

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened September 14, 2011, at the OSSE Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2009.

BACKGROUND:

Student or "the student" is age _____ and has been determined eligible as a child with a disability under IDEA with a disability classification of other health impairment ("OHI") for the condition of Attention Deficit Hyperactivity Disorder ("ADHD"). The student attends a District of Columbia public elementary school hereinafter referred to as "School A." During the 2010-2011 school year, the student was in the second grade at School A. The student's initial individualized educational program ("IEP") was developed July 20, 2010. The student's IEP was reviewed at meetings held October 5, 2010, January 20, 2011 and May 26, 2011. The student's current IEP prescribes that she be provided 15 hours per week of specialized instruction and related services.

Petitioner filed the due process complaint on June 14, 2011, alleging, *inter alia*, that DCPS had failed to provide the parent a requested independent evaluation and a dedicated aide, failed to develop an appropriate IEP for the student and failed to provide the student an appropriate educational placement. Petitioner alleged the student is in need of a full-time IEP and placement as evidenced by her lack of progress. Petitioner seeks as relief: 1) placement and DCPS funding at the _____ (2) a revision of the student's IEP to reflect a full time program and placement, and (3) compensatory education.²

DCPS filed a written response on June 30, 2011. DCPS asserted student's IEP and justification for a dedicated aide has been submitted to DCPS Central Office. However, DCPS asserted that the IEP team did not conclude the student is in need of a dedicated aide. DCPS also asserted there have been settlement agreements in prior complaints regarding the student and offers of compensatory education that have been rejected and Petitioner and Petitioner should be barred from seeking relief in the instant complaint.

Both parties initially waived resolution. However, DCPS rescinded the resolution waiver on July 24, 2011, and the matter was reset to the full 30-day resolution period. The resolution meeting was held but the matter was not resolved. Thus, the 45-day timeline originally ended August 27,

² The Hearing Officer made clear to the parties during the PHC that compensatory education would only be considered for claims in the current complaint and not for any claims that were the subject of prior complaints and/or settlement agreements. The Hearing Officer directed Petitioner's counsel to submit a proposed compensatory education plan by August 12, 2011. However, no plan was submitted. Petitioner was in discussions with DCPS at the student's IEP meeting pursuant to prior settlement agreements as to compensatory education. The plan disclosed by Petitioner in its disclosure (Petitioner's Exhibit 62) relates to alleged denials of FAPE that precede the current complaint. The Hearing Officer stated during the hearing that the only compensatory education that would be considered is from any denials of FAPE from May 26, 2011, the date of the student's last IEP.

2011. A prehearing conference in this matter was held August 10, 2011, after several attempts when the parties were not available. A pre-hearing order was issued on August 12, 2011. The hearing in the matter was originally scheduled for August 22 and 23, 2011. Continuances³ were granted and the hearing was held September 14, 2011.⁴

ISSUES: ⁵

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to authorize an independent educational evaluation, specifically a Dyslexia checklist, after the parent expressed dissatisfaction with the assessment DCPS conducted and requested (in May 2011) an independent evaluation?⁶
2. Whether DCPS denied the student a FAPE by failing to provide the student a dedicated aide as recommended at the May 26, 2011, IEP meeting?⁷
3. Whether DCPS denied the student a FAPE by failing to provide the student an IEP that prescribes full-time specialized instruction⁸ and failed to provide the student an appropriate full time educational placement?⁹

³ Petitioner had death in the family a few days before the scheduled hearing date and requested a continuance of the hearing date and HOD due date. The Hearing Officer granted Petitioner's continuance motion for 10 days. Because of scheduling conflicts the parties could not participate in the hearing within the 10 days granted by the continuance. Petitioner, thus has filed a second motion for continuance for the hearing to be held on the agreed upon dates of September 14, 2011, and the second day of hearing September 29, 2011. Petitioner has requested the hearing and HOD due date be extended an additional 27 days. The HOD due date is now extended from September 6, 2011, to October 3, 2011.

⁴ Respondent was to present its case on September 29, 2011; however, on September 28, 2011, Respondent's counsel alerted the Hearing Officer that she wished rest on the record thus far and requested the opportunity to submit written closing arguments. Petitioner did not object and the Hearing Officer closed the record on September 30, 2011, with the submission of written closing arguments.

⁵ The alleged violations and/or issues listed in the complaint may not directly correspond to the issues outlined here. However, the parties agreed at the hearing that the issues listed here are the issues to be adjudicated.

⁶ Petitioner alleges a violation of 34 C.F.R. § 502(b). This is the issue alleged in the complaint filed May 20, 2011, (which has now been dismissed) and was incorporated into this complaint by amendment. Petitioner obtained the auditory processing and Gort 4 assessments based on a January 2011 DCPS IEE authorization and DCPS agreed at that time to conduct the Dyslexia assessment. Petitioner alleges that DCPS conducted a classroom observation rather than a Dyslexia checklist. The parent was seeking an independent educational evaluation (Dyslexia checklist).

⁷ Petitioner alleges the team agreed that the student was in need of a dedicated aide but sent it to DCPS Central Office for the aide to be "approved" and provided.

⁸ Petitioner alleges the student's current IEP only contains 15 hours of specialized instruction per week but based on the student's poor performance she should have a full time IEP: 26.5 hours of specialized instruction. Petitioner alleges the student has had behavioral regression, has not mastered any of her IEP goals and is being retained.

RELEVANT EVIDENCE CONSIDERED: ¹⁰

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-62 and DCPS Exhibit 1-9) that were admitted into the record and are listed in Appendix A.¹¹ Witnesses are listed in Appendix B.

FINDINGS OF FACT: ¹²

1. The student is age _____ and has been determined eligible as a child with a disability under IDEA with a disability classification of OHI for the condition of ADHD. The student attends a District of Columbia public elementary school, School A. During the 2010-2011 school year, the student was in the second grade at School A. The student has attended School A since pre-kindergarten. The student has had behavioral difficulties since she began attending School A and was suspended on a number of occasions. The parent often came to the classroom to assist in keeping the student focused and regulating her behavior. The student continued to need constant redirection and had behavioral difficulties during her second grade year. The student was suspended a few times during the second grade year. There was a classroom aide that sometimes worked directly with the student and when the student had that attention her behavior improved. The student has shown the tendency to reverse letters when she is writing. The parent is concerned the student has Dyslexia, which is not being fully addressed in her current IEP. (Parent's testimony, Petitioner's Exhibit 19)
2. The student's initial IEP was developed July 20, 2010. (Petitioner's Exhibit 21)
3. A psycho-educational evaluation was conducted of the student in August 2010 when the student was _____ years -11 months of age and going to second grade. The evaluation revealed the student has low average cognitive abilities. The student's academic scores were as follows:

⁹ Petitioner alleges the student is need of a full time special t educational placement and the student's current IEP and location of services (School A) cannot meet the student's needs and is inappropriate.

¹⁰ Although not evidence, the Hearing Officer also considered the written closing arguments submitted by counsel on September 30, 2011.

¹¹ Respondent's counsel objected to several of the documents presented by Petitioner. As a result, Petitioner withdrew some of the documents as noted in the Appendix. The Hearing Officer after consideration of the objections admitted the remainder of Petitioner's documents into the record. Respondent's counsel objected to the following documents presented by Petitioner: P 1-3, 10, 21-25, 27, 28, 32, 33, 34, 35, 41, 42, 43, 44, 47, 50 & 60 based on relevance as they pre-dated the last settlement agreement.

¹² The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

	Percentile	Stand. Score	Age Eq.	Grade Eq.
Broad Reading:	6	77	6-4	1.1
Broad Math:	16	85	6-5	1.1
Broad Reading Language:	7	78	6-4	1.0

(Petitioner's Exhibit 17-10)

4. The student's IEP was reviewed and amended at meetings held October 5, 2010, January 20, 2011 and May 26, 2011. (testimony)
5. At the October 5, 2010, IEP meeting the student's teachers expressed concern the student might have Dyslexia. The parent requested that an assessment be conducted to determine if the student in fact had Dyslexia. DCPS authorized a Gort 4 assessment and an auditory processing assessment and the parent requested a Dyslexia checklist be conducted. DCPS did not conduct a Dyslexia checklist but conducted classroom observations and asserted the observations and other assessments were sufficient and did not conduct a Dyslexia checklist. A Dyslexia checklist includes a list of criteria and characteristics of Dyslexia the assessor reviews and completes while observing the student. (testimony, Petitioner's Exhibit 21, 25, 26, 29, 35, 39 40)
6. On May 3, 2011, Petitioner, through counsel submitted a written request to DCPS pursuant to 34 C.F.R. §300.502 requesting an independent educational evaluation, specifically a Dyslexia evaluation, as the Petitioner did not agree with the classroom evaluation conducted by DCPS. DCPS did not respond by granting the independent evaluation and did not file a for a due process complaint to prove that the evaluation(s) it conducted was appropriate.¹³ (testimony, Petitioner's Exhibit 36)
7. At the May 26, 2011, IEP meeting the team reviewed the Gort 4 and the auditory processing evaluation and the parent's request that the student be provided a dedicated aide. The student's teachers were present. The parent attended along with her educational advocate. The team discussed the student's inappropriate behaviors in the classroom and her auditory processing difficulties associated with her ADHD. There was some academic progress noted by the student from her teachers; however, it was noted the student made greater progress when provided one to one attention. When the student did not have the benefit of individual support the student would easily become distracted and loose focus. The student's teacher stated the student was working a first grade level

¹³ DCPS counsel stated during that because Petitioner requested a hearing within 17 days of the request for the independent evaluation, the due process complaint pursuant to the Petitioner's complaint is the forum at which DCPS can prove its evaluation was sufficient. Petitioner asserted that IDEA does not allow DCPS to adjudicate this issue based on the Petitioner's complaint.

although she was in the second grade. The student clearly did better in pull out classes than in the general education setting. The parent requested that dedicated aide be provided to the student to address these behaviors and her auditory processing concerns. DCPS staff stated that a request had been submitted to DCPS central office for the aide but an aide had yet to be provided. The team did not recommend any additional interventions to address the student's behavior. The parent and advocate requested the student have a full time IEP and placement. The DCPS team members, however did not believe the student's was in need of full time placement and they believed that such a change in placement was pre-mature and the dedicated and the added related services should be tried first. There was no definitive determination by the team that the student had Dyslexia. There was some discussion of compensatory education for prior services the student had missed. The DCPS representative requested that the educational advocate present a written plan for the compensatory education the parent thought the student would be do for alleged prior missed services.¹⁴ testimony, Petitioner's Exhibits 30, 31, 60, 61, 62)

8. The student's current IEP, developed May 26, 2011, prescribes that she receive the following weekly services: 15 hours per week of specialized instruction out of general education in Reading, Math and Written Expression and, 240 minutes per month of behavior support services 240 minutes per month of speech and language pathology and 4 hours per month of occupational therapy. All related services are to be provided outside the general education setting. (Petitioner's Exhibit 29)
9. In February 2011 a functional behavior assessment ("FBA") was conducted of the student and the report was prepared on March 1, 2011. The evaluator observed the student's behavior in her classroom at School A and found that the student often tried to get the attention away from herself to mask her lack of knowledge and lack of academic abilities. When the student was not getting one to one attention she was prone to loose attention, not focus and wander. There were also incidents of the student bothering other classmates and causing disturbances in the classroom. The teachers reported the student was impulsive and often off task and often bumping into her peers to gain attention. The evaluator recommended a behavior intervention plan ("BIP") which DCPS later developed for the student. The evaluator recommended among other things that because of the student's difficulties in whole-group settings, the student should continue to receive small group and one to one instruction whenever possible. (Dr. Nelson's testimony, Petitioner's Exhibit 16)
10. The Gort -4 evaluation and the independent auditory processing evaluation were performed on the student during March 2011. The evaluator concluded the student had no hearing loss; however, the student has significant problems tolerating sounds at loud intensity levels. The student is thus easily distracted and will overact to the sounds around her and will miss information being provided to her. The student also has difficulty processing information that is coming at her too quickly. She does not have the ability to filter out background noise and she is thus distracted easily. Her auditory processing skills need to be more fully developed so she can more effectively assess the

¹⁴ Petitioner alleges DCPS had at a prior IEP meeting offered 150 hours of tutoring which were not finalized.

academic curriculum. She needs accommodations and interventions to assist in the developing her auditory skills. The appropriate classroom for the student should be a one with a low student to teacher ratio and with supports. The Gort-4 is a reading test. Based on this assessment the student's reading abilities are well below average, at about the first grade level, but her independent reading level is probably at a kindergarten level. She demonstrates decoding difficulties. Thus, she would have reading difficulties in all of her academic classes. (Dr. Lucker's testimony, Petitioner's Exhibits 12 & 13)¹⁵

11. The student has been interviewed by and accepted to attend the _____ is full time special education therapeutic program that serves students who have a primary disability classification of emotional disturbance ("ED"). Most of the students also have learning difficulties or additional disability classifications in addition to ED. There are 50 students who attend the school, 37 of whom are from the District of Columbia. _____ serves students from kindergarten through sixth grade. The school has certified special education teachers and related services providers. _____ can provide the student the specialized instruction and related services in her IEP. There is therapeutic staff to provide various behavioral/emotional therapies to support the student's academic progress. The classroom identified for the student has three students and the student would be the fourth. The school would not accept a student if it did not believe the student was in need of a full time therapeutic program. Based upon the student's evaluations the staff believes the students is appropriate for its program even though her current IEP does not require full time specialized instruction. The IEP would be amended to include full time instruction after the student arrived. _____ has been certified by OSSE and its tuition rates have also been approved by OSSE. There is a DCPS monitor assigned to _____ who is at the school two to three times per week. _____ testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a 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.

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. ¹⁶ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the

¹⁵ The witness was designated as an expert in audio processing.

¹⁶ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking

student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

ISSUE 1: Whether DCPS denied the student a FAPE by failing to authorize an independent educational evaluation, specifically a Dyslexia checklist, after the parent expressed dissatisfaction with the assessment DCPS conducted and requested (in May 2011) an independent evaluation?

Conclusion: DCPS is required to provide the parent the requested independent evaluation because it did not request a hearing and/or prove that its evaluation(s) were sufficient. Petitioner sustained the burden of proof by a preponderance of the evidence.

34 C.F.R. §300.502(b) provides:

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.
- (2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to Sec. Sec. 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

The evidence demonstrates that Petitioner challenged DCPS' educational evaluation(s) to determine if the student had Dyslexia and requested an independent evaluation on May 3, 2011. Pursuant to 34 C.F.R. §300.502(b) when such a request is made DCPS is required, without unnecessary delay, to either file a due process complaint to request a hearing to show its evaluation is appropriate or provide the evaluation at public expense. DCPS did not request a hearing and did not authorize the independent evaluation. Although DCPS counsel asserted that it could prove at the hearing Petitioner requested that its evaluation was sufficient, this Hearing Officer is not convinced that this position is valid without DCPS first meeting the requirement of filing a complaint. Perhaps the two complaints could be adjudicated in the same hearing but the plain language of the regulation requires the LEA to file a complaint. In any case, DCPS did not present evidence that its evaluation was valid. Consequently, the Hearing Officer concludes Petitioner sustained the burden of proof and DCPS' failure to fund the independent evaluation impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE. Thus, DCPS shall fund an independent Dyslexia checklist for the student.

ISSUE 2: Whether DCPS denied the student at FAPE by failing to provide the student a dedicated aide as recommended at the May 26, 2011, IEP meeting?

relief presented sufficient evidence to meet the burden of proof.

Conclusion: The evidence clearly demonstrates the IEP team determined the student was in need of a dedicated aide. Petitioner sustained the burden of proof by a preponderance of the evidence.

The IEP is the central part of the special education process and the failure to develop an appropriate IEP is a substantive denial of a Free Appropriate Public Education ("FAPE"). 20 U.S.C. § 1401 (9) (FAPE consists of special education and related services that are provided in conformity with the student's IEP, which in turn is to be developed according to a student's unique educational needs); 34 C.F.R. § 300.17; D.C. Mun. Regs. Tit. 5 § 3000.1. See also Scott v. District of Columbia, (D.C. Cir.) 03-1672 DAR (March 31, 2006); and Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 276, 182 (1982) ("The free appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

The evidence demonstrates that at the May 26, 2011, meeting the members of the IEP team unanimously determined that the student was in need of a full-time aide to assist the student in redirection and to more effectively address her behavioral difficulties. DCPS presented a BIP that was developed as a result of the FBA that had been conducted. This BIP, however, was not apparently reviewed by a team and officially incorporated into the student's IEP. Thus, there was no evidence that the BIP has been implemented and whether the BIP alone would be sufficient to address the student's behaviors. It is clear, based on the evidence presented, which was not refuted by DCPS, that the team agreed, the student is in need of a dedicated aide.

The parent and her advocate at the meeting not only requested the dedicated aide but also requested that the student be placed in a full time special education placement. There was sufficient evidence presented by Dr. Nelson, and Dr. Lucker as well as the IEP meeting notes that the student, because of her high level of distractibility, and auditory processing difficulties would benefit from a classroom with a small student to teacher ratio and sufficient supports.

The Hearing Officer is concerned that the evidence does not demonstrate that the student is both in need of a dedicated aide and a full time special education placement. The evidence demonstrates that the DCPS members of the team believed that the dedicated aide and additional related services that were added to the student's IEP in May 2011 should be tried before the student is placed in a full time special education placement. However, based on the conclusion below that the student is in need of a full time IEP and placement the Hearing Officer will not direct DCPS to provide a dedicated aide for the student at the educational placement directed by the Order below because of the significant individualized attention the student will receive at that educational placement.

ISSUE 3: Whether DCPS denied the student at FAPE by failing to provide the student an IEP that prescribes full-time specialized instruction and failed to provide the student an appropriate full time educational placement?

Conclusion: The evidence supports a conclusion that the student is in need of a full time special education IEP and placement.

The IEP is the central part of the special education process and the failure to develop an appropriate IEP is a substantive denial of a Free Appropriate Public Education ("FAPE"). 20 U.S.C. § 1401 (9) (FAPE consists of special education and related services that are provided in conformity with the student's IEP, which in turn is to be developed according to a student's unique educational needs); 34 C.F.R. § 300.17; D.C. Mun. Regs. Tit. 5 § 3000.1. See also Scott v. District of Columbia, (D.C. Cir.) 03-1672 DAR (March 31, 2006); and Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 276, 182 (1982) ("The free appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

20 U.S.C. 1414(a)(i) defines Individualized Education Program as a "written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes a statement of the child's present levels of academic achievement and functional performance." It includes measurable goals, statements of related services, assistive technology and other appropriate accommodations. It is developed by the IEP team which consists of the child's parent, general education teachers, LEA special education teachers and anyone deemed as a necessary participant by reason of the services provided to the student. The IEP is the centerpiece or main ingredient of special education services.

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

The evidence clearly demonstrates that the student has slow academic progress over the last couple of years and based upon Dr. Lucker's testimony the student is functionally reading at the kindergarten level. The student's severe distractibility due to her ADHD as related by Dr. Nelson and her auditory processing deficits as related by Dr. Lucker, as well as her teachers reports that the student learns better with individualized one to one attention was sufficient evidence, which was unrefuted by DCPS, that the student is in need of a full time special education IEP and placement.

DCPS has attempted to ensure that this student was educated with his non-disabled peers as the law requires. However, these attempt have proved unsuccessful. The evidence, including the student's recent evaluation, demonstrates that she is clearly in need of intensive special education services in a full-time out of general education setting.

The student's academic deficits and unique learning disabilities warrant a lower student to teacher ratio and more specialized instruction than DCPS has offered and than can apparently be provided at the student's current placement School A. This Hearing Officer concludes that the IEP developed for the student including the educational placement and LRE are inappropriate for this student and result in a denial of FAPE. The student cannot remain in an inappropriate

program, which the evidence demonstrates School is for this student.

The student has visited, been interviewed, and accepted by _____ DCPS is obligated to provide the student an appropriate placement. The Hearing Officer concludes, based on the evidence of the services that can be provided to the student, that the Episcopal Center can provide educational benefit consistent with "decisions in *Burlington and Carter*... when a school district fails to provide FAPE and the private-school placement is appropriate. *Forest Grove District v. T.A.* 129 S. Ct. 2484 (U.S.S.C. 2009)

However, a school district is not required to implement a program that will maximize the handicapped child's potential. *Rowley*, 458 U.S. at 198-99. Rather, a handicapped child has a right to "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley*, 458 U.S. at 203. Rowley explained that implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. . . We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-02.

Pursuant to D.C. Code § 38-2561.02 (c)

Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter:

- (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.

Accordingly, the Hearing Officer directs DCPS to place and fund the student on an interim basis at the _____ and within sixty (60) calendar days convene a MDT/IEP meeting to review and revise the student's IEP to prescribe a full time special education placement and determine appropriate placement/location of services for the remainder of 2011-2012 school year.

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program." "the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate 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." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits

resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526.

The testimony and documents offered by Petitioner with regard to compensatory education the evidence presented did not specifically address the alleged lack of services from the date of the of the last IEP dated May 26, 2011. Consequently, the Hearing Officer will order, based on equitable considerations, and as compensatory education, that DCPS conduct a comprehensive psychological evaluation with educational and clinical components that can be considered when the IEP team meets to assist in developing appropriate programming for the student during the 2011-2012 school year.

ORDER:

1. DCPS shall within fifteen (15) calendar days of the date of this Order place and fund the student on an interim basis at the and provide transportation services.
2. DCPS shall within thirty (30) calendar days of this Order fund an independent Dyslexia checklist of the student at the DCPS/OSSE approved rate.
3. DCPS shall within sixty calendar (60) calendar days of the date of this Order conduct a comprehensive psycho-educational evaluation with clinical components.
4. DCPS shall within sixty calendar (60) days of the issuance of this Order convene an IEP meeting to review the student's recent evaluations and revise the student's IEP to reflect full time services and a full time placement and determine an appropriate location of services for the student for the remainder of the 2011-2012 school year.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that 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).



Coles B. Ruff, Esq.
Hearing Officer
Date: October 3, 2011