

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

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
STUDENT HEARING OFFICE
2011 FEB 22 AM 9:44

Parent, on behalf of the Student,¹

Petitioner,

v.

The District of Columbia Public
Schools ("DCPS"),

Respondent.

Date Issued: February 19, 2011

Hearing Officer: Ramona M. Justice

Case No:

Hearing Room: Room 2009

HEARING OFFICER DETERMINATION

I. INTRODUCTION

On December 13, 2010, the parent, through her Attorney, filed with the District of Columbia, Office of the State Superintendent of Education ("OSSE"), Student Hearing Office, an "Administrative Due Process Complaint Notice", on behalf of the student, alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a free appropriate public education (FAPE), because it failed to:

- (1) Comply with the July 23, 2010 Hearing Officer's Decision, by failing to complete an Educational Evaluation within thirty (30) days of the start of the 2010/11 school year;
- (2) Provide the student an appropriate placement during the 2010/11 school year;
- (3) Implement the student's June 14, 2010 IEP, by failing to provide the student the 1.5 hours of behavioral support services, per week; and 80 minutes of behavior support consultation services, per month, as prescribed in the student's IEP.

¹ Personal identification information is provided in Appendix A.

The Petitioner requests the following relief:

- (1) That the Hearing Officer issue an Order, finding that the DCPS denied the student a FAPE, by failing to comply with the July 23, 2010 Hearing Officer's Decision (HOD); provide the student an appropriate placement during the 2010/11 school year. And implement the student June 14, 2010 IEP.
- (2) That the Hearing Officer issue an Order, requiring the DCPS to fund the student's placement at a full-time therapeutic school of the Petitioner's choosing, with transportation;
- (3) That the Hearing Officer issue an Order, requiring the DCPS to fund an independent Comprehensive Psychological Evaluation, at market rate;
- (4) That the Hearing Officer issue an Order, requiring the Respondent to convene a Multidisciplinary Development Team (MDT) meeting, to review the independent Comprehensive Psychological Evaluation; and make any necessary revisions to the student's IEP, within ten (10) days of receipt of the evaluation; and
- (5) That the Hearing Officer issues an Order requiring the DCPS to provide the student compensatory education services, to account for the denials of a FAPE.

On December 15, 2010, the Student Hearing Office assigned the due process complaint to this Hearing Officer. On December 20, 2010, the Respondent filed a response to Petitioner's due process complaint. On December 27, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for December 30, 2010, at 4:00 p.m.; the due process hearing for January 13, 2011, at 9:00 a.m.; and an Order, requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting.

According to the IDEA, a resolution meeting must be held within fifteen (15) calendar days from the date of the complaint. In this matter, the Respondent must convene a resolution meeting no later than December 28, 2010. The thirty (30) day resolution period expired on January 12, 2011. A resolution meeting was not held, and on January 5, 2011, the Respondent filed with the Student Hearing Officer, notice of its waiver of the resolution meeting. The forty-five (45) day timeline for convening a hearing and issuing a decision, began at the expiration of the 30 day resolution period; and expired on February 19, 2010.

The prehearing conference was held on January 21, 2011, at 3:00 p.m.; and on January 23, 2011, the Hearing Officer issued a prehearing order summarizing the matters discussed during the prehearing conference, and scheduling the due process hearing for February 4, 2011, from 9:00 a.m. to 5:00 p.m...

On January 28, 2011, the Petitioner filed "Petitioner's Motion to Compel the Production of Documents"; and on January 31, 2011, the Respondent filed "District of Columbia Public School's Opposition to Petitioner's Motion to Compel the Production of Documents".

On February 1, 2011, the Hearing Officer issued an Order denying Petitioner's motion to compel the production of documents, finding that the complaint failed to include allegations that the Respondent denied the parent access to the student's educational records; and prior to filing of the complaint, the Petitioner's Attorney failed to exercise due diligence in requesting and obtaining the documentation necessary, to support the allegation in the complaint that the Respondent failed to implement the student's June 14, 2010 IEP.

The Hearing Officer also held that because information regarding implementation of the student's June 14, 2010 IEP was not available at the time the Petitioner filed the complaint, it appeared that the allegation was based purely on speculation; which the Petitioner's Attorney disagreed.

The due process hearing convened on February 4, 2011, at 9:00 a.m., as scheduled, at 810 First Street, N.E., 2nd Floor, Washington, D.C.... The hearing was closed to the public, pursuant to the parents' request. Each party was represented by counsel; and both counsels waived opening statements.

As a preliminary matter, the Respondent requested clarification of Issue 1 of the complaint, which the Hearing Officer provided; and the Petitioner reiterated for the record its motion to compel the production of documents; and disagreement with the Hearing Officers' decision to deny the motion.

The Petitioner offered into evidence Petitioner's Exhibits 1-39; and the Respondent offered into evidence Respondent's Exhibits 1-8. The Petitioner objected to Respondent's Exhibit 4, on the grounds that the exhibit is unreliable, however, subsequently withdrew the objection.

The Respondent objected to the Petitioner's disclosures P-5 through P-7, on the grounds that the documents are not relevant to the issues in the complaint, because the exhibits pertained to the 2009/10 school year; and the issues in this complaint pertain to the 2010/11 school year. The Respondent also objected to the Petitioner's Exhibits 9, 10, 17-29, on the grounds of relevancy; and Petitioner's Exhibit 38, on the grounds that the Compensatory Education Plan developed by the Petitioner was based on an independent Comprehensive Psychological Evaluation, which is not in the administrative record.

After considering the Respondent's objections, and arguments of both parties, the Hearing Officer admitted into the record as evidence, the Petitioner's Exhibit 1-8, 11-16, and 30-39, while reserving on Petitioner's Exhibit 38, until after the Petitioner presents it case; and excluded Petitioner's Exhibits 9, 10, and 17-29.

The Hearing Officer also admitted into the record as evidence, Respondent's Exhibits 1-8. Both parties submitted witness lists dated January 28, 2011. The Respondent reserved its objection to Petitioner's Exhibit 38, and the Hearing Officer deferred a ruling on the exhibit, pending the presentation of evidence of compensatory education services. After considering the evidence presented, the Hearing Officer admits into the record as evidence, the Petitioner's Exhibit 38.²

Petitioner's witnesses included: the student's parent (mother); the student's Educational Advocate; the Director, The Respondent's witnesses included: Coordinator, Academy. The due process hearing concluded with the parties providing closing arguments.

II. JURISDICTION

The due process hearing was held; and the Hearing Officers' decision is written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

III. BACKGROUND

The student is _____ years of age; and a _____ grade student at a District of Columbia Public high school. The student began attending the public high school on August 28, 2010, for the 2010/11 school year. Prior to attending the public high school, the student was a _____ grade student at _____ a District of Columbia,

On December 13, 2010, the parent, through her Attorney, filed a due process complaint on behalf of the student; challenging the Respondent's implementation of a prior Hearing Officers' Decision; implementation of the student's June 14, 2010 IEP; and the appropriateness of the student's placement during the 2010/11 school year.

² The Hearing Officer finds that the probative value and benefit of admitting the Petitioner's Exhibit 38 into the record as evidence, far outweighs any prejudice that may ensue to the Respondent, particularly since the Respondent proposed no compensatory education plan; compensatory education services are warranted in this matter; and the only evidence available regarding compensatory education services, is the proposed compensatory education plan presented by the Petitioner, and the testimony of the Petitioner's witness regarding the proposed compensatory education plan. Therefore, the Petitioner's Exhibit 38 is admitted into the record as evidence; and the Hearing Officer will provide due weight to Exhibit 38, considering the fact that the plan was developed in part, based on an evaluation not in the record.

IV. ISSUES

The following issues are before the Hearing Officer:

- (1) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to comply with the July 23, 2010 Hearing Officers' Determination (HOD), which required the Respondent to complete an Educational Evaluation within thirty (30) days of the start of the 2010/11 school year?
- (2) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to provide the student an appropriate placement during the 2010/11 school year, because the *location of services* identified in the student's June 14, 2010 IEP, is unable to implement the student IEP, provide the student access to the general education curriculum, and educational benefit; in violation of the IDEA, at 34 C.F.R. §§300.116(a)(2)?
- (3) Whether the District of Columbia Public Schools failed to implement the student's June 14, 2010 IEP, because it failed to ensure that as soon as possible following development of the IEP, the student received the 1.5 hours of behavior support services, per week, and 80 minutes of behavior support consultation services, per month; in violation of the IDEA, at 34 C.F.R. §300.323?

V. CREDIBILITY DETERMINATIONS

The Hearing Officer finds that the testimony of all witnesses at the hearing was credible; and the Respondent presented no witness testimony that contradicted the testimony of Petitioner's witnesses.

VI. FINDINGS OF FACT

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

1. The student is _____ years of age, and resides in the District of Columbia with his mother, the Petitioner.³
2. The student is disabled and eligible to receive special education and related services, under the IDEA.⁴ The student's disability classification is Emotionally Disturbed (ED).⁵

³ Testimony of parent.

⁴ Respondent's Exhibit 4.

⁵ Id.

3. The student is a _____ grade student at a District of Columbia public high school.⁶ Since attending the school, the student struggles academically and behaviorally.⁷ Prior to attending the public high school, the student attended _____ a District of Columbia, _____ and performing arts school.⁸ The student is repeating the _____ grade for the third time.⁹

While attending the _____ public charter school, the student received specialized instruction; and the following supplemental supports and services: (1) instructional accommodations (verbal and visual prompts, repeated and simplified directions, small group instruction, individual testing), (2) functional behavioral assessment, (3) parent conferences, (4) modified curriculum, (5) modified materials, (6) differentiated instruction, (7) flexible seating, and (8) counseling.¹⁰ However, the student struggled academically and behaviorally.¹¹

The Respondent determined that despite these interventions and supports, the location of services was inappropriate; because the student's behavior failed to improve; the student continued to fail all of his classes; the student was resistant to accepting assistance from special education staff; and the student continued to exhibit an unwillingness to complete school work.¹²

4. A **Functional Behavioral Assessment** (undated) was also completed while the student attended the junior public charter school, to address the student's skipping of class, arriving to class late, failing to complete and turn in assignments, not being on task, disruptive behavior, some-aggressive behavior, disrespect toward staff, associating with negative peers, non-compliance and disobeying school rules.¹³

According to the Functional Behavioral Assessment, *when the student is presented with class material that he has difficulty fully comprehending, he skips class or walks out of class to avoid learning (which is difficult and possibly frustrating and uncomfortable) and/or avoids possible revelation that he does not know the material; thus avoiding embarrassment/disappointment/feelings of inadequacy; and when the student has difficulty focusing in class he engaged in negative behavior, in order to get positive attention from negative peers.*¹⁴

⁶ Id.

⁷ Respondent's Exhibits 4 and 7.

⁸ Respondent's Exhibit 5 and 8.

⁹ Testimony of Coordinator, at public high school; and Testimony of parent, and Respondent's Exhibit 7.

¹⁰ Respondent's Exhibit 5, page 12.

¹¹ Petitioners Exhibit 8.

¹² Id and Respondent's Exhibit 8.

¹³ Petitioner's Exhibit 16.

¹⁴ Id.

According to the Functional Behavioral Assessment, *when the student is presented with class material that he has difficulty fully comprehending, he distracts others, picks on others, and/or exhibits off-task behavior in order to delay learning (which is difficult and possibly frustrating and uncomfortable for him) and/or avoids possible revelation that he does not know the material; thus, avoiding embarrassment/disappointment/feelings of inadequacy.*¹⁵

5. On **May 10, 2010**, the Petitioner through her Attorney, filed a due process complaint alleging that the Respondent failed to conduct and review evaluations in all areas of suspected disability; develop an appropriate IEP; and that the student's placement at was inappropriate.¹⁶
6. On **June 14, 2010**, the Respondent determined that the nature and severity of the student's disability is such that education of the student in the general education setting, even with the use of supplementary aids and supports, cannot be accomplished satisfactorily; and the student requires a full-time special education placement, outside the general education setting, to access the general education curriculum; and receive educational benefit.¹⁷ The Respondent developed an IEP for the student, prescribing 27.5 hours of specialized instruction, per week; 1.5 hours of behavioral support services; and 80 minutes of behavioral support consultation services, monthly.¹⁸

The Respondent also identified a District of Columbia public high school, the student's current placement, as an appropriate placement for the student, opining that because the school can provide the student a full-time special education program, outside the general education setting, with trained behavior support staff, small student to teacher ratio, time-out rooms, and a therapeutic intervention center, the student would be able to access the general education curriculum, and receive educational benefit.¹⁹ However, since attending the school, the student exhibits the same behaviors as exhibited at his prior school; and continue to regress academically and behaviorally.²⁰

7. On **July 23, 2010**, a Hearing Officer issued a decision and order providing that within Thirty (30) days of the start of the 2010/11 school year, the Respondent shall administer an educational evaluation to student; and if it becomes necessary due to the student's resistance to participation in the evaluation, DCPS shall attempt to administer said evaluation at least three (3) times.²¹

¹⁵ Petitioner's Exhibit 8, page 5.

¹⁶ Respondent's Exhibit 2.

¹⁷ Respondent's Exhibit 5, page 12, testimony of parent, testimony of Coordinator at public high school.

¹⁸ Respondent's Exhibit 5.

¹⁹ Respondent's Exhibit 1, page 9.

²⁰ Testimony of Coordinator, at public high school, testimony of parent, and Petitioner's Exhibits 17-33; and Respondent's Exhibits 3, 7, and 8.

²¹ Id.

8. The student began attending the public high school on August 28, 2010, the beginning of the 2010/2011 school year.²² Since enrolling at the school, the student is present at school, however, has difficulty attending or remaining in classes, particularly, classes which he finds challenging.²³

The student exhibits the same truancy issues at his current school, as exhibited at his prior school; and it is this school's policy that if a student fails to attend all of his classes during a school day or is tardy, the student is marked absent for the entire day.²⁴ The student also exhibits the same behaviors as exhibited at the public charter school; except there is some noted improvement in the number of altercations the student has with other students; and the student continue to regress academically and behaviorally.²⁵

The student also exhibits the same difficulties academically, as experienced at the charter school.²⁶ The parent met with the school's Coordinator and the student's World History Teacher, to express concern regarding the student's truancy, behavior, and the impact the student's disabilities continue to have on the student's learning.²⁷ The school continues to implement behavioral interventions and supports, however, the student exhibits no academic or behavioral progress.²⁸

9. On **September 20, 2010**, an **Educational Evaluation**, consisting of a Woodcock Johnson III assessment was administered, to assess the student's academic achievement.²⁹ At the time of the assessment the student was repeating the grade, for the third time.³⁰ When compared to others at his grade level, the student's academic skills and fluency with academic tasks are both within the average range; and the student's standard scores are average in broad reading and brief reading; his standard score is low (compared to grade peers) in math calculation skills.³¹

The student performs at a 4th grade equivalent in passage comprehension and calculation; 5th grade equivalent in math calculation skills; 7th grade equivalent in broad reading, brief reading, academic fluency, reading fluency, and writing fluency; 8th grade equivalent in math fluency and academic skills; and 10th grade equivalent in spelling.³²

²² Testimony of parent.

²³ Testimony of parent and Coordinator, public high school; and Respondent's Exhibit 8..

²⁴ Testimony of parent.

²⁵ Id; and Testimony of Coordinator a public high school, testimony of parent and Education Advocate; Respondent's Exhibit 7; Petitioner's Exhibit 11 and 12.

²⁶ Testimony of parent, testimony of Coordinator at public high school, Respondent's Exhibits 3, 4, 5, 7, and 8.

²⁷ Id.

²⁸ Id.

²⁹ Respondent's Exhibit 6.

³⁰ Respondent's Exhibit 6-1-6-2.

³¹ Respondent's Exhibit 6.

³² Respondent's Exhibit 6-1-6-2.

10. For the school advisory ending on January 21, 2011, the student received failing grades during the first and second advisories, and no grades for the 3rd and 4th advisories; and final grades consisting of a "C" in World History and Reading Workshop II; a "D" in Environmental Science; an "A" in from Bach to Rap; and an "F" in Survey of World Art, with no grades in his Advisory, Algebra I, English I, Computer Applications I, Health Education, Computer Applications II, or Physical Education classes.³³
11. On **January 24, 2011**, after filing of the complaint, the Respondent convened a Multidisciplinary Development Team (MDT) meeting, to review the student's IEP, and academic assessments.³⁴ The student's teachers expressed concern regarding the student walking out of class when bored or restless; and one teachers' approach to addressing the student's behavior, by allowing the student ten minute breaks, upon request.³⁵ The team also stated that technicians and security guards have been placed on notice regarding the student skipping and leaving class, and will redirect the student back to class; and that an alternative placement for the student would not be discussed, due to the parent's absence from the meeting.³⁶

The MDT developed a "Draft" IEP for the student increasing the specialized instruction from 27.5 to 31 hours per week; and 1.5 hours per week, behavioral support services, outside the general education setting; and eliminating from the IEP, the 80minutes of behavioral support consultation services, monthly.³⁷ In describing the student's need for removal from the general education setting, the IEP provides that because of the student's defiant, oppositional, and aggressive behaviors, the student requires a full-time placement and support of special education staff for him to access the general education curriculum.³⁸

The student's IEP also provides that the student's projected exit category is a high school certificate, prior to age 21;³⁹ however, the Respondent states that this notation on the IEP is an error because classes for students on a certificate track differ from classes for students on a diploma track; and the student's current school would be an inappropriate placement for the student, if he is on a certificate track because a certificate track is not available at the school.⁴⁰

12. Failure to Comply with the July 23, 2010 Hearing Officer's Decision (HOD)

The Hearing Officer finds that the Respondent complied with the July 23, 2010 Hearing Officer's Decision, by completing an Educational Evaluation within thirty (30) days of the beginning of the 2010/11 school year.

³³ Respondent's Exhibit 7.

³⁴ Respondent's Exhibit 3.

³⁵ Respondent's Exhibit 3-3.

³⁶ Respondent's Exhibit 4, page 3-2 and 3-3.

³⁷ Respondent's Exhibit 4.

³⁸ Respondent's Exhibit 4-10.

³⁹ Respondent's Exhibit 4-15.

⁴⁰ Testimony of Coordinator, at public high school.

The July 23, 2010 Hearing Officer's Decision (HOD) required the Respondent to administer an Educational Evaluation, within 30 days of the start of the 2010/11 school year. The first day of the 2010/11 school year began on August 23, 2010; therefore, the thirty (30) day time period to complete an Educational Evaluation expired on September 22, 2010. The Respondent completed the Educational Evaluation on September 20, 2010; within thirty (30) days of the start of the 2010/11 school year, in accordance with the July 23, 2010 HOD.

13. Failure to Provide the Student an Appropriate Placement (Location of Services)

The Hearing Officer finds that the Respondent failed to provide the student an appropriate placement during the 2010/11 school year, because the location of services identified in the student's June 14, 2010 IEP, is unable to implement the student's IEP; or provide the student educational benefit.⁴¹

The Hearing Officer finds that in developing, reviewing, and revising the student's June 14, 2010 IEP; and determining the student's placement, the Respondent failed to carefully consider the following information, as a result, the student's IEP is not specifically tailored to address the student's academic, developmental, and functional needs of the student, or reasonably calculated to provide the student educational benefit; and the location of services identified in the IEP, is inappropriate because the school is unable to implement the student's IEP, or provide the student educational benefit:

- The student attends school and classes regularly, indicating that it is more probable than not, that the student wants to be in school; and wants to learn, however, his disability, particularly limited ability to comprehend the information received, significantly impedes his learning.
- In February 2009, the student was determined to be "*at risk*" or elevated in 11 of the 12 following areas: oppositional scale, *cognitive problems/inattentive scale*, *hyperactivity scale*, *anxious-shy scale*, social problems scale, Conners' *ADHD* index, Conners' Global: *Restless-Impulsive* Index, Conners' Global: Emotional index, Conners' Global: Total Index, DSM-IV *Hyperactive-Impulsive* Index and DSM-IV Total index.⁴²

These elevations indicate the student's difficulties with emotional control, rule breaking, inattention, hyperactivity and organization deficits, which have not been addressed in the student's IEPs. A rule out of *attention deficit hyperactivity disorder (ADHD)*, combined type, was recommended by the evaluator, however, the Respondent failed to reevaluate the student to determine whether the student satisfies the eligibility criteria, as a student with ADHD, under the disability classification of Other Health Impaired (OHI).

⁴¹ Respondents' Exhibit 5, page 12.

⁴² Respondent's Exhibit 13, pages 7 and 8.

- The student satisfies the eligibility criteria, as a student with a *specific learning disability* in mathematics and reading; and the student's learning disability is not *primarily* the result of his emotional disability, however, the student's specific learning disability, is *in addition* to his emotional disability, and due to his limited cognitive ability and comprehension.⁴³

The student has a disorder in comprehending language, spoken or written, that manifests itself in the imperfect ability to read and in performing calculations; however, the Respondent failed to review and revise the student's IEPs to address the student's lack of progress in these areas. Therefore, the IEPs are not specifically designed to address the student's educational needs.

- The student was retained three times in the grade; impacting the student's self esteem and confidence. The student is aware of his academic deficits and the need for academic support, however, avoids identification as a special education student, because of the embarrassment and stigma associated with being labeled as a special education student.⁴⁴ As a result, he engages in behaviors of avoidance.

The student is aware that since receiving special education services, he has made no progress, and in fact, continues to regress academically, as a result, his self esteem and confidence; and confidence in the overall effectiveness of the special education services, and special education educators, in addressing his unique needs, continue to plummet. The is supported by the fact that the student continues to exhibit the behaviors of avoidance; refuses to accept and avail himself of the special education services and support; and continue to regress academically and behaviorally.

- The student is repeating the grade for the third time, and is in a full-time special education program, outside general education, and according to the *Educational Evaluation* completed on *September 20, 2010*, the student is performing significantly below grade level in calculation, passage comprehension, and math calculation skills.

Additionally, according to the March 2010, DC BAS test results, the student scored below basic in all areas of reading and mathematics; and according to the WJII completed in September, 2010, the student scored significantly below grade in mathematics and reading.⁴⁵ However, the Respondent failed to review and revise the student's IEP to address the student's lack of progress in these areas, and the needs of the student.

⁴³ IDEA, 34 C.F.R. §300.8(c)(10)(i)

⁴⁴ Petitioner's Exhibit 13, and Testimony of Education Advocate.

⁴⁵ Respondent's Exhibit 10, pages 3-9.

- The student's avoidance behavior is in response to the student's academic and social deficit; the student's lack of comprehension regarding the assignments is due to his difficulty maintaining attention/focus, comprehending, memory difficulties, and/or lack of academic skills in some areas; and when the student skips class, he is able to avoid classroom activities.⁴⁶
- The nature and severity of the student's disability is such that the student not only requires a full-time special education program, outside the general education setting, however, to access the general education curriculum and receive educational benefit, the student also requires education in a *highly structured, therapeutic environment*, with firm limit setting and clear expectations that are upheld by adults at school, and consequences for his inappropriate behavior;⁴⁷ which was not available at the student's prior schools; and is not available at the student's current school.⁴⁸

14. Failure to Implement Student's June 14, 2010 Individualized Education Program (IEP)

The Hearing Officer finds that the Petitioner failed to establish that the Respondent failed to implement the student's June 14, 2010 IEP, by ensuring that as soon as possible following development of the IEP, the student received 1.5 hours of behavioral supports services, weekly; and 80 minutes of behavior support consultation services, monthly; as prescribed in the June 14, 2010 IEP.

The Petitioner failed to present the testimony of the student or Respondent's Social Worker, to testify regarding the provision of behavioral support and consultation services during the 2010/11 school year. However, at the January 24, 2011 IEP team meeting, the student's *Social Worker* advised the team that although the provision of behavioral support services was hindered due to the student's unavailability, he began working with the student in November, 2010, and prior to that time, another Social Worker was assigned to the student; suggesting that the Respondent implemented the student's June 14, 2010 IEP, by providing the student the behavioral support services prescribed in his IEP.⁴⁹

The *parent* testified that she has no knowledge of whether the student received any services; while acknowledging that the student has engaged in fewer altercations, since attending the public high school.⁵⁰ The parent also testified that she has no knowledge of the student's progress towards his IEP and counseling goals because she only received one progress report, no report cards, or homework; and was unable to attend parent teacher conferences during the 2010/11 school year to discuss the student's progress, because of commitments to her other children.⁵¹

⁴⁶ Id.

⁴⁷ Testimony of parent and Education Advocate, and Petitioner's Exhibit 13 and 16.

⁴⁸ Petitioner's exhibit 13, page 10.

⁴⁹ Testimony of Coordinator, at public high school; and Petitioner's Exhibit 12, page 3.

⁵⁰ Testimony of parent.

⁵¹ Id.

The *Education Advocate* testified that the lack of documentation verifying the provision of behavioral support services is evidence that the student failed to receive the behavioral support services prescribed in his June 14, 2010 IEP, however, the lack of documentation is not evidence that the student's IEP was not implemented. There is also no evidence that prior to filing the complaint, the Petitioner exercised due diligence in obtaining access to the student's educational records, behavioral logs, or encounter service tracking reports, to determine whether the student received the behavioral support services, prescribed in the January 14, 2010 IEP.

The Education Advocate also testified that regarding failed attempts to observe the student in the classroom, prior to filing of the complaint; and observation of the student in the classroom on February 1, 2011, after filing of the complaint.⁵² The Education Advocate has no knowledge of whether the student's June 14, 2010 IEP was implemented, or whether the student failed to receive the behavioral support services prescribed in this June 14, 2010 IEP.⁵³

Finally, the record reflects one 'incomplete' service tracker form purportedly reflecting that from November 1, 2010, through December 6, 2010, there were *no behavioral support services logged for this student*, however, the fact that there were no behavioral support services logged for the student, is not evidence that the student failed to receive behavioral support services.⁵⁴ The Petitioner also failed to present the author of this service tracker form to testify regarding its content and authenticity, therefore, the form is unreliable.

VII. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as the Hearing Officer's review of governing legal authority and case law, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.⁵⁵ Under the IDEA, the Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.⁵⁶
2. The Individuals with Disabilities Education Act ("IDEA")⁵⁷ is the federal statute governing the education of students with disabilities.⁵⁸ The IDEA ensures that all children with disabilities have available to them a free appropriate public education-

⁵² Testimony of Education Advocate and Petitioner's Exhibit 35, 36, and 37.

⁵³ Testimony of Education Advocate.

⁵⁴ Petitioner's Exhibit 31.

⁵⁵ *Shaffer v. I Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.

⁵⁶ 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)

⁵⁷ The IDEA is reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) Public Law 108-446 and 20 U.S.C. §1400 et seq..

⁵⁸ The Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.

("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. See, 20 U.S.C. §1400(d)(1)(A).

3. The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State-involved; and the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.⁵⁹

In the District of Columbia, the local education agency (LEA) must ensure that all children with disabilities, between the ages of 3 and 21, have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. This student is a child with disabilities entitled to receive special education and related services, pursuant to the IDEA.

4. Hence, the U.S. Supreme Court has held that the FAPE required by the IDEA consists of an educational program specifically tailored to address the unique needs of the student by means of an 'individualized education program' (IEP).⁶⁰

According to *Rowley*, in order for FAPE to be offered a student, the school district must show it complied with the statutory elements of an IEP, and the goals and objectives in the IEP are reasonable, realistic and attainable. The special education and related services must be reasonably calculated to enable the child to receive educational benefit, and must be likely to produce progression, not regression.

5. When parents challenge the appropriateness of a program or *placement offered to their disabled child by a school district under the IDEA*, a Hearing Officers must undertake the following two-fold inquiry, in determining whether the Respondent provided the student a FAPE: 1) procedural compliance; and 2) educational benefit.

In this matter, the parent does challenge the Respondent's compliance with the **procedural** requirements of the IDEA, however, challenges the Respondent's failure to comply with the **substantive** requirements of the IDEA, in determining the student's placement.

⁵⁹ IDEA, 34 C.F.R. §300.17(d).

⁶⁰ Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982).

(1) Procedural Compliance (Procedural FAPE).

First, the Hearing Officer must determine whether the State complied with the *procedural requirements* of the IDEA, in creating and implementing the student's IEP, or rendering the placement decision. However, the 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, unless it can be determined that the inadequacies:

- (I) impeded the child's right to a free and appropriate public education;
- (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
- (III) caused a deprivation of educational benefit to the student.

(2) Conferral of Some Educational Benefit (Substantive FAPE).

Second, once the Hearing Officer addresses the first criteria, it must determine whether the State complied with the *substantive requirements* of the IDEA, by developing an IEP for the student that is reasonably calculated to enable the student to receive educational benefit. While a student's IEP must be reasonably calculated to provide a student educational benefit, school districts are required to provide only a "basic floor of opportunity." *Rowley*, 458 U.S. at 200-01. Thus, an "appropriate" public education does not mean the absolutely best or potential-maximizing education for the individual child. *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1314 (1987). However, the benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177 206-207.

The IEP *must be appropriately designed and implemented*, emphasizing special education and related services specifically designed to meet the student's unique needs, supported by such services, as are necessary to provide the student 'meaningful', benefit. If these two (2) requirements are satisfied, the State has complied with the obligation imposed by Congress, and the courts can require no more.

6. Failure to Comply with July 23, 2010 Hearing Officer's Decision (HOD)

It is the Hearing Officer's decision that the Petitioner failed to satisfy its burden, by presenting evidence that the Respondent denied the student a free appropriate public education, by failing to comply with the July 23, 2010 Hearing Officer's Decision, which required completion of an Educational Evaluation, within thirty (30) days of the start of the 2010/11 school year.

The Petitioner's argument that the Respondent failed to comply with the HOD because the not only intended that the Respondent complete the evaluation, however, also convene a meeting to review the evaluation, and revise the student's IEP consistent with the findings and recommendations in the evaluation, fails. It is not this Hearing Officer's charge to second guess the intent of the Hearing Officer in crafting the July 23, 2010 decision and order.

The Hearing Officer's decision must be based upon a plain reading of the documents in evidence. The July 23, 2010 HOD, requires completion of an Educational Evaluation; and does not require the Respondent to complete the evaluation and convene a meeting, therefore, the Petitioner's argument fails.

7. Failure to Provide the Student an Appropriate Placement (Location of Services)

It is the Hearing Officer's decision that the Petitioner satisfied its burden of proof by presenting evidence that the District of Columbia Public Schools denied the student a free appropriate public education, by failing to provide the student an appropriate placement during the 2010/11 school year, because the *location of services* identified in the student's June 14, 2010 IEP, is unable to implement the student's IEPs, and provide the student educational benefit; in violation of the IDEA, at 34 C.F.R. §300.116(a)(2).

There is no allegation by the Petitioner that the Respondent failed to comply with the *procedural* requirements of the IDEA, in developing the student's IEPs, therefore, the Hearing Officer must address the *second prong* of the FAPE requirement, by determining whether the Respondent complied with the *substantive requirements* of the IDEA, which requires development of an IEP for the student that is:

- 1) reasonably calculated to enable the student to receive educational benefit; and
- 2) appropriately designed and implemented, emphasizing special education and related services specifically designed to meet the student's unique academic, developmental, and functional needs, supported by such services, as are necessary to provide the student 'meaningful', benefit.

It is the Hearing Officer's decision that in developing, reviewing, and revising the student's *June 14, 2010 IEP*, the Respondent failed to comply with the *substantive* requirements of the IDEA, by failing to develop an IEP for the student that is specifically tailored to this student's unique needs.

The Respondent also failed to ensure that the June 14, 2010 IEP was appropriately designed, emphasizing special education and related services specifically designed to meet the student's unique academic, developmental, and functional needs (i.e. specific learning disability in mathematics and reading); and supported by such services, as are necessary to provide the student 'meaningful' benefit. As a result, the June 14, 2010 IEP is not reasonably calculated to enable the student to receive educational benefit; and the placement which is based upon the IEPs, is not appropriate. *See Roark v. District of Columbia*, 460 F. Supp. 2d 32, 35 (D.D.C. 2006).

It is also the Hearing Officer's decision that in determining the student's *placement*, the Respondent failed to comply with the *least restrictive educational requirements* of the IDEA, because the nature and severity of this student's disability is such that the student requires a full time special education program outside the general education setting, in a *highly structured therapeutic environment*, to receive access to the general education curriculum and educational benefit; which is not available at the student's current placement.⁶¹ See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).

It is the Hearing Officer's Decision that the Petitioner satisfied its burden by proving that the District of Columbia Public Schools denied the student a *free appropriate public education (FAPE)*, by failing to provide the student an appropriate placement during the 2010/11 school year, because the *location of services* identified in the student's June 14, 2010 IEP, is unable to implement the student IEP, provide the student access to the general education curriculum, and educational benefit; in violation of the IDEA, at 34 C.F.R. §§300.116(a)(2).

The violation also results in substantive harm to the student because the student failed to receive an appropriate IEP and placement, during the 2010/11 school year; resulting in a significant loss of educational opportunity; and denial of a FAPE, entitling the student to compensatory education services. See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.

8. Private School Placement

When a public school system has defaulted on its obligations under the IDEA, as in this case, a private school placement is "proper under the Act"; if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits."⁶² The Petitioner proposes the _____ as an alternative placement for the student; and the Respondent presented no alternative placement options, for the Hearing Officer to consider.

The _____ is a non-public self contained school for emotionally disturbed and learning disabled students, located in Rockville, Maryland. The school has approximately 80 students; and 65 of the students are in the program for emotionally disturbed students, and 48 are in the high school program. The _____ offers three (3) high school programs, including 18 students in each program; three (3) full-time counselors for each program; and 4/5 teachers for each program. The high school program identified for this student has 18 students. The students receive two (2) periods of scheduled group counseling daily; individual counseling as needed, as well as, family counseling.

⁶¹ Petitioner's Exhibit 13, page 10.

⁶² Florence County School District Four, et al. v. Shannon Carter, 510 U.S. 7 (1993).

According to the Director, the school utilizes the DCPS standards of teaching, although he was unfamiliar with the standards for grade students. The school is staffed with full-time Social Workers and licensed counselors. Each student is scheduled for the credits he requires and the school serves students on; and off the diploma track. In the academic classes, there are 4-6 students in each class; and the school offers a reading specialist. There are 18 students in the class identified for this student, the students' change of classes is supervised; and the school has one hallway which the students maneuver. The students have one day in a career working class.

The school serves students with issues of avoidance, and class cutting, such as this student. School staffs are present in the hallways to facilitate the students attending classes; and these issues are also addressed in counseling, through peer support, and confronting the student with the support of staff. The school utilizes a behavioral management system and a therapeutic community approach to teaching; positive behavioral reinforcements; behavioral interventions, and consequences for inappropriate behavior. To address incidents where a student leaves the school, the school notifies the student's parents and police.

According to the school Director, there *must* be a level of commitment from the student, for behavioral interventions to be effective; although on redirect the Director testified that the school has had success with students that were not committed to the schools' behavioral management approach. The Director also testified that student have attended the school, and subsequently transitioned back to the DCPS. The annual school tuition is approximately which includes two (2) group counseling services; excluding other related services.

The parent and student's input, and the student's commitment to attend the and its approach to teaching and behavior management, are critical components in the Hearing Officer's determination that the is an appropriate placement for the student, which is lacking. The parent provided no testimony regarding her visit to the or an opinion regarding the appropriateness of the school for the student.

Additionally, the student was not present at the hearing to testify regarding his needs, that he visited the and his experience at the and a commitment to the school's methodology of teaching and behavioral management program. There is also no commitment from the student that he will attend the school if the Hearing Officer places him at the school; that he will avail himself for learning, by attending classes at the or that he has a desire to attend the

The Director at the met with the student *briefly*; reviewed the student's educational records, and June 14, 2010 IEP; and testified that the school can implement the student's IEP. However, the Director also testified that he failed to observe the student in the school setting at the There is no evidence that during the parent and student's visit at the the parent and student had the opportunity to tour the school, or the student had the opportunity to participate in classes offered at-

⁶³ Testimony of Director,

the school. There is also no evidence that the independent service providers at the had the opportunity to meet the student, discuss his needs, or participated in the decision that the school can meet this student's academic, developmental, and functional needs; implement the student's IEP; and provide the student educational benefit.

The Hearing Officer is concerned regarding the school's familiarity with the student which appears limited; and the student's placement at the absent more definitive information from the parent, input from the student. However, the Hearing Officer is equally concerned regarding the potential harm to the student and the educational program the student requires, if he remains at his current school.

The Hearing Officer concludes that the information provided is sufficient for a finding that the is an appropriate *interim* placement for the student, because the school can implement the student's IEP; provide the student the therapeutic environment which he requires to access the general education curriculum and receive educational benefit; and provide the student educational benefit

9. Failure to Implement Student's June 14, 2010 Individualized Education Program (IEP)

It is the Hearing Officer's decision that the Petitioner failed to satisfy its burden of proof by presenting evidence that the Respondent denied the student a free appropriate public education by failing to ensure that as soon as possible following development of the student's June 14, 2010 IEP, the student failed to receive the 1.5 hours of behavioral support services, per week; and 80 minutes of behavioral support consultation services, per month; in violation of the IDEA, at 34 C.F.R. §300.323.

VIII. COMPENSATORY EDUCATION SERVICES

The Petitioner satisfied its burden by proving that the District of Columbia Public Schools denied the student a free appropriate public education, by failing to provide the student an appropriate placement during the 2010/11 school year, entitling the student to compensatory education services.

According to *Mary McLeod Bethune Day Academy PCS v. Terri Bland, Civil Action No. 07-1223 (2008)*, a compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Reid*, 401 F.3d at 518, 523. Compensatory education is not a contractual remedy, but an equitable remedy that is part of the court's resources in crafting appropriate relief. *Reid v. District of Columbia, 401 F.3d 516.523 (D.C. Cir. 2005)*.

Compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that she is receiving only a de minimis benefit and fails to correct the situation, as in this case. *M.C. on behalf of J.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996)*.

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.” See G. ex rel. RG v. Fort Bragg Dependent Schs. 343 F.3d 295, 308 (4th Cir. 2003). Its purpose is to help the child make the progress that he/she would have made if an appropriate program had been available. The specific compensatory education services provided the student; must be tailored to the child’s needs.

The IDEA includes no express authority for Hearing Officer to grant compensatory education services, however, empowers Hearing Officers with considerable discretion when fashioning a remedy, when there is a finding of denial of a FAPE, as in this instance. 20 U.S.C. § 1415(i)(2)(C)(iii) (the Hearing Officer “shall grant such relief as the Hearing Officer determines is appropriate.”) The Officer of Special Education Programs.⁶⁴

However, a Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides him with “insight about the precise types of education services [the student] needs to progress.” Branham v. D.C., 427 F.3d 7, 11 (D.C. Cir 2005). Relevant evidence includes “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 environment.” *Id.* In Nesbitt, the Court found that an “award was not adequately individualized or supported by the record”, when the Hearing Officer was not provided with any information regarding the student’s current grade level of functioning.

Reid provides that a compensatory education “award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” Reid, 401 F. 3d at 524. (D.C. Cir. 2005). This standard “carries a qualitative rather than quantitative focus,” and must be applied with “[f]lexibility rather than rigidity.” According to Reid, in crafting an appropriate remedy for denial of FAPE, the Hearing Officer must engage in a fact intensive analysis that is qualitative rather than quantitative. Branham v. D.C., 427 F.3d 7, 11 (D.C. Cir 2005); Reid, 401 F.4d at 524. The amount of compensatory education is calculated by finding the period of deprivation of special education services; and excluding the time reasonably required for the school district to rectify the problem. M.C. v. Cent. Reg'l. Sch. Dist., 81 F.3d at 397 (3rd Cir. 2007).

Reid also stresses that the Hearing Officer must take into account individual individualized assessments of the student so that the ultimate award is tailored to the student’s unique needs; and must be reasonably calculated to provide the student the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.

⁶⁴ See, e.g., Letter to Riffel, 34 IDELR 292 (OSEP 2000) (discussing a hearing officer’s authority to grant compensatory education services); Letter to Anonymous, 21 IDELR 1061 (OSEP 1994)(advising that hearing officers have the authority to require compensatory education); Letter to Kohn, 17 IDELR 522 (OSEP 1991).

In determining the nature and amount of compensatory education services the student requires to place him in the position he would have been had the violation not occurred, the Hearing Officer must first consider the totality of the student's educational experiences, including the fact that the student was retained three (3) times in the 9th grade; the student was deprived of an appropriate IEP and placement at his prior schools; and his current school; resulting in a significant loss of educational opportunity; over an extended period of time. Clearly, in this instance, equity dictates that the Hearing Officer craft an appropriate compensatory education award, to compensate the student for the past violations. Heather D. v. Northampton Area Sch. Dist., 48 IDELR 67 (E.D. Pa. 2007).

The Petitioner represents that due to the Respondent's failure to provide the student a full-time special education program, outside the general education setting, in a therapeutic environment, during the 2010/11 school year, the student failed to receive approximately six (6) months (26 weeks, 182 days) of services, excluding winter break, holidays, and weekends, resulting in a total of 130 school days.

The Petitioner also represents that the student's June 14, 2010 IEP prescribes 27.5 hours of specialized instruction per week, which is approximately 632.5 hours of missed time in an appropriate educational setting (27.5 times 23 weeks of school).; and considering snow days and holidays, the student missed approximately 500 hours of specialized instruction which he was entitled.

The Petitioner submitted a compensatory education plan recommending 63 hours of independent tutoring to address the student's significant academic deficit, to be completed within a two (2) year period; 34 hours of independent counseling and behavioral support services to address the student's academic, social, and emotional challenges; 40 hours of independent vocational training with a specialist in the areas of job employment, life skills development, and community based programs to assist the student in evaluating his post-secondary options and aiding in his appropriate transition development; 40 hour of mentoring to address the student's oppositional defiant behavior, coping with life stressors positively; and supporting his comprehension of positive role models; and funding the student's placement at a Vocational Skills Program.

The Hearing Officer finds that the following services are intended to place the student in the position he would have been had the violations not occurred; and to mitigate any harm the student may have suffered as a result of this violation:

Compensatory Education Services Plan

(1) Academic Summer Camp

The Respondent shall fund the student's placement and participation in an academic camp, of the parent's choosing, for the Summer of 2011, specifically designed to provide the student 1:1 tutoring in reading and mathematics (i.e. _____ at a cost not to-

exceed The parent shall identify an academic camp for the student no later than March 15, 2011; and provide the Respondent written notice of the camp identified for the student and verification of the cost, no later than March 15, 2011.

(2) Individualized Education Program and Prior Notice of Placement

The Respondent shall convene an IEP team meeting within ten (10) calendar days of the date of this decision to revise the student's current IEP to address the student's specific learning disability in math and reading; emotional disability; and reflect the student's interim placement at the The Respondent shall revise the student's current IEP to reflect 6 hours per week of behavioral supports services, to replace the 1.5 hours per week included in his current IEP.

(3) Evaluations

Within fifteen (15) school days of this decision and order, the Respondent shall conduct a comprehensive psychological evaluation; an updated social work evaluation; a Functional Behavioral Assessment; and evaluation to "rule out" the presence of Attention Deficit Hyperactivity Disorder (ADHD). Within ten (10) calendar days of receiving the evaluations, the Respondent shall convene an IEP team meeting with the parent and the to review the evaluations and revise the student's IEP, consistent with the findings and recommendations in the evaluations; and develop a Behavioral Intervention Plan (BIP).

(4) Independent After School Tutoring

The Respondent shall fund 63 hours of independent after school tutoring in mathematics and reading comprehension to address the student's academic deficits in these areas. The parent shall identify an independent tutor, at a cost not to exceed per hour and notify the Respondent of the same; within two (2) weeks of the date of this decision and order. The student has the remainder of the 2010/11 school year; and the 2011/12 school year, to complete the independent tutoring.

(5) Specialized Instruction

Effective the date of this decision and order, the student's current IEP is revised to reflect 31 hours per week of specialized instruction; and an educational setting to include: outside the general education setting, in a therapeutic environment for learning disabled and emotionally disturbed students.

(6) Vocational Training

Within five (5) school days of this decision and order, the Respondent shall issue to the parent an independent educational evaluation (IEE) letter, authorizing the parent to obtain an independent age appropriate Vocational Assessment for the student, to be funded by the Respondent; for the purpose of determining the student's vocational interests.

Within five (5) school days of receipt of the independent Vocational Assessment, the Respondent shall convene an IEP team meeting with the parent and student, to revise the student's post-secondary transition plan, based upon the independent Vocational Assessment; and the plan shall include the Respondent funding the student's participation in a vocational skills development program such as Arch D.C. Vocational Training Program, including transportation costs (i.e. metro tokens), to assist the student in developing life skills, evaluating post-secondary options, preparing for transition from high school, and obtaining employment; if the *student* expresses to the Respondent, at this meeting, an interest in participating in the program.

- (7) The Hearing Officer recommends the student's participation in the Big Brothers Big Sisters of America organization, for mentoring.

IX. ORDER

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

1. **ORDERED**, that within ten (10) calendar days of this decision, the Respondent shall issue to the parent a Prior Notice of Placement, reflecting the student's *interim* placement and the _____ located in Rockville, Maryland; and the Respondent's funding of the student's tuition and transportation, for the student to attend the _____ for the remainder of the 2010/11 school year; and it is further
2. **ORDERED**, that the student's placement at the _____ is subject to the following conditions: the student shall enroll and attend the _____ within five (5) school days of issuance of the Prior Notice of Placement; and once enrolled, attend all assigned classes daily, fully, and completely, in a timely manner, absent documented excused absences; with no reports of leaving/skipping classes or leaving school; avails himself fully and completely of all behavioral supports services; and fully avails himself and cooperates with the behavioral interventions and supports at the school, for thirty (30) consecutive school days; otherwise, on the 31st school day or whatever school day the student becomes noncompliant; the student shall be returned to his current DCPS placement, and it is further
3. **ORDERED**, that if the student is not returned to his current placement at the end of the thirty (30) day period, as indicated in paragraph 2 of this order; within sixty (60) calendar days of the student's enrollment at the school, the Respondent shall convene a meeting with the Frost School, parent and student to discuss the student's academic and behavioral progress at the school, and the educational benefit received by the student since attending the school; and if the student's progress reports, other written documentation, teacher and provider input indicates that the student has not made more than minimum academic and behavioral progress during this period, and/or the student failed to fully comply with the conditions set forth in paragraph 2 above during this 60 day period, the student shall be returned to his current placement on the 61st calendar day; and it is further

4. **ORDERED**, that should the student demonstrate academic and behavioral progress, and compliance with paragraph 2 of this order for the remainder of the 2010/11 school year, the Respondent shall fund the student's tuition and transportation for the student to attend the _____ for the 2011/12 school year, as long as the student continues to satisfy the conditions of his placement, as set forth in paragraph 2 of this order; otherwise the student shall be returned to his current DCPS placement, consistent with paragraph 5 of this order; and it is further
5. **ORDERED**, that within five (5) school days of the student's return to his current placement, as referenced in paragraph 4 above, the Respondent shall convene an IEP team placement meeting to discuss and identify an alternative placement for this student, offering a full-time special education program outside general education, in a highly structured therapeutic environment, for students presenting with the same disabilities as this student; and it is further
6. **ORDERED**, that within ten (10) calendar days of the IEP team placement meeting, the Respondent shall issue to the parent a Prior Notice of Placement, reflecting the student's alternative placement; and the Respondent's funding of the student's tuition and transportation, for the student to attend the alternative placement, for the remainder of the 2010/11 school year and the 2011/12 school year; and it is further
7. **ORDERED**, that the Respondent shall fund the student's compensatory education Plan, provided on page 22-23 of this decision and order; and it is further
8. **ORDERED**, that that this decision and order are effective immediately

X. NOTICE OF RIGHT TO APPEAL

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

Date: February 19, 2011

Ramona M. Justice

Attorney Ramona M. Justice, Hearing Officer