

*District of Columbia*  
*Office of the State Superintendent of Education*

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OSSE  
Student Hearing Office  
March 25, 2013

**Confidential**

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| Student <sup>1</sup> ,<br><br>Petitioner,<br><br>v.<br><br>District of Columbia Public Schools (“DCPS”)<br><br>Respondent.<br><br>Case # 2013-0004 | HEARING OFFICER’S<br>DETERMINATION<br><br>Hearing Date:<br>March 14, 2013<br><br><u>Representatives:</u><br><br>Counsel for Petitioner:<br>Christopher L. West, Esq.<br>803 Roland Court<br>Elkridge, Maryland 21075<br><br>Counsel for Respondent:<br>William Jaffe, Esq.<br>Assistant Attorney General<br>1200 First Street, N.W.<br>Washington, D.C. 20002<br><br><u>Hearing Officer:</u><br><u>Coles B. Ruff, Esq.</u> |
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<sup>1</sup> Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

## **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 on March 14, 2013, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student is age [REDACTED] and resides in the District of Columbia. She has been determined to be a child with a disability with a classification of multiple disabilities including emotional disability (“ED”) and other health impairment (“OHI”). The student has several significant medical conditions including immune-compromise and end stage renal disease.

The student was a twelfth grader at (“School A”) a private full time special education school located in the District of Columbia during the 2010-2011 school year (“SY”). The student attended School A with DCPS funding. The student was due to graduate at the end of SY 2010-2011. In March 2011 an individualized educational program (“IEP”) meeting was held at School A for the student in which her requirements for graduation were discussed.

Soon after the meeting the student was hospitalized long term and School A provided the student work assignments and exams. Petitioner alleges she completed all work given to her and provided DCPS medical documentation supporting all her absences for SY 2010-2011. Petitioner asserts School A informed her that she completed all requirements for her high school diploma and could participate in the school graduation ceremony on June 15, 2011.

Petitioner left the hospital and participated in the graduation ceremony and returned to the hospital. However, because the student missed significant amounts of school during SY 2010-2011 due to of her medical conditions she was later informed by DCPS she did not have sufficient credits and requirements to obtain the DCPS high school diploma.

The student believes that she completed and provided to School A all make-up work, assignments and tests that School A provided to her in order to meet the requirements for graduation and to receive a high school diploma. Petitioner has repeatedly requested her high school records and her diploma from DCPS. Petitioner alleges DCPS has provided neither.

The student attempted to enroll in a local college at the start of SY 2011-2012 but was unable to do so because she could not obtain her diploma from DCPS or School A. School A closed permanently in August 2011. After contacting DCPS the student was informed she should register with her neighborhood high school and a meeting would be convened to review her educational records.

Petitioner registered at her local DCPS high School, (“School B”) at the start of SY 2011-2012. She did not attend School B and was hospitalized much of SY 2011-2012, but she participated in IEP meetings held at School B and DCPS provided the student visiting instruction during SY 2011-2012. Petitioner alleges, however, that at none of the IEP meetings did DCPS provide her educational records or provide her high school diploma. She also alleges DCPS did not provide her an IEP for SY 2011-2012 to ensure she was provided the services she needed to obtain her diploma.

On January 2, 2013, Petitioner filed the current due process complaint alleging DCPS failed to provide her educational records, including her high school diploma and failed to develop an IEP for her during SY 2011-2012 while she was enrolled at School B and receiving visiting instruction. Petitioner is seeking an order directing DCPS to provide the following: her educational records, her high school diploma, and appropriate compensatory education.

DCPS filed a response to the complaint on January 8, 2013. DCPS denied any alleged denial of a free and appropriate public education (“FAPE”) and specifically asserted that the student is short 5.5 credits from graduation according to DCPS’ most recent transcript for the student. DCPS asserted that no additional educational records are available to DCPS because of School A’s closure, and DCPS continues to make available to the student visiting instruction if she cannot attend school and is willing to make other provisions for the student to complete the work required to earn and complete her high school diploma in an expedited manner.

The resolution meeting was held January 17, 2013, and was unsuccessful in resolving the issues. The parties expressed no desire to proceed directly to hearing. Rather, the parties agreed to allow the full 30-day resolution period expire before the 45-day timeline began. Thus, the 45-day period began on February 2, 2013, and ended (and the Hearing Officer Determination (“HOD”) was originally due) on March 18, 2012.

A pre-hearing conference was conducted on January 30, 2013.<sup>2</sup> The Hearing Officer issued a pre-hearing order on February 10, 2013, outlining the issues to be adjudicated and setting the hearing date.

The parties appeared for the hearing on March 14, 2013. At the conclusion of the hearing Petitioner requested leave to file a post-hearing brief as to the requested remedy and requested a continuance and extension of the HOD due date for five calendar days. The continuance was granted over DCPS’ objection and the HOD due date was extended to March 23, 2013. On March 19, 2013, Petitioner’s counsel filed a post-hearing brief.<sup>3</sup>

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<sup>2</sup> The pre-hearing conference was convened on the first date that both counsel were available following the resolution meeting.

<sup>3</sup> Petitioner submitted an August 22, 2000, letter from OSEP to Dr. Gordon M. Riffel which indicates that a student’s election to graduate with a regular high school diploma does not alter the student’s right to compensatory education, and a September 3, 2010, case from the U.S. District Court of Massachusetts (*Dracut v. Mass. Dept of Elem & Secondary Education*) in which a Hearing Officer directed the school district to issue the student a regular high school diploma. Petitioner also requested in the brief that she be provided “72 hours of tutoring in academic areas necessary to take the exit/final exams for a DCPS high school diploma and she be provided a computer and all the necessary material/technology required for tutoring and the exit/final exams.”

### **THE ISSUES ADJUDICATED:**

1. Whether DCPS violated 34 C.F.R. § 300.501 (a) by failing to provide the student her educational records from her attendance at School A and her high school diploma which she alleges she earned during SY 2010-2011; and if so, did DCPS' failure to do so result in a denial of FAPE to the student.
2. Whether DCPS violated 34 C.F.R. § 300.323 (a) by failing to develop an appropriate IEP for the student during SY 2011-2012 while she was registered at School B and provided visiting instruction; and if so, did DCPS' failure to do so result in a denial of a FAPE to the student.

### **RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the student and the documents submitted in the parties' disclosures (Petitioner's Exhibits A through M and Respondent's Exhibits 1-3) that were admitted into the record and are listed in Appendix A.

### **FINDINGS OF FACT:<sup>4</sup>**

1. The student is age [REDACTED] and resides in the District of Columbia. She has been determined to be a child with a disability with a classification of multiple disabilities including ED and OHI. (Petitioner's Exhibit G-1)
2. The student has several significant medical conditions including immune-compromise and end stage renal disease and the student is currently taking at least fifteen 15 different medications daily. (Petitioner's Exhibits L & M)
3. The student was a twelfth grader at School A, a private full time special education school located in the District of Columbia during SY 2010-2011. The student attended School A with DCPS funding. (Petitioner's Exhibit G-1)
4. The student was due to graduate at the end of SY 2010-2011. On March 10, 2011, an IEP meeting was held for the student in which her requirements for graduation were discussed. The team noted that the student had missed a significant amount of school and that it was unlikely she could complete the requirements for high school graduation by the end of the school year. The student expressed a willingness to attend school an

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<sup>4</sup> 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 more than one party separately the Hearing Officer may only cite one party's exhibit.

additional year if necessary but the IEP team stated that it might not take a year to complete. (Petitioner's Exhibit H-3)

5. The student's most recent IEP, developed March 10, 2011, prescribes that she is to receive a high school diploma. (Petitioner's Exhibit G-13)
6. Soon after the March 10, 2011, IEP meeting the student was hospitalized long term and School A provided the student work assignments and exams. Petitioner completed all work given to her and provided DCPS medical documentation supporting all her absences for SY 2010-2011. Petitioner asserts School A informed her she completed all of her requirements for her high school diploma and could participate in the school graduation ceremony on June 15, 2011. (Student's testimony)
7. Petitioner left the hospital and participated in School A's graduation ceremony and returned to the hospital. However, because the student missed significant amounts of school during SY 2010-2011 due to of her medical conditions she was later informed by DCPS she did not have sufficient credits and had not met the requirements to obtain the DCPS high school diploma. (Student's testimony)
8. The student believes that she completed and provided to School A all make-up work, assignments and tests that School A provided to her in order to meet the requirements for graduation and to receive a high school diploma. Petitioner has repeatedly requested her high school records and her diploma from DCPS but DCPS has failed to provide her the work she completed at School A so that it can be reviewed and graded and she can be given credit for the work. (Student's testimony)
9. School A closed permanently in August 2011. (Student's testimony)
10. The student attempted to enroll in a local college at the start of SY 2011-2012 but was unable to do so because she could not obtain her diploma from DCPS or School A. (Student's testimony)
11. In June 2011 the student's counsel sent correspondence to DCPS asserting the student had completed missed assignments during her hospitalization and inquired about the status of her obtaining her high school diploma. (Petitioner's Exhibit C)
12. After contacting DCPS the student was informed she should register with her neighborhood high school and a meeting would be convened to review her educational records. The student registered at her local DCPS high school, School B, at the start of SY 2011-2012. She did not attend School B and was hospitalized much of SY 2011-2012, but she participated in IEP meetings held at School B and DCPS provided the student visiting instruction during SY 2011-2012. (Student's testimony)
13. At none of the IEP meetings at School B did DCPS provide the student educational records or her high school diploma, nor did DCPS provide her services she needed to obtain the diploma, nor did DCPS provide her an IEP for SY 2011-2012. Although

DCPS provided her visiting instruction the instructors did not have a set curriculum or plan as to what needed to be covered in the instruction with the student and the instructors often simply made up work for the student to complete. The student has not been provided educational records documenting the visiting instruction. (Student's testimony)

14. DCPS has produced a Letter of Understanding ("LOU") that denotes the number of credits and classes the student needs to receive a high school diploma and the number of credits she has earned and the classes she has taken. The LOU indicates the student needs a total of 24 credits or Carnegie units to graduate. The LOU indicates the student has earned 20 credits and she has 5.5 remaining credits (seven remaining courses) to complete the DCPS high school diploma requirements.<sup>5</sup> The LOU indicates the student has earned all the required community service hours. Thus, the student needs the following courses and credits in order to earn her diploma:

(Respondent's Exhibit A-2)

| # Credits Needed | Courses Needed                                  |
|------------------|---|
| 1                | English,  |
| 1                | Lab Science                                     |
| 1                | Upper Level Math                                |
| ½                | U.S. Government                                 |
| 1                | Foreign Language                                |
| ½                | Art   |
| ½                | DC History                                      |
| Total # Needed   | <hr style="width: 100px; margin-left: 0;"/> 5 ½ |
|                  | 7 Total Courses Needed                          |

15. The LOU does not contain the student's signature. The student did not know about the LOU and had never seen the document. (Student's testimony)

16. The DCPS transcript for the student indicates the student has earned twenty (20) credits toward graduation and has a cumulative grade point average of 2.08 and a class rank of 71 of 200. During SY 2010-2011 the student was enrolled in 12<sup>th</sup> grade and received failing grades in all subjects except General Music in which she earned the grade "C" and Art & Design in which her grade was incomplete "I." During the following school year SY 2011-2012 the student was allegedly enrolled based upon the transcript in eight courses some of which were the same courses listed in the transcript for the previous school year. In all courses in the transcript for SY 2011-2012 the transcript notes failing grades, except for English IV, which has the mark of "M." (Respondent's Exhibit A-1)

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<sup>5</sup> Although the student has earned 20 credits and 24 credits are needed to graduate, the specific courses the student must fulfill cause the student to need more than 24 total credits to obtain the high school diploma.

17. The student is willing to take the additional courses needed in order to obtain her high school diploma. She would be assisted if the courses are provided on expedited basis and/or through on-line instruction and if she is provided a computer, software and tutoring to assist her in completing the required work. (Student's testimony)
18. DCPS has offered to provide the student computer based instruction and technology including a computer and software (Plato) as an accelerated means of completing her remaining high diploma requirements. (Respondent's Exhibit 2-2)

### 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. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. <sup>6</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the 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.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451

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<sup>6</sup> 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 relief presented sufficient evidence to meet the burden of proof.

(i)(2)(C)(iii).

**ISSUE 1:** Whether DCPS violated 34 C.F.R. § 300.501 (a) by failing to provide the student her educational records from her attendance at School A and her high school diploma which she alleges she earned during SY 2010-2011; and if so, did DCPS' failure to do so result in a denial of a free and appropriate public education ("FAPE") to the student.

**Conclusion:** Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS' failure to provide her educational records denied her a FAPE.

34 C.F.R. §300.501(a) provides:

(a) The parents of a child with a disability must be afforded, in accordance with the procedures of Sec. Sec. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to--

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

The student is an adult and afforded under IDEA the rights that would otherwise be that of the parent to examine her educational records.<sup>7</sup> The facts of this case reveal that as early as June 2011 the student thought she had met the requirements for graduation and she began to request her educational records from DCPS to assist her in determining whether she had in fact met the high school graduation requirements.<sup>8</sup> This was prior to School A closing permanently. DCPS was funding the student's attendance at School A and presumably would have been provided some documentation from School A to ensure the student was being provided the services that DCPS was funding.

The student has requested from DCPS but been provided neither her School A records nor the visiting instruction records that she needs to assist in determining whether any of the time she spent completing assignments and time with the visiting instructors can be credited toward meeting the high school graduation requirements DCPS has alleged she has not met. DCPS has been unable to produce any educational records for the student except her last IEP drafted at School A in March 2010, the transcript that DCPS has maintained for the student and the LOU, that does not have the student's signature.<sup>9</sup>

Had the requested records been provided, even if the student could not demonstrate she met all the high school requirements, she may have been in a better position to assert at hearing that

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<sup>7</sup> 34 C.F.R. 300.520

<sup>8</sup> FOF # 11

<sup>9</sup> FOF #s 14, 15, 16

some of the remaining requirements had been met.

Petitioner has requested the Hearing Officer direct DCPS to issue her the high school diploma. However, Petitioner has produced insufficient evidence that had those records been provided she would have been able to prove she was due a high school diploma. Although the student testified that she met all the requirements for the diploma while she was at School A, the documentation from the March 10, 2011, IEP meeting belies that assertion. The team at that meeting stated that it was unlikely the student could complete the graduation requirements by the end of that school year and the student would be required to attend school for some additional period beyond the end of SY 2010-2011, if not an additional school year. The student acknowledged during that meeting her willingness to attend school for an additional period in order to obtain her diploma.<sup>10</sup>

The Hearing Officer does not conclude based upon the evidence presented that the student has completed the requirements for the high school diploma and cannot conclude there is a factual and/or legal basis to direct DCPS to grant the student her high school diploma unless and until she meets those requirements.

This is not an instance as in the case Petitioner has cited in her post hearing brief where a Hearing Officer directed that a school district issue the student a high school diploma. In that case<sup>11</sup> the district concluded the student had met the requirements for graduation but the student was kept from graduating because of a “stay-put” order. Rather, this is an instance where the district asserts that student has not met the requirements for graduation and is insisting that the student meet the requirements before the diploma is issued. This Hearing Officer does not consider the case law Petitioner offered persuasive as authority for Hearing Officer to order a school district to provide a diploma when there is insufficient evidence that the student has met the requirements for graduation.

Although Petitioner credibly testified that she completed all the work that she was given, she did not and was not able to state that the work she completed met the standards that would have allowed her to graduate. Therefore, the Hearing Officer concludes there is insufficient basis for the Hearing Officer to direct DCPS to award the student her high school diploma.

Thus, the Hearing Officer concludes that DCPS’ failure to provide the student her educational records is a procedural violation that does not rise to the level of a denial of a FAPE<sup>12</sup> because

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<sup>10</sup> FOF # 4

<sup>11</sup> 52 IDELR 85

<sup>12</sup> *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

Petitioner did not independently prove that beyond DCPS' failure to produce all her educational record she met the requirements for her graduation. The evidence from the March 2011 IEP meeting indicates that she was aware and acknowledged she would not meet the graduation requirements by the end of SY 2010-2011.

Nonetheless, the student was willing and continued to make efforts during SY 2011-2012 in order to meet her graduation requirements and enrolled in her neighborhood high school and participated in visiting instruction. It is DCPS' failure to ensure the student had an IEP and was provided the required services during SY 2011-2012 that raises greater concern for the Hearing Officer.

**ISSUE 2:** Whether DCPS violated 34 C.F.R. § 300.323 (a) by failing to develop an appropriate IEP for the student during SY 2011-2012 while she was registered at School B and provided visiting instruction; and if so, did DCPS' failure to do so result in a denial of a FAPE to the student.

**Conclusion:** Petitioner sustained the burden of proof by a preponderance of the evidence that DCPS' failure to provide her an IEP for SY 2011-2012 denied her a FAPE.

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")).

Additionally, the public agency must also ensure that an appropriate IEP is in place for the beginning of each school year. 20 U.S.C. § 1414 (d) (4) (A) (i); 34 C.F.R. § 300.323 (a); and D.C. Mun. Regs. Tit. 5 § 3010.1.

34 C.F.R. §300.324(b) provides:

(b) Review and revision of IEPs.

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address--

(A) Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate;

The Hearing Officer acknowledges the student heroic efforts despite her severe illness over time to persistently strive toward completing her high school diploma and her willingness to do whatever it takes to compete the requirements. Unfortunately, the evidence indicates that DCPS has failed to do its part to ensure that the services provided the student have been focused pursuant to an updated IEP and that the visiting instruction was directed at what the student should have been working toward as noted in her March 2010 IEP – obtaining a high school diploma.

Petitioner asserts that she has made all attempts to comply with the additional efforts DCPS has required of her, and the evidence demonstrates that it is DCPS that has effectively engaged in nonfeasance - failing to ensure the student had an IEP in place for the time she was enrolled at School B during SY 2011-2012 and failing to ensure the visiting instructors knew and provided to the student the instruction she needed to complete the high school graduation requirements. Until the student initiated due process she has apparently never been clearly told what she needed to fulfill in order to get her high school diploma - complete 5.5 credits and fulfill the seven required courses.

Consequently, the student's entire school year during SY 2011-2012 was wasted and she earned none of the credits and completed none of the courses she could have completed toward the diploma. This result was not due to a lack of willingness and effort on her part but because of the lack of conscientious focus and action by DCPS. As a result the student has been unable to move forward with her post secondary education.

The Hearing Officer concludes that the student was harmed by DCPS' failure to provide her an updated IEP for the SY 2011-2012 under which required and focused instruction could be provided to help ensure the she earned her high school diploma. The Hearing Officer thus concludes the student was denied a FAPE.

### **Appropriate Relief:**

IDEA authorized District Courts and Hearing Officers to fashion "appropriate" relief, e.g., 20 U.S.C. § 1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations." *Florence County Sch. Dist. For v. Carter*, 5

As discussed above the Hearing Officer will not provide the student the requested relief that DCPS be ordered to issue her a high school diploma unless and until she meets the graduation requirements. Petitioner also sought an order directing DCPS to provide her educational records. However, the evidence indicates that DCPS has provided the student all the educational records it has. The final request for relief was that DCPS be ordered to provide the student

compensatory education.

A compensatory award fashioned by the Hearing Officer must be the result of a "fact-specific" inquiry that is "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 at 524. This means that the plaintiff has the burden of "propos[ing] a well-articulated plan that reflects [the student's] current education abilities and needs and is supported by the record." *Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt ("Nesbitt II")*, 583 F. Supp. 2d 169, 172 (D.D.C. 2008) (Facciola, Mag. J.).

Furthermore, the Court must be wary of "mechanical" calculations because a "reasonable calculation" of a compensatory award "must be qualitative, fact-intensive, and above all tailored to the unique needs of the disabled student." Branham, 427 F.3d at 9 (citing Reid, 401 F.3d at 524) (internal quotation marks omitted); but see *Stanton ex rel. K.T. v. Dist. of Columbia*, 680 F. Supp. 2d 201, 206-207 (D.D.C. 2010) (Huvelle, J.) (holding that formulaic calculations are not per se invalid, so long as the evidence provides a sufficient basis for an "individually-tailored assessment") (citing *Brown ex rel. E.M. v. Dist. of Columbia*, 568 F. Supp. 2d 44 ≥, 53-54 (D.D.C. 2008) (Bates, J.) (internal quotation marks omitted)).

However, "Reid certainly does not require [a] plaintiff to have a perfect case to be entitled to a compensatory education award"; on the contrary, "[o]nce a plaintiff has established that she is entitled to an award, simply refusing to grant one clashes with Reid." *Stanton*, 680 F. Supp. 2d at 207.

The Hearing Officer concludes compensatory education is warranted and the type and form delineated below are based upon the facts of this case and the form and type are appropriate and equitable to put the student in the place she would have been had DCPS fulfilled its obligations to the student and provided her a FAPE that would have allowed her to obtain her high school diploma.

There is a sufficient basis and finding of denial of FAPE to direct that DCPS provide the student compensatory services that will help ensure she is able to obtain that diploma in a reasonably prompt time so as to enable her to pursue her post-secondary education. She has been prevented from pursuing a college education because she lacks the high school diploma and lacked the updated IEP and services pursuant to an IEP in order to obtain it.

The evidence indicates, based on the student's testimony and DCPS' offer<sup>13</sup> of compensation, that the means by which the student can obtain her diploma expeditiously includes instruction, both independent courses and courses provided on-line, with student being assisted with individualized tutoring.<sup>14</sup>

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<sup>13</sup> FOF #s 17, 18

<sup>14</sup> Petitioner requested 72 hours of independent tutoring; however, the Hearing Officer did not find a factual basis

As a result the Hearing Officer directs in the Order below that DCPS provide the student services and technology necessary to ensure she completes her high school requirements in an expeditious manner and that DCPS provide independent tutoring to help ensure she has the support and direction she needs to complete the requirements.

**ORDER:**

DCPS shall, within thirty (30) calendar days of the issuance of this Order provide the student the following:

- (1) Convene and IEP meeting for the student and update the student's IEP.
- (2) In order to assist the student in earning a DCPS high school diploma DCPS shall make available to the student an independent study of Art and Design Foundations with the direction of a DCPS Art teacher.
- (3) DCPS shall make available to the student the following courses through the Plato: an upper level math course, English IV (12<sup>th</sup> grade English), Spanish II, US Government, DC History, and a lab science, all through Plato (the on-line learning program).
- (4) DCPS shall provide the student a laptop computer, necessary software and a wireless card to be used in order to access the Plato courses.
- (5) DCPS shall provide the student with thirty-five (35) hours of independent tutoring (five hours for each of the seven courses the student must complete) at the DCPS/OSSE approved rate to assist the student in fulfilling the courses described above.
- (6) The above listed services to be provided to the student by DCPS must be used by the student by the June 30, 2014, and will no longer be available to her after that date.
- (7) Upon the student's successful completion on or before June 30, 2014, of the courses listed in the paragraphs 2 & 3 of this Order, DCPS shall issue to the student her DCPS high school diploma within thirty (30) calendar days of the student's successful completion of the last of these seven courses.

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for that number of hours but found based on the student's testimony that tutoring hours were necessary and warranted to assist the student in completing the course work for her diploma. Absent specific testimony as to the total number of hours of tutoring the Hearing Officer concluded and a nominal number of hours per course was warranted and determined that nominal number was 5 hours per course and to grant the student's no tutoring hours would be inequitable. "Reid certainly does not require [a] plaintiff to have a perfect case to be entitled to a compensatory education award"; on the contrary, "[o]nce a plaintiff has established that she is entitled to an award, simply refusing to grant one clashes with *Reid*." *Stanton*, 680 F. Supp. 2d at 207.

**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).

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: March 23, 2013**