

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

Petitioners,

Hearing Officer: Kimm Massey, Esq.

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

OSSE
Student Hearing Office
November 18, 2013

HEARING OFFICER DETERMINATION

**BACKGROUND AND
PROCEDURAL HISTORY¹**

Student presently attends a daycare facility located in the District of Columbia. On September 3, 2013, Petitioner filed a Complaint against Respondent District of Columbia Public Schools. On September 12, 2013, DCPS filed its Response to the Complaint.

The parties did not participate in a resolution session for this matter. The 45-day period for this case began on October 4, 2013 and will end on November 17, 2013, which is the HOD deadline.

On October 21, 2013, the hearing officer conducted a prehearing conference and determined, in a October 25, 2013 Prehearing Order, that the claims to be adjudicated, defenses asserted, and relief requested were as follows: ***Petitioner's Claims:*** (i) Alleged development of an inappropriate IEP in May 2013, with Petitioner contending that the IEP fails to offer appropriate related services in the areas of occupational therapy ("OT"), speech/language and behavioral support and a 1-to-1 aide, and fails to offer appropriate specialized instruction and individualized classroom support/accommodations; (ii) Alleged inappropriate classification as developmentally delayed instead of autistic (**Note:** The hearing officer advised that this is really an IEP/programming issue that should be merged with Claim #1 because classification does not drive services so the issue is whether Student is receiving appropriate programming in the IEP; however, Petitioner's counsel strenuously disagreed and agreed to provide statutory, regulatory and/or case law support demonstrating that this is a separate cognizable claim.); (iii) Alleged denial of FAPE by failing to offer placement in a full-time program that provides full-time special education services in a small class setting with specially trained teachers, as the proposed location of services is inappropriate because it is a general education setting with only limited OT and speech therapy, and no behavioral support, accommodations or 1-to-1 aide; and (iv) Alleged denial of FAPE by failing to take into account the conclusions, recommendations and other information in Student's independent evaluations, including the need for a comprehensive hearing assessment and FBA. ***DCPS Defenses:*** (i) DCPS convened a full IEP team on 5/21/13 and reviewed three independent assessments, multiple assessments of its own, including a

¹ This section sets forth only the basic procedural history. Other events, including motions practice, may have taken place that are not listed here.

5/17/13 psychological assessment, a 5/20/13 speech and language assessment which included a hearing screening, and a 4/23/13 educational assessment, and found Student eligible for special education services as developmentally disabled prior to drafting an IEP; (ii) DCPS was not required to blindly accept the full recommendations presented by a team of independent, non-school-based evaluators, but the evaluations were considered and that is the extent of DCPS's obligation; (iii) DCPS fully complied with the initial eligibility requirements set forth in 34 C.F.R. § 300.304-306; (iv) Petitioner's Complaint does not allege any actual harm to Student due to the current IEP, beside an assertion that he will "likely regress" if he continues not to attend preschool; DCPS has offered Student a FAPE at the proposed DCPS school and made it clear that Student is welcome to enroll and attend at any time for implementation of his IEP; (v) DCPS is not bound by the independent evaluators' recommendations for additional evaluations (a comprehensive hearing evaluation and an FBA) where it has determined that no additional data is necessary; (vi) DCPS conducted its own speech and language assessment that included a hearing screening prior to the eligibility meeting; and (vii) An FBA requires multiple classroom observations; should Student begin attending school and presenting with behavioral challenges in the classroom, it would be appropriate for DCPS to consider conducting an FBA. **Relief Requested:** (i) A meeting to develop an IEP that provides full-time out of general education special education services and classifies Student as autistic, and provides for small class sizes, a 1-1 aide, appropriate OT, speech therapy and behavioral support, and teachers trained to work with autistic students; (ii) Immediate funding and placement for Student at an appropriate program proposed by Parent, with transportation and all related services; (iii) A 30-day review meeting that includes a BIP based on the FBA requested below, if warranted, and review of the comprehensive hearing evaluation from below if warranted; (iv) funding of an independent FBA; (v) an independent comprehensive hearing evaluation with an evaluator chosen by Parent and a meeting to review same if not completed by the 30-day meeting requested above; and (vi) compensatory education consisting of social skills training and academic tutoring, with Petitioner to provide the proposed plan to DCPS with its 5-day disclosure.

By their respective letters dated October 29, 2013, Petitioner disclosed twenty-two documents (Petitioner's Exhibits 1-22) and DCPS disclosed eighteen documents (Respondent's Exhibits 1-18).

The hearing officer convened the due process hearing on November 5, 2013, as scheduled.² All documents disclosed by both parties were admitted into the record without objection. As a preliminary matter, Petitioner advised that after counsel's review of IDEA, Petitioner did not plan to proceed with its inappropriate classification claim as a separate claim. Thereafter, the hearing officer received opening statements, during which Petitioner advised that as Parent had been unable to obtain an acceptance at a private school for Student, Petitioner was not seeking a private placement but was instead seeking a meeting to include assignment of a location of services with teachers experienced working with very young children with autism. The hearing officer then received Petitioner's testimonial evidence and a portion of DCPS's testimonial evidence before adjourning for the day.

The hearing officer reconvened the due process hearing on November 6, 2013 to allow DCPS an opportunity to finish presenting its case. After the conclusion of DCPS's testimonial evidence, the hearing officer received closing statements and brought the hearing to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C.

² Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

§§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

ISSUE(S)

1. Did DCPS develop an inappropriate IEP in May 2013?
2. Did DCPS deny Student a FAPE by failing to offer placement in a full-time program that offers full-time special education services in a small class setting with specially trained teachers because the proposed DCPS school is inappropriate?
3. Did DCPS deny Student a FAPE by failing to take into account recommendations and other information in Student’s independent evaluations?

FINDINGS OF FACT³

1. Student _____ presently attends a daycare located in the District of Columbia. There is a mix of disabled and nondisabled children in the daycare.⁴
2. Student’s speech was delayed, in that he did not begin speaking until he was two years old.⁵
3. Student began at the daycare in September 2012, and the staff at the facility became concerned about Student the very first day because he cried all day long and for every transition and was inconsolable.⁶
4. During his first year at the daycare, school year (“SY”) 2012/13, Student’s class consisted of 19-20 children with four teachers. Student struggled in that classroom. He got overexcited and overstimulated; he was hitting and pushing, and tackling other children. At the start of the current school year, SY 2013/14, there were 8-9 children and four teachers in Student’s class, and Student did much better than in the previous year in that he was following directions and was not cursing or hitting, but he still could not carry on a conversation or answer questions. However, the week before the due process hearing for this case the daycare added 4 more children to the class and Student became overexcited again and began hitting, pushing, running around, and tried to run out the door twice.⁷
5. During his tenure at the daycare, Student has demonstrated very limited communication abilities, which include very segmented and compartmentalized language, difficulty communicating in a reciprocal contingent manner, and difficulty connecting communication needs within the context of a variety of activities. He has also

³ To the extent that the hearing officer has declined to base a finding of fact on a witness’s testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer’s determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁴ See Complaint at 5; testimony of clinical psychologist.

⁵ See Petitioner’s Exhibit 3 at 1; Petitioner’s Exhibit 5 at 2.

⁶ Testimony of clinical psychologist.

⁷ Testimony of clinical psychologist.

demonstrated very rigid play patterns and significant sensory needs consisting of a lack of body awareness, lack of social navigation, and he needs excessive movement to maintain his attention, which impedes his natural routine and ability to participate in the classroom. He has been difficult to manage through the routines of the classroom, and he has been unsafe for himself and others in terms of climbing on things, jumping on tables, running out of the room, throwing items and aggressive behavior with others. Moreover, Student is easily overstimulated by environmental noise and movement, and it is difficult for him to filter out environmental stimulation to focus on instruction.⁸

6. Student has received two sets of evaluations. The first set of evaluations was conducted in November to December of 2012 by the independent professionals who work with Student at the daycare pursuant to contract. The second set of evaluations was conducted in April to May of 2013 by DCPS's eligibility team members who have had only limited contact with Student.
7. Student's November 2012 cognitive evaluation was conducted by the clinical psychologist who works with Student at the daycare. The examiner noted, *inter alia*, that Student is very difficult to understand, it is sometimes hard for him to generate requests, he uses physical communication, his language and play are unusually repetitive, his social interaction and play skills are very delayed, and he points to communicate. The evaluator attempted to measure Student's thinking and problem solving skills with the Differential Ability Scales-Second Edition ("DAS-II"). Student's Verbal Cluster Standard Score was at the 1st percentile, which indicates that he showed significant delays in both the understanding of language and in the ability to explain his thoughts in words. The evaluator was unable to assess Student's nonverbal reasoning because Student did not understand the directions given and his focus on repetitive behaviors interfered with task completion. The evaluator then administered the Bayley Scales of Infant and Toddler Development-Third Edition ("Bayley III"), but at 43 months old Student was one month over the maximum age for this assessment. In any event, Student's overall score on the Bayley III was equivalent to the score of a typically developing child of 27 months. Ultimately, the evaluator concluded that Student's profile is suggestive of an Autism Spectrum Disorder, but the diagnosis could not be confirmed until the completion of other testing. The evaluator recommended a full-time placement for Student that offers at least 25 hours of instruction designed specifically to help children with his profile, as well as a small class of 6-9 students with 3 adults, intensive evidence-based classroom intervention for children with delays in social communication, social interaction, communication and play, speech/language and OT services, and a visual communication approach. This recommendation is based on the National Research Council's recommendation for children with autism, but the evaluator would recommend a small class size for Student even if he was determined not to have autism because Student has already demonstrated that he does not function well in a regular classroom. The evaluator also recommended that Student's hearing be fully evaluated if that had not already been done, which is a standard recommendation for children suspected of having autism because hearing problems can interfere with the child's social interaction and make them appear to have social interaction deficits that are actually hearing based.⁹
8. In a May 2013 Addendum to Student's November 2012 cognitive evaluation the clinical psychologist who works with Student at the daycare administered the Autism Diagnostic

⁸ Testimony of non-DCPS occupational therapist; testimony of non-DCPS speech/language therapist.

⁹ Petitioner's Exhibit 3; testimony of clinical psychologist.

Observation Schedule-2 (“ADOS-2”), Module 2. The evaluator diagnosed “Autism Spectrum Disorder (Likely to be High Functioning),” which was a clinical diagnosis based on the DSM-IV, not IDEA. Student showed emerging skills on the assessment, but he also showed repetitive behavior, they couldn’t get into conversation with Student, and he wasn’t socially engaging and just focused on his own behavior.¹⁰

9. Best practices for diagnosing autism is to use the ADOS, as well as another autism assessment. The ADOS should not be used alone because it is very subjective, as it is play-based. Other rating scales are more standardized and allow comparisons of the child’s behavior against the behavior of another typically functioning child.¹¹
10. Student’s December 2012 “Brief Occupational Therapy Evaluation Summary” was prepared by the senior occupational therapist who works with Student at the daycare. Based on Student’s performance on the Sensory Processing Measure--Pre School and observations of Student, the evaluator concluded that Student presents with significant sensory processing challenges, as he is unable to engage in structured standardized motor testing, his behavior often deteriorates with transitions and his responses do not tend to match the nature and intensity of the situation, and his ability to respond to and use the range of sensory information typically found in his school environment is poor. The evaluator attempted to administer the Peabody Developmental Motor Scales—Fine Motor Scale, but Student was not able to participate in the test items in a standardized way due to poor ability to make transitions, follow verbal directions, or wait for demonstrations. Ultimately, the evaluator recommended, *inter alia*, direct OT services for 60 minutes per week.¹²
11. Student’s December 2012 speech and language evaluation as conducted by the speech-language pathologist who works with Student at the daycare. The evaluation took place over multiple sittings due to Student’s ability to cooperate. Ultimately, the evaluator concluded that Student’s language is significantly globally impaired, and the evaluator recommended speech and language therapy for 1 hour per week, using a multi-sensory approach, to address global language delays.¹³
12. Student’s April 23, 2013 educational evaluation was conducted by DCPS. The evaluator observed Student for approximately 1 hour at DCPS’s evaluation center “in a controlled environment with limited distractions and/or interruptions,” where the evaluator did not see Student interact with his peers. Student did not display any disruptive, non-compliant behaviors in that setting, but as the material became more challenging, Student playfully refused to complete the specific task. Nevertheless, the evaluator opined that the assessment results are valid and a good estimate of Student’s abilities. The evaluator administered the Batelle Developmental Inventory, 2nd Edition (“BDI-2”), and Student’s performance thereon resulted in total Developmental Quotients in the Average range in the Adaptive and Personal-Social domains, but a total Developmental Quotient in the Low Average range in the Cognitive domain. Ultimately, the evaluator concluded that Student does not appear to require specialized instruction in the tested domains. The evaluator recommended, *inter alia*, a highly structured classroom with clear and high expectations and a visual schedule, minimized distractions, and preferential seating.¹⁴

¹⁰ Petitioner’s Exhibit 6.

¹¹ Testimony of DCPS school psychologist.

¹² Petitioner’s Exhibit 4.

¹³ Petitioner’s Exhibit 5.

¹⁴ Respondent’s Exhibit 3; Petitioner’s Exhibit 7; testimony of DCPS evaluation coordinator.

13. Student's April 23, 2013 speech and language evaluation was conducted by DCPS. This evaluator observed Student at the DCPS evaluation facility with other evaluators. This evaluator never observed Student in his classroom at the daycare and there were no other children in the room when the evaluator observed Student at the DCPS evaluation facility for a total of approximately 30 minutes. As language testing had been done within a year, the evaluator performed an articulation test only – the Clinical Assessment of Articulation and Phonology (“CAAP”). The evaluator noted that on Student's previous otoacoustic emission testing analyzing the function of the inner ear, the results were within the normal limits for the left ear only but Student was reported to have an ear infection in both ears on the date of the testing. Student's performance on the CAAP resulted in a standard score of less than 55, which corresponds to a percentile rank of less than 1 and indicates a severe articulation disorder.¹⁵
14. On April 23, 2013, a DCPS occupational therapist conducted an “Independent Assessment Review” of Student's December 2012 OT evaluation conducted at the daycare and “waived” a DCPS assessment. Instead, the evaluator interviewed Parent and observed Student at the DCPS evaluation facility for approximately 45 minutes, and relied on the school psychologist's observation of Student at the daycare. At least one other clinician was present during the observation at the DCPS evaluation facility, but no other children were present.¹⁶
15. On April 23, 2014, DCPS also prepared an Evaluation Summary Report that included a review of all of Student's assessments that were conducted by DCPS and at the daycare, as well as a review of Student's September 2012 Questionnaire, which is a screening tool that was used to assess Student's development when compared to age appropriate milestones.¹⁷
16. Student's May 10, 2013 psychological evaluation was conducted by DCPS. This evaluator observed Student at the DCPS evaluation facility for approximately 40 minutes without any other children present, and for approximately 1.5 hours at the daycare with his classmates. The evaluation report specifically states that “[d]uring the behavioral observation, there were not any behaviors characteristics of autism spectrum disorder observed. However, the evaluator notes that during the daycare evaluation Student cursed several times, refused to transition from circle time to small groups and instead began walking around the classroom and throwing items on the floor and refusing to pick them up. Moreover, although Student traveled with the evaluator to a different room for testing and participated when the evaluator read Student's favorite book to him, Student refused to participate in a cognitive assessment and began engaging in disruptive behavior again to the extent that the evaluator was unable to proceed. Hence, the only assessment data included in the evaluation report is based on behavioral rating scales completed by Student's teacher. Ultimately, the evaluator concluded that Student does not meet the eligibility criteria for autism spectrum disorder, but he does meet the criteria for developmental delay in the area of cognitive development and social or emotional development. The evaluator recommended an FBA and BIP to address Student's

¹⁵ Respondent's Exhibit 6; Petitioner's Exhibit 8; testimony of DCPS speech/language pathologist.

¹⁶ Respondent's Exhibit 4; Petitioner's Exhibit 10; testimony of DCPS occupational therapist.

¹⁷ Respondent's Exhibit 7.

disruptive behaviors, a highly structured classroom, seating away from distractions, and that teachers begin transitioning Student earlier than the rest of the class.¹⁸

17. On May 21, 2013, DCPS convened an eligibility meeting for Student. Participants included Parent, the DCPS evaluators and coordinators, and a school representative from the daycare. During the evaluation review phase of the meeting, Student's independent OT evaluation was reviewed, the DCPS occupational therapist agreed with the findings therein, and OT services were recommended. The team reviewed DCPS's speech/language evaluation and determined that Student's pragmatic skills are age appropriate, although the DCPS occupational therapist relied upon the findings in Student's independent OT evaluation regarding Student's expressive, receptive and articulation language delay. The team also reviewed Student's DCPS psychological evaluation, as well as his psychological evaluation and addendum conducted at the daycare. Finally, the team reviewed Student's DCPS educational evaluation. Ultimately, the team determined that Student qualifies for special education and related services with a disability classification of developmental delay because he "presents with significant delays in the areas of communication/language, cognitive, and social emotional development that adversely impact his educational performance." The team also specifically considered and rejected the disability classification of autism spectrum disorder. Thereafter, the team developed an IEP for Student that requires him to receive 5 hours per week of specialized instruction in general education, 2 hours per month of speech language services outside general education, and 2 hours per month of occupational therapy outside general education, with all services to begin on September 3, 2013. The team further determined that Student does not require a dedicated aide, that his least restrictive environment (LRE) is general education, and that there is insufficient data to support his participation in ESY.¹⁹
18. Student's IEP does not contain any goals related to social communication, play, comprehension of questions, or social reciprocity, which are the important deficits for a child with autism. There are very minimal IEP goals related to Student's significant receptive and expressive communication difficulties. The IEP also does not contain enough goals to address Student's significant sensory needs in areas such as transition and how he uses his body.²⁰
19. On June 13, 2013, DCPS issued a Notice of Location of Services advising Parent that Student had been assigned to attend a general education classroom in a DCPS school.²¹
20. Recent experience has proven that Student does not function well in a regular general education classroom, and it would not be appropriate to place Student in such an environment because he would not be able to be successful or stay safe. However, Student does not have to be with all disabled peers for all of the school day. In fact, it would be beneficial for Student to be in an educational setting with some verbal children and some typically developing students.²²

¹⁸ Petitioner's Exhibit 9; Respondent's Exhibit 5; testimony of DCPS school psychologist.

¹⁹ Respondent's Exhibits 8-13; Petitioner's Exhibits 2 and 11-14; testimony of DCPS speech/language pathologist.

²⁰ Testimony of clinical psychologist.

²¹ Respondent's Exhibit 14; Petitioner's Exhibit 15.

²² Testimony of clinical psychologist; testimony of non-DCPS occupational therapist.

CONCLUSIONS OF LAW

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

The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). In this regard, IDEA does not require a departure from the ordinary default rule that plaintiffs bear the risk of failing to prove their claims. *See id.*; *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3rd Cir. 2012); *L.E. v. Ramsey Board of Educ.*, 435 F.3d 384, 391 (3rd Cir. 2006). Now, for a consideration of Petitioner's claims.

Appropriateness of IEP

In determining whether a Student's IEP is appropriate, the hearing officer must determine (1) whether the LEA has complied with the procedures set forth in IDEA, and (2) whether the IEP developed through IDEA's procedures was reasonably calculated to provide the student with educational benefits. *Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982).

With respect to IDEA's procedures, IDEA provides that an initial evaluation must consist of procedures to determine if the child is a child with a disability under 34 C.F.R. § 300.308, and to determine the child's educational needs. 34 C.F.R. § 300.301(c)(2). Moreover, the child must be assessed using a variety of assessment tools and strategies and the public agency must not use any single measure or criterion, and the child must be assessed in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(b)-(c).

In the instant case, the evidence reveals that Student was assessed by both DCPS and non-DCPS evaluators using multiple assessments. However, at the time of the initial evaluation, one particular area of suspected disability based on Student's behavior and communication difficulties was that Student may be on the autism spectrum. Although best practices require that the ADOS and another autism assessment be conducted to determine whether or not a student is autistic because the ADOS is very subjective, the evidence in this case reveals that only the ADOS-2 was administered to Student prior to the team's determination that Student is not on the autism spectrum. The evidence further reveals that a hearing evaluation is standard for children suspected of having autism, and although otoacoustic emission testing analyzing the function of the inner ear was performed on Student, the results were within the normal limits for the left ear only and no subsequent hearing assessment was administered to rule out hearing problems. Moreover, although the evidence proves that Student has been exhibiting undesirable behaviors that interfere with his academic progress, DCPS has failed to conduct a functional behavior assessment to determine the underlying cause of those behaviors. Based on this evidence, the hearing officer concludes that DCPS denied Student a FAPE by failing to comply with the procedures set forth in IDEA regarding initial evaluations, with the result that the hearing officer cannot confirm that the IEP is reasonably calculated to provide Student with educational benefits. Therefore, the hearing officer will order DCPS to administer (1) another autism assessment to Student besides the ADOS-2 to definitively rule in or rule out autism, (2) another otoacoustic emission assessment (or other appropriate hearing assessment) to Student to determine whether an additional more in-depth hearing evaluation is warranted, and (3) an FBA

to Student, and then convene another MDT meeting to review those assessments, revise Student's IEP as appropriate, and determine an appropriate location of services.

Appropriateness of Location of Service for SY 2013/14

Under IDEIA, a public agency must provide an appropriate educational placement/location of services for each child with a disability, so that the child's needs for special education and related services can be met. See 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. In this regard, a FAPE consists of special education and related services that, *inter alia*, include an appropriate elementary school and are provided in conformity with the Student's IEP. See 34 C.F.R. § 300.17. Hence, where there is no contention that the student's IEP is inappropriate, the determination of whether the current location of services is appropriate turns on whether the school can implement the student's IEP. See *Hinson v. Merritt Educational Ctr.*, 579 F.Supp.2d 89, 104 (D.D.C. 2008) (to show placement is inappropriate, plaintiff must show school is unable to implement the IEP as written); *T.T. v. District of Columbia*, 2007 U.S. District Lexis (D.D.C. July 23, 2007) (plaintiffs' challenge to public schools selected by DCPS was rejected where plaintiffs could not prove public schools were unable to implement the student's IEP).

In the instant case, Petitioner claims that DCPS failed to provide an appropriate location of services for SY 2013/14 because Student requires a full-time program for students with autism. However, the hearing officer has already determined above that DCPS failed to comply with IDEA's procedures concerning initial evaluations prior to the development of an initial IEP. Hence, additional testing is required to definitively rule in or rule out autism, and it is unclear whether or not Student's existing IEP is reasonably calculated to provide him with educational benefit. As the appropriateness of a student's assigned location of services turns on whether the location can implement an appropriate IEP for a given student, the hearing officer concludes that the existing evidence is insufficient to allow a determination of the appropriateness of Student's assigned location of services for SY 2013/14. The hearing officer will, therefore, dismiss this claim without prejudice to Petitioner's right to reassert the claim at a later date if appropriate.

Consideration of Independent Evaluations

IDEA requires that as part of any initial evaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including information provided by the parents, current classroom-based, local, or State assessments, and classroom-based observations, and observations by teachers and related service providers. § 300.305(a)(1).

In the instant case, Petitioner contends that DCPS failed to take into account the conclusions, recommendations and other information contained in Student's independent evaluations. DCPS disagrees, contending that it complied with its obligations under IDEA by considering the independent evaluations, as it is not required to accept all recommendations contained in independent evaluations. A review of the evidence in this case reveals that DCPS reviewed Student's independent evaluations, adopted some of the conclusions and recommendations therein, but declined to accept all of the recommendations and conclusions of the independent evaluators. Based on this evidence, the hearing officer concludes that Petitioner has failed to meet its burden of proof on this claim.²³

²³ Indeed, even Petitioner admitted during closing arguments that DCPS is not required to accept independent evaluations "hook, line and sinker."

ORDER

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

1. Within fifteen calendar days of the issuance of this Order, DCPS shall administer (1) another autism assessment to Student besides the ADOS-2 to definitively rule in or rule out autism, (2) another otoacoustic emission assessment (or other appropriate hearing assessment) to Student to determine whether an additional more in-depth hearing evaluation is warranted, and if so, conduct same, and (3) an FBA to Student.
2. After the assessments ordered in Paragraph 1 above have been completed, but no later than 30 days after the issuance of this Order, DCPS shall convene an MDT meeting for Student to review the ordered assessments, revise Student's IEP as appropriate, and determine an appropriate location of services for implementation of the IEP.
3. Petitioner's claim that DCPS denied Student a FAPE by failing to offer an appropriate placement for SY 2013/24 in a full-time program that offers full-time special education services in a small class setting with specially trained teachers is **DISMISSED WITHOUT PREJUDICE**.
4. All remaining claims in Petitioner's September 3, 2013 Complaint are **DENIED AND DISMISSED WITH PREJUDICE**.

NOTICE OF RIGHT TO APPEAL

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

Date: 11/17/2013

/s/ Kimm Massey
Kimm Massey, Esq.
Hearing Officer