Supp. 2d 109 (D.D.C. 2013). In the instant case, Respondent *was* in the process of evaluating the Student when the DPC was filed. Finding of Fact 99.

11. Even if the DPC were not premature, inasmuch as Respondent completed its evaluation of the Student and found him eligible on February 4, 2015, Respondent met the 120-day statutory deadline.

12. Even if the Student's inconsistent grades and incidents with peers had been sufficient to put Respondent on notice that the Student might have a disability requiring special education services, Respondent could not reasonably be expected to have made that determination until a pattern was noted, which would have been mid-September 2014 at the earliest, in which case the 120-day period for evaluation would have expired mid-January 2015.

13. Because Respondent did not evaluate the Student and determine his eligibility until February 4, 2015, if Respondent were deemed to be on notice in mid-September 2014 of the need to evaluate the Student, Respondent missed the statutory deadline by approximately two weeks.

14. However, not every violation of IDEA is a denial of FAPE. Rather, a Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds:

> (ii) Procedural issues
> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies -
> (I) impeded the child's right to a free appropriate public education;
> (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
> (III) caused a deprivation of educational benefits.
> (iii) Rule of construction
> Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

20 U.S.C. § 1414(f)(3)(E)(ii). *See also*, 34 C.F.R. § 300.513(a); *accord*, *Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. 2006).

15. Once a child has been found eligible, the Student's IEP Team must meet and develop an IEP for the child within 30 days of that determination. DCMR §5-E3007.1.

16. Thus, even if Respondent had been on notice in mid-September 2014 that the Student had a suspected disability requiring special education, Respondent had until mid-January 2015 to evaluate the Student and determine his eligibility, and until mid-February 2015 to develop an IEP for the Student.

17. Because the Student's IEP was developed on February 19, 2015 (Finding of Fact 133), even if Respondent was on notice in mid-September 2014 of the need to evaluate the Student, Respondent's two-week tardiness in evaluating the Student and determining his eligibility did not constitute a denial of FAPE because the Student's initial IEP was developed timely.

Evaluation of a Child Who Transfers LEAs

18. Petitioner asserts that the usual 120-day deadline does not apply in the instant case because the Student "transferred" LEAs and DCMR §5-E3019.5(c) supersedes the 120-day period for evaluation by the "receiving LEA" (in this case, Respondent), substituting for that 120-day period a "reasonable" period. Petitioner has cited no case law in support of this assertion.

19. DCMR §5-E3019.5(c) provides in relevant part as follows:

> If a child transfers between an LEA Charter, a District Charter, or DCPS, after an evaluation or reevaluation process has begun, but prior to its conclusion, the receiving LEA shall be responsible for completing the

> evaluation process and fully implementing a resulting IEP in the event one is required….

This provision (a) does not state that the receiving LEA must complete the evaluation in what remains of the 120 days begun at the former school,[18] (b) does not establish a specific deadline for the receiving LEA to complete the evaluation, and (c) does not state that the receiving LEA must complete the former school's evaluation in a "reasonable" period.

20. In the absence of any such language in DCMR §5-E3019.5(c), or any court interpretation of that provision, the undersigned concludes that the provision does not shorten the time period for the receiving LEA (in this case, Respondent) to evaluate a child.[19]

21. A federal regulation provides that an LEA is relieved of the time period for evaluation if the subsequent LEA is making sufficient progress to ensure a prompt completion for the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed. 34 C.F.R. §300.301(e).

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[18] Such an interpretation would be unreasonable, as the entire 120 days, or almost all of the 120 days, may have run before the child transfers, as in the instant case.

[19] Petitioner asserts that Respondent had sufficient information from the Combined Evaluation to find the Student eligible and develop an IEP for him. However, the deadline established in the D.C. Official Code for an LEA to evaluate a child and determine his eligibility does not turn on sufficiency of information; it is a fixed time period, 120 days. DC ST §38-2561.02(a). Congress, in enacting IDEA, deferred to the States to set these deadlines. 20 U.S.C. §1401(31). While Petitioner understandably was frustrated that Respondent did not immediately adopt the recommendations of the evaluators who conducted the Combined Evaluation, the undersigned cannot hold Respondent to a deadline earlier than that established by statute. Moreover, the additional evaluation conducted by Respondent determined that the Student has autism, a disability that was not tested for or addressed in the Combined Evaluation. P-9. Thus, reliance upon the Combined Evaluation alone would have been an unsound basis for developing the Student's IEP.

22. However, 34 C.F.R. §300.301(e) does not *require* the parent and the subsequent LEA—in this case, Respondent—to agree to a specific time when the evaluation will be completed.

23. In *Integrated Design and Electronics Academy Public Charter School v. McKinley*, 570 F. Supp. 2d 28 (D.D.C. 2008) ("*IDEA v. McKinley"*) the child attended a charter school where evaluation was initiated. The charter school asserted, *inter alia*, that the child was enrolled in a District of Columbia Public School before the evaluation was complete, thereby relieving the charter school of its obligation to evaluate the child. The court disagreed, stating that "even if [the child] had been successfully disenrolled from [the charter school], the school still would not be relieved of its duty to evaluate [the child] because the exception [the charter school] seeks is only triggered when the 'subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed,' which clearly did not occur. See 34 C.F.R. Sec. 300.301(e)."

24. Thus, as the court in *IDEA v. McKinley* made clear, 34 C.F.R. §300.301(e) addresses only the deadline for the *former LEA*, not the *receiving LEA*, to evaluate the child. Because the instant case challenges the timeliness of evaluation by the *receiving LEA*, 34 C.F.R. §300.301(e) is inapposite.

25. The undersigned concludes that no provision of federal or District of Columbia law or regulation shortens the time period for a receiving LEA to evaluate a Student, even if a previous LEA had begun the process of evaluating the Student.

Whether such a requirement would be good public policy is beyond the scope of this proceeding and this Hearing Officer's authority.

Summary

26. From on or about August 26 to October 9, 2014, Respondent did not violate its "child find" obligations under IDEA because Respondent had no reason to believe the Student had a suspected disability.

27. Even if Respondent did have a reason to believe the Student had a suspected disability in mid-September 2014, the Student was not denied a FAPE because his initial IEP was developed within 150 days.

28. Respondent did not violate its obligations under DCMR §5-E3019.5(c) by failing to complete the evaluation process that was begun by the Student's previous LEA prior to February 6, 2015 because that regulation does not shorten the 120-day time period for evaluation by a receiving LEA.

29. Respondent timely evaluated the Student and determined his eligibility, *i.e.*, within 120 days of Petitioner's request that Respondent evaluate the Student.

30. Respondent's failure to convene an MDT prior to February 4, 2015 to review the results of the comprehensive psychological evaluation of the Student conducted by his previous LEA or to determine whether additional evaluations were required did not deny the Student a FAPE because Respondent did in fact conduct an additional evaluation and the additional information gained by Respondent's additional evaluation was material to determining the Student's primary disability classification and to developing his initial IEP.

31. Because the Student was found eligible at the MDT meeting on February 4, 2014, there was no need for Respondent to reconvene the MDT.

X. ORDER

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

Petitioner's DPC dated January 7, 2015, is dismissed in its entirety, with prejudice.

Dated this fifth day of March, 2015.

Charles Carron
Impartial Hearing Officer

XI. NOTICE OF APPEAL RIGHTS

The decision issued by the Impartial Hearing Officer is final, except that any party aggrieved by the findings and decision of the Impartial Hearing Officer shall have 90 days from the date of the decision of the Impartial Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).