

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

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT, ¹)	
)	Date Issued: July 4, 2015
Petitioner,)	
)	Hearing Officer: John Straus
v.)	
)	Case No: 2015-0086
District of Columbia Public Schools)	
("DCPS"))	Hearing Dates: June 23, 2015
)	June 24, 2015
Respondent.)	Hearing Room: 2003
)	

HEARING OFFICER DETERMINATION

Background

The Petitioner, who is an adult student, filed a due process complaint notice on March 13, 2015, alleging that he had been denied a free appropriate public education ("FAPE") by the District of Columbia Public Schools ("DCPS") in violation of the Individuals with Disabilities Education Act ("IDEA"). The Petitioner alleged that DCPS had 1) failed to fully evaluate the Student prior to exiting him from special education services, 2) failed to implement his April 19, 2013 and April 9, 2014 Individualized Education Programs ("IEP") by failing to provide him with 120 minutes of behavioral support services per month, 3) failing to provide access to records, and 4) failing to provide compensatory services to address his social emotional issues, resulting in poor attendance.

DCPS argues it conducted all necessary assessments to conduct an ineligibility determination. DCPS further argues that based on a review of the Functional Behavioral Assessment ("FBA") and vocational assessment, dated July 9, 2014, and comprehensive psychological assessment, dated July 14, 2014, the July 16, 2014 IEP team, including the Student and his representatives, appropriately determined that the Student should be exited from special education and related services and the Student did not disagree with his exit from services. DCPS argues that any failure to implement student's IEP is a result of student's excessive absences and DCPS has implemented various interventions to address Student's attendance.

¹ Personal identification information is provided in Appendix A.

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The Petitioner requests DCPS to fund an independent psychological assessment and a school refusal assessment scale, convene an IEP meeting to review the assessments and determine whether the Student is a student with a disability under the IDEA. Alternatively, the Petitioner requests the Hearing Officer to determine the Student is a student with a disability under the IDEA and order DCPS to convene an IEP team meeting to develop an IEP, including behavioral supports and or counseling services and a Behavior Intervention Plan (“BIP”). Finally, the Petitioner requested the Hearing Officer to order DCPS to fund compensatory education.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the 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 38 D.C. Code 2561.02.

Procedural History

The due process complaint was filed on March 13, 2015. This Hearing Officer was assigned to the case on March 16, 2015. DCPS timely filed a response to the complaint on March 23, 2015 and made no challenges to jurisdiction.

A Prehearing Conference took place on April 2, 2015. The Petitioner’s counsel was not able to attend due to an illness and another attorney from the Petitioner’s counsel’s firm covered the prehearing conference. At the prehearing conference, the Petitioner withdrew the third issue, “Failure to Provide Access to Records.” The first issue was divided into two issues for clarity. A second Prehearing Conference was scheduled to allow the Petitioner’s attorney to participate. A second Prehearing Conference occurred on April 13, 2015 where the issues were reviewed and clarified.

On April 23, 2015, DCPS filed a Motion to Dismiss the Due Process Complaint, in part. DCPS argued that *res judicata* and *collateral estoppel* barred the second issue in the complaint regarding failure to implement the IEP because the issue was allegedly determined in another due process complaint. DCPS also argued that the Petitioner may not assert the fourth issue regarding failure to provide compensatory education. On May 7, 2015, the Hearing Officer allowed the Petitioner to assert his claim regarding failure to implement the IEP and dismissed the fourth issue regarding compensatory services.

Neither Petitioner nor Respondent waived the resolution meeting. A resolution meeting took place on March 27, 2015, at which time parties agreed to keep the resolution period open. The 30-day resolution period ended on April 12, 2015, the 45-day timeline to issue a final decision began on April 13, 2015. The parties initially scheduled the hearing for May 8, 2015. On April 15, 2015, the Petitioner filed a Motion for Continuance due to the Petitioner’s counsel’s unavailability due to a scheduling conflict. The Hearing Officer granted the Motion for Continuance and the hearing was rescheduled for two days on May 26 and 27, 2015. On May 21,

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2015, the Petitioner's counsel notified the parties that she was not able to attend the hearing due to illness. On June 1, 2015, the Petitioner filed a second Motion for Continuance due to the Petitioner's counsel's unavailability for medical reasons. The Chief Hearing Officer granted the Motion for Continuance and the hearing was rescheduled for June 23 and 24, 2015 with the final decision due July 4, 2015.

The due process hearing was a closed hearing that took place on June 23 and 24, 2015. The Petitioner was represented by Joy Freeman, Esq. DCPS was represented by Maya Washington, Esq. Neither party objected to the testimony of witnesses by telephone. The Petitioner participated in the hearing in person.

Petitioner's Disclosure Statement, filed and served on May 18, 2015, consisted of a witness list of five witnesses and documents P-01 through P-43. DCPS filed objections to documents P-1 through P-7, P-11, P-12, and P-38 through P-42 on May 21, 2015. At the hearing, the hearing officer sustained objections to documents P-1 through P-7 and P-40. Objections to documents P-11, P-12, P-41 and P-42 were overruled. The Petitioner withdrew documents P-38 and P-39. DCPS also made a timely objection to a late disclosure of a resume. The resume was also withdrawn by the Petitioner. DCPS' Disclosure Statement, dated May 18, 2015, consisted of a witness list of six witnesses and documents R-1 through R-18. The Petitioner did not object to DCPS' disclosures.

Petitioner presented the following four witnesses in his case in chief: (1) Psychologist, who qualified as an expert in clinical psychology with a background in evaluating students for special education services, related services and accommodations; (2) Parent; (3) Educational Advocate; and (4) Petitioner. DCPS presented two witnesses: (1) School Psychologist, who qualified as an expert in evaluating students for special education services and making recommendation, including eligibility and (2) a Resolution Specialist.

The issues to be determined in this Hearing Officer Determination is as follows:

1. Whether DCPS denied Student a FAPE by failing to conduct a psychiatric assessment and school refusal assessment scale and review the assessments prior to terminating the Student's eligibility for special education services on July 16, 2014.
2. Whether DCPS denied the Student a FAPE by inappropriately terminating the Student's eligibility for special education services on July 16, 2014.
3. Whether DCPS denied the Student a FAPE by failing to implement the student's April 19, 2013 and April 9, 2014 IEPs from April 19, 2013 to July 16, 2014, by failing to provide the Student with 120 minutes of behavioral support services per month outside the general education setting.

Findings of Fact

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

1. The Student is [REDACTED] years old and resides with his mother in the District of Columbia. He was initially found eligible for special education when he was in the first grade, based on an Attention Deficit with Hyperactivity Disorder (“ADHD”) diagnosis. The Student matriculated to High School at the beginning of the 2009-2010 school year and started skipping classes. In the 2010-2011 school year, the Student’s attendance worsened. In the 2012-2013 school year, the Student stopped going to school and his teacher started picking him up from home in the morning and driving him to school. The Student’s attendance improved and his grades rose. After two months, his teacher stopped picking the Student up from home and the Student stopped attending school. The Student rarely attended school during the 2013-2014 school year.²
2. On January 7 and 12, 2012, the Student received a psychological assessment. The assessment yielded below average achievement scores in Math and average scores in all other areas of academic achievement. The evaluator noted the Student is frequently truant from school. The evaluator observed that behaviorally, the Student appeared to disconnect himself from his peers to avoid bullying, teasing and rejection. At school, he displayed deficiencies in peer relations and poor social skills. On tests of attention, results indicated that the Student had poor concentration/attention and difficulty keeping his mind on his work. The evaluator stated the Student continues to be a student with an Emotionally Disturbed (“ED”) under the IDEA because of a long history of depressive symptoms, including a suicide attempt. The evaluator also stated the Student continues to be a student with an Other Health Impaired (“OHI”) due to his diagnosis of ADHD and teacher reports of ADHD symptoms. The evaluator recommended the Student receive an Occupational Therapy consultation to determine whether additional assessments are required and an assessment from his psychiatrist to determine the appropriateness of his current medication.³
3. On April 20, 2012, the IEP team reviewed the January 7 and 12, 2012 psychological assessment determined the Student is a student with Multiple Disabilities (“MD”) under the IDEA.⁴
4. On April 19, 2013, the IEP team determined the Student continues to be a student with MD under the IDEA and that the Student’s academic achievement and functional performance are affected by his disabilities. The team noted the Student needs help attending school on a daily basis and being more assertive in the classroom setting, as well as improving his overall self-confidence to prevent removal from the general education setting. The team further noted the Student requires constant redirection and verbal reinforcement to keep him focused and to enable him to complete tasks to rigorously prepare him for increased participation in the general education setting. The team reported that his high truancy rate and withdrawn behaviors were preventing him from accessing the general education curriculum. The team determined the student requires five hours per week of specialized instruction in the general education setting, five hours per week of specialized instruction

² P-8, Parent, Petitioner

³ P-8, P-23, Psychologist

⁴ P-30

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outside the general education setting and 120 minutes per month of behavioral support services outside the general education setting. In making its determination, the team noted that in his special education classes, the Student benefitted from a lower pupil-teacher ratio and pull out services.⁵

5. On February 26, 2014, DCPS developed an attendance plan for the Student. The Student stated that he goes to bed late and does not get up in the morning. The plan recommended that the Student receive wakeup calls, go to bed earlier and be provided with supportive therapy.⁶
6. On April 9, 2014, the IEP team determined the Student continues to be a student MD under the IDEA. The team noted the Student needs to improve his school attendance so the he is available for academic instruction and he needs to participate in behavioral support services. The team did not change the hours of service in his IEP.⁷
7. The Student filed a due process complaint. On April 16, 2014, the Hearing Officer ordered DCPS to engage a qualified independent educational consultant, who has experience working with students with school avoidance behavior, to review the Student's educational history, his 2012 evaluations and assessments, and other available data in order to develop recommendations for the Student's IEP team on appropriate additional assessments and other data needed to determine the Student's ongoing educational needs and to address his school avoidance behavior. After the educational consultant made these recommendations, DCPS was ordered to convene the Student's IEP team, including the Student and educational consultant to determine what assessments and other data are needed to determine the Student's ongoing educational needs and to explore causes of his school avoidance behavior. DCPS was further ordered to promptly obtain such assessments of the Student and other data and when those assessments are completed, convene the IEP team to review the data and revise the Student's IEP.⁸
8. The educational consultant reviewed psychological assessments, a vocational assessment, the April 9, 2014 IEP and previous FBA. The educational consultant stated the Student's IEP was appropriate and recommended the Student's FBA be updated, discuss and identify comprehensive strategies to address truancy issues, review and revise a positive behavioral support plan to address truant behavior, develop an attendance monitoring plan, and conduct an assessment such as the School Refusal Assessment.⁹
9. On May 29, 2014, the IEP team reviewed the educational consultant's report. The Petitioner requested DCPS to fund independent assessments; including a psychological assessment, vocational assessment and FBA. The team did not agree to fund independent assessments; however, DCPS agreed to conduct the assessments.¹⁰

⁵ P-8, P-10, Psychologist

⁶ P-18, R-16, Parent

⁷ P-9, Psychologist

⁸ P-8, Resolution Specialist

⁹ P-17, R-12, Psychologist, Resolution Specialist

¹⁰ P-25, R-11, Educational Advocate, Resolution Specialist

10. On June 6 and 9, 2014, the Student received a psychological assessment from the School Psychologist. The assessment yielded below average achievement scores in Math and average scores in all other areas of academic achievement. The School Psychologist reported that the Student could not complete the assessment tasks when he heard noises such as the school bell and student voices in the hallways. The assessment included rating scales that were provided to the Student, parent and two of his teachers. The Student and parent reported mild clinical risk to clinically significant scores in depressed mood, anxiety/worry, diminished interest, cognitive and physical fatigue, anhedonia/negative affect, negative self-evaluation, internalizing problems and inattention. One of the Student's teachers refused to provide input into the assessment due to her lack of familiarity with the Student. The other teacher did not report clinically significant scores and stated that the Student was frequently absent. The School Psychologist noted the Student has a history of depressed mood, tearfulness, suicidal and homicidal ideations without plans, social isolation, poor peer interactions, preference of lone activities, and avoidance of large groups or a situation in which he will be the center of attention. The School Psychologist further noted the Student is often absent from school and as a result, he is failing his classes and concluded that the Student is not a student with a disability under the IDEA because his excessive absences, not his disability, interfere with his ability to succeed academically.¹¹
11. On June 20, 2014, the Student received a FBA. The evaluator noted the Student lacks motivation in the classroom, is easily distracted, has difficulty with concentration and has a high truancy rate and these behaviors interfere with the Student's access to learning, impact his academic performance and social emotional functioning. However, the evaluator was not able to generate a hypothesis regarding the function of the Student's truancy due to his excessive truancy.¹²
12. On June 27 and 30 and July 3, 2014, the Student received a vocational assessment. The Student stated he was interested in becoming a beta tester, network engineer or graphic designer. The evaluator recommended the Student review his vocational goals with his case manager, learn about college entrance requirements, participate in vocational activities, and learn about the services available from the Rehabilitative Services Administration.¹³
13. On July 16, 2014, the IEP team reviewed the psychological assessment, vocational assessment and functional behavioral assessment. The team noted the Student continued to be truant, but noted the Student has made academic progress despite his absenteeism. The team considered whether the Student is a student with MD and specifically ED under the IDEA and determined the Student is no longer a Student with a disability under the IDEA. The Student and parent stated the Student wanted to continue to receive specialized instruction. The Student stated he wants a small classroom away from his peers. The parent stated she disagreed with the psychological assessment and requested an

¹¹ P-15, R-8, Psychologist, School Psychologist, Resolution Specialist

¹² P-16, R-9, School Psychologist, Resolution Specialist

¹³ P-14, R-10, Resolution Specialist

independent assessment. DCPS refused because an independent assessment was provided in 2012.¹⁴

14. The Student requires two and a half credits to graduate. He did not attend any classes during the 2014-2015 school year. He failed all of his classes during the 2014-2015 school year due to absenteeism. The Student states that he does want to graduate from high school. However, during the past two years, he avoids class because the classes are too loud and have too many students. Instead of attending school, he went to the neighborhood library or school library. He knew where to find his school counselor for behavior support services if he chose to receive counseling and he could take and pass his classes if the classes were presented online. At home, the Student does not interact with his family much and chooses to spend time in his room.¹⁵
15. The Petitioner requests a new comprehensive psychological assessment, 126 hours of academic tutoring and 64 hours of counseling to redress the lack of special education and related services as a result of DCPS discontinuing special education services.¹⁶

Conclusions of Law

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

"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*, 44 IDELR 150 (2005).

DCPS did not deny the Student a FAPE by failing to conduct a psychiatric assessment and school refusal assessment scale and review the assessments prior to terminating the Student's eligibility for special education services on July 16, 2014.

Pursuant to 34 C.F.R. § 300.305(e), DCPS must evaluate a student with a disability before determining that the student is no longer a student with a disability. The Student was given a psychological assessment, vocational assessment and functional behavioral assessment pursuant to the Petitioner's request. See 34 C.F.R. § 300.304(b)(1)(i) and .306(c)(i). The IEP team reviewed the assessments and determined the Student is no longer a Student with a disability under the IDEA. See 34 C.F.R. § 300.305(a)(2)(i)(B). The Petitioner argues that DCPS should have administered a psychiatric assessment and a school refusal scale prior to terminating the Students special education services. However, the Petitioner did not provide evidence regarding how those assessments would assist the IEP team in determining whether the Student is either a student with

¹⁴ P-13, P-24, P-26, R-2, R-3, R-4, R-5, R-6, R-7, Educational Advocate, Parent, School Psychologist

¹⁵ P-33, P-36, R-14, R-15, Petitioner, Educational Advocate, Parent

¹⁶ P-43, Psychologist

an ED or OHI under the IDEA. Accordingly, the Hearing Officer finds that DCPS did not deny the Student a FAPE by failing to conduct a psychiatric assessment and a school refusal scale.

DCPS denied the Student a FAPE by inappropriately terminating the Student's eligibility for special education services on July 16, 2014

Under the IDEA, a child with a disability means a child who is evaluated as having one of the defined disabilities under the IDEA, and who, by reason thereof, needs special education and related services. 34 C.F.R. § 300.8(a). The Student received special education services as a Student with Multiple Disabilities, i.e., ED and OHI. On July 16, 2014, the IEP team determined the Student is no longer a student with a disability under the IDEA.

A student needs to exhibit one of the five criteria of the definition of ED listed in 34 C.F.R. § 300.8(c)(4) over a long period of time¹⁷ and to a marked degree¹⁸ to be so classified, provided that his educational performance is thereby adversely affected. *See, e.g. Lapidés v. Coto*, 559 IDELR 387 (N.D. Cal. 1988). The five criteria are 1) An inability to learn that cannot be explained by intellectual, sensory, or health factors; 2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; 3) Inappropriate types of behavior or feelings under normal circumstances; 4) A general pervasive mood of unhappiness or depression; 5) A tendency to develop physical symptoms or fears associated with personal or school problems.

The Student has received failing grades for the past two years due to truancy. However, the evidence supports that the Student does want to succeed in school and go to college. *Compare, Garcia v. Albuquerque Public Schools*, 520 F.3d 1116, 1127 (10 th Cir. 2008)(Student's patterns of misbehavior would have prevented her from getting an educational benefit no matter what the District did). The Student is not a student with social maladjustment and he does not cause trouble in the community or use drugs. *Compare, Springer v. Fairfax County School Board*, 27 IDELR 367 (4th Cir. 1998). In fact, the evidence supports the Student leaves home each school day and goes either to the school library or the community library. The Student does not go to his assigned classes because his peers are too loud and too disruptive for him. Likewise, at home the Student does not interact with his siblings and retreats to his bedroom to be on the computer. The Student can do his work and pass his classes if his classes are modified so that he produces all of his work on the computer. This indicates the Student does in fact have an inability to build or maintain satisfactory interpersonal relationships with peers or teachers which satisfies the second criteria under 34 C.F.R. § 300.8(c)(4).

Furthermore, the June 6 and 9, 2014 psychological assessment indicates that the Student and Petitioner reported that the Student has depressed mood, anxiety/worry, diminished interest, cognitive and physical fatigue, anhedonia/negative affect, negative self-evaluation and internalizing problems. The fact that the teachers did not report the same is not significant because

¹⁷ According to OSEP, a generally acceptable definition of a long period of time is a range of time from two to nine months, preliminary interventions have been implemented and proven ineffective during that period. *Letter to Anonymous*, 213 IDELR 247 (OSEP 1989).

¹⁸ OSEP takes the position that "to a marked degree" generally refers to the frequency, duration or intensity of a student's emotionally disturbed behavior in comparison to the behavior of his peers and can be indicative of either degree of acuity or pervasiveness. *Letter to Anonymous*, 213 IDELR 247 (OSEP 1989).

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the teachers do not interact with the Student due to his truancy. In fact, one of his teachers refused to respond to evaluation questions because she was not familiar with the Student. Therefore, based on the Student and Parent's reports, the Student suffers from general pervasive mood of unhappiness or depression, satisfying the fourth criteria under 34 C.F.R. § 300.8(c)(4) and the team could have determined the Student is a student with ED under the IDEA.

The July 16, 2014 IEP team did not consider whether the Student is a student with OHI. The Student has a diagnosis of ADHD and the Student was eligible as a Student with OHI as a result of his ADHD diagnosis since the first grade. 34 C.F.R. § 300.8(c)(9). A student could have a qualifying OHI by reason of ADHD if the disorder limits the student's ability to attend to a specific academic task by causing him to be overly alert to his environment in general. In other words, if the student's disability-related distractibility adversely affects his educational performance, he has limited alertness. *See e.g. Letter to Cohen*, 20 IDELR 73 (OSEP 1993) (Limited alertness must be viewed in terms of its effect on educational performance.) The regulations at 34 C.F.R. 300.8(c)(9) define an OHI as including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment. The psychological assessment reports that the Student could not complete the assessment tasks when he heard noises such as the school bell and student voices in the hallways. Regardless of the existence of ADHD, it is only a qualifying disability under the IDEA if the disability adversely affects a child's educational performance. 34 C.F.R. § 300.8(c)(9)(ii). Although the Student has average academic achievement, he is failing all of his classes due to truancy. The Student reports that he does not attend his classes because of distractions from other students. Therefore, had the IEP team considered whether the Student is a student with OHI, the team could have determined the Student continues to be a Student with OHI.

A student who meets one of the disability classifications under the IDEA who solely is in need of behavioral intervention or a related service and does not require special education services, does not qualify as a student with a disability under the IDEA. 34 C.F.R. § 300.8(a)(2)(i). Special education means specially designed instruction to meet the unique needs of a student with a disability. 34 C.F.R. § 300.39(a)(1). Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 C.F.R. § 300.39(b)(3). The evidence supports that the Student can receive educational benefit if the delivery of instruction is adapted, i.e., instruction is provided without distractions from other students. Further, the evidence supports that the Student requires adaptations in the delivery of general curriculum to have success.

DCPS argues that the Student's average academic achievement as demonstrated in the June 6 and 9, 2014 psychological assessment indicates that he does not require specialized instruction. Remarkably, the Student's academic achievement, and his emotional and behavioral functioning, did not differ much from the January 7 and 12, 2012 psychological assessment. Regardless, despite the Student's average scores, he had still failed most of his classes for the past two years indicating the need for specialized instruction. The Psychologist stated the Student is not a student with a disability due to his truancy. However, DCPS cannot terminate special education services under

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the IDEA for a student based on the Student's failure to cooperate with his educational program. The district retains its obligation to provide FAPE for that student, provided the student has not earned a regular high school diploma and is within the state's age range for eligibility. A student's lack of cooperation generally triggers an obligation to reexamine the student's IEP to determine if changes in his program should be made. *Letter to Borucki*, 16 IDELR 884 (OSEP 1990).

The Hearing Officer finds that the IEP team erred in determining the Student is not a student with a disability under the IDEA and no longer requires special education services. Therefore, the hearing officer will order DCPS to reconvene an IEP team meeting to develop an IEP that addresses the Student's unique special education needs.

DCPS did not deny the Student a FAPE by failing to implement the student's April 19, 2013 and April 9, 2014 IEPs from April 19, 2013 to July 16, 2014, by failing to provide the Student with 120 minutes of behavioral support services per month outside the general education setting.

The Petitioner alleges that the Student was not provided behavioral support services or counseling. The evidence indicates that DCPS did have counseling services available for the Student. In fact, the Student testified that he knew where to find his counselor. However, the Student did not attend any of his counseling sessions, just as he did not attend any of his classes. Therefore, the Hearing Officer finds that DCPS did not deny the Student a FAPE by failing to implement the Student's IEPs.

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

The hearing officer finds that DCPS' determination that the Student was not a student with a disability and subsequent termination of special education services kept the Student back to where he was a year ago. Therefore, the Hearing Officer will order DCPS to fund tutoring and counseling services for the Student to focus on completing coursework required for a high school diploma and beginning postsecondary goals as it is expected that this will take a year or less.

ORDER

1. Within ten school days, including summer school days, DCPS shall convene an IEP team meeting to develop an IEP for the student and determine a placement where the IEP may be implemented;

2. DCPS shall keep careful track of the Student's attendance. Within two months after implementation of the IEP described above, DCPS shall convene another IEP team meeting to review the Student's attendance reports and revise the IEP, as necessary;
3. DCPS shall fund one to one independent tutoring service for the Student for two hours per week and one to one counseling services for the Student for one hour per week until the Student graduates from high school; and
4. All other requested relief is denied.

IT IS SO ORDERED.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: July 4, 2015

John Straus
Hearing Officer

Copies to:
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