

**District of Columbia
Office of the State Superintendent of Education**

Student Hearing Office
810 First Street, N.E., Suite 2001
Washington, DC 20002

OSSE
Student Hearing Office
May 22, 2013

<p>STUDENT¹, By and through PARENT,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>Case No.</p> <p>Impartial Hearing Officer: Charles M. Carron</p> <p>Date Issued:</p> <p>May 22, 2013</p> <p>Representatives:</p> <p>Joy L. Freeman-Coulbary, Esq. for Petitioner</p> <p>Erin Auerbach, Esq. and Jennifer Segal, Esq. for Respondent</p>
--	--

HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND

This is a Due Process Complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed March 26, 2013, on behalf of the Student, who resides in the District of Columbia, by Petitioner, the Student’s Parent, against Respondent, a District of Columbia Public Charter School.

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

On March 27, 2013, the undersigned was appointed as the Impartial Hearing Officer.

On April 5, 2013, Respondent filed its Response, stating that Respondent has not violated IDEA.

The undersigned held a Prehearing Conference (“PHC”) by telephone on April 12, 2013, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by May 6, 2013 and that the Due Process Hearing (“DPH”) would be held on May 13 and 14, 2013.

A Resolution Meeting was held on April 15, 2013, but it failed to resolve the Complaint. The statutory 30-day resolution period ended on April 25, 2013. The 45-day timeline for this Hearing Officer Determination (“HOD”) started to run on April 26, 2013, and will conclude on June 9, 2013.

No motions were filed by either party and the DPH was held on May 13, 2013 from approximately 9:40 a.m. until 4:00 p.m. at the Student Hearing Office, 810 First Street, NE, Suite 2001, Washington, DC 20002. Petitioner elected for the hearing to be closed.

At the DPH, the following documentary exhibits were admitted into evidence without objection: Respondent’s proposed Exhibits R-1 through R-21 and the Hearing Officer’s proposed Exhibits HO-1 through HO-7. Petitioner proposed Exhibits P-1 through P-35. Respondent objected to the admission of P-25, P-27, P-30 and P-34. After hearing argument by counsel, the undersigned admitted all of Petitioner’s exhibits.

The following Witnesses testified on behalf of Petitioner at the DPH:

(a) Mia Long, who was qualified, after *voir dire*, over Respondent’s objection as an expert in special education programming and services, response to intervention processes, and referrals for eligibility determination; and

(b) the Parent.

The following witnesses testified on behalf of Respondent at the DPH:

- (a) Respondent's Director of Student Support Services;
- (b) the Student's Second Grade Teacher;
- (c) the School Counselor/Social Worker; and
- (d) the School Special Education Coordinator.

The parties made oral closing arguments at the DPH and filed written closing arguments on May 20, 2013, addressing the following legal issue as requested by the undersigned on the record at the DPH: whether Response to Intervention ("RTI") is an appropriate first step in evaluating a suspected disability other than a Specific Learning Disability ("SLD").²

II. JURISDICTION

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

² Petitioner's written closing addressed the RTI legal issue only in one footnote quoting Wikipedia (which is a non-authoritative source), and in the Appendix, which comprises a Wrightslaw index of articles on RTI. The remainder of Petitioner's written closing addresses other legal issues and factual disputes. Because the undersigned permitted written closing arguments only on the RTI legal issue, the undersigned has disregarded the remainder of Petitioner's written closing.

III. CIRCUMSTANCES GIVING RISE TO THE COMPLAINT

The circumstances giving rise to the Complaint are as follows:

The Student is male, Current Age, and attends Current Grade at Respondent. The Student has not yet been determined to be eligible or ineligible for special education and related services as a child with a disability under the IDEA.

Petitioner claims that Respondent has denied the Student a Free Appropriate Public Education (“FAPE”) by failing to evaluate him, failing to consider evaluations submitted by Petitioner, and failing to determine the Student’s eligibility. Respondent asserts, *inter alia*, that it initiated the evaluation process timely upon receiving the Parent’s request, and that the deadline for evaluation has not yet passed.

IV. ISSUES

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

(a) Did Respondent violate the Individuals with Disabilities Education Act (“IDEA”) by failing to evaluate the Student under IDEA’s “Child Find” provisions?

(b) Did Respondent violate IDEA by failing to complete an initial evaluation within 120 days of the Parent’s request in August 2012?

(c) Did Respondent violate IDEA by failing to consider the outside evaluations and/or assessments provided to Respondent by the Parent?

(d) Did Respondent violate IDEA by failing to determine the Student’s eligibility in a timely manner?

(e) Did Respondent violate IDEA by failing to invite the Parent to a meeting in February 2013 where the Student's "504 Plan"³ was revised?

V. RELIEF REQUESTED

Petitioner requests the following relief:

(a) an Order that Respondent fund an independent comprehensive psychological evaluation, social history, functional behavioral assessment, and any other assessments reasonably recommended by those assessments;

(b) an Order that Respondent convene a Multi-Disciplinary Team ("MDT") meeting within 10 days of receiving the last of the independent assessments to review all assessments, including the January 2013 psychiatric report from Children's National Medical Center, and the February 2012 Individualized Service Plan of Care ("ISP"), and to determine the Student's eligibility for special education and related services;

(c) an Order that if the Student is determined to be eligible, that Respondent develop and implement an Individualized Education Program ("IEP") including a Behavior Intervention Plan ("BIP") and determine placement with placement to be made within 10 days;

³ The undersigned advised counsel that he lacks jurisdiction over Rehabilitation Act Section 504 claims; accordingly, Petitioner would need to establish that this meeting involved the Student's eligibility under IDEA.

- (d) an Order of compensatory education consistent with Petitioner's compensatory education plan to be filed no later than May 1, 2013;⁴ and
- (e) an Order that Respondent include the Parent and her counsel in all subsequent eligibility, and/or IEP/MDT Meetings;⁵
- (f) any other relief determined appropriate; and
- (g) an Order that all meetings be scheduled through counsel for the Parent, in writing, via facsimile.

Petitioner requested the following relief that the undersigned struck as inappropriate for the reasons described below:

- (a) attorney's fees and costs, which the undersigned lacks the authority to award;
- (b) an order that Respondent file a Response within 10 calendar days of the filing of the DPC, which was moot because Respondent filed a timely response;
- (c) an order that if Respondent failed to file a timely Response, the arguments and facts averred by the Parent be deemed true and accurate and act as

⁴ In the DPC, Petitioner requested an Order that the Student's Multi-Disciplinary Team ("MDT") determine any compensatory education that may be due. The undersigned explained to counsel that under controlling case law a Hearing Officer cannot delegate to an MDT, or to Respondent, the determination of compensatory education. Rather, any compensatory education award must be based upon evidence in the record. Because Respondent had the right to challenge Petitioner's requested compensatory education, the undersigned ordered Petitioner's counsel to file Petitioner's Compensatory Education Plan no later than May 1, 2013, or this requested remedy would be waived. The undersigned modified the request for relief accordingly. Petitioner's counsel filed the proposed Compensatory Education Plan on April 23, 2013.

⁵ In the DPC, Petitioner also requested this relief with regard to "SST" and "504" meetings over which the undersigned has no authority, so the undersigned deleted these references in the request for relief.

a waiver, on the part of Respondent, of the desire to have a Resolution Session Meeting, and that the timeline of the DPH be accelerated accordingly, which was moot because Respondent filed a timely response;

(d) an order that Respondent, within 15 calendar days of receiving the DPC, file any Notice of Insufficiency, which was and is not ripe because Respondent did not file a Notice of Insufficiency; and

(e) an order that if Respondent failed to file a Notice of Insufficiency within 15 calendar days of receiving the DPC, that this constitute a waiver on the part of Respondent to make such an argument subsequently, which was and is not ripe because Respondent did not file a Notice of Insufficiency.

VI. FINDINGS OF FACT

Facts Related to Jurisdiction

1. The Student is a male, Current Age. P-27-1.⁶
2. The Student resides in the District of Columbia. P-26-1, R-2-1.

Facts Related to the Parent's Alleged Request for Evaluation

3. The Parent testified that at the beginning of the 2012-2013 school year, in August 2012, she told the Second Grade Teacher that the Student had Attention Deficit Hyperactivity Disorder (“ADHD”) and would need “special education,” to which the Second Grade Teacher responded that she would talk to the Special Education Coordinator (“SEC”). Testimony of the Parent.

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

4. On cross-examination, when asked what she said to the Second Grade Teacher about evaluating the Student for “special education,” the Parent testified that she said the Student would need “services.” *Id.*

5. The Second Grade Teacher testified that the 2012-2013 school year began September 3, 2012, and that prior to February 2013, the Parent never requested special education for the Student or evaluation to determine the Student’s eligibility for special education. Testimony of Second Grade Teacher.

6. The Second Grade teacher testified that if a parent requested special education for a child, she would email the SEC. *Id.*

7. The SEC testified that the school year began September 4 or 5, 2012.
Testimony of SEC.

8. Respondent’s Director of Student Support Services (the “Director”) testified that she was unaware of any request from the Parent in August 2012, or any time prior to October 18, 2012,⁷ to evaluate the Student. Testimony of Director.

9. The School Counselor/Social Worker testified that, prior to February 2013, Petitioner never made a request to her that the Student be evaluated. Testimony of School Counselor/Social Worker.

10. The SEC testified that, prior to February 2013, Petitioner never made a request to her that the Student be evaluated. Testimony of SEC.

11. The Director testified that the Parent never submitted any evaluations of the Student from outside evaluators, and that if the Parent had done so, those evaluations

⁷ This is when the “SIT” process was initiated. *See*, Finding of Fact 36, *infra*.

would have been turned over to the MDT to initiate evaluation of the Student. Testimony of Director.

12. The SEC testified that the ISP from First Home Care Corporation (P-20) was not an evaluation (Testimony of SEC).

13. Based upon a review of the ISP from First Home Care Corporation (P-20), the undersigned finds that it is not an evaluation.

14. Based upon all of the record evidence, the undersigned finds that, prior to November 28, 2012, Petitioner never made a request to Respondent that the Student be evaluated.

15. Based upon all of the record evidence, the undersigned finds that, prior to November 28, 2012, Petitioner never made a request to Respondent that the Student receive specialized instruction or related services, or “special education.”

16. Based upon all of the record evidence, the undersigned finds that, prior to November 28, 2012, Petitioner never submitted to Respondent any evaluations of the Student from outside evaluators.

Facts Related to the Student’s Academic Progress

17. The Student began the 2012-2013 school year one grade level behind in reading. Testimony of Second Grade Teacher.

18. Sixty to seventy five percent (60% - 75%) of students who begin attending Respondent at a grade above pre-kindergarten or kindergarten are not performing at grade level when they start. Testimony of SEC.

19. Not all of the students who begin at Respondent below grade level have disabilities. *Id.*

20. In the first half of the 2012-2013 school year, the Student progressed one grade level in reading (Testimony of Mia Long, testimony of Second Grade Teacher), but he still is one grade level behind (Testimony of Second Grade Teacher).

21. The Student is performing at grade level in math. *Id.*

22. The Student is able to write, slightly below grade level, when motivated but he is difficult to motivate and becomes frustrated with writing. Testimony of Second Grade Teacher.

23. The Student's deficits in reading affect his writing. *Id.*

24. The Parent testified that the Director told her shortly after November 20, 2012, that the Student would be retained in second grade. Testimony of the Parent.

25. The Director testified that she was not aware that the Student was in danger of being retained. Testimony of Director.

Facts Related to Respondent's "Child Find" Obligation

26. On February 2, 2012, First Home Care [Corporation], a social service agency that provides, *inter alia*, family counseling and therapeutic services, developed an ISP for the Student. P-20, testimony of Director.

27. The Student's February 2, 2012 ISP listed the following needs identified by the child and family:

“To not hit other kids.”

“To stay in his [seat].”

“To worry about himself and ignore others.”

“To focus more.”

“To be able to open up more.”

“To have better ways to work on dealing with frustration and talking better.”

P-20-3 and -4.

28. The Student’s February 2, 2012 ISP identified “Action Steps/Objectives,” among others, to meet those needs:

To work on improving positive communication with the teacher and addressing ways to deal with both positive and negative behaviors.

To work on behavior problems and addressing ways to decrease hyperactivity and increase ability to focus.

To work on improve (sic) social skills and addressing ways to not hit peers when he is feeling upset.

To address ways to improve talking to teacher when he is upset and frustrated[.]

To participate in individual therapy to address ways to improve communication and identifying (sic) feelings.

To participate in medication management and assessment to determine in (sic) medication could be helpful.

To work on improving coping and social skills to deal with difficult emotions in a positive way.

To work on ways to improve focus and staying (sic) on task.

Id.

29. The Student began attending Respondent on the first day of the 2012-2013 school year. Testimony of Second Grade Teacher; testimony of Parent.

30. Sometime in early October 2012, the Student's Second Grade Teacher completed the Vanderbilt ADHD Diagnostic Teacher Rating Scales. Stipulation of counsel at the DPH, P-23-6 through -8, testimony of Second Grade Teacher. On this instrument, the Second Grade Teacher found that the Student's reading, written expression and behavior were problematic. *Id.*

31. On October 3, 2012, the Student was observed in the classroom by the Director, who observed, *inter alia*, that the Student was able to stay on task when the social worker was sitting next to him, but when the social worker left, he was unable to attend to tasks, was disruptive to peers physically and verbally (saying "shut up" numerous times), engaged in throwing and kicking, and required constant redirection from teachers. P-21-2.

32. On October 3, 2012, the Second Grade Teacher referred the Student to the Student Intervention Team ("SIT") because he was extremely rude to students and adults, was aware that he was hurtful toward others but showed no remorse or sympathy, when redirected he often laughed and continued doing unsafe or harmful things, and when angry he kicked chairs and desks and "cussed" at many classmates. R-2-1, R-5-1, testimony of Second Grade Teacher.

33. The Second Grade Teacher discussed the Student's behavioral concerns with his mother almost daily when she picked the Student up from school. R-2-6, testimony of Parent.

34. The Second Grade Teacher had attempted various interventions apparently without success. R-2-6 and -7.

35. On October 15, 2012, Respondent suspended the Student for one day for hitting a student at recess. P-11-1.

36. On October 18, 2012, the Director wrote to “the parent or guardian” of the Student stating that the Student had been referred to the SIT, a team comprised of Respondent staff “who will act in the best interest of your child to develop an action plan to ensure academic and social success. Meetings will be held to determine goals and interventions and to monitor progress.” R-5-1, testimony of Director.

37. SIT is Respondent’s version of “Response-to-Intervention” (“RTP”), a three-tiered process establishing goals and interventions to address students’ learning and behavior problems. Testimony of Director.

38. All of Respondent’s teachers meet weekly beginning in October of each school year to discuss whether they have any students that should be referred to SIT. *Id.*

39. Tier 1 of SIT is school-wide; Tier 2 is for students who do not respond to Tier 1 and require skill-specific interventions; and Tier 3 comprises more intensive and frequent interventions for students who do not respond to Tier 2. *Id.*

40. The Director signs and sends letters of invitation to parents to attend all SIT meetings involving their children, and she invited Petitioner to all SIT meetings involving the Student. *Id.*

41. Parents are not required to attend SIT meetings, and if they do not attend a meeting, the case manager follows up with them after the meeting to inform them what happened at the meeting. *Id.*

42. In the case of a student who did not attend Respondent from pre-kindergarten or kindergarten, one purpose of the SIT process is to determine whether the student's deficit is due to lack of education at the student's prior school. Testimony of SEC.

43. If a student is not successful in SIT, the Student is referred to the MDT, which may or may not result in the student being evaluated for eligibility for special education. Testimony of Director.

44. The Director testified that not all students with learning or behavior problems go through SIT (*Id.*) but the Second Grade Teacher testified that a student is referred to the SEC only after going through the SIT process (Testimony of Second Grade Teacher).

45. The Director testified that if a parent requests an evaluation during the SIT process, the child would be referred to the MDT. Testimony of Director.

46. The Director testified that a student who was not responding to the SIT process typically would be referred to the MDT between Tiers 2 and 3, although such decisions are made on a case by case basis. *Id.*

47. The SEC testified that she becomes involved in the SIT process if the SIT strategies are not successful or if the SIT determines that the Student requires evaluation. Testimony of SEC.

48. Based upon all of the record evidence, the undersigned finds that Respondent's staff members have different understandings of when a student who is not responding to the SIT process is referred to the MDT, and whether such a referral ensures that the student will be evaluated for eligibility under IDEA.⁸

⁸ The undersigned has no jurisdiction or authority with regard to Respondent's SIT process as it is applied to students other than the Student in this case, and only with regard to the Student in this case as the SIT process affected Petitioner's IDEA rights.

49. On October 23, 2012, the Student was observed in the classroom by the Director, who observed, *inter alia*, that the Student leaned on his desk without his body in the chair, needed reminders to change stations and get off the computer, did not go straight to the next center, threw “manipulatives” in the air, did not start his activity, took “stuff” away from a peer, was defiant to the teacher (refusing to give dice to the teacher, throwing “it” at the teacher), was out of his seat, and ignored teacher redirection despite many warnings. P-21-1.

50. The SIT met on October 23, 2012. R-12-4 and -5.

51. At the October 23, 2012 SIT meeting, the Parent provided a copy of the February 2, 2012 ISP to Respondent, but she did not provide copies of any evaluations of the Student. Testimony of Director.

52. At the October 23, 2012 meeting, the SIT discussed the Student’s strengths and concerns, “talked a lot about” his behaviors, identified goals and interventions, and put into place a SIT/IST Student Action Plan (“Action Plan”). *Id.*, testimony of Second Grade Teacher.

53. The Second Grade Teacher and her co-teacher (who is a special education teacher) implemented the Action Plan, including engaging the Student as a helper in the classroom. Testimony of Second Grade Teacher.

54. On November 13, 2012, the Director again wrote to “the parent or guardian” of the Student stating that the Student had been referred to the SIT, “[i]n an effort to meet the academic and social needs of your child....” R-7-1.

55. On November 20, 2012, the SIT met again, with Petitioner present. R-12-5, testimony of Director.

56. At the November 20, 2012 meeting, the participants noted that the Student's behavior was improving, especially in the afternoon; however, he still needed frequent breaks, misbehaved when he did not understand, and was having difficulty and becoming frustrated with reading. *Id.*, testimony of Second Grade Teacher.

57. At the November 20, 2012 meeting, Petitioner stated that the Student's doctor had recommended medication about which she was reluctant but would discuss with the doctor again on January 29, 2013. R-12-5 and -6.

58. At the November 20, 2012 meeting, based upon medical information, tests, records and reports, the SIT determined that the Student had a physical or mental impairment and a record of such impairment, and was regarded/perceived as having such an impairment, constituting a disability under Section 504 of the Rehabilitation Act of 1973. P-22-2.

59. At the November 20, 2012 meeting, the SIT determined that the Student was eligible for a "504 Plan" and that his ADHD required "adaptations" in the classroom. *Id.*

60. On November 28, 2012, Respondent completed a "Social History" of the Student, indicating, *inter alia*, that the Student was suspended often at the Prior School for fighting, that he "bangs into" furniture when frustrated, and that when angry he states that he will "burn the house." P-26-3 and -4.

61. Based upon all of the record evidence, the undersigned finds that prior to November 28, 2012, the Student's academic performance and behavior were not sufficiently problematic to put Respondent on notice that the Student might have a disability affecting his academic progress or social-emotional functioning.

62. Based upon all of the record evidence, the undersigned finds that as of November 28, 2012, despite the Student's improving behavior in the afternoons, Respondent had reason to *suspect* that the Student's ADHD adversely affected his academic progress and social-emotional functioning.

63. On December 17, 2012, Respondent suspended the Student for two days for insubordination, specifically, refusing to surrender a toy when directed by his teacher, walking out of class repeatedly, and swinging on a restroom stall door. P-12-1.

64. Just before the December 2012-January 2013 school break, the Second Grade Teacher expressed serious concerns that the Student was not responding to the "504 Plan." Testimony of Director, testimony of Second Grade Teacher.

65. Another SIT meeting was scheduled for the Student for the first day after the winter break, *i.e.*, January 8, 2013. Testimony of Director.

66. The Teacher Comments in the Student's (undated) report card for the second quarter of the 2012-2013 school year included references to his being distracted and distracting other students and concern that his behavior was affecting his academic progress. P-14-2.

67. Prior to the January 8, 2013 SIT meeting, the Director consulted with the Student's social worker at First Home Care Corporation and the social worker's supervisor, and was advised that First Home Care Corporation intended to conduct assessments of the Student. Testimony of Director.

68. The social worker advised the Second Grade Teacher that Petitioner did not want the test results given to Respondent. Testimony of Second Grade Teacher.

69. Respondent determined not to refer the Student for evaluation for eligibility under IDEA because Respondent did not consider it a good idea to have multiple assessments conducted at the same time. Testimony of Director.

70. Upon questioning by the undersigned, the Director testified that she did not recall what assessments First Home Care Corporation intended to conduct. *Id.*

71. On January 8, 2013, the SIT met and determined that the “strategies are no longer working,” that the Student had set fire in the house, that he hid and ran out of the classroom, that he made threats to other students, that he engaged in disruptive behavior, that he had no remorse, that he was failing academically and in danger of being retained, and that he was not permitted to go on field trips without a parent. R-12-6.⁹

72. At the January 8, 2013 meeting the SIT discussed modifications to the interventions that had been developed previously for the Student. Testimony of Second Grade Teacher.

73. After the January 8, 2013 meeting, the Second Grade Teacher implemented modified interventions, including allowing the Student to play games on the computer as an incentive, and “pulling” the Student into small groups when he became frustrated; however, he then distracted the other students. *Id.*

74. On January 29, 2013, the Student received a psychiatric evaluation at Children’s National Medical Center, with the evaluation conducted by Kory Stotesbery, D.O. and Edgardo J. Menvielle, M.D, who diagnosed the Student with ADHD combined type and Learning Disability Not Otherwise Specified (“NOS”) and recommended medication, to which the Parent agreed. P-27-3.

⁹ The meeting notes are dated January 8, 2012, but it is apparent from the context that the year was 2013; in fact, the Student attended Prior School in January 2012.

75. The report of this evaluation was not provided to Respondent until the DPC was filed March 26, 2013 herein. Testimony of SEC.

76. On February 6, 2013, Dr. Stotesbery wrote a letter “To Whom it May Concern” stating that the Student’s behavioral problems could be a function of cognitive difficulties and recommending that the Student be evaluated for eligibility for an IEP. R-13-1.

77. On February 21, 2013, the Director again wrote to “the parent or guardian” of the Student again stating that the Student had been referred to the SIT, “[i]n an effort to meet the academic and social needs of your child” and extending an invitation to a meeting on February 26, 2013. R-11.

78. Petitioner did not attend the February 26, 2013 SIT meeting.¹⁰ Testimony of School Counselor/Social Worker.

79. Based upon all of the record evidence, the undersigned finds that Petitioner was invited to the February 26, 2013 SIT meeting and that she was not prevented from attending by Respondent.

80. On February 26, 2013, the SIT met and discussed that the Student had been found by an outside service to have a learning disability, that he was taking medication only intermittently, that there had been no change in his behavior, that parents of other students had made complaints that he was calling names, that he walked around screaming, that he refused to go to classrooms, that he refused to do any work or follow

¹⁰ In cross-examining the Director, Petitioner’s counsel implied that Petitioner had been “turned away” from the February 26, 2013 SIT meeting. However, Petitioner did not so testify, the Director stated she was not aware of Petitioner being turned away, and there is no other record evidence that Petitioner was precluded from attending this meeting.

directions, that he needed redirection, that he would hide and cry, and that he would refuse extra help. R-12-7.

81. At the February 26, 2013 meeting, the SIT noted that they still were awaiting assessments from First Home Care. Testimony of Director, testimony of Second Grade Teacher.

82. At the February 26, 2013 meeting, the SIT noted that they were waiting for Petitioner's documentation of the Student's ADHD. R-12-7.

83. At the February 26, 2013 meeting, the SIT discussed that the Student's social worker from First Home Care would work with him once per week in the classroom and once per week outside the classroom. Testimony of Second Grade Teacher.

84. The SIT did not discuss the Student's IDEA eligibility at the February 26, 2013 meeting. Testimony of School Counselor/Social Worker.

85. The Second Grade Teacher testified that referral of the Student to the MDT was not discussed at the February 26, 2013 meeting (Testimony of Second Grade Teacher); however, the SEC testified to the contrary (Testimony of SEC) and the notes of the meeting include the following: "Waiting for parent documentation regarding ADHD – refer to MDT" (R-12-7).

86. Based upon all of the record evidence, the undersigned finds that the Student's evaluation or eligibility under IDEA was not discussed at the February 26, 2013 SIT meeting, but the SIT did refer the Student to the MDT for possible (although not certain) evaluation and determination of his eligibility under IDEA.

Facts Related to Events Subsequent to the February 26, 2013 SIT Meeting

87. Petitioner was not present at the February 26, 2013 SIT meeting but came in after the meeting, reviewed the Student Action Plan, and shared that the Student had been taking Ritalin which was helping. R-12-7.

88. On February 26, 2013, after the SIT meeting, the School Counselor/Social Worker asked Petitioner for documentation of the Student's disability, and Petitioner said she would provide it. Testimony of School Counselor/Social Worker.

89. On March 12, 2013, Respondent sent Petitioner a form entitled "Analysis of Existing Data" (P-17) indicating, *inter alia*, that the Student's behavior "impacts his ability to grow academically. He has been diagnosed with ADHD. A 504 plan has been developed, however, his ADHD is currently significantly impacting his academic performance" (P-17-2). The form also noted that the Student "[f]requently calls out, uses inappropriate language, out of seat ... has a very difficulty (sic) time controlling his behavior, when defiant he is very disruptive to the class." P-17-2 and -3, testimony of SEC.

90. Attached to the "Analysis of Existing Data" form was a Prior Written Notice ("PWN") proposing to conduct an evaluation of the Student, specifically to determine whether the Student's ADHD was affecting his academic performance. P-16.

91. Based upon all of the record evidence, the undersigned finds that Respondent initiated evaluation of the Student on March 12, 2012.

92. Also enclosed with the PWN was a form for Petitioner to consent to the evaluation of the Student, which Petitioner signed and returned on March 13, 2013. Testimony of SEC.

93. On the Consent for Initial Evaluation/ Reevaluation Form that Petitioner signed March 13, 2013, she checked neither the box indicating that she was giving consent, nor the box indicating that she was not giving consent. P-9-1.

94. Respondent subsequently ordered various assessments¹¹ of the Student. *Id.*

95. Based upon all of the record evidence, the undersigned finds that the Student's evaluation and eligibility determination that Respondent initiated on March 12, 2013, could not have been completed by March 28, 2013.

96. On March 22, 2013, Respondent suspended the Student for three days for insubordination, specifically, repeatedly pushing a student who was using the restroom and throwing water on that student, repeatedly running out of a room where he had been directed to stay, making a verbal threat to "smack" the student, throwing chairs, and walking out of a classroom without permission. P-13-1.

97. At the Resolution Session Meeting held April 15, 2013, Respondent asked Petitioner for any evaluations she had of the Student, to which Petitioner responded that the doctors had told her she was not required to give Respondent the evaluations.

Testimony of SEC.

98. As of the date of the DPH, May 13, 2013, some of the evaluations ordered by Respondent had not been completed (*Id.*) reinforcing the finding by the undersigned (Finding of Fact 95, *supra*) that the evaluations could not have been completed by March 28, 2013.

¹¹ Witnesses and counsel used the terms "assessment" and "evaluation" interchangeably at the DPH. The difference is not material to deciding the issues in the case.

Facts Related to Petitioner's Compensatory Education Plan

99. Petitioner's Compensatory Education Plan (the "Plan") states that the Student should receive two hours per week of independent one-on-one tutoring for 20 weeks and one hour per week of independent behavioral support services for 20 weeks. P-31-2.

100. The Plan does not identify (a) what specialized instruction or related services Petitioner asserts the Student should have received if he had been timely evaluated and found eligible, (b) the Student's educational deficits resulting from failure to receive that instruction or services, or (c) how the proposed tutoring and behavioral support services will remediate those deficits. *See*, P-31.

101. Ms. Long testified that in her expert opinion the Plan was appropriate.

Testimony of Mia Long.

102. Upon questioning by the undersigned, Ms. Long maintained her opinion that the Plan was appropriate, even when it was brought to her attention that the Plan assumed the Student should have received specialized instruction and related services from the beginning of the 2012-2013 school year (P-31), whereas Petitioner acknowledged that Respondent had 120 days to make an eligibility determination (Testimony of Mia Long).

103. Upon further questioning by the undersigned, Ms. Long testified that even if Respondent's obligation to provide specialized instruction and related services did not begin until February, 2013—resulting in "18 weeks of harm"—the compensatory education recommended in the Plan that was based on five additional months of "harm" was appropriate. Testimony of Mia Long.

104. Upon cross-examination, Ms. Long admitted that the Student's deficits might not be based upon specialized education and related services that he "missed." *Id.*

105. Ms. Long did not participate in any meetings concerning the Student, did not communicate with Respondent about the Student until a week before the DPH, and did not observe the Student until after the DPC was filed. *Id.*

106. Based upon all of the record evidence, the undersigned finds that the Plan is unrelated to any harm the Student may have suffered from Respondent's delay in providing any specialized instruction or related services that the Student would have been entitled to receive if eligible under IDEA.

VII. BURDEN OF PROOF

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

VIII. CREDIBILITY

The undersigned found all of the witnesses to be credible, to the extent of their first hand knowledge or professional expertise, with the following exceptions:

The Parent's vague testimony that she told the Second Grade Teacher in August 2012 that she wanted the Student to be evaluated for eligibility for special education services, and that the Student needed those services, was not credible in view of the fact that the school year did not begin until the first week of September (Findings of Fact 5 and 7), and in view of the Second Grade Teacher's detailed and entirely credible

testimony that the Parent never made a request to her for special education services or evaluation (Finding of Fact 5).

The Parent's testimony that the Director told her the Student was in danger of being retained in Second Grade (Finding of Fact 24) was not credible in view of the Director's testimony that she was unaware of the Student being at risk of retention (Finding of Fact 25).

Ms. Long's testimony that the proposed compensatory education plan (the "Plan") was appropriate to remediate the Student's harm was not credible for the following reasons: (a) Even accepting Petitioner's testimony that she requested evaluation at the beginning of the school year, Respondent had 120 days to evaluate the Student and determine his eligibility, and some time thereafter to develop his initial IEP, so that he would not have received specialized instruction or related services until the second semester of the 2012-2013 school year beginning January 8, 2013. (b) The Plan was designed to remediate Respondent's failure to provide specialized instruction and related services to the Student from the beginning of the school year in September 2012 (Finding of Fact 102). (c) Ms. Long's testimony that she would recommend the same compensatory education even if the Student was not entitled to specialized instruction and related services until January 2013 (Finding of Fact 103) is inconsistent with the principles of compensatory education as discussed in Section IX *infra*—principles that Ms. Long recited in her testimony. In short, the undersigned finds that Ms. Long's testimony that the hours of instruction and services in the Plan are appropriate regardless of the time period of alleged educational deficit to be remediated was a *post hoc* rationalization and not at all credible.

IX. CONCLUSIONS OF LAW

Purpose of the IDEA

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

Child Find

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

3. Response-to-Intervention (“RTI”), *i.e.*, determining whether a child who is underachieving responds to scientific, research-based interventions, can be utilized to determine whether a child has a Specific Learning Disability (“SLD”) under IDEA. 34 C.F.R. § 300.309(a)(2)(i).

4. RTI is not intended as a method of determining whether a child has a disability other than an SLD. 34 C.F.R. § 300.309.¹²

5. With exceptions not relevant to the instant case, the use of RTI does not relieve a public agency, such as Respondent, from its obligation to “promptly request parental consent to evaluate the child to determine if the child needs special education and related services.” 34 C.F.R. § 300.309(c).

6. With exceptions not relevant to the instant case, use of RTI does not relieve a public agency, such as Respondent, from the timelines for initial evaluations in 34 C.F.R. § 300.301. 34 C.F.R. § 300.309(c).

7. A public agency, in conducting an evaluation, must use “a variety of assessment tools and strategies to gather functional, developmental, and academic

¹² Respondent’s written closing argument asserts to the contrary: “While not specifically mandated, the use of RTI, or an RTI-type process in the evaluation of other disabilities is certainly allowable. See Letter to Zirkel at 3 (‘the IDEA statute and regulations do not preclude or prohibit an LEA [*i.e.*, a Local Educational Agency] from using data gathered through an RTI process or model in the identification of other disabilities’).” Respondent did not provide a citation to this Letter to Zirkel, which is one of many letters from the Director of the U.S. Department of Education Office of Special Education Programs responding to inquiries from Perry A. Zirkel, a professor at Lehigh University. The letter from which the above quote was taken is dated January 6, 2011, and is published at 56 IDELR 140 and 111 LRP 2768. When read in its entirety, the letter largely undercuts Respondent’s argument. After the statement quoted above, the letter goes on to say that “it would be inappropriate to assume . . . that [the RTI] process extends to other classifications more closely connected to behavior.” While an LEA must consider any data it has obtained on a child through the RTI process when evaluating the child for non-SLD disabilities, this Letter to Zirkel does not stand for the proposition that RTI is *an appropriate first step* in evaluating whether a child has a non-SLD disability. Similarly, the authorities cited by Respondent supporting the use of RTI and associated federal funding to provide behavioral interventions to *nondisabled* children simply do not support the use of RTI to *evaluate non-SLD* disabilities. Finally, the publications of the District of Columbia Office of the State Superintendent of Education (“OSSE”) and various LEAs cited by Respondent are not legal authorities. In any event, as discussed *infra*, regardless of the child’s suspected disability, an LEA is required to use a variety of assessment tools and an LEA’s use of RTI neither excuses nor extends the time period for evaluation and eligibility determination.

functioning about the child” and must not “use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability ...” 34 C.F.R. § 300.304(b)(1).

8. The fact that a child has not failed or been retained in a course or grade, and is advancing from grade to grade does not mean that the child is not entitled to a FAPE. 34 C.F.R. § 300.101(c)(1).

9. The undersigned concludes that Respondent’s use of the SIT, which is Respondent’s version of RTI, however well-intentioned, did not relieve Respondent of its obligations (a) to evaluate the Student for other IDEA disabilities, such as Other Health Impairment, including ADHD; (b) to use a variety of assessment tools; and (c) to complete the evaluation within the timeline established by IDEA and its implementing regulations.

10. Prior to November 28, 2012, Respondent was not on notice of substantial evidence that the Student may have qualified for special education such that he should have been evaluated. Finding of Fact 61. Despite a diagnosis of ADHD, some academic deficits and behavior problems resulting in one suspension, the Student was making academic progress and his behavior was improving in the afternoons. Finding of Fact 56.

11. However, the Social History completed on November 28, 2012 revealed the Student’s longstanding and serious behavior issues that put Respondent on notice that the Student likely had a disability adversely affecting his ability to access the general education curriculum and interfering with his social-emotional development. Findings of Fact 60 and 61.

12. In these circumstances, the undersigned concludes that Respondent's "child find" obligations were triggered on November 28, 2012.¹³ *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 17 n.3 (D.D.C. 2008) and *Clay T. v. Walton County Sch. District*, 952 F. Supp. 817 (M.D. Ga. 1997).

Evaluation

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

14. The District of Columbia, which is a State for purposes of IDEA (20 U.S.C. § 1401(31)), has established its own timeframe. Under DC ST § 38-2561.02(a), "DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment." The 120 days runs from referral, not consent.

15. In the instant case, the undersigned has found that as of November 28, 2012, Respondent had reason to suspect that the Student had a disability affecting his ability to access the general education curriculum. Finding of Fact 62. Accordingly, the

¹³ Even if Respondent should have initiated an evaluation of the Student prior to November 28, 2012, as discussed *infra* Petitioner has not established by a preponderance of the evidence that the Student is eligible for special education and related services; accordingly, Petitioner has not established that the Student was denied a FAPE and no remedy is warranted. 20 U.S.C. § 1414(f)(3)(E)(ii). *See also*, 34 C.F.R. § 300.513(a). *Accord, Lesesne v. District of Columbia*, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. 2006) ("*Lesesne*"); *but see, G.G.v. District of Columbia*, ___ F. Supp. 3d ___. 13 LRP 7373 (D.D.C. 2013) ("*GG*").

undersigned concludes that Respondent should have initiated evaluation of the Student on that date, and should have concluded that evaluation no later than March 28, 2013.

16. The undersigned found that Respondent initiated evaluation of the Student on March 12, 2013 (Finding of Fact 91) and that it was not possible for the evaluation to be completed by March 28, 2013 (Finding of Fact 94).¹⁴ The undersigned therefore concludes that Respondent violated its “child find” obligations by initiating the Student’s evaluation so far into the 120-day period as to preclude timely completion of the evaluation.

Eligibility Determination

17. Once a child has been evaluated,

a group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (c) of this section and the educational needs of the child

34 C.F.R. §300.306(a)(1).

18. There is no statutory or regulatory time limit on the school district making an eligibility determination. However, the U.S. District Court for the District of Columbia has interpreted the 120-day period for evaluation as the period for evaluation and determination of eligibility. *D.L. v. District of Columbia*, 111 LRP 71487 (05-1437 (RCL), November 16, 2011), at paragraph 40. In the instant case, the 120-day period ended March 28, 2013 and the undersigned concludes that Respondent should have determined the Student’s eligibility no later than that date. Accordingly, the undersigned

¹⁴ The fact that the 120-day period had two more days to run when the DPC was filed does not render the DPC premature because Respondent subsequently failed to complete the evaluation by the 120th day. *GG, supra*.

concludes that Respondent violated its “child find” obligations by initiating the Student’s evaluation so far into the 120-day period as to preclude a timely eligibility determination.

Procedural Violations

19. A parent may file a DPC over an LEA’s procedural violations of IDEA.

However, a procedural violation does not necessarily equate to a denial of FAPE. Rather, a hearing officer’s determination of whether a child received a FAPE must be based on substantive grounds:

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies -

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

20 U.S.C. § 1414(f)(3)(E)(ii). *See also*, 34 C.F.R. § 300.513(a). *Accord, Lesesne, supra; but see, GG, supra.*

20. FAPE means:

special education and related services that –

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

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

21. In the instant case, because the Student has not yet been found eligible for specialized instruction and related services, it would be speculative to conclude that he was denied a FAPE.¹⁵

22. Based upon the entire record, the undersigned concludes that Respondent's failure timely to evaluate the Student and determine his eligibility constituted procedural violations of IDEA but not denials of FAPE.

Compensatory Education

23. Under the IDEA, a Hearing Officer has broad discretion to determine appropriate relief, based upon a fact-specific analysis. *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005) ("*Reid*"). That relief may include compensatory award of prospective services *if there has been a denial of FAPE*:

When a school district denies a disabled child of free appropriate education in violation of the Individuals with Disabilities Education Act, a court fashioning "appropriate" relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place.

Id.

24. In the instant case, the undersigned has found no denial of FAPE; accordingly, the undersigned concludes that an award of compensatory education is not justified.

¹⁵ A contrary holding of the U.S. District Court for the District of Columbia, *G.G., supra*, is inconsistent with the general line of authority that only children who have been found eligible under IDEA are entitled to a FAPE.

25. Even if Respondent had denied the Student a FAPE, Petitioner's compensatory education plan is not justified for the reasons set forth *infra*.

26. In all cases, an order of relief must be evidence-based. *Branham v. District of Columbia*, 427 F.3d 7 (D.C. Cir. 2005). Educational programs, including compensatory education, must be qualitative, fact-intensive, and "above all tailored to the unique needs of the disabled student." *Id.*

27. Mechanical calculation of the number of hours of compensatory education (a "cookie-cutter approach") is not permissible. *Reid, supra*. Rather, compensatory awards "should aim to place disabled children in the same position they would have occupied but for the school district's violation of IDEA." *Id.* Awards compensating past violations must "rely on individual assessments." *Id.*

Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.

Id.

28. A Hearing Officer must base a compensatory education award on evidence regarding the student's "specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 206-207 (D.D.C. 2010) (citing *Brown v. District of Columbia*, 568 F. Supp. 2d 44, 53-54 (D.D.C. 2008) (internal quotation marks omitted).

29. "In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the

educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Id.*

30. When a parent’s request for compensatory education is “untethered” to the student’s “educational deficit or to the necessary and reasonable education reasonably calculated to elevate [the student] to the approximate position he would have enjoyed had he not suffered the denial of FAPE” the Hearing Officer cannot award compensatory education. *Gill v. District of Columbia*, 751 F. Supp. 3d 104, 44 IDELR 191 (D.D.C. 2010) (“*Gill*”).

31. Because the record in the instant case is devoid of evidence that would allow the undersigned to craft an order of compensatory education that would be “specifically and individually tailored to the student to compensate the student for the [alleged] educational lapse suffered in violation of the [IDEA]” (*Gill, supra*), the undersigned concludes that even if Respondent had denied the Student a FAPE by the delay in evaluating him and determining his eligibility, no compensatory education award should be granted (*See, Phillips v. District of Columbia*, 736 F. Supp. 2d 240 (2010)).¹⁶

Summary

32. Respondent violated IDEA by failing to evaluate the Student timely under IDEA’s “Child Find” provisions because the Student’s behavior as of November 28, 2012, together with Respondent’s knowledge of his ADHD diagnosis and his social history put Respondent on notice that the Student likely had a disability affecting his

¹⁶ Moreover, it is speculative to assume that the academic and behavioral support services the Student would have received under his IEP if timely evaluated and found eligible would have been different or superior to the services he received in the SIT process.

academic progress and/or social-emotional functioning, triggering the 120-day period for Respondent to evaluate the Student that expired March 28, 2013.

33. Respondent did not violate IDEA by failing to complete an initial evaluation within 120 days of the Parent's request in August 2012 because no such request was received by Respondent.

34. Respondent did not violate IDEA by failing to consider the outside evaluations and/or assessments provided to Respondent by the Parent because the Parent did not provide any evaluations or assessments to Respondent until the DPC was filed; moreover, Petitioner refused to provide some evaluations and/or assessments to Respondent.

35. Respondent violated IDEA by failing to determine the Student's eligibility in a timely manner because the time period for determining eligibility expired March 28, 2013.

36. Respondent did not violate IDEA by failing to invite the Parent to a meeting in February 2013 where the Student's "504 Plan" was revised because the Parent was invited, she was not precluded by Respondent from attending, and in any event that meeting did not involve any discussion of the Student's evaluation or IDEA eligibility.

X. ORDER

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

1. No later than June 5, 2013, Respondent shall complete its evaluation(s) of the Student and provide Petitioner with copies of all assessments and evaluations via U.S. mail, facsimile or email.

2. No later than June 12, 2013, Petitioner shall notify Respondent's Special Education Coordinator, via facsimile or email, whether Petitioner (a) agrees with all of Respondent's evaluations and assessments, (b) agrees with some but not all of Respondent's evaluations and assessments (specifying which ones Petitioner agrees with and which ones Petitioner does not agree with), or (c) disagrees with all of Respondent's evaluations and assessments.

3. If Petitioner notifies Respondent that Petitioner disagrees with any or all of Respondent's evaluations and/or assessments, then, no later than five calendar days after receiving Petitioner's notification, Respondent shall authorize Petitioner to obtain independent educational evaluation(s) ("IEEs") at public expense coextensive with Respondent's evaluations and/or assessments with which Petitioner has expressed disagreement. For example, if Petitioner disagrees with Respondent's comprehensive psychological evaluation (assuming that is one of the evaluations that Respondent has conducted), Respondent shall authorize an IEE for a comprehensive psychological evaluation. The criteria under which any such IEE is to be obtained, including the location of the evaluation and the qualifications of the examiner must be the same as the criteria that Respondent uses when it initiates an evaluation, and Respondent may not

impose additional conditions or timelines on obtaining the IEE. Because this Order is a remedy for Respondent's past violation of its obligations under IDEA, Respondent may not avoid authorizing IEE(s) required by this Order by filing a Due Process Complaint asserting that its evaluations and/or assessments are appropriate.

4. If the evaluations and assessments provided to Petitioner pursuant to Paragraph 1 of this Order do not include a comprehensive psychological evaluation, a social history, and a functional behavioral assessment, Petitioner may request an IEE for any or all of those, with the request and Respondent's authorization to follow the procedures specified in paragraph 3 of this Order.

5. Within 15 calendar days of receiving Petitioner's notice under Paragraph 2(a) above, or the last of the reports from the IEE(s) issued under Paragraph 3 and/or 4 above, Respondent shall convene a meeting of the Student's Multi-Disciplinary Team ("MDT") or Individualized Education Program Team ("IEP" Team) with all necessary members, including Petitioner. Petitioner shall respond to any scheduling request no later than the business day after receiving the request. At the meeting, the MDT or IEP Team shall (a) review the results of Respondent's evaluations and assessments, the results of any IEEs, and any other evaluations and assessments that may have been provided; (b) review any other updated information regarding the Student's performance, behavior, discipline, and known or suspected disabilities; (c) determine the Student's eligibility for specialized instruction and related services and (d) if the Student is determined to be eligible, develop the Student's Individualized Educational Program ("IEP") and discuss and determine an appropriate educational placement and/or location of services that can meet the Student's needs. If the time period for the meeting occurs during Respondent's summer break, and

any required participants are unavailable because they are on pre-approved vacations or are employed on contracts that do not include the summer break, Respondent shall promptly advise Petitioner of the unavailability of those participants and of their first dates of availability. In that case, the meeting will proceed without those participants unless Petitioner requests a postponement of the meeting until those participants are available, with such request to be made via facsimile or email, to Respondent's Special Education Coordinator, no later than the business day after Petitioner receives notice of the participants' unavailability.

6. All written communications from Respondent to Petitioner concerning the above matters shall include copies to Petitioner's counsel by facsimile or email.

7. All written communications from Petitioner to Respondent concerning the above matters shall include copies to Respondent's counsel by facsimile or email unless and until Respondent's counsel advises Petitioner's counsel by facsimile or email that such copies are not required.

8. Any delay caused by Petitioner or Petitioner's representatives (*e.g.*, absence or failure to attend a meeting, or failure to respond to scheduling requests within one business day) shall extend Respondent's deadlines under this Order by the same number of days.

9. Petitioner's other requests for relief are DENIED.

Dated this 22nd day of May, 2013.



Charles Carron
Impartial Hearing Officer

NOTICE OF APPEAL RIGHTS

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