

DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
Student Hearing Office  
810 First Street, N.E.  
Washington, D.C. 20002

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Parent<sup>1</sup>, on behalf of )  
Student, )  
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Petitioner, )  
 )  
v. )  
 )  
DISTRICT OF COLUMBIA PUBLIC )  
SCHOOLS )  
 )  
Respondent. )

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Hearing Officer: James McKeever

OSSE  
STUDENT HEARING OFFICE  
2012 FEB -6 AM 9:03

HEARING OFFICER DETERMINATION

I. Introduction and Procedural Background

This is a due process proceeding brought in accordance with the Individuals with Disability Education Act 2004 ("IDEA"), and its implementing regulations codified at 20 U.S.C. Section 1400 *et seq.*, against Respondent, District of Columbia Public Schools (DCPS).

Petitioner is the parent of the Student, a year-old girl with a disability who resides in the District of Columbia and who currently attends a Private School in the District of Columbia. The Student is eligible for special education and related services as a student with a disability under the IDEA (Exhibit P-19).

On December 1, 2011, Petitioner filed a Due Process Complaint (DPC) against DCPS alleging that DCPS failed to offer the Student a free and appropriate public education (FAPE) during the 2011-2012 school year by failing to schedule an Individualized Education Plan (IEP) (Referred to the DPC as a "LRE") meeting at the convenience of the parent and the Student's multidisciplinary team (MDT) from the Students then current high school and by failing to provide an appropriate placement for the Student during the 2011-2012 school year. Petitioner also alleged a denial of FAPE based on an inappropriate Prior Written Notice (PWN) and based

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<sup>1</sup> Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

on DCPS' failure to provide counseling services to the Student as per her IEP dated July 29, 2011 (DPC).

On December 5, 2011, DCPS filed its response. DCPS asserted a general denial to the allegations contained in the DPC and asserted that numerous efforts were made to enable the parent to attend the meeting on July 27, 2011 and that the PWN dated July 27, 2011 was issued for the Student's current placement (Exhibit R-1).

The Resolution session was initially waived on December 15, 2011. However, the Disposition form was not filed until December 22, 2011. The parties advised that the resolution period would end on December 22, 2011. The forty-five day HOD timeline began on December 22, 2011.

The PHC was held on December 29, 2011. Counsel for Petitioner and counsel for DCPS participated. During the PHC the parties discussed the issues raised in the DPC and Petitioner's requested relief (set forth below). It was agreed that the Due Process Hearing (DPH) would be held on January 24, 2012 and that the disclosures would be filed by January 17, 2011.

The disclosures were filed as agreed on January 17, 2011 and the DPH was held on January 24, 2011. Petitioner elected for the hearing to be closed.

Petitioner's Exhibits 1-24 were admitted into evidence. Respondent's Exhibits 1-14 were also admitted into evidence<sup>2</sup>.

The following witnesses testified on behalf of the Petitioner: Mother, Father, Student, Advocate, Curriculum Specialist and Director of Private School

The following witnesses testified on behalf of the Respondent: Progress Monitor and Special Education Teacher at DCPS high school.

## II JURISDICTION

The Due Process Hearing was held in accordance with the rights established under the Individuals with Disability Education Act 2004 ("IDEA), and its implementing regulations at 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25. This decision constitutes the Hearing Officer's Determination (HOD) pursuant to 20 U.S.C. §1415 (f); 34 C.F.R. §300.513.

## III. ISSUES PRESENTED

The following issues were certified for adjudication at the due process hearing:

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<sup>2</sup> A list of all Exhibits entered into evidence is annexed hereto at Appendix "B"

a. Whether DCPS denied the Student a FAPE by refusing to hold the Student's "IEP or "LRE" meeting at a time and place that was agreeable to the parent and that would permit the Student's Multidisciplinary Team from her then current school to attend; (This issues encompass issues A, B, and C in the DPC);

b. Whether DCPS denied the Student a FAPE by providing an inappropriate placement recommendation at the IEP (LRE) meeting held on July 29,2011 when DCPS changed the Student's placement to her current school;

c. Whether DCPS denied the Student a FAPE by failing to issue an appropriate Prior Written Notice informing the parent of the Student's change of placement for the 2011-2012 school year;

d. Whether DCPS denied the Student a FAPE by failing to provide the Student with counseling services as per her IEP.

Petitioner requests an Order directing DCPS to place the Student in an out of general education setting of the parent's choice (the Private School referenced above) for the remainder of the 2011-2012 school year, with transportation. Petitioner also requests compensatory education services for the denial of FAPE.

#### IV. FINDINGS OF FACT

Based upon the evidence adduced at the Due Process Hearing, I make the following findings of fact:

The Student is a -year-old girl who resides in the District of Columbia. The Student is eligible for special education and related services under the IDEA as a child classified with Emotional Disturbance. The Student presently attends the grade at the Private School in the (Exhibit P-19).

During the 2010-2011 school year, the Student attended the 9<sup>th</sup> grade at a non-public school that was funded by DCPS, which was a self-contained school. That school was closed by the Office of the State Superintendent (OSSE) during the summer of 2011 (Petitioner's testimony).

At the end of 2010-2011 school year, the Student passed all of her classes, with the exception of "Health PE" (Exhibit R-14).

By Letter dated April 28, 2011, DCPS advised Petitioner that the Student's non-public school may lose its certification and that an IEP meeting will be scheduled to discuss an appropriate location of services for the Student (Exhibit P-18, page 3).

On May 23, 2011, DCPS generated an IEP that provided for 25.5 hours of specialized instruction outside the general education setting, 1 hour of counseling per week and one hour of speech and a language services per week (Exhibit P-19). This IEP was developed without the participation of the parent, who had a medical emergency on the day of the meeting (Petitioner's testimony). Nevertheless, this IEP was not at issue in the hearing(DPC).

On June 30, 2011, the staff at the non-public school that the Student attended during the 2010-2011 school year sent an email to Petitioner's attorney advising "parents to insist on having any meeting scheduled by DCPS held at the non-public school" (Exhibit P-16). The staff at the non-public school advised that they could not attend a meeting at DCPS headquarters because it would interrupt the instruction and related services to other students at the non -pubic school and because "communication by telephone during these meetings was ineffective" (Exhibit P-16).

On July 7, 2011, DCPS issued a Letter of Invitation (LOI) to Petitioner to review the Student's IEP and to discuss placement, among other things (Exhibit P-17). The LOI was sent to Petitioner by regular mail and certified mail. DCPS also called Petitioner on the July 7, 2011 to advise of the scheduled meeting. The meeting was scheduled for July 29, 2011, and was to be held at DCPS central offices located at 1200 First Street, NE (Exhibit P-17). The LOI was issued by DCPS' "LRE" representative, who was also the Student's Progress Monitor during the 2010-2011 school year (Exhibit P-17, testimony of Progress Monitor).

On July 15, 2011, and July 19, 2011, Petitioner left a voicemail confirming that she would attend the DCPS meeting on July 29, 2012 (Exhibit R-9, page 7, Testimony of Progress Monitor).

On July 19, 2011, Petitioner's attorney advised DCPS that the parent would not attend the meeting scheduled for July 29, 2012 at DCPS headquarter and that Petitioner wanted the meeting scheduled at the non-public school in order to permit the Student's MDT to participate (Exhibit P-16, page 7).

On July 22, 2011, DCPS sent Petitioner's attorney the LOI for the meeting scheduled on July 29, 2011 (Exhibit P-16, page 10, 11). On the same date, Petitioner's attorney advised DCPS that she advised Petitioner not to attend the scheduled meeting on July 29, 2011 (Exhibit P-16, page 12).

On July 28, 2011, Petitioner's attorney sent another email to DCPS advising that Petitioner would not attend the meeting scheduled for July 29, 2011 at DCPS headquarters and requested that DCPS reschedule the meeting to a "mutually agreeable time and place" (Exhibit P-16, page 19).

On July 29, 2011, the staff at the non-public school advised Petitioner's attorney that DCPS went forward with the meeting at DCPS headquarters and that

the staff would not participate in the absence of Petitioner and Petitioner's counsel (Exhibit P-16, page 19).

DCPS would have rescheduled the IEP meeting held of July 29, 2011, if the "parents asked for it to be rescheduled" (Testimony of Progress Monitor).

On July 29, 2011, DCPS generated an IEP without Petitioner and without the Student's MDT from the non-public school. The IEP provided for the same services as the IEP dated May 23, 2011 (Exhibit P-15).

On July 29, 2011, DCPS issued a Prior Written Notice to Petitioner advising that a DCPS high school would implement the Student's IEP and provide the Student with a FAPE (Exhibit P-14). The Progress Monitor who generated the PWN did not recall whether any other placement locations were considered at the meeting (Testimony of Progress Monitor).

At the time the PWN was issued, the program at the proposed location was not in operation (Testimony of Progress Monitor). As such, Petitioner could not tour the program until September 2011.

The Student requires a small, structured education setting with full time special education services provided in a high teacher to student ratio (Exhibit P-24) The Student also requires speech and language services as well as behavior supports in the form of counseling (Exhibit 15)

On or about August 22, 2011, Petitioner advised DCPS that the Student would attend another non-public school (Exhibit P-13).

On or about September 14, 2011, DCPS advised that they refused to fund the Student's placement at the non-public school (Exhibit R-8).

On or about September 2011, the Student withdrew from the non-public school because the school was located too far from the Student's home (Testimony of Petitioner and Student). The Student then enrolled at the placement offered by DCPS (Testimony of Petitioner and Student).

The DCPS placement for the Student is a self contained classroom located on the 2<sup>nd</sup> floor of a DCPS general education high school. The program was developed by a private educational contractor in partnership DCPS (P-9, page 3). The program services kids with IEPs who are classified with an "emotional disturbance" (Exhibit P-9, page 1). Each class contains up to 12 students with a head teacher, an assistant teacher and a behavior specialist (Testimony of Curriculum Specialist). The program includes computer instruction called "A-Plus," which is used for the core subjects of English, math, history and science, in conjunction with direct instruction from either the head teacher, the assistant teacher or the behavior specialist (Exhibit R-2, Testimony of Head Teacher).

The Head Teacher in the Student's class is certified to teach special education in the state of New Jersey (Testimony of Head Teacher).

The school day begins at 8:45 a.m., however, the Student often arrives at school at 9:30 a.m. As such, the Student misses "journal" and part of her English class due to lateness (Exhibit P-7).

The "A-Plus" program is approved by OSSE to earn Carnegie Units towards graduation (Testimony of Curriculum Specialist).

Although the A-Plus program is an integral part of the Students overall academic program, the Head Teacher could not testify about the program "because it's a program with it's own tutorial" (Testimony of Head Teacher).

Carnegie Units for graduation are earned based on class work with the teacher and by virtue of the Student's scores on the A-Plus program: (Testimony of Head Teacher).

At times, the Head Teacher is not able to help the Student with English and math on the A-Plus program because the Head Teacher does not know the content area. However, the Head Teacher is willing to "learn with the Student" (Testimony of Head Teacher).

The Head Teacher is a "self contained teacher," who is not certified in any academic content area (Testimony of Head Teacher).

The Head Teacher believes that the Student is "shutting down" by choice and that it is not based her disability (Testimony of Head Teacher).

The Head Teacher is aware that the Student has social/emotional goals on her IEP, but she could not speak about the goals because they were not her "specialty" (Testimony of Head Teacher).

The Head Teacher does not believe that she should help the Student with the A-Plus program, but that that Student should be able to "sit down and do it" by herself (Testimony of Head Teacher). The Head Teacher believes Student's behavior is an act (P-11, page 4, Testimony of Head Teacher).

On November 3, 2011, DCPS conducted a 30 day review of the Student's progress at the request of the Petitioner. The review meeting revealed that the Student is not receptive to the A-Plus program and that she struggles and "shuts down" when compelled to use the program. This behavior has impacted the Student's academic performance (R-2, P-11, Student's testimony). It was also noted at the meeting that Student's behaviors have included verbal altercations with peers and throwing scissor and other objects at her classmates (Exhibit 2, page 3).

During the Student's first advisory, the Student had 1.5 unexcused absences and was not tardy. The Student also failed all of her classes (Exhibit P-6, page 3). At the end of the Student's second advisory, the Student had 3.5 unexcused absences and was late twice. The Student passed "Algebra II-A + Trig 1.0" and U.S. History (Exhibit P-6, page 2).

As of November 3, 2011, Student had not received any of her counseling sessions listed on her IEP (P-11, Student's testimony).

Student enrolled at the Private School in January 2012 where she currently remains (Testimony of Petitioner and Student).

The Private School is a high school for Student's classified with ED, Mental Retardation and Other Health Impaired. The school includes a vocational Program and offers a High school diploma. All teachers are certified in their content area and certified in special education. There are a total of 26 students at the school. The school has clinical social worker for counseling services and a speech and language therapist (Testimony of Admission Director of Private School).

After a 4 day interview, the Student was accepted to the program. The school made an assessment of the Student's needs and mapped out a schedule for her to graduate (Testimony of Admission Director). Since the Student's enrollment, her attendance has been good and she had completed most of her work. In addition to the core academic courses, the Student is enrolled in a cosmetology program where a special education teacher pushes in when the Student is working from a book. Class sizes can go up to 10, but the Student's largest class is 7 students. Students are assigned to classes based on their needs to graduate and their academic functioning levels. The school is approved by OSSE<sup>3</sup> and the daily tuition rate is (Testimony of Admission Director of Private School).

The Students academic and social/emotional needs are being met at the Private School and the Student is receiving an educational benefit (Testimony of Admission Director of Private School).

## V. BURDEN OF PROOF

The burden of proof in a special education due process hearing lies with the party seeking relief. DCMR 5-3030.3; see, Schaffer v. Weast, 546 U.S. 49 (2005).

## VI. SUMMARY

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<sup>3</sup> Witness testified that certification has been extended by OSSE.

The Hearing Officer concludes that Petitioner has met her burden of proof with respect to all of the claims raised in her DPC with the exception of issue (c) set forth below.

## VII CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses at the due process hearing provided credible testimony.

## VI. ANALYSIS AND CONCLUSIONS OF LAW

a. Whether DCPS denied the Student a free and appropriate public education by refusing to hold the Student's IEP or "LRE" meeting at a time and place that was agreeable to the parent and that would permit the Student's Multidisciplinary Team from her then current school to attend.<sup>4</sup>

Pursuant to 34 C.F.R. Section 3022.322, (a) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place.

Pursuant to 34 C.F.R. § 3022.322, (d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—(1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 C.F.R. § 300.1169 (a)(1) requires that "In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—(a) The placement decision—(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Here, DCS held the Student's IEP meeting on July 29, 2011, DCPS without

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<sup>4</sup> This issues encompass issues A, B, and C in the DPC.

Petitioner (parent) and without the Student's MDT from the non-public school that the Student was attending at the time (Exhibit P-16). Although 34 C.F.R. § 3022.322(d) allows for a meeting to be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend, here the parent's agreed to attend the meeting, but then advised, through counsel, that they would not attend because the Student's current MDT could not participate (Exhibit P-16). The evidence shows that DCPS was aware that the parent would not attend the IEP meeting and that DCPS made no attempt to reschedule the meeting pursuant to the parent's request. I find that DCPS; refusal to reschedule the meeting at the request of the parent, impeded the Student's right to a FAPE and significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student. 34 § 300.513(a)(2). *See also Lesesne v. DC*, 447 F.3d 828, 834 (D.C. Cir. 2006); 20 U.S.C. § 1415(f)(E), and resulted in a denial of FAPE.

However, I do not find that the Student was denied a FAPE based on DCPS' failure to include the MDT from the Student's then current school because the record shows that the Student's MDT team was available, but refused to attend (Testimony of Progress Monitor).

b. Whether DCPS denied the Student a free and appropriate public education by 'providing an inappropriate placement recommendation at the meeting held on July 29, 2011 when they changed the Student's placement from to her current school.

34 C.F.R. § 300.17 provides that Free appropriate public education or FAPE means special education and related services that—(a) Are provided at public expense, under public supervision and direction, and without charge;(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324. (See, 20 U.S.C. 1401(9)).

A free appropriate and public education "consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." Bd. Of Education v. Rowley, 458 U. 176, 188-89, 73 L. Ed. 2d 690, 102 S. 0.3034 (1982). Under Rowley, a child is deprived of a free and appropriate public education: (a) If the LEA violated the IDEA's procedural requirements to such an extent that the violations are serious and detrimentally impact upon the child's right to a free and appropriate public education, or (b) if the IEP is not reasonably

calculated to enable a child to receive educational benefits.

Here, the evidence demonstrates that Petitioner has met her burden of demonstrating that the Student was denied a FAPE when DCPS changed the Student's placement to the DCPS high school that utilized the A-Plus program.

First, the evidence shows that DCPS changed the Student placement from a self contained classroom in a special school to a self-contained classroom located in a general education high school without assessing whether the new location was appropriate to meet the Student's special education needs. DCPS also changed the Student's academic program from direct instruction throughout the day by a certified special education teacher, to instruction that utilizes a computer program for the core subjects of English, math, history and science, in conjunction with direct instruction from either a head teacher, an assistant teacher or a behavior specialist (Exhibit R-2, Testimony of Head Teacher). Although the A-Plus program is approved by OSSE to earn Carnegie Units towards graduation (Testimony of Curriculum Specialist), the evidence shows that program is not appropriate for the Student as she shuts down when she is directed to utilize the program and that she has failed most classes since she began using the program (Exhibit P-6, page 3). Significantly, the evidence shows that although the A-Plus program is an integral part of the Students academic program, the Head Teacher could not testify about the program "because it's a program with it's own tutorial" (Testimony of Head Teacher) and that the Head Teacher is not able to help the Student with English and math on A-Plus because she does not know the subject area content (Testimony of Head Teacher). Additionally, the evidence shows that the Head Teacher does not believe that she should help the Student with the A-Plus program, because despite the Student's classification and eligibility un the IDEA for special education services, the Student should be able to "sit down and do it" by herself (Testimony of Head Teacher). Based on these facts, I find that the Student was denied a FAPE because her current placement is not reasonably calculated to enable the Student to receive an educational benefit.

Further, although Student is often late to school, the evidence shows that her lateness would only effect the first 30 minutes of her English class, not the majority of her classes, which she attended and failed.

c. Whether DCPS denied the Student a free and appropriate public education by failing to issue an appropriate Prior Written Notice informing the parent of the Student's change of placement for the 2011-2012 school year.

CFR 34 § 300.503 Prior notice by the public agency provides that written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—(1) Proposes to initiate or change the identification,

evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) *Content of notice.* The notice required under paragraph (a) of this section must include—(1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal. (Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1)).

Here, the PWN issued by DCPS on July 29, 2011 indicates that the student' location of services will change from the non-public school she was attending in the 2010-2011 school year to the DCPS high school because the current school "can implement the Student's IEP and provide a FAPE." No other explanation was offered. With respect to the "description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action," the PWN only indicates that the Student's "IEP, evaluations, attendance records, incident reports, transcripts and MDT input" were considered, but does not describe the contents of these documents or how they would support DCPS' decision to change the Student's placement. As such, I find that the PWN issued by DCPS does not comply with CFR 34 § 300.503. However, I do not find that the PWN resulted in a denial of FAPE because the evidence does not demonstrate that this procedural violation impeded the Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student or caused a deprivation of educational benefit." *Id.* § 300.513(a)(2). *See also Lesesne v. DC*, 447 F.3d 828, 834 (D.C. Cir. 2006); 20 U.S.C. § 1415(f)(E).

d. Whether DCPS denied the Student a free and appropriate public education by failing to provide the Student with counseling services as per her IEP.

A free appropriate and public education "consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Bd. Of Education v. Rowley*, 458 U. 176, 188-89, 73 L. Ed. 2d 690, 102 S. 0.3034 (1982). Under *Rowley*, a

child is deprived of a free and appropriate public education: (a) If the LEA violated the IDEA's procedural requirements to such an extent that the violations are serious and detrimentally impact upon the child's right to a free and appropriate public education, or (b) if the IEP is not reasonably calculated to enable a child to receive educational benefits.

Here, the evidence is undisputed that the Student's behaviors, which included verbal altercations with her peers and throwing scissors and other objects at her classmates, has interfered with her ability to access her education and obtain a meaningful educational benefit (Exhibit 2, page 3). Despite these behaviors and the Student's undisputed classification of ED, DCPS failed to provide the Student's behavior support services mandated on her IEP from the time she enrolled at the DCPS high school on September 22, 2011 up until the date of the review meeting held on November 3, 2011. Accordingly, I find that DCPS' failure to provide the Student's behavior support services during this time resulted in a denial of FAPE because the Student clearly required behavior support services in order to derive an educational benefit.

#### Private School Placement:

The Student requires a small, structured educational setting with full time special education services provided in a high teacher to student ratio (Exhibit P-24) The Student also requires speech and language services as well as behavior supports in the form of counseling (Exhibit 15)

The Private School is a high school for Student's classified under the IDEA. The school includes a vocational Program and offers a high school diploma and all teachers are certified in their content area and certified in special education. The school has clinical social worker for counseling services and a speech and language therapist to provide speech services. (Testimony of Director of Private School). The Student is currently attending this school and the Student has completed most of her work. In addition to the core academic courses, the Student is enrolled in a cosmetology program where a special education teacher pushes in when the Student is working from a book. The Student's largest class is 7 students and Students are assigned to classes based on their needs to graduate and their academic functioning levels. Finally, the school is approved by OSSE<sup>5</sup> and the daily tuition rate is (Testimony of Admission Director of Private School).

Further, the evidence shows that the Students academic and social/emotional needs are being met at the Private School and that the Student is receiving an educational benefit (Testimony of Admission Director of Private School). Based on these facts, I find that the program and services offered at

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the Private School are appropriate to meet the Student's needs. Additionally, there was no showing that the Student's needs could be met at a DCPS school. As such, Petitioner's request for prospective funding for the Student's placement at the Private School is granted Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

I also find that the Private School is the Student's least restrictive environment (LRE), as the evidence shows that the Student should not be placed in the general education setting, but in a small class with a small student to teacher ratio (Exhibit 14). As such, I find the Private School is presently the Student's LRE.

Equities:

The evidence shows that the Petitioner cooperated with the IEP process and no evidence was presented to warrant a denial of prospective funding for the Private School. As such, I find that the equities support an award of prospective funding for placement at the Private School for the remainder of the 2011-2012 school year.

Compensatory Education:

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, which is the replacement of educational services that the child should have received in the first place. Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005). Because compensatory education is a remedy for past deficiencies in student's educational program, a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award," Peak v. District of Columbia, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

As indicated above, Petitioner has proven that the Student was denied a FAPE for the 2011-2012 school year. As such, the Student is entitled to compensatory education. (See, The Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115 (D.D.C. 2008). However, at the hearing, counsel for Petitioner advised that the Student's current placement at the Private School is able to remedy the past deficiencies in Student's educational program without an award of compensatory education services. Accordingly, I conclude that an award of compensatory services is not necessary at this time as the evidence shows that the Student is making progress in current educational setting and that the Student's current placement is able to remedy the past deficiencies in Student's educational program without an award of compensatory education services.

**ORDER**

Based upon the Findings of Fact and Conclusions of Law herein, on this 5<sup>th</sup> day of February, 2012, it is hereby

**ORDERED** that, on or before March 5, 2012, the DCPS shall fund the Students' placement at the Private School for the remainder of the 2011-2012 school year and arrange for the Student's transportation by bus to and from the Private school.

Dated February 5, 2012

By: /s/ James McKeever  
Hearing Officer

**NOTICE OF APPEAL RIGHTS**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer's Determination shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. Section 1415(i)(2).