

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

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

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. Introduction and Procedural Background

This is a due process proceeding brought in accordance with the Individuals with Disability Education Act of 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 “Student,” a year-old boy classified as a student with a disability who attends the grade at a Middle School in the District of Columbia. On February 27, 2012,² Petitioner filed a Due Process Complaint (“DPC”) against DCPS alleging violations of the IDEA. Respondent did not challenged the sufficiency of the DPC. Respondent also did not file a Response to the DPC. The Resolution session was held on March 2, 2011. The parties did not resolve the issues raised in the DPC. The case was initially entered as a non-discipline matter, but was changed by the HO upon review of the DPC to an expedited discipline case. The Hearing Period ended on March 27, 2012 and the HOD is due on April 19, 2012.

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

² The case was initially filed on February 10, 2012 then withdrawn and refilled filed on 2/27/12.

The Prehearing Conference (PHC) was held on February 28, 2012. Counsel for Petitioner and counsel for DCPS participated. At the time of the PHC, Respondent's Response was not yet due, although it was anticipated that Respondent would file its Response shortly thereafter. Respondent failed to do so. At the impartial hearing, Petitioner objected to Respondent's failure to file a Response to the DPC, but failed to file a motion prior to the hearing date as per the PHC Order.

It was agreed that the Due Process Hearing (DPH) would be held on March 26, 2012 and March 27, 2012 and that the disclosures would be filed by March 19, 2012. The Hearing concluded on March 27, 2012. The disclosures were filed as agreed on March 19, 2012. Petitioner's Exhibits 1-32 were admitted into evidence. Respondent's Exhibits 1-20 were also admitted into evidence.³

The following witnesses testified on behalf of the Petitioner: Parent, Student, Advocate, Wrap Around Coordinator (Coordinator), Tutor and Principal of Non-Public School.

The following witnesses testified on behalf of the Respondent: DCPS Principal, SEC and Teacher.

II JURISDICTION

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

III. ISSUES PRESENTED

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

1. Whether DCPS denied the Student a FAPE by failing to evaluate him in all areas of suspected disability when they believed the Student was Emotionally Disturbed (ED);

2. Whether DCPS denied the Student a FAPE by failing to evaluate the Student as per the Parent's request in June 2011 and October 2011;

³ A list of all Exhibits entered into evidence is annexed hereto at Appendix "B"

3. Whether DCPS denied the Student a FAPE by failing to increase the Student's hours of special education services on the Student's IEP in October 2011;

4. Whether DCPS denied the Student a FAPE by failing to implement the Student's IEP during the 2011-2012 school year with respect to the Student's hours of specialized instruction and behavior supports;

5. Whether DCPS denied the Student a FAPE by failing to follow proper procedures when suspending the Student for more than 10 days:

a. Whether DCPS denied the Student a FAPE by failing to find the Student's behavior was a manifestation of his disability on September 19, 2011 when they were aware that they were not implementing the Student's IEP;

b. Whether DCPS denied the Student a FAPE when they found the Student's behavior to be a manifestation of his disability on October 21, 2011, but continued to fail to implement the Student's IEP;

c. Whether DCPS denied the Student a FAPE by failing to find the Student's behavior was a manifestation of his disability on January 6, 2012;

d. Whether DCPS denied the Student a FAPE by failing to find the Student's behavior was a manifestation of his disability on January 31, 2012;

6. Whether DCPS denied the Student a FAPE by failing to offer the Student an appropriate placement;

Petitioner requests an Order directing DCPS to fund the Student's placement at a full time special education program at the Non-Public School and to fund an independent comprehensive psychological evaluation⁴ and to revise the Student's IEP to reflect full time special education services. Petitioner also seeks compensatory education services in the form of summer reading services at Lindamood Bell, which is a private remedial reading program.

IV. FINDINGS OF FACT

⁴ Prior to the hearing date, DCPS issued an IEE for an independent comprehensive psychological evaluation (Petitioner's counsel).

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 as a student with a Specific Learning Disability (SLD). The Student enrolled at in the 6th grade at subject DCPS Middle School in August 2011 (Exhibit P-1).

The Student's IEP, dated October 19, 2010, provides for 60 minutes of specialized instruction in math, reading and written expression, per day, outside the general education setting and 30 minutes per week of behavioral supports (Exhibit P-9).

Upon entering the DCPS Middle School in August 2011, the Student was disciplined on August 23rd, 29th, 30th as well as September 6th and 15th for disrespectful communications with his teachers and for hitting another Student, among other reasons (Exhibit P-1). The Student was suspended for these infractions for more than 10 days during the month of September 2011 (Exhibit P-5). On September 19, 2011, the Student was suspended for 5 days for fighting with another Student (Exhibit P-5).

DCPS held a Manifestation Determination Review meeting on September 19, 2011 and determined that the Student's conduct was not related to his disability and that it was not the direct result of DCPS' failure to implement the Student's IEP (Exhibit P-11).

During the month of October 2011, the Student was suspended on multiple occasions for various infractions that included disruptive behavior and hitting other students (Testimony of Advocate, Exhibit P-21). On October 10, 2011, the Student was suspended for 10 days for "disruption on school property" (Exhibit P-21).

On October 21, 2011, the school convened an MDR meeting and determined that the Student's conduct on October 7, 2011 was a manifestation of his disability because the school acknowledged that they were not implementing the Student's IEP (Testimony of DCPS Principal). The MDR team also reversed their prior finding in September 2011, where they found that Student's conduct was not related to his disability, to a finding that it was, because the team acknowledged that they had failed to implement the Student's IEP in August and September 2011 with respect to the Student's specialized instruction in math (Exhibit P-21, page 9).

Additionally, during this meeting, the team acknowledged that the Student's Functional Behavioral Assessment (FBA) indicated the need for

additional assessments to determine the appropriate needs for the Student. The team also acknowledged that the Student had mental health issues that were undiagnosed and that another disability was suspected (Exhibit P-21). As of the date of the impartial hearing, DCPS had not conducted any additional evaluations of the Student to rule out and/or to confirm another disability classification (Testimony of Advocate).

The Student failed math, English and science at the end of the fall semester in 2011 (Exhibit 6).

The Student has significant behavior issues and delays in reading (GE 1.7), math (GE 3.2), written expression GE 1.5) (Exhibit P-11, Exhibit P-31). The Student is functioning 5 years below his grade level and the Student has not had any academic success during Middle School (Exhibit P-11, page 6). The Student's low level of academic performance prevents him from being successful in the general education setting (Exhibit P-11, page 6)

From August 2011 thru December 2012, the Student did not receive his specialized instruction in math as per his IEP dated October 19, 2010 (Exhibit P-9). The Middle School employs one special education teacher who provided the Student with his specialized instruction in reading and writing (Testimony of Teacher). In December 2011, the Middle School began providing the Student with specialized instruction in math (Testimony of DCPS Principal).

The Student's FBA indicates that the Student's low level of academic performance causes him to become easily frustrated and overwhelmed, which leads to inappropriate behaviors in order to escape and avoid doing his class work. The Student's behaviors impeded his educational progress and interferes with his social interactions, *inter alia* (Exhibit P-11).

On October 7, 2011, the Multidisciplinary Team (MDT) convened an IEP meeting for the Student. The MDT reviewed the Student's Behavioral Intervention Plan (BIP) and FBA. The Advocate advised that the Student required a full-time, out of general education IEP (Exhibit P-14). The MDT, however, created a draft IEP that did not include the full-time special education services, however, the team agreed to discuss this issue again at an IEP meeting that was to be held later in the month (Exhibit P-12, Exhibit P-14).

On October 21, 2011 the DCPS held another meeting wherein they reviewed the FBA and developed a draft BIP (Exhibit P-20, Exhibit P-20).

The DCPS Principal, Teacher, the SEC for the subject Middle School all agreed that that the Middle School was not an appropriate placement and/or location of services for the Student (Testimony of DCPS Principal, Teacher and

SEC). The Student requires a small, structured class setting and requires a full-time IEP as well as 1:1 instruction (Testimony of Advocate).

In the fall of 2011, the Middle School advised DCPS that the Student required a more restrictive placement (Testimony of DCPS Principal). DCPS did not change the Student's placement and/or location of service (Testimony of Advocate).

The Student's problematic behaviors do not occur in Art, computer or soccer (Exhibit P-21). Educational testing administered to the Student in April 2010, indicated scores in the clinically significant range for learning problems, inattention and hyperactivity (Exhibit P-31).

On December 7, 2011, the Student was suspended for 10 days for "flipping chairs and kicking a door in the classroom" after he learned that his seat in the classroom had been reassigned (Exhibit R-3).

On January 6, 2012, a third MDR meeting was held due to a disciplinary action that was taken against the Student for the infraction that occurred on December 7, 2011. At this meeting, the MDR team determined that the Student's behavior was not a manifestation of his disability (Testimony of DCPS Principal).

On January 26, 2012, the Student was disciplined for not complying with instructions, pushing another student's books to the floor and for pushing the Principal (Exhibit 25). DCPS recommended a 25-day suspension (Exhibit 25).

An MDR meeting was held on January 31, 2012. The MDR team, with the exception of the parent and the Advocate, determined that the Student's behavior was not a manifestation of his disability. During this meeting the SEC indicated that the Student was suspected of having an Emotional Disturbance. The DCPS Principal believed that the Student's non-compliant behavior was the result of the Student not wanting to be at the school anymore and Student's belief that he would be transferred to another school (Exhibit P-25, Testimony of DCPS Principal).

The Student interviewed at the proposed Non-Public School in February 2012. The Non-Public School is approved by OSSE. The program at the Non-Public School includes individualized and 1:1 instruction, behavior management programming, crisis intervention and individual and group therapy (Exhibit P-3). The Non-Public school also provides a summer reading program that is based on a multisensory approach, which is appropriate for the Student (Testimony of Principal at Non-Public School). There are 25 Student's at the Non-Public School, all of whom have IEPs. The Student's at the Non-Public School are

classified as "Other Health Impaired," SLD or ED (Testimony of Principal-Non-Public).

No one from Lindamood Bell testified at the impartial hearing and no documentary evidence was offered with respect to the Lindamood Bell program.

DCPS conceded that the Student required a full-time out of general education IEP (Closing statement of DCPS counsel).

DCPS also agreed that the Student was entitled to compensatory education services (Closing statement of DCPS counsel).

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 has prevailed with respect to issues (1), (2), (3), (4), (5)(c) and (d) and (6). Petitioner has not met her burden of proof with respect to issue (5)(a) and (b).

VII CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses at the due process hearing provided credible testimony. However, I will not credit the testimony of DCPS Principal with respect to her belief that the Student's behavior was the result of the Student's belief that he could change schools and therefore did not have to comply with their rules. The evidence substantially demonstrates that the Student's disruptive behavior was the result of DCPS' failure to adequately identify the Student's special education needs and its failure to provide the Student with the appropriate amount of academic support.

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

Issue (1):

Whether DCPS denied the Student a FAPE by failing to evaluate the Student in all areas of suspected disability when they believed the Student was Emotionally Disturbed (ED).

Pursuant to 34 C.F.R. Section 300.304©(4),(6) and (7):a child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities... In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified...the assessment tools and strategies must provide relevant information that directly assists persons in determining that the educational needs of the child are provided (20 U.S.C. 1414(b)(1)-(3),1412(a)(6)(B)).

Here, the evidence shows that DPCS was aware that the Student had significant social/emotional issues and that DCPS suspected that the Student could possibly classified as ED, as well as SLD. The evidence also shows that DCPS believed that the Student required more services than he was getting under his current IEP. Nevertheless, and despite their documented concerns, DCPS failed to conduct any additional evaluations in order to assess the Student's educational and social/emotional needs and develop an IEP that was tailored to meet the Student's individual needs. Accordingly, based on these facts, I find that DCPS' failure conduct a comprehensive psychological to rule out and/or confirm an ED classification resulted in a substantive denial of FAPE.

Issue (2):

Whether DCPS denied the Student a FAPE by failing to evaluate him as per the Parent's request in June 2011 and October 2011.

A child is evaluated under section 1414 of the IDEA to determine

whether he is a child with a disability and to determine his educational needs. 20 U.S.C. § 1414(a)(1)(B). The educational authorities are directed to "ensure that a reevaluation of each child with a disability is conducted...if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years[.]" *Id.* at § 1414(a)(2)(A). Before a reevaluation may be conducted, the parent must provide consent for the evaluation. 34 C.F.R. 300.300. The IDEA and the implementing regulations are silent about the time frame within which an agency must conduct the reevaluation requested by a parent. In the District of Columbia, a reevaluation should be conducted within a "reasonable period of time" or "without undue delay." Herbin ex rel. Herbin v. District of Columbia, 362 F. Supp. 2d 254, 259 (D.D.C.2005).

In this case, the evidence shows that the Advocate, on behalf of Petitioner, requested that DCPS conduct a comprehensive psychological evaluation of the Student in June and October 2011. The evidence also shows that Petitioner entered into a SA with DCPS in September 2011 (Exhibit R-20), which resolved Petitioner's claims prior thereto (Testimony of Advocate). As such, the issue of Petitioner's request for a reevaluation in June of 2011 is precluded in this case based on the SA Petitioner entered into with DCPS in September 2011. However, the evidence shows that Petitioner also requested a reevaluation in October 2011 and that DCPS' failed to conduct the reevaluation as of the date of the impartial hearing. Although DCPS provided Petitioner with an IEE for a comprehensive psychological evaluation at the resolution session held on March 2, 2012, I find that DCPS failure to conduct any evaluation from October 2011 until March 2012, was an unreasonable delay, particularly since DCPS was aware of the Student's significant behavioral issues at school, which resulted in multiple suspensions for the Student. Accordingly, I find that DCPS' failure to conduct a reevaluation of the Student as per the parent's request in October 2011 resulted in a denial of FAPE.

Issue (3):

Whether DCPS denied the Student a FAPE by failing to increase the hours of special education services on the Student's IEP in October 2011.

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, DCPS conceded that as of October 2011 the Student's IEP, which provided only 15 hours per week of specialized instruction outside the general education setting, was insufficient to meet the Student's needs and that the Student required a full-time IEP in order to receive an educational benefit (Testimony of DCPS Principal, Teacher and SEC). Accordingly, based on these facts, I find that DCPS denied the Student a FAPE by failing to increase the Student's hours of special education services on Student's IEP in October 2011.

Issue (4):

Whether DCPS denied the Student a free and appropriate public education by failing to implement the Student's IEP during the 2011-2012 school year with respect to his hours of specialized instruction and behavior supports.

[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. 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 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). 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).

Here, DCPS conceded that the Student was not receiving any specialized instruction in his math class as per his IEP from August 2011 through December 2011 (Testimony of Principal and Teacher). The evidence also shows that the Student's impulsive behaviors, which led to numerous suspensions, are triggered when the Student is frustrated when presented with academic challenges (Exhibit P-21). As such, I find that DCPS failure to provide any specialized instruction during the Student's math class, as per the Student's IEP, from

August 2011 until December 2011 was more than a *de minimis* failure to implement the Student's IEP and resulted in a denial of FAPE.

Nevertheless, I find that Petitioner failed to demonstrate that the Student was denied a FAPE based on her assertion that the Student was not receiving his behavior supports. The evidence shows that the Student received his counseling services when he was in school. Additionally, with the exception of the testimony of the Student's outside Coordinator, the evidence shows that the Student's BIP was implemented when he was in school (Testimony of SEC and Principal).

Disciplinary Issues:

School personnel may remove a child with a disability who violates a code of student conduct from her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement (34 C.F.R. § 300.530 (b)(1)).

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability (as described below), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities (*Id.* at § 300.530 (c)). However, the local educational agency ("LEA") must provide services to the student so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP (34 C.F.R. §§ 300.530 (a)(2), 300.530 (d)(1)(i)). As appropriate, the LEA also must conduct a functional behavioral assessment of the student and provide the student behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur *Id.* at § 300.530 (d)(iii).

If a LEA decides to make a removal that constitutes a change of placement for a student with a disability because of a violation of a code of student conduct, the LEA must immediately notify the parents of that decision and provide the parents with a procedural safeguards notice (34 C.F.R. § 300.530 (h)). Within 10 school days of any decision by the LEA to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA must also convene a meeting of the manifestation determination review ("MDR") team, which must include the parent and relevant members of the child's IEP team *Id.* at § 300.530 (e). The MDR team must review all relevant

information in the student's file, including the student's IEP, to determine whether the conduct in question was a manifestation of the student's disability *Id.* at § 300.530 (g).

The MDR team must determine whether the conduct in question was: (1) caused by, or had a direct and substantial relationship to the student's disability or (2) was the direct result of the LEA's failure to implement the IEP (*Id.* at § 300.530 (e) (1)). If the MDR team answers either of these questions in the affirmative, the team must find that the conduct in question was a manifestation of the student's disability *Id.* at § 300.530 (e) (2)).

If the MDR team finds that the conduct was a manifestation of the student's disability, the IEP team must either conduct a functional behavioral assessment ("FBA") of the student, unless the LEA had previously conducted an FBA, and implement a behavioral intervention plan ("BIP") *Id.* at § 300.530 (f)(1)(i). If the student already has a BIP in place, the IEP team must review the BIP and modify it as necessary to address the behavior. The IEP team must also return the student to the placement from which the student was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. *Id.* at §§ 300.530 (f)(1)(ii), 300.530 (f)(2).

Issue (5): (a) and (b):

Whether DCPS denied the Student a FAPE by failing to find that the Student's behavior was a manifestation of his disability on September 19, 2011 when they were aware that they were not implementing the Student's IEP at the time and whether DCPS denied the Student a FAPE when they found the Student's behavior to be a manifestation of his disability on October 21, 2011, but continued to fail to implement the Student's IEP;

The evidence shows that DCPS found that the Student's behaviors that led to his suspensions on September 29, 2011 and October 21, 2011, were a manifestation of his disability. As such, these issues are moot. Additionally, as indicated above, I found that DCPS' failure to provide the Student with specialized instruction in his math class as per his IEP from August 2011 to December 2011 was a denial of FAPE. Further, the evidence shows that the Student's FBA was appropriate and that DCPS reviewed the Student's BIP in October 2011.

Issue (5): (c) and (d):

Whether DCPS denied the Student a FAPE by failing to find the Student's behavior was a manifestation of his disability on January 6, 2012 and whether

DCPS denied the Student a FAPE by failing to find the Student's behavior was a manifestation of his disability on January 31, 2012.

Here, the evidence substantially demonstrates that the Student's behaviors that led to his suspensions on January 6th and January 31st 2012 were a manifestation of his disability. As indicated above, the Student's suspensions on these two dates resulted from the Student "flipping chairs and kicking a door in the classroom" (December 7, 2011, Exhibit R-3) and for "not complying with instructions, pushing another student's books to the floor and for pushing the Principal (January 26, 2011, Exhibit 25). Although DCPS was now providing the Student with specialized instruction in his math class, DCPS acknowledged that the Student had mental health problems and that it was likely that the Student required an ED classification in addition to his SLD classification (Exhibit P-25). Additionally, DCPS conceded that the services provided on the Student's IEP were insufficient to meet the Student's needs, yet they did nothing to increase the Student's level of support. Accordingly, I find that there was substantial evidence to support a finding that the Student's behaviors that led to his suspensions on January 6th and January 31st 2012 were a manifestation of his disability and that DCPS failure to make that determination on each of these dates was a denial of FAPE.

6. Whether DCPS denied the Student a FAPE by failing to offer the Student an appropriate placement.

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.

As indicated above, DCPS conceded that the Student's IEP, dated October 19, 2010, which recommended 15 hours per week of specialized instruction outside the general education setting, was insufficient to meet his needs and that the Student required a full time IEP (Testimony of Teacher, SEC and Principal). As such, I find that the evidence shows that Student's placement as per his IEP was inappropriate and denied him a FAPE for the 2011-2012 school year.

Private School Placement:

Here, the evidence shows that the Student is significantly delayed in all academic areas and that he requires full time special education services outside the general education setting in order to obtain an educational benefit. The proposed Non-Public School, which is approved by OSSE, includes individualized and 1:1 instruction, behavior management programming, crisis intervention and individual and group therapy (Exhibit P-3). The Student interviewed at the proposed Non-Public School in February 2012 and was accepted to the program. There are 25 Student's at the Non-Public School, all of whom have IEPs and who are classified as "Other Health Impaired," SLD or ED (Testimony of Principal- Non-Public School). Additionally, the Non-Public school provides a summer reading program that is based on a multisensory approach (Testimony of Principal at Non-Public School). Based on these facts, I find that the program and services offered at the Non-Public School are appropriate to meet the Student's needs. Additionally, there was no showing that the Student's needs could be met at a DCPS school or any other school.

Further, I find that the Non-Public School is the Student's least restrictive environment (LRE), as the evidence shows that the Student should not be placed in the general education setting (Exhibit P-21). Additionally, DCPS conceded that placement in a full time out of general education setting was appropriate for this Student. As such, I find the Non-Public School is presently the Student's LRE.

Accordingly, Petitioner's request for funding for the Student's placement at the Non-Public School is granted Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005). Funding for placement at the Non-Public School, however, is limited to the remainder of the 2011-2012 school year and the summer of 2012 (discussed below).

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). Here, Petitioner requests a compensatory education award in the form of funding for summer reading services at Lindamood Bell. However, no one from Lindamood Bell testified at the impartial hearing and no documentary evidence was offered with respect to the appropriateness of the Lindamood Bell program for the Student. As such, Petitioner's request for funding for summer reading services at Lindamood Bell is denied. Nevertheless, the evidence shows that the Non-Public School has a summer reading program, which is based on a multisensory approach and that it is appropriate for the Student (Testimony of Principal at Non-Public School). As I have found that the Non-Public School is an appropriate placement for the Student, and because it is undisputed that the Student has significant delays in reading (Exhibit P-9), I find that a compensatory education award in the form of funding for the summer reading program at the Non-Public School is appropriate.

Further, I find that the an award of individual tutoring services in math, one hour per day, for eight weeks during the summer of 2012, is appropriate to compensate the Student for DCPS' failure to provide the Student with specialized education services in his math class from August 2011 through December 2011 as per his IEP, dated October 19, 2010 (Exhibit P-9).

Equities:

Nothing in the hearing record suggests that Petitioner failed to cooperate with the IEP process. As such, I find that the equities support an award of prospective funding for placement at the Non-Public School for the remainder of the 2011-2012 school year.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 18^h day of April, 2012, it is hereby

ORDERED, that DCPS shall fund the Student's placement at the Non-Public School for the remainder of the 2011-2012 school year;

ORDERED, that DCPS shall fund the Student's enrollment in the summer reading program at the Non-Public School during the summer of 2012;

ORDERED, that DCPS shall fund eight weeks of individual tutoring services in math for one hour per day during the summer of 2012;

ORDERED, that within 20 school days DCPS shall convene an IEP meeting to develop a full time out of general education IEP for the Student.

Dated April 18, 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).