

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

OSSE
STUDENT HEARING OFFICE
2012 APR -2 AM 8:34

PETITIONER,
on behalf of STUDENT,¹

Date Issued: March 30, 2012

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by PETITIONER (the "Petitioner" or "Mother"), under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint, Petitioner alleges that DCPS denied Student a free appropriate public education ("FAPE") by failure to conduct timely special education eligibility reevaluations and by failure

¹ Personal identification information is provided in Appendix A.

to provide the Specialized Instruction and related services specified in Student's Individualized Education Programs ("IEP").

Student, an AGE boy, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on January 19, 2012, named, as respondents, the D.C. Office of the State Superintendent of Education ("OSSE") and DCPS. This case was initially assigned to Hearing Officer Gary L. Lieber. On February 15, 2012, Hearing Officer Lieber granted OSSE's motion to be dismissed as a party respondent. The parties met for a resolution session on February 2, 2012, but did not come to an agreement. The 45-day timeline for issuance of this HOD began on February 19, 2012. On February 16, 2012, Hearing Officer Lieber convened a prehearing telephone conference with counsel for Petitioner and counsel for DCPS to discuss the hearing date, issues to be determined and other matters. The case was reassigned to undersigned Hearing Officer on February 22, 2012.

The due process hearing was held before the undersigned Impartial Hearing Officer on March 15 and March 23, 2012 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS COUNSEL and by SPED COORDINATOR.

The Petitioner testified and called, as witnesses, FORMER TEACHER and EARLY INTERVENTION SPECIALIST. DCPS called, as witnesses, SOCIAL WORKER, OCCUPATIONAL THERAPY ("OT") ASSISTANT, SPEECH LANGUAGE ("S/L") PATHOLOGIST, SPED TEACHER, FORMER SPED COORDINATOR, SPED COORDINATOR and OCCUPATIONAL THERAPIST. Petitioner's Exhibits, P-1 through P-10, P-12 and P-13, were admitted into evidence without objection. Petitioner's Exhibit P-11 was

not introduced. DCPS' Exhibits R-1 through R-38 and R 40 (Resumes of S/L Pathologist, SPED Teacher, Social Worker and Occupational Therapist) were admitted into evidence without objection. Exhibit R-39 was not introduced.

At request of Petitioner's Counsel, counsel for both parties elected to file post hearing memoranda in lieu of making closing arguments. Briefs were received from both parties on March 28, 2012.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

- WHETHER DCPS DENIED STUDENT A FAPE BY FAILING TO CONDUCT AN ANNUAL OR TRIENNIAL EVALUATION;
- WHETHER DCPS DENIED STUDENT A FAPE BY NOT PROVIDING SPECIALIZED INSTRUCTION IN ALL ACADEMIC AREAS; AND
- WHETHER DCPS DENIED STUDENT A FAPE BY NOT PROVIDING RELATED SERVICES, INCLUDING SPEECH, OCCUPATIONAL, SOCIAL AND EMOTIONAL SERVICES.²

For relief, Petitioner seeks an order for DCPS to fund an independent educational reevaluation of Student to include psychological, occupational therapy ("O/T") and S/L components and to revise and update Student's IEP as needed after the evaluations are completed. Petitioner also seeks an award of compensatory education, to compensate Student

² The issues are stated as set forth in Hearing Officer Lieber's February 21, 2012 Prehearing Order. In her Due Process Complaint Notice, Petitioner alleged that for the past two years, Specialized Instruction and OT services have not been provided to Student. Petitioner also alleges that although Student did receive some social emotional services, "the school just informed the parent the social emotional services would be removed. The school did not conduct any evaluation to show that [Student] no longer needs social emotional services." Exhibit P-1, p. 3.

for Specialized Instruction and related services not provided over the two years preceding the filing of Petitioner's complaint.

FINDINGS OF FACT

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

1. Student is an AGE resident of the District of Columbia, where he lives with his mother. Testimony of Mother.

2. Student attends CITY ELEMENTARY SCHOOL ("CES"), where he is in the GRADE. Testimony of Mother.

3. In May 2009, when Student was attending DAY CARE CENTER, he was referred for initial evaluation for special education eligibility by Mother. D.C. Early Stages (Screenings, Transition, Assessments, Goals, Evaluations and Services) of the Office of Special Education conducted a S/L Assessment (June 2009), a Psychological Evaluation (July 2009) and a Comprehensive Developmental Evaluation (October 2009). Exhibits P-8, P-9, P-10 and P-13.

4. At a Multi-Disciplinary Team ("MDT") meeting at Early Stages on January 21, 2010, Student was found to meet all of the criteria for the disability, Developmental Delay ("DD"). Exhibit R-4.

5. Student's IEP team met on January 22, 2010 and determined that Student would receive 5 hours per week of Specialized Instruction in the general education setting, 20 minutes per week of Behavioral Support Services in the general education setting, 60 minutes per week of S/L pathology outside of general education and 45 minutes per week of OT outside of general education. Exhibit R-6. Mother attended the January 22, 2010 IEP meeting. She signed the IEP to affirm that she agreed with its contents and consented to implementation of services for

Student. Id., Testimony of Mother.

6. Student's IEP team met again at CES on October 18, 2010 to update and revise Student's IEP. Specialized Instruction and Related Services were continued at the same level as in the prior January 22, 2010 IEP. Mother attended that October 18, 2010 IEP meeting. She signed the IEP to affirm that she agreed with its contents and consented to implementation of services for Student. Exhibit R-13, Testimony of Mother.

7. SOCIAL WORKER 2 provided Behavioral Support Services to Student for the 2010-2011 school year. On March 9, 2011, at an MDT meeting which Mother attended, Social Worker 2 reported that Student was exhibiting no social emotional difficulties or behavioral challenges in the classroom setting and that he had mastered all social, emotional and developmental goals in his 2010-2011 IEP. The MDT Team concluded that Student had mastered all of his behavioral support goals effective 1/21/2011. Social Worker 2 reported that Mother was in agreement that Student was no longer in need of, or eligible for, Behavioral Support Services. All participants at the meeting, including Mother, executed March 9, 2011 meeting report to indicate that the report reflected their conclusions regarding Student and their agreement with the eligibility decision. Exhibit R-17, R-22, R-26. No attendee at the meeting expressed disagreement with the team's determination to end Behavioral Support Services.

Testimony of S/L Pathologist.

8. Student's IEP team met again at CES on April 6, 2011 to update and revise Student's IEP. Specialized Instruction was continued at 5 hours per week in the general education setting. S/L services were changed to 4 hours per month outside general education. OT services were reduced to 30 minutes per week outside general education. The April 6, 2011 IEP contains no social, emotional, behavioral goals and discontinued Behavioral Support

Services. Mother attended the April 6, 2011 IEP meeting. She signed the IEP to affirm that she agreed with its contents and consented to implementation of services for Student. Exhibit R-13, Testimony of Mother.

9. In January 2010, Mother enrolled Student in Pre-Kindergarten at CES, where Student is currently a student. From January to June 2010, Student was in 2010 TEACHER's regular education classroom. Testimony of Mother.

10. For the 2010-2011 school year, Student was in Former Teacher's regular education classroom. From August 2011 to the hearing date, Student has been placed in 2011-2012 TEACHER's regular education classroom. Testimony of Mother.

11. Social Worker provided Behavioral Support Services to Student beginning February 22, 2010 through the end of that school year. Social Worker provided all Behavioral Support Services specified in Student's January 22, 2010 IEP. Testimony of Social Worker.

12. S/L Pathologist has provide S/L services to Student since February 2010. Exhibits R-9, R-11, R-15, R-17, R-19, R-21, R-25, R-32, R-34, R-36, Testimony of S/L Pathologist. Student has been provided the hours of S/L services specified in Student's IEPs and he has made steady progress on his IEP S/L goals. Testimony of S/L Pathologist.

13. From May 2010 to the end of the 2010-2011 school year, Occupational Therapist provided Student's OT services. During that period, Student has received the hours of OT related services specified in his IEPs. Testimony of Occupational Therapist; Exhibits R-11, R-17, R-19. Beginning October 2011 through the date of the hearing, OT Assistant provided OT services to Student, under Occupational Therapist's supervision. OT Assistant made up the OT hours missed by Student from the beginning of the 2011-2012 school year until OT Assistant

started in October 2011. Testimony of OT Assistant, Exhibits R-21, R-32, R-36 and R-38.

Student is progressing on his IEP OT goals. Testimony of OT Assistant.

14. Since Student first enrolled at CES in 2010, SPED Teacher has been Student's case manager. Testimony of SPED Teacher. When Student was assigned to 2010 Teacher's classroom, SPED Teacher worked with Student daily in the general education setting.

Testimony of SPED Teacher.

15. During the 2010-2011 school year, Former Teacher did not allow SPED Teacher to come in her classroom because of a lack of rapport between the two teachers. During that school year, SPED Teacher provided Specialized Instruction services to student exclusively on a pull-out basis, outside of the general education setting. SPED Teacher informed the CES principal and special education coordinator that she was not allowed to enter Former Teacher's classroom to provide services, but nothing was done about the situation. Testimony of SPED Teacher.

16. There was conflicting evidence on how many hours of services SPED Teacher provided Student during the 2010-2011 school year. Former Teacher testified that she kept personal records of whenever Students were pulled out of her classroom for services. Former Teacher testified from memory – not from her records – that SPED Teacher started providing Specialized Instruction services to Student in November 2010 and provided only 4½ to 6 hours of services per month for the rest of the school year. Testimony of Former Teacher. SPED Teacher testified that during the 2010-2011 school year, she provided the number of hours of Specialized Instruction specified in Student's IEP, but also testified that she would typically only provide 40 minutes of services per day and that she did not make up time she had to miss to attend IEP meetings. Testimony of SPED Teacher. I find Former Teacher's testimony to be

more credible than the testimony of SPED Teacher. Former Teacher was confident in her testimony and DCPS adduced no reason for her to have misrepresented the facts. SPED Teacher's testimony was, at times, inconsistent. Moreover, if Former Teacher had prevented SPED Teacher from providing the services specified in Student's IEP, it would be expected that SPED Teacher would have made a written record of Former Teacher's interference. No such record was introduced. I make the factual finding, based upon Former Teacher's testimony, that in the 2010-2011 school year, SPED Teacher started providing Specialized Instruction services to Student in November 2010 and provided services for only 4½ to 6 hours per month for the rest of the school year.

17. SPED Teacher provided inconsistent testimony on her provision of Specialized Instruction in the current 2011-2012 school year. In her testimony on direct examination, SPED Teacher testified that she has had a positive experience working with 2011-2012 Teacher and works with Student in the general education classroom. However on redirect, she testified that she instructs Student between 1:10 p.m. and 2:10 p.m. in her pull-out classroom. Testimony of SPED Teacher.

18. Mother testified that at the April 6, 2011 IEP meeting, she requested that Student be reevaluated to determine his special education needs. Mother stated that she was told that Student would not be reevaluated again until 2013. Testimony of Mother. SPED Teacher did not recall Mother's asking for additional evaluations at the April 2011 IEP meeting. Testimony of SPED Coordinator. At the March 9, 2011 MDT eligibility review meeting, all of the attendees, including Mother, agreed with the team's eligibility decision that Student no longer was eligible for Behavioral Support Services -- but that he continued to need 5 hours per week of

Specialized Instruction³, 4 hours per month of S/L Pathology and 30 minutes per week of OT.

Exhibit R-26.

CONCLUSIONS OF LAW

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

DISCUSSION

In this case, the issues were limited in the Prehearing Order to the following: Whether DCPS failed to conduct an annual or triennial evaluation; whether DCPS failed to provide Specialized Instruction in all academic areas; and whether DCPS failed to provide Student the S/L, OT and Behavioral Support services specified in Student's IEPs. To the extent that Petitioner now seeks relief for other alleged denials of FAPE, those additional issues are barred by the Prehearing Order and will not be considered. *See* Prehearing Order, ¶ 9.⁴

Burden of Proof

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

³ The Analysis of Existing Data report, Exhibit R-26, states that Student's "Current Special Education and Related Services" included 15 hours per week of Specialized Instruction in the general education setting. I conclude that this was a typographical error because all of Student's IEPs provide only 5 hours of Specialized Instruction. *See* Exhibits R-6, R-13, and R-31.

⁴ *See, e.g.*, Petitioner's Closing Argument memorandum, wherein Petitioner seeks a determination that DCPS denied Student a FAPE by failing to provide him with an appropriate IEP. *Petitioner's Closing Argument*, p. 3.

Analysis

1. DID DCPS DENY STUDENT A FAPE BY FAILING TO CONDUCT AN ANNUAL OR TRIENNIAL EVALUATION?

U.S. Department of Education regulations, 34 CFR § 300.303(b)(2), consistent with § 614(a)(2)(B)(ii) of the IDEA, require a reevaluation of a child with a disability to occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. If a parent requests a reevaluation and the local education agency (“LEA”) disagrees that a reevaluation is needed, the LEA must provide prior written notice to the parent, consistent with 34 CFR § 300.503, that explains, among other things, why the agency refuses to conduct the reevaluation and the parent’s right to contest the agency’s decision through mediation or a due process hearing. *See* Office of Special Education and Rehabilitative Services, Department of Education, *Analysis of Comments and Changes*, 71 Fed. Reg. 46640 (2006).

In the present case, the initial eligibility evaluation of Student was completed, and Student was found eligible as a child with a DD disability, in January 2010. Mother testified at the due process hearing that she requested a reevaluation at the April 6, 2011 IEP meeting. According to her testimony, Mother was told that Student would not be reevaluated again until 2013. The IDEA would not normally have required Student’s reevaluation until 2013. However, if Mother did in fact request a reevaluation in April 2011, DCPS was obliged, under 34 CFR § 300.303(b)(2), to either conduct the requested reevaluation or issue a prior written notice that explained its refusal. DCPS denies that Mother requested a reevaluation at the April 2011 IEP meeting and I find that the evidence does not establish that Mother made the request. At the March 9, 2011 MDT eligibility review meeting, less than a month before the IEP meeting, all of the attendees, including Mother, agreed with the team’s eligibility decision that Student

was no longer eligible for Behavioral Support Services -- but continued to need Specialized Instruction, S/L Pathology and OT services. SPED Teacher did not recall Mother asking for additional evaluations at the April 2011 IEP meeting. Mother signed the April 6, 2011 IEP to affirm she agreed with the IEP contents. Finally, while Petitioner's Due Process Complaint Notice complains about DCPS' "failing to conduct a tri-annual or annual evaluations" [*sic*] it does not allege that Mother requested a reevaluation in April 2011 or at any other time.

Petitioner has not met her burden of proof on this issue.

2. DID DCPS DENY STUDENT A FAPE BY NOT PROVIDING SPECIALIZED INSTRUCTION IN ALL ACADEMIC AREAS?

Petitioner contends that DCPS failed to implement Student's 2010 and 2011 IEPs by failing to provide the Specialized Instruction and Related Services specified in the IEPs. In *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), U.S. District Judge Kennedy followed the standard for failure-to-implement claims articulated by the Fifth Circuit in *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 348-49 (5th Cir.2000). In *Bobby R.*, the court wrote:

[T]o prevail on a claim under the IDEA, 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. Thus, a court reviewing failure-to-implement claims under IDEA must ascertain whether the aspects of the IEP that were not followed were "substantial or significant," or, in other words, whether the deviations from the IEP's stated requirements were "material."

Catalan, *supra* 478 F.Supp.2nd at 75.

Student's 2010 and 2011 IEP's required that he be provided 5 hours per week of

Specialized Instruction in the general education setting. Petitioner's evidence is not sufficient to overcome SPED Teacher's testimony that from January to June 2010, she provided Specialized Instruction to Student, as required by his January 22, 2010 IEP, and that she has provided 5 hours per week of Specialized Instruction services to Student in the current school year. With regard to the 2010-2011 school year, in my above Findings of Fact, I have made a finding that SPED Teacher only started providing Specialized Instruction services to Student in November 2010 and provided services for only 4½ to 6 hours of services per month for the rest of the 2010-2011 school year. DCPS' failure to provide Specialized Instruction to Student for the first months of the school year, failure to provide the required 5 hours per week of services and its failure to provide those services in the least restrictive general education environment,⁵ were a material deviation from Student IEPs. I also find, from SPED Teacher's testimony, that during the present school year, she has continued to provide Specialized Instruction to Student in her pull-out classroom, and not in the general education setting as specified in Student's IEP. By failing to provide all of the Specialized Instruction services required by Student's IEPs, DCPS denied Student a FAPE. Petitioner prevails on this issue.

3. HAS DCPS DENIED STUDENT A FAPE BY NOT PROVIDING RELATED SERVICES, INCLUDING SPEECH, OCCUPATIONAL, SOCIAL AND EMOTIONAL SERVICES SPECIFIED IN HIS IEP?

Petitioner contends that DCPS also failed to implement Student's January 22, 2010 IEP, October 18, 2010 IEP and April 6, 2011 IEP by not providing the related services specified by the IEP teams. Petitioner has not met her burden of proof on this claim.

⁵ "The IDEA requires school districts to place disabled children in the least restrictive environment possible." *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) (citing 20 U.S.C. § 1412(a)(5); 34 C.F.R. 300.550; D.C. Mun. Regs. tit. 5, § 3011 (2006)).

Student's IEPs included the following provisions for related services:

	<u>Behavioral Support</u>	<u>Speech-Language</u>	<u>Occupational Therapy</u>
Jan. 22, 2010 IEP:	20 min. per week	60 min. per week	45 min. per week
Oct. 18, 2010 IEP:	20 min. per week	60 min. per week	45 min. per week
Apr. 6, 2011 IEP:		4 hours per month	30 min. per week

At the due process hearing, Student's S/L and OT related services providers testified that they had provided the hours of services specified in Student's IEPs. Social Worker testified that he had provided behavioral support services, as required by Student's IEP for the spring 2010 school term. DCPS exhibits show that for the 2010-2011 school year, Social Worker 2 provided services to Student on a weekly basis and that Student mastered all of his IEP Emotional, Social and Behavioral Development goals. I find that the evidence does not establish that DCPS failed to implement the related services provisions in Student's 2010 and 2011 IEPs. DCPS prevails on this issue.⁶

REMEDY

In this decision, I have found that DCPS has denied Student a FAPE by not fully implementing the IEP requirement to provide 5 hours per week of Specialized Instruction in the General Education setting. I found that during the 2010-2011 school year, SPED Teacher only provided some 4½ to 6 hours per month of Specialized Instruction and that, in both the 2010-2011 and 2011-2012 school years, she provided the services on a pull-out basis, instead of in Student's regular education classroom. In her complaint for due process, Petitioner requested an award of compensatory education as a remedy for DCPS' denial of FAPE to Student. The IDEA

⁶ To the extent that Petitioner claims, as a separate issue, that Student was denied a FAPE by the April 6, 2011 IEP team's decision that Student no longer needed Behavioral Support services, that issue was not identified in the Prehearing Order and I do not reach it in this determination.

gives courts “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See, e.g., Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir. 2005). The award must “provide the educational benefits that likely would have accrued from special education services” that the school district “should have supplied in the first place.” *Id.* at 524. A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. District of Columbia*, 680 F.Supp.2d 201, 206 (D.D.C. 2010), quoting *Anthony*, *supra*, 463 F.Supp.2d at 44; *Reid*, *supra*, 401 F.3d at 527.

At the two-day hearing in this case, Petitioner produced little or no evidence upon which to craft an award of compensatory education. Notably Petitioner offered no evidence of what additional further education benefits would likely have accrued to Student if he had received the Specialized Instruction specified in his IEP, or if the services had been provided in the general education classroom instead of in SPED teacher’s classroom. In her post hearing brief, Petitioner contends that Student should be provided “a full time summer intervention at Lab School” as a compensatory remedy. However, Petitioner does not explain how this remedy would compensate appropriately for DCPS’ failure, mainly, in the 2010-2011 school year, to fully implement Student’s Specialized Instruction service plan. *See Gill v. District of Columbia*, 751 F.Supp.2d 104, 112 (D.D.C. 2010) (Plaintiff’s burden to give some reasoning why their request would ameliorate the denial of FAPE.) *See, also A.T. v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C.2005) (observing that “it may be conceivable that no compensatory education is required for the denial of FAPE”). In the absence of such evidence, I am unable to

make findings upon which to craft a compensatory education award.⁷

Summary

In summary, I have found that DCPS violated the IDEA and denied Student a FAPE by not fully implementing the Specialized Instruction requirements of Student's April 19, 2010 and April 6, 2011 IEPs. Petitioner has not met her burden of proof to establish that DCPS also denied Student a FAPE by not conducting timely reevaluations or by not providing the related services specified in Student's IEPs.

⁷ In theory, a Hearing Officer may receive additional evidence on what would be an appropriate compensatory education remedy. *Cf. A.G. v. District of Columbia*, 794 F.Supp.2d 133,140 (D.D.C. 2011) ("In light of the 'case-specific flexibility' inherent in fashioning an equitable remedy, *Reid*, 401 F.3d at 524, the Court will grant plaintiffs' motion to submit the additional evidence regarding costs they incurred for wrap-around services."); *Walker v. District of Columbia*, 86 F.Supp.2d 232, 239 (D.D.C. 2011) ("Once a student has established a denial of the education guaranteed by the IDEA, the Court or the hearing officer must undertake 'a fact-specific exercise of discretion' designed to identify those services that will compensate the student for that denial.") However, under the D.C. Municipal Regulations, I am constrained to issue my Hearing Officer Determination ("HOD") no later than April 3, 2012. *See* D.C. Regs. tit. 5-E, § 3030.11. An HOD is a final decision and claims may not be held "in abeyance." *See* 34 CFR § 300.514(a). My denial of Petitioner's compensatory education request will be without prejudice. I encourage, but do not order, the parties to implement a plan, by a voluntary agreement, to compensate Student for DCPS' failure in the 2010-2011 and current school years to provide Specialized Instruction services in the amount and setting specified in Student's IEPs.

ORDER

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

1. Having found that DCPS denied Student a FAPE by not fully providing the 5 hours per week of Specialized Instruction services specified in the April 19, 2010 and April 6, 2011 IEPs, but that Petitioner has failed to provide evidence upon which to craft an equitable award, Petitioner's request for an award of compensatory education is denied without prejudice;
2. DCPS shall ensure that, henceforth, all of Student's Specialized Instruction is provided in the General Education setting as required in his IEP; and
3. All other relief requested by Petitioner herein is denied.

Date: March 30, 2012

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

NOTICE OF RIGHT TO APPEAL

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