

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

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STUDENT HEARING OFFICE
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Parent, on behalf of STUDENT,¹)	
)	
Petitioner,)	
)	
v.)	
)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
)	
Respondent.)	Hearing Officer: Frances Raskin

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND

Petitioner is the parent² of a _____-year-old student ("Student") with a disability who attends a senior high school in the District of Columbia. On March 7, 2012, Petitioner filed a due process complaint ("Complaint") against the District of Columbia Public Schools ("DCPS") alleging violations of the IDEA.

On March 12, 2012, this Hearing Officer was assigned to preside over this case. On March 19, 2012, Respondent filed a response to the Complaint.³ Respondent filed its Response two days after the deadline established by IDEA.⁴

¹ Personal identification information is provided in Attachment A.

² Petitioner is the adoptive parent and biological great aunt of the Student.

³ Respondent did not challenge the sufficiency of the Complaint.

⁴ If DCPS has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent

On March 20, 2012, this Hearing Officer held a prehearing conference to inquire about Petitioner's assertion that the Student was out of school because he had been asked to leave his neighborhood school and had no direction as to where he was to attend school. Alana Hecht, counsel for Petitioner, and Laura George, counsel for Respondent, participated in the prehearing conference. During the prehearing conference, counsel informed this Hearing Officer that the DCPS had transferred the Student to another DCPS senior high school for safety reasons.

On March 29, 2012, counsel for Petitioner filed a Consent Motion to Amend the Due Process Complaint filed on March 17, 2012 ("Motion"). Petitioner concurrently filed a First Amended Due Process Complaint Notice ("Amended Complaint"). On April 2, 2012, this Hearing Officer granted the Motion, *nunc pro tunc* to March 29, 2012.

Respondent did not file a response to the Amended Complaint.

On April 23, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties agreed to continue to work to resolve the Complaint through the end of the resolution session. Thus, the resolution period ended on April 28, 2012. The parties agreed that the forty-five day, due process hearing timeline began on April 29, 2012.

On May 4, 2012, this Hearing Officer held a prehearing conference in which Alana Hecht, counsel for Petitioner, and Linda Smalls, counsel for Respondent, participated. On May 10, 2012, this Hearing Officer issued a prehearing conference summary and order ("Prehearing Order").

The due process hearing commenced on May 30, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits,⁵ as well as Respondent's proposed exhibits.⁶ Subsequently, Petitioner withdrew Petitioner's Exhibit 13, as it contains confidential information from a family court proceeding in the Superior Court of the District of Columbia.⁷

regarding the subject matter contained in the parent's due process complaint, DCPS must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. § 300.508(e).

⁵ This Hearing Officer admitted into evidence Petitioner's exhibits 1-24, inclusive. Neither party objected to the admission of the other party's exhibits.

⁶ This Hearing Officer admitted into evidence Respondent's exhibits 1-8, inclusive.

⁷ As agreed-upon by Petitioner, the Student Hearing Office is hereby directed to remove copies of this document from the Student Hearing Office files and place them in a sealed

Petitioner testified and presented five witnesses on her behalf: the Student, educational advocate ("Advocate"), Nonpublic School 1 Director of Academics ("Academics Director"), the Student's community-based intervention therapist ("CBI Therapist"), and the Assistant Educational Director of Nonpublic School 2 ("Educational Director"). Respondent presented three witnesses: the special education coordinator of DCPS School 2 ("SEC 1"), the special education coordinator of DCPS School 3 ("SEC 2"), and a DCPS school psychologist ("Psychologist"). After the parties presented oral closing arguments, the due process hearing concluded on June 5, 2012.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether Respondent denied the Student a free, appropriate, public education ("FAPE") from August 2011 through March 2012 by failing to provide the Student an appropriate placement/location of services⁸ because the school he was attending during that time, DCPS School 2, could not implement his individualized educational program ("IEP") or provide the therapeutic environment he required to access the curriculum;

B. Whether Respondent denied the Student a FAPE from April 2012 through the present by failing to provide the Student an appropriate placement/location of services because the school he currently attends, DCPS School 3, cannot implement his IEP or provide the therapeutic environment he requires to access the curriculum; and

C. Whether Respondent denied the Student a FAPE by failing to implement his IEP during the 2011-2012 school year, because DCPS School 2 and DCPS School 3 could not implement his IEP, and the Student had no school to attend from October 2011 through March 12, 2012.⁹

Petitioner requests relief in the form of an order that requires Respondent to place the Student at Nonpublic School 2 at public expense for the remainder of the 2011-2012 school year and the entire 2012-2013 school year, and to provide him compensatory education.

envelope that bears instructions regarding keeping the document under seal and the circumstances under which it is to be unsealed.

⁸ During the prehearing conference, the parties could not agree whether Petitioner is challenging the Student's placement during this time or the location of services, i.e. the particular school the student attended.

⁹ This Hearing Officer Determination does not address issue C because it is simply a restatement of issues A and B.

IV. FINDINGS OF FACT

1. The Student is _____ years old and in the _____ grade.¹⁰ He was found eligible for special education services as a student with an emotional disturbance when he was four years old.¹¹ By age six, he was diagnosed with attention deficit disorder and oppositional defiant disorder.¹² When the Student was ten years old, he was admitted to a psychiatric hospital where he exhibited signs of emotional volatility, disturbed thinking, and suicidal thoughts.¹³

2. In 2011, the Student was diagnosed with psychosis and mood disorder.¹⁴ In 2012, he was diagnosed with bipolar disorder.¹⁵ He also has a disorder called pica, and eats various nonfood substances, including batteries, aluminum foil, dirt, and plastic bottle tops.¹⁶

3. Due to his bipolar disorder, the Student has difficulty regulating his mood.¹⁷ His mood changes from week to week and sometimes within the space of an hour when he can shift from being happy and silly to crying.¹⁸

4. The Student also has difficulty regulating his emotions.¹⁹ He has strong reactions to what he experiences and his emotions swing from one extreme to the other.²⁰ Because he has difficulty regulating his emotions, he has difficulty following rules.²¹

5. At home and in the community, the Student displays an unusually high number of disruptive, impulsive, and uncontrolled behaviors.²² He can be argumentative, defiant, and threatening to others.²³ He has clinically significant depression and is withdrawn, pessimistic, and sad.²⁴ He has limited social skills and significant needs in performing simple daily tasks in a safe and efficient manner.²⁵

¹⁰ Testimony of Petitioner, Student.

¹¹ Petitioner Exhibit 6 at 3 (June 27, 2011 Psycho-educational Evaluation).

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ Testimony of Petitioner.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Testimony of CBI Therapist.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Petitioner Exhibit 6 at 12.

²³ *Id.* at 12-13.

²⁴ *Id.* at 13.

²⁵ *Id.*

6. The Student has difficulty inhibiting impulsive responses, adjusting to changes in his routine, modulating his emotions, initiating problem-solving approaches, sustaining working memory, organizing his environment and materials, and monitoring his own behavior.²⁶ He appears to have problem solving rigidity and emotional dysregulation.²⁷ Adolescents with this profile tend to lose emotional control when their routines or perspectives are challenged and/or behavior flexibility is required.²⁸

7. The Student reports social stress, anxiety, depression, and unusual thoughts or perceptions.²⁹ He feels overwhelmed in some situations and has a sense of little control over the events in his life.³⁰ He evidences clinically significant concerns for depression, anger, bullying, conduct problems, attention deficit hyperactivity disorder (“ADHD”), and learning problems.³¹ He also evidences problems with internalizing and externalizing behaviors.³²

8. The Student presents as an emotionally needy student who is quick to react when he feels his needs aren’t being met.³³ His chief defenses include denial, projection of blame onto others, and avoidance.³⁴ His predominant emotion is anger, and he lashes out explosively at others.³⁵ He is socially immature.³⁶

9. The Student has borderline intellectual skills.³⁷ His full-scale IQ is 73, which is in the fourth percentile of his same age peers and in the borderline range.³⁸ His verbal comprehension is in the eighth percentile of his same age peers and in the borderline range.³⁹ His perceptual reasoning is in the thirty-fourth percentile, which is in the average range.⁴⁰ His working memory is in the fourth percentile, and in the borderline range.⁴¹ His

²⁶ *Id.* at 14.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 14-15.

³⁶ *Id.*

³⁷ Petitioner Exhibit 6 at 16.

³⁸ *Id.* at 10, 16, 23.

³⁹ *Id.* at 9, 23.

⁴⁰ *Id.*

⁴¹ *Id.* But see Petitioner Exhibit 6 at 10 (indicating that the Student’s working memory is in the low average range).

processing speed is in the first percentile, which is in the extremely low range.⁴² He struggles with processing complex auditory and visual directions.⁴³

10. The Student's performance in broad reading, including letter-word identification, reading fluency, and passage comprehension, ranges from the low-average range to borderline.⁴⁴ His performance in broad math, including in calculation, math fluency, and applied problems, is generally in the low average range, although he is far below age expectancy in math fluency.⁴⁵ His performance in broad written language, including in spelling, writing fluency, and producing writing samples, ranges from below average to borderline.⁴⁶ He has learning disorders in the areas of reading, written expression, and mathematics.⁴⁷

11. The Student responds to relationships and will perform if he has constant supervision and support.⁴⁸ His ability to perform independent tasks is not age-appropriate and he stops his work when prompts are not available.⁴⁹ He is acutely aware of his academic limitations and gives up easily on tasks.⁵⁰ Because his academic skills are far below grade expectations, he can become embarrassed and emotionally reactive.⁵¹

12. The Student requires an educational setting that includes integrated therapy, counseling support, and medication management to address his emotional, behavioral, attention, executive functioning, and academic needs.⁵² Due to his low performance in math, reading, and written language, he would benefit from specialized, small-group supports to improve his skills in these areas.⁵³ He should use manipulatives and engage in hands-on projects because he benefits from touching, manipulating, and creating with materials, which would facilitate memory and learning.⁵⁴ He would benefit from organizational strategies and from learning strategies for anger management and frustration tolerance.⁵⁵

13. During the 2010-2011 school year, the Student was in eighth grade at DCPS School 1.⁵⁶ He was often talkative in class, disrupted the learning environment for others,

⁴² *Id.* at 10, 23.

⁴³ *Id.* at 13.

⁴⁴ Petitioner Exhibit 6 at 11.

⁴⁵ *Id.* at 11-12.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.* at 16.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 16.

⁵² *Id.* at 19.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Testimony of Petitioner.

walked out of the classroom, was defiant toward staff, and was aggressive toward adults and students.⁵⁷ He frequently responded to conflicts with his peers with angry outbursts.⁵⁸ During these outbursts, he threw objects, knocked over furniture, and engaged in emotional tirades.⁵⁹ His behavior often led to his being removed from the classroom and impacted his ability to access the curriculum.⁶⁰ He would remain outside the classroom until he calmed down, which took anywhere from an hour to a full school day.⁶¹

14. The Student also had difficulty separating fantasy from reality.⁶² He often would tell outrageous lies to get attention or curry favor, including that his sister was shot and killed in Baltimore.⁶³

15. On May 6, 2011, when the Student was fourteen years old, he was admitted to the Psychiatric Institute of Washington ("PIW") after he indicated he would commit suicide.⁶⁴

16. By the end of the 2010-2011 school year, the Student had learned strategies for self-regulating his behavior.⁶⁵ He had stopped responding to peer teasing and taunting with anger, disappointment, and frustration.⁶⁶ He learned to think before he acted and choose the appropriate behavioral response.⁶⁷ Although he periodically reverted back to inappropriate responses and behaviors in response to teasing, he responded well to verbal prompts and redirection to deescalate the crises.⁶⁸

17. On June 15, 2011, Petitioner attended a meeting of the Student's IEP team at DCPS School 1.⁶⁹ The IEP team developed an IEP for the Student that provided that he would receive 25.5 hours per week of specialized instruction outside the general education setting as well as two hours per week of behavioral support services.⁷⁰ The June 15, 2011, IEP also provided that his therapist and teachers would consult for one hour per week regarding his behavioral needs and supports.⁷¹

⁵⁷ Petitioner Exhibit 8 at 3, 7 (June 15, 2011, IEP).

⁵⁸ *Id.* at 6.

⁵⁹ *Id.*

⁶⁰ *Id.* at 3.

⁶¹ Testimony of Petitioner.

⁶² Testimony of Petitioner, Petitioner Exhibit 8 at 7.

⁶³ Testimony of Petitioner.

⁶⁴ Petitioner Exhibit 4 at 8 (PIW Psychosocial Assessment for Youth).

⁶⁵ *Id.* at 7.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Petitioner Exhibit 7 at 1 (June 15, 2011, MDT Meeting Notes).

⁷⁰ Petitioner Exhibit 8 at 8.

⁷¹ *Id.*

18. The IEP team included in the Student's June 15, 2011, IEP classroom and statewide testing accommodations, including interpretation of oral directions, reading of test questions, translation of words and phrases, repetition of directions, preferential seating, and breaks during testing.⁷² The IEP team decided that the Student would receive extended school year during the 2011 summer in the form of four hours per week of specialized instruction and on hour per week of behavioral support services.⁷³

19. During the June 15, 2011, IEP meeting, the Student's IEP team discussed his location of services for his ninth grade year, and the high school he would attend in the fall.⁷⁴ The team suggested that he attend DCPS School 2, as it was his neighborhood school.⁷⁵ The team agreed that the Student would be on a diploma track during high school.⁷⁶

20. A representative from DCPS School 2 attended the June 15, 2011, meeting by telephone and informed the IEP team that DCPS School 2 could provide the Student only 19.5 hours of specialized instruction outside the general education setting.⁷⁷ The representative did not answer Petitioner's questions about the therapeutic supports that would be available to the Student at DCPS School 2, including whether a therapeutic crisis room would be available so the Student could deescalate after being removed from the classroom for inappropriate conduct.⁷⁸

21. Petitioner then informed the IEP team that DCPS School 2 would not be appropriate for the Student because it could not meet his behavioral needs because he needed a therapeutic environment where behavioral supports were an integral part of his school day.⁷⁹ The members of the IEP team agreed that DCPS School 2 would not be appropriate for the Student but informed Petitioner that they could not discuss placement because the meeting was an IEP meeting and not a placement meeting.⁸⁰ Thus, the team made no decision about where the Student's June 15, 2011, IEP would be implemented for the 2011-2012 school year.⁸¹

22. The Student did not start school immediately at the beginning of the 2011-2012 school year.⁸² Petitioner was concerned about the appropriateness of DCPS School 2, so she looked for other schools for the Student.⁸³ After Petitioner was unable to find

⁷² *Id.* at 9.

⁷³ *Id.* at 11.

⁷⁴ Testimony of Petitioner.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Testimony of Petitioner.

⁸³ *Id.*

another school for the Student to attend, the Student began attending DCPS School 2 in the first week of September 2011.⁸⁴

23. At the end of the Student's first day of at DCPS School 2, Petitioner drove to DCPS School 2 to pick him up.⁸⁵ The Student stopped to give a hug to another student when a third student started a fight with the Student.⁸⁶ After a couple of young men broke up the fight, the Student got in Petitioner's car and left.⁸⁷

24. In early September 2011, DCPS School 2 held a meeting of the Student's IEP team to review the Student's independent psychological evaluation and review and revise the Student's IEP.⁸⁸ The DCPS school psychologist reviewed the psychological evaluation and then the IEP team reviewed his IEP.⁸⁹ The DCPS social worker opined that the Student did not require 27.5 hours of specialized instruction and related services and that his IEP should be revised to provide 19.5 hours of specialized instruction and related services.⁹⁰ Petitioner objected, stating that the Student requires all of the services on his June 15, 2011, IEP.⁹¹ After Petitioner objected, DCPS School 2 adjourned the meeting without making changes to the Student's IEP.⁹²

25. On September 13, 2011, the Student entered into a contract with the school social worker after threatening to hurt himself.⁹³ The contract specified that, if the Student ever had thoughts of suicide, felt like he wanted to kill himself, and/or had the urge to harm himself, he could take certain steps including reminding himself that his mother cared deeply for him and would not want him to hurt himself, call 9-1-1, his mother, or the social worker, or call the suicide prevention hotline.⁹⁴ The social worker also created a behavioral plan for the Student.⁹⁵

26. On September 19, 2011, the young man who had hit the Student on his first day of school bragged about beating him up in front of his mother.⁹⁶ Then, the young man sat on the Student's lap and started pummeling him.⁹⁷ The Student became upset and threatened to kill someone and blow up the school.⁹⁸ He was then suspended for ten

⁸⁴ *Id.*; Respondent Exhibit 7 at 1 (Attendance Summary).

⁸⁵ Testimony of Petitioner.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Testimony of Petitioner.

⁸⁹ *Id.*

⁹⁰ *Id.*; Respondent Exhibit 3 at 4 (February 29, 2012, MDT meeting notes).

⁹¹ *Id.*

⁹² *Id.*

⁹³ Petitioner Exhibit 9 at 1 (September 13, 2011, Contract); testimony of Petitioner.

⁹⁴ Petitioner Exhibit 9 at 1.

⁹⁵ Testimony of Petitioner; Petitioner Exhibit 10 at 2-3 (Behavior Plan).

⁹⁶ Testimony of Petitioner.

⁹⁷ *Id.*

⁹⁸ *Id.*

days.⁹⁹ Petitioner did not return the Student to DCPS School 2 after his suspension because she was worried about his safety.¹⁰⁰

27. While at DCPS School 2, the Student sporadically attended the four classes on his schedule.¹⁰¹ Of the eleven days the Student attended DCPS School 2, he had eight unexcused absences in his ROTC class, eight unexcused absences in his algebra class, seven unexcused absences in his US government class, and three unexcused absences in his English class.¹⁰²

28. At the end of September 2011, the Student interviewed at Nonpublic School 1.¹⁰³ He began attending Nonpublic School 1 on October 7, 2012.¹⁰⁴ At Nonpublic School 1, the Student was in small classes with just five or six other students and a general education and a special education teacher.¹⁰⁵ The school implemented a behavior plan for the Student, increased his interventions from those provided on his IEP, and provided regular therapeutic intervention.¹⁰⁶

29. By November 2011, the Student had stopped attending his classes and was not completing his work.¹⁰⁷ However, the work he produced indicated that he was capable of accessing the curriculum if his behavior did not impede his learning.¹⁰⁸

30. While at Nonpublic School 1, the Student had several, significant behavioral outbursts and antagonized other students.¹⁰⁹ He threatened to hurt himself and blow up the school.¹¹⁰ He had physical tantrums, threw things, ran through the school building, and was disruptive in class.¹¹¹ There were days when he refused to work, would shut down, and refuse to leave the front office.¹¹² On several occasions, he left the school building without permission.¹¹³

⁹⁹ *Id.*; Petitioner Exhibit 10 at 1 (manifestation determination review); Respondent Exhibit 7 at 1.

¹⁰⁰ Testimony of Petitioner. DCPS School 2 convened a manifestation determination review and determined that the behavior that led to the Student's suspension was a manifestation of his disability. Petitioner Exhibit 10 at 1.

¹⁰¹ Respondent Exhibit 7 at 1.

¹⁰² *Id.*

¹⁰³ Testimony of Petitioner.

¹⁰⁴ *Id.*

¹⁰⁵ Testimony of Nonpublic School 1 Academics Director.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Testimony of Nonpublic School 1 Academics Director.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

31. By the end of the semester, the Student had failed all of his classes.¹¹⁴ In late December 2011 or early January 2012, after an incident in which he hit the executive director of the school, the Student was expelled from Nonpublic School 1.¹¹⁵

32. In January 2012, after the Student was expelled from the Nonpublic School, Petitioner attempted to reenroll him in DCPS School 2.¹¹⁶ The principal of DCPS School 2 informed Petitioner and the Student that he did not want the Student in his school.¹¹⁷ Petitioner asked the principal to find another school for the Student to attend, but the principal refused, stating that this was not his job.¹¹⁸ The Student then made a remark to Petitioner that no one wanted him and that he would be better off in heaven.¹¹⁹

33. Later that day, Petitioner went to the Student's bedroom and found him attempting to hang himself.¹²⁰ Petitioner took the Student to Children's National Medical Center, where he was admitted to the psychiatric unit.¹²¹ The Student remained in the psychiatric unit for at least a week.¹²²

34. Other than the time he spent at PIW, the Student remained at home through February 2012.¹²³ The Student has not been hospitalized since January 2012.¹²⁴

35. On January 20, 2012, a DCPS compliance case manager ("CCM") advised counsel for Petitioner that Petitioner should enroll the Student at a non-attending student at DCPS School 2.¹²⁵ Soon thereafter, Petitioner enrolled the Student as a non-attending student at DCPS School 2.¹²⁶

36. Petitioner then met with SEC 1 and requested that DCPS School 2 provide some schoolwork for the Student to complete while he was out of school.¹²⁷ The SEC

¹¹⁴ *Id.*

¹¹⁵ *Id.*; testimony of Petitioner; Petitioner Exhibit 16 at 1 (January 18, 2012, letter from counsel for Petitioner to Dr. Nathaniel Beers).

¹¹⁶ Testimony of Petitioner.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Testimony of Petitioner, CBI Therapist.

¹²² Testimony of Petitioner.

¹²³ *Id.*; testimony of Petitioner.

¹²⁴ Testimony of CBI Therapist.

¹²⁵ Petitioner Exhibit 5 at 1 (January 20, 2012, email from compliance case manager to counsel for Petitioner).

¹²⁶ Testimony of Petitioner.

¹²⁷ *Id.*

responded that she couldn't give the Student any schoolwork to complete because he was registered as a non-attending student.¹²⁸

37. On February 29, 2012, DCPS School 2 convened a meeting of the Student's IEP team.¹²⁹ The CCM, who chaired the meeting, informed the participants that the purpose of the meeting was to review and revise the Student's IEP.¹³⁰ Petitioner's educational advocate objected, stating that Petitioner requested the meeting to discuss the Student's placement for the remainder of the 2011-2012 school year.¹³¹

38. After an initial discussion about the purpose of the meeting, Petitioner privately informed SEC 1 that another student at Nonpublic School 1 attacked the Student while both students were hospitalized at PIW.¹³² SEC 1 agreed to transfer the Student to another school.¹³³ SEC 1 did not identify the school to which the Student would be transferred or how this school could implement the Student's IEP.

39. The Student began attending DCPS School 3 on March 13, 2012.¹³⁴ From the time he enrolled in DCPS School 3 through April 12, 2012, the Student was enrolled in general education classes as well as special education classes.¹³⁵ He had four classes on his schedule - Junior ROTC, world history/geography, general music, and art - in addition to a special education learning lab.¹³⁶ Junior ROTC, music, and art were general education classes.¹³⁷ The Student was not taking either a math or an English class, even though his June 15, 2011, IEP included reading, writing, and mathematics goals.¹³⁸

40. Between March 13, 2012, and March 30, 2012, the Student regularly attended his classes at DCPS School 2 and enjoyed being at his new school.¹³⁹ By the end of March 2012, the Student went to school but stopped attending his classes and walked around the hallways most of the day.¹⁴⁰ When he attended class, he slept through most of his classes.¹⁴¹ His behavior deteriorated and he got into fights with other students.¹⁴²

¹²⁸ *Id.*

¹²⁹ Petitioner Exhibit 17 at 1 (February 29, 2012, Advocate's IEP Meeting Notes); Respondent Exhibit 3 at 1.

¹³⁰ Respondent Exhibit 3 at 2.

¹³¹ Testimony of Petitioner, Advocate; Petitioner Exhibit 17 at 2.

¹³² Testimony of Petitioner, Advocate, SEC 1.

¹³³ *Id.*

¹³⁴ Testimony of Petitioner.

¹³⁵ Testimony of SEC 2; Petitioner Exhibit 3 at 1 (March 30, 2012, Report to Parents on Student Progress).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Testimony of SEC 2; Petitioner Exhibit 8 at 3-6.

¹³⁹ Testimony of Petitioner; testimony of SEC 2.

¹⁴⁰ Testimony of Petitioner.

¹⁴¹ *Id.*

41. At DCPS School 3, the Student mingled with his nondisabled peers.¹⁴³ He often left the school building to smoke cigarettes and cigars on the playground.¹⁴⁴ He has been involved in fights with other students and has been defiant and disrespectful to school staff.¹⁴⁵ He began arriving late to his classes and skipping class altogether.¹⁴⁶

42. On April 12, 2012, DCPS School 3 convened a meeting of the Student's IEP team for a thirty-day review.¹⁴⁷ During the meeting, the IEP team reviewed the Student's June 27, 2011, psychological evaluation.¹⁴⁸ The IEP team discussed the portion of the psychological evaluation that diagnoses the Student with ADHD, oppositional defiant disorder, depressive disorder, reading disorder, disorder of written expression, and mathematics disorder.¹⁴⁹ The team also discussed the fact that, during his most recent stay at Children's National Medical Center, the Student was diagnosed with psychotic disorder.¹⁵⁰ The Student also was diagnosed with bipolar disorder.¹⁵¹ The IEP team reviewed the portion of the June 27, 2011, psychological evaluation that concluded that the Student requires an educational setting that includes integrated therapy, counseling support, and medication management to address his emotional, behavioral, attention, executive functioning, and academic needs.¹⁵²

43. During the April 12, 2012, meeting, the Student informed the team that he cuts himself on his arms, fingers, and hands when he is depressed.¹⁵³ The Student also reported that he claws his way through walls by using a pencil and his teeth.¹⁵⁴ Petitioner informed the team that the Student has pica and that he chews and eats nonfood items regularly.¹⁵⁵ She reported his concomitant behaviors are anger, disrespect, oppositional defiance, attention issues, and low frustration tolerance.¹⁵⁶

44. At the meeting, Petitioner informed the IEP team about the Student's regressing behaviors, including skipping class, leaving the school building, and smoking on

¹⁴² *Id.*; testimony of DCPS Psychologist.

¹⁴³ Testimony of Petitioner.

¹⁴⁴ *Id.*

¹⁴⁵ Testimony of SEC 2.

¹⁴⁶ Testimony of Petitioner.

¹⁴⁷ Testimony of Petitioner; testimony of SEC 2; Respondent Exhibit 5 at 1 (April 12, 2012, meeting notes).

¹⁴⁸ Respondent Exhibit 5 at 1.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Testimony of CBI Therapist.

¹⁵² Testimony of DCPS Psychologist. See also Petitioner Exhibit 6 at 19.

¹⁵³ Testimony of CBI Therapist.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

the playground.¹⁵⁷ Petitioner expressed concern that DCPS School 3 did not have sufficient behavioral supports to assist the Student when his behavior escalated.¹⁵⁸

45. The team discussed the fact that the Student receives therapy outside of school once a week and has a mentor, therapist, and counselor.¹⁵⁹ They discussed the fact that the Student receives counseling and wrap-around services outside of school from an independent provider.¹⁶⁰

46. At the April 12, 2012, meeting, Petitioner informed the IEP team that she wanted the Student to remain in the ROTC and art classes she selected for him when she enrolled him in DCPS School 3.¹⁶¹ The IEP team agreed that the Student would continue to receive 25.5 hours of specialized instruction outside the general education environment and 240 minutes per month of behavioral support.¹⁶² Petitioner agreed with the content of the Student's April 12, 2012, IEP.¹⁶³

47. On April 12, 2012, the IEP team agreed that the Student would take English instead of art.¹⁶⁴ Petitioner stated that the Student would not attend ESY because she wanted him to attend summer school.¹⁶⁵

48. On April 12, 2012, DCPS School 3 changed the Student's class schedule to provide him with a ROTC class that, while not taught by a special education teacher, contained only special education students, a special education English class, and a special education world history/geography class.¹⁶⁶ Even though the Student's June 15, 2011, and April 12, 2012, IEPs included mathematics goals, the Student was not assigned to a math class.¹⁶⁷ During the time he attended DCPS School 3, the Student received regular behavioral support services from the school social worker.¹⁶⁸

49. At the end of the 2011-2012 school year, the Student had failed all of his classes at DCPS School 3.¹⁶⁹ Thus, in his ninth grade year of high school, the Student earned no credits toward graduation or a certificate of completion as he failed all of his classes.¹⁷⁰

¹⁵⁷ Testimony of Petitioner.

¹⁵⁸ *Id.*

¹⁵⁹ Respondent Exhibit 5 at 1.

¹⁶⁰ Testimony of Petitioner, CBI Therapist; DCPS Psychologist.

¹⁶¹ Respondent Exhibit 5 at 2.

¹⁶² *Id.*; Respondent Exhibit 6 at 8 (April 12, 2012, IEP).

¹⁶³ Testimony of Petitioner.

¹⁶⁴ Respondent Exhibit 5 at 2.

¹⁶⁵ *Id.*

¹⁶⁶ Petitioner Exhibit 3 at 4 (May 10, 2012, Report to Parents on Student Progress); testimony of SEC 2.

¹⁶⁷ *Id.*

¹⁶⁸ Testimony of SEC 2.

¹⁶⁹ Testimony of Petitioner.

50. The Student has been accepted for admission at Nonpublic School 2, a full-time, therapeutic school in Northern Virginia.¹⁷¹ The school employs has nine clinical psychologists who provide individual and group therapy as well as crisis management.¹⁷² Each student at Nonpublic School 2 receives weekly individual and group therapy.¹⁷³ The school has behavioral counseling centers where students can go if they need time to deescalate.¹⁷⁴ Students who are having difficulties or are dangerous to themselves or others also are sent to the behavioral counseling center.¹⁷⁵

51. Nonpublic School 2 has a policy of keeping students in school, so when students are disciplined, they spend their suspension in school in an in-school suspension room under constant adult supervision.¹⁷⁶ All students are on a behavioral contract and earn points for good behavior.¹⁷⁷ As they earn more points, the students earn more responsibilities and are given more privileges.¹⁷⁸ Adult staffers monitor the hallways and students are not allowed to be in the hallway unescorted until they reach the highest level of behavioral compliance according to their behavioral contracts.¹⁷⁹

52. Students at Nonpublic School 2 have no exposure to their nondisabled peers during the school day.¹⁸⁰ They receive thirty hours per week of specialized instruction and related services.¹⁸¹

53. Each student is placed in classes of no more than ten students and as few as two students.¹⁸² Each classroom has at least one teacher and at least one other adult.¹⁸³ The teachers at Nonpublic School 2 are certified in special education or general education, or are dually certified, by the state of Virginia.¹⁸⁴ Most of the teachers have a special education certification.¹⁸⁵

¹⁷⁰ Testimony of Petitioner; testimony of Advocate.

¹⁷¹ *Id.*

¹⁷² Testimony of Educational Director.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

54. Nonpublic School 2 offers credit-bearing, “ramp-up” classes that focus on math and English skills for students with deficits in these areas.¹⁸⁶ The Student could take these classes in place of elective courses such as music or barbering.¹⁸⁷

55. Nonpublic School 2 has a certificate of authority from the District of Columbia Office of State Superintendent of Education.¹⁸⁸ For students who reside in the District of Columbia, the school follows the District of Columbia academic curriculum.¹⁸⁹ The District of Columbia students at Nonpublic School 2 graduate with either a District of Columbia diploma or a certificate of completion.¹⁹⁰

56. The base tuition for an 183-day school year is _____ Students pay extra for related services other than once weekly individual and group counseling.¹⁹² ESY costs an extra \$7760.¹⁹³ For the 2012 summer, ESY begins on July 2, 2012, and ends on August 10, 2012.¹⁹⁴

57. Each of the witnesses that Petitioner presented gave credible testimony with the exception of the Student and the Educational Advocate. As explained herein, the Student has difficulty separating fiction from reality, and this was reflected in his testimony. For example, he testified that he was receiving passing grades in his classes when the documentary evidence, as well as the testimony of other witnesses, showed otherwise. The Educational Advocate’s testimony about whether the classes on the Student’s schedule were general education or special education classes was shown to be unreliable when SEC 2 explained the coding of each class on his schedule. In all other respects, the Educational Advocate testified reliably.

58. Each of the witnesses that Respondent presented gave credible testimony. In general, the documentary evidence and the testimony of the witnesses Petitioner presented corroborated the testimony of SEC 1, SEC 2, and the DCPS Psychologist.

V. CONCLUSIONS OF LAW

The purpose of IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.”¹⁹⁵ Implicit in the congressional purpose of

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.¹⁹⁶ FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)."¹⁹⁷

In deciding whether Respondent provided a student a FAPE, the inquiry is limited to (a) whether Respondent complied with the procedures set forth in IDEA; and (b) whether the student's IEP is reasonably calculated to enable the student to receive educational benefit.¹⁹⁸ Under this second "substantive" prong, a school district need not maximize the potential of children with disabilities, but the door of public education must be opened in a meaningful way, and the IEP must provide the opportunity for more than only "trivial advancement."¹⁹⁹

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.²⁰⁰ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.²⁰¹

The burden of proof is properly placed upon the party seeking relief.²⁰² Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.²⁰³ The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.²⁰⁴ In other words,

¹⁹⁶ *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

¹⁹⁷ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

¹⁹⁸ *Rowley*, 458 U.S. at 206-207.

¹⁹⁹ *P. v. Newington Bd. of Educ.*, 546 F.3d 111 (2nd Cir. 2008) (citations omitted).

²⁰⁰ 34 C.F.R. § 300.513 (a)(2).

²⁰¹ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

²⁰² *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

²⁰³ 20 U.S.C. § 1415 (i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

²⁰⁴ *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).

preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.²⁰⁵

Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,²⁰⁶ except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.²⁰⁷

VI. DISCUSSION

A. Petitioner Proved that Respondent Denied the Student a FAPE from January 2012 through March 2012 by Failing to Implement His IEP but Failed to Prove that Respondent Denied the Student a FAPE by Failing to Provide a Therapeutic Placement between September 2011 and March 2012.

The IEP is "the centerpiece of the statute's education delivery system for disabled children."²⁰⁸ An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,²⁰⁹ establishes annual goals related to those needs,²¹⁰ and provides appropriate specialized instruction and related services.²¹¹ For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."²¹²

A local education agency ("LEA"), such as DCPS, must ensure that the IEP team reviews a student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.²¹³ The LEA must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals; and the results of any reevaluation or information about the child provided to, or by, the parents.²¹⁴ Additionally, if the parent obtains an independent educational evaluation ("IEE") at public expense, or shares with the public agency an evaluation obtained at private expense, the LEA must consider the results of the evaluation, if it meets agency

²⁰⁵ *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 246 (1994).

²⁰⁶ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).

²⁰⁷ *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

²⁰⁸ *Honig v. Doe*, 484 U.S. 305, 311 (1988).

²⁰⁹ 34 C.F.R. § 300.320 (a) (1).

²¹⁰ 34 C.F.R. § 300.320 (a) (2).

²¹¹ 34 C.F.R. § 300.320 (a) (4).

²¹² *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

²¹³ 34 C.F.R. § 300.324 (b)(1).

²¹⁴ *Id.*

criteria, in any decision made with respect to the provision of FAPE to the child.²¹⁵ The IDEA mandates that an IEP be based on the results of the most recent evaluation of a student.²¹⁶

Additionally, each public agency must ensure that, as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with the child's IEP.²¹⁷ In order to implement the IEP, a team that includes the child's parents determines where the child should be placed based on the child's IEP.²¹⁸ Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.²¹⁹

In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child's home.²²⁰ The IDEA requires that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.²²¹ In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.²²² A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.²²³

Further, mainstreaming of children eligible for special education services under the IDEA is not only a laudable goal but is also a requirement of the Act.²²⁴ If no public school can accommodate the student's needs, the government is required to place the student in an appropriate private school and pay the tuition.²²⁵

On June 15, 2011, the Student's IEP team developed his IEP for the 2011-2012 school year. The June 15, 2011, IEP provided that the Student would receive 25.5 hours per

²¹⁵ 34 C.F.R. § 300.502 (c)(1).

²¹⁶ *M.M. v. District of Columbia*, 607 F. Supp. 2d 168, 174 (D.D.C. 2009).

²¹⁷ 34 C.F.R. § 300.323 (c)(2). Public agency includes the state education agency, local education agencies ("LEAs"), educational service agencies ("ESAs"), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of a State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33.

²¹⁸ 34 C.F.R. § 300.116.

²¹⁹ See *Rourke v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006).

²²⁰ *Id.*

²²¹ 34 C.F.R. § 300.116 (c).

²²² 34 C.F.R. § 300.116 (d).

²²³ . *Id.* at (e)

²²⁴ *Roark*, 460 F. Supp.2d at 43 (quoting *DeVries v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4th Cir. 1989)); *Rowley*, 458 U.S. at 201 (The Act requires participating States to educate handicapped children with nondisabled children whenever possible.).

²²⁵ 20 U.S.C. § 1412(a)(10)(B)(I); see also *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369 (1985).

week of specialized instruction outside the general education setting as well as two hours per week of behavioral support services. The IEP also provided that the Student's therapist and teachers would consult for one hour per week regarding his behavioral needs and supports. The IEP team included in the Student's June 15, 2011, IEP classroom and statewide testing accommodations.

During the June 15, 2011, IEP meeting, the Student's IEP team discussed his location of services for his ninth grade year, i.e., the high school he would attend in the fall. The team suggested that he attend DCPS School 2, as it was his neighborhood school. Although a representative from DCPS School 2 attended the June 15, 2011, meeting by telephone and informed the IEP team that DCPS School 2 could provide the Student only 19.5 hours of specialized instruction outside the general education setting, the IEP team provided no other locations of service to implement the Student's IEP.

Petitioner objected to placing the Student in this school, arguing that he required a therapeutic setting and that DCPS School 2 could not implement his June 15, 2011, IEP. Nonetheless, the IEP team identified no other locations of service for the Student for the 2011-2012 school year.

September through December 2011 at DCPS School 2

In August 2011, Petitioner searched for other schools for the Student but was unsuccessful in finding an alternative to DCPS School 2. Having run out of options, she enrolled the Student in DCPS School 2 during the first week of September 2011. On his first day of school, the Student was attacked by another student.

The Student's social and behavioral difficulties escalated during his first week at DCPS School 2. By September 13, 2011, the Student had threatened to hurt himself.

In response to the Student's suicidal intentions, DCPS School 2 social worker entered into a contract that with the Student that specified that if the Student ever had thoughts of suicide, felt like he wanted to kill himself, and/or had the urge to harm himself, he could take certain steps including reminding himself that his mother cared deeply for him and would not want him to hurt himself, calling 9-1-1, his mother, or the social worker, or calling the suicide prevention hotline. The social worker also created a behavioral management plan for the Student.

On September 19, 2011, the young man who had hit the Student on his first day of school bragged about beating him up in front of his mother. Then, the young man sat on the Student's lap and started pummeling him. The Student became upset and threatened to kill someone and blow up the school. He was then suspended for ten days.

Petitioner did not return the Student to DCPS School 2 after his suspension because she was worried about his safety. Thus, the Student attended DCPS School 2 for only eleven school days during the fall of 2011.

During those eleven days, the Student sporadically attended the four classes on his

schedule. He had eight unexcused absences in his ROTC class, eight unexcused absences in his algebra class, seven unexcused absences in his US government class, and three unexcused absences in his English class.

After his suspension on September 19, 2011, until October 7, 2011, Petitioner kept the Student at home. Petitioner presented no evidence to show that she requested that DCPS provide the Student a FAPE during this time. Rather, she was in the process of placing the Student in a nonpublic school. On October 7, 2011, the Student began attending Nonpublic School 1. He remained in Nonpublic School 1 until he was expelled for assaulting a staff member in late December or early January 2011.

Petitioner presented no evidence to show that, during the eleven school days that the Student was enrolled in and attending DCPS School 2 during the fall of 2011, DCPS failed to implement his IEP. Petitioner also failed to show that the Student was available to receive a FAPE from DCPS School 2, or any DCPS school, between October 7, 2011, and January 2012.

Petitioner also failed to show that the Student skipped most of his classes during the two weeks he attended DCPS School 2 because the school did not implement his IEP or because it did not provide a therapeutic environment. Nor did Petitioner prove that the Student's behavioral difficulties during this time stemmed from Respondent's failure to implement his IEP or provide him a therapeutic placement.

Thus, Petitioner failed to prove that Respondent denied the Student a FAPE from September 2011 through December 2011.

January through March 2012 at DCPS School 2

In January 2012, after the Student was expelled from Nonpublic School 1, Petitioner sought to reenroll the Student in DCPS School 2. The principal of DCPS School 2 refused to enroll the Student and stated that he did not want the Student in his school.

Due to his feelings of rejection, the Student attempted suicide and then spent the next week hospitalized at PIW.

On January 20, 2012, the CCM advised counsel for Petitioner that Petitioner should enroll the Student at a non-attending student at DCPS School 2. Soon thereafter, Petitioner enrolled the Student as a non-attending student at DCPS School 2.

Petitioner then met with SEC 1 and requested that DCPS School 2 provide some schoolwork for the Student to complete while he was out of school. The SEC responded that she couldn't give the Student any schoolwork to complete because he was registered as a non-attending student.

Another month passed before DCPS School 2 held a meeting to discuss the Student's reentry into DCPS School 2. The Student's IEP team met on February 29, 2012, to review and revise his IEP. Petitioner and the Educational Advocate also requested that the IEP

team discuss the Student's placement for the rest of the 2011-2012 school year.

The February 29, 2012, meeting was interrupted when Petitioner and the SEC privately discussed the reasons why the Student should attend a school other than DCPS School 2. The SEC agreed to transfer the Student to DCPS School 3.

Thus, because the principal of DCPS School 2 refused to readmit the Student, even though the MDR team had determined that his previous behavior was a manifestation of his disability, the Student missed two months of school and was denied the services his IEP required. Because the CCM instructed Petitioner to enroll the Student as a non-attending student, SEC 1 was unable to provide him schoolwork to complete while he was sitting at home. DCPS School 2 took no steps to ensure the Student's IEP was being implemented until February 29, 2012, when it agreed to transfer him to DCPS School 3.

For these reasons, Petitioner proved that Respondent denied the Student a FAPE between January 2012, when Petitioner asked that the Student be reenrolled in DCPS School 2, and February 29, 2012, when Respondent agreed to transfer him to DCPS School 3. However, Petitioner presented no evidence to show that the Student was denied a FAPE during this time because DCPS School 2 failed to offer him a therapeutic environment.

B. Petitioner Proved that Respondent denied the Student a FAPE from March 13, 2012 through June 5, 2012, by Failing to Implement his IEP and Provide Him a Therapeutic Environment.

The Student began attending DCPS School 3 on March 13, 2012. From the time he enrolled in DCPS School 3 through April 12, 2012, the Student was enrolled in general education classes as well as special education classes. He had four classes on his schedule: Junior ROTC, world history/geography, general music, and art, as well as a special education learning lab. Junior ROTC, music, and art are all general education classes..

Between March 13, 2012, and March 30, 2012, the Student regularly attended his classes at DCPS School 2 and enjoyed being at his new school. By the end of March 2012, the Student continued to go to school but stopped attending his classes and walked around the hallways most of the day. When he attended class, he slept through most of the class.

DCPS School 3 held a meeting of the Student's IEP team on April 12, 2012. During the meeting, the IEP team reviewed the Student's June 27, 2011, psychological evaluation. The IEP team discussed the fact that, during his most recent stay at Children's National Medical Center, the Student was diagnosed with psychotic disorder.

The IEP team reviewed the portion of the June 27, 2011, psychological evaluation that concluded that the Student requires an educational setting that includes integrated therapy, counseling support, and medication management to address his emotional, behavioral, attention, executive functioning, and academic needs. The June 27, 2011, psychological evaluation concluded that the Student required a therapeutic environment.

During the April 12, 2012, meeting, the Student informed the team that he cuts himself on his arms, fingers, and hands when he is depressed. Petitioner informed the IEP team about the Student's regressing behaviors, including skipping class, leaving the school building, and smoking on the playground. Petitioner expressed concern that DCPS School 3 did not have sufficient behavioral supports to assist the Student when his behavior escalated.

The IEP team agreed that the Student would continue to receive 25.5 hours of specialized instruction outside the general education environment and 240 minutes per month of behavioral support. Petitioner agreed with the content of this IEP. However, Petitioner and the Educational Advocate continued to assert that the Student required a placement in a therapeutic environment, which Nonpublic School 3 could not provide.

On April 12, 2012, DCPS School 3 changed the Student's class schedule to provide him with a ROTC class that, while not taught by a special education teacher, contained only special education students; a special education English class; and a special education world history/geography class. Even though the Student's June 15, 2011, and April 12, 2012, IEPs included mathematics goals, the Student was not assigned to a math class.

Thus, Petitioner proved that, from the day he started attending DCPS School 3 through the last day of the due process hearing, Respondent failed to implement the Student's IEP by failing to implement the academic goals on the IEP and by failing to place the Student in his least restrictive environment. First, DCPS School 3 failed to place the Student in an English class through March 30, 2012, even though his June 11, 2012, IEP includes numerous reading and writing goals. Second, DCPS School 3 failed to place the Student in a math class from March 13, 2012, through June 5, 2012, despite that his IEP includes math goals. Third, DCPS School 3 placed the Student in all general education classes from March 13, 2012, through April 12, 2012, even though his IEP required that he receive all his instruction outside the general education setting.

Finally, DCPS School 3 failed to heed the findings of the June 27, 2011, psychological evaluation and place the Student in a therapeutic environment. As a result, the Student failed all of his classes at the end of the school year. Thus, Petitioner proved that Respondent denied the Student a FAPE by failing to place him in a therapeutic environment.

Because Respondent denied the Student a FAPE, and because the Student requires a therapeutic environment, this Hearing Officer will place the Student at Nonpublic School 2 for the 2012-2013 school year at public expense.

C. The Student is Entitled to Compensatory Education in the Form of Extended School Year Services at Nonpublic School 2.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of

educational services the child should have received in the first place."²²⁶ An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."²²⁷

"Because compensatory education is a remedy for past deficiencies in a 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."²²⁸

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA."²²⁹ A compensatory education "award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."²³⁰

This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity."²³¹ Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.²³² Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.²³³

Here, Petitioner proved that DCPS denied the Student a FAPE between January 2012 and June 5, 2012, by failing to implement his IEP. Petitioner further proved that DCPS denied the Student a FAPE by failing to provide him a therapeutic environment between April 12, 2012, and June 5, 2012. As a result, the Student earned no credits during the 2011-2012 school year, his ninth grade year, and failed all of his classes. Thus, Petitioner proved that the Student is entitled to compensatory education.

Petitioner has proposed a compensatory education plan that would provide the Student three hours per week of tutoring in math, reading and writing.²³⁴ However, the

²²⁶ *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

²²⁷ *Reid*, 401 F.3d at 518.

²²⁸ *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

²²⁹ *Reid*, 401 F.3d at 518, 523.

²³⁰ *Reid*, 401 F.3d at 524.

²³¹ *Id.*

²³² *Id.*

²³³ *Id.* See also *Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

²³⁴ Petitioner Exhibit 1 at 2 (May 23, 2012, Compensatory Education Plan). In her compensatory education plan, Petitioner proposed that the Student attend a summer automotive camp. However, the Educational Advocate testified that she was unable to locate such a camp.

Student already receives wrap-around services, mentoring, counseling, and therapy after school. Considering that Nonpublic School 2 offers "ramp up" classes to address a student's academic deficits, it is this Hearing Officer's understanding that this class may serve the same purpose as the three hours per week of tutoring Petitioner proposes.

Additionally, because the Student will have to travel back and forth to Northern Virginia to attend Nonpublic School 2, this Hearing Officer is concerned that the Student may not have the mental stamina or desire to perform additional academic work after school or on the weekends. Instead, this Hearing Officer will place the Student in the Nonpublic School for the 2012 summer, in addition to the tuition award for the 2012-2013 school year, in the hopes that this will help remediate the denial of FAPE during the second half of the 2011-2012 school year.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this 12th day of June hereby:

ORDERED that, by June 29, 2012, Respondent shall place the Student at Nonpublic School 2 at public expense for the 2012 extended school year, which begins on July 2, 2012;

IT IS FURTHER ORDERED that, by June 29, 2012, Respondent shall arrange and fund transportation for the Student to attend Nonpublic School 2 for the 2012 extended school year, which begins on July 2, 2012;

IT IS FURTHER ORDERED that, by August 1, 2012, Respondent shall place the Student at Nonpublic School 2 at public expense for the 2012-2013 school year; and

IT IS FURTHER ORDERED that, by August 1, 2012, Respondent shall arrange and fund transportation for the Student to attend Nonpublic School 2 for the 2012-2013 school year.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by this Hearing Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearing Officer 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. § 1415(i)(2).
