

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
December 23, 2013

PETITIONER,
on behalf of STUDENT,¹

Date Issued: December 21, 2013

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Student Hearing Office
Washington, D.C.

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (DCPS) failed in its child find obligation to identify Student as a child with a disability and to offer her a free appropriate public education (“FAPE”) prior to the 2013-2014 school year.

¹ Personal identification information is provided in Appendix A.

Student, an AGE young woman, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on October 18, 2013, named DCPS as respondent. The parties met for a resolution session on November 1, 2013 and were unable to reach an agreement. The 45-day time period for issuance of my Hearing Officer Determination began on November 18, 2013. On November 5, 2013, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was convened before the undersigned Impartial Hearing Officer on December 18, 2013 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. Student and COMMUNITY SUPPORT SPECIALIST also attended part of the hearing. DCPS was represented by DCPS' COUNSEL.

Petitioner testified, and called as witnesses, Student, CLINICAL PSYCHOLOGIST, and NONPUBLIC SCHOOL DIRECTOR OF ACADEMICS. DCPS called as witnesses PROJECT COORDINATOR and SCHOOL PSYCHOLOGIST. Petitioner's Exhibits P-6 through P-16 were admitted into evidence without objection. Exhibit P-2 was admitted over DCPS' objection. Exhibits P-1, P-3, P-4, P-5 and P-17 were not offered. Respondent's Exhibits R-4 and R-5 were admitted without objection. Exhibits R-1 through R-3 and R-7 were admitted over Petitioner's objections. Exhibit R-6 was not offered. Counsel for both parties made opening and closing statements.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The issues to be determined in this case are:

- Whether, prior to the beginning of the 2013-2014 school year, DCPS failed in its child find obligation to identify, locate and evaluate Student and find her eligible for special education and related services;
- Whether DCPS denied Student a FAPE by failing to provide an appropriate Individualized Education Plan (“IEP”) and placement for Student for the 2013-2014 school year; and
- Whether DCPS has denied Student a FAPE by failing to provide Parent access to Student’s DCPS education records, which DCPS advises it has been unable to locate.

For relief, Petitioner seeks an order determining that Student is a child with a disability, eligible for special education and related services; an order for DCPS to conduct any needed evaluations to determine Student’s special education and related services needs; an order for DCPS to convene an IEP meeting to develop an appropriate IEP and make a placement for Student at Nonpublic School and an order for DCPS to fund Student’s private placement at Nonpublic School for the 2013-2014 school year, retroactive to the beginning of the school year.

STIPULATION

At the beginning of the due process hearing on December 18, 2013, DCPS stipulated that between November 18, 2013 and December 12, 2013, it recognized that Student is a “child with a disability” as defined by the IDEA and her disability classification includes, but is not necessarily limited to, Emotional Disturbance (“ED”).

FINDINGS OF FACT

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

1. Student, an AGE young woman, resides with Petitioner in the District of Columbia. Testimony of Petitioner.

2. Student has a long history of habitual school truancy. A court truancy referral for Student was entered on June 14, 2010. On January 2, 2013 City High School 2 made a truancy referral to the Superior Court of the District of Columbia. That referral was not recommended for petition because of insufficient documentation. Exhibit P-8. On May 16, 2013, a petition was filed with the Superior Court of the District of Columbia Family Court subsequent to a second truancy referral from CITY HIGH SCHOOL 2. An attorney was appointed for Student. Exhibit P-6.

3. On July 3, 2013, following the May 16, 2013 truancy referral, a court-ordered Psychoeducational Evaluation of Student was conducted by Court Social Services Division Child Guidance Clinic. EXAMINER issued her Psychoeducational Evaluation Report on July 25, 2013. Exhibit P-6. (Mother's testimony at the due process hearing appeared to be impeded by difficulty with recall. Furthermore, DCPS advised on September 11, 2013 that in its initial search for school records for Student, there were no records in the special education EasyIEP system, the Integrated Document System or the records storage facility. Exhibit P-12. Therefore, my background Findings of Fact herein will rely largely upon the history obtained by Examiner.)

4. Student attended D.C. public elementary schools from kindergarten through fifth grade. Student reported that she was suspended several times during her

elementary school years for “cussing out a teacher” and fighting with other students.

Exhibit P-6.

5. When Student was 11 years old, she gave birth to a daughter who was placed for adoption. Exhibit P-6.

6. Student was enrolled in CITY MIDDLE SCHOOL for sixth through eighth grades. Student reported to Examiner that in City Middle School, she was repeatedly suspended for disrespecting her teachers and for fighting with other students. Exhibit P-6.

7. Student had poor grades in middle school and was often suspended from elementary school and middle school for behavior issues. Testimony of Mother.
Testimony of Student.

8. After middle school, Student enrolled in CITY HIGH SCHOOL 1. Exhibit P-6. There was no evidence as to whether Student ever attended City High School 1. Beginning September 13, 2011, Student was enrolled at PUBLIC CHARTER SCHOOL (PCS). Between September 14, 2011 and October 18, 2011, Student was present at PCS for only four days. Her last day was September 22, 2011. Exhibit P-7. According to Mother, Student was expelled from PCS due to her not attending school. Testimony of Mother. The PCS transcript states Student “transferred out.” Exhibit P-7. I find that the evidence is insufficient to determine whether Student was expelled from PCS or she dropped out of the school.

9. Since Student stopped attending PCS in September 2011, she did not attend school until the current, 2013-2014, school year. Testimony of Mother. Mother registered Student at City High School 2 on August 13, 2012, but Student never reported to the School. Exhibit P-6. Since she left PCS, Student has been unwilling to go to any

DCPS school. Testimony of Mother.

10. Examiner reported in her July 25, 2013 psycho-educational evaluation that psycho-educational assessments established that Student's Full Scale IQ is in the Extremely Low to Borderline range with Limited levels of academic functioning. The evaluation suggested that Student experienced developmental delays and an early onset of academic, social and behavioral problems. The development delays were exacerbated by Student's pregnancy and delivery at age 11 and the subsequent adoption out of her baby. Exhibit P-6.

11. During the spring 2013 court truancy proceedings there was agreement that it would be best to see what was the problem with Student. This led to appointment of Petitioner's Counsel as Mother's attorney. Testimony of Mother, Exhibit P-11.

12. Prior to August 29, 2013, neither Mother nor DCPS ever initiated a request for an initial evaluation to determine if Student was a child with a disability. Neither had Mother ever requested an IEP or special education services for Student. Testimony of Mother. On August 29, 2013, Petitioner's Counsel sent a facsimile letter to DCPS' Deputy Chancellor of Special Education serving notice that Mother would unilaterally place Student at Non-Public School for the 2013-2014 school year and would seek tuition reimbursement from DCPS. In that letter, Petitioner's Counsel requested that DCPS consider Student eligible for special education. Exhibit P-2.

13. On November 18, 2013, School Psychologist reviewed the court-ordered July 25, 2013 Psychoeducational Evaluation Report on Student. In his December 12, 2013 report, School Psychologist concluded that the court-ordered evaluation suggests that Student may have experienced developmental delays with an early onset of academic, social and emotional problems, which may have been both genetic and

acquired. He reported that Student's developmental delays were reportedly exacerbated by her pregnancy, delivery and the early adoption her daughter. School Psychologist concluded that the court-ordered evaluation indicated that since her early years, Student has demonstrated difficulty with schoolwork and deficits in adaptive behavioral functioning. Exhibit R-7. In November 2013, School Psychologist attempted to schedule a time to interview Student at Nonpublic School and observe her in the classroom. Student was absent from school on the days when School Psychologist called and he was never able to interview her. Testimony of School Psychologist.

14. Beginning November 15, 2013, Project Coordinator attempted to contact Petitioner's Counsel by email to schedule an eligibility/IEP meeting for Student. However the email address Project Coordinator used was incorrect. Testimony of Project Coordinator. Petitioner's Counsel did not receive Project Coordinator's communications. Representation of Petitioner's Counsel.

15. In the current school year, Student is enrolled in Nonpublic School. Mother decided to enroll Student at Nonpublic School after visiting the private school in July or August 2013. Testimony of Mother.

16. Nonpublic School is a full-time special education day high school in the District of Columbia. The school provides a full academic program and a vocational program. It operates on an 11-month program. There are 21 students enrolled at Nonpublic School. All of the students are children with recognized or suspected special education disabilities. Testimony of Director of Academics.

17. Classroom size at Nonpublic School averages six students. Classes may be taught by one or two teachers. All teachers are content-area certified and classroom teachers are dual certified in special education. Vocational teachers have vocational

certificates. Nonpublic School holds a current Certificate of Approval from the D.C. Office of the State Superintendent of Education (OSSE). The tuition is approximately \$35,000 per year, which is the OSSE approved rate. Testimony of Director of Academics.

18. Student is doing well at Nonpublic School. She has very good attendance, participates in class, is compliant and does not have behavior issues. Testimony of Director of Academics. Student testified that things are “going wonderfully” for her at Nonpublic School and she gets her work done. Testimony of Student.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

1. Did DCPS, prior to the beginning of the 2013-2014 school year, fail in its child find obligation to identify, locate and evaluate Student and find her eligible for special education and related services?

Did DCPS deny Student a FAPE by failing to provide her an appropriate Individualized Education Plan (“IEP”) and placement for the 2013-2014 school year?

Petitioner’s fundamental claim in this case is that, although she never sought special education services for her daughter, Student’s academic difficulties over the

years and, especially, her truancy record gave rise to a duty on DCPS' part to evaluate Student for special education eligibility. DCPS maintains to the contrary that Student's educational history and chronic truancy were not enough to cause it to suspect that she had a disability. In *Henry v. Friendship Edison P.C.S.*, 880 F.Supp.2d 5, 7 (D.D.C.2012), the Court noted that “[s]chool officials . . . have an affirmative duty under the IDEA to locate and evaluate, within their school system, children suffering from disabilities—an obligation referred to as ‘child find.’ 20 U.S.C. § 1412(a)(3); *see also B.R. ex rel. Rempson v. District of Columbia*, 802 F.Supp.2d 153, 160 (D.D.C.2011). This duty is triggered by a reasonable suspicion that a student has a disability. 20 U.S.C. § 1412(a)(3).” *Id.* (emphasis supplied).

At the due process hearing in this case, DCPS stipulated that Student is a child with a disability, as defined by the IDEA, and eligible for special education and related services. My child find inquiry here is to examine whether DCPS had reason to suspect that Student had a disability before the complaint in this action was filed, and whether DCPS had reason to suspect that special education services might be needed to address that disability. *See El Paso Independent School Dist. v. Richard R.*, 567 F.Supp.2d 918, 950 (W.D.Tex.2008). My analysis is necessarily hampered in this case because DCPS has been unable to locate any educational records for Student, even though she attended DCPS schools through the 2010-2011 school year. Nonetheless, I find that Petitioner has met her burden of proof to establish that DCPS has long had cause for a “reasonable suspicion” that Student has an IDEA disability and a need for special education and related services.

Although Student's DCPS educational records are not available, court-ordered psycho-educational assessments, conducted in 2013, established that Student's Full

Scale IQ is in the Extremely Low to Borderline range with Limited levels of academic functioning. The evaluation suggested that Student experienced developmental delays and an early onset of academic, social and behavioral problems. The development delays were exacerbated by Student's pregnancy and delivery at age 11 and the subsequent adoption-out of her baby. In addition, Mother's testimony was unrefuted that Student had poor grades in middle school and was often suspended from elementary school and middle school for behavior issues. Further, DCPS had notice of Student's extreme truancy issues. In the spring of 2010, when Student was 13 years old, DCPS made its first reported truancy court-referral on Student. Since fall 2011, Student did not attend any school until she enrolled in Nonpublic School this school year. As DCPS' School Psychologist concluded in his December 2013 report, since her early years, Student has demonstrated difficulty with schoolwork and deficits in adaptive behavioral functioning. I conclude that long before the complaint in this case was filed, DCPS had reason to suspect that Student had an emotional and/or a learning disability and had cause to suspect that special education services might be needed to address her disability. DCPS' failure to locate and evaluate Student, as a child potentially suffering from disabilities, violated its child find obligations.

Under the IDEA and DCMR, a parent must request a due process hearing within two years of the date the parent knew or should have known about the action that forms the basis for the due process complaint. *See* 34 CFR § 300.511(e). Parent's complaint in this case was filed on October 18, 2013. While it is not possible on this record to determine when DCPS first should have had a reasonable suspicion that Student was a child with a disability, I find that the agency had cause to suspect a disability at least since it made a truancy referral for Student in 2010. I conclude, therefore, that DCPS

denied Student a FAPE for the two years preceding the filing of complaint in this case, by failing to locate, evaluate and identify her as a child with a disability.²

Petitioner also contends that DCPS denied Student a FAPE not providing her an IEP and placement for the 2013-2014 school year. An evaluation and eligibility determination is a prerequisite to preparing an IEP. Therefore, it follows from my child find discussion above that DCPS' failure to evaluate Student or determine her eligibility for special education and related services ensured that she would not receive a timely IEP, thus, denying her a FAPE. *See G.G. ex rel. Gersten v. District of Columbia* 924 F.Supp.2d 273, 280 (D.D.C. 2013).

2. Did DCPS deny Student a FAPE by failing to provide Mother access to Student's DCPS education records, which DCPS advises it has been unable to locate?

Parent also contends that Student has been denied a FAPE by DCPS' not providing access to Student's educational records. On August 28, 2013, Petitioner's Counsel requested DCPS to provide to her Student's "entire cumulative educational records from the day she entered District of Columbia Public Schools." On September 11, 2013, DCPS' Office of Special Education responded that there were no records for Student found in the special Easy IEP system of the Integrated Document Archived

² In oral argument, Petitioner's Counsel contended that Parent was not knowledgeable about DCPS' child find obligations under the IDEA and therefore should not be deemed to have known about the action that forms basis for her due process complaint until she retained an attorney. Petitioner's interpretation of the provision is not persuasive. The "action" that forms the basis for Mother's complaint is DCPS' failure to locate and evaluate Student as a potential child with a disability. I find that Mother has not shown that she did not know, or should not have known, that DCPS never conducted an initial eligibility evaluation of Student. *See Department of Education, Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46706 (August 14, 2006) (Hearing officers will have to make determinations, on a case-by-case basis, of factors affecting whether the parent "knew or should have known" about the action that is the basis of the complaint.)

System or the records storage facility. The IDEA regulations provide that,

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

34 CFR § 300.613(a). In this case, Student has not been enrolled in a DCPS school since the 2010-2011 school year. (She was enrolled in PCS for a very short period in the 2011-2012 school year and was registered for, but not enrolled in, City High School 2 for the 2012-2013 school year.) I find that Petitioner has not established that DCPS currently collects, maintains or uses educational records relating to Student or that DCPS' not providing her access to such records resulted in denial of FAPE.³

Remedy

In this decision I have found that DCPS failed in its child find obligation to Student, resulting in a denial of FAPE. The hearing officer has remedial authority under the IDEA and “broad discretion to grant such relief as the [hearing officer] determines is appropriate under the IDEA as guided by the goals of the Act. 20 U.S.C. § 1415(i)(2)(C)(iii). That remedial authority includes tuition reimbursement for parents who unilaterally place their child in private school, *see* § 1412(a)(10)(C)(ii), and compensatory education to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE.” *Walker v. District of Columbia*, 786 F.Supp.2d 232, 235 -236 (D.D.C. 2011) (citations and internal quotations omitted.)

³ DCPS' Counsel posited that Student's previous DCPS records may now be maintained by the Office of the State Superintendent of Education.

For her remedy in this case, Petitioner seeks reimbursement for Student's private school tuition costs at Nonpublic School since the beginning of the 2013-2014 school year and an order for DCPS to pay for Student's enrollment at Nonpublic School for the remainder of the school year. Under the IDEA, "when a public school fails to provide a [free appropriate public education] and a child's parents place the child in an appropriate private school without the school district's consent, a court may require the district to reimburse the parents for the cost of the private education." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 232, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009). But parents who unilaterally decide to place their disabled child in a private school, without obtaining the consent of local school officials, "do so at their own financial risk." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). "Parents 'are entitled to reimbursement only if a [hearing officer] concludes both that the public placement violated IDEA and the private school placement was proper under the Act.' *Carter*, 510 U.S., at 15, 114 S.Ct. 361. And even then [hearing officers] retain discretion to reduce the amount of a reimbursement award if the equities so warrant." *Forest Grove School Dist. v. T.A.* 557 U.S. 230, 246-247, 129 S.Ct. 2484, 2496 (2009).

The evidence in this case establishes that DCPS denied Student a FAPE. I further find that Nonpublic School would be an appropriate private school for Student. However, I find that Mother is not entitled to private school reimbursement because she failed to give DCPS a reasonable opportunity to evaluate Student and determine her special education eligibility before enrolling her in Nonpublic School. The IDEA directs that an award of private school tuition 'may be reduced or denied' under a variety of

circumstances, including ‘upon a judicial finding of unreasonableness with respect to actions taken by the parents, 20 U.S.C. § 1412(a)(10)(C)(iii)(III) . . .’ *C.H. v. Cape Henlopen School Dist.*, 606 F.3d 59, 71 (3rd. Cir. 2010). *See, also, New York City Dept. of Educ. v. V.S.* 2011 WL 3273922, 15 (E.D.N.Y. July 29,2011) (whether Parent acted “truly unilaterally, bereft of any attempt to achieve a negotiated compromise and agreement on a . . . placement.” (citing *Burlington v. Dep't of Educ.*, 736 F.2d 773, 799 (1st Cir.1984), *aff'd*, 471 U.S. 359.))

I find that the actions taken by the parent in this case were unreasonable. Prior to August 29, 2013, Mother never requested DCPS to conduct an eligibility evaluation of Student and never sought an IEP or special education services for her. On August 29, 2013, Petitioner, through her attorney, first contacted DCPS to demand that DCPS place Student at Nonpublic School, “effective immediately.” This was three days after the DCPS 2013-2014 school year started and, by then, Mother had already enrolled Student in Nonpublic School. (Under the District law, if Mother had requested an initial eligibility evaluation, DCPS would have been obliged to conduct the evaluations “within 120 days from the date that the student was referred [to DCPS] for an evaluation or assessment.” D.C.Code § 38–2561.02(a).)

Petitioner’s Counsel argues that her client’s untimely private placement request to DCPS was not unreasonable because the parent did not know her rights as a parent under the IDEA. I find this argument unpersuasive. Even if the parent had been ignorant of her rights, Student was represented by an attorney at least since a Habitual Truancy petition was filed against her in May 2013. Moreover, Petitioner’s Counsel was appointed to represent Mother before she enrolled Student in Nonpublic School. Because Petitioner did not afford DCPS a reasonable opportunity to conduct an initial

evaluation and make an eligibility determination or give DCPS reasonable notice before enrolling Student in Nonpublic School, Petitioner is not entitled to reimbursement. *Cf. Ash v. Lake Oswego School Dist. No. 7J*, 766 F.Supp. 862, 864 (D.Or. 1991), *aff'd and remanded*, *Ash v. Lake Oswego School Dist., No. 7J*, 980 F.2d 585 (9th Cir. 1992) (Reimbursement reduced where school district had not been asked to provide services to child and given a reasonable opportunity to complete the process of evaluating child and making a placement recommendation;) *Hunter on Behalf of Hunter v. Seattle School Dist. No. 1*, 46 Wash.App. 523, 731 P.2d 19 (Wash.App. 1987) (Parent not entitled to reimbursement from school district for cost of tuition when, without informing school district, parent unilaterally placed child in private school, located out of state, before school district was afforded an opportunity to assess child's educational needs and make a placement recommendation.) For the same reasons, I decline to order DCPS to fund Student's prospective placement at Nonpublic School.

A compensatory education remedy for DCPS' denial of FAPE to Student may be warranted. *See Phillips ex rel. T.P. v. District of Columbia*, 736 F.Supp.2d 240, 247 (D.D.C. 2010) (Court has consistently held that when the IDEA is violated through a denial of a free and appropriate public education, the injured party is entitled to compensatory education.) "In every case, however, the [compensatory education] 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 ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C.Cir.2005). In this case, Petitioner has not requested a compensatory education award for Student. While I, nonetheless, have the authority to order compensatory education as an

equitable remedy, *see, e.g., S.C. ex rel. K.S. v. Seattle School Dist. No. 1*, 2005 WL 2455000, 4-5 (W.D.Wash. 2005), it would be inappropriate to do so here because (1) no evidence was presented at the due process hearing as to how much or what form of compensatory education would be necessary to remedy DCPS' denial of FAPE to Student from 2011 to 2013 and (2) DCPS did not have the opportunity to respond to such evidence by showing that compensatory education might not be warranted. *See, e.g., Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 -116 (D.D.C.2005) (conceivable that no compensatory education is required for the denial of FAPE . . . either because it would not help or because student has flourished in his current placement.) While a trial court 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), I am constrained to issue my final Hearing Officer Determination no later than January 1, 2014. *See* DCMR tit. 5-E, § 3030.11. Therefore, I decline to award Student compensatory education. However, that decision shall be without prejudice to Petitioner's right to seek, in a future proceeding, a compensatory education remedy for the denial of FAPE I have found in this case.

Based on the record before me, I find that the appropriate remedy in this case is to order DCPS to convene a eligibility team to complete Student's eligibility determination pursuant to 34 CFR § 300.306 and an IEP team to develop an IEP for Student in accordance with 34 CFR §§ 300.320 through 300.324.

Summary

In this decision, I have found that DCPS failed in its child find obligations resulting in a denial of FAPE to Student in the two years preceding the filing of the

present complaint. I have found that Petitioner is not entitled to reimbursement for Student's tuition at Nonpublic School at to publicly-funded prospective placement at the private school. Petitioner has not requested compensatory education for Student and, on the record before me, I am unable to determine whether that remedy would be warranted or what award would be appropriate to provide Student the educational benefits which DCPS "should have supplied in the first place." *Reid, supra*, 401 F.3d at 524. DCPS will be ordered to convene an eligibility team to complete Student's eligibility determination and an IEP team to develop an appropriate IEP for her.

ORDER

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

ORDERED:

1. Within 10 school days of issuance of this Order, DCPS shall convene an eligibility team to determine Student's eligibility for special education and related services in accordance with 34 CFR § 300.306. Within 10 school days of the eligibility determination, DCPS shall convene an IEP team to develop an IEP for Student, in accordance with 34 CFR §§ 300.320 through 300.324;
2. Petitioner's request for reimbursement and for public funding of Student's tuition and expenses at Nonpublic School is denied, without prejudice to Petitioner's right to seek prospective placement for Student at any proper school, if she disagrees with the placement decision to be made hereafter by Student's IEP team;
3. On the present record, no award of compensatory education is ordered. This is without prejudice to Petitioner's right, in any future proceeding, to seek a compensatory education remedy for the denial of FAPE found in this decision; and
4. All other relief requested by Petitioner herein is denied.

Date: December 21, 2013

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

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).