



## **JURISDICTION:**

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened for one day on \_\_\_\_\_ at the Office of the State Superintendent (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student is classified under IDEA with an emotional disability (“ED”). The student resides in the District of Columbia with her parent. She began attending a special education program (“School A”) located at a DCPS high school soon after the start of school year (“SY”) 2012-2013.

Prior to attending School A, the student had been placed at a residential treatment center for a year. She returned home \_\_\_\_\_ on \_\_\_\_\_ DCPS issued a prior written notice placing the student in a less restrictive environment in a self-contained classroom at School A.

On \_\_\_\_\_ the student’s parent filed a due process complaint alleging the student’s individualized education program (“IEP”) lacked therapeutic wrap-around services to address the student’s functional needs following her release from the residential facility and that the student’s placement at School A was inappropriate. The complaint resulted in a Hearing Officer Determination (“HOD”) issued \_\_\_\_\_ concluding that there was no showing the student required wrap-around services and concluding School A was an appropriate placement for the student.

During the first semester of SY 2012-2013 the student attended school regularly and earned passing grades \_\_\_\_\_.

DCPS convened an IEP meeting for the student to review evaluations that had been conducted in April 2012 at the residential treatment center and to review the student’s academic performance. The student’s parent participated in the IEP meeting. The team determined the student continued to be classified as ED and would remain at School A.

On \_\_\_\_\_ the student’s parent requested that the student be transferred to a different DCPS high school due to concerns in and out of school.

Petitioner filed a due process complaint alleging, inter alia, that the student's placement at School A was inappropriate due to her recent hospitalization and her behavior at and around School A.<sup>2</sup> Petitioner sought a residential placement.<sup>3</sup>

In early March 2013, despite the pending due process complaint, the student's parent withdrew the student from School A and enrolled her in a comparable program at another DCPS high school, ("School B"). In order to assert that both the programs, School A and School B were inappropriate Petitioner withdrew the complaint and re-filed the current complaint on

After being transferred to School B the student attended school for approximately two weeks before she began being absent from school or leaving school early. Because the student's parent had difficulty ensuring the student attended school and difficulty controlling her behaviors out of school,

After a few weeks the student was released to a group home and allowed to return to School B to attend school during the day. However, the student's school attendance remained inconsistent. On the student was placed at again after making suicidal and homicidal ideations toward a police officer. The student remained at until late July 2013, when she was placed in a residential treatment center outside the District of Columbia.

On DCPS filed a response to the complaint. DCPS denied any alleged denials of free and appropriate public education ("FAPE") and specifically asserted that the student did not exhibit any behavioral difficulties that would warrant a change in placement and/or location.<sup>4</sup> DCPS also asserted that programs at both School A and School B were appropriate at the time the student attended them and that because of the student's extended hospitalization and pending court case the appropriate prospective placement for the student was undetermined until she was released from. As to the issue regarding the student's evaluations DCPS asserted that the student is not yet due for triennial evaluations and no request for reevaluation had been made.

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<sup>2</sup> Petitioner asserted that although the HOD concluded that the program at School A was an appropriate placement, a change in circumstances including the student's escalating behaviors and recent hospitalization gave rise to new claim that was not barred by the previous HOD.

<sup>3</sup> As remedy Petitioner also sought an order directing DCPS to maintain the behavior support services in the student's IEP and include therapeutic interventions and an attendance plan and that DCPS fund an independent FBA, and convene a meeting to review and update the student's IEP and BIP and to provide the student compensatory education.

<sup>4</sup> DCPS initially asserted that the claim and issue raised in the complaint was raised and adjudicated in DCPS' favor in the HOD. However, based on Petitioner's claim of changed circumstances DCPS' argument of the issue being barred was not advanced.

A resolution meeting was convened \_\_\_\_\_ The resolution meeting was not successful in resolving the disputes. The parties did not agree to waive the remainder of the resolution period.

On \_\_\_\_\_ Petitioner filed a motion for a continuance in light of the student's continued hospitalization and the pending D.C. Superior Court case that had placed her at \_\_\_\_\_. The motion was granted delaying the hearing until \_\_\_\_\_ and extending the HOD due date to \_\_\_\_\_

The parties appeared for hearing \_\_\_\_\_ The duration of the student's placement \_\_\_\_\_ was uncertain and there was no scheduled placement and/or IEP review meeting and no DCPS placement monitor had yet been assigned. Because the student had already been placed in residential treatment DCPS asserted that none of the requested relief is appropriate.

Petitioner, however, asserted that because the student was harmed while attending School A and School B she is due relief and any compensatory education awarded can and will be used by the student upon her release from residential treatment.

The Hearing Officer concluded that none of the requested relief, save perhaps compensatory education, was appropriate because the residential placement would likely determine what if any services and assessments were appropriate for the student while she is placed there. The Hearing Officer allowed the hearing to proceed for Petitioner to present proof that the student was denied a FAPE because of her placements at School A and School B from mid December 2013 to the date of the complaint and whether DCPS failed to re-evaluate the student while she attended School A, and if that burden was met whether the student was due compensatory education.

**The issues adjudicated are:**<sup>5</sup>

1. Whether DCPS denied the student a FAPE by failing to provide the student an appropriate educational placement and location of services at School \_\_\_\_\_ until the date the complaint was filed.
2. Whether DCPS denied the student a FAPE by failing to evaluate/reevaluate the student based upon requests from the parent made during resolution sessions and/or meeting with DCPS regarding the student since mid December 2012.

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<sup>5</sup> The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order ("PHO") do not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) in the pre-hearing conference order and at the outset of the hearing and the parties agreed that the issue(s) listed herein were the issue(s) to be adjudicated. Petitioner's counsel confirmed at the outset of the hearing that one of the three issues in the PHO complaint was withdrawn.

## RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-69 and DCPS Exhibit 1-15) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

## FINDINGS OF FACT:<sup>6</sup>

1. The student is classified under IDEA as ED. The student resides in the District of Columbia with her parent. She began attending School A soon after the start of SY 2012-2013. (Parent's testimony, Petitioner's Exhibit 33-1)
2. Prior to attending School A, the student had been placed at a residential treatment center for a year. On \_\_\_\_\_ an IEP was developed for the student while she resided at the residential placement. This IEP classified the student with ED disability and provided for 30 hours per week of specialized instruction outside of general education and 3 hours per week of counseling outside of general education. The IEP did not mandate that the special education services were to be provided in a therapeutic setting. (Parent's testimony, Petitioner's Exhibit 32-1)
3. The student returned home from the residential placement in August 2012 and on \_\_\_\_\_ DCPS issued a prior written notice placing the student in a less restrictive environment in a self-contained classroom at School A. (Parent's testimony, Petitioner's Exhibit 6-1)
4. The student's \_\_\_\_\_ IEP was in effect at School A until a new IEP was developed in January 2013. The student's program at School A (and at School B) is a full-time special education program that provides the student with a small group setting and focuses on behavioral as well as learning difficulties. The self-contained classroom is designed for students with ED classification in which a special education teacher provides all core course work with assistance from an educational aide and a behavior technician. (Witness 2's testimony, Petitioner's Exhibits 32-1, 40-1).
5. At School A there was a 2 to 1 student to staff ratio and there were never more than six students in a classroom at a time. The special education teacher provided blended instruction - half from an on-line program called Plato the other half from the special education teacher with assistance from the educational aide. The student was operating \_\_\_\_\_ below her appropriate ninth grade level in reading and at fifth grade in math. The staff kept a running behavior measurement. According to the daily behavioral logs kept by the behavior technician there were no incidents in the classroom

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<sup>6</sup> The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

involving the student and the classroom teacher never witnessed any major behavior incidents involving the student. (Witness 2's testimony).

6. Soon after the student began attending School A she witnessed another student, whom she was with at the time, being shot outside the school at the end of the school day. This caused the student trauma. (Parent's testimony)
7. On the student's parent filed a due process complaint alleging the student's IEP lacked therapeutic wrap-around services to address the student's functional needs following her release from a residential facility and the student's placement in the program at School A was inappropriate. The complaint resulted in a HOD issued concluding that there was no showing the student required and lacked wrap-around services and concluding School A was an appropriate placement for the student. (HOD)
8. During the first semester of SY 2012-2013 the student attended school regularly and earned passing grades. However, she earned the grade "F" in her Band class and she was cited for excessive tardiness to class. (Witness 2's testimony, Respondent's Exhibits 7, 9-1)
9. During the third advisory at School A the student had excessive absences from the classroom. She also had 13 unexcused homeroom absences. However the student was still able to pass her core classes, History, Algebra and English. (Petitioner's Exhibit 14-1, 14-2).
10. Although the report card says the student had excessive absences the parent did not get calls about her attendance and was not aware that she was not in classes. (Parent's testimony)
11. Student received poor grades during the third advisory, i.e., a "D" in English, History and Math, and a grade of "F" in Band. (Petitioner's Exhibit 14-1).
12. On the student was hospitalized at Psychiatric Institute of Washington (" after she had stayed away home overnight three days in a row engaging in drug and alcohol use and threatening to harm her younger sibling. The student remained at until and returned to School A briefly upon her release from (Petitioner's Exhibit 49-1, 49-2 Respondent's Exhibits 9-3)
13. On DCPS convened an IEP meeting for the student to review evaluations that had been conducted in April 2012 at the residential treatment center and to review the student's academic performance. The team determined the student continued to be classified as ED. (Respondent's Exhibit 6, Petitioner's Exhibit 7-1, 7-2, 1)
14. The IEP provided for 30 hours per week of specialized instruction outside of general education and 3 hours per week of behavioral support services outside

of general education. The IEP identified the need to provide the student with small group and/or individualized instruction, but the IEP did not mandate that services were to be provided in a therapeutic environment. (Petitioner's Exhibit 33-1, 33-8, 33-9)

15. When the student first began attending School A she got into occasional fights with other students. On one occasion the classroom teacher called the parent and gave the phone to the student for the parent to de-escalate her. The student soon calmed down. By the time of the student's IEP meeting there was none of that behavior being displayed by the student. She was not fighting and she was cooperating with her teachers. As far as her teachers were concerned the student was well groomed and well mannered and although she had some arguments in class it was nothing the staff felt was of concern. The student was never suspended at School A and never had any suicidal or other incidents at school that resulted in her hospitalization. (Parent's testimony)
16. At the meeting the parent expressed her concerns about the student's placement. At the time the School A staff all acknowledged that the student may need some additional assistance but because there were no behavioral issues at the time they concluded they could accommodate the student at the school. There was no request during this meeting for the student to be evaluated or that other assessments be completed. (Parent's testimony, Respondent's Exhibit 6)
17. The parent, however, believes the student needed more specialized instruction than she received at School A and believes that although the student's report card reflected that she was doing quite well, because her lessons were done on a computer she often just continued her attempts at questions until she got them correct even if it took scores of attempts. Consequently, the parent believed that the student's grades did not really reflect her true academic performance. However, the parent acknowledged that the student's poor grades during the third advisory could have been affected by her time at (Parent's testimony)
18. Pursuant to a settlement agreement DCPS awarded the student compensatory education in the form of tutoring. However, the student could not take advantage of the tutoring because most of the time after the award the student was in Consequently, DCPS awarded the student a choice of a laptop computer in lieu of the tutoring hours. (Respondent's Exhibit 15)
19. On the day after the student was released from the student's parent requested that the student be transferred to a different DCPS high school due to concerns in and out of school that she felt were impacting the student. (Respondent's Exhibit 5)
20. In February 2013, Petitioner had the option of participating in the wrap-around services program sponsored by the Department of Mental Health. The wrap-around services could be implemented via a choice of two community based organizations. There is no indication whether the parent or student took advantage of these services. (Petitioner's Exhibit 22-2).

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22. The student engaged in reckless and unsafe behaviors in the home and community setting that consisted of lying and absconding from home for weeks at a time due to conflicts with her family. The student's absconding behaviors were not linked to anything that happened in school. (Petitioner's Exhibits 24-1, 38-5, 39-4, 59-1).

23. In early March 2013, the student's parent withdrew the student from School A and enrolled her in a comparable program at School B. (Respondent's Exhibit 4, 9-3)

24. After being transferred by her parent to School B the student attended school for approximately two weeks before she began to miss school or leave school early. The student's parent had difficulty ensuring the student attended school and difficulty controlling her behaviors out of school in the community. As result, some time in April 2013 the parent filed a PINS case with D.C. Superior Court and the student was thereafter detained at the D.C. Youth Services Center. After a few weeks she was released to a group home and allowed to return to School B to attend school during the day. However, the student's school attendance remained inconsistent. School B notified the parent that she was leaving school, but they told her it was not a locked facility and they could not stop her from leaving. (Parent's testimony, Respondent's Exhibit 9-13, Petitioner's Exhibit 38-1)

25. During the third advisory at School B the student received all failing grades; i.e., a grade of "F" in Algebra, English and Financial Planning. (Petitioner's Exhibit 16-1).

26. On \_\_\_\_\_ the student was placed at \_\_\_\_\_ again after making suicidal and homicidal ideations toward a police officer. (Respondent's Exhibit 11-1)

27. In July 2013 the D.C. Department of Mental Health Services placed the student at a residential treatment center located outside the District of Columbia. (Respondent's Exhibit 14)

28. Petitioner engaged the services of a firm to design a compensatory education plan for the denials of FAPE alleged in the \_\_\_\_\_ due process complaint. The plan recommended the student be provided 120 of tutoring and 20 hours of counseling over twenty week period. (Witness 3's testimony, Petitioner's Exhibit 64)

## CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (“FAPE”).

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS’] procedural violations affected the student’s *substantive* rights.” *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. <sup>7</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE 1:** Whether DCPS denied the student a FAPE by failing to provide the student an appropriate educational placement and location of services at School A from mid December 2012 to \_\_\_\_\_ and/or at School B from \_\_\_\_\_ until the date the complaint was filed.

**Conclusion:** Petitioner failed to prove by a preponderance of the evidence that the educational placement and location of services at School A and School B was inappropriate.

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch .Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

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<sup>7</sup> The burden of proof shall be the responsibility of the party seeking relief. 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.

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is made in conformity with the Least Restrictive Environment ("LRE") provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; (3) is determined annually; (4) is based on the child's IEP; and (5) is as close as possible to the child's home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

"Educational placement" means educational program, not the particular institution where that program is implemented." *White v. Ascension Parish School Board*, 343 F.3d 373 (5<sup>th</sup> Cir. 2003), 39 IDELR 182. A placement is not a physical location, but a program of educational services offered to the student. *Sherri A.D. v. Kirby*, 19 IDELR 339 (5th Cir. 1992).

The "educational placement" consists of: (1) the education program set out in the student's IEP, (2) the option on the continuum in which the student's IEP is to be implemented, and (3) the school or facility selected to implement the student's IEP. *Letter to Fisher*, 21 IDELR 992 (1994).

In this jurisdiction, the educational placement is the child's IEP, and the school designated by the public agency to implement the child's IEP is the location of services. *Johnson v. District of Columbia*, 2012 L 883125 (D.C.C.),

Petitioner did not challenge any of the substantive provisions of the IEP and offered no proof that the substantive provisions of the IEP were inadequate to meet the student's educational needs. The student educational placement at School A conformed to the parameters of the student's IEP. Petitioner also did not present any proof that the educational program, i.e., the IEP, was insufficient to meet the student's educational needs.

The evidence in the record showed that the student performed well both academically and behaviorally during first semester of SY 2012-2013.<sup>8</sup> During the third advisory she did not perform as well academically; however, she still passed all of her core curriculum classes.

<sup>9</sup> The evidence supports a finding that the student received educational benefit from the IEPs in effect at School A. Also, Petitioner failed to offer any evidence that School A could not implement Student's IEP.

The evidence demonstrates that the program at School A is a full-time special education program that provided the student with a small group setting and focuses on behavioral as well as learning difficulties with a special education teacher and educational aide and a behavior technician. There was a 2 to 1 student to staff ratio and a special education teacher provided blended instruction half from an on-line program called Plato the other half from the special education teacher.<sup>10</sup>

Although the parent was concerned that the student was not performing well academically, the student's classroom teacher credibly<sup>11</sup> testified that the student was performing fairly well academically and she was being given instruction not just on the computer program but blended instruction by both the classroom teacher and educational aide to support the learning done on the online program.

Although the parent expressed concern that the School A and School B did not have sufficient behavioral or therapeutic supports to address the student's behaviors, the behaviors that were of greatest concern were not in school behaviors but those displayed outside of school.<sup>12</sup> After the student's hospitalization at \_\_\_\_\_ in January 2013, there appears to have been wrap-around community services made available to the student but it is not clear whether she took advantage of the services.<sup>13</sup>

The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

The IDEA only mandates a "basic floor of opportunity." *Id.*; *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995). To accomplish this, an IEP must only "be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's

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<sup>8</sup> Finding of Fact ("FOF") # 8

<sup>9</sup> FOF # 9

<sup>10</sup> FOF #s 4, 5

<sup>11</sup> The witness was unhesitant and clear in her testimony regarding the student's academic abilities, performance and her in school behaviors.

<sup>12</sup> FOF # 22

<sup>13</sup> FOF # 20, 22

intellectual potential." *Chambers v. Sch. Dist. of Philadelphia Bd. of Educ.*, 587 F.3d 176, 182 (3d Cir. 2009) (quoting *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004)).

Petitioner's argument that School A did not provide the therapeutic services that the student needed, was misplaced. Neither the IEP nor the IEP mandated that services be provided in a therapeutic environment. The services provided were sufficient to confer educational benefit and the IEP met the requirements of *Rowley*.

Petitioner also failed to meet her burden of proof that DCPS failed to provide the student with an appropriate educational placement and location of services at School B. DCPS did not change the location of services from School A to School B. Petitioner did. DCPS provided the student with a FAPE at School A. Nothing more can be expected of DCPS.

Nonetheless, the evidence indicates that at School B as well, the student's IEP could be implemented.<sup>14</sup> It was the student's lack of attendance and problems that developed in the community that eventually resulted in the parent initiating a PINS case, the student being detained and returned to and ultimately reinstated in residential placement.<sup>15</sup> There was no evidence this was caused by DCPS' failure to provide the student a FAPE. Consequently, the Hearing Officer concludes Petitioner failed to sustain the burden of proof on this issue by a preponderance of the evidence.

**ISSUE 2:** Whether DCPS denied the student a FAPE by failing to evaluate/reevaluate the student based upon requests from the parent made during resolution sessions and/or meeting with DCPS regarding the student

**Conclusion:** There was no evidence presented that the parent requested that the student be evaluated or reevaluated and no evidence that her reevaluation was warranted. Petitioner failed to sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.303(a)(2) make clear that, "A local education agency ("LEA") *shall ensure* that a re-evaluation of each child with a disability is conducted...if the child's parents or teacher requests a re-evaluation." (emphasis added). 34 C.F.R. § 300.305(d)(2) also clarifies that the parent must be advised by the LEA of the right to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. *See also Letter to Copenhaver*, 108 LRP 16368 (OSEP 2007).

20 U.S.C. §1414(b)(3)(B) and 34 C.F.R. § 300.304(c)(4) make clear that an "LEA *shall ensure* that a child is assessed in all areas of suspected disability, including, if appropriate, health, vision, *hearing, social and emotional status...and motor abilities.*" (emphasis added).

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<sup>14</sup> FOF # 4

<sup>15</sup> FOF #s 22, 23, 24

Petitioner asserted that the student warrants trauma focused behavior intervention in her IEP and a functional behavior assessment (“FBA”) and that DCPS should have been on notice to conduct the evaluations and amend the student’s IEP. However, there was no evidence the student display problematic in-school behaviors such that DCPS should have been point on notice of the need for an evaluation.<sup>16</sup> There was also no evidence that any request for evaluation was made the meeting or subsequent thereto.<sup>17</sup> The Hearing Officer thus concludes that Petitioner failed to sustain the burden of proof that there was a violation by DCPS in this regard.

**Compensatory Education**

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. 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." *Reid, 401 F.3d 522 & 524*. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

The Hearing Officer concludes that Petitioner’s failed to sustain the burden of proof that the student was denied a FAPE. Therefore, the hearing Officer concludes there is no basis for an award of compensatory education.

**ORDER:**

The claims raised in the due process complaint are hereby dismissed with prejudice and all requested relief is denied.

**APPEAL PROCESS:**

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

*/s/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**

**Date:**

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<sup>16</sup> FOF #s 5, 15, 16

<sup>17</sup> FOF # 16. Although there appeared to be a request for a vocational evaluation at a resolution meeting in December 2012, there is no evidence this request was repeated at the meeting or thereafter, and there was no evidence presented during the hearing that such an assessment was warranted.