DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., Second Floor
Washington, DC 20002

Parents on behalf of STUDENT,[1]	)	Case Number:
Petitioners,	)	Hearing Date: August 4, 2011 Room 2003
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	Hearing Officer: Frances Raskin

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STUDENT HEARING OFFICE
2011 AUG 29 AM 9: 23

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), and its implementing regulations at 20 U.S.C. §§ 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioners are the parents of a -year-old student ("Student") with a disability who attends a public elementary school in the District of Columbia. On June 13, 2011, Petitioners filed a Due Process Compliant ("Complaint") against the District of Columbia Public Schools ("DCPS") pursuant to the IDEA.

On June 14, 2011, this Hearing Officer was appointed to preside over this case. On July 14, 2011, Respondent DCPS filed a response to the Complaint ("Response").[2] Respondent filed its Response twenty-one days after the deadline established in IDEA.[3]

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[1] Personal identification information is provided in Attachment A.

[2] Respondent has not challenged the sufficiency of the Complaint, although counsel for DCPS asserted that the Complaint was insufficient because Petitioners had not previously made written requests for a dedicated aide for the Student, the alleged denial of which is the primary issue she raises in the Complaint. This Hearing Officer then informed counsel for DCPS that she

The parties participated in a resolution meeting on June 29, 2011. The parties agreed to continue to work to resolve the Complaint through the thirtieth day of the resolution period. The parties agreed that the forty-five day, due process hearing timeline began on July 14, 2011.

On July 15, 2011, this Hearing Officer held a prehearing conference in which Alana Hecht, counsel for Petitioners, and Daniel McCall, counsel for Respondent DCPS, participated. On July 18, 2011, this Hearing Officer issued a prehearing conference summary and order.

The due process hearing convened at 9:30 a.m. on August 4, 2011. At the outset of the hearing, this Hearing Officer entered the parties' respective five-day disclosures into evidence.[4] After the parties provided opening statements, Petitioner A testified and presented two witnesses, the Student's former educational advocate ("Educational Advocate A") and his current educational advocate ("Educational Advocate B"). Respondent then presented one witness, the Special Education Coordinator ("SEC") of the DCPS school the Student attends. After the parties presented oral closing arguments, the hearing concluded at 3:30 p.m. on August 4, 2011.

III. ISSUES PRESENTED

This Hearing Officer certified the following issue for adjudication at the due process hearing:

Whether DCPS denied the Student a free, appropriate, public education ("FAPE") by failing to provide him a dedicated aide for the past two years to assist him in daily functioning, including fine motor tasks such as holding a pencil, communication, and toileting.

Petitioners seek relief in the form of an order requiring DCPS to amend the Student's individualized educational program ("IEP") to specify that he is to receive the services of a

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understood that DCPS had missed the timeline for filing a notice of insufficiency. *See* 34 C.F.R. § 300.508 (d) (due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of IDEA).

[3] If DCPS has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, DCPS must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. 300.508 (e). During the prehearing conference, counsel for DCPS asserted that no responsive pleading was required because DCPS had issued a prior written notice. However, counsel for DCPS failed to identify or produce any such notice.

[4] This Hearing Officer entered into evidence Petitioners' Exhibits 1-26, inclusive, and Respondent's Exhibits 1-3, inclusive.

dedicated aide. Petitioners also seek compensatory education in the form of independent behavioral therapy for the Student.

V. FINDINGS OF FACT

1. The Student is years old and was in the grade at a DCPS elementary school ("DCPS School") during the 2010-2011 school year.[5] The Student has attended the DCPS School since the beginning of the 2007-2008 school year.[6]

2. The Student's full-scale IQ is 40, which is in the mentally deficient range and below the first percentile of children his age.[7] The Student has unusual difficulty comprehending and completing schoolwork.[8] He has deficits in all academic areas, and his academic functioning is generally below the kindergarten level.[9]

3. The Student is at-risk for hyperactivity,[10] attention problems,[11] aggression,[12] and conduct problems.[13] The Student also is at-risk for depression[14] and withdrawal.[15] When he was younger, he was a head banger and continually struck his head against a hard surface.[16]

4. The Student's adaptive skills are at-risk, as are his leadership, study skills, and social skills.[17] The Student has clinically significant impaired functional communication, and demonstrates unusually poor expressive and receptive communication skills.[18] He also has extremely low expressive and receptive vocabulary skills.[19]

5. He has very low visual-motor functioning, equal to his IQ expectations.[20] He has below average fine-motor manipulation skills and very low visual-motor integration skills.[21]

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[5] Testimony of Petitioner A.
[6] Petitioner Exhibit 13 at 2 (May 11, 2007 Prior Notice).
[7] Petitioner Exhibit 21 at 3, 8 (June 2, 2008, Confidential Report of Psychological Evaluation). The average IQ score is 100 (with a range of average of 90-109). *Id.*
[8] *Id.* at 7.
[9] *Id.* at 8; Petitioner Exhibit 22 at 3 (April 9, 2008, Educational Evaluation); testimony of Petitioner.
[10] Petitioner Exhibit 21 at 6.
[11] *Id.* at 7.
[12] *Id.* at 6.
[13] *Id.*
[14] *Id.*
[15] *Id.* at 7.
[16] *Id.* at 2.
[17] *Id.*
[18] *Id.*; Petitioner Exhibit 20 at 5 (October 7, 2008, Speech-Language Evaluation).
[19] Petitioner Exhibit 20 at 3.
[20] Petitioner Exhibit 21 at 7.

This may affect his ability to perform classroom activities and self-help tasks successfully.[22] He has very low visual perceptual abilities, which may impact on his ability to perform certain math skills and reading/language and handwriting development.[23]

6. The Student's current IEP provides that he is to receive 25.5 hours per week of specialized instruction, sixty minutes per week of speech-language therapy, and sixty minutes per week of occupational therapy outside the general education setting.[24] The IEP contains annual goals and short-term objectives in mathematics, reading, adaptive/daily living skills, communication/speech and language, and motor skills/physical development.[25] The IEP also provides that the Student was to receive extended school year services from June 18, 2011, to August 12, 2011.[26] The IEP states the Student does not require a dedicated aide.[27] Petitioner cannot recall whether she indicated on the IEP that she agreed with its contents.[28]

7. On April 21, 2009, DCPS convened a meeting of the Student's IEP team to discuss his location of services for the 2009-2010 school year to the DCPS School due to the change in his disability classification from developmentally disabled to intellectual disability.[29] At the meeting, Petitioner A and Advocate A requested that the Student be provided a dedicated aide during the 2009-2010 school year.[30] The Student's teacher stated that she did not believe the Student needed a dedicated aide.[31]

8. Petitioner spoke to the Special Education Coordinator at the DCPS School when she enrolled him at the beginning of the 2009-2010 school year.[32] She again requested a dedicated aide for the Student.[33] Petitioner was concerned about the Student's safety and the

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[21] Petitioner Exhibit 19 at 6 (October 11, 2008, Occupational Therapy Evaluation). Visual motor integration involves the process of interpreting information, giving meaning to what is seen, and then making the appropriate motor responses in relation to the information obtained visually. *Id.*
[22] *Id.*
[23] *Id.* at 4.
[24] Petitioner Exhibit 9 at 8-9 (January 19, 2011, IEP).
[25] *Id.* at 2-7.
[26] *Id.* at 11-12.
[27] *Id.* at 9.
[28] Testimony of Petitioner. *See also* Petitioner Exhibit 9 at 1 (copy of IEP without check mark next to sentence stating that Petitioner agrees with the contents of the IEP) with Petitioner Exhibit 9 at 13 (copy of IEP containing check mark next to sentence stating that she agrees with contents of IEP).
[29] Petitioner Exhibit 18 at 1 (April 21, 2009, DCPS MDT/Placement Meeting Notes). *See also* Petitioner Exhibit 23 at 1 (January 18, 2008, IEP) (reflecting disability classification of DD).
[30] Petitioner Exhibit 18 at 2 (DCPS Meeting Notes); *Id.* at 5 (April 21, 2009 Advocate A's Notes).
[31] Petitioner Exhibit 18 at 2.
[32] Testimony of Petitioner.
[33] *Id.*; testimony of Educational Advocate A.

safety of others.[34] Petitioner hoped that the Student would cease behaviors such as others.[35]

9. The Special Education Coordinator informed Petitioner A that DCPS would consider Petitioner's request for an aide after it reviewed the Student's progress and determined whether he had shown any improvement in his behavior.[36] The Special Education Coordinator stated that DCPS would reconsider the request to provide the Student a dedicated aide upon any request from Petitioner A, the Student's teacher, or any person who was working with the Student and recommended a greater level of support for him.[37]

10. At the meeting to review the Student's first thirty days at the DCPS School, Petitioner A did not renew her request for a dedicated aide because the DCPS School had implemented some strategies that she and Educational Advocate A thought would address the Student's behaviors.[38]

11. On February 22, 2010, DCPS convened a meeting of the Student's IEP team to address Petitioner A's concerns regarding the Student's behavior.[39] The Student's general education teacher reported that the Student had difficulties staying focused.[40] She stated that the Student also had difficulties with socialization, was hesitant to participate in activities, and needed to work on his social skills.[41] The teacher stated that, when asked to participate in a required educational task, the Student's behaviors were very inconsistent.[42]

12. The special education teacher stated that the Student often became extremely upset with his classmates, engaged in spitting, acted out, and was disrespectful.[43] She reported that ignoring the Student or implementing time-outs was unsuccessful as he exploded, took off his clothes, engaged in spitting, and put his toes in his mouth.[44]

13. At the February 22, 2010, meeting, Petitioner A reported that the Student got upset when he had to put a toy down to get dressed.[45] Petitioner A stated that, when he is not allowed to do preferred activities, at home and at school, the Student strips off his clothing.[46] She reported that the Student at times was very defiant, engaging in hitting, kicking, spitting on the

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[34] Testimony of Educational Advocate A.
[35] *Id.*
[36] Testimony of Educational Advocate A.
[37] *Id.*
[38] *Id.*
[39] Petitioner Exhibit 15 at 1 (February 22, 2010, DCPS MDT Meeting Notes); Petitioner Exhibit 15 at 4 (February 22, 2010, Educational Advocate A's Notes); testimony of Educational Advocate A.
[40] *Id.* at 4.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.* at 6.
[45] *Id.* at 4.
[46] *Id.*

floor, and climbing furniture, which was a safety hazard.[47] These tantrums lasted thirty to forty-five minutes at a time and were triggered by a transition from one activity to another.[48] His behavior worsened in the afternoon.[49]

14. Petitioner also reported that the Student interpreted hugs as hitting.[50] He didn't like to be touched.[51] She informed the team that the Student needs a lot of praise and attention but has difficulty with the imposition of consequences for his inappropriate behavior.[52] The Student has difficulty communicating his emotions and explaining what happened to upset him.[53] She stated that she hoped the Student would receive counseling to help with his behavioral difficulties.[54]

15. At the February 22, 2010, meeting, the school psychologist recommended several strategies to assist the Student.[55] These strategies included a visual schedule, time prompts in advance of transitions, and allowing the Student to leave early to an activity.[56] The psychologist recommended that the Student's teacher keep lessons basic, break down the lessons into small tasks, and review the lessons immediately.[57] She also recommended that the teacher institute consequences that include a time out of three minutes, with a timer, and ensure she is consistent with consequences and corrections.[58] Finally, the psychologist suggested that the teacher review the rules and expectations with the Student, reward good behavior, and use other students and models of good behavior.[59]

16. Petitioner and Advocate A informed the IEP team that they were very pleased with the proposed educational strategies.[60] The DCPS members of the IEP team also agreed with the proposed strategies.[61] The IEP team agreed that there was no need to make any changes to the Student's IEP.[62]

17. On October 15, 2010, DCPS convened a meeting of the Student's IEP team to review his academic performance and review and revise the Student's IEP.[63] Petitioner attended

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[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.* at 5.
[51] *Id.* at 6.
[52] *Id.* at 1.
[53] *Id.* at 6.
[54] *Id.* .
[55] *Id.* at 2.
[56] *Id.* at 7.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.* at 2.
[61] *Id.*
[62] *Id.*
[63] Petitioner Exhibit 14 at 1 (October 15, 2010, IEP Meeting Notes).

the IEP meeting unaccompanied by an educational advocate.[64] Petitioner stated that she was very pleased with the progress the Student was making and the services he was receiving.[65] Petitioner informed the IEP team that the Student was exhibiting this progress at home as well.[66]

18. At the October 15, 2010, IEP meeting, the Student's IEP team revised his IEP.[67] The team agreed that the Student would receive 25.5 hours per week of specialized instruction outside the general education setting.[68] The team also agreed that the Student would receive sixty minutes per week of occupational therapy and sixty minutes per week of speech-language pathology in a small setting.[69]

19. On February 10, 2011, the Student broke his hand while at school.[70] He came home from school saying his hand was hurt.[71] By the next morning, his hand was
When Petitioner A took the Student to the emergency room, she learned his hand
The Student told her that

20. When Petitioner a confronted the DCPS School staff about the incident in which the Student broke his hand, no one on the staff admitted knowing anything about the incident.[75] The Special Education Coordinator told Petitioner A that no one had witnessed the incident.[76]

21. On March 1, 2011, while the Student was in the computer lab, the Classroom Aide turned off the Student's laptop computer after he refused to allow anyone to assist him on the computer.[77] The Student responded by cursing and calling the aide derogatory names.[78] He then tried to leave the classroom.[79] When the aide stood in front of the classroom door to prevent the Student from leaving,
aide and When the Special Education Teacher tried to talk to the Student to calm him down, [82] Classroom Aide and

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[64] *Id.*
[65] *Id.* at 2.
[66] *Id.*
[67] *Id.* at 7-18.
[68] *Id.* at 15.
[69] *Id.*
[70] Testimony of Petitioner A; Petitioner Exhibit 8 at 2 (Children's National Medical Center Patient Itinerary) (showing that Student was admitted to hospital on February 11, 2011).
[71] Testimony of Petitioner A.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] Petitioner Exhibit 2 at 1 (March 1, 2011, incident report).
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.* at 1-2.

hit her when she did not allow him to take the computer out of the room.[83] The Student then ran from the classroom,

22. After he returned to the computer lab, he continued his When the Special Education Teacher to call his grandmother (Petitioner A), the Student again used He then took his He ten started After the Classroom Aide took the paper from him, the Student started After a security officer arrived, the Student calmed down, apologized to the Classroom Aide, and gave her a hug.[90]

23. During the 2010-2011 school year, the Student's behavioral difficulties escalated.[91] Previously, the Student also did use or run out of the classroom.[92] The Student how regularly uses [94] The March 1, 2011, incident was the first time he took off his shoes and

24. During the first three quarters of the 2010-2011 school year, the Student was performing below basic in all academic areas.[96] He required frequent prompting to follow directions, complete class work on time, work with others or cooperate, use time wisely, and make an effort.[97] He rarely participated in class discussion.[98]

25. Over the past two school years, the Student's IEP goals and objectives have remained constant.[99] The Student still cannot count to ten or recite the alphabet.[100] Even with prompting and support, the Student has not mastered his IEP goals in two years.[101]

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[83] *Id.* at 2.
[84] *Id.*
[85] *Id.*
[86] *Id.* at 2-3.
[87] *Id.* at 3.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] Testimony of Petitioner A.
[92] Testimony of Educational Advocate A.
[93] Petitioner Exhibit 2 at 4. The Student regularly calls people and *Id.* at 3-4. He uses statements such as and *Id.* at 4.
[94] *Id.*
[95] *Id.*
[96] Petitioner Exhibit 3 at 1 (DCPS Fourth Grade Report Card).
[97] *Id.*
[98] *Id.*
[99] Testimony of Educational Advocate A.
[100] *Id.*
[101] *Id.*

26. His behavioral difficulties also have remained roughly the same during this time.[102] The Student is unable to manage a toileting routine and regularly wets himself during class.[103] Although he can undress himself, he cannot dress himself.[104]

27. A behaviorist is a certified behavior analyst who can utilize specific behavior modification and prompts to help a student relearn proper behavior and unlearn improper behaviors using scientific methods.[105] Behaviorists work with students on all levels of functioning, whether verbal or nonverbal.[106] A behaviorist also may collaborate with the IEP team so the team can implement strategies in school and collaborate with the parent to help her implement these strategies in the home.[107] A behaviorist can provide behavior modification and social skills training to the Student, assist Petitioners with the Student's behavioral issues at home, and collaborate with the Student's teachers and service providers in the school setting.[108]

28. Petitioner A was a credible witness. She provided forthright testimony about the Student's behavioral difficulties and low academic and adaptive functioning.

29. Educational Advocate A was a credible witness. She provided forthright testimony about Petitioner A's request for a dedicated aide, including that she and Petitioner agreed that a dedicated aide was not necessary for the 2009-2010 school year in light of the strategies proposed by the DCPS psychologist. She had an excellent command of the history of the Student's academic performance and behavioral difficulties,

30. The Special Education Coordinator was not a credible witness. She attacked the veracity of Petitioner A regarding the Student's broken hand, while providing no credible alternative explanation. She also was combative on cross-examination and refused to answer the questions posed to her.

V. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.[109] Under IDEA, the Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[110] The burden of showing something by a preponderance of evidence simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence

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[102] *Id.*
[103] *Id.*; testimony of Petitioner A.
[104] *Id.*
[105] Testimony of Educational Advocate A.
[106] *Id.*
[107] *Id.*
[108] Petitioner Exhibit 26 at 2 (July 28, 2011, Compensatory Education Plan).
[109] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[110] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

before she may find in favor of the party who has the burden of persuasion.[111] In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[112] Unlike other standards of proof, the preponderance standard allows both parties to share the risk of error in roughly equal fashion,[113] except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[114]

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[115] FAPE is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability."[116] FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[117]

DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."[118] In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEIA; and (b) whether the Student's IEP reasonably calculated to enable the Student to receive educational benefits.[119]

In matters alleging a procedural violation, a hearing officer may find that the 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.[120] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[121]

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[111] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[112] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), aff'd, 512 U.S. 246 (1994).
[113] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).
[114] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).
[115] 20 U.S.C. §§ 1400(d)(1)(A),1412(a)(1).
[116] 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, D.C. Mun. Reg. tit. 30 § 3001.1.
[117] *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).
[118] 34 C.F.R. § 300.101.
[119] *Rowley* at 206-207.
[120] 20 U.S.C. § 1415 (f)(3)(E)(ii).
[121] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").

VI. DISCUSSION

A. Petitioners Established by a Preponderance of the Evidence that DCPS Denied the Student a FAPE by Failing to Provide Him a Dedicated Aide during the 2010-2011 School Year.

The IEP is the centerpiece of special education delivery system.[122] The adequacy of the student's IEP is determined by whether the student has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child."[123] IDEA does not require that the services provided maximize each child's potential.[124]

In developing an IEP, the IEP team must consider the strengths of the child; concerns of the parents for enhancing the education of the child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.[125] An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.[126] The services provided to the child in the IEP must address all of the child's identified special education and related services and must be based on the child's unique needs and not on the child's disability.[127]

Here, Petitioner A first requested a dedicated aide on April 21, 2009, when the DCPS IEP team decided to change the Student's location of services to the DCPS School.[128] At the outset of the 2009-2010 school year, Petitioner A did not renew her request for a dedicated aide because the DCPS School had implemented some strategies that she and Educational Advocate A thought would address the Student's behaviors. Petitioners failed to renew this request at any time thereafter, including after the Student was injured at school and the incident in the computer lab.

Nonetheless, the Student's need for a dedicated aide was evident throughout the 2010-2011 school year. On February 10, 2011, the Student broke his hand after another student pushed him down. The Student had regular tantrums during which he used During the incident in the computer lab in March 2011, the Student's behaviors escalated to taking off his shoes,

Thus, DCPS should have provided the Student a dedicated aide during the 2010-2011 school year for his safety and the safety of others. Because DCPS failed to provide the Student a

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[122] *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).
[123] *Rowley,* 458 U.S. at 201 (1982).
[124] *Id.* at 198.
[125] 34 C.F.R. § 300.324 (a).
[126] 34 C.F.R. § 300.320 (a) (1); 5 D.C.M.R. § 3007.2 (a).
[127] D.C. Mun. Reg. tit. 30 § 3002.1(f).
[128] Any claim arising out of this meeting is barred by the two-year statute of limitations.

dedicated aide, his behavior escalated. As a result of his behaviors, the Student made no academic or behavioral progress during the 2010-2011 school year.[129]

Thus, Petitioners proved by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to provide him a dedicated aide during the 2010-2011 school year.

C. Petitioners Proved that the Student is Entitled to Compensatory Education.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place."[130] Because compensatory education is a remedy for past deficiencies in a student's educational program, a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award."[131]

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA."[132] A compensatory education "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."[133]This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity."[134]

A Petitioner certainly need not "have a perfect case to be entitled to a compensatory education award." Rather, once a Petitioner has established that she is entitled to an award, a hearing officer may not simply refuse to grant one.[135] Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.[136] Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.[137]

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[129] Petitioner failed to prove that the Student was capable of making academic progress given his extremely low cognitive functioning. However, the Student may have made behavioral progress had his behavioral difficulties been addressed.
[130] *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).
[131] *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).
[132] *Reid*, 401 F.3d at 518, 523.
[133] *Id.* at 524.
[134] *Id.*
[135] *Stanton v. District of Columbia*, 680 F. Supp. 2d 201, 207 (D.D.C. 2010).
[136] *Reid*, 401 F.3d at 524.
[137] *Id. See also Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

Here, Petitioners have requested compensatory education for denials of FAPE from June 2009 through June 2011 due to the failure of DCPS to provide the Student a dedicated aide during this time. If the Student had received a dedicated aide during the 2010-2011 school year, when his behavior escalated, the Student would have gained social skills and made behavioral progress. Instead, the Student's behavior deteriorated to the point where he was a danger to himself and others.

Thus, the Student is entitled to compensatory education for the denial of FAPE during this time. Providing the Student two hours per week with a certified behaviorist for 20 weeks will allow the Student an opportunity to gain the behavioral skills he otherwise would have obtained if he had had a dedicated aide during the 2010-2011 school year. In other words, these services will put the Student in the place where he would have been but for the denial of FAPE.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 27th day of August 2011, it is hereby:

ORDERED that DCPS shall provide the Student a dedicated paraprofessional aide throughout the school day to assist with instructing the Student and his completion of assignments, managing his behavior, and attending to his toileting needs, for the 2011-2012 school year; and

IT IS FURTHER ORDERED that DCPS shall provide the Student compensatory education, in the form 40 hours of services (two hours of service every week for twenty weeks) with an independent certified behaviorist, of Petitioners choosing, at a rate not to exceed an hour.

By: /s/ *Frances Raskin*
Hearing Officer

NOTICE OF APPEAL RIGHTS

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).

Distributed to:
Alana Hecht, Attorney at Law
Daniel McCall, Attorney at Law
Student Hearing Office
DCPS