

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

OSSE
STUDENT HEARING OFFICE
2012 APR 17 AM 9:40

Parent ¹ , on behalf of)	
Student,)	
)	
Petitioner,)	
)	Hearing Officer: James McKeever
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC)	
SCHOOLS)	Hearing Date: April 3, 2012
)	
Respondent.)	

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 boy who resides in the District of Columbia and who is classified as a child with a disability. The Student currently attends the grade at a Non-Public School in the District of Columbia (Exhibit R-6).

On February 3, 2012, 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 because DCPS failed to include the parent in the MDT/IEP meeting held on January 23, 2012; failed to develop an appropriate IEP that was reasonably calculated to provide FAPE and failed to determine a proper placement for the Student, *inter alia* (issued set forth below).

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

On February 9, 2012, DCPS filed its Response to the DPC. DCPS asserted that the numerous attempts were made to secure the parent's participation at the IEP meeting held of January 23, 2012 and that FAPE was offered to the Student for the subject school year.

The Resolution session was held on February 24, 2012. The parties did not resolve the issues raised in the DPC, but continued the resolution period to March 4, 2012. The initial forty-five day HOD timeline began on March 5, 2012.

The Prehearing Conference (PHC) was held on March 8, 2012. Counsel for Petitioner and counsel for DCPS participated. It was agreed that the Due Process Hearing (DPH) would be held on April 3, 2012 and April 4, 2012 and that the disclosures would be filed by March 27, 2012. The Hearing concluded on April 3, 2012. The disclosures were filed as agreed on March 27, 2012. Petitioner's Exhibits 1-20 were admitted into evidence. Respondent's Exhibits 1-15 were also admitted into evidence.² Petitioner's Exhibit 11 was redacted at the hearing in order to eliminate the names of other student's referenced on the document. Petitioner's Exhibit 21, 22 and 23 were not admitted into evidence because they were HODs and a Settlement Agreement (SA) involving other students and were irrelevant to the issues involving this Student.

The following witnesses testified on behalf of the Petitioner: Parent, Student, Psychologist, Advocate, Director of Non-Public School (Director), Head of School and Teacher.

The following witnesses testified on behalf of the Respondent: DCPS Progress Monitor.

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 hearing³:

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

³ At the hearing, Petitioner's counsel withdrew the issue of whether DCPS denied the Student a FAPE by failing to identify all of the Student's special education and related service needs

1. Whether DCPS denied the Student a FAPE by failing to convene a proper MDT/IEP meeting when the progress Monitor and her supervisor were the only participants at the IEP meeting held on January 23, 2012.

2. Whether DCPS denied the Student a FAPE by failing to provide the parent with meaningful participation in the Student's educational placement as required under 34 C.F.R. Sec. 300.327, when DCPS developed an IEP on January 23, 2012 without the participation of the parent.

3. Whether DCPS denied the Student a FAPE by failing to develop an appropriate IEP that is reasonably calculated to provide the Student FAPE when they failed to developed post secondary goals based on a vocational assessment

4. Whether DCPS denied the Student a FAPE by failing to conduct an appropriate "Transition Assessment" and/or a vocational evaluation as required by the IDEA.

5. Whether DCPS denied the Student a FAPE by failing to implement the Student's IEP when DCPS terminated the Student's bus transportation on January 25, 2012.

6. Whether DCPS denied the Student a FAPE by failing to determine a proper placement for the Student at the MDT/IEP meeting held on January 23, 2012 when they recommended that the Student's IEP be implemented at a new Program located in a self contained classroom within a DCPS general education High School.

7. Whether DCPS denied the Student a FAPE by failing to comply with the Settlement Agreement dated October 22, 2010, which was a violation of Blackman/Jones.

Petitioner requests an Order directing DCPS to continue to fund the Student's placement at the Non-Public School for the 2012-2012 school year with transportation and compensatory education.

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 boy who resides in the District of Columbia. The Student is eligible for special education and related services under the IDEA

Issue #1 in the PHC was withdraw by counsel at the impartial hearing. . Petitioner's counsel also clarified the issues on the record as he did during the PHC.

as a child with a disability. The Student presently attends the 10th grade at a Non-Public School in the District of Columbia. The Student's placement at the Non-Public School was the result of a Settlement Agreement (SA) with DCPS, dated October 22, 2010, which allowed the Student to enroll at the Non-Public School during the 2010-2011 school year. The SA also provided the Student with transportation to the Non-Public School (Exhibit P-6).

The Student struggles with math and reading, but he's on grade level in written expression (Testimony of Teacher).

There are 30 Student's at the Non-Public School, most of whom have IEPs and are classified with a Specific Learning Disability (SLD) (Testimony of Director). The Non-Public School has two special education teachers on staff who meet with all of the Student's teachers every Wednesday and informally at other times during the week to modify the instruction for the Student (Testimony of Teacher). The special education teacher provides direct instruction in the Student's English (Testimony of Director). The Student's teachers, who are not presently certified in special education in the District on Columbia, are either in the process of applying for reciprocity from the States where they are certified or are in the process of completing the requirements for their initial certification in the District of Columbia (Testimony of Director)

The Student made progress at the Non-Public School during the 2010-2011 and the 2011-2012 school years (Testimony of Parent, Director, Psychologist and Exhibit P-19).

DCPS scheduled an IEP meeting on December 9, 2011. The parent did not appear. DCPS attempted to call the parent on various dates in November 2011, however, DCPS did not have the correct telephone number for the parent (Testimony of Progress Monitor). DCPS contends that they sent Letters of Invitation (LOIs) to the parent via certified mail and first class mail. The parent testified that she did not receive any LOI from DCPS and the copies of the certified mail receipts offered into evidence by DCPS did not contain a date of mailing or any information regarding postage (Exhibit R-1, R-2). DCPS also claims that a LOI was hand delivered to the parent's address on November 15, 2011 (Testimony of Progress Monitor, Exhibit R-1, R-2). However, no affidavit of service was offered into evidence at the hearing regarding delivery of the LOI and the person who allegedly hand delivered the LOI to the parent's home did not appear at the hearing. The parent testified that she did not receive a hand delivered LOI. As such, I find that the evidence is insufficient to make a finding that any of the LOIs were delivered to the parent's home in November 2011.

DCPS rescheduled the Student's IEP meeting to December 20, 2012. The parent did not appear. DCPS contends that they called the parent prior to the

meeting and that they sent a LOI via first class mail and certified mail for this meeting. However, the evidence shows that DCPS did not have the correct telephone for the parent and copies of the certified mail receipts offered into evidence by DCPS did not contain a date of mailing or any information regarding proof of postage paid (Exhibit R-1, R-2). DCPS acknowledged that despite their difficulty in contacting the parent, DCPS did not ask the staff at the Non-Public School for the parent's current contact information (Testimony of Progress Monitor). As such, I find that the evidence is insufficient to make a finding that any of the LOIs were delivered to the parent's home in December 2011.

DCPS contacted the parent's attorney, via email on November 11, 2011, December 20, 2011 and on January 11, 2012 regarding various dates in which to hold the IEP meeting (Testimony of Progress Monitor, Exhibit R-1, R-2). In November 2011, the parent's attorney advised that he was not the attorney of record for the parent in this matter and the parent testified she did not retain her attorney for this case until December 2011 (Testimony of Parent, Exhibit 13).

The Student's IEP meeting was rescheduled to January 23, 2011. The parent did not appear. However, on the morning of January 23, 2012, the parent's attorney contacted the DCPS Progress Monitor and advised that the parent was unavailable for the IEP meeting and that he would provide DCPS with another date for the IEP meeting once he spoke with his client (Exhibit P-13). Later that day, the parent's Advocate sent a letter to DCPS and proposed February 2, 2012 for the date of the meeting.

DCPS went forward with the IEP meeting on January 23, 2012, without the parent. The staff at the Non-Public School refused to participate in the IEP meeting because Petitioner, Student and their Advocate were not present at the meeting (Testimony of Director).

The Student's IEP was scheduled to be renewed on or about February 2, 2012 (Exhibit P-7).

DCPS held the IEP meeting at DCPS' central office. The participants at the IEP meeting included the Progress Monitor, her supervisor, a speech and language services provider and a social worker. The social worker is not listed as an attendee on the IEP, but the "Meeting Notes" and the testimony of the Progress Monitor indicate that a social worker was at the meeting (Unrebutted Testimony of Progress Monitor, Exhibit P-7 and P-8).

The IEP dated January 23, 2012, provided the Student with 25 hours of specialized instruction outside the general education setting, 60 minutes per

week of speech and language therapy services and 30 minutes per week of counseling services (Exhibit P-7).

The Student will be 16 years old on December 20, 2012. The Non-Public School administered a vocational assessment to the Student, via interview, in December 2011 (Testimony of Director). The vocational assessment indicated that the Student "would like to attend college and study film or graphic design" (Exhibit P-7, page 13).

Following the IEP meeting on January 23, 2012, DCPS issued a Prior Written Notice for the Student's IEP to be implemented at new Program located in a self contained classroom within a DCPS general education High School. This would remove the Student from the Non-Public School where the Student had been for the last year and a half (Exhibit R-6). No other locations of service were considered by DCPS at the IEP meeting held on January 23, 2012 (Testimony of Progress Monitor).

The change in location of service was not discussed with the Student or with the Petitioner (Testimony of Progress Monitor).

Petitioner testified that she understood the SA from October 2010 to mean that the Student would remain at the Non-Public School until he graduated from High School (Testimony of Petitioner).

DCPS' proposed placement and/or location of services for the Student is a program that was developed by a private educational contractor in partnership DCPS (R-7). The program services kids with IEPs who are classified with an "emotional disturbance (Testimony of Advocate, Exhibit R-7). Each class contains up to 12 students with a head teacher, an assistant teacher and a behavior specialist (Testimony of Progress Monitor). The program includes computer instruction called "A-Plus," which is used for core academic subjects and is how the students earn Carnegie Units toward graduation. The computer instruction is used in conjunction with direct instruction from either the head teacher, the assistant teacher or the behavior specialist (Exhibit R-7, Testimony of Progress Monitor). The "A-Plus" program is approved by OSSE to earn Carnegie Units (Testimony of Progress Monitor).

The Progress Monitor visited the proposed program on one occasion (Testimony of Progress Monitor). The Student's Advocate researched the proposed program and applied for a position as its special education teacher in August 2011. The Advocate's colleague works at the proposed program (Testimony of Advocate).

DCPS terminated the Student's bus service to the Non-Public School on January 25, 2012, but provided bus service to the new location of services. Since the Student's bus service to the Non-Public School was terminated, the staff at

the Non-Public School either transported the Student to school or provided the Student with a token for the Metro (Testimony of Student and Director).

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

Petitioner prevailed with respect to issues (1), (2) and (6), but did not prevail with respect to issues (3), (4), (5) and (7).

VII CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses at the due process hearing provided credible testimony. However, with respect to the components of the DCPS program, I credit the testimony of Petitioner's Advocate over that of the Progress Monitor because the Advocate demonstrated that she was very familiar with the program and her testimony was corroborated by the program description entered into evidence at Exhibit R-7.

VII STATUTORY FRAMEWORK

Under the IDEA, the federal government provides funding to state and local educational agencies, including those of the District of Columbia, see 20 U.S.C. § 1401(31), for the education of disabled children. As a condition of receiving that funding, an educational agency must maintain policies and procedures ensuring that a "free appropriate public education is available to all children with disabilities residing in the [jurisdiction] between the ages of 3 and 21." 20 U.S.C. § 1412(a)(1)(A). A "central component of a disabled student's special education under the IDEA" is the individualized education program ("IEP"), which is a written statement setting out the student's "individually tailored goals and the means of achieving them." District of Columbia v. Doe, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010) (citing 20 U.S.C. § 1414(d)). The IDEA also guarantees a student's parents "both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate." Id. at 890 (quoting Honig v. Doe, 484 U.S. 305, 311-12 (1988)) (internal quotation marks omitted).

VI. ANALYSIS AND CONCLUSIONS OF LAW

Issues (1) and (2):

The facts of this case require that I address issue number 2 before I

address issue number 1.

Issue number (2) is whether DCPS denied the Student a FAPE by failing to provide the parent with meaningful participation in the Student's educational placement as required under 34 C.F.R. Sec. 300.327, when DCPS developed an IEP on January 23, 2012 without the participation of the parent.

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.

Here, DCPS scheduled an IEP meeting on December 9, 2011, January 9, 2012 and January 23, 2012. I will address the IEP meeting on December 0, 2011 and January 9, 2012 first. The evidence shows that the parent did not appear at any of these meetings. However, the evidence also shows that during this time DCPS did not have the correct telephone number for the parent and that DCPS did not request the parent's current contact information from the staff at the Non-public School where the Student was attending. Additionally, the parent testified that she did not receive the LOIs in the mail and the certified mail receipts offered by DCPS at the hearing did not include a date or any evidence that the postage was actually paid (Exhibit R-1, R-2). (DCPS also provided a copy of certified postage receipt for a different student (Exhibit R-1). Further, the evidence shows that the parent did not retain her attorney for this case until December 2011 and that DCPS was made aware of this fact prior to January 2012. Finally, DCPS' assertion that an LOI was hand delivered to the parent's address on November 15, 2011 (Testimony of Progress Monitor, Exhibit R-1), is insufficient to rebut the parent's testimony that she did not received the LOI because an affidavit of service was not offered into evidence at the hearing regarding delivery of the LOI and the person who allegedly hand delivered the LOI to the parent's home on did not appear at the hearing. Therefore I find that the evidence was insufficient to put the parent on notice of the scheduled IEP meetings on December 9, 2011 and January 9, 2011.

With respect to the IEP meeting held on January 23, 2012, the evidence shows that the parent's attorney spoke to DCPS on this date and advised that the parent was not available for the IEP meeting (Testimony of DCPS Progress Monitor). Later that same day, the parent's Advocate proposed a new date, in writing, for the IEP meeting, which was only a week after January 23, 2012 (Exhibit P-15). Nevertheless, DCPS went forward with the IEP meeting on January 23, 2012, without the parent. 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 parent that they should attend, the evidence shows that the parent agreed, in writing, to attend an IEP meeting on an alternate date, to wit, February 2, 2012 (Exhibit P-16) but DCPS refused to reschedule. I find that DCPS; refusal to reschedule the meeting at the request of the parent was inappropriate and impeded the Student's right to a FAPE. I also find that DCPS decision not to reschedule the IEP meeting significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student because the parent was not present to participate. 34 § 300.513(a)(2), 20 U.S.C. § 1415(f)(E), and resulted in a denial of FAPE.

Issue number (1) is whether DCPS denied the Student a FAPE by failing to convene a proper MDT/IEP meeting when the progress Monitor and her supervisor were the only participants at the IEP meeting held on January 23, 2012.

Pursuant to 34 C.F.R. § 300.321 the public agency must ensure that the IEP Team for each child with a disability includes—(1) The parents of the child; (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; (4) A representative of the public agency who—(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) Whenever appropriate, the child with a disability.

As indicated above, DCPS went forward with the IEP meeting on January 23, 2012, without the parent and without the staff from the Non-Public School because the parent did not appear and the staff at the Non-Public School refused to participate without the parent. The participants at the IEP meeting included the Progress Monitor, her supervisor, a speech and language service provider

and a social worker (Testimony of Progress Monitor). As set forth above, I find that DCPS should not have gone forward with the IEP meeting on January 23, 2012 without the parent. I also find, here, that composition of the MDT was insufficient because it did not include the parent and that this procedural violation resulted in a denial of FAPE to the Student because DCPS' decision to hold the IEP meeting without the parent 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). Nevertheless, I do not find that denial of FAPE based on failure of the staff at the Non-Public School to attend to the IEP because the evidence shows that DPCS invited them to participate in the meeting and they refused (Testimony of Progress Monitor and Director).

Issue (3) and (4):

Whether DCPS denied the Student a FAPE by failing to develop an appropriate IEP that is reasonably calculated to provide the Student FAPE when they failed to developed post secondary goals based on a vocational assessment and whether DCPS denied the Student a FAPE by failing to conduct an appropriate "Transition Assessment" and/or a vocational evaluation as required by the IDEA.

I find that Petitioner has failed to meet her burden of proof with respect to issues number (3) and (4).

C.F.R. § 300.43 (a) entitled "Transition services"(a) means a coordinated set of activities for a child with a disability that— (1) Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—(i) Instruction; (ii) Related services; (iii) Community experiences; (iv) The development of employment and other post-school adult living objectives; and (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. (b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (Authority: 20 U.S.C. 1401(34)).

Transition assessments and the development of post secondary goals for the Student is required to be on the Student's IEP "beginning not later than the first IEP to be in effect when the child turns 16...(20 U.S.C. 1414(d)(1)(A)).

Here, the evidence shows that at the time the subject IEP was developed, the Student had just turned 15 years old. As such, DCPS was not required to conduct a "transition assessment" or developed post secondary goals for the Student (20 U.S.C. 1414(d)(1)(A)). Nevertheless, the evidence shows that the Non-Public School administered a vocational assessment to the Student, via interview, in December 2011 (Testimony of Director) and that the Director of the Non-Public School, who was Petitioner's witness, confirmed that vocational assessment administered to the Student was appropriate (Testimony of Director). Further, the vocational assessment indicated that the Student "would like to attend college and study film or graphic design" (Exhibit P-7, page 13), which the Student confirmed at the hearing (Testimony of the Student). Accordingly, I find that the Student was not denied a FAPE based on DCPS failure to conduct a "transition assessment" and develop postsecondary goals.

Issue number (5):

Whether DCPS denied the Student a FAPE by failing to implement the Student's IEP when DCPS terminated the Student's bus transportation on January 25, 2012.

In Houston Independent School District v. Bobby R., 200 F.3d 341, 349 (5th Cir. 2000). *See*, Catalan ex rel. E.C. v. District of Columbia, 478 F. Supp 2d 73, 75 (D.D.C. 2007), *aff'd sub nom. E.C. v. District of Columbia*, No. 07-7070 (D.C. Cir. Sept. 11, 2007). The *Bobby R.* court wrote:

[A] party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit.

Bobby R., 200 F.3d at 349.

The D.C. Circuit has noted that, because the IDEA defines "free appropriate public education" to mean special educational services that are, inter alia, "provided in conformity with" a student's IEP, 20 U.S.C. § 1401(9)(D), a "complete failure" to implement a student's IEP is "undoubtedly" a denial of an appropriate education under the IDEA. *Abney ex rel. Kantor v. District of Columbia*, 849 F.2d 1492, 1496 n.3 (D.C. Cir. 1988). The IDEA is violated when a school district deviates materially from a student's IEP. *See Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) ("[A] material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to

a disabled child and the services required by the child's IEP."); accord S.S. ex rel. Shank v. Howard Road Acad., 585 F. Supp 2d 56, 68 (D.D.C. 2008); Catalan, 478 F. Supp. 2d at 75.

Here, it is undisputed that the Student's IEP provided for bus transportation as a related service (Exhibit P-7). The evidence is also undisputed that DCPS terminated the Student's bus service to the Non-Public School on January 25, 2012. However, the evidence shows that DCPS provided bus service to DCPS' proposed location of services when they issued the PWN for the new location of services (Testimony of Progress Monitor, Director and Student). Accordingly, I find that the evidence does not support a finding of a denial of FAPE because the Student's bus service was terminated to the Non-Public School because DCPS had issued a PWN for a new location of service. As such, there was not a "material failure" in implementing the Student's IEP.⁴ Accordingly, I find that Petitioner has failed to meet her burden of proof with respect to this issue.

Issue (6):

Whether DCPS denied the Student a FAPE by failing to determine a proper placement for the Student at the MDT/IEP meeting held on January 23, 2012 when they recommended that the Student's IEP be implemented at a new Program located in a self contained classroom within a DCPS general education High School.

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 proof of demonstrating that the Student was denied a FAPE when DCPS changed the Student's location of services from the Non-Public School to a self-contained class in a DCPS High School.

First, the evidence shows that DCPS changed the Student's academic program from direct instruction throughout the day to instruction that utilizes a computer program (A-Plus) for all of the Student's core academic subjects (Testimony of Progress

⁴ This could have been an issue under Pendency. However, it was not raised by Petitioner.

Monitor). Although the Progress Monitor testified that she believed the computer program is appropriate for the Student, and that the computer program is used less than half of the school day, the evidence shows that all of the Student's Carnegies Units are earned through the A-Plus program, which means that it is more than likely that the Student would utilize the A-Plus for the majority of the school day. Additionally, the evidence shows that DCPS did not make any assessment as to whether the A-Plus program was appropriate for this Student prior to recommending this program for the Student. Significantly, the Student's IEP calls for direct instruction throughout the day. As such, I find that DCPS' decision to change the Student's location of services was actually a change in placement because the new program is mainly provided through a computer program. Additionally, the Student, who is 15 years old, testified that he would not be able to learn from a computer program and that he needs direct instruction from his teachers in order to obtain an educational benefit (Testimony of Student).

Further, and contrary to the testimony of the DCPS Progress Monitor, the A-Plus program is designed for Students classified with an emotional disturbance (Testimony of Advocate, Exhibit). The evidence shows that the Student is classified with a SLD and that he has no behavioral issues in the classroom (Testimony of Director). The evidence also shows that the Student is vulnerable, socially, and that he has been bullied in the past (Testimony of Parent). Accordingly, I find that these facts support of finding of a denial of FAPE because DCPS' decision to place the student in the A-Plus program was not simply a change in the location of services, but a change in placement as this decision would significantly change the child's learning experience.

Issue (7):

Whether DCPS denied the Student a FAPE by failing to comply with the Settlement Agreement dated October 22, 2010, which was a violation of Blackman/Jones, when DCPS changed the Student's location of services from the Non-Public School to the Program located in a self contained classroom within a DCPS general education High School.

I find that petitioner has failed to meet her burden of proof with respect to this issue because nothing in the SA indicates that the Student would remain at the Non-Public School until he graduated high school (Exhibit R-6). Although this may have been Petitioner's desire, the SA on its face does not support such a finding in the parent's favor.

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 during the current 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). Nevertheless, Petitioner failed to present any evidence in support of an award of compensatory education services. Additionally, although it is undisputed that the Student's bus service was interrupted, the evidence shows that the Student went to school every day and otherwise received all of the services on his IEP. As such, based on these facts, the evidence does not support an award of compensatory education services.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 16th day of April, 2012, it is hereby

ORDERED, that DCPS shall continue to fund the Student's placement at the Non-Public School, with transportation, for the remained of the 2011-2012 school year;

ORDERED, that DCPS shall convene an IEP meeting within 20 school days of the date of this decision to develop an appropriate IEP for the Student with the participation of the parent and the staff at the Non-Public School.

Dated April 16, 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).