

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

810 First Street, N.E. 2d Floor
Washington, DC 20002

OSSE
Student Hearing Office
June 03, 2013

STUDENT, ¹)	
)	
<i>Petitioner,</i>)	
v.)	
)	
DISTRICT OF COLUMBIA)	Bruce Ryan, Hearing Officer
PUBLIC SCHOOLS,)	
)	
<i>Respondent.</i>)	Issued: May 31, 2013
)	

HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools (“DCPS”). The Administrative Due Process Complaint (“Complaint”) was filed March 13, 2013, on behalf of a student (“Student” or “Petitioner”) who resides in the District of Columbia and who has been determined to be eligible for special education and related services as a child with a disability under the IDEA. Student attends a non-public school pursuant to parental placement for the 2012-13 school year.²

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

² The Complaint was originally brought by Student’s parent. However, Student turned years of age during this proceeding and is now prosecuting the case as an adult student pursuant to a Verified Statement filed prior to hearing, as stipulated and agreed at the prehearing conference. *See Prehearing Order* (April 16, 2013), ¶ 1.

Petitioner alleges that DCPS has committed procedural violations of the IDEA and denied Student a free appropriate public education (“FAPE”), as described further below under the specified hearing issues, primarily with respect to the development of Student’s June 5, 2012 individualized education program (“IEP”). DCPS filed a timely Response to the Complaint on March 22, 2013, which denies the allegations that it violated IDEA and failed to provide FAPE to the Student.

On April 11, 2013, a Prehearing Conference (“PHC”) was held to discuss and clarify the issues and requested relief. A resolution meeting had not been held as of the date of the PHC, and neither party requested the Hearing Officer’s intervention under 34 C.F.R. § 300.510. The 30-day resolution period then ended without agreement on April 12, 2013, and a Prehearing Order (“PHO”) was issued on April 16, 2013.³ At the PHC, the parties agreed to schedule the due process hearing for May 14, 2013, with five-day disclosures due May 7, 2013. Petitioner elected for the hearing to be closed.

The parties then filed their five-day disclosures, as required, and the hearing convened in Hearing Room 2004 on May 14, 2013, at 9:00 AM. A second hearing session was needed to complete the cross examination of a DCPS witness, which was then held as agreed on May 21, 2013, also in Hearing Room 2004. At the May 21 hearing session, the parties agreed to submit written closing statements by May 24, 2013, and to continue the HOD timeline to May 31, 2013. The Hearing Officer granted Petitioner’s unopposed continuance motion verbally on the record on May 21, 2013, which was confirmed by Order issued 5/28/2013 granting Petitioner’s written motion filed May 22, 2013.

³ The parties subsequently held a resolution meeting on April 24, 2013, which was not successful in resolving their dispute. *See Resolution Period Disposition Form* (April 24, 2013).

At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence:

Petitioner's Exhibits: P-1 through P-24.⁴

Respondent's Exhibits: R-1 through R-4.

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

Petitioner's Witnesses: (1) Parent; (2) Student; (3) Educational Advocate; and (4) Director of Academics, Private School.

Respondent's Witnesses: (1) School Psychologist (Expert); (2) LEA Representative; and (3) General Education Teacher.

The parties submitted written closing statements on May 24, 2013.

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* 5-E DCMR §§ 3029, 3030. 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 May 31, 2013.

⁴ DCPS' objections to Exhibits P-15, 17, 19, 21 and 22 were overruled for the reasons stated on the record.

III. ISSUES AND REQUESTED RELIEF

As stated in the PHO, the issues presented for determination at hearing were:

(1) Child Find/Untimely Initial Evaluation — Did DCPS **(a)** fail to identify, locate, and evaluate the Student as a child who was suspected of having a disability and who was in need of special education and related services (“child find”), and/or **(b)** fail timely to complete initial evaluations within 120 days of referral as required by the IDEA and D.C. Code § 38-2561.02 (a)?

(2) Procedural/June 5, 2012 IEP Team — Did DCPS violate the IDEA and/or deny the Student a FAPE by failing to have an appropriate IEP Team at the 6/5/2012 meeting, in that *parent and Student did not participate*? > If the Hearing Officer determines that DCPS committed a procedural violation, Petitioner must prove one or more of the substantive effects listed in 34 CFR 300.513 (a) (2).

(3) Behavior Intervention Plan (BIP) — Did DCPS violate the IDEA and/or deny the Student a FAPE by failing to include in the IEP or otherwise provide an appropriate behavior intervention plan to address Student’s *hyperactivity and off-task behaviors*, as of June 5, 2012?

(4) Failure to Develop Appropriate IEP (6/5/2012) — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP (*i.e.*, one that was reasonably calculated to confer educational benefit) on or about June 5, 2012, in that the IEP failed to provide **(a) full-time specialized instruction**, **(b)** in an *outside general education setting*, and **(c)** with appropriate goals and objectives to address Student’s needs regarding *organization and memory concerns*?

(5) Failure to Provide Appropriate Placement (6/5/2012) — Did DCPS deny the Student a FAPE by failing to place the Student into an appropriate school or program pursuant to the IDEA and D.C. Code §38-2561.02 (b), in that she allegedly requires either a *separate special education class* or other *full-time special education program*?

(6) Right to Independent Educational Evaluation — Did DCPS violate the IDEA and/or deny the Student a FAPE by failing to comply with 34 C.F.R. 300.502(b) to provide Petitioner with an independent educational evaluation (“IEE”) in the areas of *comprehensive psychological, speech/language, and FBA*?

In her Complaint, and as discussed at the PHC, Petitioner requested that DCPS be ordered to: (a) fund the Student's placement at her current non-public school ("Private School"), retroactive to 10/28/2012; (b) convene an MDT meeting to review/revise the June 5, 2012 IEP; (c) fund comprehensive psychological, speech/language, and FBA IEEs; and (d) award compensatory education in the areas of academic tutoring, speech/language and behavioral support services for denials of FAPE from October 2011 to October 2012.

At the outset of the due process hearing, the parties stipulated and agreed on the record to DCPS' issuance of IEEs in the areas of comprehensive psychological, speech/language, FBA, and vocational. This stipulation and agreement resolved Issue 6; and Petitioner also withdrew as moot her requested relief under item (c) above. The stipulated IEEs will be included in the Order herein.

IV. FINDINGS OF FACT

Based upon the evidence presented at the due process hearing, this Hearing Officer makes the following Findings of Fact:

1. Student/Petitioner is an -year old adult student who resides in the District of Columbia. *Pet. Test.; Parent Test.*
2. Student has been determined to be eligible for special education and related services as a child with a disability under the IDEA. Her primary disability is Other Health Impairment ("OHI"), based on the effects of her Attention Deficit Hyperactivity Disorder ("ADHD") condition. *See P-10; P-14; School Psych. Test.*
3. During the 2010-11 school year, Student attended 9th grade at her neighborhood DCPS high school. Student then enrolled and attended a D.C. public charter school ("District Charter") that has elected to have DCPS act as its local educational agency ("LEA"). She attended District

Charter for the 2011-12 school year, where she repeated the 9th grade. *See Parent Test.; LEA Rep. Test.; R-1.*

4. On or about June 1, 2011, DCPS received a written referral from Parent for an initial evaluation of Student for special education eligibility under the IDEA. *See P-5 (6/9/2011 Analysis of Existing Data); P-9 (PWN); P-10 Final Eligibility Determination Report); Parent Test.*
5. On or about June 15, 2011, DCPS received Parent's consent to an initial evaluation and began the initial evaluation process. *See P-10.*
6. Student was referred for psychological evaluation due to concerns regarding her academic progress. On her June 2011 report card, she failed English I, Algebra I, Spanish I, and Extended Literacy I. She also received a D+ in Biology and Cs in World History and Physical Education. *See P-11, p. 1.*
7. DCPS' School Psychologist assigned to her neighborhood high school conducted an evaluation of Student in early August 2011, despite experiencing some difficulties reaching Parent and Student by telephone to complete the interview process over the 2011 summer. *See School Psych. Test.* The evaluation included review of records, teacher and Student interviews, the Reynolds Intellectual Assessment Scale ("RIAS"), and the Behavior Assessment Scale for Children ("BASC"), 2d edition, parent and teacher ratings. The evaluator was unable to conduct a classroom observation due to Student's being out of school for the summer recess. *Id.; School Psych. Test.*
8. On or about September 3, 2011, DCPS' School Psychologist completed a written report of Comprehensive Psychological Evaluation of Student. *P-11.* According to the report, teacher interviews conducted during the psychological evaluation indicated that Student had "difficulty with her processing," a "little delay in picking up on new information," and a "lot of

difficulty keeping up with the work load.” *P-11, pp. 1-2*. Student reported that “her memory is not strong,” that “she easily forgets new learned information,” that “she is easily distracted and prefers working alone so she can concentrate on her assignments,” and that “she enjoys interacting with others.” *Id., p. 2*. The evaluator noted that Student was alert and put forth consistent effort during the testing procedure,” but “seemed to struggle during the memory portion of the cognitive testing.” *Id.*

9. On cognitive testing with the RIAS, Student earned a Composite Intelligence Index (or “CIX”) of 90, which fell within the range of average scores; her Verbal Intelligence Index (“VIX”) was measured at 81, which was below average for verbal intelligence skills; her Nonverbal Intelligence Index (“NIX”) was 104; and her Composite Memory Index (“CMI”) was 93. *P-11, pp. 2-3*. Behaviorally, the school reported that Student had “elevated difficulty with Hyperactivity, Anger Control, Negative Emotionality, and Executive Functioning.” *Id., p. 4*.
10. In assessing the educational implications of these findings, the School Psychologist concluded that: Student “may have some difficulty staying in one place for a long period of time. For example, sitting in a class for more than 45 minutes may be challenging for [Student]. She may require frequent breaks as an accommodation.” *P-11, p. 4*. The evaluator further noted Student’s “elevated levels of frustration in the school setting,” her “significant difficulty with organization,” and tendency to become distracted, which needed to be addressed educationally. *Id.* In addition, based on the significant discrepancy between Student’s verbal and non-verbal scores, the evaluator concluded that Student’s “verbal skills are a deficit compared to her non-verbal thinking skills,” suggesting difficulties in

acquiring information through typical instructional approaches at the high-school level. *Id.*

11. Overall, the 9/3/2011 Comprehensive Psychological Evaluation report recommended (*inter alia*) that the MDT obtain standardized academic scores to determine whether Student was learning disabled; that Student may benefit from counseling and scheduled breaks; and that “teachers may want to utilize project-based assignments that tap topics of interest for her.” *P-11, p. 5*. The evaluator did not reach any specific diagnoses or determinations of any disabilities.
12. During the first couple weeks of the 2011-12 school year, Parent was informed by District Charter’s Special Education Coordinator (“SEC”) that, due to Student’s change in enrollment, District Charter would need to re-start the testing that had begun at her neighborhood high school. *Parent Test.*
13. On or about January 31, 2012, Student was assessed to be performing on a 1st-4th grade level in math, and to have attained various reading skills to the 4th grade level, based on the Scantron Performance Test. *See P-5, pp. 1-2.*
14. On or about February 29, 2012, DCPS convened a meeting of Student’s MDT/IEP Team at District Charter, including the Parent. *P-6*. At this meeting, the MDT reviewed DCPS’ 9/3/2011 Comprehensive Psychological Evaluation report. Parent noted that she was seeing progress by Student at District Charter and liked the school. *Id.* The Team discussed Student’s difficulty expressing her thoughts and staying focused. Parent also provided consent for DCPS to conduct a speech/language evaluation of Student. *Id.; P-7; Parent Test.*
15. On or about March 29, 2012, DCPS completed a Speech and Language Evaluation of Student. DCPS’ Speech/Language Pathologist conducted the evaluation to assess oral communication skills, determine current levels of

achievement in that area, and the impact if any on classroom performance.

P-12. The evaluation found that Student “presents with communication scores that range from the average range to the mild deficit range.” *Id.*, p. 7.

Overall, the evaluator found that Student “presents with communication skills that are adequate for classroom communication,” concluding that “[w]hile [Student] demonstrates specific weaknesses, the gestalt of her communication profile is not indicative of a *disabling* communication disorder that would prevent her from accessing or gaining benefit from the general education curriculum.” *Id.* (emphasis in original). She recommended that Student “would benefit from a customized set of strategies that should be incorporated in her overall educational plan to promote generalization of skills,” including techniques like (a) frequent exposure to vocabulary reinforcement routines, (b) accessing her prior knowledge through discussion, and (c) dictionary use using “think-alouds” and discussion of how to choose the most appropriate definition, *Id.*, pp. 7-8.

16. On or about May 22, 2012, DCPS’ School Psychologist issued a revised report of Comprehensive Psychological Evaluation. The report stated that the dates of evaluation were 8/5/2011 to 5/21/2012.⁵ The evaluation now included additional background information, review of the recent speech/language evaluation, parent interview, and testing results from the Woodcock-Johnson Tests of Achievement – 3d Edition (“WJ- III”) and the Behavior Rating Inventory of Executive Function (“BRIEF”) – Parent/Teacher Reports. *See R-3*. Parent reported that Student has a short attention span, easily forgets things, is easily distracted, cannot concentrate

⁵ The same School Psychologist who evaluated Student in August 2011 completed the revised report after being requested to do so by District Charter’s school psychologist. *See School Psych. Test*.

when other children are playing in the classroom, and has difficulty organizing homework items. *Id.*, p. 3.

17. The 5/22/2012 WJ-III testing revealed severe academic deficits. Results showed that Student's "academic skills and ability to apply those skills are both within the very low range" when compared to others at her age level. *Id.*, p. 6. In Broad Math, she received a standard score of 52 (Very Low) for an approximate grade equivalency ("GE") of 2.8; in Broad Written Language, she scored 77 (Low) for a GE of 5.1; and in Broad Reading, she scored 82 (Low Average) for a GE of 6.1. *Id.*, pp. 5-6. She also scored Very Low in Math Calculation (SS=54; GE=3.2) and Applied Problems (SS=56; GE=1.8) subtests in the math area. *Id.* Reading Fluency (90; 8.7) and Passage Comprehension (94; 8.9) were relative strengths. *Id.*
18. The 5/22/2012 BRIEF assessment of executive functioning (parent reporting) revealed that Student had a significantly elevated score on the Working Memory scale compared with like-aged peers. *R-3*, p. 7. "This suggests that [Student] has substantial difficulty holding an appropriate amount of information in mind or in 'active memory' for further processing, encoding, and/or mental manipulation." *Id.* It also "suggests difficulties sustaining working memory, which has a negative impact on her ability to remain attentive and focused for appropriate lengths of time." *Id.* Children with limited working memory "often miss information that exceeds their working memory capacity such as instruction for an assignment." *Id.*, pp. 7-8. Student's score on the Plan/Organize scale was also significantly elevated, which suggests that she has "marked difficulty with the planning and organization of information which has a negative impact on her approach to problem solving." *Id.*, p. 8. Teacher reporting similarly indicated difficulties with aspects of executive function. *Id.*

19. With this additional information, DCPS' School Psychologist concluded that Student qualified for special education services under the OHI classification due to her presenting ADHD (Primarily Inattentive Type) symptoms that adversely affected her educational performance. *R-3, p. 10*. The evaluator recommended that the MDT meet to develop an IEP that includes specialized instruction in reading, math, and written expression, counseling services, and social skills training. *Id.* He also offered several educational recommendations designed to address Student's working memory and attention concerns. *Id., pp. 10-11. See also School Psych. Test.*
20. The next day, on or about May 23, 2012, DCPS convened a meeting of Student's MDT/IEP Team at District Charter to discuss and determine eligibility. At this meeting, DCPS determined that the Student was eligible for special education services as a student with an OHI, and issued a Prior Written Notice - Identification ("PWN") to that effect. *See P-5; P-9; P-10*. Student's disability was found to impact her in all academic areas (Reading, Math, Written Expression), as well as communication and behavioral development. *P-10 (5/23/2012 Final Eligibility Determination Report)*.
21. On or about June 1, 2012, DCPS conducted a Functional Behavior Assessment ("FBA") of Student. According to the FBA, Student has problems with attention and attendance that interfere with her learning. *See P-13* ("The student is rarely in school and due to this it's very hard for her to catch up with the rest of her class." When she is in class, she "is distracted easily mainly by her male classmates.").
22. On or about June 5, 2012, DCPS convened another MDT meeting for the purpose of to developing an initial IEP. Participants included a Special Education Teacher, General Education Teacher, District Charter's School Psychologist, Social Worker, Guidance Counselor, and Speech Pathologist.

Parent and Student did not attend or participate. *P-14*. Parent had informed DCPS that she was unable to attend the meeting because her advocate/representative was unavailable, but DCPS went ahead with the meeting anyway. *Parent Test.; EA Test.*

23. The Student's IEP developed June 5, 2012 provides 40 hours per *month* of Specialized Instruction in a General Education (inclusion) setting; four (4) hours per *month* of Behavioral Support Services in an Outside General Education setting; and four (4) hours per *month* of Speech/Language Pathology Services in an Outside General Education setting. *P-14, p. 8*. The IEP includes annual goals in Mathematics, Reading, and Written Expression; Communication/Speech and Language; and Emotional, Social and Behavioral Development. *Id., pp. 2-7*. The IEP also includes various classroom accommodations such as extended time for testing, repetition of directions, preferential seating, breaks, and use of calculators. *Id., p. 10; Teacher Test.*⁶
24. The parties stipulated and agreed at hearing that Student received no special education or related services prior to the June 5, 2012 IEP.
25. District Charter primarily offers a "full-inclusion" setting for special education students. *Teacher Test.* It has no self-contained classrooms. However, it does have "support centers" where students can receive some

⁶ Student's Educational Advocate testified that the IEP substantially conforms with the educational recommendations made in the 5/22/2012 revised psychological report, although he felt more support was needed to address word and informational retrieval difficulties resulting from her working memory deficits. *See R-3, p. 10; EA Test.* (cross examination & redirect). The Teacher testified that Student would benefit from graphic or writing organizers, as reflected in his IEP statement of needs (*P-14, p. 5*), but he acknowledged that the IEP goals and accommodations do not specifically require use of such organizers. *Teacher Test.* (cross examination). He also appeared to agree that the IEP did not include any specific goal directing Student to work on her memory issues. *Id.*

- 1:1 attention from a special education teacher, generally up to five (5) hours per week. *Id.* The support centers are similar to resource rooms. *Id.*
26. Student's grades during the 2011-12 school year included F's in English I, Algebra I, and Physical Science, and D's in World History and Spanish I. *See P-15; Parent Test.*
27. Student frequently missed school during the 2011-12 school year, which affected her grades. Most of her absences (approximately 47 of 62 total days) were excused for medical and other reasons. She was out of school for approximately six weeks in February-March 2013 due to child birth and related health issues. *See Parent Test.; Student Test.; Teacher Test.*
28. In August 2012, Parent enrolled Student in Private School for the start of the 2012-13 school year, rather than returning her to District Charter. *See Parent Test.; P-18; R-1.* Parent testified that she heard about the school through a relative, took a tour and spoke with the school owner/director, and thought the school would be a good fit for Student. *Parent Test.*
29. Approximately two months later, on or about October 18, 2012, Parent through counsel sent a letter to DCPS notifying it that she "intends to remove" Student from DCPS "and unilaterally enroll her in" Private School within 10 business days. *P-18.* Parent stated that she was securing this private placement at DCPS' expense because she believed DCPS had failed to provide Student with an appropriate IEP and an appropriate placement/location of services. *Id.; Parent Test.* DCPS did not respond to this notification letter. Approximately five months after sending the letter, Parent filed this due process complaint. *P-2.*
30. Private School provides a full-time special education program for high school-level students with a variety of disabilities between the ages of 14 and 22. There are no non-disabled students. The school offers an 11-month

program that includes academic instruction on both diploma and certificate tracks, as well as approximately two hours per day of vocational training. The current school year runs from 8/27/2012 to 8/3/2013. Private School has been approved by OSSE and currently has a certificate of approval (“COA”) to operate as a non-public school in the District of Columbia. *See Priv. Sch. Test.; LEA Rep. Test.*

31. Student’s attendance and academic performance has significantly improved at Private School, compared with the 2011-12 school year at District Charter. *See Parent Test.; EA Test.; P-16; P-24.* Her current courses include English I, Algebra, Geometry, U.S. History, Life Science, and Cosmetology; and she is earning mostly Bs and Cs through the 3d Quarter. *P-24; Priv. Sch. Test.*

V. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above. “Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a Free Appropriate Public Education (FAPE).” 5-E DCMR §3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). The Hearing Officer’s determination is based on the preponderance of the evidence standard, which generally requires sufficient evidence to make it more likely than not that the proposition sought to be proved is true.

B. Issues/Alleged Denials of FAPE

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

For the reasons discussed below, the Hearing Officer concludes that Petitioner met her burden of proof on **Issues 1 through 3**; she met her burden of proof *in part* on **Issue 4**; and she failed to meet her burden of proof on **Issue 5**.

Issue 1: Child Find/Untimely Initial Evaluation

The IDEA’s “child find” provisions require each State to have policies and procedures in effect to ensure that “[a]ll children with disabilities residing in the State ... who are in need of special education and related services, are ***identified, located, and evaluated.***” 20 U.S.C. §1412(a) (3) (A); 34 C.F.R. §300.111(a) (emphasis added). Child find must include any children “***suspected*** of being a child with a disability under §300.8 and in need of special education, even though they are advancing from grade to grade.” 34 C.F.R. §300.111(c) (1) (emphasis added). OSSE regulations further require all LEAs, including DCPS, to ensure that such procedures are implemented for all children residing in the District. 5-E DCMR §3002.1(d).

As the courts have made clear, these provisions impose an ***affirmative duty*** to identify, locate, and evaluate all such children. *Reid v. District of Columbia*, 401 F.3d 516, 518-19 (D.C. Cir. 2005); *Hawkins v. District of Columbia*, 539 F. Supp. 2d 108 (D.D.C. 2008). Consistent with the statutory and regulatory language, such

affirmative duty “extends to all children *suspected* of having a disability, not merely to those students who are ultimately determined to have a disability.” *N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008) (emphasis in original). “[A]s soon as a student is identified as a *potential* candidate for special education services, [LEA] has a duty to locate that student and complete the evaluation process.” *Id.* (emphasis in original).

In addition, D.C. Code § 38-2561.02 (a) provides that “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” (emphasis added). As § 38-2561.02 (a) has been construed by the courts, DCPS “must conduct a full and individual initial evaluation” within the required time frame of 120 days from the date of referral. *IDEA Public Charter School v. McKinley*, 570 F. Supp. 2d 28 (D.D.C. 2008); *see also* 34 C.F.R. §300.301(a); 5-E DCMR §3005.2. This means that DCPS ordinarily must complete and review the initial evaluation in all areas of suspected disability, determine eligibility, develop an IEP if the Student is found eligible, and determine an appropriate placement, all within 120 days. *See Hawkins v. D.C.*, 539 F. Supp. 2d 108 (D.D.C. 2008); *D.C. v. Abramson*, 493 F. Supp. 2d 80, 85 (D.D.C. 2007); 5-E DCMR §§3002, 3013.

The statute does not define what it means to be “referred” for evaluation or assessment. However, OSSE regulations specify that a child with a suspected disability who may need special education “shall be *referred, in writing*, to an IEP team.” 5-E DCMR §3004.1 (a) (emphasis added). OSSE regulations provide that a “referral ... shall state why it is thought that the child may have a disability,” and that it may be made *by a parent*, a professional staff employee of the LEA, or a

staff member of a public agency who has direct knowledge of the child. *Id.*, §3004.1 (b) (emphasis added).⁷

In this case, Petitioners have proved by a preponderance of the evidence that the Student was “referred” for an initial evaluation for special education eligibility within the meaning of D.C. Code §38-2561.02 (a) on or about June 1, 2011. This meant that DCPS had until approximately October 1, 2011, to conduct a full and individual initial evaluation, determine eligibility, and develop an IEP. Instead, DCPS did not complete its evaluation and determine eligibility until May 23, 2012, and did not develop an initial IEP for Student until June 5, 2012. This was over *eight months late*. As a result, DCPS violated the statutory 120-day timeline and the IDEA.⁸

An LEA’s failure to conclude the initial evaluation process within 120 days is generally viewed as a procedural violation, as are violations of the timing requirements of 34 C.F.R. §§ 300.323 (a) and (c). Such procedural delays give rise to viable IDEA claims only where such delays affect the student’s substantive rights. *See Lesesne v. District of Columbia*, 447 F.3d 828 (D.C. Cir. 2006); *Kruvant v. District of Columbia*, 99 Fed. Appx. 232 (failure to show harm resulting from error under 120-day requirement). IDEA regulations provide that “[i]n matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies – (i) impeded the child’s

⁷ “In the case of a parental request for evaluation, the student has already been ‘identified’ by the parental request, thus obviating the LEA need to identify the student as a possible student with a disability. However, the LEA is then obligated to move forward with the requirement of [IDEA] § 1414 (a) (1) and determine whether the student is in fact a child with a disability.” *District of Columbia v. Abramson*, 493 F. Supp. 2d 80, 85 (D.D.C. 2007) (quoting hearing officer decision).

⁸ As Petitioner stipulated at hearing that she was not alleging any child-find violation prior to June 2011, Issue 1 can be decided only by reference to the 120-day timeline violation.

right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or (iii) caused a deprivation of educational benefit." 34 C.F.R. §300.513 (a) (2).

The Hearing Officer concludes that Petitioners have proved that DCPS' violation of D.C. Code § 38-2561.02 (a)'s 120-day timeline affected the Student's and Parent's substantive rights under IDEA so as to make such violations actionable. The timeline violations impeded the Student's right to FAPE because the failure to determine eligibility and develop an IEP by October 2011 prevented the Student from receiving a timely offer of FAPE, thus depriving Student of needed services for most of the 2011-12 school year. Even when Student's poor attendance record is factored in, Student still missed hundreds of hours of special education and related services while attending District Charter. DCPS's timeline violations have thereby also deprived the Student of educational benefit.⁹ This effectively constitutes a substantive denial of FAPE.

Issue 2: Procedural/June 5, 2012 IEP Team

The IDEA requires each public agency to "take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate." 34 C.F.R. §300.322 (a). This includes "(1) notifying parents of the meeting early enough to ensure that they will attend; and (2) scheduling the meeting at a mutually agreed on time and place." *Id.* The notice must include the purpose, time, and location of the meeting, who will attend, and other required information. *Id.*, §300.322 (b). A public

⁹ *Cf. Roland M. v. Concord Sch. Committee*, 910 F.2d 983, 994 (1st Cir. 1990) (en banc); *Blackman v. District of Columbia*, 39 IDELR 241 (D.D.C. 2003) ("harm is denial by DCPS of a free appropriate education, and this harm is not dependent on the financial resources of an individual plaintiff's family"); *Student v. DCPS*, Case No. 2012-0280 (Hearing Officer Leff June 30, 2012).

agency may conduct a meeting without a parent in attendance only “if the public agency is unable to convince the parents that they should attend.” *Id.*, §300.322 (d). In that situation, the public agency “must keep a record of its attempts to arrange a mutually agreed on time and place, such as – (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parent’s home or place of employment and the results of those visits.” *Id.*

In this case, the evidence shows that DCPS failed to comply with these procedural requirements in convening an MDT meeting to develop an initial IEP for Student on June 5, 2012. Parent had informed DCPS that she was unable to attend the meeting because her advocate/representative was unavailable, but DCPS went ahead with the meeting anyway. *See Parent Test.; EA Test.; Findings, ¶ 22.* DCPS did not contradict Parent’s testimony on that point, and DCPS made no showing sufficient to satisfy the stringent requirements of 34 C.F.R. §300.322 (d), especially where the meeting was being held over eight months late.

As noted under Issue 1 above, an IDEA claim is viable only if the procedural violation affects student’s or parent’s substantive rights. *See Lesesne v. District of Columbia*, 447 F.3d 828 (D.C. Cir. 2006). Petitioner has carried her burden of proof because she has shown that DCPS’ procedural violation in this regard significantly impeded Parent’s opportunity to participate meaningfully in the decision-making process as to her child’s IEP, which is the cornerstone of FAPE. *See* 34 C.F.R. § 300.513 (a) (2) (ii).

Issue 3: Behavior Intervention Plan (BIP)

In the case of a student whose behavior impedes the learning of the student or others, the IEP Team must “consider use of positive behavioral interventions

and supports, and other strategies, to address that behavior”. 34 C.F.R. § 300.324 (a) (2). At the time the June 5, 2012 IEP was being developed, DCPS had just completed an FBA documenting Student’s serious problems with both attendance and distractibility, which were negatively impacting her academic performance. *See P-13; Findings, ¶ 21*. “The FBA is essential to addressing a child’s behavioral difficulties, and as such, it plays an integral role in the development of an IEP.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 68 (D.D.C. 2008). Moreover, the IEP itself noted that Student “has excessive absences from school that further reduce her opportunities to learn.” *See P-14, p. 7*. DCPS was well aware that Student missed over 60 days of school during the 2011-12 school year. *See Teacher Test.; Findings, ¶ 27*.

Accordingly, DCPS should have included in the IEP or otherwise provided an appropriate behavior intervention plan to address these significant behavioral concerns that interfered with her learning. For example, to help address the attendance concerns, DCPS could have placed Student on an “attendance contract,” to be monitored by a counselor or other responsible school official, or could have developed some other appropriate forms of positive behavioral intervention and support.

Issue 4: Failure to Develop Appropriate IEP (6/5/2012)

The “primary vehicle” for implementing the goals of the IDEA is the IEP, which the statute “mandates for each child.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (*citing Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). *See* 20 U.S.C. 1414(d)(1)(A)(i); 34 C.F.R. 300.320; DCMR 5-E3009.1. “The IEP must, at a minimum, `provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Reid v. District of Columbia*, 401 F. 3d 516, 519 (D.C. Cir. 2005), *quoting Board of*

Education v. Rowley, 458 U.S. 176, 200, 207 (1982). *See also Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988). The “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.” *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009).

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.’” *Schaffer v. Weast*, 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207). “[A]n individualized education program (“IEP”) is a snapshot, not a retrospective. In striving for “appropriateness,” an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.” *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993) (citations omitted). *See also Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1st Cir. 2008) (same); *Adams v. State of Oregon*, 195 F. 3d 1141, 1149 (9th Cir. 1999) (same). In the event of challenge, the issue of whether an IEP is appropriate is a question of fact for hearing. *See, e.g., S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003).

In this case, Petitioner claims that the June 5, 2012 IEP was not reasonably calculated to confer educational benefits on Student because it failed to provide (a) full-time specialized instruction, (b) in an outside general education setting, and (c) with appropriate goals and objectives to address Student’s needs regarding organization and memory concerns.

Based on the evidence presented at hearing, as summarized in the Findings of Fact above, the Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Student required *full-time* specialized instruction entirely in an *outside general education* setting, based on the information available to the IEP Team on June 5, 2012. However, the evidence was sufficient to establish that, as of that date, Student needed to receive at least some specialized instruction in her areas of greatest academic weakness within a less-distracting, pull-out setting. The evidence shows that, without such services, Student could not reasonably have been expected to access the general education curriculum and make adequate progress toward achieving her IEP goals, given her demonstrated ADHD symptoms and her severe academic deficits. *See, e.g., Findings*, ¶¶ 10, 13, 16-19.

On the May 2012 WJ-III, Student was tested at only the 2d-3d grade level in math, and the 5th-6th grade level in reading and written expression. Moreover, based on the May 2012 BRIEF assessment of executive functioning, Student was found to have significant difficulties sustaining working memory, which had a negative impact on her ability to acquire necessary information, and to remain attentive and focused for appropriate lengths of time. *See Findings*, ¶¶ 17-18. Student was also repeating the 9th grade and receiving failing grades at the time.

DCPS' School Psychologist further testified that math is Student's greatest academic weakness and appears to require additional supports and intervention. Indeed, in his expert opinion, he believes that Student has a learning disability in math, in addition to her primary disability of OHI/ADHD. *See School Psych. Test.* Regardless, the evidence strongly suggests that the impact of her disability (whether ADHD or SLD) is greatest in the math area, especially in math

calculation and applied problems. *See also P-14, p. 2* (6/5/2012 IEP - Student “needs intensive remediation exercises to raise her skills” in math area).

In order for the June 5, 2012 IEP to be reasonably calculated to confer educational benefit on Student, it should have included at least five (5) hours per week of specialized instruction in an Outside General Education setting, primarily to address Student’s severe academic deficits in the math area. These services should have been provided in addition to the 40 hours per month (or 10 hours per week) of specialized instruction provided in a General Education (inclusion) setting. Accordingly, Petitioner has met her burden of proof to this extent, but has failed to prove the remainder of her claims under Issue 4.¹⁰

Issue 5: Failure to Provide Appropriate Placement

“Designing 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). Moreover, statutory law in the District of Columbia requires that “DCPS shall place a student with a disability in an appropriate special education school or program” in accordance with the IDEA. D.C. Code 38-2561.02 (b). *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005), *citing McKenzie v. Smith*, 771 F.2d 1527, 1534-35 (affirming “placement based on match between a student’s needs and the services offered at a particular school”).

¹⁰ In addition, with respect to Student’s needs regarding organization and memory concerns, the Hearing Officer concludes that the June 5, 2012 IEP, at minimum, should be revised to include classroom accommodations requiring use of appropriate graphic organizers (as DCPS’ testimony appears to concede, *see Teacher Test.*), as well as goals and objectives relating to the “chunking” of information (*see EA Test.; Pet’s Closing, p. 4*).

Educational placement under the IDEA must be “based on the child’s IEP.” 34 C.F.R. 300.116 (b) (2). DCPS must also ensure that its placement decision is made in conformity with the Least Restrictive Environment (“LRE”) provisions of the IDEA. *See* 34 C.F.R. §§ 300.114-300.116. The IDEA requires each public agency to ensure that “[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are nondisabled,” and that “removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. §1412 (a) (5); 34 C.F.R. §300.114 (a) (2). *See also* 5-E DCMR §3011.1; *e.g.*, *Daniel R.R. v. El Paso*, 874 F.2d 1036 (5th Cir. 1989).

The Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Student required a ***full-time, out of general education*** program as part of her June 5, 2012 IEP. Petitioner did not establish that Student’s OHI/ADHD disability is so severe that she cannot be educated primarily in regular classes with supplementary aids and services. Thus, Petitioner has not shown that a full-time, outside general education program – much less, a special school – is Student’s LRE. Petitioner has also failed to prove that District Charter was unable to implement the requirements of Student’s June 5, 2012 IEP, even had it been appropriately revised to include specialized instructional support outside the general education classroom as discussed above. The evidence shows that District Charter has “support centers” (similar to resource rooms in other schools) where students can receive some 1:1 attention from a special education teacher, generally up to five (5) hours per week. *Findings*, ¶ 25. Whether District Charter would be an appropriate school/program for Student going forward will depend on an updated assessment of Student’s needs and terms of any revised IEP.

C. Appropriate Relief

As relief for denials of FAPE in this case, Petitioner requests that the Hearing Officer: (a) order DCPS to fund the Student's placement at Private School, retroactive to October 28, 2012; (b) order DCPS to convene an MDT meeting to review/revise the June 5, 2012 IEP; and (c) award compensatory education in the areas of academic tutoring, speech/language and behavioral support services for denials of FAPE from October 2011 to October 2012.

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). Based on the evidence presented at the due process hearing, the findings and conclusions above, and relevant equitable considerations, the Hearing Officer concludes that the relief set forth in the Order below is appropriate to address the violations and denials of FAPE found herein.

Funding of Parental Private Placement

"IDEA authorizes reimbursement for the cost of private special education services when [1] a school district fails to provide a FAPE and [2] the private-school placement is appropriate, regardless of whether the child previously received special education or related services through the public school." *Forest Grove School District v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2496 (2009). *See also Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 12-13 (1993); *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 369-70 (1985).¹¹

¹¹ "When a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits'." *Florence County Sch.*

Where reimbursement relief is found to be authorized under the above two-part test, it must still be shown that such relief would be appropriate and equitable. *Carter*, 510 U.S. at 16; *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. ___, 129 S. Ct. 2484 (2009) (“When a court or hearing officer concludes that a school district failed to provide a FAPE and the private placement was suitable, it must consider all relevant factors, including the notice provided by the parents and the school district’s opportunities for evaluating the child, in determining whether reimbursement for some or all of the cost of the child’s private education is warranted.”).

In this case, the Hearing Officer has concluded that DCPS did not make FAPE available to the Student in a timely manner when it violated the 120-day timeline requirement, failed to include parent in the June 5, 2012 IEP meeting, and omitted certain supports and services from the IEP. However, the Hearing Officer concludes that reimbursement relief is not appropriate and equitable in this case for the following reasons:

- (1) The parental placement did not respond to DCPS’ default in its initial evaluation obligations during the 2011-12 school year. Parent only chose to explore other placements and enroll Student at Private School *after* DCPS had found Student eligible and completed an IEP, albeit in an untimely manner.

Dist. Four v. Carter, 950 F.2d 156, 163 (4th Cir. 1991), *aff’d*, 510 U.S. 7 (1993) (quoting *Rowley*, 458 U.S. at 207). The Supreme Court’s decisions only require the parental placement to be “proper;” they do not require it to meet all the standards required for an “appropriate” placement by the school system. Courts have explicitly ruled that a parental placement need not comply with “the whole panoply of duties that the Act imposes on the state,” *Carter*, 950 F.2d at 163, including that it be the least restrictive environment (“LRE”). *E.g.*, *N.T. v. District of Columbia*, 839 F. Supp. 2d 29, n. 3 (D.D.C. 2012). *See also* 34 C.F.R. 300.148 (c).

- (2) Petitioner failed to prove her claims that she was entitled to a full-time, outside general education program and that DCPS failed to provide an appropriate school placement, either as of June 5, 2012, or the start of the 2011-12 school year. The evidence was insufficient to show that District Charter could not have provided an appropriate program, including some specialized instruction in an outside general education setting. Parent also did not place Student at Private School based on any perceived inadequacies in the June 5, 2012 IEP, as Parent testified that she had not even seen the IEP at that time. *Parent Test.*
- (3) Parent did not provide written notice to DCPS at least 10 business days prior to Student's removal from public school, as required by 34 C.F.R. § 300.148 (d) (2). Her notice was provided almost two months *after* Student enrolled at Private School. This did not provide reasonable notice and an opportunity for DCPS to further evaluate Student's needs and respond accordingly. Moreover, the equities further disfavor reimbursement relief under the circumstances where Petitioner waited five more months to file her due process complaint.
- (4) Petitioner presented no evidence that Parent has paid or otherwise incurred any costs of Private School since August 2012. Hence, Petitioner has not proved that there are any costs to be reimbursed in this matter.

However, as discussed below, DCPS will be ordered to pay the costs of the Private School program for the remainder of its 2012-13 school year (through August 3, 2013) as compensatory education.

Compensatory Education

Compensatory education is one of the equitable remedies available to a hearing officer, exercising his authority to grant “appropriate” relief under IDEA. Under the theory of ‘compensatory education,’ courts and hearing officers may award ‘educational services...to be provided prospectively to compensate for a past deficient program.’” *Reid v. District of Columbia*, 401 F. 3d 516, 521 (D.C.Cir. 2005) (quotations omitted). Compensatory education is fact-specific relief designed to compensate a student for the educational benefits of which he or she was deprived. *See, e.g., Gill v. District of Columbia*, 751 F. Supp. 2d 104, 110-12 (D.D.C. 2010); *Friendship Edison Public Charter School v. Nesbitt*, 532 F. Supp. 2d 121, 125 (D.D.C. 2008). An IDEA petitioner generally has the burden of proposing a well-articulated plan demonstrating what it is he wants and the reasoning why his request would ameliorate the denial of FAPE, although a court or hearing officer ultimately must determine what is equitable. *Gill, supra*. *See also Reid*, 401 F. 3d at 523-24 (“compensatory education involves discretionary, prospective, injunctive relief crafted by a court [and/or hearing officer] to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student”).

In this case, the Hearing Officer has determined that DCPS denied the Student a FAPE by failing to complete its initial evaluation within D.C. Code § 38-2561.02 (a)’s 120-day timeline. The failure to determine eligibility and develop an IEP by October 2011 prevented Student from receiving a timely offer of FAPE, thus depriving Student of needed services for most of the 2011-12 school year. Even when Student’s poor attendance record is factored in, Student still likely missed hundreds of hours of special education and related services while attending District Charter. DCPS thereby deprived the Student of the educational benefits of

these services for approximately eight months. Petitioner has shown that this has caused educational harm to the Student that entitles her to an award of compensatory education reasonably designed to compensate the Student for these deprived educational benefits. *See Findings; discussion under Issue 1 above.*¹²

Without the necessary support, Student's unaddressed weaknesses adversely affected her ability to access the curriculum across multiple academic areas, and she appears to have made little if any academic progress over the 2011-12 school year. As noted above, by May 2012, DCPS' standardized testing revealed severe academic deficits. Results showed that Student's "academic skills and ability to apply those skills are both within the very low range" when compared to others at her age level. *R-3, p. 6.* In Broad Math, she received a standard score of 52 (Very Low) for an approximate grade equivalency ("GE") of 2.8; in Broad Written Language, she scored 77 (Low) for a GE of 5.1; and in Broad Reading, she scored 82 (Low Average) for a GE of 6.1. *Id., pp. 5-6.* She also scored Very Low in Math Calculation (SS=54; GE=3.2) and Applied Problems (SS=56; GE=1.8) subtests in the math area. *Id. See Findings, ¶ 17.* Moreover, by June 2012, Student was again receiving failing grades in a number of 9th grade courses she was repeating.

Based on the testimony presented regarding Student's experience and progress at Private School, the Hearing Officer finds that the completion of the remaining two months of that program would provide services that are fact-specific and are designed to remedy the specific harm suffered by Student. The services

¹² DCPS' failure to include Parent in the June 5, 2012 IEP meeting and the adjudicated deficiencies in the IEP document also contributed to the harm, albeit to a far lesser extent given Parent's decision to remove Student from District Charter where she could have received services under the IEP.

appear well suited to address Student's continued academic weaknesses, as well as her other unique needs associated with her disability, and to enable Student to make progress toward her IEP goals. *See, e.g., Priv. Sch. Test.* Additional 1:1 academic tutoring will also be awarded in the amount of 50 hours.

In sum, based on all the available evidence, the Hearing Officer concludes that DCPS must pay (a) all costs of the Private School program, with transportation, from June 3, 2013 to August 3, 2013; and (b) the cost of 50 hours of individual academic tutoring for Student. The Hearing Officer finds that the combination of these services are necessary and sufficient to provide the educational benefits that likely would have accrued from the services that Student missed between approximately October 2011 and June 2012. The remedy is supported by the record evidence, including the testimony of Petitioner's witnesses and the substantial documentary evidence adduced at hearing, as summarized herein.

The remainder of the relief set forth in the Order addresses DCPS' obligation to convene an MDT/IEP Team meeting to review the stipulated independent evaluations, to review and revise as appropriate Student's IEP based on an updated assessment of her needs, and to discuss and determine an appropriate school/program placement for the 2013-14 school year. Consideration of prospective placement is premature at this point, until the updated independent evaluations are completed and reviewed by Student's IEP Team and any appropriate adjustments are made to the IEP.

VI. ORDER

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

1. Petitioner shall be authorized to obtain a **comprehensive psychological evaluation, speech/language evaluation, functional behavior assessment (“FBA”), and vocational evaluation** of the Student **independently**, at the expense of DCPS and consistent with DCPS’ publicly announced criteria for independent educational evaluations (“IEEs”). Upon completion of the assessments, Petitioner shall promptly submit a copy of the written report(s) of evaluation to DCPS. Unless otherwise agreed to by the parties, all evaluations and assessments shall be completed within **forty-five (45) calendar days** of this Order (*i.e.*, **by July 15, 2013**).

2. Within **thirty (30) calendar days** of the submission of the report(s) of assessment specified in Paragraph 1 above, Respondent District of Columbia Public Schools (“DCPS”) shall convene a **meeting of the Student’s MDT/IEP Team**, at which the following shall take place:
 - (a) review the independent educational evaluations (“IEEs”) of the Student in the areas of comprehensive psychological, speech/language, FBA, and vocational assessment;

 - (b) review any other updated information concerning Student’s academic and behavioral progress since June 5, 2012; under;

 - (c) review and revise, as appropriate, the goals and services in Student’s individualized education program (“IEP”) dated June 5, 2012, in the areas of Reading, Writing, Written Expression; Communication/Speech and Language; Social, Emotional, and Behavioral Development; and Post-Secondary Transition Planning;

(d) discuss and determine whether Student's appropriate exit category under her IEP should remain a High School Diploma or should be changed to a Certificate of Completion; and

(e) discuss and determine an appropriate public or non-public school/program in which to place the Student pursuant to the IDEA and D.C. Code § 38-2561.02 (b).

3. The IEP developed pursuant to paragraph 2 above shall provide specialized instruction in all academic areas within Student's least restrictive environment, which shall include at least **five (5) hours per week** of specialized instruction in **Math** in an **Outside General Education** setting, either one-on-one or in small groups. The IEP shall also be revised to include classroom accommodations requiring use of appropriate **graphic organizers** and appropriate goals and objectives relating to the **"chunking" of information**.
4. Any school/program in which DCPS proposes to place Student pursuant to paragraph 2 above must (a) be able to implement Student's revised IEP; (b) be appropriate for Student's needs, including her need for a location with minimal distractions and her need for appropriate vocational training; and (c) be a school/program in which Student can access the general education curriculum and make adequate progress toward her IEP goals before exiting special education by Age 22.
5. In the event DCPS fails to provide timely Prior Written Notice for placement of Student into an appropriate school/program prior to the start of the 2013-14 School Year, DCPS shall place and fund the Student at **Private School**; ¹³ *provided, however*, that this deadline shall not apply if completion and submission of the independent evaluation reports is delayed beyond July 15, 2013, pursuant to Paragraph 1 of this Order.
6. As **compensatory education**, Respondent DCPS shall pay for (a) all tuition and fees, plus transportation, to **Private School** for the remainder of its 2012-13 School Year, through August 3, 2013; and (b) **fifty (50) hours of one-to-one academic tutoring services** . The tutoring services

¹³ **Private School** is identified in the Appendix to this HOD.

shall focus primarily on developing Student's math and written language skills. The services shall be performed by qualified independent provider(s) of Petitioner's choice at hourly rates not to exceed the current established OSSE-approved rates for such services. Unless the parties agree otherwise, these services shall be completed by no later than **May 31, 2014**.

7. Any delay in meeting any deadline in this Order caused by Petitioner or Petitioner's representatives (*e.g.*, absence or failure to attend a meeting, or failure to respond to scheduling requests) shall extend the deadline by the number of days attributable to such delay.
8. Petitioner's other requests for relief in her Due Process Complaint filed March 13, 2013, are hereby **DENIED**; and
9. The case shall be **CLOSED**.



Dated: May 31, 2013

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).