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Student Hearing Office

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STUDENT HEARING OFFICE
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Confidential

STUDENT[1], by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.	**HEARING OFFICER'S DECISION** **Date: November 27, 2009** **Hearing Officer: Wanda I. Resto, Esquire**

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

I. PROCEDURAL BACKGROUND

On October 28, 2009, the Petitioner, through counsel, filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent") pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE").[2]

The Petitioner requested the Respondent be deemed to have denied the Student a FAPE by failing to provide an appropriate placement, to convene a manifestation determination, and to provide educational services following the removal from school. As relief the Petitioner asked the Respondent fund and place the Student at a full-time special education school of the Petitioner's choice; fund a functional behavior assessment and within thirty days of the Student's enrollment convene a multidisciplinary team meeting to discuss the Student's educational program.

The Hearing Officer held a pre-hearing conference call with Counsel for both parties on November 6, 2009. During that conference call, the Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session and reiterated the issues as plead. The Respondent asserted it can provide a FAPE in the least restrictive environment in the Student's current school; and that the Student was invited back into school on November 4, 2009, and has chosen not to attend. Furthermore, the Respondent argued that it can provide 10 hours of specialized instruction which is appropriate for this student. Additionally, the Respondent alleged that when the student was suspended on September 30, 2009; the process was explained to the parent and she was told to "pickup" from school the work packets for the student.

The DCPS' Response to Parent's Administrative Due Process Complaint Notice was filed on November 5, 2009.

A hearing was held on November 17, 2009. The Petitioner presented a disclosure letter dated November 13, 2009 to which seven documents were attached, labeled P-1 through 7 and which listed nine witnesses; two witnesses testified. The Respondent presented a disclosure letter dated November 13, 2009 identifying eight witnesses and to which eight documents were attached, labeled DCPS 1 through DCPS 8; two witnesses testified. The documents were admitted without objections.

The hearing was conducted in accordance with the rights established under the IDEIA and the implementing federal and local regulations, and the SOP. [3]

II. ISSUE(S)

1. Did the Respondent fail to develop an individualized education plan ("IEP") for the student during school year 2008?

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[2] 20 U.S.C. §1415(c)(2)(B)(i)(I).

[3] 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

2. Did the Respondent fail to include the parent in IEP development discussion during the 2008-09SY?

3. Whether the Respondent failed to provide an appropriate placement for the 2009-2010SY?

4. Was the Student denied a FAPE?

III. FINDINGS OF FACT

1. The Student's disability classification is listed as learning disabled. He has an IEP dated April 14, 2008 which prescribes 10 hours of specialized instruction weekly. The document is not signed by the parent; the Student's IEP must be updated. [4]

2. The Petitioner was concern about the Student's academic performance and behavioral problems and requested evaluations. The Respondent sent an invitation to discuss the Student's IEP and she refused to meet with the Respondent because it had not performed the evaluations she requested. She visited the school once and believes the Student is in a classroom with approximately 30 other students. There have been three or four fires and many fights in the school during the course of the year. The Petitioner did not discuss with any teacher the Student's program; however she believes the Student did not receive specialized instruction, speech/language and counseling services. The Student cannot read seventh grade books and has not made progress in math. The Student has been suspended more than ten times and in September 2009 was suspended over thirty days; the day after the suspension the Petitioner went to the school; and was told to that she would receive an invitation for a hearing and did not. The Petitioner did not go to the school to pickup work for the Student during the suspension. Two weeks later when told the Student could attend class; however the student told her he was not receiving services and the Petitioner told the Student not to go to school. According to the Petitioner the Student hates school and only did well while attending a private religious school.[5]

3. An April 2008 evaluation found the Student to have a Verbal Comprehension Index of 91, Perceptual Reasoning Index of 108, Working Memory Index of 80, Processing Speed of 85, and Full Scale IQ of 89. In the Scale for Assessing Emotional Disturbance (SAED), "the Student received a Quotient of 70, indicating he was unlikely to have ED, but a standard score of 18 making it likely that the Student has emotional disturbance on the inability to learn." The evaluation states that it is likely that the Student has a severity in his learning, and sadness from his lack of success in the classroom setting. The evaluation recommended academic instruction in a classroom setting with a small student to teacher ratio and social emotional counseling to address self-esteem, anxiety, feelings of sadness, hopelessness and

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[4] P#6 IEP dated 4/14/08.

[5] Testimony of the Petitioner.

coping skills. The evaluation also indicates the Student may benefit from more specialized instruction than he is currently receiving. [6]

4. On 4/14/08 the SET recommended in an MDT meeting that the Student be provided 15 hours of specialized instruction. The notes also indicated that the Student does not do his work and refuses to cooperate when accommodations are provided; and does not demonstrate effort.[7]

5. In June 2008 the MDT team determined that the Student should receive academic instruction in a classroom setting with a small student-teacher ratio and that he may benefit from more special education services than he is currently receiving based on his academic levels of performing and social emotional needs. The team also agreed that the Student may benefit from carrying a conduct sheet as a gauge of measuring his work and productivity in the classroom, behavior, and completion of homework assignments. It further stated that the Student should participate in psychosocial counseling to address the issues related to self esteem and, anxiety, feeling of sadness, hopelessness, and coping skills. Student is placed in the mild clinical risk range of measures of the anxiety, depression, autistic spectrum behaviors, learning disability, mental retardation, and executive function.[8]

6. The Student has speech and language evaluation dated 2/17/09 recommending services.[9]

7. The Educational Evaluation dated 2/17/09 indicates the Student grade equivalent of 1.1 in oral language, 2.6 in broad reading, 3.3 in broad math and 3.2 math calculation skills. 3. 1 in academic skills, and 2.6 in academic fluency. [10]

8. In a February 27, 2009, Hearing Officer Decision, the undersigned determined the Student required an Autism Rating Scale, Vineland Adaptive Assessment, Functional Behavioral Assessment, and Comprehensive Psychological evaluations that includes educational, behavioral and emotional measures. It ordered the Respondent to convene an MDT meeting to review completed evaluations, revise the Student's program and discuss whether the Student requires additional specialized instruction hours and counseling services; at the aforementioned meeting, the Respondent was to secure the participation of all necessary IEP team members to include but not limited to the appropriate personnel required to review assessments and develop an appropriate program for this child. [11]

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[6] P#4 Comprehensive Psychological Evaluation dated 4/24/08.

[7] P#2 MDT meeting notes dated 4/14/08.

[8] P#3 MDT meeting notes dated 6/05/08.

[9] P# 5 Speech and Language Evaluation 2/17/09.

[10] P# 6 Educational Evaluation dated 2/17/09.

[11] On January 16, 2009, the Petitioner filed a Complaint against the DCPS alleging the Respondent denied the Student a FAPE by failing to complete the Student's triennial reevaluation and evaluations requested by the parent, failing to evaluate the Student in all areas of suspected disability, inappropriately reducing the hours in the Student's IEP, and failing to develop an appropriate IEP. The Petitioner requested the Respondent be deemed to have denied the Student a FAPE and as a relief ordered to fund the Student's independent Comprehensive Psychological to include educational, behavioral and emotional measures, an Autism Rating Scale, a Vineland Adaptive Assessment,

9. A November 2009 Order granted the request for expediting the hearing; and required the Petitioner to demonstrate at the hearing what aspects of the IEP and placement are inappropriate; how was the parent excluded from the IEP development discussion during the 2008-09; and it also required the Respondent to provide evidence at the hearing that it did not neglect to convene a MDR meeting where the parent was included; that the IEP and placement are appropriate; that it has and can provide a FAPE.[12]

10. The Student was suspended and there was not a manifestation determination. The attorney for the student was sent an invitation to meet and there was no response. The Student received services from a special education teacher in all his core academic courses, and was provided almost 2 hours over the 10 hours required in the 2008 IEP. The Student was in a group with 18 students; and received additional support with daily projects from the Learning Lab. The Student has many absences and performed at a slower rate than peers. *The Student did not receive speech and language or counseling services.* The Student has current evaluations that have not been reviewed. The Respondent's document dated April 2009, has an error it should indicate 600 minutes a week of services and not 600 hours.[13]

11. The Student was called and accepted back in the school building on November 4, 2009.[14]

12. The Respondent accepted it did not hold a MDR and agreed to provide a compensatory award from September 30, 2009 through November 4, 2009.[15]

13. [redacted]ltiple disabled students primarily emotionally disturbed students. The classrooms identified for the Student is a class with six students, three adults and the staff is certified and licensed in Maryland. The Student would be in a therapeutic setting, provided with coping skills and a class rotation program to help keep the Student focused. The decision to admit the Student was made by the admission's team who reviewed the Student's IEP which provides 10 hours of specialized instruction and current evaluations. The Student was interviewed by phone because it was not possible to contact the Petitioner to coordinate a personal meeting; the Student said he wants to go to school now. The school only serves students with a full time program in specialized instruction. The Student was accepted because she needs her IEP to be implemented at a therapeutic small setting, and with a social worker in the classroom.[16]

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and a Functional Behavioral Assessment, and within ten (10) days of receipt of the independent evaluations, convene a MDT meeting to review the evaluations and revise the IEP.

[12] November 11, 2009, Prehearing Order.

[13] Testimony of the special education coordinator; and DCPS #4 IEP dated 4//9/9.

[14] Testimony of the Dean of Students.

[15] Representation made by Counsel for the Respondent during the Hearing.

[16] Testimony of the Senior Admissions Director HRA.

IV. CONCLUSIONS OF LAW

Preliminary matters

The student was granted an expedited hearing. The parties agreed that a Manifestation Determination Review (MDR) meeting; was not held; and the Respondent agreed that the Student is entitled to compensatory education from the suspension date on September 30, 2009 until November 4, 2009 date upon which he was invited back into school.

FAPE Determination

The IDEIA requires the Respondent to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living.[17]

The applicable regulations define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)." [18]

Burden of Proof

The burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student a FAPE.[19]

Individualized Education Program

In accordance with 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), Individualized Education Program or IEP "means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

aa. Meet the child's needs that result from the child's disability and to enable the child to be involved in and make progress in the general education curriculum; and

bb. Meet each of the child's other educational needs that results from the child's disability."

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[17] 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) *id.*
[18] 34 C.F.R. § 300.17.
[19] 5 D.C.M.R. § 3030.3

In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. In considering the substantive validity of an IEP pursuant to the second part of this test, a number of circuits have held that a court must judge prospectively.[20]

The evidence is that existing evaluations are inconsistent on the Student's disability classification. The Student is placed in the mild clinical risk range of measures of the anxiety, depression, autistic spectrum behaviors, learning disability, mental retardation, and executive function. There is also evidence of concerns with the Student's work and productivity in the classroom, behavior, and completion of homework assignments. A team agreed that the Student should receive psychosocial counseling to address the issues related to self esteem and, anxiety, feeling of sadness, hopelessness, and coping skills. In June 2008 the MDT team determined that the Student should receive academic instruction in a classroom setting with a small student-teacher ratio and that he may benefit from more special education services than he was receiving based on his academic levels of performing and social emotional needs. Also during June 2008 the SET recommended of specialized instruction and increase to 15 hours. There was no evidence that a new IEP was created to reflect the MDT and SET recommendations of April and June 2008. The document purporting to be an April 2009 IEP does not reflect the increase in services; fails to address the Student's unique needs and fails describe the goals. The evidence is that existing evaluations are inconsistent on the Student's disability classification. The Respondent acknowledged that 600 hours of services weekly was an error in the document.

The Petitioner did not include in the Complaint the Student's disability category as an issue. However, at the Hearing Counsel for the Petitioner argued that the Student's IEP should be modified to include emotional disturbance; however he failed to provide credible witness; or evaluations to demonstrate that over a long period of time the Student has an inability to learn that cannot be explained by intellectual; or that he failed to maintain satisfactory interpersonal relationships with peers; and that to a marked degree these characteristics have adversely affected the Student's educational performance.[21]

The Petitioner did not provide sufficient evidence to allow the Hearing Officer to adjust the Student's IEP to include the special education category of emotional disturbance; and failed to prove that the Student requires more than the 15 hours of specialized instruction as already recommended. The credible evidence is that the Student willingly or under the instruction of the Petitioner chooses not to go to school.[22]

The Petitioner is correct to claim that the proposed April 2009 IEP, is incomplete and inappropriate. The Student's IEP requires information from current evaluation; it must be revised to include specific strategies to address attendance, self esteem, and to assist the Student to be motivated to attend classes. The IEP must reflect that all the recommendations of April and June 2008 are either discussed or incorporated. The Student's current IEP is not reasonably

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[20] *Bd. of Educ. v. Rowley,* 458 U.S. 176, 206-07 (1982); and *Jalloh v. District of Columbia,* 535 F. Supp. 2d 13, 16 (D.D.C. 2008).

[21] *34 C.F.R. 300§ 300.8 (4)*

[22] The Petitioner acknowledge during testimony that she told the Student not to return to school after the suspension expired.

calculated to enable the Student to receive educational benefits. The Petitioner prevailed on the claim that the Student's has no current appropriate IEP.

Parent participation

The IDEIA requires that the Respondent make efforts to ensure that a parent of a child with a disability is present at each IEP Team meeting or is afforded the opportunity to participate, including-

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
(2) Scheduling the meeting at a mutually agreed on time and place.

The information provided to parents must indicate the purpose, time, and location of the meeting and who will be in attendance.

The IDEIA demands that, the public agency use other methods to ensure parent participation, including individual or conference telephone calls, consistent with regulations at 34 C.F.R § 300.328. A meeting may be conducted without a parent in attendance, in that scenario the Respondent must keep a record of its attempts to arrange a mutually agreed on time and place, detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parent and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.[23] The only evidence of attempts made was a statement from the SEC and the parent that she chose not participate in a meeting.

The Respondent failed to document its efforts to achieve the participation of the parent. Nonetheless, the credible evidence was that the Petitioner's made little efforts to contact or discuss with the Respondent her concerns about the Student's placement or educational program.[24]

Under the IDEIA the parent is a statutorily required participant in a group discussion about placement. The Petitioner has an obligation to cooperate; and make herself available to participate in the educational programming for the Student. The Petitioner, however, is only a member of the MDT/IEPT and not the final arbiter of the placement decision. No such power is granted the parent under the IDEA.[25]

The last IEP/MDT meeting on behalf of the Student according to the evidence was conducted in June 2008, and there has not been an update and the Petitioner has the obligation to participate and should provide input.

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[23] 20 U.S.C. 1414(d)(1)(B)(i)

[24] The Petitioner testified went once to the school and did not like it because it was chaotic.

[25] The Petitioner stated she refused to participate in an IEP meeting because; evaluations and services she requested had not been provided. Testimony from the Director of Admission at the private school, confirmed the difficulties to coordinate meetings with the Petitioner.

Educational Placement

The IDEIA and its implementing regulations require when determining the educational placement of a child with a disability, the decision is made by a group of persons, including the parents. It also requires that the determination of the educational placement of a child with a disability must be based on a child's IEP.[26]

The credible evidence showed that the Student when attending school is provided with specialized instruction and received services from a Learning Lab and that the special education teacher provides assistance in other subjects. [27]

There was no evidence showing that a placement decision was issued by DCPS for the 2009-2010 school year. The Petitioner enrolled the Student in the neighborhood school, within a month the Student was suspended; the Student was accepted back into school on November 4, 2009 and the parent made the choice of not sending the Student to school. Doubts were raised by the testimony of the Petitioner and the private school's Admission Director that the placement at HRA could fit the unique needs of the student or that it is appropriate; particularly when it had difficulty in communicating with the Petitioner to coordinate a visit and personal interview of the Student at the school.

Furthermore, the Petitioner's choice of placement for the Student is a private full time special education program in the state of Maryland with no interaction with non disabled peers; and the Petitioner could not provide sufficient evidence to justify a full time IEP for the Student. Uncertainty was raised by the testimony of the Director of Admission that the placement at HRA is appropriate, the admission was made based on an IEP that was not current and only provides for 10 hours of specialized instruction. The Student would be placed in the most restrictive environment and in a school which primary focus of services is not directed to learning disabled students, which is the Student's current disability classification. This is contrary to the IDEIA 20 U.S.C. 1412(a)(5) and it's regulation at Sections 300.114 through 300.118, consistent with the preference for educating children with disabilities in regular classes with appropriate aids and supports. The placement should be as close as possible to the child's home and made in conformity with the least restrictive environment provisions.

In the present case, the evidence was the placement at Ballou appears not to be appropriate based on the testimony of the mother, and the Student's behavior and absenteeism problems. The evidence is that HRA, the school requested by the Petitioner, is not compatible with the Student's IEP. An MDT including the Petitioner and the Student must meet to discuss evaluations; the IEP and placement for the 2008-2009 school year. The Student's participation in the development of his IEP is extremely important given his apparent dissatisfaction with the current program location.

The Student's IEP is inappropriate, the Student's current placement is the neighborhood school; it is not clear if the lack of educational benefit is because of the failure to provide an appropriate placement for 2009-2010; or is the lack of follow-up by the Respondent and the Petitioner; or is a result of the Student's absences. The Petitioner did not prove that HRA is the appropriate placement for the Student. The credible evidence was that the Petitioner has chosen

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[26] 20 U.S.C. 1412(a)(5). 34 C.F.R.§ 300.116

[27] Testimony of the SEC.

to keep the Student out of school, and she has not made herself available to discuss the Student's IEP and educational placement.[28]

The Petitioner prevailed in the claim that the Respondent failed to provide an appropriate placement. The Petitioner did not prevail on her choice of a private placement.

"Although the IDEA guarantees a Free Appropriate Public Education, it does not, however, provide that this education will be designed according to the parent's desires. The primary responsibility for formulating the education to be accorded a [child with a disability] and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parent or guardian of the child. Thus proof alone that loving parents can draft a better program than a state offers does not, alone, entitle them to prevail under the Act." Shaw v. The District of Columbia, 238 F. Supp. 2d 127, 139 (D.D.C. 2002).

Prior Written Notice

The IDEIA regulations that written notice must be given to the parents of a child with a disability a reasonable time before the public agency-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. [29] The Respondent admitted failing to provide the prior notice of placement.

Manifestation determination review

The Respondent admitted during the Hearing that a Manifestation determination was not conducted and that the Student is entitled to compensatory education from the suspension date on September 30, 2009 until November 4, 2009 date upon which he was invited back into school.

Compensatory Education

The parties agreed that the student is entitled to a compensatory education award during the time of the suspension; however neither offered a plan for the Hearing Officer's consideration. Additionally the Petitioner as a result of the denial of FAPE for the failures found in the current complaints is due a compensatory education award.

"Under the theory of "compensatory education," courts and hearing officers may award educational services . . . to be provided prospectively to compensate for a past deficient program." See, *G. ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 308 (4th Cir. 2003). More specifically, as the Fourth Circuit has explained, "[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an

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[28] The Petitioner testified she only visited the school once. She also failed to participate in a meeting in early in 2009, after a February 27, 2009, HOD required evaluations and meetings to discuss these.

[29] *34 CFR §300.503(a); and §300.503(b)*

educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." *G. ex rel. RG, 343 F.3d at* 309 **(emphasis supplied).**

In *Reid v. District of Columbia*, 401 F.3d 516 (2005) the D.C. Circuit held, with respect to compensatory education, that, "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."

Delegation of Hearing officer responsibility to the MDT

The parties did not propose to the Hearing Officer a compensatory education plan. The Petitioner requested that the MDT be authorized to design the compensatory education award.

In *Reid* the Circuit Court considered a fact pattern in which a hearing officer had ordered compensatory education and in the order, empowered the MDT to "reduce or discontinue" the compensatory education that had been ordered. The D.C. Circuit held that a hearing officer may not authorize an MDT to reduce or discontinue compensatory education awards. It mentioned in dicta that likewise, it could not increase compensatory education over the school district's objection. The Reid court found that the hearing officer could not delegate decisions about compensatory education to the MDT because the MDT includes employees of the education agency involved in the education of the child, and such employees are barred by 20 U.S.C. Section 1415(f)(3) from conducting due process hearings and from being empowered to make the decisions that a hearing officer must make at a due process hearing, including decisions about compensatory education.

The court indicated that such a rule is required because hearing awards "shall be final" unless modified through administrative appeal or judicial action, and to permit an MDT to reduce or discontinue an award of compensatory education would run afoul with this requirement. Thus, under the reasoning of the Reid court, a hearing officer who cannot delegate to an MDT decisions to reduce, discontinue or increase compensatory education likewise cannot delegate to an MDT other decisions about compensatory education, including whether it is appropriate and if it is, what should be the content and amount.

Both the IDEIA and Reid bar the Hearing Officers from delegating compensatory education awards to an MDT because it is an improper delegation to an unauthorized group.

During the Hearing for purposes of establishing what type and amount of compensatory education is most appropriate. The Petitioner has an obligation *inter alia* to present evidence regarding the specific educational deficits resulting from the Student's loss of FAPE and the specific compensatory measures needed to best correct those deficits. The Petitioner must prove the reasonableness of the amount of compensatory education requested, what program, if any, would be used to get the Student to where he should be, and how the hours will be integrated into the Student's current educational program.

There was no evidence presented at the Hearing to allow the Hearing Officer to design a compensatory education award. Nonetheless, the Petitioner is authorized to develop a compensatory education plan that follows the standard as establish in the *Reid* decision and present it to the consideration of the Hearing Officer.

V. SUMMARY OF DECISION

The Petitioner proved that since June 2008 the DCPS has not convened a meeting to determine an appropriate educational program or placement for the Student. The document purporting to be an April 2009 IEP does not reflect the increase in services; fails to address the Student's unique needs and fails to describe the goals. The evidence is that existing evaluations are inconsistent on the Student's disability classification. The Petitioner did not provide sufficient evidence to allow the Hearing Officer to adjust the Student's IEP to include the special education category of emotional disturbance; and failed to prove that the Student requires more than the 15 hours of specialized instruction as already recommended. The Student's IEP requires information from current evaluation; it must be revised to include specific strategies to address attendance, self esteem, and to assist the Student to be motivated to attend classes. The IEP must reflect that all the recommendations of April and June 2008 are either discussed or incorporated. The Student's current IEP is not reasonably calculated to enable the Student to receive educational benefits. The Petitioner prevailed on the claim that the Student's has no current appropriate IEP. The Petitioner failed to demonstrate that she was not included in the educational placement or educational program decision.

The Petitioner prevailed in the claim that the Respondent failed to provide an appropriate placement. The Petitioner did not prevail on her choice of a private placement.

The Respondent admitted during the Hearing that a manifestation determination review was not conducted and that the Student is entitled to compensatory education from the suspension date on September 30, 2009 until November 4, 2009 date upon which he was invited back into school.

A MDT meeting must convene to discuss the evaluations including the FBA previously authorized. The MDT will consider prior MDT recommendations that the Student receive academic instruction in a classroom setting with a small student-teacher ratio and that he may benefit from more special education services than he is currently receiving. The team will provide the Student with a conduct sheet as a gauge of measuring his work and productivity in the classroom, behavior, and completion of homework assignments. Additionally, the MDT will provide the Student with psychosocial counseling to address the issues related to self esteem and, anxiety, feeling of sadness, hopelessness, and coping skills.

Furthermore, the MDT must explain in written manner what the Student's least restrictive environment should include. The Student's IEP must include a BIP and the MDT must include the Petitioner and the Student in the conversation and decision of the development of the 2009 IEP.

The MDT will discuss in detail the current location and offer other alternatives to the Petitioner for the services to be provided including additional hours of specialized instruction. The Respondent will discuss educational placement for the 2009-2010 school year; and issue a

notice of placement. The Student must attend classes at the neighbor school and participate in the MDT meeting prior to any additional services being provided.

The Hearing Officer cannot based on the current record in the present matter make a determination that the amount of hours for specialized instruction should be increased to a fulltime program or that the Student's disability classification should be changed. The Petitioner did not prove that High Road Academy is the appropriate educational placement for the Student.

The Petitioner has an obligation *inter alia* to present evidence regarding the specific educational deficits resulting from the Student's loss of FAPE and the specific compensatory measures needed to best correct those deficits. The Petitioner must prove the reasonableness of the amount of compensatory education requested, what program, if any, would be used to get the Student to where he should be, and how the hours will be integrated into the Student's current educational program.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the DCPS has denied the Student a FAPE and issues the following:

VI. ORDER

ORDERED, the Respondent shall by December 11, 2009 provide three dates to the Petitioner to schedule and convene an MDT/IEP with the appropriate personnel to review the evaluations; develop an IEP and discuss placement; **it is further**

ORDERED, at the MDT meeting the evaluations including the FBA previously authorized will be discussed. The MDT will consider prior MDT recommendations that the Student receive academic instruction in a classroom setting with a small student-teacher ratio and that he may benefit from more special education services than he is currently receiving. The team will provide the Student with a conduct sheet as a gauge of measuring his work and productivity in the classroom, behavior, and completion of homework assignments. Additionally, the MDT will provide the Student with psychosocial counseling to address the issues related to self esteem and, anxiety, feeling of sadness, hopelessness, and coping skills. The MDT must explain in written manner what the Student's least restrictive environment should include. The Student's IEP must include a BIP and the MDT must include the Petitioner and the Student in the conversation and decision of the development of the 2009 IEP.

ORDERED, the MDT must revise the Student's IEP to include specific strategies to address attendance, self esteem, and to assist the Student to be motivated to attend classes. The IEP must reflect that all the recommendations of April and June 2008 are either discussed or incorporated; **it is further**

ORDERED, the MDT will discuss in detail the current location and offer other alternatives to the Petitioner for the services to be provided including additional hours of specialized instruction. The Respondent will discuss educational placement for the 2009-2010 school year; and issue a notice of placement. The Student must attend classes at the neighbor

school and participate in the MDT meeting prior to any additional services being provided; **it is further**

ORDERED, at the MDT meeting, the advantages and disadvantages with respect to each school must be discussed, including any schools proposed by the Petitioner. The Respondent shall provide the Petitioner an explanation for the placement it proposes, and the reasons for the proposal shall be provided in the Meeting Notes. The Respondent shall have five school days to issue a prior notice of placement to a DCPS school, and 20 school days to issue a prior notice of placement to a non public or private school; **it is further**

ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; **it is further**

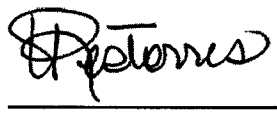
ORDERED, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days; **it is further**

ORDERED, the Petitioner may request a hearing to provide evidence as required by the *Reid* decision and address the reasonableness of the amount of compensatory education requested, what program, if any, will be used to get the Student to where he should be, and how the hours will be integrated into the Student's current educational program; **it is further**

This order resolves all matters presented in the Petitioner's October 28, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)



Signed: November 27, 2009

Wanda Iris Resto - Hearing Officer

APPENDIX A
INDEX OF NAMES
In the MATTER OF "Student" V. DCPS

[redacted]	[redacted]
Child's Parent(s) (specific relationship)	[redacted]
Senior Director [redacted] PG County	[redacted]
Child/Parent's Representative	[redacted]
School System's Representative	Blair Matsumoto, Esquire
Attending School	Jefferson JHS

SSE
MAILING OFFICE
7 PM 1:15