DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.,
Washington, D.C. 20003

CONFIDENTIAL

through the Parent/Guardian	)	
	)	
Petitioner,	)	**Virginia A. Dietrich, Hearing Officer**
	)	
vs.	)	**Case No.:**
	)	
The District of Columbia Public Schools	)	
	)	
Respondent.	)	

OSSE
STUDENT HEARING OFFICE
2010 JAN 25 AM 9: 23

HEARING OFFICER DETERMINATION

Petitioner's Attorney:

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James E. Brown & Associates, PLLC
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Washington, D.C. 20005

Respondent's Attorney:

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Assistant Attorney General
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Washington, D.C. 20002

*Personally identifiable information is attached as an Index to this decision and must be removed prior to public distribution.

JURISDICTION

#1. The Due Process Hearing was convened and this Hearing Officer Determination ("HOD") and Order written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Section 1400 et. seq., the implementing regulations for the IDEIA; 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.")

PROCEDURAL HISTORY

#1. On 11/24/09, an *Administrative Amended Due Process Complaint Notice* ("Complaint") was filed by the parent ("Parent" or "Petitioner") on behalf of the 11 year old student ("Student"), alleging that District of Columbia Public Schools ("DCPS") denied Student a free appropriate public education ("FAPE") in violation of the IDEIA when DCPS failed to provide an appropriate placement, when DCPS failed to develop an appropriate Individualized Education Program ("IEP"), when DCPS failed to determine that Student's conduct on 11/12/09 was a manifestation of Student's disability, and when DCPS failed to provide an alternative educational placement while Student was suspended from school. Petitioner asserts that Student is entitled to compensatory education for missed educational services in the form of an interim full time special education private placement.

#2. The Complaint filed on 11/24/09 expanded on a due process complaint filed on 11/19/09. The entire contents of the complaint filed on 11/19/09, i.e., Case No. was replicated in the instant Complaint. Since all of the allegations, issues and requests for relief contained in Case No. were contained in Case No. Case No. was dismissed on 12/01/09 by the Hearing Officer. Although this Complaint is filed as an amended complaint, there is no underlying complaint with the Case No. this Complaint is treated as the original complaint filed to resolve the alleged failures of DCPS as delineated above. On 12/04/09, DCPS filed a response to the Complaint, denying that Student had been denied a FAPE.

#3. Resolution was attempted by the parties, and on 12/29/09, DCPS filed its *Due Process Complaint Disposition*, indicating that no agreement regarding resolution of the Complaint was reached between DCPS and Petitioner.

#4. A pre-hearing conference occurred on 12/04/09 and the issues and defenses discussed at the Pre-Hearing Conference were memorialized in a Pre-Hearing Conference Order issued on 12/04/09.

THE DUE PROCESS HEARING

Background:

#1. The Due Process Hearing convened on 01/08/10 at 9:00 a.m. in Hearing Room #4a at the Van Ness Elementary School located at 1150 5th Street, S.E., Washington, D.C. 20003. Petitioner was represented by Pamela Halpern, Esq. ("Petitioner's Attorney") and DCPS was represented by Harsharen Bhuller, Esq. ("DCPS' Attorney.") Petitioner participated in the due process hearing in person.

#2. At the inception of the due process hearing, parties recessed to discuss settlement; however, settlement could not be reached. The hearing resumed with the matter of admitting disclosures into evidence. Due to the submission of multiple disclosure packages from Petitioner containing exhibit numbering inconsistencies, and due to numerous objections by DCPS to the admission of documents submitted by Petitioner, the admission into evidence of disclosures and supplemental disclosures was a protracted and cumbersome process that lasted until almost noon. At approximately noon, parties requested and were granted a joint continuance of seven (7) calendar days so that Petitioner could meet with the Multidisciplinary Team ("MDT") at to review a recently completed independent psychological evaluation and attempt to resolve some or all of the issues in the Complaint. Parties jointly agreed to allow the submission of additional supplemental disclosures no later than 10:00 a.m. on Wednesday, January 13, 2010.

#3. Petitioner met with the MDT on 01/11/10 at however, none of the issues in the Complaint could be resolved to the satisfaction of Petitioner. Thus, the due process hearing resumed on 01/15/10 at 9:00 a.m. in Hearing Room #5A and concluded at 5:00 p.m. on that same day.

Disclosures:

#1. Petitioner's *Five-Day Disclosures* dated 12/31/09 contained Petitioner's Exhibits #1-66. Petitioner's Exhibits #1-7, #9-10, #12, #14, #16, #18-50, and #52-56 were admitted into evidence without objection. Petitioner's Exhibits #8, #11, #13, #15, #17, and #51 were admitted into evidence over objection.

#2. Petitioner also submitted a *Disclosure Statement-Supplemental Provision* dated 01/05/10 that referenced Exhibits #1-71, but contained only Petitioner's Exhibits #69-71. Petitioner's Exhibits #67-68, referenced in the *Disclosure Statement-Supplemental Provision* dated 01/05/10 were duplicates of Petitioner's Exhibits #65-66 that were contained in *Petitioner's Five-Day Disclosures* dated 12/31/09. Petitioner's Exhibits #69-71, as listed in Petitioner's *Disclosure Statement-Supplemental Provision* dated 01/05/10, were admitted into evidence without objection.

#3. Petitioner also submitted a *Disclosure Statement-Supplemental Provision* dated 01/14/10 that contained Petitioner's Exhibits #72-78. Petitioner's Exhibits #72-78 were admitted into evidence without objection.

#4. DCPS' *Disclosure Statement*, undated but filed stamped by the Student Hearing Office on 12/31/09, contained DCPS' Exhibits #1-12. Exhibits #1-12 were admitted into evidence without objection. DCPS' *Disclosure Statement – Supplemental Provision*, undated but filed stamped by the Student Hearing Office on 12/31/09, contained DCPS' Exhibit #13. DCPS' Exhibit #13 was withdrawn by DCPS. DCPS' *Supplemental Disclosure Statement* dated 01/14/10, contained DCPS' Exhibits #14-21. DCPS' Exhibits #14-21 were admitted into evidence without objection.

Witnesses:

#1. Petitioner presented the following witnesses: (1) Petitioner; (2) grandmother of Student; (3) Ida Jean Holman, Ph.D., who qualified as an expert in special education; (4) admissions coordinator at (via telephone); and (5) tutor (via telephone).

#2. DCPS presented the following witnesses: (1) special education teacher (via telephone); and (2) special education coordinator ("SEC.")

Issues for Litigation:

#1. Whether DCPS failed to provide Student with an appropriate placement for the 2009-2010 school year; (2) whether DCPS failed to develop an appropriate IEP for Student; (3) whether DCPS failed to determine that Student's conduct on 11/12/09 was a manifestation of Student's disability; (4) whether DCPS failed to provide an alternative educational placement while Student was suspended from school; and (5) whether Student is entitled to compensatory education for missed educational services from 11/12/09 through 01/11/10?

Relief Requested by Petitioner:

(1) A finding of a denial of a FAPE on the issues presented in the Complaint with the exception of the issue concerning entitlement to compensatory education;
(2) DCPS to fund and place Student at an interim full time therapeutic special education school of Petitioner's choice, with transportation, until the MDT meets to review evaluations and the IEP and discuss placement; and
(3) Within 30 days of Student's enrollment at an interim appropriate placement, DCPS to convene a MDT meeting to review all current evaluations, review and revise Student's IEP as appropriate to include counseling and a behavior intervention plan, DCPS to review and revise Student's IEP to address behaviors related to ADHD and bipolar disorder, and DCPS to discuss and determine appropriate compensatory education.

Admissions:

DCPS offered the following admissions at the beginning of the due process hearing:

#1. Student has been without a placement since 11/12/09 and Student can return to on 01/11/10. DCPS offers remediation for missed services from 11/12/09 through 01/11/10 to address any academic regression by Student. DCPS offers remediation in the form of 90 minutes/week of tutoring in math and 90 minutes/week of tutoring in reading for six months each by an independent provider at a rate of to be completed by 12/31/10; DCPS offers 5 hours of counseling services by an independent provider at a rate of to be completed by 12/31/10; DCPS offers to fund two weeks of academic enrichment camp of Petitioner's choice at a rate not to exceed week, to be completed by 08/31/10. (*Note: Petitioner rejected this offer of remediation to resolve Issue #4, believing that tutoring was an inappropriate remedy and that an interim placement in a full time special education private school was an appropriate remedy as compensatory education for missed services.)

#2. DCPS wants to proceed with an IEP/Placement meeting on 01/18/10 or 01/19/10 at 10:00 a.m. to review a recently completed independent psychological evaluation, update Student's IEP as necessary, discuss and determine placement, and revisit compensatory education.

Stipulations:

#1. DCPS provided Petitioner with a letter of funding dated 12/02/09 for an independent comprehensive psychological evaluation that has been completed, and DCPS provided Petitioner with a letter of funding dated 12/02/09 for an independent Functional Behavioral Assessment.

FINDINGS OF FACT

#1. Student, with a date of birth of is years old and resides in the District of Columbia with Student's parent who is the Petitioner. *(Petitioner's Exhibit #2, Administrative Amended Due Process Complaint Notice dated 11/23/09.)*

#2. On 02/04/09, while Student attended grade at an IEP was developed for Student that classified Student as a student with a Specific Learning Disability, and prescribed 10 hours/week of specialized instruction outside of general education and 30 minutes/week of behavioral support services outside of general education. The specialized instruction addressed the academic areas of mathematics, reading, and written expression. The behavioral support services addressed Student's disruptive verbal and physical conduct towards adults and peers when angry, annoyed or upset. *(Petitioner's Exhibit #9, IEP dated 02/04/09.)*

#3. After Student graduated from at the end of the 2008-2009 school year, Petitioner enrolled Student at which is Student's neighborhood school. *(Testimony of Petitioner.)*

#4. The 02/04/09 IEP in effect at was also in effect at at the beginning of the 2009-2010 school year, and Student received the same level of special education services at both schools. *(Testimony of Petitioner.)* Student did well academically at and received good report cards despite behavior problems at *(Testimony of Petitioner.)*

#5. While Student attended the at during the summer of 2009, Student was taking medication for Attention Deficit Hyperactivity Disorder ("ADHD") and performed well during the program. *(Testimony of Petitioner.)* While attending the Student was a model student, was attentive, followed the rules of the school, and was forthcoming with answers *(Testimony of* and there were no reports of behavior problems or outbursts *(Testimony of Petitioner; Testimony of* When Student took medication during the and at the beginning of the 2009-2010 school year, Student was more focused and calm. *(Testimony of Petitioner.)*

#6. When Student began attending at the beginning of the 2009-2010 school year, Student was still taking medication for ADHD; however, Petitioner discontinued Student's ADHD medication in October 2009. Student had behavioral incidents while Student was taking medication and while Student was not taking medication for ADHD. *(Testimony of Petitioner.)*

#7. On 11/05/09, while Student attended grade at an IEP was developed that classified Student as a student with a Specific Learning Disability and prescribed 10 hours/week of specialized instruction outside of general education and 30 minutes/week of behavioral support services outside of general education. The specialized instruction addressed the academic areas of mathematics, reading, and written expression. The behavioral support services addressed Student's disruptive verbal and physical conduct towards adults and peers when angry, annoyed or upset. A Behavior Intervention Plan was also developed and incorporated as part of the IEP and scheduled for a review in 30 days. Student's 11/05/09 IEP indicated that Student would participate in Regular Statewide Assessment with Accommodations, rather than Alternate Assessments. *(Petitioner's Exhibit #10, IEP dated 11/05/09.)*

#8. Student's 11/05/09 IEP was implemented in such a way that Student's special education teacher at would go into Student's English and geography class as a co-teacher and provide Student with lesson modifications if Student was having trouble with the academic material or the special education teacher would put Student in a smaller group or provide scaffolding or a graphic organizer. Student's special education teacher also worked with Student on behavioral issues and gave Student anger outlet options of writing down the problem, asking the teacher for a break, or asking to see a counselor or the special education teacher. Prior to 11/12/09, when Student's behavior

escalated in the general education classroom, there was no adult present with expertise who could help Student de-escalate, and school staff would typically call the special education teacher to intervene. *(Testimony of.*

#9. Student has excellent social skills with adults, but not so good social skills with peers. Student's attempts at interactions with peers are inappropriate and the interactions end up in fights or disciplinary actions, both inside and outside of the classroom. As of the date of the due process hearing, Student had not received any in-classroom behavioral support services. It would be helpful to Student in the classroom setting if staff would intervene and correct Student's behavior rather than pulling Student out of class for behavioral support services. *(Testimony of Dr. Ida Jean Holman.)*

#10. None of the evaluations conducted on Student indicate that Student needs a full time educational placement; rather, the evaluations recommend that Student receive a classroom setting with a low teacher to student ratio. *(Testimony of Dr. Ida Jean Holman.)*

#11. On 01/11/10, the MDT met and proposed an IEP that changed Student's services to specialized instruction outside of general education in the resource classroom at *(Testimony of. Testimony of Petitioner.)* The draft IEP proposed on 01/11/10 prescribed that Student's first and last class of the day would be in the general education setting, and the three core content courses would be in the middle of the day in a self contained resource classroom. *(Testimony of.* The resource classroom currently has two special education teachers and one para-professional, and a class size of 12 students. Thus, the resource room program to be provided to Student pursuant to Student's draft 01/11/10 IEP, provides almost one to one instruction. *(Testimony of* Student gets frustrated in class if Student doesn't receive immediate remedial instruction *(Testimony of.* and Student does well working one on one *(Testimony of Dr. Ida Jean Holman.)* The specialized instruction and behavior support services that Student would receive in the resource classroom appear to be sufficient for Student to achieve academic progress *(Testimony of* and the 01/11/10 draft IEP can confer educational benefit to Student *(Testimony of* Since August 2009, the achievement scores of resource room students have improved. Since November 2009, the behavior incidents of the students in the resource classroom have de-escalated to zero incidents throughout the entire school day. *(Testimony of*

#12. Student would benefit from working with non-disabled peers. Self-sufficiency skills and self-determination skills are more difficult to learn in special education schools. The disadvantage of graduating from a special education school is that students go into society where segregation cannot occur. It is more advantageous for students to learn alongside of everyday people; it gives them better coping skills. *(Testimony of.*

#13. On 09/22/09, Student received a Discipline Referral due to Student throwing a chair, eating an orange, and threatening to punch the teacher in the face. *(Petitioner's*

Exhibit #21, Discipline Referral dated 09/22/09.) On 10/06/09, Student received a Discipline Referral for hitting the teacher in the head with an eraser. *(Petitioner's Exhibit #23, Discipline Referral dated 10/06/09.)* On 10/07/09, Student received a Discipline Referral for talking while the teacher was talking, playing with the desk, walking in the classroom, and not following instructions. *(Petitioner's Exhibit #21, Discipline Referral dated 10/07/09.)* Also on 10/07/09, Student received a Discipline Referral for not leaving class when asked to, and for cursing and walking away from the teacher. *(Petitioner's Exhibit #25, Discipline Referral dated 10/07/09.)* On 10/19/09, Student received a Discipline Referral for playing with the desk, hitting and arguing with students, yelling at the teacher and laughing. *(Petitioner's Exhibit #30; Discipline Referral dated 10/19/09.)* On 10/20/09, Student received a Discipline Referral for playing cards. *(Petitioner's Exhibit #31, Discipline Referral dated 10/20/09.)* On 10/22/09, Student received a Discipline Referral for talking inappropriately to the teacher *(Petitioner's Exhibit #32, Discipline Referral dated 10/22/09,)* and for bullying another student and disrupting class (*Petitioner's Exhibit #33, Discipline Referral dated 10/22/09.*) On 10/23/09, Student received a Discipline Referral for walking during the mid-term exam and disrupting others while testing, yelling to the teacher and stepping out of the classroom without reason. *(Petitioner's Exhibit #35, Discipline Referral dated 10/23/09.)*

#14. On 10/09/09, Student was suspended for three days for excessive noise in the classroom, hall and building and for inappropriate or disruptive physical contact between students. This suspension was Student's first suspension for the 2009-2010 school year. *(Petitioner's Exhibit #28, Notification of Disciplinary Action dated 10/09/09; Petitioner's Exhibit #29, Suspension/Expulsion Form.)* On 10/26/09, Student was suspended for three days for failing to comply with rules and routines in class, hallways, and the school building. This suspension constituted Student's third suspension. *(Petitioner's Exhibit #36, Suspension/Expulsion Form dated 10/26/09.)* On 11/12/09, Student was suspended for 45 days. Prior to the suspension on 11/12/09, Student had previously been referred to the office for disciplinary reasons eight times. *(Petitioner's Exhibit #41, Suspension/Expulsion Form dated 11/12/09.)*

#15. Student's 11/05/09 IEP contained Annual Goals in the academic areas of mathematics; reading; written expression; and emotional, social, and behavioral developments. The Annual Goals in the 11/05/09 IEP in all academic areas were at a 6th grade level and contained not only written descriptions of concrete academic assignments that Student would participate in to achieve the goals; the Annual Goals also contained the measure of performance, e.g., evaluating work samples once a month. The 11/05/09 IEP also contained Student's baseline testing which was at a 4th grade level in mathematics, at a 3rd grade level in reading, and at a 4th grade level in written expression. Grade level goals are routinely established for special education students, with accommodations at the student's grade level (aka scaffolding,) to enable students to gain exposure to grade level goals and reach grade level goals using modifications and accommodations. *(Testimony of Testimony of* Students must be exposed to their grade level content so that they become familiar with the vocabulary. In the inclusion setting, scaffolding allows the student to develop the same skill but with a different text. *(Testimony of*

#16. Student received one report card from for the 2009-2010 school year, and that report card indicated that Student did not fail any subjects. Student's report card consisted of a "C-" in mathematics, a "C-" in language, a "B" in art, and comments regarding behavior incidents and poor behavior. *(Testimony of Petitioner; Petitioner's Exhibit #37, Report to Parents on Student Progress dated 10/30/09.)* The grade of "I" that Student received in Spanish was due to Student not turning in an assignment; however, Student was given the accommodation of an extended period of time to complete the project. *(Testimony of* Until Student was suspended on 11/12/09, Student was making academic progress in all content areas, as reflected in Student's report card, which is a measure of academic progress. *(Testimony of*

#17. At the MDT meeting on 01/11/10, the MDT agreed to increase Student's special education service hours due to (A) review of a January 2010 independent psychological evaluation, and (B) Petitioner's discontinuation of Student's medication for ADHD. The MDT believed that the best way to compensate for Student's increased behavior problems was to provide more services in a smaller classroom with a 4 to 1 student to teacher ratio. All recommendations listed in the independent psychological evaluation dated 01/03/10 were utilized in development of the 01/11/10 IEP and the development of a Behavior Intervention Plan dated 01/13/10. *(Testimony of Resheeda Hinkson.)*

#18. The Behavior Intervention Plan developed on 01/13/10 was designed to help Student de-escalate, and behavioral support services for Student were increased from 30 minutes/week to 1.25 hours/week. *(Testimony of Petitioner; DCPS' Exhibit #20, Behavior Intervention Plan dated 01/13/10; DCPS' Exhibit #19, draft IEP dated 01/11/10.)*

#19. A Psychological Evaluation conducted by DCPS and dated 06/19/09, referenced a psychiatric assessment dated 05/24/09 that generated a diagnosis for Student of Oppositional Defiant Disorder and Attention Deficit Hyperactivity Disorder. The Psychological Evaluation referenced a 06/01/07 psychological evaluation that classified student with Specific Learning Disabilities. The 06/19/09 Psychological Evaluation found that Student functioned in the Average range of cognitive development with nonverbal skills being better developed than verbal skills. The Psychological Evaluation noted that the higher the academic challenge, the higher the level of frustration and possible behavioral incidents. The evaluation also noted that Student would need a great deal of support to help manage anger and cope with new challenges associated with transition to middle school. *(Petitioner's Exhibit #16, Psychological Evaluation dated 06/19/09.)*

#20. On 11/12/09, Student's special education teacher received calls regarding Student's behavior during the 1st and 2nd class periods. The special education teacher went to Student's 1st period class, discussed the problem with Student who described the behavior as "playing," and Student returned to class. The special education teacher

responded to Student's 2nd period class and took Student to her office where Student wrote a reflection about what had happened. In an effort to redirect Student, the special education teacher asked Student to move a chair into the science lab classroom and Student did so. While in the science lab classroom, Student, while calm and sitting in a chair, looked up at a shower lever hanging from the ceiling and said "what's this" as Student spontaneously and simultaneously pulled the lever. This action by Student resulted in a lot of water entering the classroom through a water hose. Student then hit the button on the eyewash fountain in an effort to cut off the water from the shower, and this resulted in another water shower being activated. Both the special education teacher and Student worked together to cut off the water. Student indicated to teacher that Student was just curious about what the lever was for. The lever was red in color but had no markings such as "Do not touch." *(Testimony of* Student simply saw the lever and pulled it. *(Petitioner's Exhibit #47, Student's Statement dated 11/12/09.)*

#21. On 11/12/09, a Manifestation Determination Review ("MDR") was held to determine whether or not Student's behavior and the resulting property damages from the water showers were contributed to Student's disability. *(Petitioner's Exhibit #39, Manifestation Determination Review dated 11/12/09.)* The purpose of the MDR meeting was to review the water hose incident from the perspective of witnesses, review Student's psychological evaluations to consider if the behavior was a manifestation of Student's disability, determine whether Student's IEP was appropriately designed and whether the IEP services were being provided. *(Testimony of* The MDR Team decided that Student's behavior was not a manifestation of Student's disability because Student was able to read the sign that said "do not pull," Student had an average cognitive level, Student's non-verbal skills were better developed than Student's cognitive skills, and Student's cognitive functioning was adequate. *(Testimony of* The MDR Team concluded that Student's IEP was properly implemented because Student was receiving specialized instruction in the general education setting, Student was receiving behavior support services, a Behavior Intervention Plan was in place and was being implemented when the behavior incident occurred, the MDT had just created a new Behavior Intervention Plan on 11/05/09, teachers had been following the Behavior Intervention Plan, and a Functional Behavioral Assessment had been completed on 10/29/09. *(Testimony of* *Petitioner's Exhibit #39, Manifestation Determination Review dated 11/12/09; Petitioner's Exhibit #73, Behavior Intervention Plan dated 11/05/09; Petitioner's Exhibit #74, Functional Behavioral Assessment dated 10/29/09.)*

#22. On 11/12/09, Student was suspended for 45 days for pulling and pushing the lever and button that activated the water hoses in the science classroom. *(Petitioner's Exhibit #38, Notification of Disciplinary Action dated 11/12/09.)* On 11/12/09, a Welcome Back Plan was developed which stated that Student would be placed in a self contained classroom with the special education teacher upon Student's return to school following suspension. *(Petitioner's Exhibit #40, Welcome Back Plan dated 11/12/09.)*

#23. Student was without a school placement from 11/12/09 until Student was able to return to on 01/11/10. DCPS offers remediation for missed services

from 11/12/09 through 01/11/10 to address any regression experienced by Student due to missed services. DCPS offers remediation in the form of 90 minutes/week of tutoring in math and 90 minutes/week of tutoring in reading each for six months by an independent provider at a rate of to be completed by 12/31/10; 5 hours of counseling by an independent provider at a rate of to be completed by 12/31/10; and funding for two weeks at an academic enrichment camp of Petitioner's choice at a rate not to exceed week, to be completed by 08/31/10. *(DCPS' Admission #1.)*

#24. On 12/09/09, DCPS issued a Notice of Final Disciplinary Decision that indicated that Student would incur a 30 day off-site suspension at from 11/12/09-01/11/10. *(Petitioner's Exhibit #62, DCPS Notice of Final Disciplinary Decision dated 12/09/09.)* Pursuant to the written direction of DCPS, Petitioner took Student to for enrollment, but Student could not be enrolled because had not forwarded the necessary paperwork to *(Testimony of Petitioner.)*

#25. On 12/14/09, DCPS sent a letter to Petitioner advising that Petitioner was in violation of the District of Columbia's compulsory school attendance law because Student had eight unexcused absences from school from 11/12/09 through 12/09/09. *(Petitioner's Exhibit #63, correspondence from dated 12/14/09.)* On 12/22/09, DCPS sent a security guard and truancy officer to Petitioner's home regarding Student's absences from school during the suspension period. *(Testimony of Petitioner; Petitioner's Exhibit # 63, correspondence from James E. Brown & Associates, PLLC dated 12/28/09.)*

#26. Tutoring, a therapeutic afterschool program, and a therapeutic summer camp would all be appropriate and beneficial remediation for the missed educational services that Student experienced from 11/12/09 through 01/11/10. A therapeutic day camp or an afterschool therapeutic program for at risk students where Student would receive art, recreation and mentoring services, would be appropriate. Student would also benefit from additional tutoring services to bring Student's achievement levels up to be commensurate with Student's abilities. Student is already receiving tutoring services, but additional tutoring services could be added after the current tutoring is completed. Student works well one on one, Student works well with adults, and Student stops behaviors immediately when redirected. *(Testimony of Dr. Ida Jean Holman; Testimony of Petitioner.)*

DISCUSSION AND CONCLUSIONS OF LAW

#1. "The burden of proof in an administrative hearing...is properly placed upon the party seeking relief." *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct. 528, 535-37 (2005), 44 IDELR 150. "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. 3030.3.

#2. The purpose of IDEIA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

#3. Free appropriate public education or FAPE means special education and related services that...are provided in conformity with the IEP. 34 C.F.R. 300.17. DCPS shall make a free appropriate public education (FAPE) available to each child with a disability, ages three to twenty-two, who resides in, or is a ward of, the District of Columbia. 5 D.C.M.R. 3002.1(a). DCPS shall ensure that, beginning at age three, FAPE is available to any child with a disability who needs special education and related services, including children who are suspended or expelled, and highly mobile children, such as migrant or homeless children, even if they are advancing from grade to grade. 5 D.C.M.R. 3002.1(e); 34 C.F.R. 300.101(a).

#4. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings.... 34 C.F.R. 300.39(a)(1). Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 C.F.R. 300.39(b)(3).

#5. This case involves year old who attended the grade at in the District of Columbia during the 2008-2009 school year as a student with a disability classification of Specific Learning Disability and with an IEP dated 02/04/09 that prescribed 10 hours/week of specialized instruction to address deficiencies in the academic content areas of mathematics, reading, and written language, and 30 minutes/week of behavioral support services to address behavior problems of aggression with adults and peers in the school environment. *(Finding of Fact #2.)* While at Student took medication for a medical diagnosis of ADHD, and despite behavior incidents, did well academically. *(Finding of Fact #4.)*

#6. At the end of the 2008-2009 school year, Student graduated from and matriculated to Student's neighborhood school, *(Finding of Fact #3.)* During the summer preceding Student's entry into for the 2009-2010 school year, Student participated in a Bridge Program at While attending the Bridge Program, Student took medication for ADHD, and by the account of Petitioner and the special education coordinator at Student displayed appropriate behaviors, performed well academically, and was a model student. *(Finding of Fact #5.)*

#7. Student then began at the beginning of the 2009-2010 school year with the 02/04/09 IEP that prescribed 10 hours/week of specialized instruction and

30 minutes/week of behavioral support services, and Student was still on medication for ADHD. *(Findings of Fact #6, #7.)* From August 2009 through the beginning of October 2009, there were no notable behavior problems even though Student had behavior incidents, and there were no academic concerns. *(Finding of Fact #6, #16.)* However, during the month of October 2009, Petitioner discontinued Student's prescription medication for ADHD, and that is when Student's behavior problems in school became pronounced, marked by many discipline referral reports and multiple suspensions. *(Findings of Fact #6, #13, #14.)*

#8. It is against this backdrop that we began the analysis of whether or not Student was denied a FAPE by DCPS.

Issue #1 – Whether DCPS failed to provide Student with an appropriate placement, thereby denying Student a FAPE?

#9. Petitioner alleges that is an inappropriate placement for Student because: (A) At the end of the 2008-2009 school year, the MDT at did not meet and determine Student's placement for the 2009-2010 school year or issue a prior notice of placement; and (B) Student has incurred several suspensions during the 2009-2010 school year because of Student's inappropriate behaviors, and Student has received poor and failing grades.

#10. DCPS responds to this allegation by asserting that is an appropriate placement for Student, that was implementing Student's IEP until Student was suspended from school on 11/12/09, and that continues to provide a baseline FAPE to Student. DCPS further asserts that does not constitute a change of placement for Student that requires prior notice to Petitioner, pursuant to 34 C.F.R. 300.503. DCPS asserts that Student naturally matriculated to Student's neighborhood school, after graduating from elementary school, and therefore, represents a change of setting and not a change of placement. And, because Student's transfer to represents a change of setting or location, the MDT was not required to meet and issue a prior notice of placement to

#11. Petitioner offered no evidence or argument that Student's matriculation from to was inappropriate or violated any of the provisions of IDEIA. The 02/04/09 IEP in effect at was also in effect at at the beginning of the 2009-2010 school year, and Student received the same level of special education services at both schools. *(Finding of Fact #4).*

#12. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982) provides a two step analysis in determining whether or not Student has been denied a FAPE. First, the Hearing Officer must determine whether the procedural requirements of the Act have been followed. Second, the Hearing Officer must determine whether the IEP developed under those procedures is "reasonably calculated to enable the child to receive educational benefits." If the Hearing Officer finds that both requirements are satisfied, then the

government "has complied with the obligations imposed by Congress and the courts can require no more."

#13. The first question to be answered is whether or not DCPS was required to give Petitioner proper notice regarding Student's transfer from to 34 C.F.R. 300.503(a) and 5 D.C.M.R. 3024.1 state that written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, and 34 C.F.R. 300.503(b) states that the notice must include a description of the action proposed or refused by the agency…a description of each evaluation procedure, assessment, record, or report the agency used as a basis of the proposed or refused action…a description of other options that the IEP Team considered and the reasons why those options were rejected… and a description of other factors that are relevant to the agency's proposal or refusal.

#14. The Comments to Part 300 of the C.F.R., p. 46588, clarify the difference between "placement" and "location." "Placement" is defined as points along the continuum of placement options available for a child with a disability, and "location" is defined as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. IDEIA states that public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. The Comments go on to state that "while public agencies have an obligation under the Act to notify parents regarding placement decisions, there is nothing in the Act that requires a detailed explanation in children's IEPs of why their educational needs or educational placements cannot be met in the location the parents request...such a provision would be overly burdensome for school administrators and diminish their flexibility to appropriately assign a child to a particular school or classroom, provided that the assignment is made consistent with the child's IEP and the decision of the group determining placement." "It is the Department's longstanding position that maintaining a child's placement in an educational program that is substantially and materially similar to the former placement is not a change of placement."

#15. The Hearing Officer concludes that when Student matriculated from to with the same IEP, and the same services prescribed in Student's 02/04/09 IEP were provided to Student at *(Finding of Fact #4),* the change in schools constituted a change of location and not a change in placement. Since Student's transfer to did not constitute a change of placement, DCPS was not required to give Petitioner notice pursuant to 34 C.F.R. 300.503(a). Thus, DCPS did not fail to comply with the procedural requirements of the IDEIA, and Petitioner does not get past the first prong of the *Rowley* inquiry in determining whether or not Student was denied a FAPE.

#16. Petitioner did not meet its burden of proof on Issue #1(A,) i.e., that Student's placement at was inappropriate because DCPS did not meet, discuss the transfer to and issue a notice of change of placement.

#17. With respect to Issue #1(B,) Petitioner alleges that is an inappropriate placement for Student because Student has incurred several suspensions during the 2009-2010 school year due to Student's inappropriate behaviors, and because Student has received poor and failing grades.

#18. The record demonstrated that Student experienced a spate of disciplinary referrals and suspensions from mid October 2009 until the time of Student's 45 days suspension on 11/12/09. *(Findings of Fact #13, #14, #20.)* However, these behavior problems coincided precisely with the discontinuation of prescription medication that Student had been taking to address symptoms of ADHD. *(Finding of Fact #6.)* In approximately one months time from the time Student begin attending school without medication until the time of Student's 45 days suspension on 11/12/09, Student incurred approximately eight discipline referrals and three suspensions. *(Finding of Fact # 14.)* This deterioration in behavior did not go unnoticed by DCPS because on 11/05/09, DCPS developed a new Behavior Intervention Plan, *(Finding of Fact #7)* and was implementing the Behavior Intervention Plan at the time Student engaged in a behavior that resulted in Student being suspended from school for 45 days.

#19. Despite Student's numerous behavior problems in school from mid October 2009 until Student's suspension on 11/12/09, Student still received passing grades in all subjects except for Spanish where Student received the special education accommodation of extra time to complete the assignment. *(Finding of Fact #16.)* Additionally, when Student was suspended on 11/12/09, DCPS developed a Welcome Back Plan for Student that indicated that when Student returned, Student would be receiving special education services in the resource classroom with the special education teacher. *(Finding of Fact #22.)* The resource classroom, newly implemented at to accommodate 12 special education students in a self contained classroom with three adult instructors, can provide Student with nearly one on one instructional assistance in the core content academic courses, and beneficial exposure to non-disabled peers through participation in elective courses in the general education curriculum. *(Findings of Fact #11, #12.)* This program appears ideal for Student who gets frustrated if not receiving immediate instructional assistance *(Finding of Fact #11,)* works well one on one and with adults *(Finding of Fact #26,)* would benefit from in-classroom behavioral support services *(Finding of Fact #9,)* requires a great deal of support to manage anger and cope with new challenges associated with transition to middle school *(Finding of Fact #19,)* and needs a classroom setting with a low teacher to Student ratio. *(Finding of Fact #10.)* Moreover, the resource classroom has an excellent track record for reducing behavioral incidents in the classroom. *(Finding of Fact #11.)*

#20. It is clear by a preponderance of the evidence that DCPS provided Student with a FAPE at from the beginning of the 2009-2010 school year until Student was suspended on 11/12/09. Student was receiving educational benefit as evidenced by passing grades *(Finding of Fact #16,)* and DCPS was adjusting Student's Behavior Intervention Plan *(Findings of Fact #7, #8)* in an effort to stabilize Student's newly occurring exacerbated behaviors. It is also clear by a preponderance of the evidence that DCPS can continue to provide Student with a FAPE at by

providing services to Student in the resource room as specified in the draft IEP developed on 01/11/10 *(Finding of Fact #17.)* Placement of Student in the resource classroom, pursuant to Student's draft 01/11/10 IEP, would be a placement in the Least Restrictive Environment, as mandated by 5 D.C.M.R. 3013.1, as it represents a placement that is based on Student's IEP and is located at Student's neighborhood school.

#21. Petitioner failed to meet its burden of proof on Issue #1(B.)

Issue #2 – Whether DCPS failed to develop an appropriate IEP, thereby denying Student a FAPE?

#22. Petitioner alleges that Student's IEP, developed on 11/05/09, is insufficient to meet Student's needs and is inappropriate because:

(A) The 10 hours per week of specialized instruction and 30 minutes per week of behavioral support services is an insufficient amount of special education services for Student to receive educational benefit; and

(B) The IEP is deficient in that:

(1) It has no short-term objectives;

(2) It has very broad annual goals with no indication of how goals are to be met or measured;

(3) The annual goals on the IEP are on a 6th grade level and Student is currently on a 3rd grade level, and therefore the goals are unreasonable for Student to meet;

(4) The IEP does not address or compensate for Student's ADHD and bipolar disorders even though Petitioner presented DCPS with documentation regarding Student's medical conditions at the beginning of the 2009-2010 school year;

(5) Definitions and objectives regarding behavior are vague in the IEP; and

(6) The behavioral intervention strategy specified in the IEP is inadequate.

#23. The analysis for determining whether or not the IEP developed on 11/05/09 was sufficient to meet Student's academic needs is tricky because (1) The IEP was developed only 3-4 weeks after Student's ADHD medication was discontinued and while Student's behavior was still in flux; (2) The service hours in the 11/05/09 IEP were not increased for content curriculum or behavioral support *(Findings of Fact #2, #7;)* but the service hours were subsequently increased in a draft 01/11/10 IEP *(Finding of Fact #17;)* (3) A new Behavior Intervention Plan was developed and attached to the 11/05/09 IEP that did address Student's newly erupting behavior problems *(Finding of Fact #7, #8;)* and (4) Although Student's behavior was poor and declining, Student was still receiving passing grades and as such, was receiving educational benefit *(Finding of Fact #16.)* This Hearing Officer concludes that on 11/05/09, DCPS took the appropriate least restrictive approach in modifying Student's IEP by modifying only Student's Behavior Intervention Plan and setting a review of the Behavior Intervention Plan in 30 days *(Finding of Fact #7.)*

#24. Therefore, the Hearing Officer concludes that at the 11/05/09 IEP development meeting, it was not erroneous for DCPS to take the least restrictive approach of developing a new Behavior Intervention Plan to address Student's negative behaviors rather than increase the specialized service hours or the amount of behavioral support services outside of general education. At that point in time, it was unclear whether or not Student would resume medication, and since Student's grades were not suffering, there was no apparent reason to increase the amount of specialized instruction that Student was to receive. The 11/05/09 Behavior Intervention Plan actually provided more intensive behavioral support services by providing Student with various anger outlet options for reducing anger. *(Finding of Fact #8.)* When Student was suspended just one week after the 11/05/09 IEP was developed, DCPS planned to increase services when Student returned to school from suspension, as evidenced by the Welcome Back Plan that stated that Student would be placed in the resource room. *(Finding of Fact #22.)*

#25. Petitioner failed to meet its burden of proof on Issue #2(A) that the IEP developed on 11/05/09 was insufficient for Student to receive educational benefit.

#26. With respect to Issue #2(B), whether or not the numerous alleged deficiencies in the 11/05/09 IEP denied Student a FAPE, 34 C.F.R. 300.320(a) and 5 D.C.M.R. 3009.1 state that the IEP must contain a statement of measureable annual goals, including academic and functional goals, and for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

#27. Student's 11/05/09 IEP did not specify that Student would take Alternate Assessments; therefore, pursuant to 34 C.F.R. 300.320(a), short-term goals on Student's IEP are not required by IDEIA. Petitioner failed to meet its burden of proof on Issue #2(B)(1) that Student's IEP was deficient because it did not contain short-term goals.

#28. With respect to Petitioner's Issue #2(B)(2), Petitioner alleges that Student's 11/05/09 IEP has very broad goals with no indication of how goals are to be met or measured.

#29. Student's 11/05/09 IEP contained Annual Goals in the academic areas of mathematics, reading, written expression and emotional, social, and behavioral development. The Annual Goals in all academic areas were at a 6th grade level and contained not only written descriptions of concrete academic assignments that Student would participate in to achieve the goals; the goals also contained the measure of performance, e.g., evaluating work samples once a month, and the degree of accuracy required to achieve the goal, e.g., 80% accuracy. The IEP also contained Student's baseline testing which was at a 4th grade level in mathematics, at a 3rd grade level in reading, and at a 4th grade level in written expression. According to the credible testimony of the special education coordinator and the special education teacher, grade level goals are routinely established for special education students who are then provided with accommodations and supports at the student's grade level to enable the Student to

gain exposure to grade level goals and eventually reach grade level goals. *(Finding of Fact #15.)*

#30. Therefore, Petitioner did not meet its burden of proof with respect to Issues #2(B)(2) and #2(B)(3), that the 11/05/09 IEP had very broad goals with no indication of how goals are to be met or measured, and that the Annual Goals on the IEP were on a 6th grade level and beyond Student's reach and therefore unreasonable.

#31. In Issue #2(B)(4), Petitioner asserts that the 11/05/09 IEP did not address or compensate for Student's ADHD and bipolar disorders.

#32. The 11/05/09 IEP did address concerns in Student's emotional, social and behavioral development by providing annual goals to address Student's disruptive verbal and physical behaviors and a means of measurement, e.g., a log, observation, or verbal response. The 11/05/09 IEP also included a Behavior Intervention Plan. *(Findings of Fact #7, #8.)* Without the Behavior Intervention Plan, the IEP goals might appear too general. However, the Behavior Intervention Plan specifically details procedures for Student to follow that are different from what is normally done, e.g., for Student to ask to be excused from class or find a counselor or the special education teacher when Student becomes upset and cannot calm down, and/or fill out a Behavior Reflection Sheet. The Behavior Intervention Plan also establishes a time certain for review of the plan, i.e., on 12/03/09, which was approximately one month from the time of its implementation. *(Finding of Fact #7.)* Therefore, the Hearing Officer concludes that the 11/05/09 IEP did not fail to address Student's ADHD and bipolar disorders symptoms. Petitioner did not meet its burden of proof on Issue #2(B)(4).

#33. With respect to Issues #2(B)(5) and #2(B)(6), the record showed that the 11/05/09 Behavior Intervention Plan was specific enough to be employed and was actually being employed on 11/12/09 prior to Student pulling the water hose lever. On that day, the special education teacher had gone to Student's 1st period class and talked with Student. The special education teacher also had gone to Student's 2nd period class and removed Student from the class, Student had filled out a reflection sheet, and immediately prior to Student pulling the water hose lever, Student was calm and sitting down. Therefore, the Hearing Officer concludes that the 11/05/09 IEP that included the Behavior Intervention Plan was specific enough to be employed by staff and Student alike, and was adequate to quell Student's disruptive behaviors.

#34. Petitioner did not meet its burden of proof on Issues #2(B)(5) and #2(B)(6).

Issue #3 – Whether DCPS failed to determine Student's conduct was a manifestation of Student's disabilities, thereby denying Student a FAPE?

#35. Petitioner alleges that on 11/12/09, a Manifestation Determination Review was held and it was determined that when Student pulled the shower/eye wash fountain button and flooded the classroom on 11/12/09, the behavior was not a manifestation of Student's disabilities. Petitioner contends that DCPS erred in making this determination

because it was Student's emotional disabilities that caused Student to act out, and DCPS was aware of the nature of Student's ADHD and bipolar disorders.

#36. Petitioner argues that Student was in an agitated state all morning and this is borne out by the record. However, of significance is the fact that by the time that Student got to the science classroom and before Student pulled the water hose lever, Student had calmed down and was actually sitting down prior to seeing and pulling the lever. *(Finding of Fact #20.)* Of all the evidence in the record, the written statement of Student that Student saw the lever and pulled it, and the testimony of the only other eye witness, the special education teacher, that when Student pulled the lever the action was not malicious, leads this Hearing Officer to conclude that Student pulled the handle out of pure curiosity and nothing more. At the time the handle was pulled, Student was calm and sitting down, displayed appropriate behavior in trying to stem the flow of water, and was apologetic for Student's actions. Therefore, the Hearing Officer concludes, giving validity to the reasons elucidated by the MDT on 11/12/09 *(Finding of Fact #21,)* that Student's behavior of pulling the shower levers was not a manifestation of Student's disability or a manifestation of ADHD symptoms and behavior.

#37. Petitioner did not meet its burden of proof on Issue #3.

Issue #4 – Whether DCPS failed to provide Student with an alternative educational placement, thereby denying Student a FAPE?

#38. Petitioner alleges that on 11/12/09, Student was suspended for 45 days and sent home without any educational packets, and that Student did not receive any educational services since being suspended. Pursuant to 5 D.C.M.R. 3002.1(e) and 34 C.F.R. 300.530(d), DCPS is obligated to provide alternative services to suspended Students.

#39. DCPS makes no bones about the fact that Student was without educational services for the duration of the 45 days suspension period *(Finding of Fact #23,)* and it was not the fault of Petitioner. DCPS did not send home educational packets as promised *(Testimony of Petitioner)* and Petitioner tried to enroll Student at per the directions of DCPS, but could not do so due to an administrative oversight by *(Finding of Fact #24.)* Additionally, Petitioner was approached by a truant officer inquiring about Student's "unexcused absences" because Student was out of school during the suspension period. *(Finding of Fact #25.)*

#40. Under *Rowley*, DCPS committed a procedural violation of IDEIA when it sent Student home for suspension and did not provide an educational alternative such as homework packets or an alternate school site. Was there harm to the Student as a result of this procedural violation?

#41. 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).

#42. Implicit in missing 45 days of school and not receiving any educational services is the obvious educational tenet that missing school does not allow Student to receive educational benefit. If this were not implicitly so, DCPS would not have sent a truant officer to Petitioner's home to inquire about Student's unexcused absences from school or sent Petitioner correspondence advising that Petitioner was in violation of compulsory attendance laws because of Student's absences from school. *(Finding of Fact #25.)* Therefore, this Hearing Officer concludes that Student was deprived of an educational benefit when DCPS sent Student home on suspension for 45 days beginning on 11/12/09 and failed to provide Student with any educational services. Student was denied a FAPE.

#43. Petitioner met its burden of proof on Issue #4, i.e., that DCPS failed to provide Student with an alternative educational placement while Student was suspended for 45 days, and that Student was denied a FAPE.

Issue #5 – Whether Student is entitled to compensatory education?

#44. Petitioner alleges that Student is entitled to compensatory education for missed general education services from 11/12/09 through 01/08/10, and for special education and counseling services from 11/12/09 through 01/08/10 as specified in Student's 11/05/09 IEP. Petitioner began the due process hearing with a request for compensatory education in the form of an interim full time special education school placement until the MDT convened to review a recently completed January 2010 independent psychological evaluation.

#45. "When a school district deprives a disabled child of free appropriate public education in violation of the Individuals with Disabilities Education Act, a court fashioning "appropriate" relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place." *Reid v. District of Columbia, 43 IDELR 32 (2005).* The qualitative standard for determining compensatory education is that "compensatory awards should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." *Reid v. District of Columbia, 43 IDELR 32 (2005).*

#46. DCPS not only admitted that Student missed all educational services from 11/12/09 through 01/08/10, DCPS also offered remediation services to Petitioner for the missed services. *(Finding of Fact #23.)* Petitioner refused the remediation services and instead requested an interim placement at a full time special education school as compensatory education for missed services until the MDT met to review an independent psychological evaluation completed in January 2010. The hearing recessed and the MDT met on 01/11/10 and reviewed the independent psychological evaluation *(Finding of Fact*

#17;) therefore, Petitioner's request for an interim placement at a full time special education school is moot.

#47. Applying the *Reid* standard to this case, the Hearing Officer concludes that Student is entitled to compensatory education for missed educational services, both general education and special education services, from 11/12/09 through 01/08/10. There is evidence in the record that Student would benefit from tutoring and a therapeutic summer camp *(Finding of Fact #26,)*, that Student has excellent social skills with adults but needs remediation for peer group social skills *(Finding of Fact #9),* and that a full time therapeutic placement is not warranted for Student *(Finding of Fact #10).* In the absence of a better or more comprehensive compensatory education plan, this Hearing Officer concludes that Student would benefit from the remediation services offered by DCPS in DCPS' Admission #1, and that these remediation services are appropriate as compensatory education for Student.

Other Requests For Relief

#48. The MDT met on 01/11/10, reviewed the 01/03/10 independent psychological evaluation, reviewed and revised Student's IEP to include more special education services in the resource classroom, an increased amount of behavioral support services, and a revised Behavior Intervention Plan. *(Finding of Fact #17, #18.)* As such, Petitioner's original request for relief for the MDT to meet, review the 01/03/10 evaluation, and review and revise Student's IEP, is moot.

ORDER

IT IS ORDERED, that

(1) Within 10 calendar days of the date of this Order, DCPS shall provide a letter to Petitioner authorizing compensatory education in the form of (A) 90 minutes/week of tutoring in math and 90 minutes/week of tutoring in reading each for six months by an independent provider at a rate of to be completed by 12/31/10; (B) 5 hours of counseling services by an independent provider at a rate of to be completed by 12/31/10; and (C) two weeks at an academic enrichment camp of Petitioner's choice at a rate not to exceed week, to be completed by 08/31/10; and

(2) Any delay caused by Petitioner or any representative of Petitioner shall result in a day for day extension of time for DCPS to meet any deadline specified in this Order.

IT IS SO ORDERED.

This is the FINAL ADMINISTRATIVE DECISION in this matter. Any party aggrieved by the findings and decision may APPEAL to a state court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. Section 1415(i)(2).

Virginia A. Dietrich /s/ 01/23/10

Virginia A. Dietrich, Esq. Date
Impartial Due Process Hearing Officer

Issued: January 23, 2010