

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

STUDENT,
By and through PARENT¹

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Case No.

Bruce Ryan, Hearing Officer

Issued: April 24, 2011

2011 APR 25 11:03:04
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. INTRODUCTION/ PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed February 8, 2011, on behalf of a -year old student (the "Student") who resides in the District of Columbia and has been determined by DCPS to be eligible for special education and related services as a child with a disability under the IDEA. The Student currently attends his neighborhood DCPS high school (the "School"), where he is in the grade. Petitioner is the Student's parent.

Petitioner claims that DCPS has denied the Student a free appropriate public education ("FAPE") by: (a) failing to provide an appropriate educational placement for the Student; and (b) failing to evaluate the Student in all areas of suspected disability, as required by the IDEA.

DCPS filed its Response on February 17, 2011, which responds that DCPS has not denied the Student a FAPE. DCPS asserts (*inter alia*) that the Student was found eligible for special education services in September 2010 after a settlement agreement granted independent

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

evaluations; that the Student received a comprehensive psychological evaluation and social history in July 2010; and that any new claims for compensatory education should be limited to after September 2010.

A resolution session was held February 23, 2011, which did not resolve the Complaint. The 30-day resolution period then ended on March 10, 2011.

A Prehearing Conference (“PHC”) was held on April 5, 2011, at which the parties discussed and clarified the issues and requested relief.² A Prehearing Order was issued that same date. At the PHC, the parties agreed that Petitioner’s claims of FAPE denial and request for compensatory education relief are limited to the period after the 9/15/2010 eligibility date.

Five-day disclosures were filed as agreed on April 6, 2011; and the Due Process Hearing (“DPH”) was held in hearing room 2008 on April 12, 2011. Petitioner elected for the hearing to be closed.

During the DPH, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner’s Exhibits: P-1 through P-9.

Respondent’s Exhibits: R-1 through R-5.

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

Petitioner’s Witnesses: (1) Petitioner; (2) Independent Psychologist;³ and (3) Director, Private School (high school program).

Respondent’s Witnesses: No witnesses.

² The PHC was originally scheduled for March 18, 2011, but was cancelled due to an emergency conflict of the Hearing Officer. Subsequent attempts to reschedule the PHC between March 18 and March 31 were unsuccessful. April 5 was the earliest date thereafter that both parties were available to conduct the PHC.

³ The psychologist was accepted as an expert witness in Educational and Child Development Psychology, including specifically the application of these disciplines to determinations of placement and compensatory education in the special education context.

II. JURISDICTION

The Due Process Hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures ("SOP")*. The HOD deadline is April 24, 2011.

III. ISSUES AND REQUESTED RELIEF

As confirmed at the PHC and in opening statements at the DPH, the following issues were presented for determination at hearing:

- (1) **Failure to Provide an Appropriate Educational Placement** — Did DCPS deny the Student a FAPE by failing to provide the Student with an appropriate educational placement during the 2010-11 School Year, beginning 9/15/2010?

Petitioner alleges (*inter alia*) that the Student's current school placement has failed to provide meaningful academic benefit and has been unable to appropriately address his behavioral difficulties.

- (2) **Failure to Evaluate** — Did DCPS deny the Student a FAPE by failing to conduct updated evaluations in light of the Student's alleged regression and the parent's alleged request for re-evaluations?

As relief, Petitioner requests that DCPS be ordered to: (a) place and fund the Student in a private school placement; (b) fund independent evaluations, to include neuropsychological and psychiatric; (c) convene an MDT meeting to review the evaluations and revise the Student's individualized education program ("IEP"); and (d) fund a compensatory education plan developed by the parent as warranted.

IV. FINDINGS OF FACT

1. The Student is a 16-year old student who resides in the District of Columbia. Petitioner is the Student's mother. *See P-1; Petitioner Test.*
2. The Student has been determined by DCPS to be eligible for special education and related services under the IDEA as a child with a disability. *P-2; R-2.*
3. The Student currently attends his neighborhood DCPS high school (the "School"), where he is in the 9th grade. *See P-1; Petitioner Test.*
4. During the 2009-10 school year, the Student attended his neighborhood DCPS middle school. After experiencing serious behavioral difficulties, the Student was referred for community-based intervention, and Petitioner attempted to have him evaluated for special education services. *See P-3; Petitioner Test.* Through the 3d advisory, the Student had F's in all of his academic subjects. *P-4 (03/26/2010 report card).*
5. On or about April 20, 2010, Petitioner filed a due process complaint against DCPS pursuant to the IDEA. On May 3, 2010, the parties entered into a settlement agreement ("SA") by which Petitioner was authorized to obtain an independent comprehensive psychological evaluation, functional behavior assessment ("FBA"), vocational evaluation, and speech-language evaluation at the expense of DCPS. *P-6.*
6. Independent evaluations were obtained by the end of July 2010, and DCPS convened MDT/IEP team meetings in August and September 2010, to review the evaluations and determine eligibility and to develop an IEP. *See P-2; P-7; R-2; R-4; R-5.* DCPS found the Student to be eligible for special education and related services as a child with an Emotional Disturbance ("ED"). *P-2; R-2.*
7. The 07/14/2010 independent Comprehensive Psychological Evaluation with Social History reviewed by the IEP team found that the Student's overall cognitive functioning is Low, and that his overall academic skills were in the very low range. His Broad Reading and Broad Written Language results were at the 4th grade level, and his Broad Math was at the 3d grade level. *R-4, p. DCPS000037.* Social-emotional testing and interviews also suggested significant areas of concern. "These include poor peer relations, rule breaking, severe conduct problems, and an inability to sufficiently regulate his anger." *Id.*

8. The 07/14/2010 evaluation also found that the Student exhibited significant symptoms of anxiety and depression that may be exacerbated by his low academic achievement. *Id.*, p. DCPS000038. The report further noted that the Student does not attend school regularly, that he drinks alcohol almost daily and occasionally smokes marijuana, and that he often “stays up all night drinking and smoking with his friends.” *Id.*, p. DCPS000030. At the time of the report, he had been living with his girlfriend and had a six-month old daughter. *Id.*, p. DCPS000029.
9. To address the Student’s educational needs effectively, the 07/14/2010 independent psychological evaluation recommended that the Student receive specialized educational programming in a separate, full-day school, with a small classroom size and a low teacher/student ratio. *R-4*, p. DCPS000038. The evaluator also recommended a behavior intervention plan to aid in addressing the inappropriate and disruptive behaviors in school. *Id.*
10. DCPS first convened a meeting of the Student’s MDT/IEP team on August 26, 2010, to review compliance with the SA and to discuss evaluations and eligibility. *P-2* (08/26/2010 meeting notes). The team also reviewed the Student’s truancy problems and non-compliance with medications. *Id.*, p. 3. The team, including parent and attorney, agreed with the ED classification, the 14 hours per week of specialized instruction, and the placement/location of services at the School. *Id.*, p. 5. The team agreed to reconvene another meeting to develop and review the IEP by 09/16/2010. *Id.*⁴
11. On or about September 15, 2010, DCPS reconvened an MDT/IEP team meeting to develop the Student’s IEP. *See R-5* (09/15/2010 meeting notes). The parties stipulated at hearing that the IEP provides 14 hours per week of specialized instruction in a general education (inclusion) setting, plus one hour per week of counseling services and 30 minutes per week of speech-language services. *See R-2; R-5*. The team decided that the School would be the Student’s educational placement for the 2010-11 school year. *R-5*, p. DCPS000048.
12. At the 09/15/2010 meeting, the team also discussed compensatory education. It was determined that DCPS would fund 30 hours of tutoring, 15 hours of expressive therapy, and

⁴ Petitioner’s psychological expert attended this meeting and supported the recommendation in the independent psychological report of a full-time special education placement. He also mentioned the possibility of obtaining a neuropsychological evaluation, but did not press the issue at that time. *See Psychologist Test.*

one week of therapeutic summer camp. *R-5, p. DCPS000049. See also R-3 (09/13/2010 authorization letter for independent tutoring).* However, the Student has not yet taken advantage of the tutoring services that were awarded. *Petitioner Test. (cross examination).*

13. Between September and December 2010, the Student's behavior worsened, and he had significant school attendance issues. *See Petitioner Test.; Psychologist Test.; R-1 (attendance records dated 02/15/2011, showing 108 unexcused class absences since August 2010).* The Student's poor attendance record has apparently continued since that time.⁵ According to Petitioner, his grades have also declined from D's to F's during this period. *Petitioner Test.*
14. Shortly before or about the same time as the Complaint was filed, Petitioner requested to have the Student reevaluated, to include a neuropsychological and psychiatric evaluation.⁶
15. In February 2011, subsequent to the filing of the Complaint, a disciplinary hearing was held to consider a proposed 45-day suspension for behavioral misconduct (threatening a teacher), but the Student was not suspended because it was determined that the behavior was related to his disability. *See Petitioner Test.; Psychologist Test.*

V. DISCUSSION AND CONCLUSIONS OF LAW

A. Summary

The Hearing Officer concludes that Petitioner failed to establish by a preponderance of the evidence that the Student's IEP or his placement was inappropriate due to the failure to provide for a full-time, therapeutic, special education setting. However, Petitioner did meet her burden of proving that DCPS failed to evaluate the Student in an area (neuropsychological) related to his disability and needed to identify potential special education and related service needs. DCPS is ordered to authorize an independent evaluation and reconvene a meeting of the Student's MDT/IEP team to review the evaluation, review and revise (as appropriate) the IEP, and discuss and determine educational placement for the 2011-12 school year.

⁵ For example, Petitioner testified that the Student had another baby born a couple weeks before the hearing, and he did not attend school for about three weeks prior to that due to medical problems involving the baby's mother. *See Petitioner Test. (cross examination).*

⁶ Petitioner testified that she asked the Special Education Coordinator ("SEC") at the School in approximately December 2010 or January 2011 to have the Student reevaluated and his placement reviewed. However, this request was made orally, and was not confirmed or reflected in any writing. *Petitioner Test.* Then in closing argument, Petitioner's counsel appeared to concede that these further evaluations were not requested until February 2011.

B. Burden of Proof

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

C. Issues/Alleged Denials of FAPE

The IDEA requires that all students be provided with a Free Appropriate Public Education (“FAPE”). FAPE means:

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

In this case, Petitioner has proved her case in part under Issue 2 by a preponderance of the evidence, but has failed to meet her burden of proof under Issue 1.

1. Failure to Provide an Appropriate Educational Placement

Petitioner claims that his current school placement fails to provide the Student with meaningful educational benefit. She alleges that the Student has regressed academically and from a behavioral/emotional standpoint during the current school year.

As noted above, under the IDEA, FAPE includes “an appropriate preschool, elementary school, or secondary school education ... provided in conformity with the [IEP].” 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; DCMR 5-E3001.1. To provide FAPE, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.” *Anderson v. District of Columbia*, 606 F. Supp. 2d 86, 92 (D.D.C. 2009),

quoting *Board of Education of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 200, 207 (1982). Moreover, “[d]esigning an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP.” *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008); see *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988) (quoting *Board of Education v. Rowley*, 458 U.S. 176, 200, 207 (1982); *T.T. v. District of Columbia*, 48 IDELR 127 (D.D.C. 2007) (“Once developed, the IEP is then implemented through appropriate placement in an educational setting suited to the student’s needs”).

In this case, the record unfortunately is not as complete as the Hearing Officer would like due to DCPS’ failure to present any testimony from school officials regarding the development of the Student’s IEP or the services provided by the School during the current school year. Nevertheless, for the following reasons, the Hearing Officer concludes that Petitioner has failed to establish by a preponderance of the evidence that the Student’s IEP or his placement was inappropriate due to the failure to provide for a full-time special education placement. See, e.g., *S.S. v. Howard Road Academy*, 585 F. Supp. 2d 56 (D.D.C. 2008):

(a) The Student was just recently found eligible for special education services in September 2010 after a settlement agreement granted independent evaluations. The 09/15/2010 MDT/IEP team was responsible for developing an initial IEP for the current school year that was reasonably calculated to enable the Student to receive educational benefits, within the least restrictive environment. But the IDEA does not guarantee any substantive outcome; if a child fails to make progress, the IEP can be revised over time to ensure that the child receives a FAPE. See, e.g., *M.M. v. District of Columbia*, 607 F. Supp. 2d 168 (D.D.C. 2009).

(b) Petitioner’s Complaint contains only general allegations that the Student is experiencing behavioral, academic, and social/emotional difficulties in his current school placement, *P-1*; and the evidence presented at hearing was for the most part similarly vague.

(c) Petitioner has not shown that the IEP was inappropriately designed to provide educational benefit, *at the time it was developed*, based on the evaluations and other information then before the MDT/IEP team. And the placement is required to be *based on the IEP*. 34 C.F.R. 300.116

(b) (2). Thus, the IEP and placement made in September 2010 cannot be shown to be inadequate by proving the Student’s *subsequent* lack of progress or regression, as Petitioner argues. “Neither

the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement." *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir. 2008).⁷

(d) Petitioner also has not shown that DCPS failed to implement the IEP at the School between September 2010 and February 2011. There is no evidence that DCPS was not able to provide all of the services specified in the IEP to the extent the Student attended school and was available to receive such services. *Cf. O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53-54 (D.D.C. 2008) (proposed placement found appropriate where plaintiff failed to prove that school was unable to implement IEP).

(e) The evidence suggests that the Student's academic and behavioral struggles during the current school year do not necessarily result from an inappropriate educational placement. The Student has been absent from school and/or missed classes for a substantial portion of the school year, *R-1*, which has almost certainly affected his grades and ability to make academic progress this year. It also appears that he is not attending school for a variety of reasons, including complications in his personal and home life. *See, e.g., Findings*, ¶¶ 8, 12. In addition, the Student has not taken advantage of any of the additional, independent tutoring hours awarded him last September. *Cf. Hinson v. Merritt Educational Center*, 579 F. Supp. 2d 89 (D.D.C. 2008) (parent did not show that student's poor academic performance resulted from a lack of appropriate services rather than the student's own extended absences).

(f) While the IEP "must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities, and must be amended if its objectives are not met. See 20 U.S.C. 1414 (b)-(d)," *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C.

⁷ *See also Schaffer v. Weast*, 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207) (judicial and hearing officer review of IEPs is "meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was 'reasonably calculated to enable the child to receive educational benefits.'"); *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) (whether an IEP is appropriate "can only be determined as of the time it is offered for the student, and not at some later date"); *T.H. v. District of Columbia*, 620 F. Supp. 2d 86 (D.D.C. 2009) (student's regression after IEP's creation held not to establish deficiencies in IEP); *S.S. v. Howard Road Academy*, 585 F. Supp. 2d 56 (D.D.C. 2008).

2010), *slip op.* at p. 6, the evidence shows that DCPS had not yet had a reasonable opportunity to do so at the time the Complaint was filed in this case.⁸

(g) The Student has very recently requested additional evaluations, including a neuropsychological evaluation that Petitioner's expert believes could yield important information bearing on the design of his educational program. As discussed under Issue 2 below, the Hearing Officer is ordering that DCPS complete this evaluation and reconvene an MDT/IEP team meeting to review its results within 20 days of receiving the final report.

(h) At that time, it would be appropriate for DCPS to review other updated information regarding the Student's performance, behavior, and disabilities, and decide whether the IEP should be amended to ensure that it is "tailored to the unique needs" of the Student, *Maynard, supra, quoting Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982). DCPS should also make a decision on school placement for the 2011-12 school year based on these results – well in advance of the next school year, so that Petitioner may challenge that decision if she is not satisfied. Rendering a judicial determination now would risk prejudging that analysis, which the IDEA commits to the team in the first instance; it could also unreasonably disrupt the delivery of educational services to the Student to switch schools at this late stage in the current school year.

Petitioner did present credible expert testimony from a very experienced school psychologist indicating that the Student would benefit from a self-contained, therapeutic special education setting. The psychologist testified that, in his opinion, the Student's needs would be better addressed and he would become more engaged in his education within the "therapeutic milieu" of the Private School, with its more extensive support system. *Psychologist Test.*⁹ Similarly, the Private School witness testified that his school can provide a therapeutic environment with social workers and a nurse on site, smaller class sizes, and additional reading programs. *Private School Test.* The Hearing Officer does not doubt that the Student would benefit educationally from this environment, assuming *arguendo* that he had a full-time IEP.

⁸ While Petitioner's counsel and witnesses protested DCPS' failure to convene a 30-day follow-up meeting to review progress after September 2010, such failure was not alleged as a separate procedural issue in the Complaint. *See P-1.*

⁹ The Hearing Officer notes, however, that while Petitioner's expert psychologist has known the Student for at least a year and a half, he has only observed him in the classroom once for about 30 minutes. Moreover, the observation was made during the previous (2009-10) school year, and at a different school (the DCPS middle school). He has not observed the Student at all at the School during the current school year. *Psychologist Test.*

However, the IDEA “establishes a ‘basic floor of opportunity’; it does not require that a school provide the very best educational experience.” *S.S. v. Howard Road Academy, supra*; *Schoenbach v. District of Columbia* (D.D.C. 2006) (citing *Rowley*, 458 U.S. at 201). Petitioner simply has not shown – on the basis of the present record and the DCPS actions to date – that DCPS has failed to meet this minimum standard of educational benefit, and that a full-time private placement is required for the Student at this time.

2. Failure to Evaluate

Petitioner next claims that DCPS denied him a FAPE by failing to conduct updated evaluations in light of the Student’s significant regression and the parent’s request for re-evaluations. Petitioner claims that DCPS should have conducted or authorized a neuropsychological evaluation and a psychiatric evaluation.

As part of both an initial evaluation and any re-evaluation, DCPS must (*inter alia*) ensure that the child “is assessed in all areas related to the suspected disability,” and that the evaluation is “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. §300.304 (c) (4), (6); *see also Harris v. DC*, 561 F. Supp. 2d 63, 67-68 (D.D.C. 2008). Parents also have a right to request particular assessments to determine whether their child has a disability and the child’s educational needs. *See, e.g.*, 34 C.F.R. 300.305 (d); *see also Herbin v. District of Columbia*, 362 F. Supp. 254, 43 IDELR 110 (D.D.C. 2005). The failure to act on a request for independent evaluation may constitute a denial of FAPE. *Harris v. DC, supra*, 561 F. Supp. 2d at 68-69.

Petitioner recognizes that an independent comprehensive psychological evaluation was recently completed in July 2010, and that the evaluator did not recommend any further psychological or psychiatric evaluations. Nevertheless, Petitioner’s expert testified that a neuropsychological evaluation was needed because (a) the July 2010 report noted increased alcohol abuse and (b) numerous studies show that alcohol abuse can lead to a deterioration of executive functioning abilities. While the witness conceded on cross examination that he did not know what type or quantity of alcohol had been ingested by the Student or for how long, he testified that a “pattern of abuse” of alcohol on a daily or near-daily basis was the key factor in this case. *See Psychologist Test*. In his opinion, a neuropsychological evaluation may provide

valuable information concerning executive functioning issues (including visual-spatial relationships, memory, and abstract reasoning) beyond what was tested in July 2010, and these areas may impact his educational programming. *Id.* In very basic terms, it may help decide whether a diploma or certificate track is best for the Student. *Id.* DCPS presented no testimony to rebut Petitioner's expert.

With respect to the requested psychiatric evaluation, Petitioner's psychological expert stated that he thought this would be appropriate to look further at the Student's medication needs and compliance. However, he was unable to explain the educational necessity for such evaluation at this time. He also conceded that the idea of doing a psychiatric evaluation was first raised in the due process complaint, and thus the IEP team has never even had an opportunity to consider it. *See Psychologist Test. (cross examination).*

For the above reasons, the Hearing Officer concludes that Petitioner has met her burden of proving that a neuropsychological evaluation of the Student is warranted, and that the failure to conduct or authorize such evaluation amounts to a denial of FAPE. However, Petitioner failed to prove that DCPS wrongfully denied a request for a psychiatric evaluation of the Student.

D. Requested Relief

Having found a denial of FAPE on a portion of the failure to evaluate claim, as described herein, the IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005). Accordingly, the Hearing Officer will grant Petitioner's request to order DCPS to (a) fund an independent neuropsychological evaluation of the Student, and (b) convene an MDT meeting to review the evaluations and review and revise the Student's IEP.

No other relief is found warranted at this time. The requested private placement remedy is denied because Petitioner has not shown that DCPS has failed to provide an appropriate educational placement, for the reasons discussed under Issue 1. Thus, there is no need to examine the relevant factors relating to an award of a particular private-school placement under *Branham v. District of Columbia*, 427 F.3d 7, 11 (D.C. Cir. 2005). With respect to compensatory

education, Petitioner never presented any testimony or plan developed by the parent, and appeared to concede in closing argument that no such relief was sought for any failure to evaluate from September 2010 to February 2011, when the Complaint was filed. In any event, there was no evidence of any educational harm caused by a failure to conduct or authorize a neuropsychological evaluation that could conceivably support any compensatory education relief. *See Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). Finally, at the PHC, Petitioner's counsel withdrew the requests for an independent comprehensive psychological and social history given that they had just been completed in the 2010 summer.

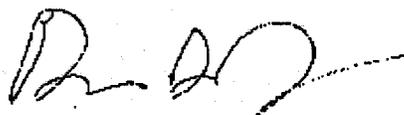
VI. ORDER

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

1. Petitioner shall be authorized to obtain an **independent neuropsychological evaluation**, at the expense of DCPS and consistent with DCPS publicly announced criteria for IEEs. Petitioner shall make reasonable efforts to have such evaluation completed within **45 calendar days** of this Order. Upon completion, Petitioner shall cause copies of the reports to be sent directly to DCPS' Compliance Case Manager.
2. Within **20 calendar days** of receiving the independent evaluation report, DCPS shall convene a meeting of the Student's MDT/IEP Team with all necessary members (including Petitioner) to: (a) review the results of the evaluation; (b) review any other updated information regarding the child's performance, behavior, and disabilities; (c) review and revise, as appropriate, the Student's IEP, consistent with this information; and (d) discuss and determine an appropriate educational placement and/or location of services that can meet the Student's needs and implement an appropriate, revised IEP for the 2011-12 school year.
3. Petitioner's other requests for relief in her Due Process Complaint filed February 8, 2011, are hereby **DENIED**.
4. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: April 24, 2011



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

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