

DC Office of the State Superintendent of Education
Office of Compliance & Review

State Enforcement & Investigation Division

STUDENT HEARING OFFICE

Van Ness Elementary School

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

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STUDENT HEARING OFFICE
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CONFIDENTIAL

In Re the Matter of:

Parent on behalf of Student*

Petitioner,

vs.

The District of Columbia Public Schools

Respondent.

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CASE NO.

Complaint Filed: 02/12/09

Hearing Date: 03/13/09

Hearing Site:

Van Ness Elementary School

1150 5th Street, S.E., 1st Floor

Washington, D.C. 20003

HEARING OFFICER DETERMINATION

Petitioner's Attorney:

Fatmata Barrie, Esq.

Law Offices, Christopher N. Anwah, PLLC

10 R Street, N.E.

Washington, D.C. 20002

Respondent's Attorney:

Tanya Chor, Esq.

Assistant Attorney General

Office of the Attorney General as Counsel

for D.C. Public Schools

Office of the General Counsel

825 North Capitol Street, N.E., 9th Floor

Washington, D.C. 20002

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

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JURISDICTION

The Due Process Hearing was convened and this Hearing Officer Determination (“HOD”) and Order written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”), 20 U.S.C. Section 1400 et. seq., the implementing regulations for IDEIA; 34 C.F.R. Part 300; Title V, Chapter 30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); The District of Columbia Public Schools Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures (“SOP”); and the Federal Rules of Evidence.

INTRODUCTION

On 02/12/09, a Due Process Complaint Notice (“Complaint”) was filed by the parent (“Parent”) on behalf of the 17 year old student (“Student”), alleging that District of Columbia Public Schools (“DCPS”) denied Student a Free Appropriate Public Education (“FAPE”) in violation of IDEIA, when DCPS failed to provide Student with compensatory education for a previous denial of a FAPE.

DCPS did not file a response (“Response”) to the Complaint.

PRE-HEARING CONFERENCE

On 03/13/09, a pre-hearing conference was convened by the Impartial Hearing Officer, Virginia A. Dietrich, Esq. immediately prior to the due process hearing. Attorney Fatmata Barrie represented Petitioner. Attorney Tanya Chor represented DCPS. The parties were unable to settle the case.

DUE PROCESS HEARING

The due process hearing convened on 03/13/09 at the Van Ness Elementary School located at 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003.

Petitioner was represented by Fatmata Barrie, Esq. (“Petitioner’s Attorney”). DCPS was represented by Tanya Chor, Esq. (“DCPS’ Attorney”). Petitioner attended the due process hearing.

The parties were unable to settle the case; however, DCPS offered an admission and the parties were able to reach a stipulation.

Admission by DCPS - #1: DCPS agrees that Student requires compensatory education. DCPS made an attempt to convene a meeting on 03/05/09 to discuss compensatory education, but the meeting was unable to go forward.

Stipulation #1 - Both parties agree that Student requires compensatory education.

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Disclosures: The parties mutually agreed to waive the Five (5) Day Disclosure Rule requirements delineated in 34 C.F.R. 300.512 and SOP Section 500.

Petitioner's Disclosure letter dated 03/11/09, containing Exhibits #1-27, was admitted into evidence without objection.

DCPS' Disclosure Letter dated 03/10/09, contained Exhibits #1-8. DCPS withdrew Exhibit #6. Exhibits #1-5 and #7-8 were admitted into evidence without objection.

Witnesses:

For Petitioner:

(1) Brandi Reynolds, Psychologist Associate at Interdynamics, Inc. (via telephone).

For DCPS: None.

Issue for Litigation:

#1 – Whether DCPS failed to provide Student with compensatory education for a previous denial of a FAPE?

Petitioner asserts that a 01/16/08 HOD determined that Student was denied a FAPE for the four previous years due to academic regression caused by an emotional deficiency. On 10/28/08, at a Multidisciplinary (“MDT”) meeting, Petitioner requested two (2) years of compensatory education, and the request was denied by DCPS. Petitioner asserts that Student is years old, functions academically at the grade level, is three grade levels behind in school, and has earned no credits towards Student's high school diploma. Even though the Student has received a private placement at Academy, Petitioner asserts that Student still requires compensatory education to bring Student to the academic place Student would have been but for the previous denial of a FAPE.

Relief Requested by Petitioner:

(1) A finding of a denial of a FAPE; and
(2) An Order for DCPS to fund compensatory education in the form of an independent one on one tutor.

FINDINGS OF FACT

#1. A 01/16/08 HOD contained a Findings of Fact and Conclusions of Law that DCPS denied Student a FAPE by failing to identify and evaluate Student. It cannot be

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determined from a reading of the HOD as to what period of time the denial of FAPE covered; however, the due process complaint underlying the HOD alleged that Student had been denied a FAPE for the preceding four years. The HOD ordered DCPS to conduct or fund the following independent evaluations: a psychoeducational evaluation, a social history, a speech and language evaluation and a clinical psychological evaluation. The HOD also ordered DCPS to convene a meeting after receiving copies of the evaluations to review the evaluations, determine eligibility, determine whether additional evaluations were necessary, develop an appropriate Individualized Education Program ("IEP") if Student was found eligible for special education services, determine the need for compensatory education, and determine an appropriate placement. (*Petitioner's Exhibit #23, HOD issued 01/16/08*).

#2. Student, age 17, began attending _____ Academy on 09/02/08. (*Petitioner's Exhibit #4, Academy Justification for Speech and Language Services dated 10/15/08*). _____ Academy is a full time, special education school. (*Petitioner's Exhibit #6, Psychiatric Evaluation dated 09/09/08*).

#3. From 09/02/08 until 09/27/08, while at _____ Academy, Student had been sent to the Behavioral Counseling Center on seven occasions for verbal abuse to a peer, engaging in physical contact with a peer, disruption, not following directions and using "foul language." A September 2008 assessment to determine Student's need for counseling services, performed by a psychologist at _____ Academy, recommended that Student receive individual therapy services of 60 minutes/week to address anxiety, depression, low self-esteem and difficulties with interpersonal relationships. (*Petitioner's Exhibit #8, Academy Report dated 09/27/08*).

#4. On 10/28/08, the MDT at _____ Academy convened an MDT/IEP meeting, reviewed evaluations, classified Student as Emotionally Disturbed ("ED"), and developed an IEP that required 28 hours/week of specialized instruction, 1 hour/week of behavioral support services, and 1 hour/week of speech and language pathology services, with 100% of services provided outside of general education. This IEP, an initial determination of eligibility for special education services, indicated that Student's present level of functioning was at the 1 percentile for Student's age in communications/speech and language with verbal expression in the deficient range and at a 8.6 years age equivalency; and below grade level in Broad Reading with a 6.7 age equivalency. (*Petitioner's Exhibit #2, IEP dated 10/28/08; Petitioner's Exhibit #3, MDT Notes dated 10/28/08*). The 10/28/08 IEP also indicated that Student had deficits in the areas of emotional expression, adaptive coping, interpersonal skills and self-esteem, and these deficits negatively impacted Student's availability for learning in the classroom environment. The IEP indicated that Student demonstrated weaknesses in the areas of receptive language, expressive vocabulary, sentence assembly and semantics, and these deficits impacted Student's performance across the curriculum. And, the IEP indicated that due to behavior and lack of concentration in math, Student was unable to complete tasks and this negatively impacted Student's performance. (*Petitioner's Exhibit #2, Initial IEP dated 10/28/08*).

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#5. At the MDT meeting on 10/28/08, Petitioner requested 2 years of compensatory education to remedy the denial of a FAPE finding in the 01/16/08 HOD, but DCPS did not agree with it on the basis that the HOD said nothing about compensatory education. As a result, a compensatory education plan was not discussed or developed. (*Petitioner's Exhibit #3, MDT Notes dated 10/28/08*).

#6. Student is currently on the diploma track for graduation from high school. The MDT that met on 10/28/08 determined that it would formulate a plan for transitioning Student into regular education classes at the next IEP meeting. (*Petitioner's Exhibit #3, MDT Notes dated 10/28/08*).

#7. A psychiatric evaluation conducted by Interdynamics, Inc. and dated 09/09/08, diagnosed Student with Post-Traumatic Stress Disorder, Bipolar I Disorder (by history), and Cannabis Abuse. The evaluation recommended individual counseling once a week to address a myriad of psychological stressors and remedial assistance in all under performing subject areas to address extensive time away from school. (*Petitioner's Exhibit #6, Psychiatric Evaluation dated 09/09/08*). This psychiatric evaluation was reviewed by the MDT at _____ Academy at the time Student's 10/28/08 Initial IEP was developed. (*Petitioner's Exhibit #3, MDT Notes dated 10/28/08*).

#8. The speech and language therapist at _____ Academy reviewed a 03/27/08 speech and language evaluation and concluded that based on Student's below average receptive language skills and language content, and given Student's good potential for improvement, Student should receive 1 hour/week of individual speech and language therapy for the 2008-2009 school year. (*Petitioner's Exhibit #4, _____ Academy Justification for Speech and Language Services dated 10/15/08*). This recommendation was adopted by the 10/28/08 MDT. (*Petitioner's Exhibit #3, MDT Notes dated 10/28/08*).

#9. A psychoeducational evaluation conducted by Interdynamics, Inc. and dated 05/21/08, indicated that Student was admitted to Psychiatric Institute of Washington in April 2006 for disruptive behavior and suicidal thoughts; that Student functions in the Borderline range of cognitive functioning with specific weaknesses in processing speed and verbal comprehension; that Student performs in the Extremely Low range in overall reading skills, in the Borderline range in overall math skills, and in the Low Average range in overall written language skills; that Student's achievement ability suggests that Student has the potential to complete school work on Student's grade level; and that when compared with Student's cognitive ability, Student's achievement ability scores indicate that Student is not performing up to Student's potential; that Student appears to have some language deficits that have affected Student's learning ability; that Student needs intensive language services to increase Student's language ability and vocabulary; and that Student seems to be dealing with some emotional issues that impact Student's availability for learning. The psychoeducational evaluation recommended that Student receive assistance in increasing vocabulary and verbal comprehension and that Student should be enrolled in an intensive language program to address deficits in this area. The evaluation also recommended that Student receive assistance in mastering mathematic

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skills, as Student has difficulty with problems that require Student to work with fractions and exponents, calculate percentages, solve algebraic equations, and adding and dividing problems using whole numbers. (*Petitioner's Exhibit # 9, Psychoeducational Evaluation dated 05/21/08*). The psychoeducational evaluation was reviewed at the 10/28/08 MDT meeting. (*Petitioner's Exhibit #3, MDT Notes dated 10/28/08*).

#10. A clinical psychological evaluation conducted by Interdynamics, Inc. and dated 06/20/08, provided a diagnosis of Bipolar I Disorder, Most Recent Episode Unspecified. The evaluation indicated that Student manifested symptoms of depressive and manic, aggressive and hyperactive manners; and that Student had problems of controlling Student's attitude and feelings of depression and sadness. The evaluation recommended individual and group psychotherapy to address and work through with previous traumas, current sadness, aggression and acting out. (*Petitioner's Exhibit #10, Clinical Psychological Evaluation dated 06/20/08*).

#11. A neuropsychological evaluation conducted by Interdynamics, Inc. and dated 09/11/08, indicated that Student has deficits in working memory and attention, which significantly affects Student's ability to learn. The test results showed that Student has problems encoding information at a level commensurate with Student's intellectual ability, and Student needs to be instructed in both recall and recognition techniques in order to help Student retrieve and process information. The neuropsychological evaluation recommended that Student be taught various memory strategies to help increase Student's retention of information; that Student would benefit from a learning environment in which efforts are made to breakup information into smaller chunks to help Student process it; that Student required extra time to allow Student to stop after reading smaller sections and make sure that each piece of information is registered before continuing; that Student needs to be involved in individual and group psychotherapy to address and work through previous traumas, current sadness, aggression, as well as acting out behaviors; and that Student needs to be involved in tutoring in the areas of academic weaknesses, as outlined by Student's psychoeducational evaluation. (*Petitioner's Exhibit #26, Neuropsychological Evaluation dated 09/11/08*).

#12. Prior to the development of the 10/28/08 IEP, Student received no special education or related services. (*Petitioner's Exhibit #2, Initial IEP dated 10/28/08*). Student attended the [redacted] grade at [redacted] High School during the 2004-2005 school year and received final grades of "F" in Entrepreneur and in Math; a "D" in English, World History and Mechanical Drawing; and a "C" in Life Science. (*Petitioner's Exhibit #5; Report to Parents on Student Progress dated 06/30/05*).

#13. Student attended the [redacted] grade at [redacted] School during the 2005-2006 school year and received final grades of "F" in English, American History, Physical Science, and Computer Applications; a grade of "C" in Pre-Algebra and in Study Skills (4th Advisory); a grade of "D" in reading; and a grade of "B" in Study Skills (2nd Advisory). Although Student only had a total of 5 absences from homeroom for the entire academic year, Student had excessive absences from all classes. (*Petitioner's Exhibit #5; Report to Parents on Student Progress dated 06/15/06*).

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#14. Student attended the grade at School during the 2007-2008 school year and received 1st advisory grades of "F" in Algebra, Biology, Success Strategies in Math, Reading, and 9th Grade America's Choice Ramp Up ELA. (*Petitioner's Exhibit #5; Report to Parents on Student Progress dated 10/28/07*). Student stopped attending School after the 1st Advisory of the 2007-2008 school year. (*Petitioner's Exhibit #6, Psychiatric Evaluation dated 09/09/08; Petitioner's Exhibit #5; Report to Parents on Student Progress dated 10/28/07*).

#15. Student requires compensatory education. (*Stipulation #1*).

#16. Brandi Reynolds, a psychologist associate at Interdynamics, Inc. received a Bachelor of Arts degree in Psychology in 2002 from Hampton University, and a Master of Arts degree in counseling psychology from Bowie State University in 2005. Ms. Reynolds has worked with children with special needs for the past six years; has worked as a special education teacher and IEP case manager and provided recommendations for instructional modifications and accommodations to the IEP in the areas of academic, transition, and social and emotional goals to hundreds of special needs children in the Prince George's County Public Schools from 2006-2008 in order to help the students gain access to the general education curriculum; has previously testified as an expert in compensatory education at due process hearings; is experienced in reviewing psychological evaluations and other assessments to determine what services are best for a particular student; and has developed approximately 10 compensatory education plans for Interdynamics, Inc., a private company that conducts psychoeducational evaluations, psychiatric evaluations, clinical psychological evaluations, neuropsychological evaluations, and functional behavioral assessments. (*Petitioner's Exhibit #24, Curriculum Vitae of Brandi Reynolds; Testimony of Brandi Reynolds*).

#17. There is not a set methodology to determine compensatory education. Each child is different. The amount and type of compensatory education is determined by a review of the evaluations and assessments that exist, and the skill set of the person determining compensatory education. Brandi Reynolds used her skill set as a special education teacher, and IEP case manager, and counseling psychologist to make a professional judgment in determining what Student didn't receive academically, what is needed to compensate Student for a previous deficient program, and to figure out where Student would have been if Student had been in the correct placement or had received appropriate services from the public school system. (*Testimony of Brandi Reynolds*).

#18. In order to formulate a compensatory education plan for Student, Brandi Reynolds reviewed Student's 09/09/08 psychiatric evaluation, the 05/21/08 psychoeducational evaluation, the 09/11/08 neuropsychological evaluation, the 06/20/08 clinical psychological evaluation, the Woodcock Johnson 2008 testing scores, the 10/28/08 IEP and school records, Student's grade reports from School and School, and two 2008 reports from Academy. All assessments and evaluations reviewed were conducted in 2008. After review of these records, Ms. Reynolds determined that Student's level of functioning was between

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the 3rd and 6th grade level based on Woodcock Johnson testing scores, with Broad reading at the 6.7 grade level equivalent, Broad math at the 4.2 grade level equivalent, and Broad reading at the 6.5 grade level equivalent. Ms. Reynolds concluded that Student, at age 17, should be at the 11.1 grade level, and therefore Student is 5 to 6 grade levels behind. Additionally, Ms. Reynolds noted that there were a lot of recommendations for remedial assistance and counseling contained in the evaluations and assessments, and because of these recommendations and the factors underlying the recommendations, remedial assistance and counseling became the main focus for the compensatory education plan she developed for Student. (*Testimony of Brandi Reynolds*).

#19. Student is diagnosed with Bipolar Disorder, and due to this disorder has difficulty managing emotions. Due to the mood swings of a child with Bipolar Disorder, it is difficult to know what state the child is in. For example, one day the child might be in a depressed state and the next day the child might be alert and elect to participate in ways outside of instruction. Student, with Bipolar Disorder, has the potential to be redirected and is able to focus on instruction. (*Testimony of Brandi Reynolds*).

#20. In addition to the current instruction that Student is receiving, an appropriate plan for compensatory education for Student would be 2.5 hours/day for 4 days per week with a one on one tutor in the academic areas of reading, math, writing and science, for a total of 10 hours/week, with the tutoring to be conducted in the needed areas of instruction. The tutor should be the same person for all subjects if possible because children with Bipolar Disorder do not perform well with change. The tutor should be certified in special education, and services can be conducted at school, at an after school program or at Student's home. Ms. Reynolds formulated a compensatory education plan of 10 hours/week for 146 weeks spread over the 42 weeks of the remainder of this school year and over the 52 weeks of the 2009-2010 school year and over the 52 weeks of the 2010-2011 school year. Ms. Reynolds justified this amount of tutoring on the premise that Student has had a deficient educational program for the past four years, i.e., while at School during 2005-2006 and 2006-2007, while at

School in 2007-2008, and until the present time. The expectation for Student with respect to the proposed compensatory education plan is that if Student receives the tutoring needed, Student can attain 3-4 grade levels above the grade levels where Student currently is. The 10/07/08 Woodcock Johnson scores indicate that Student is prompt, responsive and persistent with tasks; and that Student has the desire to achieve academically but just needs assistance. The compensatory education plan should also include 60 minutes/week of counseling to address anxiety and acting out behavior to address Student's depression and low self esteem. The counseling is compensatory education for the counseling that Student should have received at School and School when Student was not recognized as a student with special needs due to the delay in testing. (*Testimony of Brandi Reynolds*).

DISCUSSION AND CONCLUSIONS OF LAW

"The burden of proof shall be the responsibility of the party seeking relief. Based solely upon evidence presented at the hearing, an impartial hearing officer shall

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determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. 3030.3.

Issue #1 - Whether DCPS failed to provide Student with compensatory education for a previous denial of a FAPE?

Even though Student is currently attending a full time special education school (*Finding of Fact #2*), and is receiving specialized instruction and related services commensurate with a current IEP (*Finding of Fact #4*), Student is still entitled to additional services as compensatory education (*Finding of Fact #15*) for a previous denial of a FAPE (*Finding of Fact #1*).

The parties stipulated that Student requires compensatory education (*Finding of Fact #15*). Petitioner offered Brandi Reynolds as an expert witness in the development of compensatory education plans. The Hearing Officer qualified Ms. Reynolds as an expert witness in the development of compensatory education plans over the objection of DCPS. The explanation for the qualification of this witness is as follows:

The SOP Section 700.4 provides that the due process hearing is not governed by formal rules of procedure or evidence. The purpose of the hearing is to allow all parties to present evidence supporting their positions and to explain why they believe they should prevail on the issues at the hearing. *SOP Section 700.2*.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." *Federal Rules of Evidence, Rule 702*. "An intelligent evaluation of facts is often difficult or impossible without the application of some scientific, technical, or other specialized knowledge. Whether the situation is a proper one for the use of expert testimony is to be determined on the basis of assisting the trier. There is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute." Ladd, *Expert Testimony*, 5 *Vank.L.Rev.* 414, 418 (1952). "When opinions are excluded, it is because they are unhelpful and therefore superfluous and a waste of time. 7 *Wigmore Section 1918*. The fields of knowledge which may be drawn upon are not limited merely to the "scientific" and "technical" but extend to all "specialized" knowledge. Similarly, the expert is viewed, not in a narrow sense, but as a person qualified by "knowledge, skill, experience, training, or education." Thus within the scope of the rule are not only experts in the strictest sense of the word, e.g., physicians, physicists, and architects, but also the large group of sometimes called

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“skilled” witnesses, such as bankers or landowners testifying to land values.” See *Advisory Committee’s Note, 56 F.R.D. 183, 282, Federal Rules of Evidence, Rule 702.*

Brandi Reynolds offered the principles and methodology used in determining the calculation of compensatory education. (*Finding of Fact #17*). Her application of the principles and methods to the facts of Student’s case was reliable; she used current and extensive testing evaluations, report cards and other current reports to assess the Student’s current level of functioning, determined what the norm would be for a student of Student’s age, what factors were considered in all determinations, and how the conclusion was drawn that Student required a particular compensatory education plan. (*Finding of Fact #18, #19, #20*).

Brandi Reynolds’ experience as a special education teacher, her undergraduate and postgraduate education in psychology, her work experience in the field of administering psychological tests, her knowledge of test instruments and testing procedures, her work experience in providing input into hundreds of IEPs, her experience as a special education teacher, and her past experience in developing compensatory education plans (*Finding of Fact #16*), convinced the Hearing Officer that she could provide an opinion that was beyond the layperson and an opinion that was reliable. Therefore, Ms. Reynolds was qualified as an expert in the development of compensatory education plans in order to assist the Hearing Officer in determining what would be an appropriate compensatory education plan for Student, particularly in view of the fact that DCPS admitted that Student required compensatory education. (*Finding of Fact #15*).

One must never forget that the overall purpose of IDEIA is to provide all children with disabilities a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. *34 C.F.R. 300.1*. Given its broad educational objectives and specific prescriptions, the IDEA should be liberally applied and construed in favor of meeting its goals of providing appropriate and effective education to children with disabilities. See *Espino v. Vesteyro, 520 F. Supp. 905, 911 (S.D. Tex 1981)*.

Petitioner must prove by a preponderance of the evidence that the educational program requested is reasonably calculated to confer the remedial and contemporary educational benefits by IDEIA. *Diatta v. District of Columbia, 41 IDELR 124 (D.C.C. 2004)*. Petitioner proposes, through the testimony of Brandi Reynolds, a compensatory education plan for Student. (*Finding of Fact #20*).

“Compensatory education awards should aim to place disabled students in the same position they would have occupied but for the school district’s violation of IDEA.” Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. *Reid v. District of Columbia, 43 IDELR 32 (U.S. Court of Appeals, District of Columbia Circuit 2005)*. The aim of IDEA is to guarantee disabled students “specialized education and related services designed to meet their unique needs.” In every case, however, the inquiry must be fact-specific and, to

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accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." The court must conduct a "qualitative inquiry" to determine whether the proposed compensatory placement and tutoring remedy are appropriate." *Id.* "Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors." *Florence County Sch. Distr. Four v. Carter*, 510 U.S. 7, 16, 114 S. Ct. 361 (1993).

In *Bethune v. District of Columbia*, 50 IDELR 134 (D.C.C. 2008), the court observed that the independent hearing officer (IHO) had sufficient information about the student's needs to craft an award that was reasonably calculated to compensate student for the school's FAPE violation. The IHO had the benefit of an evaluation report showing Student's reading level, a report card and progress report that showed that Student was not reading at grade level, and an estimate from a private tutoring service of the number of hours of tutoring that Student required. On review, the court determined that the IHO had conducted a fact-specific inquiry and tailored the award to the student's individual needs, and the award was determined to be appropriate.

It was obvious to the Hearing Officer that Ms. Reynolds had thoroughly reviewed Student's assessments and other pertinent documentation, had applied her experience, education and skills to an analysis of the facts, and made a reasonable and appropriate determination of compensatory education. This Hearing Officer had much more data available than the IHO in *Bethune*. This Hearing Officer's review of the assessments revealed information properly cited in the testimony of Ms. Reynolds, and it is obvious that Ms. Reynolds had put considerable thought into fashioning a compensatory education plan that would meet Student's needs and restore Student to the position Student would have been in but for the denial of a FAPE.

In the short time that Student had attended _____ Academy in September 2008, Student had been sent to the Behavioral Counseling Center on seven occasions. (*Finding of Fact #3*). It is evident that Student will benefit from additional counseling. Student's main impediments to academic success are language deficits that affect Student's learning ability across the curriculum. (*Finding of Fact #9*). Remedial academic assistance was recommended in all assessments. (*Finding of Fact #7, #8, #9, #10, #11*). DCPS stipulated that Student required compensatory education. (*Finding of Fact #15*). Student has had failing grades since the 2004-2005 school year. (*Finding of Fact #12, #13, #14*). Student is far below grade level in reading and has verbal expression deficiencies that place Student in the 1 percentile for Student's age. (*Finding of Fact #4*). Student is on the diploma track and in the near future DCPS will formulate a plan for transitioning Student into regular education classes. (*Finding of Fact #6*). Student needs assistance in making gains in order to access the general education curriculum, and compensatory education can help.

Student needs a compensatory education plan now, and Petitioner has proposed a viable one. DCPS not only disavowed its obligation to provide compensatory education

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at the 10/28/08 MDT meeting, DCPS also did not bring a proposed compensatory education plan to the due process hearing table.

Petitioner met its burden of proof by a preponderance of the evidence that Student is entitled to compensatory education for the previous denial of a FAPE identified in the 01/16/08 HOD, and that Student is entitled to the compensatory education plan formulated by Brandi Reynolds because the plan is specifically designed to meet Student's unique educational needs. The plan was calculated using a variety of current and thorough assessment tools that contained recommendations that could be implemented, the plan takes into account Student's personality, attributes, academic strengths and weaknesses; and if the plan is properly implemented, Student can advance 3-4 grade levels. (*Finding of Fact #20*).

Petitioner also showed by a preponderance of the evidence that Student had been denied a FAPE when DCPS refused to discuss and determine the need for compensatory education, as was ordered by the 01/16/08 HOD. By stipulation, DCPS now agrees that Student requires compensatory education. Not only was there a procedural violation of IDEA by DCPS' failure to comply with the HOD when it failed to determine compensatory education, this failure impacted Student's right to be successful under IDEIA. It was Student's substantive right to a FAPE that was affected, and Student was denied a FAPE. *See 34 C.F.R. 300.513(a)*.

Petitioner met its burden of proof on Issue #1.

CONCLUSION

Student is entitled to receive the compensatory education plan proposed by Petitioner because the plan is appropriate and viable, and Student has been denied a FAPE. Although DCPS conceded that Student requires compensatory education, DCPS did not offer an alternative compensatory education plan that could be implemented by DCPS. Petitioner seeks an independent one on one tutor, with the location of services to be determined by Petitioner and the service provider. It is critical that compensatory education services begin as soon as possible.

ORDER

IT IS ORDERED, that

(1) DCPS shall provide funding for an independent one on one tutor for 10 hours/week for the next 42 weeks of this year and for an additional 52 weeks during the following two successive years, and funding shall be provided no later than 15 school days following the date of this Order. The tutor shall be a certified special education teacher who shall provide tutoring services in reading, writing, math and science at the rate of 2.5 hours/day for 4 days/week, for a total of 146 weeks with services in each specific area to be determined by the ongoing needs of Student. Tutoring shall not interfere with the instruction provided during the Student's regular school day; and

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Petitioner shall strive to find a single tutor who can provide tutoring in all of the above mentioned academic areas; and

(2) DCPS shall provide Student with 60 minutes/week of counseling (in addition to what is already specified in Student's IEP) by a mental health therapist certified as a licensed professional counselor who is qualified to work with persons with a bipolar disorder; and this counseling shall be provided for 146 weeks; and

(3) DCPS shall provide Student with intensive language services that focus on increasing language ability and vocabulary, increasing verbal comprehension, instruction in recall and recognition techniques, and memory strategies, at the rate of 60 minutes/week, as needed, to help Student reach the goal of accessing the general education curriculum; and these language services shall be in addition to the speech and language services already identified in Student's IEP.

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

03/23/09

Date

Issued: March 23, 2009

Virginia A. Dietrich /s/

Virginia A. Dietrich, Esq.

Impartial Due Process Hearing Officer