DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE STUDENT HEARING OFFICE 2011 FEB 14 AM 9:54

PETITIONER, on behalf of [STUDENT],[1]

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: February 12, 2011

Hearing Officer: Peter B. Vaden

Case No:

Hearing Date: January 28, 2011

Student Hearing Office, Room 2006
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by PARENT (the "Parent"), under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint, the Parent alleges numerous violations of the IDEA by District of Columbia Public Schools ("DCPS") over the 2009-2010 and 2010-2011 school years, including making an inappropriate placement for both school years and failure to implement the Student's 2009-2010 Individualized Education

[1] Personal identification information is provided in Appendix A.

Program ("IEP"). Parent seeks an order requiring DCPS to fund Student's placement at D.C. PRIVATE PLACEMENT ("DCPP").

The Student, an AGE adolescent, is a resident of the District of Columbia and is eligible for special education services under the primary disability, Intellectual Disability ("ID"). The Parent's Due Process Complaint, filed on December 13, 2010, named DCPS as respondent. The undersigned Hearing Officer was appointed on December 14, 2010. The parties met for a resolution session on December 29, 2010. No agreement was reached and the parties decided that the case should proceed to a due process hearing. A prehearing telephone conference was held with the Hearing Officer and counsel on January 12, 2011 to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on January 28, 2011 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Parent appeared in person and was represented by counsel. Respondent DCPS was represented by counsel. The Parent testified and called as witnesses COMP ED ADVOCATE, SOCIAL WORKER, and PSYCHOLOGIST. DCPS called no witnesses. Parent's Exhibits P-1 through P-30 and DCPS Exhibits R-1 through R-9 were admitted into evidence without objection.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

a. Whether DCPS failed to provide Special Education and Related Services outside the general education setting as specified in Student's February 1, 2010 IEP.

b. Whether DCPS's failure to provide Extended School Year ("ESY") services for the summer of 2010 was denial of FAPE;

c. Whether DCPS's placement of Student at was inappropriate;

d. Whether DCPS convened February 1, 2010 IEP meeting without the participation of Parent and other required team members;

e. Whether DCPS failed to provide an appropriate transition plan in Student's 2010-2011 IEP;

f. Whether DCPS denied Student a FAPE by failing to conduct a Functional Behavioral Assessment ("FBA") and to develop and implement a Behavior Intervention Plan ("BIP") for Student[2]; and

g. Whether Student was suspended for more than 10 school days in the 2009-2010 school year, without a Manifestation Determination Review ("MDR") being conducted.

Parent seeks an order to require DCPS to fund Student's private placement at DCPP, compensatory education and other relief.

FINDINGS OF FACT

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

1. Student is an AGE resident of the District of Columbia. Testimony of Mother

2. Student was identified in 2002 as a child with a disability requiring special education services under the classification Mental Retardation ("MR"). Exhibit P-7

[2] At the hearing, Petitioner's counsel reported that agreement had been reached with DCPS on other evaluations sought in the due process complaint.

3. At the beginning of the 2009-2010 school year, Student matriculated to as a GRADE student, from DC MIDDLE SCHOOL ("DCMS"). Testimony of Mother

4. Student's February 5, 2009 IEP, developed at DCMS, specified that she was to receive 600 minutes per week of Specialized Instruction, 30 minutes per week of Speech-Language ("SL") Pathology, and 60 minutes per week of Behavioral Support Services. All of the Special Education and Related Services were to be provided outside the general education setting. Exhibit R-5

5. Student's February 5, 2009 IEP was revised on February 1, 2010 at Her disability was classified as Intellectual Disability (also known as Mental Retardation). The February 1, 2010 IEP specified that from October 8, 2009 to October 8, 2010, Student was to receive 26 hours per week of Specialized Instruction and 1 hour per week of Behavioral Support Services, all outside of the general education setting. Exhibit R-4

6. Student's February 1, 2010 IEP did not provide for Extended Year Services ("EYS"). Id.

7. Student attended the February 1, 2010 IEP meeting. Parent did not attend but later signed the IEP to affirm her agreement with the content. No regular education teacher was present. Testimony of Parent, Exhibit R-4

8. Prior to the February 1, 2010 IEP, Student was in a full-inclusion program at with a resource class for help with her homework and classwork. Exhibit R-4, p. 6

9. As of May 28, 2010, Student had over 100 unexcused absences during the 2009-2010 school year. Exhibit P-13

10. Student's IEP was amended on October 6, 2010 at Under the new IEP, Student was to receive 19.5 hours per week of Specialized Instruction and 30 minutes per week

of Behavioral Support Services, all outside of the general education setting. Parent and her educational advocate attended the October 6, 2010 IEP meeting. Parent affirmed on the IEP that she agreed with its contents. Exhibit R-3

11. Student's IEP was amended again on December 7, 2010. No change was made in the hours of Specialized Instruction and Behavioral Support Services provided. Parent, Student and Parent's educational advocate attended the December 7, 2010 IEP meeting. Parent stated on the IEP that she wanted the IEP services implemented but did not agree with the service hours. Exhibits R-1, R-2

12. From August 16, 2010 to January 21, 2011, Student was present at school for 26 of the 90 school days during the period. Exhibit R-8

CONCLUSIONS OF LAW

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

DISCUSSION

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

1. WHETHER DCPS FAILED TO PROVIDE SPECIAL EDUCATION AND RELATED SERVICES OUTSIDE THE GENERAL EDUCATION SETTING AS SPECIFIED IN STUDENT'S FEBRUARY 1, 2010 IEP.

Student's February 1, 2010 IEP provided that she was to receive 26 hours per week of Specialized Instruction and 1 hour per week of Behavioral Support Services outside general

education. Petitioner contends that DCPS failed to implement this IEP and denied Student a FAPE by providing all special education instruction in an inclusion setting in the general education classroom. If Student had been instructed only in the general education classroom in spring 2010, proving this fact should not have been difficult for Petitioner. However, rather than offering testimony about failing to implement the IEP placement, Petitioner asks the Hearing Officer to draw inferences from exhibits which are, at best, ambiguous. Petitioner argues that Student's February 1, 2010 IEP shows that was operating exclusively on an inclusion model for the entirety of the 2009-2010 school year. I disagree. The IEP is clear that the IEP team justified its decision to require full-time instruction outside the general education setting, because Student had shown no progress in inclusion program. Exhibit 4, pp. 5-6 In the Other Classroom Aids and Services section of the IEP, the IEP team stated that "[a] self contained or smaller setting is recommended for this student." It is not a logical reading of the IEP to infer that the IEP team rejected inclusion and recommended a small classroom setting, if that accommodation were not available at

Petitioner also contends that Student's Progress Reports are definitive proof that only inclusion services were offered to Student after the February 1, 2010 IEP meeting. The only Progress Report in evidence for spring 2010 ends with the Third Advisory Period on March 26, 2010. Exhibit P-14 For that advisory period, Student received failing grades in Algebra 1B, Environmental Science, Art and Financial Planning. Presumably Student had been enrolled in those course before the February 1, 2010 IEP was developed and implemented. To assume, based on the fact that Student received failing grades in the four courses, that Student was only offered inclusion instruction after February 1, 2010 would be entirely speculative. In sum, I find

that Parent has not met her burden of proof to show that Student was not instructed outside general education after the February 1, 2010 IEP was adopted. DCPS prevails on this issue.

2. WHETHER DCPS'S FAILURE TO PROVIDE ESY SERVICES FOR THE SUMMER OF 2010 WAS DENIAL OF FAPE

The Student's IEP Team agreed in the February 1, 2010 IEP that ESY services were not required for Student. ESY services must be provided where a child's IEP team determines that the services are necessary for the provision of a FAPE. 34 CFR § 300.106(a). ESY Services are necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. *See S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 68-69 (D.D.C. 2008); *MM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-38 (4th Cir.2002). Petitioner contends that the February 1, 2010 IEP shows Student is "prone to regression." This mischaracterizes the evidence. What the IEP team reported was that, due to Student's behavior and attendance problems, she was regressing during the regular school year. Exhibit R-4, p. 3 No evidence was adduced at the hearing that Student's gains during the regular school year would be jeopardized if she were not provided with an educational program during the summer of 2010.[3] DCPS prevails on this issue.

3. WHETHER DCPS'S PLACEMENT OF STUDENT AT CHS IS INAPPROPRIATE

The Parent contends that Student's placement at is inappropriate because does not provide Student a full-time special education program with therapeutic components and a

[3] Parent also argues that Student's interfering behaviors such as stereotypic, ritualistic, aggressive, or self-injurious behaviors prevented her from benefitting from her educational program during the school year and, without ESY services, she would be prevented from receiving some benefit from her educational program during the regular school year. There was no evidence at the hearing that Student's "interfering behaviors such as stereotypic, ritualistic, aggressive, or self-injurious behaviors" prevented her from benefitting from her educational program during the school year

small student to teacher ratio. Under the IDEA, DCPS is obligated to devise IEPs for each eligible child, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991). If no suitable public school is available, DCPS must pay the costs of sending the child to an appropriate private school; however, if there is an "appropriate" public school program available, *i.e.*, one "reasonably calculated to enable the child to receive educational benefits," DCPS need not consider private placement, even though a private school might be more appropriate or better able to serve the child. *Id.* (citing *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)).

To determine whether the placement was appropriate for Student, one must refer to the IEPs. *See Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006). In Student's February 1, 2010 IEP, her IEP team at determined that a "self contained or a smaller setting is recommended for this student." Exhibit R-4 Student's educators reported in the IEP that "she would have a great difficulty in coping in the regular education classroom" and that she "requires intensive small group instruction if not a self contained class." The IEP Team agreed that Student required full time specialized instruction outside of general education. The Student's October 6, 2010 IEP team also agreed that a self contained or a smaller setting was recommended. Exhibit R-3 I find that having determined that Student would have difficulty in coping in a regular education classroom and that a smaller setting was recommend, the October 6, 2010 IEP team's decision to reduce Student's out of general education instruction from full time to 19.5 hours per week did not meet Student's specific educational goals and requirements. Neither was this reduction in services supported by an improvement in Student's grades or

behavior. In the grading period ending October 28, 2010, Student failed four of five classes and she continued to have chronic absenteeism. Exhibit P-14 Based upon this record, I find that DCPS's failure, in the October 6, 2010 and December 7, 2010 IEPs, to provide Student a full time special education program, outside of the regular education setting, was a denial of FAPE. Petitioner prevails on this issue.

4. WHETHER DCPS CONVENED FEBRUARY 1, 2010 IEP MEETING WITHOUT THE PRESENCE OF PARENT AND OTHER REQUIRED PARTICIPANTS

The Parent's testimony was unrefuted that DCPS did not contact Parent before the February 1, 2010 IEP meeting and that Parent did not attend. Parents are required members of the IEP team. For the IEP team to meet, without the Parent, was a procedural violation of the IDEA. *See* 34 CFR § 300.321(a)(1). There is also no indication that a regular education teacher participated in the February 1, 2010 IEP meeting as required by the IDEA. *See* 34 CFR § 300.321(a)(2). While not every procedural violation of the IDEA is fatal to an IEP's legitimacy, procedural inadequacies that seriously infringe upon the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a FAPE. *See, e.g., A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 164 (D.D.C. 2005). In this case, I find that the Parent's participation in the IEP formulation process was not seriously infringed upon for several reasons. First, Student attended the meeting and, presumably, reported back to her Parent. Second, someone from DCPS took the completed IEP to the Parent to review at her home and obtained her agreement with the IEP contents. The Parent signed the IEP and dated it February 1, 2010, the date of the IEP meeting. Most important, the placement provided in the February 1, 2010 IEP – full-time specialized instruction outside of the general education setting – is the very

placement that the Parent is seeking in this due process proceeding.[4] Under the unusual facts in this case, I find that DCPS's failure to assure the presence of Parent and a regular education teacher at the February 2, 2010 IEP meeting did not result in a loss of FAPE to Student. DCPS prevails on this issue.

5. WHETHER DCPS FAILED TO PROVIDE AN APPROPRIATE TRANSITION PLAN IN STUDENT'S 2010-2011 IEP

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter, the IEP must include—

> (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
>
> (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR § 300.320(b). Student's October 6, 2010 IEP was required to include a transition plan to meet the requirements of the IDEA. Although Petitioner and her educational advocate agreed to the content of the October 6, 2010 IEP, Petitioner now contends that the contents of the transition plan are inadequate because the plan lacks measurable and specific goals. The October 6, 2010 IEP does have specific, measurable goals: "[Student] will attend at least 1 post secondary option fairs, events, and group sessions provided by school with the school year;" "The student will answer a survey that will determine what her interests are and what are the

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[4] Petitioner argues that if she had been present at the February 2, 2010 IEP meeting, she might have indicated that Student needed a smaller environment and that Student was embarrassed because she could not read. Since the IEP Team agreed that Student needed a small class setting and, notably, intensive small group intervention for reading deficiencies, it appears that the IEP team was aware of the same concerns. Also, I note that Parent did attend the October 6, 2010 IEP meeting with her educational advocate. At that meeting Parent agreed with the contents of an IEP, which reduced specialized instruction to 19.5 hours per week from the full time program provided in the February 2, 2010 IEP.

skills that she needs to develop to be successful in the profession that she chooses after high school;" and "Within 10 months, the student will demonstrate proper etiquette, procedure, and social conversation whin in school with 100 % accuracy." These goals were considerably expanded in the December 7, 2010 IEP. Like the other content of the IEP, the transition goals and services must be reasonably calculated to provide educational benefit. *See Rowley, supra,* 458 U.S. at 206-207. I find that Petitioner has not established that the IEP transition goals in the October 6, 2010 and December 7, 2010 IEPs are not sufficiently measurable and specific, or not reasonably calculated to provide educational benefit to Student. DCPS prevails on this issue.

6. WHETHER DCPS DENIED STUDENT A FAPE BY FAILING TO CONDUCT AN FBA

The IDEA requires in the case of a child whose behavior impedes the child's learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 20 U.S.C. § 1414(d)(3); 34 CFR § 300.324(a)(2)(i). As Petitioner contends, there is abundant evidence in this case that Student's behaviors are impeding her learning and that of others. In a 2008 Psychological Re-evaluation Report, SCHOOL PSYCHOLOGIST reported that Student demonstrates significant behavioral and social adjustment problems in the school. At the time, Student was reported to be "noncompliant to adult requests for action, and generally responds with a negative attitude. She refuses to listen and has problems with authority. [Student] has poor peer relationships with her classmates due to her making negative statements about them. She can be defiant, and uses profanity at will. Her MR classmates have noted her disrespectful behavior to the teacher and others in the classroom." Exhibit P-7. Student's behavior problems continued into the 2010-2011 school year. *See, e.g.,* Student's October 6, 2010 IEP. ("Her attendance is poor and behavior is a major factor in her inability to improve academic scores." Exhibit R-3, p. 3) In

sum, the evidence establishes that Student's behaviors impede her learning and that of her classmates. Consequently, pursuant to 34 CFR § 300.324(a)(2)(i), DCPS must develop and implement a BIP directed at producing positive changes in Student's behavior. The Petitioner prevails on this issue.

The IDEA only requires the an FBA be conducted if a Manifestation Determination Review ("MDR") team makes the determination that the misconduct of a child with a disability was a manifestation of the child's disability. In this case, there has been no MDR Team meeting or a finding that Student's misconduct was a manifestation of her disability. DCPS shall not be required to conduct an FBA, except to the extent needed to develop and implement a BIP for Student.[5]

7. WHETHER STUDENT WAS SUSPENDED FOR MORE THAN 10 SCHOOL DAYS IN 2009-2010 SCHOOL YEAR WITHOUT AN MDR BEING CONDUCTED.

After a child with a disability has been removed from her current placement for more than 10 school days in the same school year because of a violations of a code of student conduct, the LEA must convene an MDR meeting, to determine (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. *See* 34 CFR § 300.530. Petitioner contends that Student was suspended from for more than 10 school days in the 2009-2010 school year and that DCPS failed to conduct an MDR. The documentary evidence offered by the parties establishes only that Student was suspended for a total of 8 days in the 2009-2010 school year – February 25, 2010 (3 days), March 8, 2010 (2 days) and March 25, 2010 (3 days). Exhibits P-9, P-10 and P-11 The Parent testified that Student was suspended for 10 to 15 days during the school year. However, the Parent's knowledge came second hand from

[5] An FBA of Student was conducted in the fall of 2010. Exhibit P-21

what Student told her when Parent would find Student at home during the day. Testimony of Parent The record establishes that Student regularly skipped school. As of May 28, 2010, she had over 100 unexcused absences. I find that the evidence that Student had been suspended for more than 10 days is not persuasive, both because Parent relied upon the chronically truant Student's explanations for not being at school and because Parent's own recollection (testimony that Student suspended for "10 to 15 days") is less than precise after the passage of time. Because Petitioner has not established that Student was suspended for more than 8 days in the 2009-2010 school year, there is no showing that DCPS was required to conduct an MDR. DCPS prevails on this issue.

REMEDIES

In her prayer for relief, Petitioner requests an order for DCPS to provide funding for a private placement at DCPP and an award of compensatory education. The facts in this case do not warrant an order for private placement. Before DCPS may be ordered to pay the costs of sending Student to a private school, there must be a showing that no suitable public school is available. *See, e.g., Branham v. Dist. of Columbia*, 427 F.3d 7, 9 (D.C. Cir. 2005); *Jenkins, supra* 935 F.2d at 305 (D.C. Cir. 1991). Parent and DCPS agreed at the beginning of the 2010-2011 school year that Student's special education services would be reduced from full-time to 19.5 hours per week. Both the Parent and her educational advocate helped to craft the October 4, 2011 IEP and agreed with its content. It was only at the December 7, 2010 IEP meeting for Student and her two siblings that Petitioner objected to the hours of service provided and to Student's placement at She filed her due process complaint four days later.

Because placement decisions implicate equitable considerations, the Hearing Officer may consider the parties' conduct. *See Branham, supra.* In this case, it would not be equitable to

order DCPS to pay for a private placement before it has the opportunity to propose a suitable public school for Student. Moreover, except for an August 30, 2010 acceptance letter from DCPP, there was a paucity of evidence that this private school is in fact an appropriate placement for Student. *See id.* (Courts have identified a set of considerations "relevant" to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment.) In sum, I find that the evidence does not establish that no suitable public school placement is available to Student or that DCPP is an appropriate placement. Accordingly I will deny Parent's request for an order to require DCPS to fund Student's enrollment at DCPP.

Parent also requests compensatory education for the denial of a FAPE to Student. I have found that DCPS denied FAPE to Student in two respects: (1) by reducing Student's Specialized Instruction outside general education in the October 6, 2010 IEP from full time to 19.5 hours per week, and (2) by not developing a BIP for Student. The IDEA gives Hearing Officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. The "ultimate award" must "provide the educational benefits that likely would have accrued from special education services" that the school district "should have supplied in the first place." A compensatory award must "rely on individualized assessments" after a "fact specific" inquiry. "In formulating a new compensatory education award, the hearing officer must determine 'what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures.'" *Stanton v. Dist. Of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (citations omitted). The behavior of a student's parent is also relevant in

fashioning equitable relief. *See Parents of Student W. v. Puyallup School Dist., No. 3,* 31 F.3d 1489, 1497 (9th Cir. 1994).

With regard to DCPS's failure to develop a BIP for Student, Parent's Comp Ed Advocate opined that a reasonable award would be 40 hours of outside counseling for behavioral support. However, Comp Ed Advocate's opinion was based upon her assumption that Student's IEP was not implemented during the 2009-2010 school year – a claim which I have found was not established by the evidence. According I discount this expert's opinion. It is undisputed, however, that Student's school attendance during the fall 2010 term continued to be a major problem. A BIP would have targeted, and, arguably, ameliorated, Student's attendance issues. Although Parent's evidence does not establish what educational benefit the Student would have received from a timely BIP, Student's February 1, 2009 IEP team found that Student needed 1 hour per week of behavioral support services "to support and encourage [S]tudent to attend school regularly and to make efforts to complete/participate with classroom work". The same needs were reported in Student's October 6, 2010 IEP, but the IEP Team reduced Student's Behavioral Support Services to 30 minutes per week. I also take into consideration the facts that Parent and her educational advocate agreed to the October 6, IEP and that a Functional Behavior Assessment was undertaken in October 2010. Considering all of the circumstances in this case, I find that an award of an additional 30 minutes per week, for 12 weeks, of Behavioral Support Services, in the form of one-on-one counseling, is an appropriate equitable compensation for DCPS's failure to develop a BIP for Student for the 2010-2011 school year. DCPS may provide the counseling through in-school services or pay for a private counselor.

I do not award compensatory education to remedy DCPS's failure to continue Student's full time out of general education placement in the 2010-2011 school year. This is because

Student skipped so many days of school during the fall 2010 term, that it is doubtful that Student would have accrued any additional educational benefits had the IEP team specified more than the 19.5 hours per week of Specialized Instruction provided in the October 6, 2010. Furthermore, I take into consideration the fact that the Parent and her educational advocate helped to craft the October 6, 2010 IEP and agreed to its content. *See Hinson ex rel. N.H. v. Merritt Educational Center,* 579 F.Supp.2d 89, 102 (D.D.C., 2008) (where Parent participated in the process and fully agreed with the substance of the IEP); *Hogan, supra* at 573. (A school district should not be presumptively responsible for compensating lost education directly attributable to the actions of parents.)

SUMMARY

In summary, I find that Student was denied a FAPE by DCPS's failure to develop and implement a BIP for the 2010-2011 school year and by the reduction of Student's Specialized Instruction to 19.5 hours per week in the October 6, 2010 IEP. The facts in this case do not warrant an order for DCPS to fund Student's enrollment at DCPP. An award of 6 hours of additional behavioral support services would be an appropriate equitable remedy to compensate Student for DCPS's failure to develop a BIP for her.

ORDER

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

Within 10 school days of the date of this Order, DCPS shall convene Student's IEP Team to develop an IEP which conforms to this decision and specifically provides for full time Specialized Instruction outside the general education setting. DCPS shall also increase Behavior Support Services to Student to 1 hour per week, for 12 weeks, to include one-on-one counseling

as provided in this decision. All other relief requested by the Parent in her Due Process Complaint is denied.

Date: February 12, 2011

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

NOTICE OF RIGHT TO APPEAL

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