Owens, Tawanda (OSSE)

From: admin@dcsho.i-sight.com
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To: rgambale@jeblaw.biz; Chor, Tanya (DCPS); HearingOffice, Student (OSSE); Due, Process (OCTO)
Cc: Massey, Kimm (OSSE); Merced, Deusdedi (OSSE-Contractor)
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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

[redacted], on behalf of
[redacted]

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Hearing Officer: Kimm Massey, Esq.

Case No: 2012-0539

Room No.: 2006

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HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

Student is a [redacted], who presently attends a charter school located in the District of Columbia. On August 6, 2012, Petitioner filed a Complaint against DCPS, alleging that DCPS denied Student a free appropriate public education ("FAPE") by (1) failing to include Parent as a participant in the May 4, 2012 multidisciplinary team ("MDT") meeting and/or to reconvene the MDT upon parental request; (2) failing to revise Student's individualized education program ("IEP") on or about May 4, 2012 to provide Student with his least restrictive environment ("LRE"), which would be a full-time out of general education setting; (3) failing to provide Student with a location of services that could implement Student's February 2012 IEP; and (4) failing to fully implement Student's IEP between February 2012 and June 2012. As relief for these alleged violations of IDEA, Petitioner requested a finding of a denial of FAPE; funding and placement, with transportation, to a specified private school or an alternate private placement selected by Parent; that DCPS reconvene the MDT with Parent and amend Student's IEP to reflect the need for a full-time out of general education setting; and additional compensatory education for denials of FAPE that have occurred.

On August 15, 2012, DCPS filed its Response, which primarily asserted the following defenses: (i) Petitioner's advocate confirmed the May 4, 2012 meeting date, but Parent and the advocate failed to attend the meeting; and (2) Student's IEP was reviewed at the meeting, no changes were made, and the team determined that McFarland MS would be the location of services.

The parties concluded the Resolution Meeting process by participating in a resolution session on August 30, 2012. No agreement was reached, but the parties agreed not to shorten the 30-day resolution period. Therefore, the 45-day timeline began on September 6, 2012 and was scheduled to end on October 20, 2012. However, based upon Petitioner's subsequent amendment of the Complaint, the 75-day timeline in this case was reset and will end on November 24, 2012, which is now the HOD deadline.

On September 10, 2012, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, relief requested, and other relevant topics. Petitioner sought leave to amend the Complaint to revise Claim#3, and the hearing officer granted leave to amend. The hearing officer issued a Prehearing Order and Order Granting Petitioner's Motion to Amend on September 13, 2012.

On September 12, 2012, Petitioner filed an Amended Complaint that amended Claim #3 to allege that DCPS denied Student a FAPE by failing to change Student's location of service at the May 4, 2012 meeting in light of the location's inability to provide Student with an appropriate setting, failure to fully implement the IEP, the escalation of Student's behaviors at the location and the failure of Student to make appropriate academic progress. The remaining claims and requested relief remained the same as in the original Complaint.

By their respective letters dated October 31, 2012, Petitioner disclosed nineteen documents (Petitioner's Exhibits 1-19), and DCPS disclosed twenty-one documents (Respondent's Exhibits 1-21).

The hearing officer convened the due process hearing on November 8, 2012.[1] The parties' disclosed documents were admitted without objection. Thereafter, the hearing officer received the parties' opening statements, testimonial evidence and closing statements prior to bringing 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. §§ 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)

The issues to be determined are as follows:

1. Did DCPS deny Student a FAPE by failing to include Parent as a participant in the May 4, 2012 MDT and/or reconvene the MDT upon parental request?

2. Did DCPS deny Student a FAPE by failing to revise Student's IEP on or about May 4, 2012 to provide Student with his LRE, which Petitioner contends would be a full-time out of general education setting?

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

3. Did DCPS deny Student a FAPE by failing to change Student's location of service at the May 4, 2012 meeting?

4. Did DCPS deny Student a FAPE by failing to fully implement Student's IEP between February 2012 and June 2012?

FINDINGS OF FACT[2]

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is a [redacted] who currently attends a charter school located in the District of Columbia.[3]

2. Student's most comprehensive psychological evaluation was conducted on July 25, 2011 and was conducted just after Student had completed 5th grade. The evaluator determined that Student has Low Average cognitive abilities (FSIQ=83) overall. The evaluator also rendered the following Axis I diagnoses: Attention-Deficit/Hyperactivity Disorder, Combined Type; and Learning Disorder, Not Otherwise Specified.[4]

3. On January 23, 2012, the undersigned hearing officer issued a Hearing Officer Determination ("HOD"), which required DCPS to, *inter alia*, convene an IEP/Placement meeting to revise Student's IEP to provide a dedicated aide and 15 hours per week of specialized instruction and place Student in a school other than the one he was attending at the time that could implement the revised IEP.[5]

4. On February 1, 2012, DCPS convened an MDT meeting for Student. At that meeting, DCPS revised Student's IEP to include 15 hours per week of specialized instruction, reviewed and revised Student's IEP goals, and assigned Student to attend a DCPS Middle School. The IEP identifies Student's primary disability as multiple disabilities.[6]

5. On February 3, 2012, Petitioner's counsel sent DCPS an email stating that Student's grandmother and advocate had gone to visit the assigned DCPS Middle School and did not agree with that location of services.[7]

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[2] 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.
[3] Testimony of Parent.
[4] Petitioner's Exhibit 15.
[5] Respondent's Exhibit 1; Petitioner's Exhibit 11.
[6] .*See* Respondent's Exhibits 3-5; Petitioner's Exhibits 6 and 9.
[7]. Respondent's Exhibit 6

6. On February 6, 2012, Petitioner filed a Complaint challenging the DCPS Middle School as Student's location of services and requesting funding and placement at a private special education school and additional compensatory education.[8]

7. On February 16, 2012, a hearing officer denied Petitioner's Stay-Put motion to have Student returned to the school he was attending prior to the issuance of the January 23, 2012 HOD and ruled that the DCPS Middle School Student was assigned to attend at the February 1, 2012 MDT meeting was Student's location of services at the time the Complaint was filed.[9]

8. On or about March 16, 2012, Petitioner and DCPS entered into a Settlement Agreement ("SA") that required DCPS to convene an MDT meeting within 20 days to review and revise Student's IEP, if necessary, and discuss location of services.[10]

9. On March 29, 2012, DCPS issued a Letter of Invitation ("LOI") inviting Parent to attend an MDT meeting in early April. By email dated April 2, 2012, DCPS sent an email identified as an LOI to Petitioner's counsel. Parent, through Petitioner's counsel, initially confirmed a meeting for April 12th, but later indicated that she would not be available on that date because "something ha[d] popped up." Parent proposed three additional dates for the meeting, including May 4, 2012. The parties ultimately agreed to extend the timeline provided in the SA, and they confirmed a meeting date of May 4, 2012.[11]

10. On Friday, May 4, 2012, DCPS convened the MDT meeting pursuant to the SA. The DCPS team members, consisting of the Compliance Case Manager, two special education teachers, a general education teacher, and the Special Education Coordinator, waited for Parent and her advocate for 30 minutes. When Parent and her advocate did not show up, the DCPS team members moved forward with the meeting. The team reviewed the IEP and determined that no changes were warranted. The team also discussed location of services and determined that the assigned DCPS Middle School could continue to meet Student's needs. The meeting concluded after 30 minutes.[12]

11. The special education teacher who participated in Student's May 4, 2012 IEP meeting did not provide any special education services to Student during SY 11/12; the teacher filled as a member of the IEP team because Student's special education teacher was out for personal reasons that day. This teacher was also filling in for the SEC, who arrived at the meeting late. The special education teacher who provided services to Student during SY 11/12 was called briefly to participate in the meeting,

[8] Respondent's Exhibit 7.
[9] Respondent's Exhibit 9.
[10] Respondent's Exhibit 11; Petitioner's Exhibit 12.
[11] Respondent's Exhibits 12-13, 15, 17-19.
[12] Respondent's Exhibit 21; Petitioner's Exhibit 5; testimony of former special education teacher.

but she was told that she would be called again when Parent arrived and no one ever called her back.[13]

12. Petitioner's advocate had received a call from Student's grandmother on Monday, April 30, 2012 indicating that she could not make the meeting that Friday, on May 4th. Also on April 30th, the advocate had received notification that her position as an advocate would be terminating on the following Monday. Nevertheless, the advocate left a voicemail message for the DCPS Compliance Case Manager stating that the grandmother would be unable to attend the meeting on Friday but she did not hear anything back before her job ended and she did not make any additional attempts to contact DCPS.[14]

13. DCPS suspended Student for two days on May 16 and 17, 2012 and for 5 days from May 18 to May 24, 2012. Both suspensions were for engaging in a documented pattern of persistent Tier 2 behavior.[15]

14. Student did not have a very good experience at the DCPS Middle School he was assigned to attend at the February 1, 2012 meeting. He had a hard time transitioning to the school, and once he was there, he had one confrontation after another – mostly with teachers. He did not receive any counseling services at the school; indeed, he did not even know who the counselor was. He was suspended several times, but most of the time the teachers would just send him out of the room to an assistant principal's office when he was uncooperative. As a result, he would often come home from school saying that he had sat in the assistant principal's office all day long.[16]

15. Although DCPS presented at the due process hearing witnesses who testified that Student received his specialized instruction and related services at the DCPS Middle School during SY 11/12, one of the witnesses had never been present for the provision of Student's related services, and although she saw Student receiving specialized instruction in reading she did not testify that she saw Student receiving specialized instruction in other academic areas. Moreover, the witness who testified that she actually provided specialized instruction to Student during SY 11/12 also testified that Student was not on her case load and provided testimony that was less than convincing.[17]

16. Student lacked the ability to complete some of his assignments at the DCPS Middle School, so he would act out to try to distract from that. This is also why Student often did not complete his work. Student is still working on acquiring basic math skills, he can read low level readers that are well below grade level but his vocabulary is very limited, and his writing is at a very basic level so he has problems constructing ideas and writing information that makes sense. However, Student is very socially adept,

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[13] Testimony of former special education teacher; testimony of SEC; testimony of special education teacher.
[14] Testimony of advocate.
[15] Petitioner's Exhibits 8 and 10.
[16] Testimony of grandmother.
[17] *See* testimony of SEC; testimony of special education teacher.

so he is able to cover up and downplay his limited skills. He is embarrassed about his low level of functioning.[18]

17. Student initially attended the DCPS Middle School at the start of SY 12/13. However, after Student had a physical confrontation with his dedicated aide, his mother transferred him to a charter school located in the District Columbia. Student is having some problems at the charter school involving uniforms and tardiness. The tardiness is a result of him taking the Metro bus to school now.[19]

18. Student's June 14, 2012 Progress Report indicates that he earned three Ds and one F, as well as an illegible grade, as his final grades for SY 11/12.[20]

19. On July 5, 2012, Petitioner's counsel sent DCPS an email stating that the MDT meeting was never held pursuant to the SA and offering dates in July for the meeting. Upon being advised that the meeting had already been held pursuant to the parties' previous agreement, Petitioner's counsel asked DCPS to reconvene the meeting since Parent did not participate on May 4th. DCPS responded that the meeting had already been held pursuant to the SA and the SA had been closed, but Parent could make a request through the school for another meeting. Petitioner's counsel asserted that the meeting was not valid because Parent was not a participant and asked to reconvene the meeting.[21]

20. Student was accepted to attend a full-time special education school by letter dated March 29, 2012. The school offers an 11-month middle school program and instructs middle school students using a curriculum that is aligned with the Maryland State Curriculum. The school is a Maryland State Department of Education approved nonpublic special education provider. The student/teacher ratio is 4 to 1 at the school, and the school serves students with learning disabilities, language processing disorders, high functioning autism syndrome, Aspergers and OHI, including head injuries, ADHD, etc.

    The teachers at the school have to meet State of Maryland certification standards for teachers and they must be certified in special education. The school offers a psychologist, three full-time social workers who have clinical licenses, 3 speech/language therapists certified by ASHA and the State, a full-time OT therapist, a part-time OT assistant, and a part-time physical therapist.

    This school can implement all of the educational and related services listed on Student's IEP. The school plans to provide modifications for Student that will allow him to access closer to grade level work, and the school also plans to help Student improve with respect to self-regulation and attention issues. The tuition at the school is $36,000 per year for a 200-day program, and the cost includes all related services.[22]

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[18] Testimony of Parent; testimony of tutor.
[19] Testimony of Parent.
[20] Petitioner's Exhibit 7.
[21] Petitioner's Exhibits 1-4.
[22] Petitioner's Exhibit 16;testimony of private school Program Director.

21. Petitioner's October 25, 2012 Compensatory Education Proposal seeks the following forms and amounts of compensatory education for Student: 54 hours of individualized tutoring, 15 hours of counseling, and 10 hours of occupational therapy ("OT") services. The plan seeks to redress alleged harm resulting from Student's improper placement at the DCPS Middle School from February 2012 to the middle of June 2012. Specifically, Petitioner asserts that Student did not make significant educational progress during that period, spent a number of hours outside of the learning environment because of his frequent referrals to the office and was suspended for at least 5 days, did not have his behavior addressed by a behavior specialist or receive emotion services, and did not receive OT services.[23]

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:

1. Alleged Failure to Include Parent in MDT or Reconvene MDT Upon Parental Request

IDEA provides that the IEP team for each disabled child must include the child's parent(s). *See* 34 C.F.R. § 300.321(a)(1). Moreover, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.322(a).

In the instant case, Petitioner argues that DCPS denied Student a FAPE by either failing to include Parent as a participant in the May 4, 2012 and/or failing to reconvene the meeting upon Parent's request to allow Parent an opportunity to participate. DCPS argues that there has been no denial of FAPE in this regard, because DCPS rescheduled the meeting once at Parent's request and then went forward on the rescheduled date when Parent failed to show up.

The evidence in this case supports DCPS's position. Hence, the evidence shows that the parties initially confirmed a meeting date in April but the meeting was rescheduled because something "popped up" on Parent's end, then Parent failed to appear on the rescheduled meeting date and DCPS went forward with the meeting in Parent's absence. Finding of Fact ("FOF") 9. There is also evidence, however, that Parent attempted to advise DCPS, through the advocate, that Parent would be unable to attend the meeting on May 4, 2012 as well. This attempt by Parent was made through an advocate who was on the verge of losing her job and who left a single voice mail message for DCPS without any attempt to follow up. *See* FOF 12. Hence, it is unclear whether DCPS actually received notice that Parent would be unable to attend the May 4, 2012 meeting.

Moreover, the hearing officer is not convinced that DCPS would have been obliged to reschedule the meeting again even if it had received notification that Parent was unable, yet again, to attend

[23] Petitioner's Exhibit 18.

the meeting that had already been rescheduled once at Parent's request. To the contrary, based on the evidence in this case, the hearing officer is persuaded that DCPS complied with its obligation under IDEA to provide Parent with advance notice of the meeting and to schedule the meeting at a mutually agreeable time and date, which it actually did twice. As a result, the hearing officer concludes that DCPS did not deny Student a FAPE by proceeding with the May 4, 2012 meeting in Parent's absence and/or failing to reconvene the meeting at Parent's request.

2. Alleged Failure to Revise Student's IEP to Provide the LRE

With respect to LRE requirements, IDEA provides that each public agency must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature of severity of the disability is such that education in the regular classes with the use of supplementary aids and servicers cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2). Moreover, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115(a).

In the instant case, Petitioner argues that DCPS failed to revise the Student's IEP on May 4, 2012 to provide the LRE, which would be a full-time out of general education setting. However, the evidence in this case demonstrates that in a January 23, 2012 HOD, the undersigned hearing officer determined that Student requires an IEP that provides him with a dedicated aide and 15 hours per week of specialized instruction, or in other words, that Student's LRE is not a full-time out of general education environment. The fact that Student earned primarily Ds and Fs at the end of SY 11/12 does not undermine that determination, because the evidence also demonstrates that Student did not consistently receive the 15 hours per week of specialized instruction required by the January 23, 2012 HOD and the February 1, 2012 IEP developed pursuant to the HOD. *See* FOFs 14-15. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving that DCPS denied Student a FAPE by failing to revise Student's IEP on May 4, 2012 to provide a full-time out of general education setting as the LRE.

3. Alleged Denial of FAPE by Failing to Change the Location of Services

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 secondary school and are provided in conformity with the Student's IEP. *See* 34 C.F.R. § 300.17.

In the instant case, Petitioner alleges that DCPS denied Student a FAPE by failing to change the location of services at the May 4, 2012 meeting in light of the location's inability to provide Student with an appropriate setting, failure to fully implement the IEP, the escalation of Student's behaviors at the location and the failure of Student to make appropriate academic progress. On the other hand, DCPS insists that the assigned location of services that it determined to continue at the May 4, 2012 meeting implemented the IEP during SY 11/12, tried

to engage Student through the use of a behavioral plan, and has the current ability to implement the IEP.

A review of the evidence in this case confirms that DCPS failed to fully implement Student's IEP during SY 2011/12, that the assigned location of services was unable to control Student's undesirable behaviors at school, with the result that he spent much of his time in an administrator's office instead of in class accessing his education, and that Student ultimately failed to make much academic progress by the end of SY 11/12. *See* FOFs 13-16 and 18. Indeed, within two weeks of the May 5, 2012 meeting, Student was suspended twice for a total of 7 days for engaging in "a documented pattern of persistent Tier 2 behavior." FOF 13. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of demonstrating that DCPS denied Student a FAPE by failing to change his location of services at the May 4, 2012 meeting. *See, e.g., Hinson v. Merritt Educational Ctr.,* 579 F.Supp.2d 89, 104 (D.D.C. 2008) (plaintiff shows placement is inappropriate by showing school is unable to implement the IEP as written).

4. <u>Alleged Failure to Implement Student's IEP between February and June of 2012</u>

The "free appropriate public education" required by the Act is tailored to the unique needs of the handicapped child by means of an "individualized educational program." Board of Education of the *Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982). Hence, as noted above, a FAPE consists of special education and related services that, *inter alia*, are provided in conformity with the Student's IEP. *See* 34 C.F.R. § 300.17. However, "to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Catalan v. District of Columbia,* 478 F. Supp. 2d 73 (D.D.C. 2007) (quoting *Houston Independent School District v. Bobby R.,* 200 F.3d 341, 348 (5th Cir. 2000)).

In the instant case, Petitioner alleges that DCPS failed to implement Student's IEP between February and June of 2012, while DCPS asserts that the assigned location of services has implemented, and moving forward can implement, Student's IEP. As noted above in subsections 2 and 3, the evidence in this case demonstrates that DCPS failed to fully implement Student's February 1, 2012 IEP. *See* FOFs 14-15. The evidence further reveals that DCPS's failure to implement Student's IEP was substantial because Student did not receive any counseling services at all and he spent much of his time, including the time he should have been receiving specialized instruction, sitting in an administrator's office. As a result, Student's behavior continued to interfere with his ability to access his education, and he made minimal academic progress by the end of SY 11/12. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving that DCPS denied Student a FAPE by failing to implement his IEP between February and June 2012.

5. Relief to be Awarded

In the instant case, Petitioner has requested funding and placement, with transportation, to a specified private school; that DCPS reconvene the MDT with Parent and amend Student's IEP to reflect the need for a full-time out of general education setting; and compensatory education in the form and amount of 54 hours of individualized tutoring, 15 hours of counseling, and 10 hours of occupational therapy ("OT") services.

The hearing officer has already determined in subsection 2, *supra*, that Student's LRE is not a full-time out of general education setting. Therefore, the hearing officer will deny Petitioner's requests for an Order requiring DCPS to amend Student's IEP to reflect his need for a full-time out of general education setting and for funding and placement, with transportation, to the specified private school, which is a full-time special education school. *See e.g., N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (D.D.C. 2008) (citations omitted) (one of the factors to be considered in determining whether a particular private placement is appropriate for a particular student is the extent to which the school represents the LRE); *Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982) (the requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction).

However, as Petitioner has met its burden of proving that DCPS denied Student a FAPE by failing to change Student's location of services in May 2012, but even as late as the due process hearing in this case DCPS continued to assert that the current location of services is appropriate for Student, notwithstanding the fact that Student's mother had already transferred him to a DCPS charter school due to difficulties he experienced at the assigned school at the start of SY 12/13, the hearing officer lacks confidence in DCPS's ability to select a school that is appropriate for Student. Therefore, the hearing officer will order DCPS to (1) provide Parent with three different school options that can fully implement Student's IEP, (2) allow Parent sufficient time to investigate those options, during which time Parent may also select two schools of Parent's choice that can implement Student's current IEP and still provide Student with his LRE, and (3) reconvene Student's IEP to assign Student to attend a school that Parent agrees with that can implement Student's IEP.

Moreover, as Petitioner also proved that DCPS denied Student a FAPE by failing to implement his IEP between February and June 2012, and Petitioner presented the hearing officer with a compensatory education plan designed to address the denial of FAPE during that time period, the hearing officer will also order DCPS to either implement, or provide funding for the implementation of, Parent's proposed compensatory education plan.

ORDER

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

1. Within 15 calendar days of the issuance of this Order, DCPS shall provide Parent with three different school options that can fully implement Student's IEP. DCPS shall then

allow Parent at least 15 calendar days to investigate those options and to select two schools of Parent's choice that can implement Student's current IEP and still provide Student with his LRE. Thereafter, but not later than 40 calendar days after the issuance of this Order, DCPS shall reconvene Student's IEP to assign Student to attend a school that is chosen from either DCPS's options or Parent's options, and with which Parent agrees, that can implement Student's IEP and provide him with his LRE.

2. Within 15 calendar days of the issuance of this Order, DCPS shall either begin the implementation of, or provide funding to Parent for the implementation of, Parent's proposed compensatory education plan consisting of 54 hours of individualized tutoring, 15 hours of counseling, and 10 hours of OT services.

3. All remaining claims and requests for relief in Petitioner's September 12, 2012 Amended 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: 11/24/2012 /s/ *Kimm Massey*

Kimm Massey, Esq.
Hearing Officer