

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

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STUDENT HEARING OFFICE
2011 OCT 11 PM 3:19

PETITIONER, on behalf of
[STUDENT],¹

Petitioner,

Date Issued: October 11, 2011

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by MOTHER (the "Petitioner"), under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint, the Petitioner alleges that DCPS failed in its child find obligation to identify, locate and evaluate Student as a child with a disability.

¹ Personal identification information is provided in Appendix A.

Student, an AGE young woman, is a resident of the District of Columbia. The Petitioner's Due Process Complaint, filed on August 10, 2011, named DCPS as respondent. The undersigned Hearing Officer was appointed on August 11, 2011. The parties met for a resolution session on August 30, 2011 and did not reach a settlement. The parties agreed to curtail the remainder of the resolution period. The 45-day time line for issuance of this HOD began on August 31, 2011. On August 31, 2011, a prehearing telephone conference was held with the Hearing Officer and counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on September 28 and 29, 2011 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS COUNSEL.

The Petitioner testified and called as witnesses VICE PRINCIPAL of PRIVATE SCHOOL, Student, PSYCHIATRIST, and COURT PSYCHOLOGIST. DCPS called as witnesses SCHOOL PSYCHOLOGIST, SPED COORDINATOR of DC HIGH SCHOOL and SPED COORDINATOR of DC MIDDLE SCHOOL. Petitioner's Exhibits P-1 through P-34 were admitted into evidence without objection. DCPS Exhibits R-1 and R-3 through R-16 were admitted into evidence without objection. DCPS withdrew Exhibit R-2.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

- WHETHER DCPS DENIED STUDENT A FAPE BY FAILING TO IDENTIFY HER AS A CHILD WITH A DISABILITY AT SEPTEMBER 2011 MDT TEAM MEETING; and
- WHETHER DCPS FAILED IN ITS CHILD FIND OBLIGATION TO IDENTIFY, LOCATE AND EVALUATE STUDENT AS A CHILD WITH A DISABILITY IN PRIOR SCHOOL YEARS.

Petitioner requests that the Hearing Officer make a finding that Student is a child with a disability and order DCPS to develop an Individualized Education Program ("IEP") for Student and fund her placement at Private School. In addition, Petitioner seeks an award of compensatory education.

FINDINGS OF FACT

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

1. Student is an AGE young woman. Student resides with Mother in the District of Columbia. Testimony of Mother.
2. For the 2011-2012 school year, Student is enrolled in GRADE at DC High School ("DCHS"). Student has never been identified by DCPS as a child with a disability. Testimony of Mother.
3. For the three prior school years, Student was enrolled at D.C. Middle School ("DCMS"). Exhibit P-17.
4. On or about January 21, 2011, Student was suspended from DCMS for allegedly assaulting a teacher. Student was arrested and led out of the school in handcuffs. Testimony of Mother. Student was charged with assault and threat to do bodily harm. She pled guilty to the

latter offense and was referred by the District of Columbia Superior Court for a psychiatric evaluation and a psycho-educational evaluation. Exhibits P-16, P-17.

5. On March 10, 2011, DCPS notified Mother that Student would be placed on Off-site Long-Term Suspension, through June 17, 2011, for Assault/physical attack on student or staff. Student was assigned to ALTERNATIVE SCHOOL for the duration of the suspension. Exhibit P-20. Although the Notice of Final Disciplinary Action (Exhibit P-20) states that the Date of Incident was February 16, 2011, it appears that this was the same incident for which Student was arrested on or about January 21, 2011. Student was not permitted to return to DCMS after this incident. Testimony of Mother.

6. Student was placed at Alternative School from on or about March 30, 2011 through June 15, 2011. Testimony of Mother, Exhibit P-21. During that period, Student was only present at Alternative School for 16 out of 47 school days. Exhibit P-21.

7. In October 2007, when she was a student at D.C. ELEMENTARY SCHOOL (“DCES”), Student had been referred to _____ for behavior problems. Exhibit P-18. Student’s reported conduct leading to the referral included extreme insubordination, appearing to be under the influence, and violation of classroom rules. Student had previously been referred to a school counselor for alleged glue sniffing and referred to the DCES principal for violent outbursts. Exhibit P-18. The outcome of the CNMC referral is not in evidence.

8. When Student was at DCES, Mother asked for an evaluation to see if Student needed “additional learning” or “additional school replacement.” Student was not evaluated at that time. Testimony of Mother.

9. At DCMS, Student missed 64 school days in the 2008-2009 school year, 93 days in 2009-2010 and 75 school days before she was suspended in January 2011. Exhibit R-15. For at least the 2009-2010 and 2010-2011 school years, Student was placed on a school attendance plan, which was the practice for students who missed more than 25 days of school. Testimony of DCMS SPED Coordinator. For all three school years, Student's grades were mostly D's and F's. Exhibit P-19. The DCMS principal regularly communicated with Mother about Student's behavior problems and disciplinary suspensions. Testimony of Mother.

10. At DCMS, during the 2009-2010 and 2010-2011 school years, Student was not referred by Petitioner or by school staff for evaluation for special education eligibility. Testimony of DCMS SPED Coordinator.

11. On February 2, 2011, following Student's arrest for the January 21, 2011 assault incident at DCHS, D.C. Superior Court Judge Maribeth Raffinan ordered a mental examination of Student. Student was referred to Psychiatrist who conducted a one hour psychiatric evaluation at Student's home. Psychiatrist learned from his interviews with Mother and Student that Student had a long history of very significant mood swings happening at a rapid pace. Psychiatrist diagnosed Student with Mood Disorder Not Otherwise Specified ("NOS"). The Mood Disorder was serious enough to qualify as severe. Testimony of Psychiatrist, Exhibit P-16.

12. Psychiatrist recommended that Student receive a psycho-educational evaluation, which was conducted by Court Psychologist on March 15, 2011. Court Psychologist administered a battery of tests, including the Woodcock-Johnson Tests of Achievement - Third Edition (WJ-III), Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV), Million Adolescent Clinical Inventory (MACI), Behavior Assessment System for Children-

Second Edition (BASC-2) Self Report and Parent Report, Conners Comprehensive Behavior Rating Scales (CBRS) Self Report, Multidimensional Anxiety Scale for Children (MASC), Trauma Symptom Checklist for Children (TSCC) and the Rorschach Inkblot Test. Exhibit P-17.

13. Court Psychologist reported, *inter alia*, that Student's scores on the WISC - IV placed her in the overall average range of the Full Scale IQ. On the WJ-III achievement tests, Student's scores indicated that her academic skills ranged from the 3rd grade to the 6th grade level for an overall grade equivalency of about the 4th grade. Court Psychologist also reported that the testing indicated that Student has a number of personality functioning deficits. Court Psychologist diagnosed Student with Anxiety Disorder (NOS), Dysthymic Disorder², and Learning Disorder. Exhibit P-17.

14. Petitioner's Counsel provided Court Psychologist's psycho-educational evaluation of Student to Alternative School on June 22, 2011. Petitioner's Counsel requested the school to immediately schedule a Multidisciplinary Team ("MDT") meeting to review the evaluation and find Student eligible for special education and related services. Exhibit P-8.

15. DCHS convened a MDT eligibility meeting for Student on September 8, 2011. The team considered, *inter alia*, current year school progress reports and attendance summaries, Student's report card from DCMS and Court Psychologist's March 22, 2011 psycho-educational evaluation. At the meeting, School Psychologist told the MDT team that the psycho-educational report indicated that Student was showing extreme social and emotional problems. He recommended a disability classification of ED for Student. However, apparently because Student had recently enrolled at DCHS and had only been present for four days, the DCHS

² According to the DSM-IV-TR, "The essential feature of Dysthymic Disorder is a chronically depressed mood that occurs for most of the day more days than not for at least 2 years." *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition, Text Revision

eligibility team decided on a 30-day extension to revisit Student's eligibility and agreed to reconvene in 30 days. Exhibit R-4, Testimony of DCHS SPED Coordinator.

16. On September 9, 2011, DCHS SPED Coordinator sent a Prior Written Notice to Mother that DCPS refused to identify Student as a student with a disability as defined in IDEA. The notice stated that Student does not meet the criteria to be identified as a student with a disability under IDEA and does not need special education and related services; that Independent Psychological does not make any recommendations; that Student has been in school 3 days since being enrolled as of 8/23/11; and that Team agreed to reconvene in 30 days to review current educational/behavior data. Exhibit P-24.

17. In a September 18, 2011 "Addendum" to her psycho-educational evaluation, prepared for Student's MDT team, Court Psychologist recommended that Student be considered as an adolescent with a Learning Disability and an Emotional Disturbance. In the addendum, Court Psychologist opined that Student needs a small, structured classroom setting where she can receive more individualized instruction, as well as more behavior support and the ability to access her counselor. Testimony of Court Psychologist, Exhibit P-17.

18. Student has been accepted at Private School, a nonpublic day school in Prince George's County, Maryland. Private School has a total enrollment of 16 high school students, all on full-time IEPs. It offers small class size with typically 4 students per class. Private School provides regular individual and group counseling, crisis intervention, individual behavior programs and academic remediation. Testimony of Vice Principal.

CONCLUSIONS OF LAW

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

DISCUSSION

Burden of Proof

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

1. DID DCPS DENY STUDENT A FAPE BY FAILING TO IDENTIFY HER AS A CHILD WITH A DISABILITY AT SEPTEMBER 2011 MDT TEAM MEETING?

Under the IDEA regulations, as part of an initial evaluation, the IEP team and other qualified professionals, as appropriate, must determine whether a child is a child with a disability, as defined in 34 C.F.R. § 300.8, and the educational needs of the child, based upon,

(1) Review [of] existing evaluation data on the child, including —

- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and input from the child's parents.

34 C.F.R. § 300.305(a). Under the IDEA, "Child with a disability" means a child evaluated as having one or more defined disabilities, including, *inter alia*, a serious emotional disturbance

(referred to as “emotional disturbance”) or a specific learning disability, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3).

When Student’s IEP team met at DCHS on September 8, 2011, the team had before it, *inter alia*, Court Psychologist’s March 22, 2011 psycho-educational evaluation, which referenced Psychiatrist’s February 2011 psychiatric evaluation. From these evaluations, the IEP team was informed that Student was diagnosed with Mood Disorder (NOS), Anxiety Disorder (NOS), Dysthymic Disorder and a Learning Disorder. Further, the WJ-III data showed that Student, whose IQ tested on the average level, was performing at a grade equivalency which was 4 to 5 years behind typical students at her actual grade level. In addition, the DCHS School Psychologist informed the IEP team that Student should be found eligible for special education services under the disability classification ED. Unaccountably, instead of finding Student eligible, the IEP Team made a provisional determination that Student was not a child with a disability and agreed to reconvene in 30 days to revisit her eligibility.

According to both Court Psychologist and School Psychologist, Student should have been found eligible for special education under the ED classification. (Court Psychologist also recommended a SLD classification.) In the IDEA, the disability Emotional Disturbance (“ED”) is defined as

[A] condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

34 C.F.R. § 300.8(c)(4)(i). Court Psychologist's comprehensive psycho-educational evaluation fully documents that Student suffers from, *inter alia*, inappropriate types of behaviors and feelings under normal circumstances as well as a general pervasive mood of unhappiness or depression (Dysthymic Disorder). Court Psychologist reported that in 2010 and 2011, Student was receiving counseling at DCMS and was on a behavioral management plan for her anger. As to the adverse effect on Student's educational performance, Student's achievement scores indicated that her academic skills were at a 4th grade "grade equivalency," even though her full scale IQ scores placed Student in the overall average range. In sum, the psycho-educational evaluation and other data considered by the MDT team established that Student exhibited several of the specified characteristics of ED, over a long period of time and to a marked degree, that adversely affects her educational performance. By reason thereof, Student needed special education and related services. Therefore, I find it was an error and a denial of FAPE for the September 8, 2011 MDT team not to have found Student to be a child with a disability and eligible for special education and related services.³

Petitioner prevails on this issue.

2. DID DCPS VIOLATE ITS CHILD FIND OBLIGATION IN PRIOR SCHOOL YEARS TO IDENTIFY, LOCATE AND EVALUATE STUDENT AS A CHILD WITH A DISABILITY?

³ Having found that the evidence establishes that Student meets the criteria for the ED disability, it is unnecessary for me to consider whether Student should also be identified as SLD or under additional disability classifications. A child's entitlement under the IDEA is to FAPE and not to a particular label. The child's identified needs, not the child's disability category, determine the services that must be provided to him. *Letter to Anonymous*, 48 IDELR 16 (OSEP 2006). *See, also, Heather S. v. State of Wis.*, 125 F.3d 1045, 1055 (7th Cir. 1997) (IDEA not concerned with labels, but with whether a student is receiving a FAPE.)

Petitioner contends that Student's disabilities have existed for years and that DCPS denied Student a FAPE by failing to identify and evaluate her sooner as a child with a disability. The IDEA places an affirmative duty on states to identify, locate, and evaluate all children with disabilities residing within their boundaries. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111. This duty, called the 'child find' duty, is triggered when the school has reason to suspect a child has a disability, and has reason to suspect that special education services may be needed to address the disability. *Reid v. District of Columbia*, 310 F.Supp.2d 137, 146 (D.D.C. 2004) (citations omitted), rev'd on other grounds, 401 F.3d 516 (D.C.Cir. 2005).

The difficult issue in this case is not if, but when, Student's behavior or performance should have given DCPS reason to suspect her disabilities, triggering the "child find" duty. *See Reid, supra* at 147. Parent's expert, Court Psychologist, opined that Student should have been evaluated years ago when she was retained in third grade. I discount that opinion because Court Psychologist and Psychiatrist did not evaluate Student until some five years later and Court Psychologist's testimony does not definitively establish that Student's disabilities should have been detected when she was in third grade. Petitioner testified that when Student attended DCES, she asked for an evaluation to see if Student needed "additional learning" or "additional school replacement." However, the evidence does not establish whether this was an actual request for an initial evaluation to determine if Student was a child with a disability or simply a parent's plea for more help for her child. *See* 20 U.S.C. § 1414(a)(1)(B). In 2007, Student was referred by DCES to CNMC for "Behavior problems in school." No evidence was offered at the hearing, regarding the antecedents to the referral or the results of any CNMC assessment, to show whether the referral may have indicated a need for special education services. In sum, I find that Parent has not met her burden of proving that, prior to Student's enrollment at DCMS,

DCPS had reason to suspect that Student had a disability for which special education services may have been needed.⁴

After Student matriculated to DCMS, reasons to suspect that she could have a disability accumulated. Student's poor academic performance and truancy were chronic at DCMS. She missed 64 school days in the 2008-2009 school year, 93 days in 2009-2010 and 75 school days before she was suspended in January 2011. For at least the 2009-2010 and 2010-2011 school years, Student was placed on a school attendance plan, which was the practice for students who missed more than 25 days of school. For all three school years, Student's grades were mostly D's and F's. The DCMS principal regularly communicated with Mother about Student's behavior problems and disciplinary suspensions. *But see, Reid, supra*, at 148 (Discussions between the parents and the principal alone insufficient to trigger the "child find" duty.)

On January 21, 2011, Student was arrested and led out of the school in handcuffs after allegedly assaulting a teacher. Student was ultimately placed on off-site long term suspension for the remainder of the school year. Surely, after Student's extensive history of failing grades, poor attendance, and recurring behavior problems, this incident provided sufficient reason for DCHS to suspect that Student had a disability and that she may have needed special education services. I conclude that there is "ample evidence in the record" indicating that, by the time of the January 21, 2011 incident, DCMS was on notice of Student's potential IDEA disabilities. *See Reid, supra* at 146. DCPS took no action to identify or evaluate Student until September 2, 2011, when DCHS SPED Coordinator issued a Letter of Invitation to Petitioner's counsel for an

⁴ The issue of whether Student should have been identified and evaluated while at DCES may also be barred by the IDEA time line for requesting a due process hearing. *See* 20 U.S.C. § 1415(f)(3)(C) (A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint.)

MDT meeting to determine Student's eligibility. This delay constituted a denial of FAPE. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 16 (D.D.C. 2008) (Failure to locate and evaluate a potentially disabled child constitutes a denial of FAPE.)

Petitioner prevails on this issue.

REMEDY

Compensatory Education

I have found that DCPS has denied Student a FAPE by not finding her eligible for special education and related services and that, at least since January 2011, DCPS was on notice of Student's potential disabilities. In her complaint for due process Petitioner seeks, *inter alia*, an award of compensatory education as a remedy. The IDEA gives courts "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir. 2005). The award must "provide the educational benefits that likely would have accrued from special education services" that the school district "should have supplied in the first place." *Id.* at 524. A compensatory education award must "rely on individualized assessments" after a "fact specific" inquiry. *Id.* "In formulating a new compensatory education award, the hearing officer must determine 'what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures.'" *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010), *quoting Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid, supra*, 401 F.3d at 527.

In my Prehearing Order in this case, I alerted the parties that a compensatory education award must "rely on individualized assessments" after a "fact specific" inquiry, and that to establish a basis for such a compensatory education award, counsel must be prepared at the

hearing to document with exhibits and/or testimony “the correct amount or form of compensatory education necessary to create educational benefit” to enable the Hearing Officer to project the progress Student might have made, but for the alleged denial of FAPE, and further quantitatively defining an appropriate compensatory education award. *See, e.g., Friendship Edison v. Nesbitt*, 532 F.Supp.2d 121, 124 (D.D.C. 2008). Unfortunately, Petitioner did not heed this guidance. Petitioner did not offer competent, fact specific evidence of what services Student needs to elevate her to the position she would have occupied but for DCPS failure to timely identify and evaluate her as a child with a disability. In the absence of such evidence, I am unable to make findings upon which to craft a compensatory education award.⁵

Private School Placement

Petitioner also requests that the Hearing Officer order DCPS to fund Student’s placement at Private School. However, an award of private-school placement is “not retrospective relief designed to compensate for yesterday’s IDEA violations, but rather prospective relief aimed at ensuring that the child receives tomorrow the education required by IDEA.” *Branham v. Government of the Dist. of Columbia*, 427 F.3d 7, 11 (D.C. Cir. 2005) “[C]ourts have identified a set of considerations ‘relevant’ to determining whether a particular placement is appropriate for a

⁵ During closing argument on September 29, 2011, I alerted the parties that there did not appear to be sufficient evidence to craft an award of compensatory education. Petitioner did not request a continuance to supplement the record. *Cf., e.g., Gill v. District of Columbia*, 751 F.Supp.2d 104, 114 (D.D.C. 2010) (Concluding it was appropriate to hear additional evidence concerning the appropriate compensatory education due to plaintiff.) Under the D.C. Municipal Regulations, I am constrained to issue my final hearing decision no later than October 15, 2011. *See* D.C. Regs. tit. 5-E, § 3030.11. My denial of Petitioner’s compensatory education request will be without prejudice. *See Henry v. Dist. of D.C.*, 750 F.Supp.2d 94, 98-99 (D.D.C. 2010) (citations omitted). (“Under the IDEA, if a disabled student is denied special education services, he is entitled to compensatory education. In fact, once a plaintiff has established that she is entitled to an award, simply refusing to grant one clashes with [*Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C.Cir.2005)]”) I encourage, but do not order, the parties to implement a compensatory education plan by a voluntary agreement.

particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment.” *Id.* at 12. (citations omitted.)

I find that the evidence in this case does not establish that a placement at Private School is appropriate for Student, based upon the nature and severity of her disability or her specialized instructional needs, or that Private School represents the least restrictive environment. Private School is a highly specialized institution⁶ with only 16 enrolled students, all of whom receive full-time special education. Heretofore, Student has been educated in a general education setting without any special education services.⁷ While I have found that Student requires special education services, there is no competent evidence upon which to conclude that the nature and severity of Student's disability necessitates her placement away from her nondisabled peers, or that she could not receive educational benefits in a less restrictive setting than Private School. *See Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). Court Psychologist opined that Student needs a full-time placement in a small structured classroom where she can receive individualized instruction. I discount Court Psychologist's opinion on this matter because she was not qualified as an education expert. However, were I to credit this opinion, there is no evidence that Private School represents the

⁶ Private School Vice Principal did not know the tuition cost, but made a “ball park” estimate of _____ to _____ per year.

⁷ In argument, Petitioner cited *Forest Grove Sch. Dist. v. T.A.*, 129 S. Ct. 2484 (2009), as support for funding Student's placement at Private School. However, *Forest Grove* is a reimbursement case holding that Parents may send their child to a private program and seek retroactive tuition reimbursement from the state, regardless of whether the child previously received special education or related services through the public school. *Id.* at 2496. In the present case, Petitioner is seeking funding for a prospective placement, not reimbursement. The *Branham* standard – not *Forest Grove* – applies.

least restrictive educational environment⁸ in which Student could receive such individualized instruction or that Student could not be educated in a general education classroom with tailored specialized instruction or in a self-contained classroom in a school with nondisabled peers.⁹

In summary, I find that Petitioner has not established that a restrictive placement, such as Private School, where Student would not be educated with nondisabled peers, is appropriate for her. Accordingly, I will order DCPS to convene Student's IEP team to devise an IEP for Student, "mapping out specific educational goals and requirements in light of [Student's] disabilities and matching [Student] with a school capable of fulfilling those needs. *See Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991).

SUMMARY

Student is a child with a disability, whose IDEA disabilities include, but are not necessarily limited to, ED. By January 26, 2011, DCPS was on notice of Student's potential IDEA disabilities. By not identifying or evaluating Student for special education eligibility until September 2, 2011, and by not finding Student eligible at the September 8, 2011 MDT meeting, DCPS denied Student a FAPE. The evidence does not establish that a prospective placement at Private School is appropriate for Student. Petitioner has not provided sufficient evidence upon which to craft an award of compensatory education.

⁸ "Mainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with nonhandicapped children is not only a laudable goal but is also a requirement of the [IDEA]." *DeVries by DeBlaay v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4th Cir.1989). *See, also, JN v. District of Columbia*, 677 F. Supp.2d 314, 324 n.1 (D.D.C. 2010).

⁹ In addition, the law of the District of Columbia requires that special education placements be made in the priority of (i) DCPS schools, or District of Columbia public charter schools, (ii) Private or residential District of Columbia facilities, and (iii) Facilities outside of the District of Columbia. D.C. Code § 38-2561.02(c) Private School is a facility outside of the District and Student's placement there would only be in order if the evidence established that no suitable placement was available within DCPS schools, public charter schools or private facilities in the District.

ORDER

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

1. Student is a "child with a disability" within the meaning of 20 U.S.C. § 1401(3)(A). Within 10 school days of this order, DCPS shall convene Student's IEP team to develop and implement an appropriate, interim, IEP for her, based upon existing evaluations, data and other input, and adhering to the requirements of 34 C.F.R. § 300.324;
2. Within 10 school days of this order, DCPS shall convene Student's MDT/IEP team to review existing data and identify what additional evaluations and data may be needed to fully identify Student's disabilities and educational needs. Subject to Petitioner's granting consent, DCPS shall promptly administer such assessments and other evaluation measures as may be appropriate to produce the needed additional data; and, within 60 days hereof, Student's IEP team shall reconvene, and as appropriate, update and revise Student's above-ordered interim IEP;
3. Petitioner's request for an award of compensatory education is denied without prejudice; and
4. All other relief requested by Petitioner herein is denied.

Date: October 11, 2011

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

NOTICE OF RIGHT TO APPEAL

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