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

STUDENT,¹)
By and through PARENT,)
)
 Petitioner,)
v.)
)
DISTRICT OF COLUMBIA)
PUBLIC SCHOOLS,)
)
 Respondent.)

Case No.
Bruce Ryan, Hearing Officer
Issued: September 3, 2010

HEARING OFFICER DETERMINATION

I. PROCEDURAL BACKGROUND AND RECORD

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, and its implementing regulations. The Complaint was filed June 11, 2010, against Respondent District of Columbia Public School ("DCPS"). It concerns a -year old student (the "Student") who resides in the District of Columbia, attends her neighborhood DCPS senior high school (the "School"), and has been determined to be eligible for special education and related services as a child with a disability under the IDEA. Petitioner is the Student's mother.

Petitioner claims that DCPS has denied the Student a free appropriate public education ("FAPE") by: (1) failing timely to complete triennial re-evaluations of the Student; (2) failing to include the Parent on the team that developed the student's individualized educational program ("IEP") in December 2009; (3) failing to develop an appropriate IEP, including transition goals; and (4) discontinuing speech services due to poor attendance.

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

DCPS filed a Response on June 22, 2010, which denies that the Student has been denied a FAPE and states that no relief is warranted. DCPS further responds, *inter alia*, that: (1) an MDT meeting was convened on 12/14/09 without the parent “after multiple letters of invitation to the Parent went unanswered”; (2) the 12/14/09 IEP is “appropriate to provide the student with a FAPE”; and (3) DCPS discontinued speech services due to poor attendance. DCPS denies the Student has suffered any educational harm because “the student has not been attending school on a regular basis this entire school year.” *Response*, p. 2.

The resolution process was not successful, and the 30-day resolution period ended on July 11, 2010. A Prehearing Conference (“PHC”) was held on July 26, 2010, at which the parties discussed and clarified the issues and requested relief; and a Prehearing Order was issued August 3, 2010. *See P-2* (Prehearing Order, issued Aug. 3, 2010), ¶ 6 (statement of Issues and Requested Relief).

At the July 26 PHC, Petitioner discussed the need for a brief continuance to re-schedule the hearing to accommodate Petitioner’s availability. Petitioner then filed an unopposed motion for continuance that would extend the timeline for issuance of the Hearing Officer Determination (“HOD”) by nine (9) days, to September 3, 2010. The motion for continuance was granted.

Five-day disclosures were thereafter filed by both parties as directed on or about August 17, 2010; and the Due Process Hearing was held on August 25, 2010. Petitioner elected for the hearing to be closed. During the hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner’s Exhibits: P-1 through P-26.

DCPS’ Exhibits: DCPS-1 through DCPS-10.

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

Petitioner’s Witnesses: (1) Parent-Petitioner; (2) Educational Advocate; and (3) Dr. Natasha Nelson, Psychologist, Parker Diagnostics.

DCPS’ Witnesses: (1) DCPS Special Education Teacher/Case Manager; (2) DCPS Speech/Language Pathologist; and (3) DCPS School Psychologist.

This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures ("SOP")*.

II. ISSUES AND REQUESTED RELIEF

A discussion at the prehearing conferences of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

- (1) **Procedural –Re-evaluations** – Did DCPS fail to conduct timely re-evaluations of the Student (including review of findings and appropriate IEP revisions)? And did such procedural violation result in a denial of FAPE or otherwise satisfy the criteria specified in 34 CFR 300.513(a)?
- (2) **Procedural – IEP Meetings** – Did DCPS fail to include the parent on the team that developed the December 2009 IEP? And did such procedural violation result in a denial of FAPE or otherwise satisfy the criteria specified in 34 CFR 300.513(a)?
- (3) **Inappropriate IEP** – Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP in December 2009 for the reasons alleged at paragraphs 31 through 36 of the Complaint? This issue includes the alleged failure to include a transition plan and/or goals (§35) and discontinuation of speech services (§36).

As relief, Petitioner requests that DCPS be ordered to: (1) provide a vocational-based program as recommended by evaluations; (2) provide tutoring to remediate academic deficits; (3) provide up to two hours of independent counseling per week; (4) convene an MDT meeting to revise the IEP and transition plan and to address placement; and (5) compensatory education for denials of FAPE.

III. FINDINGS OF FACT

1. The Student is a -year old student who resides with Petitioner in the District of Columbia and currently attends her neighborhood DCPS senior high school (the "School").
2. The Student has been determined to be eligible for special education and related services under the IDEA as a child with a primary disability of Speech or Language Impairment. *See P-8; DCPS-4; Parent Testimony; Advocate Testimony.*

3. A special education re-evaluation was completed for the Student in November 2005, according to the findings of a prior HOD issued December 23, 2009. *See P-22 (HOD, Case No.* A further triennial re-evaluation was due in December 2008, but was not completed on time. *Id., p. 7*
4. On or about December 9, 2008, an Individualized Education Program (“IEP”) was developed for the Student that provided for the following services: 15 hours per week of specialized instruction (7.5 hours inclusion support in General Education and 7.5 hours in an Outside General Education setting); 30 minutes per week of speech/language therapy; and 30 minutes per week of behavioral support services. *P-11- p. 4*. The current IEP dated December 3, 2009, continues the same levels of service. *See DCPS-4*.
5. On or about June 23, 2009, Petitioner sent a letter through counsel requesting DCPS to conduct a “comprehensive re-evaluation” of the Student, to include at least a comprehensive psychological, functional behavior assessment (“FBA”), audiological testing, social history, and vocational assessment, as well as other evaluations if warranted. *P-16*.
6. On or about September 15, 2009, Petitioner wrote DCPS to follow up on this request, stating that “it appears that triennial evaluations were never conducted for this student.” *P-17*. Petitioner also filed a due process complaint that same month alleging that DCPS had failed to complete a timely triennial re-evaluation and failed to provide a required post-secondary transition plan and services. *See P-22 – pp. 2-3*.
7. On or about December 16, 2009, the Parent received copies of speech/language and psychological re-valuation reports that had been completed by DCPS on August 11, 2009, and September 28, 2009, respectively. DCPS also authorized the Parent to obtain independently a comprehensive psychological evaluation of the Student. *See P-22 – pp. 5-6*. As of that date, no vocational evaluation of the Student had been completed. *Id. – p. 5, ¶ 10*.
8. During December 2009, the Student’s MDT/IEP Team met to review and revise, as appropriate, her IEP. However, the Parent failed to attend the meeting. The prior HOD in Case No. found that a “DCPS case worker took the proposed new

IEP to the Parent to review at her home, but the Parent refused to give her consent until the IEP could be reviewed by her attorney.” *P-22 – pp.6-7*. Petitioner also testified that she requested that the meeting be rescheduled for after receipt of the independent evaluations. *See Parent Testimony*.

9. The Student has a record of extreme school truancy dating back to at least 2005, and continuing into the 2009-10 School Year. *See P-22 – p. 6*. The 12/23/09 HOD found that as of November 12, 2009, for the first 53 days of the 2009-10 school year, the Student had 49 absences from Algebra, 48 absences from Citizenship, 43 absences from French, and 41 absences from Geometry. *Id., p. 6, ¶12*.
10. Service trackers show that the Student has been absent or unavailable for all of her scheduled speech/language therapy sessions from September 1, 2009 through April 29, 2010. *DCPS-2*. These services were made available by DCPS in accordance with the IEP throughout this time period. *DCPS SLP Testimony*.
11. The evidence shows that staff at the School, including the Special Education Teacher/Case Manager and Speech Language Pathologist (“SLP”) made repeated efforts to get the Student to attend school and receive the services available to her. These efforts included calling home, sending letters, talking with the Student in school, referring her to the School’s attendance counselor, and generally encouraging her to attend classes, S/L therapy sessions, and the special education learning lab. *See Testimony of Case Manager and DCPS SLP; DCPS-5*.
12. On or about January 21, 2010, the DCPS SLP wrote Petitioner to inform her that the Student was not attending her speech/language therapy services as provided in her IEP and to enlist Petitioner’s assistance in encouraging the Student to attend. *DCPS-5*. The SLP did not receive any response from the Parent. *See DCPS SLP Testimony*. *See also DCPS-2 – p.4* (01/22/10 SLP consult with classroom teacher concerning the Student’s attendance and progress, noting that the Student “is not attending class and progress cannot be assessed”; therefore a “Parent conference will be requested.”); *DCPS-5* (contact log).
13. On or about January 14, 2010, an independent comprehensive psychological evaluation of the Student was completed. *P-7*. The evaluator diagnosed the Student

with a depressive disorder, found that the Student was performing at a low elementary school level academically, and recommended (*inter alia*) that the Student's counseling sessions be increased from 30 minutes per week to 90 minutes per week (*i.e.*, two 45-minute sessions). *See P-1 – p. 3; P-7 – pp. 12-15.* This evaluation was provided to DCPS on or about January 28, 2010.

14. On or about February 4, 2010, DCPS completed a Review of Independent Assessment with respect to the 01/14/10 independent psychological evaluation. The DCPS Psychologist noted, *inter alia*, that the Student's "social emotional skills are problematic," and that "[t]here were several indications of depression." *DCPS-9.* She agreed that the Student now "meets the criteria for Emotional Disturbance." *Id.*
15. On or about May 5, 2010, DCPS convened another MDT/IEP Team meeting, with the Parent in attendance. There are no minutes of the meeting in evidence, other than the advocate's notes (*P-6*). DCPS should have completed its review of the IEP at this meeting. However, Petitioner and the Advocate assert that DCPS advised them that the meeting would be for the sole purpose of reviewing the independent evaluations and addressing eligibility, and that the IEP would need to be reviewed at a later date. *See P-1 – p. 4.*
16. At the May 5, 2010 MDT meeting, it was reported that the Student's behavior and mood had deteriorated and that she was smoking marijuana approximately three times/week. The Parent advised the team that she was seeking a drug treatment program for the Student. *See P-1 – p. 4; P-6 – pp. 2-3.* Based on the independent psychological evaluation and the DCPS Psychologist's review, the Team agreed that the Student met the eligibility criteria for an Emotional Disturbance ("ED"). *P-6 – pp. 3-4; see also DCPS Psychologist Testimony.*
17. Also at the May 5, 2010 MDT meeting, it was reported that the Student had been dropped from speech/language services for non-attendance and dropped from the School's roster for truancy. *P-6 – p. 3.* However, the DCPS SLA testified that the services are still available to the Student if she attends after being re-enrolled.

18. At the conclusion of the May 5, 2010 meeting, it was determined that the "Team will reconvene to review and revise the IEP, within 30 days, per SEC." P-6. However, no further MDT meeting has been held to date.
19. On or about June 29, 2010, a resolution meeting was held on the instant complaint, attended by the Parent, the Parent's attorney, and DCPS representatives. "DCPS proposed no settlement, due to student does not come to school." P-5 – p.1. DCPS stated that as of June 1, 2010, the Student had 132 unexcused absences; that after Parent re-enrolled the Student, she still had not attended school as of June 22, 2010; and that "Student cannot receive services if she does not attend school." *Id.*
20. Due in large part to her excessive absences from classes, the Student has struggled academically. *See P-13; DCPS Case Manager Testimony; DCPS School Psychologist Testimony.*

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to provide an appropriate IEP and/or placement, as well as failures to implement an IEP.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-E3030.3. The normal standard is preponderance of the evidence. *See, e.g., NG. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

B. Issues/Alleged Denials of FAPE

The Hearing Officer concludes that Petitioner has failed to meet her burden of proof on the specified issues and alleged denials of FAPE, except to the limited extent discussed below under Issue 3.

1. Procedural –Re-evaluations

The IDEA provides that DCPS “shall ensure that a reevaluation of each child is conducted ...at least once every 3 years, unless the parent and [LEA] agree that a reevaluation is unnecessary.” 34 C.F.R. §300.303 (b)(2); *see, e.g., Herbin v. District of Columbia*, 362 F. Supp. 254, 43 IDELR 110 (D.D.C. 2005) (giving effect to clear statutory language, without triggering conditions). This includes the requirement that the evaluation be “sufficiently comprehensive to identify all of the child’s special education and related services needs....” *Id.* §300.304(c) (6); *see also Letter to Tinsley*, 16 IDELR 1076 (OSEP June 12, 1990) (triennial reevaluation “must be a complete evaluation of the child in all areas of the child’s suspected disability....”).

The 12/23/09 HOD has already concluded that DCPS committed a procedural violation by not completing a re-evaluation within three years after the December 2005 re-evaluation. However, the HOD also found that this procedural violation did not result in a substantive denial of FAPE, primarily due to the Student’s long history of severe truancy. As the prior hearing officer explained, “the Student’s unrelenting pattern of severe truancy made it extremely unlikely that even if DCPS had timely conducted the triennial evaluation, and the IEP team had used the data to update the Student’s educational needs, the Student would have gone to class and accessed the educational opportunities afforded to her.” *P-22 – p. 10*. Thus, the hearing officer found that Petitioner had “not demonstrated that the Student’s education was affected in any way by DCPS’s delay and it would be purely speculation to conclude that the Student lost any educational opportunity as a result.” *Id.*

Petitioner obviously cannot re-litigate these findings with respect to any DCPS delay up until at least the date of the prior HOD, *i.e.*, December 23, 2009. Nor has Petitioner shown any evidence in this hearing that the result should be any different for the post-12/23/09 time period. Essentially the same pattern of non-attendance continued through the May 2010 MDT/IEP team meeting, with the same effects. Accordingly, this Hearing Officer similarly concludes that Petitioner has not shown that any continued delay in completing the re-evaluation has resulted in an effective denial of FAPE or other substantive impact on the Student under the circumstances. *See* 34 CFR 300.513; *Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006). *See also Garcia v. Board of Educ. of Albuquerque Public Schools*, 520 F.3d 1116 (10th Cir. 2008) (affirming decision not to award denial of FAPE remedy in light of student’s severe truancy).

2. Procedural – IEP Meetings

Petitioner next claims that DCPS failed to include the parent on the team that developed the December 2009 IEP, and thus that the Parent was deprived of an opportunity to participate in the decision-making process regarding the provision of a FAPE. *See P-2 – pp. 8-9*. However, even assuming that DCPS did not satisfy IDEA requirements for conducting an IEP Team meeting without a parent in attendance (*see, e.g., 34 C.F.R. 300.322*), such procedural violation did not result in a denial of FAPE or other substantive harm entitling Petitioner to relief under the IDEA. *See 34 CFR 300.513; Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006). During this time period, the undisputed evidence shows that the Student was not available for services because she was not attending the service sessions being offered. Moreover, the IEP has not yet been reviewed and finalized in light of the independent evaluations, which is what the Parent had originally requested. Finally, it appears that any possible harm resulting from a procedural violation will be effectively cured by the Parent’s participation at the May 5, 2010 MDT meeting and at the further MDT meeting that will be held to review and finalize the current IEP pursuant to this HOD.

3. Appropriateness of December 2009 IEP

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

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...*include an appropriate preschool, elementary school, or secondary school education* in the State involved; and are *provided in conformity with the individualized education program (IEP)...*”

20 U.S.C. § 1401(9) (emphasis added); 34 C.F.R. § 300.17; DCMR 5-E3001.1.

The “primary vehicle” for implementing the goals of the IDEA is the IEP, which the statute “mandates for each child.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (*citing Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). An IEP is a comprehensive written plan that must include, among other things: (1) “a statement of the child’s present levels of academic achievement and functional performance, including ... how the child’s disability affects the child’s improvement and progress in the general education curriculum”; (2) “a

statement of measurable annual goals, including academic and functional goals, designed to ... meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum...and meet each of the child's other education needs that result from the child's disability"; (3) "a description of how the child's progress toward meeting the annual goals...will be measured"; (4) "a statement of the special education and related services and supplementary aids and services ...and a statement of the program modifications or supports for school personnel that will be provided for the child"; and (5) an explanation of the extent, if any, to which the child will not participate with non-disabled children in any regular classes. 20 U.S.C. 1414(d)(1)(A)(i).

To be sufficient to provide FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.'" ² Judicial and hearing officer review of IEPs is "meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was 'reasonably calculated to enable the child to receive educational benefits.'" ³ In addition, "[b]ecause the IEP must be 'tailored to the unique needs' of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), it must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities, and must be amended if its objectives are not met. See 20 U.S.C. 1414 (b)-(d)." ⁴

² *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176, 200, 207 (1982). See also *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988); *J.G. v. Abington School*, 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit. ").

³ *Schaffer v. Weast*, 554 F.3d 470, 477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207); see also *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) (whether an IEP is appropriate "can only be determined as of the time it is offered for the student, and not at some later date").

⁴ *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010), slip op. at p. 6. The issue of whether an IEP is appropriate is a question of fact for hearing. See, e.g., *S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003). "Ultimately, the question ...is whether or not [the] defects in the ...IEP are so significant that [DCPS] failed to offer [the Student] a FAPE." *N.S. v. District of Columbia*, 2010 WL 1767214, Civ. Action No. 09-621 (CKK) (D.D.C. May 4, 2010), p. 20).

In this case, Petitioner claims that the December 2009 IEP is inappropriate for the following reasons: (a) it failed to include writing goals despite the fact that the Student's writing abilities are at the 4.6 grade level; (b) it provides only 7.5 hours/week of specialized instruction in an outside general education setting and 7.5 hours/week in a general education setting; (c) it failed to increase the Student's counseling services or include a behavioral plan to address attendance issues; (d) it failed to include "adequate academic support and/or emotional support" for the Student; (e) it failed to include transition goals and/or a transition service plan; and (f) it "discontinues speech services based on attendance without consideration of the fact that goals for the student in this area have not been mastered and he has deficits." *P-1 – p. 6*, ¶¶ 31-36.

The Hearing Officer has carefully reviewed the evidence with respect to each of these claims and concludes that Petitioner has failed to meet her burden of proving a denial of FAPE, in large part because the Student has not been availing herself of educational benefit at the School. For example, there is no evidence that DCPS has failed to provide speech/language or other services consistent with the IEP. The Student simply has not been available for services because she would not attend any of the sessions. Moreover, there is no evidence in the record to suggest that the Student would avail herself of any additional speech services (or greater amounts of specialized instruction) if they continued to be offered by DCPS, at least under present circumstances. *Cf. Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 104 (D.D.C. 2008) (parent "has not shown that the student's poor academic performance resulted from lack of appropriate services rather than the student's own extended absences"; thus, HO's conclusion that student "was not 'availing himself of educational benefit' under these circumstances was a reasonable determination.").

However, the IDEA does require DCPS to use "positive behavioral interventions and supports, and other strategies," to address any behavior that "impedes the child's learning or that of others." *Id.*, 300.324(a)(2)(i). While Petitioner did not necessarily prove that the Student's extremely poor attendance record is a result of her disability, there is no question that this behavior was impeding her learning as of December 2009. DCPS witnesses testified concerning past *ad hoc* attendance counseling, efforts to file truancy reports, and the like, but there was insufficient evidence of any coordinated behavioral intervention plan or strategies to address this problem. The Hearing Officer finds that the Student would benefit from a more formal written

behavior intervention plan (“BIP”) being developed and incorporated into his IEP designed to address the serious attendance issues.

In addition, the evidence shows that the new ED disability classification and other new information (including recent psychological evaluations completed *after* the 12/09 IEP) indicates that the Student may have significant emotional needs which (in addition to speech/language deficits) impede her ability to function in the classroom and may not be addressed adequately in her current program (e.g., social/emotional goals to address depression). The DCPS School Psychologist testified that the Team needs to meet to discuss appropriate services based on the ED disability determination, since the existing IEP is based only on the Student’s speech/language impairment. The Team’s review should include consideration of additional counseling services to address any additional social/emotional needs.

With respect to transition services, the 12/23/09 HOD already found that Petitioner failed to show that the December 2008 Transition Plan was inadequate or that additional transition goals or services were needed for the Student to receive a FAPE, *P-22 – pp. 11-12*, and there is no basis to revisit such findings. The December 2009 Transition Plan appears to make minor changes to the plan (*compare DCPS-4 – pp.10-11 with P-11 – pp. 6-7*), but Petitioner similarly has not shown them to be inappropriate based on the information the Team had as of either December 2009 or May 2010.

Finally, the Hearing Officer agrees with Petitioner that the IEP’s statement of measurable annual goals should include appropriate goals in Written Expression, based on her current levels of performance. Such goals appear necessary to enable her to be involved in and make progress in the general education curriculum. *See, e.g., P-7 – p.7* (noting K.10 grade level and other weaknesses in written expression); *DCPS-9* (noting that written language composites were assessed within the deficient range).

C. Appropriate Relief

The IDEA authorizes the Hearing Officer to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). Based on the findings and record developed at hearing, the Hearing Officer has exercised his discretion to order appropriate

equitable relief, as described in the Order issued below, which requires DCPS to reconvene a meeting of the MDT/IEP Team to complete review of the Student's updated IEP.

As noted above, DCPS acknowledged the need to convene such meeting within 30 days of the May 5, 2010 meeting, but it has not yet done so. *P-6 – p. 4*. Such a meeting should now proceed promptly so that the above matters can be addressed and the updated IEP can be finalized. See 34 C.F.R. 300.324(b)(1)(i) (LEA must review the child's IEP "periodically, but not less than annually"); *id.*, 300.324(a)(5) (encouraging consolidation of IEP team meetings); *Maynard v. District of Columbia, supra* ("Because the IEP must be 'tailored to the unique needs' of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), it must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities, and must be amended if its objectives are not met. See 20 U.S.C. 1414 (b)-(d).").

Petitioner did not present any evidence at hearing to support an award of tutoring or other forms of compensatory education. Thus, there is no occasion to consider this remedy, even assuming *arguendo* that DCPS had been shown to deny a FAPE to the Student in any respect.

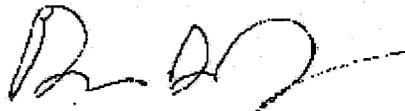
V. ORDER

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

1. Within **30 calendar days** of this Order (*i.e.*, by **October 4, 2010**), DCPS shall convene a meeting of the Student's MDT/IEP Team with all necessary members (including Petitioner) to review and revise, as appropriate, the Student's current IEP dated December 3, 2009.
2. At the meeting held pursuant to paragraph 1 above, the Team shall: (a) determine what changes are appropriate to address the educational needs that result from the Student's recently determined ED disability, including but not limited to additional behavioral support services and revised Emotional, Social, and Behavioral Development goals; (b) develop and incorporate an appropriate Behavioral Intervention Plan to address the Student's behaviors that impede her learning, including but not limited to her severe attendance problems; (c) develop and incorporate appropriate Annual Goals in the area of Written Expression; (d) determine whether speech-language pathology services should continue to be included in her IEP going forward; (e) consider any updated information concerning the Student's vocational and other post-secondary transition goals; and (f) consider any other appropriate subjects for Team discussion at this time.

3. Petitioner's other requests for relief in her Complaint are **DENIED**; and
4. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.



Dated: September 3, 2010

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

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