

STATE EDUCATIONAL AGENCY FOR THE DISTRICT OF COLUMBIA  
STATE ENFORCEMENT AND INVESTIGATION DIVISION (SEID)  
SPECIAL EDUCATION PROGRAMS

On behalf of,

Student,  
STARS

Petitioner,

Case No.  
Bruce Ryan, Hearing Officer

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Hearing: April 20 and 28, 2009  
Decided: May 15, 2009 \*

Respondent.

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STUDENT HEARING OFFICE  
2009 MAY 15 PM 1:33

\* As noted below, a joint motion for continuance was granted extending the HOD deadline to 5/15/09 in order to allow consideration of late-filed post-hearing briefs, pursuant to Sections 402(A)(1) and 700.4 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP")*.

## HEARING OFFICER DECISION

### I. PROCEDURAL BACKGROUND

This Due Process Complaint was brought on behalf of a now -year old student (the "Student") who resides in the District of Columbia and currently attends

The complaint was filed March 3, 2009, pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, and its implementing regulations, as well as relevant provisions of the District of Columbia Code and the Code of D.C. Municipal Regulations. Petitioners are represented by Domiento Hill, Esq., and Respondent District of Columbia Public Schools ("DCPS") is represented by Tanya Chor, Esq., Assistant Attorney General for the District of Columbia.

Petitioners allege that following a prior Hearing Officer Decision ("HOD") issued December 15, 2008, the Student's Multi-disciplinary Team ("MDT") met on or about January 29, 2009, and agreed to place the Student at . The MDT also requested Petitioners to prepare and submit a compensatory education plan for the period preceding the Student's placement at during which time the complaint alleges that DCPS denied a free appropriate public education ("FAPE") to the Student. According to the complaint, DCPS rejected the parents' plan for compensatory education and proposed an alternative plan that was unsatisfactory to the parents.

DCPS filed a response to the complaint on March 12, 2009, which asserted that DCPS has proposed an appropriate compensatory education plan for the Student. DCPS further stated that the laptop computer referred to in the complaint was never provided for compensatory education purposes and failed to address the harm suffered by not receiving appropriate services previously.<sup>1</sup>

An initial Prehearing Conference ("PHC") was held on March 13, 2009. Based on a discussion of the issues and requested relief raised in the initial complaint, the parties agreed that (a) Petitioners would file an Amended Complaint by 3/13/09, (b) DCPS would file a further Response by 3/23/09, and (c) a further PHC would be held April 3, 2009. It was acknowledged that the Amended Complaint would result in a new 45-day time line and that the Due Process Hearing would be rescheduled accordingly. See *Prehearing Conference Order*, dated March 17, 2009, ¶ 6.

Petitioners thereafter filed a First Amended Complaint on or about March 18, 2009. MB-7. As detailed in the amended complaint, Petitioners request a finding that DCPS denied FAPE to the Student during the time he was placed at \_\_\_\_\_ and \_\_\_\_\_ until the time he was placed at \_\_\_\_\_. Petitioners also seek an award of compensatory education for such FAPE denial, to include: (a) a full diagnostic reading evaluation at the \_\_\_\_\_ at a cost of \_\_\_\_\_ (b) 40 sessions of one-on-one clinical reading instruction at \_\_\_\_\_ at a cost of \_\_\_\_\_; (c) 30 sessions of one-on-one tutoring services in mathematics with a qualified provider at DCPS prevailing rates; (d) 20 sessions of one-on-one tutoring services in written expression with a qualified provider at DCPS prevailing rates; (e) a 12-month enrollment at the Hip Hop Dance Class of the \_\_\_\_\_ of Washington, DC, at a cost of \$330; and (f) a laptop computer with educational software in reading and math. \_\_\_\_\_, pp. 6-7.

DCPS filed a response to the amended complaint on or about March 26, 2009, asserting (*inter alia*) that DCPS has provided the Student with an appropriate compensatory education plan as directed in the 12/15/08 agreed order/HOD, "that the Student is being provided a FAPE," and that Petitioners are not entitled to any relief. DCPS-5, pp. 3-5. DCPS' response also asserted that the "claim for compensatory education should be denied because of the doctrines of res judicata and collateral estoppel," since "Petitioner[s] had the opportunity to litigate the issue ... of compensatory education before a hearing officer at the November 25, 2008 Due Process Hearing.... *Id.*, pp. 2-3.

DCPS filed a further response and motion to dismiss on or about April 6, 2009, based on the res judicata/collateral estoppel defense. On or about April 8, 2009, Petitioners filed an opposition to the motion to dismiss, asserting that DCPS' motion "is without merit because there has been no final decision on the merits of the Petitioners' previous claims, and DCPS at the previous hearing agreed that the issue of the student's right to receive compensatory education was going to be discussed at the student's upcoming MDT meeting." \_\_\_\_\_, p. 4.

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<sup>1</sup> DCPS also filed a Notice of Insufficiency ("NOI") with its response on 3/12/09. The NOI asserted that the complaint was insufficient because (a) it was not signed by the parent, and (b) it referenced "several documents as factual assertions that are not provided with the complaint." \_\_\_\_\_-9. At the 3/13/09 PHC, the NOI was resolved and withdrawn without the necessity of a determination by the Hearing Officer, based on the parties' agreement that the complaint would be amended and that one or both parents would appear at the due process hearing. DCPS subsequently filed no NOI against the amended complaint.

Following five-day disclosures, the Due Process Hearing convened on April 20, 2009. At the hearing, the following documentary exhibits from the parties' respective five-day disclosures were offered and admitted into evidence:

*Petitioners* — Admitted: 1 through 25; 31 through 43.<sup>2</sup>

*DCPS* — Admitted: DCPS-1 through DCPS-17.

Because the hearing required more time than originally requested and allotted, the Hearing Officer granted a joint request for continuance and recessed the hearing until April 28, 2009, as agreed by the parties pursuant to *SOP* Section 402(B)(11).

During the April 20 and 28, 2009 hearing sessions, Petitioner presented two witnesses: the parent (Petitioner [REDACTED] and Mr. [REDACTED] Educational Advocate). DCPS presented one witness: [REDACTED] (DCPS Compliance Case Manager).

Both parties were directed to submit written closing arguments and/or post-hearing briefs within three (3) business days of the hearing, *i.e.*, by May 1, 2009. Thereafter, both parties requested additional time to file their statements, which were then submitted by COB on May 6, 2009. Pursuant to *SOP* Sections 402(A)(1) and 700.4, the parties also filed a joint motion for further continuance requesting to extend the HOD deadline in order to allow adequate consideration of the late-filed post-hearing briefs, as otherwise the HOD would have been due no later than May 8, 2009. The Hearing Officer granted the motion and extended the deadline to by one week to May 15, 2009.

This decision constitutes the Hearing Officer's determination pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and *SOP* Section 1003.

## **II. ISSUE(S) AND REQUESTED RELIEF**

As discussed at the prehearing conferences and the outset of the Due Process Hearing the following issues were presented for determination:

- a. ***Whether DCPS denied the Student a FAPE by failing to provide an appropriate placement that could implement the Student's IEP while at ES and ES; and***
- b. ***Whether the Student is entitled to compensatory education services for the above denial of FAPE and, if so, in what type and amount.***

In its response and motion to dismiss, DCPS also raised the issue of whether the claims are barred by "the doctrines of res judicata and collateral estoppel." *1*. The Hearing Officer finds that this argument lacks merit, given the express agreement between the parties, as reflected in the 12/15/08 HOD, which provided: "Issues of placement, FAPE denial, and compensatory education were deferred pending the outcome of the MDT meeting." *12*, p. 4. *See Findings of Fact, infra*. Accordingly, it is clear that the issue of compensatory education "has never been adjudicated in a due process hearing." *Serpas v. District of Columbia*, 108 LRP 9952 (D.D.C. 2005), slip op. at 7. *See also IDEA Public Charter School v. Belton*, 48 IDELR 90

<sup>2</sup> Petitioners withdrew exhibits 26 through 30. DCPS objected to exhibits 11, 13, 21 through 25, and 31 through 42, but those objections were overruled. DCPS' withdrew its objection to 17.

(D.D.C. 2007); *Serpas, supra*, slip op. at 5 (application of claim preclusion “is inappropriate when, as here, plaintiff conscientiously asserts her rights in the first forum”).

### III. FINDINGS OF FACT

1. The Student is a \_\_\_\_\_ year old resident of the District of Columbia whose date of birth is \_\_\_\_\_. He currently attends \_\_\_\_\_ in \_\_\_\_\_ Virginia, pursuant to a DCPS notice of placement issued on or about January 30, 2009. \_\_\_\_\_ -7; \_\_\_\_\_ -10.
2. The Student previously attended \_\_\_\_\_ during the 2007/08 school year, and attended \_\_\_\_\_ during the 2008/09 school year, until he was placed at \_\_\_\_\_.
3. The Student was first determined to be eligible for special education and related services as a child with a disability, with a disability classification of Learning Disabled, on or about March 21, 2007. *See* \_\_\_\_\_ 33; \_\_\_\_\_ -36. The eligibility determination was based (*inter alia*) on an educational evaluation conducted by DCPS on or about March 19, 2007. \_\_\_\_\_ 33.
4. On or about December 19, 2007, the Student’s MDT convened and determined that the Student continued to be eligible to receive special education and related services as a result of his being Learning Disabled. \_\_\_\_\_ -36. The MDT developed an IEP providing for 15 hours per week of specialized instruction, along with 30 minutes of counseling services, in a combination general education/ resource setting. *Id.*<sup>3</sup>
5. The 12/19/07 MDT meeting also developed a Behavior Intervention Plan (“BIP”), which was incorporated into the Student’s IEP. Intervention strategies adopted as part of his educational program included data recording, visible/audible announcement of favorable behavior, computer time, and sustained silent game time. \_\_\_\_\_ 36, p. 6 (BIP).
6. On or about February 13, 2008, the Student received a laptop computer for school and homework as an assistive technology device under the IDEA. *DCPS-11*. DCPS stated that the Student would receive the same provision in the following school year, 2008-2009, from his neighborhood middle school. *Id.* This provision was subsequently incorporated into the Student’s IEP, as a resource needed for program implementation, in April 2008. \_\_\_\_\_ -20. *See also* \_\_\_\_\_ -36.
7. On or about April 1, 2008, the Student’s MDT met at \_\_\_\_\_ to review the IEP, and determined to continue his 15.5 hours of specialized instruction and related services in the same combination setting. \_\_\_\_\_ -20.
8. While at \_\_\_\_\_ DCPS was not fully implementing the Student’s IEP, which called for specialized instruction, psychological counseling, and occupational therapy services. The student’s mother testified that the Student did not receive all of his psychological counseling other than a few sessions and did not receive all of his occupational therapy services. Among

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<sup>3</sup> Despite the fact the Student’s occupational therapy report was completed by DCPS in September 2007 and recommended OT services, the Student’s 12/19/07 IEP failed to provide the student with any occupational therapy services. *See* \_\_\_\_\_ -34; \_\_\_\_\_ -36.

other things, the parent testified that while at \_\_\_\_\_ she did not receive any IEP Progress Report Cards or updates from any of the Student's teachers and related services providers as to how the Student was doing; and that while her son attended \_\_\_\_\_ she would conduct observations of classes and did not observe him receiving all of his special education instruction and related services. *See Parent Testimony*. The parent began to communicate concerns to the Special Education Coordinator ("SEC") in February 2008. *Id.* (cross examination).

9. At the end of the 2007-2008 school year, the Student matriculated from \_\_\_\_\_ and was subsequently enrolled at \_\_\_\_\_ at the beginning of the 2008-2009 school year.

10. While at \_\_\_\_\_ DCPS also was not fully implementing the Student's IEP. The Student did not receive all of the special education instruction and related services required under his IEP. Although the IEP required that the Student receive specialized instruction outside the general education setting in a resource classroom \_\_\_\_\_ 20), the parent was told by the SEC at \_\_\_\_\_ that his services were being provided on an "inclusion" basis in the general education classroom. *Parent Testimony*. This situation persisted until at least the time of the 11/19/08 MDT meeting when the parent again expressed concern about it. *See Parent Testimony*; \_\_\_\_\_ 11 (11/19/08 meeting notes). Special education services were provided on an inclusion basis within grade classes of as many as 29 students, apparently due to staffing issues at \_\_\_\_\_ *See Testimony*.

11. While at \_\_\_\_\_ the Student also received little, if any, of the data recording, visible/audible announcement of behavior, computer time, and sustained game time required under his BIP. *See Parent Testimony*; \_\_\_\_\_ -11. Furthermore, the Student did not have access to his laptop computer as it did not function properly since at least the beginning of the 2008-2009 school year and did not contain the necessary educational software. *Id.*

12. As testified to by both the parent and the Student's educational advocate, the Student was not successful in his placement at \_\_\_\_\_ behaviorally or academically. A Report to Parents on Student Progress dated September 24, 2008, indicated that the Student was failing English and World History, lacked initiative, and did not interact in class. \_\_\_\_\_ -37. The educational advocate observed two classrooms in October 2008, and found the Student to be the "lowest functioning" student in the grade, requiring nearly "continuous one-on-one attention." \_\_\_\_\_ *Testimony*.

13. On October 24, 2008, Petitioners filed a due process complaint alleging that DCPS denied the Student a FAPE by (a) failing to conduct a speech and language evaluation that was recommended for the Student in March 2007; (b) failing to evaluate the Student with an in-depth cognitive assessment as recommended in October 2007; and (c) failing to provide the Student an appropriate placement that was able to implement the Student's IEP. *See* \_\_\_\_\_ 12.

14. On or about November 13, 2008, while the prior complaint was pending, DCPS conducted an OT evaluation of the Student. \_\_\_\_\_ -40.

15. On or about November 14, 2008, while the prior complaint was pending, DCPS conducted a speech/language evaluation of the Student. \_\_\_\_\_ -42.

16. On or about November 19, 2008, while the prior complaint was pending, the Student's MDT met at \_\_\_\_\_ to review and update the IEP and to develop a Student Evaluation Plan ("SEP"). The team determined to continue the IEP from 4/1/08, with the addition of 30 minutes per week of occupational therapy ("OT") and 30 minutes per week of

speech/language services. See -20 (Prior Notice and handwritten notes/updates on 4/1/08 IEP). See also 11 (MDT meeting notes, 11/19/08).

17. At the 11/19/08 MDT meeting, the team also determined that "the laptop computer given to [the Student] as a supplementary aide will be repaired or replaced." 11 (MDT meeting notes), p. 3.

18. On November 25, 2008, the due process hearing was convened on the prior 10/24/08 complaint. The parties stipulated that the MDT/IEP team met on November 19, 2008, and took the actions noted above. The parties also stipulated that the team agreed: (a) to repair and replace the laptop computer provided as a supplementary aide; (b) to conduct the in-depth cognitive assessment of the Student that had been originally recommended in October 2007; and (c) to reconvene following completion of the additional evaluation, which it anticipated would occur by February 2009. See 12 (12/15/08 HOD), pp. 2-3.

19. On or about December 8, 2008, DCPS completed a comprehensive psychological evaluation of the Student. -41. The report indicated, *inter alia*, that the evaluation was "highly indicative that [the Student] is experiencing significant ADD impairment and emotional disturbances that are creating adverse impact in the learning process." *Id.*, p. 7. The report "recommended that he be provided specialized support services to facilitate the most advantageous educational program for a student with ADD, learning disabilities and emotional interferences that have impact in the classroom." *Id.*, p. 8.

20. Also according to the 12/8/08 evaluation, although the Student was in the grade, his overall intelligence measured in the mid/2<sup>nd</sup> grade range; his cognitive efficiency measured at the 2<sup>nd</sup> grade/ 8<sup>th</sup> month range; and his working memory was measured at the 2<sup>nd</sup> grade/5<sup>th</sup> month range. See 41, pp. 3-4.

21. On December 10, 2008, the due process hearing on the prior complaint was reconvened. At the December 10 hearing session, the parties reached an agreement on the record eliminating the need to complete the due process hearing pursuant to SOP §1002.1. The parties agreed that the Student's MDT/IEP team should meet to review the updated psychological evaluation and other information, and to make any appropriate determinations regarding placement and provision of special education services, as recommended in the 12/8/08 report. See DCPS-15.

22. As a result of the parties' agreement and the actions taken at the November 19, 2008 MDT meeting, the parties agreed that no further testimony or evidence was needed at the 12/10/08 hearing and that no findings of fact or conclusions of law should be made at that time on the basis of an incomplete hearing record. Moreover, it was expressly agreed that: "**Issues of placement, FAPE denial, and compensatory education were deferred pending the outcome of the MDT meeting.**" -12, p. 4 (emphasis supplied); see also DCPS-15 (hearing transcript), pp. 16-18. The 12/15/08 HOD included the following agreed Order (MB-12, p. 5):

"DCPS shall convene a meeting of the student's MDT/IEP team on **January 6, 2009, at 9:30 AM**. At this meeting, the MDT/IEP team shall (a) review all evaluations, including but not limited to, the December 8, 2008, report of comprehensive psychological evaluation, (b) review and, if appropriate, update the student's IEP, (c) discuss and determine placement, and (d) discuss and determine if any compensatory education

services are appropriate as part of a special education program and compensatory education plan designed to meet the unique needs of the student.”

23. Following the 12/15/08 HOD, the Student’s MDT eventually met on or about January 29, 2009. At the 1/29/09 MDT meeting, the team agreed that the Student’s placement at [REDACTED] was not appropriate as it could not implement the Student’s IEP, that the Student was not making demonstrable progress, and that a new placement needed to be found. As a result, DCPS issued a Prior Notice of Placement for the Student to attend [REDACTED] See -10; *Testimony; DCPS Testimony.*

24. At its 1/29/09 meeting, the MDT/IEP team also agreed that the Student was entitled to compensatory education services for the periods in which he was denied a FAPE while at [REDACTED] and [REDACTED] and requested that the parents prepare and submit a compensatory education plan for its review. *Testimony; DCPS Testimony.*

25. On or about February 5, 2009, the parents (through their educational advocate) submitted a proposed compensatory education plan for the Student. -15.

26. On or about February 12, 2009, DCPS sent a response to the parents’ educational advocate proposing an alternative plan that incorporated some aspects of the parents’ plan, but rejected several other components including counseling services and a laptop computer with educational software. -16; *DCPS-17.*

27. The parties were unable to develop a mutually agreeable compensatory education plan and proceeded to a due process hearing on this issue.

28. Since enrolling at [REDACTED] the Student has “improved a lot,” according to the parent’s testimony. He wants to attend school, he completes homework assignments in a timely manner, and the parent has not received any calls from the school concerning inappropriate behavior. *See Parent Testimony.*

#### **IV. DISCUSSION AND CONCLUSIONS OF LAW**

##### **A. Burden of Proof**

1. The burden of proof in a special education due process hearing generally is on the party seeking relief, *i.e.*, Petitioner. DCMR 5-3030.3; *see also Weast v. Schaffer*, 126 S. Ct. 528 (2005) (burden of persuasion in due process hearing under IDEA is on party challenging IEP); *L.E. v. Ramsey Board of Education*, 44 IDELR (3d Cir. 2006).

2. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-3030.3. The standard generally is preponderance of the evidence. *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008).

3. To the extent set forth below, the Hearing Officer concludes that Petitioner has carried her burden of proof with respect to both Issues 1 and 2.

**B. Issues/Alleged Violations by DCPS**

**(1) *Whether DCPS denied the Student a FAPE by failing to provide an appropriate placement that could implement his IEP while at ES and***

4. The IDEA requires that all students be provided with a Free Appropriate Public Education ("FAPE"). FAPE means:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...*include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...*" (emphasis added).

20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; 30 DCMR Sec. § 3001.1.

5. In this case, DCPS did not seriously contest the allegation that it failed to provide an appropriate placement that could successfully implement the Student's IEP, and thereby denied a FAPE to the Student, while he was attending and This was testified to in detail by the parent and educational advocates, and was not refuted by any testimony or other evidence presented by DCPS. *See Parent Testimony; Testimony; DCPS Testimony. See, e.g., Findings of Fact ¶¶ 8-16.*

6. As testified by the Student's mother and his educational advocate, while the Student attended and DCPS did not fully implement the Student's IEP and did not provide the Student a FAPE. *See Parent Testimony; Testimony; Findings of Fact, supra.* During the due process hearing, DCPS did not present any witnesses or evidence to refute the parent's allegation that DCPS did not fully implement the student's IEP while at and DCPS' sole witness (Mr. Karty) testified only on the issue of appropriate compensatory education.

7. Moreover, at its meetings in November, 2008 and January, 2009 the MDT/IEP team determined (*inter alia*) that the Student was not in an appropriate placement, that he required a more restrictive setting, and that he was not receiving all the special education instruction he was entitled to receive. As a result, the team found the Student should be provided appropriate compensatory education services and a change in placement to the

8. Accordingly, the Hearing Officer concludes that DCPS denied the Student a FAPE by failing to provide an appropriate placement that could implement his IEPs at and over the past two school years. The period of FAPE denial began in August 2007 and ended when the Student was placed at on or about January 29, 2009.

(2) **Whether Petitioner is entitled to an award of compensatory education services for DCPS' denials of FAPE at \_\_\_\_\_ and \_\_\_\_\_ and, if so, in what type and amount.**

9. 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.'" *Reid v. District of Columbia*, 401 F. 3d at 521 (quotations omitted). "In every case, however, 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." 401 F.3d at 524. *See also Friendship Edison Public Charter School v. Nesbitt*, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'").

10. Petitioners demonstrated that DCPS' failure to provide the Student with an appropriate special education program and placement has resulted in harm to the Student. DCPS did not rebut this showing at hearing. To the contrary, in recognition of such harm, DCPS proposed a compensatory education plan that was largely in agreement with Petitioner's proposal.

11. Thus, it would appear most useful at this stage to focus on the differences between the two plans and determine whether Petitioners have carried their burden of proof under *Reid* with respect to the disputed elements. The remaining components will be adopted as part of a compensatory education plan since both parties appear to agree that they (a) would address this Student's unique needs and educational deficits, and (b) are reasonably calculated to provide the educational benefits that likely would have accrued from special education services that DCPS should have supplied in the first place during the relevant time periods.

12. As described in the testimony and documentary evidence at hearing, and their respective pleadings, the relevant elements of an award of compensatory education services in this case appear to be as follows:

(a) ***LindaMood Bell reading instruction*** - Both parties agree as to this element; to consist of initial diagnostic reading assessment (at cost of \_\_\_\_\_ and 40 sessions of one-on-one clinical reading instruction (at cost not to exceed \_\_\_\_\_ at the LindaMood Bell Learning Processes Center. — Accordingly, this agreed element will be awarded.

(b) ***Educational tutoring*** – Petitioners seek 30 sessions of one-on-one tutoring in math and 20 sessions of 1:1 tutoring in written expression, each by a qualified provider. DCPS proposed 30 hours combined tutoring in math and written expression (without breakdown), at hourly rates not to exceed \_\_\_\_\_ — Petitioners' proposal will be adopted (with the rate cap proposed by DCPS), as the Hearing Officer concludes that Petitioners have carried their burden of proof on this element. In contrast, DCPS' proposal appears to be less tailored to the Student's unique needs, and DCPS presented testimony in support of its proposal that was less persuasive.<sup>4</sup>

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<sup>4</sup> DCPS' witness Mr. Karty testified on cross examination that in developing his compensatory education proposal, he did not speak with the parent, or with teachers or school staff, and never observed the Student in a classroom setting. He developed the compensatory education plan in consultation with two other DCPS officials who also had no direct contact with or personal knowledge of the Student. *See DCPS Testimony.*

(c) **Hip Hop dance class** – Petitioners seek a 12-month enrollment at the Hip Hop Dance Class at \_\_\_\_\_ at a cost of \_\_\_\_\_ DCPS proposed two semesters of the same dance class at a cost not to exceed \_\_\_\_\_ per semester. — DCPS' proposal will be adopted, as Petitioners have not shown how a 12-month program would better address the harm, and DCPS' proposal appears to have greater monetary value (*i.e.*,

(d) **Laptop computer and software** — Petitioners seek a laptop computer with educational software in reading and math and to address organizational issues. DCPS proposed no assistive technology as part of the compensatory education plan because it believes that this is not an appropriate item of compensation as it does not address the harm suffered by not receiving appropriate past services. *See DCPS-13*. However, DCPS agrees that the Student's IEP requires that he be provided with a laptop computer as a supplementary aid. — Since (i) this has been a requirement of his IEP since at least April 2008 (*MB-20*), (ii) the undisputed evidence shows that the laptop computer (and software) provided to the Student has not functioned properly, and (iii) the MDT directed on 11/19/08 that the laptop given to the Student as a supplementary aide be repaired or replaced but that has not yet occurred (*MB-11*), the Hearing Officer will include a directive on this as part of appropriate equitable relief entered below (rather than as an element of compensatory education).

(e) **Speech/language therapy** – DCPS proposed 45 minutes of speech/language therapy per week for six (6) months by an independent provider, at hourly rates not to exceed \$85. DCPS has stated that it “would like to see [the Student's] speech/language issues in particular be addressed by direct services, due to the delay in receipt of services and the direct effect that receptive and expressive language has on academics.” *DCPS-17*. Petitioners did not include this component in their request for compensatory education relief, apparently because they substituted the laptop computer and educational software. DCPS believes the request for a laptop — DCPS' proposal will be adopted.

### C. **Appropriate Relief**

13. The IDEA authorizes district courts and hearing officers to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid*, 401 F.3d at 521-23. *See also* 34 C.F.R. § 300.513 (a) (3) (“Nothing in [Section 300.513(a)] shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.”).

14. As noted above, compensatory education is an equitable remedy available to a hearing officer, exercising his authority to grant “appropriate” relief under IDEA. Based on careful consideration of all the testimony and evidence adduced in this case, the Hearing Officer concludes that a compensatory education plan with the elements described above should be adopted. The plan meets the *Reid* standard because it has been shown to be (a) reasonably calculated to provide the educational benefits that likely would have accrued from special education services that DCPS should have supplied in the first place during the relevant time periods listed above, and (b) reasonably tailored to the unique needs of the Student. The compensatory education plan addresses the Student's specific deficiencies by enabling him to gain skills and other benefits he otherwise would have obtained had he not been placed in an inappropriate learning environment during the two school years at issue.

15. In addition, the Hearing Officer will order DCPS to take remedial action to repair or replace the laptop computer (with educational software) that is required to be provided as part of the Student's IEP, as the Student's MDT previously directed be done on November 19, 2008.

16. The foregoing relief is deemed necessary and appropriate based on the record developed in this proceeding and the FAPE denials adjudicated herein. Such equitable relief is, accordingly, set forth in the Order below.

#### V. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby ordered:

1. Within 30 calendar days of this Order, DCPS shall fund and implement the compensatory education plan described in Paragraph 12 of the Conclusions of Law herein, as appropriate compensation for the denials of FAPE found herein.
2. Within 10 calendar days of this Order, DCPS shall repair or replace the laptop computer (with appropriate educational software for math and reading) required to be provided to the Student as a needed resource and supplementary aid pursuant to his IEP.
3. All written communications from DCPS concerning the above matters shall include copies to counsel for Petitioner, Domiento Hill, Esq., via facsimile (202-742-2098), or via email ([dhill@jeblaw.biz](mailto:dhill@jeblaw.biz)).
4. This case shall be, and hereby is, **CLOSED**.

Dated: May 15, 2009

/s/



Impartial Hearing Officer

#### NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).