

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
August 26, 2014

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STUDENT, <sup>1</sup>	)	
through the PARENT,	)	
	)	Date Issued: August 26, 2014
<i>Petitioner,</i>	)	
	)	Hearing Officer: NaKeisha Sylver Blount
v.	)	
	)	
District of Columbia Public Schools,	)	
	)	
<i>Respondent.</i>	)	

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**Hearing Officer Determination**

**SUBJECT MATTER JURISDICTION**

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

**PROCEDURAL BACKGROUND**

This is a Due Process Complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*

The DPC was filed on June 20, 2014, on behalf of Student, a resident of the District of Columbia, by Petitioner, Student’s guardian, against Respondent, District of Columbia Public Schools (“DCPS” or “LEA”). Because the DPC included discipline-related allegations, the case has proceeded according the expedite timeline, pursuant to 34 CFR §300.532.

On June 24, 2014 the undersigned was appointed as the Impartial Hearing Officer (“IHO”). On July 1, 2014, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties held a Resolution Meeting was held on July 3, 2014 but it failed to resolve the DPC. Pursuant to 34 CFR §300.532(c)(1) and (2), the DPH proceeded within 20 school days of the filing of the DPC, and a final decision in this matter is due 10 school days after the DPH concluded, which is by August 26, 2014.

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<sup>1</sup>Personal identification information is provided in Appendix A.

## Hearing Officer Determination

The undersigned IHO held a Pre-hearing Conference (“PHC”) by telephone on July 10, 2014, at which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day disclosures would be filed by Tuesday, July 17, 2014 and that the Due Process Hearing (“DPH”) would be held on July 22, 2014. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the “PHO”) issued July 10, 2014.

Petitioner’s disclosures were timely filed on July 15, 2014. Respondent’s disclosures were also timely filed on July 15, 2014. At the DPH, the following documentary exhibits were admitted into evidence without objection: P-1 through P-11 and R-1 through R-7. The following exhibits were admitted over the Petitioner’s objection: R-1, R-2, R-2B, R-3 through R-7. The following exhibits were admitted over Petitioner’s objection: R-2A-1, R-8, R-9. The following exhibits were admitted over Respondent’s objection: P-12, P-13.<sup>2</sup>

The following witnesses testified on behalf of Petitioner at the DPH:

- (a) Parent/Petitioner (Guardian);
- (b) Parent’s Educational Advocate (Educational Consultant) – offered as an expert in the area of special education programming; not qualified as an expert; however, permitted to provide lay witness opinion testimony consistent with Federal Rule of Civil Procedure 701, which the IHO applied by analogy;

The following witness testified on behalf of Respondent at the DPH:

- (a) Special Education Consultant at District Middle School;

The parties gave oral closing arguments.

### ISSUES

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH.

- (a) Whether DCPS denied the student a free appropriate public education (“FAPE”) by failing to comply with the disciplinary procedures set out in 34 CFR 300.534, which pertain to students suspected of a disability but not yet found eligible
- (b) Whether DCPS denied the student a FAPE by failing to provide appropriate services to the student namely an interim alternative educational setting.

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<sup>2</sup>Petitioner filed supplemental disclosure on July 16, 2014, containing P-14 and P-15. The supplemental disclosures came after the disclosure deadline, and Petitioner withdrew them at the DPH, so P-14 and P-15 were not admitted into evidence.

## Hearing Officer Determination

### **RELIEF REQUESTED**

Petitioner requested the following relief:

- (a) an Order that DCPS develop a full time individualized education program (“IEP”) for the student;
- (b) an Order that DCPS identify an appropriate therapeutic school placement for the student;
- (c) an Order that DCPS provide the student with compensatory education services in the form of direct and individual instruction of 6 hours weekly for 8 months (for a total of 192 total hours).

### **FINDINGS OF FACT**

#### ***Background***

2. Student resides with his guardian, the Petitioner (“Parent”<sup>3</sup>), in Washington, D.C.

3. Student has recently been determined to be eligible for special education and related services under the IDEA.

#### ***Eligibility Determination***

4. By September 12, 2013,<sup>4</sup> Parent had made a request to DCPS, through District Middle School, that Student be evaluated to determine his present levels of cognitive and behavioral performance, and to assist with Student’s educational planning.<sup>5</sup>

5. With Parent’s signed permission,<sup>6</sup> in September and October 2013, DCPS School Psychologist conducted a Confidential Psychological (“Confidential Psychological”) Evaluation on Student, documented in a report dated October 17, 2013.<sup>7</sup>

6. On or around January 13, 2014, Parent participated with DCPS in an IEP team meeting.<sup>8</sup> At this meeting, the team found Student eligible for special education services under the classification “Other Health Impairment” as a student with Attention Deficit Hyperactivity Disorder, based on the Confidential Psychological conducted by DCPS School Psychologist. The team indicated that it would develop a draft individualized education program (“IEP”) for the student; however, Parent disagreed with the Confidential Psychological and requested an

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<sup>4</sup>P-1; Testimony of Parent; additionally, the DCPS Confidential Psychological Evaluation at R-1-1 was begun by September 14, 2013 and Confidential Psychological indicates that Parent had requested the Confidential Psychological.

<sup>5</sup>R-1-1; testimony of the Petitioner; testimony of Special Education Coordinator.

<sup>6</sup>Testimony of the Petitioner.

<sup>7</sup>R-1.

<sup>8</sup>Testimony of Parent; testimony of Special Education Coordinator.

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Independent Education Evaluation (“IEE”). Parent declined to sign a form consenting to the initial provision of services to Student, as requested by DCPS.<sup>9</sup>

7. At Parent’s request, DCPS authorized Parent to obtain an IEE. Parent obtained the IEE, and provided it to DCPS in June 2014.<sup>10</sup>

8. The IEE indicated that Student did not meet the qualifications of a student with a disability, but recommended that Student finish the school year in a therapeutic placement.<sup>11</sup>

9. On June 18, 2014, the MDT/IEP team reconvened, this time to review the IEE and the Confidential Psychological conducted by DCPS School Psychologist, and to determine eligibility. Parent disagreed with the IEE, objected to the team reviewing the IEE, and interfered with the review of the IEE. The team was not able to go forward with the meeting due to interruptions from Parent. An eligibility determination was not able to be made.

10. The IEP team again reconvened on July 3, 2014. Parent and team agreed to not rely on the IEE, but rather to proceed with the recommendations in the Confidential Psychological from DCPS School Psychologist, which Parent had initially rejected in January 2014.

11. The IEP team determined Student eligible for special education services at the July 3, 2014 IEP meeting as a student with “Other Health Impairment (Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder).” Unlike at the January 2014 IEP team meeting, this time Parent conceded to the eligibility determination.

12. Parent was again asked at the July 3, 2014 IEP team meeting to sign a form consenting to the initial provision of services to Student. Parent declined to sign the form.

13. A draft IEP was developed for Student by July 15, 2014. In order for the IEP to be finalized, DCPS will need to schedule an IEP meeting, and Parent will need to sign the form giving DCPS permission to provide initial services to Student. As of the DPH, neither act had been completed.

### *Suspensions*

14. On or around October 31, 2013, Student had been suspended 10 school days during the 2013-2014 school year. After this point, Student was suspended approximately 73 calendar days (some of which were weekend days or holidays) throughout the remainder of the school year.<sup>12</sup>

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<sup>9</sup>Testimony of Parent; testimony of Special Education Coordinator.

<sup>10</sup>Testimony of Special Education Coordinator.

<sup>11</sup>R-4.

<sup>12</sup>P-8. Parent agrees that the Student was suspended on all the days reflected in the Student’s attendance record at P-7; however, Parent asserts that the Student was also suspended on additional dates not reflected on the attendance record. From the record, however, there is no basis for the hearing officer to determine what, if any, suspension dates are not reflected on the Student’s attendance record. Therefore, the hearing officer will deem the attendance records accurate for purposes of the HOD.

## Hearing Officer Determination

15. Student's various suspensions reflect a pattern consistent with the behavior described in the October 17, 2013 Confidential Psychological, which describes Student as one who often antagonizes and engages in regular conflict with his peers, has difficulty remaining still and remaining in the classroom, needs regular behavioral redirection, disobeys authority, often becomes distracted/frustrated, or in conflict with others, which impacts his availability for learning.<sup>13</sup>

### *Academic Performance*

16. Student is bright, has strong cognitive skills, and "superior" thinking and reasoning abilities. Student's learning problems are primarily a result of lack of school attendance and emotional and attention problems.<sup>14</sup>

17. Student is anxious in class, and has difficulty sitting through a class period without interruption.<sup>15</sup>

### *Interventions and Services*

18. The first Manifestation Determination Review ("MDR/IEP team") meeting for Student was held on February 24, 2014 to determine whether an incident Student was involved in on February 18, 2014 was a manifestation of Student's disability. The team determined that the behavior was a manifestation of Student's disability, but that the conduct in question was not a result of the district's failure to implement Student's IEP, because Parent disagreed with the team's earlier disability determination, and had not yet signed the written consent to have DCPS provide initial special education services to Student. Because Parent did not agree with each of the conclusions of the remainder of the MDR/IEP team, the team retracted its determination.<sup>16</sup>

19. When Student was suspended, he was given work packets during his suspension and/or allowed to make up the work he missed on his return.<sup>17</sup>

20. Student was promoted to the next grade at the end of the 2013-2014 school year. District Middle School has a policy against social promotion.

### *Proposed Compensatory Education*

21. Parent's Educational Advocate developed a compensatory education plan based in part on her perspective that DCPS should have located, identified and evaluated Student prior to Parent making the request for evaluation in September 2013. While she had not been aware prior to the DPH that Parent caused the June 18, 2014 IEP team meeting to be interrupted, her conclusion would not have been different even had she known that information when she was developing her recommendation.<sup>18</sup>

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<sup>13</sup>P-8; R-1.

<sup>14</sup>R-1-12.

<sup>15</sup>R-1-12.

<sup>16</sup>R-9.

<sup>17</sup>Testimony of Special Education Coordinator.

<sup>18</sup>Testimony of Parent's Educational Advocate.

### CONCLUSIONS OF LAW

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the Impartial Hearing Officer by a preponderance of the evidence. DCMR §5-E3022.16; *see also, N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

A hearing officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

**I. Whether DCPS denied the student a free appropriate public education (“FAPE”) by failing to comply with the disciplinary procedures set out in 34 CFR 300.534, which pertain to students suspected of a disability but not yet found eligible.**

Pursuant to 34 CFR 300.534(a),

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

The statutory provision applies in this case. Student had not yet been determined eligible for special education and related services at the beginning of the 2013-2014 school year. As evidenced by his numerous suspensions, Student engaged in behavior that violated a code of student conduct. Additionally, DCPS had knowledge, by way of Parent’s request that he be evaluated for special education services, that Student was a child with a disability by the time Student faced a series of suspensions for violations of the applicable code of student conduct.<sup>19</sup>

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<sup>19</sup>The parameters under which DCPS could be said to have had knowledge of the Student’s disability are set out in 34 CFR 300.534(b), which reads: “A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred— (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.”

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There are exceptions by which an LEA would not be deemed to have knowledge that a child who committed a behavioral violation is a child with a disability. The first exception is when the child's parent has not allowed the child to be evaluated pursuant to §§300.300 through 300.311.<sup>20</sup> This exception does not apply in this case, because Parent permitted DCPS to evaluate Student, and DCPS School Psychologist did in fact evaluate Student, as reflected in her Confidential Psychological Evaluation report dated October 17, 2013. There is also an exception for when "[t]he child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part." This exception does not apply in this case, because the IEP team determined Student to be a child with a disability at the January 13, 2014 IEP team meeting (when Parent disagreed with the disability classification) and the July 3, 2014 IEP team meeting (when Parent agreed with the disability classification). The remaining exception is when "the parent of the child has refused services under this part."<sup>21</sup>

There are two relevant time period to consider when determining whether DCPS' obligations toward Student pursuant to 34 CFR 300.534. The first relevant time period is from on or around September 12, 2013 (when Parent made the request to DCPS to have Student evaluated) through the January 13, 2014 IEP meeting when the team offered a proposed disability classification of Other Health Impairment. During this period of time, Student had not yet been determined eligible for special education and related services. DCPS had knowledge, by way of Parent's request that he be evaluated for special education services, that Student was a child with a disability, and Student engaged in behavior that violated a code of student conduct, as evidenced by the fact that he was suspended approximately 38 days. In other words, all of the elements set out in 34 CFR 300.534(a) were met during this period. Additionally, none of the exceptions apply, because Parent consented to having Student evaluated, and he was in fact evaluated. Further, Student had not been evaluated and been determined ineligible. He was evaluated during this period, and when the IEP team ultimately convened on January 13, 2014, the team offered Student an eligibility determination.<sup>22</sup> Finally, it is clear that Parent did not refuse any services for Student during this period.

Pursuant to IDEA, DCPS is required to convene a student's IEP team for a MDR/IEP team meeting "within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct."<sup>23</sup> The statute dictates that a "change of placement" has occurred when the child has been subjected to a series of removals that constitute a pattern:

- (i) because the series of removals totals more than 10 school days in a school year;
- (ii) because the student's behavior is substantially similar to his behavior in previous incidents that resulted in the series of removals; and
- (iii) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

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<sup>20</sup>34 CFR 300.534(c)(1)(ii).

<sup>21</sup>34 CFR 300.534(c)(1)(ii).

<sup>22</sup>Even though Parent did not accept the specific proposed eligibility determination or provide signed consent for the Student to receive services, Parent did not disagree that the Student was eligible.

<sup>23</sup>34 CFR § 300.530(e).

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If the MDR/IEP team determines that the conduct in question “was caused by, or had a direct and substantial relationship to, the child’s disability,” then the conduct is necessarily a manifestation of the student’s disability.<sup>24</sup> If the behavior is a manifestation of the student’s disability, the MDR/IEP team must conduct a functional behavioral assessment (“FBA”), implement a behavioral intervention plan (“BIP”), and return the student to the placement from which he was removed, unless the parent and DCPS agree to a change in placement as a part of the BIP.<sup>25</sup>

In this case, Student experienced a change of placement by October 31, 2013. By that point in the school year, Student had been suspended 10 days. Student was being suspended for similar types of incidents, involving fighting and disruptive behaviors. Additionally, Student had been suspended multiple day periods, each within very close proximity to one another, and a total of 10 days of suspension so early in the school year represented a significant loss of instructional time. As discussed above, DCPS also had knowledge by September 12, 2013 that Student had a disability; therefore, within 10 school days of October 31, 2013 (by November 14, 2013), DCPS should have convened an MDR/IEP team meeting for Student. The conduct leading to Student’s suspensions was caused by, or had a direct and substantial relationship to, Student’s disability in that it involved the same types of behavior described in the October 17, 2013 Confidential Psychological evaluation, for example, demonstrating difficulty with impulse control and high conflict behavior. Therefore, Student’s MDR/IEP team should have conducted a FBA, implemented a BIP, and allowed Student to remain in his school, unless parent and DCPS had agreed to a change in placement as a part of the BIP. An IEP team for Student did not convene until January 13, 2014, and in the interim Student was denied the behavioral supports he needed, and to which he was entitled.

Respondent argues that Petitioner’s failure to provide written consent for initial provision of special education and related services after Student was determined eligible on January 13, 2014 constituted a refusal of services. However, in situations such as the instant case, behavioral support services are to be in place prior to a determination of eligibility. For this reason, it is particularly noteworthy that 34 CFR 300.534(c)(1)(ii) does not indicate that a parent must “consent” in order to receive such behavioral support services, but rather absolves the LEA of the responsibility to provide such services if the parent “refuses” such services. Under the facts of this case, the IHO will construe the term “refuses services” as requiring an affirmative act, or at least more than failure to sign the consent for initial provision of special education services.

Here, an FBA should have been provided for Student and a BIP put in place as early as November 1, 2014. This was not done, so Parent had no opportunity to affirmatively refuse

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<sup>24</sup>34 CFR 530(e)(1)(i)&(e)(2). The first MDR/IEP team meeting for Student was held on February 24, 2014. The team determined that the behavior was a manifestation of the Student’s disability, but that the conduct in question was not a result of the LEA’s failure to implement the Student’s IEP (because Parent had not yet provided written consent for initial provision of services, and Student did not yet have a finalized IEP). Because Parent did not agree with both conclusions, the team retracted its decision. However, the MDR/IEP team needed only find that the behavior in question “was caused by, or had a direct and substantial relationship to, the child’s disability” *or* that it was due to the LEA’s failure to implement the Student’s IEP in order for the behavior to be a manifestation of the student’s disability. It is not required that both elements be met. 34 CFR 530(e)(1)(ii).

<sup>25</sup>34 CFR § 300.530(f)(2).

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these behavioral support services. Had the BIP been in place when it should have been, it is unlikely that Parent would have refused them beginning on January 13, 2014 when she rejected the specific disability classification the rest of Student's IEP team offered and requested an IEE as permitted by 34 CFR § 300.300.502(a). The entire team, including Parent, agreed that Student had a disability and needed special education and related services. Parent's disagreement at the time was with the proposed classification of Other Health Impairment, and she did not provide written consent for the initial provision of services specific to that proposed classification. However, Parent was clearly troubled by Student's behavior and frequent suspensions. Therefore, had behavioral support services already been in place prior to the January 13, 2014 eligibility determination, as should have been the case, it is unlikely that Parent would have subsequently refused such services.<sup>26</sup>

During the each of the two relevant time periods, Petitioner has met her burden of proof that DCPS denied the student a FAPE by failing to comply with the disciplinary procedures set out in 34 CFR 300.534, which pertain to students suspected of a disability but not yet found eligible.

### **II. Whether DCPS denied the student a FAPE by failing to provide appropriate services to the student namely an interim alternative educational setting.**

As discussed above, Student had been removed from his placement for 10 school days in the same school year by October 31, 2013. For each day he was suspended subsequent to that point, DCPS was obligated to provide him services, including: (1) an FBA,<sup>27</sup> (2) BIP services and modifications that are designed to address the behavior violation so that it does not recur,<sup>28</sup> and (3) educational services to enable Student to continue to participate in the general education setting.<sup>29</sup> Unlike 34 CFR § 300.530(f), which discusses an FBA and BIP in the context of a change in placement and allows 10 school days for the MDR/IEP team to convene, a student is entitled to an FBA and BIP right away once he has been suspended for 10 days in the same school year, pursuant to 34 CFR 300.530(d)(1)(ii). This means an FBA and BIP should have been provided to Student beginning on or around his 11<sup>th</sup> day of suspension, which was on November 1, 2014. These services were not provided.

Though Parent testified that work packets were not sent home for Student, in light of the fact that Student missed so many days from school, yet passed most of his courses and was promoted to the next grade, even without having in place the IEP and behavioral supports he needed at any point during the school year, the IHO credits the testimony of Special Education Coordinator that Student was either given work packets and/or allowed to make up missed work

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<sup>26</sup>Had Parent merely refused to provide written consent and not also been pursuing an IEE for purposes of shedding further light on the proposed disability classification, with which she disagreed, the IHO may have reached a different conclusion as to whether she had "refused services," because that would have effectively put the process at an indefinite standstill.

<sup>27</sup>34 CFR 300.530(d)(ii).

<sup>28</sup>34 CFR 300.530(d)(ii).

<sup>29</sup>34 CFR 300.530(d)(i). As Student did not yet have an IEP in place, DCPS would not be able to offer services to enable Student to "progress toward meeting the goals set out in the child's IEP," as also provided for in this provision.

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for the days he was suspended, and that 34 CFR 300.530(d)(1)(i) was satisfied. While the educational services, FBA and BIP could have been provided in an interim alternative educational setting, 34 CFR 300.530(d)(2) does not require that they be offered in an interim alternative educational setting.

Petitioner has met her burden of proof that DCPS denied Student a FAPE by failing to provide an FBA and BIP to Student; however, these services did not necessarily have to be provided in an alternative educational setting.

### **Compensatory Education**

Petitioner seeks a compensatory education award in the form of 6 hours weekly for 8 months (a total of 192 hours) of direct and individual instruction. Petitioner's proposed compensatory education plan is based on "DCPS' failure to locate, identify and evaluate Student," which it asserts "resulted in significant education deficits because DCPS failed to provide the direct and individual instruction or decrease disruptive behaviors . . ." It states that "in addition, Student suffered additional education deficits as a result of the multiple suspensions." The proposed compensatory education plan is not entirely relevant to this case, because the IHO has not found a denial of FAPE on the grounds of DCPS' failure to locate, identify and evaluate Student – allegations that were not before the IHO in this matter.

The district court case of *Gill v. District of Columbia*, 770 F.Supp.2d 112, (D.D.C.2011), *aff'd.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C. Cir. Aug. 16, 2011), restates the standards for an award of compensatory education, set out in *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005).

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. Remedying the deprivation of FAPE carries a qualitative rather than quantitative focus. [A]wards compensating past violations [must] rely on individualized assessments. In every case . . . , 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. In addition, whereas ordinary Individual Education Plans need only provide some benefit, compensatory awards must do more — they must compensate.

*Gill, supra*, 770 F.Supp.2d at 116-117 (citations and internal quotations omitted).

The July 10, 2014 PHO specifies that Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged loss of FAPE and the specific compensatory measures needed to best correct those deficits, *i.e.*, to elevate Student to the approximate position she would have enjoyed had she not suffered the alleged denial of FAPE. Petitioner did not offer sufficient evidence at the DPH to project the progress Student might have made had an FBA been conducted on or around November 1, 2013, and had a BIP been in place for Student from around that point through June 18, 2014 (from which point the IHO would likely have awarded no compensatory

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education, due to the fact Parent prevented the IEE she requested from being reviewed by the IEP team).

While Petitioner's proposed compensatory education plan asserts that direct and individual services are the appropriate type of compensatory education, and while it proposes a number of such hours, Petitioner's proposed compensatory education plan does not indicate how the number of hours proposed would remedy the harm resulting from DCPS' failure to provide these specific behavioral support services and Student's frequent suspensions throughout the school year (some days of which occurred during weekends and holiday breaks when school was closed). According to the testimony of the educational advocated who drafted the plan, Petitioner's proposed compensatory education plan does not account for the fact that Parent prevented an official eligibility determination from going forward on June 18, 2014 (.

Petitioner has failed to support her claim for compensatory education. *See, Gill, supra*, 770 F.Supp.2d at 118. While a hearing officer has discretion to take additional evidence concerning the appropriate compensatory education due a student, *see Gill v. District of Columbia*, 751 F.Supp.2d 104, 114 (D.D.C.2010), *aff'd.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C. Cir. Aug. 16, 2011), there would not be sufficient time to do so and meet the deadline for issuing this Hearing Officer Determination no later than August 26, 2012. Therefore, Petitioner's request for a compensatory education will be denied, but without prejudice.

### **Order**

Based on the Findings of Fact and Conclusion of Law above, it is hereby ORDERED that:

- A. Within 10 school days from the issuance of this decision, DCPS shall reconvene Student's MDT/IEP team to: (1) develop an appropriate IEP for Student, and (2) determine and put in place any appropriate behavioral supports for Student;
- B. Petitioner's request for compensatory education is denied, without prejudice.

Petitioner's other requests for relief are **DENIED**.

**IT IS SO ORDERED.**

Date: August 26, 2014

/s/ NaKeisha Sylver Blount  
Hearing Officer

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**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).