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

PETITIONER,
on behalf of STUDENT,[1]

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Date Issued: December 18, 2012

Hearing Officer: Peter B. Vaden

Case No: 2012-0693

Hearing Date: December 6, 2012

Student Hearing Office, Room 2006
Washington, D.C.

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STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the "Petitioner" or "MOTHER"), 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, Petitioner alleges that DCPS denied Student a free appropriate public education ("FAPE") by not providing a full-time, outside of general education, placement in Student's October 21, 2011 Individualized Education Program ("IEP").

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[1] Personal identification information is provided in Appendix A.

Student, an AGE young man, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on October 4, 2012, named DCPS as respondent. The undersigned Hearing Officer was appointed on October 9, 2012. The parties met for a resolution session on November 6, 2012 and were unable to reach an agreement. The 45-day deadline for issuance of this Hearing Officer Determination began on November 4, 2012. On October 24, 2012, the Hearing Officer convened a prehearing telephone conference with 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 December 6, 2012 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[2] and called as witnesses Student, SISTER, EDUCATIONAL ADVOCATE, and ASSOCIATE HEAD OF SCHOOL from NON-PUBLIC SCHOOL. DCPS called no witnesses. Petitioner's Exhibits P-1 through P-15 were admitted into evidence without objection, except for pages 3 through 8 of Exhibit P-4 which were withdrawn.[3] DCPS' Exhibits R-1 through R-13 were admitted without objection. Counsel for both parties made opening and closing statements. There was no request for post-hearing briefing.

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[2] An English-Spanish interpreter provided simultaneous interpretation of the due process hearing for Petitioner, whose first language is Spanish. Petitioner testified in Spanish and the interpreter translated her testimony to English.

[3] Exhibit Pages P-3-12 through P-3-21, originally part of Student's November 3, 2010 IEP (Exhibit P-4), were moved to Exhibit P-4, to follow Page P-4-2.

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[4]

- WHETHER STUDENT HAS BEEN DENIED A FAPE BY HIS OCTOBER 21, 2011 IEP WHICH DOES NOT MEET HIS ALLEGED NEED FOR FULL-TIME SPECIALIZED INSTRUCTION SERVICES, OUTSIDE OF THE GENERAL EDUCATION SETTING;

- WHETHER DCPS HAS DENIED STUDENT A FAPE BY FAILING TO PROVIDE HIM A FULL-TIME, OUTSIDE OF GENERAL EDUCATION, EDUCATIONAL PLACEMENT; and

- (IN THE ALTERNATIVE) WHETHER DCPS HAS DENIED STUDENT A FAPE BY PLACING HIM FOR THE CURRENT SCHOOL YEAR AT CITY HIGH SCHOOL, WHICH IS, ALLEGEDLY, UNABLE TO IMPLEMENT THE 22.75 HOURS OF SPECIALIZED INSTRUCTION, OUTSIDE OF THE GENERAL EDUCATION SETTING, SPECIFIED IN STUDENT'S OCTOBER 21, 2011 IEP.

For relief, Petitioner seeks an order for DCPS to develop a full time, outside of general education, educational program for Student and to fund Student's prospective enrollment at Non-Public School for the remainder of the 2012-1013 school year. Petitioner also seeks an award of compensatory education to compensate for educational harm allegedly caused by DCPS' failure to develop a Behavior Intervention Plan ("BIP") to address Student's truancy since the 2011-2012 school year and/or caused by Student's unsuitable placement at City High School for the current school year.

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[4] The fourth issue identified in the October 25, 2012 Prehearing Order, whether DCPS denied Student a FAPE by failing to conduct a Functional Behavioral Assessment and to implement a Behavior Intervention Plan to address Student's truancy issues, was resolved by the Parties prior to the hearing. However, Petitioner continues to seek compensatory education as a remedy for DCPS' allegedly not addressing Student's truancy during the 2011-2012 school year.

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 resident of the District of Columbia, where he resides with Mother, his father, Sister and another sibling. Mother's first language is Spanish. Testimony of Mother. Student is bilingual. Exhibit P-07.

2. For the 2012-2013 school year, Student is enrolled at CITY HIGH SCHOOL, where he is in the GRADE. Testimony of Mother, Exhibit R-10.

3. Student has been evaluated as having a Specific Learning Disability ("SLD") as his primary disability, and by reason thereof, needs special education and related services. Exhibit P-2.

4. Student began attending school at age 4 at FIRST DC PUBLIC SCHOOL. About one year later, he was identified as eligible for special education and related services. For grades 2 through 5, Student attended SECOND DC PUBLIC SCHOOL. Student returned to First DC Public School for his middle school years. Testimony of Mother.

5. Following two clinical evaluations in 2005, Student was diagnosed with Pervasive Developmental Disorder, Not Otherwise Specified. Exhibit P-07 (Review of Previous Evaluations.)

6. PSYCHOLOGIST conducted a bilingual psychoeducational reevaluation of Student on April 29, 2008. She reported that throughout the evaluation, Student spoke English and rarely answered in Spanish. (He was credited for his correct responses, whether given in English or in Spanish.) Psychologist reported that on the Woodcock–Johnson Tests of Cognitive Abilities, on cognitive measures related to verbal and non-verbal reasoning, Student had

Borderline scores. On visual-spatial and visual motor integration skills, Student attained Average scores. Psychologist noted that Student obtained much lower scores on Memory and Verbal Skills and on Verbal Abilities. Exhibit P-07.

7. On the Woodcock-Johnson Tests of Achievement, Student's problems with verbal skills, specifically phonological processing and memory, were evident in his lack of progress in reading and writing, since he had last been evaluated three years before. His scores were within the Very Low to Mild-Moderate ranges, within the 1st grade level, in basic reading and writing skills, including fluency. He had made relative progress in math. Scores were within the Borderline (Math Fluency) and Low Average (Calculation) ranges, within the 3rd grade level. His Applied Problems score was in the Very Low, Mild Deficient level. Psychologist projected that Student's significant problems with verbal skills, as well as memory, would continue to influence any work that involved those skills. Exhibit P-07.

8. In her 2008 report, Psychologist opined that Student's continued pattern of Very Low, Mild Moderate deficient scores suggested possible Mental Retardation, Mild-Moderate [*sic*] and wrote that a current adaptive behavior scale was strongly suggested to confirm or disconfirm this. Exhibit P-07. The evidence does not establish whether the adaptive behavior scale evaluation was conducted.

9. Student's October 21, 2011 IEP at First DC Public School reported Student's primary disability as SLD. It contained annual goals for Mathematics, Reading, Written Expression, Communication/Speech and Language, Emotional, Social and Behavioral Development, and Motor Skills/Physical Development. Exhibit R-1.

10. In the October 21, 2011 IEP, Student's Mathematics Needs were identified as follows:

> Student requires extensive small-group instruction and practice in order to improve his math skills. In addition, Student would somewhat benefit from having word problems read to him instead of having to read them on his own. Student also needs visual cues (in the forms of pictures or diagrams) to substitute for words whenever possible.

Exhibit R-1.

11. In the October 21, 2011 IEP, Student's Reading Needs were identified as follows:

> Student requires extensive small-group or one-on-one instruction in order to improve his reading skills in the areas of phonemic awareness, decoding, sight words, and vocabulary.

Exhibit R-1.

12. In the October 21, 2011 IEP, Student's Written Expression Needs were identified as follows:

> Student needs continued intensive practice in forming complete sentences. He may benefit from the use of word banks or pre-chosen words to form his sentences or the use of sentence starters.

Exhibit R-1.

13. In the October 21, 2011 IEP, Student's Communication/Speech and Language Needs were identified as follows:

> Student needs to increase/improve his ability to comprehend directives that include spatial concepts. He needs to recall information to facilitate his ability to follow directions. He should learn to ask for help when clarification of directions is warranted. He needs to be able to answer simple biographical questions and recent event questions. He needs to work on his auditory reception skills. Pragmatically, Student should work on initiating a conversation with adult and peers alike. Socializing with age appropriate peers and sharing information with others. [*Sic.*]

Exhibit R-1.

14. In the October 21, 2011 IEP, Student's Emotional, Social, and Behavioral Development Needs were identified as follows:

> Student requires consultative supports with on task behaviors and verbalizations of feelings concerning stress provoking situations. He requires constant redirection and verbal reinforcement to keep him focused to complete tasks.

Exhibit R-1.

15. In the October 21, 2011 IEP, Student's Motor Skills/ Physical Development Needs were identified as follows:

> Improved handwriting skills for letter and punctuation omission. Improved visual motor/visual perceptual skills for improved classroom performance.

Exhibit R-1.

16. The October 21, 2011 IEP provided that Student would receive 22.75 hours per week of Specialized Instruction and 60 minutes per week of Speech-Language Pathology, all outside general education, and 90 minutes per month of Behavioral Support Services. Exhibit R-1.

17. Sister picked Student up after school during the 2011-2012 school year. For the first half of the year at First DC Public School, Student would tell Sister there was no problem. Subsequently, following an alleged inappropriate advance made by a female student, Student became resistant to going to school. Testimony of Sister.

18. As of end of the June 14, 2012 Reporting Period, Student was reported to be "Progressing" on all of his October 21, 2011 IEP academic goals, on his Communication/ Speech and Language goals, and on his Emotional, Social and Behavioral Development goals. Student was reported to have "Mastered" his Motor Skills/Physical Development goal. SCHOOL SOCIAL WORKER reported in her end-of-year comment:

> There has been noted growth this school year in [Student's] social emotional development. He appears more comfortable with the school environment and school activities. He especially enjoys participating in sport related activities. His

> school attendance is good and he interacts with age appropriate peers. If something is bothering him, he will verbalize his feelings to adults. He needs to work more on verbalizing these feelings to peers if they are the source of frustration. His special ed teacher relates increased confidence levels and increased completion of class assignments. Special Subject teachers relate [Student] oftentimes refuses to complete assignments and this may be due to his lack of confidence in his ability. Reportedly, he does not usually ask for additional help.

Exhibit R-3.

19. Student's grades on his final report for the 2011-2012 school year were B's (English, Pre-Algebra, History-Geography and Science), B- (Health-Physical Education), F (Spanish Exploratory) and D (Art). Exhibit R-5.

20. In the 2011-2012 school year, Student had 188 class absences, of which 133 were unexcused. He was present for 151.5 of 183 days of school. In April 2012, he was absent for all or part of two school days. In May 2012, Student was absent for all or part of four school days. In June 2012, he was absent for all or part of one school day. Exhibit R-4.

21. Student's 2011-2012 school grades did not reflect performance or educational progress equivalent to that of nondisabled peers in the same grade. At home, he had difficulty reading books intended for primary grade students. Testimony of Sister. Student's Present Levels of Educational Performance, as reported on his October 26, 2012 IEP, were nearly identical to his Present Levels of Educational Performance reported on his October 21, 2011 IEP. Exhibits R-1, R10.

22. Student's October 26, 2012 IEP specifies that he will be provided 22.75 hours per week of Specialized Instruction and 60 minutes per week of Speech-Language Pathology outside the general education setting. The IEP also provides that Student will receive 90 minutes per month of Behavioral Support Services. Exhibit R-10.

23. At the end of the 2010-2011 school year, Mother left the United States temporarily to care for her mother and took Student with her. Student did not return to the United States until September 30, 2012 and began attending City High School approximately October 5, 2012. Testimony of Mother, Exhibit R-15.

24. Student has four classes each day at City High School. All classes are taught in self-contained special education classrooms, outside of general education, by teachers dually certified in special education and in their respective content areas. There may be up to 12 children in Student's classes. Testimony of Educational Advocate.

CONCLUSIONS OF LAW

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

Legal Standard for Prospective Non-Public Placement

Petitioner asserts that Student is entitled to public funding from DCPS for a private placement, because Student was denied a FAPE by his October 21, 2011 IEP, which did not provide for full-time specialized instruction outside of the general education setting, or because City High School is unable to implement the October 21, 2011 IEP. The IDEA ensures that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). Under the Act, DCPS is obligated to devise IEPs for each eligible child, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir.1991). If no suitable public school is available to fulfill the

child's IEP needs, DCPS must pay the costs of sending the child to an appropriate private school; however, if there is an "appropriate" public school program available, *i.e.*, one "reasonably calculated to enable the child to receive educational benefits," DCPS need not consider private placement, even though a private school might be more appropriate or better able to serve the child. *Id. (*citing *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)).

"The question of whether a public school placement is appropriate rests on '(1) whether DCPS has complied with IDEA's administrative procedures and (2) whether or not the IEP . . . was reasonably calculated to provide some educational benefit to [the student.]'" *J.N. v. District of Columbia*, 677 F.Supp.2d 314, 322 (D.D.C. 2010) (quoting *Schoenbach v. District of Columbia*, 309 F.Supp.2d 71, 80 (D.D.C.2004)). "While an IEP under the IDEA must be reasonably calculated to furnish educational benefits to the child and must be developed with parental involvement, it does not have to maximize the potential of a disabled child or include all the wishes of a child's parents." *See Rowley*, 458 U.S. at 189–90, 102 S.Ct. 3034; *Kerkam v. McKenzie*, 862 F.2d 884, 886 (D.C.Cir.1988) (Proof that loving parents can craft a better program than a state offers does not, alone, entitle them to prevail under the Act.) Under the IDEA, parental concerns are just one factor to be considered by the IEP team when developing the IEP. 20 U.S.C. § 1414(d)(3)(A)(ii). *Long v. District of Columbia* 780 F.Supp.2d 49, 58 (D.D.C.2011). A Hearing Officer may award appropriate equitable relief, including a prospective private placement, when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia,* 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d 7, 11–12 (D.C.Cir.2005)).

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).

ANALYSIS

1. WAS STUDENT DENIED A FAPE BECAUSE DCPS' OCTOBER 21, 2011 IEP DID NOT PROVIDE A FULL-TIME, OUTSIDE OF GENERAL EDUCATION, EDUCATIONAL PLACEMENT?

The issue of whether DCPS' October 21, 2011 IEP for Student was, or was not, appropriate rests on (i) whether DCPS complied with IDEA's administrative procedures in developing the IEP and (ii) whether the October 21, 2011 IEP was reasonably calculated to enable Student to receive educational benefits. *See J.N., supra*, 677 F.Supp.2d at 322. Because Petitioner has not alleged that DCPS failed to comply with the IDEA's procedural requirements, I proceed directly to the second prong of the inquiry.

An IEP "must include a variety of information, including the child's current levels of academic achievement and functional performance, measurable annual goals, how the child's progress towards the goals will be measured, and the special education and related services to be provided to the child. [20 U.S.C.] § 1414(d)(1)(A)(i)." *Savoy v. District of Columbia,* 844 F.Supp.2d 23, 26 (D.D.C.2012). The October 21, 2011 IEP identified Student's present levels of performance and needs, both in academic and related services areas. It contained detailed annual goals and described how Student's progress towards the goals would be measured. The IEP provided almost 23 hours per week of self-contained specialized instruction services, in addition to speech-language and behavioral support services. There was no evidence that

Mother or any other member of the IEP team dissented from the IEP when it was offered.

At the due process hearing, Petitioner generally did not address the appropriateness of the October 21, 2011 IEP as of the time it was offered. Her evidence was focused on Student's educational and emotional challenges during the 2011-2012 and current 2012-2013 school years. However, "[j]udicial review of IEPs under the IDEA is meant to be largely prospective and to focus on the child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was reasonably calculated to enable the child to receive educational benefits." *S.H. v. Fairfax Cnty. Bd. of Educ.*, Civil Action No.: 1:11-cv-128 (E.D.Va. Jun. 19, 2012) (Internal quotations and citations omitted, emphasis supplied.). *See, also, S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008) (Measure and adequacy of an IEP can only be determined as of the time it is offered to the student.) In this case, Petitioner offered no evidence that the October 21, 2011 IEP was not appropriate when it was offered to Student. Moreover, there was evidence at the hearing that Student made some academic progress under October 21, 2011 IEP. *See Schoenbach v. District of Columbia*, 309 F.Supp.2d 71, 80 (D.D.C.2004) (Academic progress is strong, though not probative, evidence that an IEP provides educational benefit.) During the 2011-2012 school year, Student earned satisfactory grades and was reported to be progressing on all of his academic and behavioral goals. Student's 2011-2012 special education teacher related Student's increased confidence levels and increased completion of class assignments. Although Sister testified, persuasively, that Student's grades were "inflated", if measured by achievement expectations for non-disabled peers, Sister also acknowledged that Student had no problems for the first half of the 2011-2012 school year.

Student's academic progress in the current 2012-2013 school year is another matter. Student has matriculated to a large public high school. His Present Levels of Educational

Performance reported on his October 26, 2012 IEP were essentially identical to his Present Levels reported on his October 21, 2011 IEP[5], putting in doubt the gains implied by Student's 2011-2012 end-of-year grade and progress reports. However, Student was out of the country until the end of September 2012 and he missed the first five or six weeks of school. His absence from school undoubtedly was a contributing factor to his unchanged Present Levels. I find, therefore, that Mother has not met her burden of proving that the October 21, 2011 IEP, at the time it was created, was not reasonably calculated to provide educational benefits to Student. DCPS prevails on this issue.

2. IS CITY HIGH SCHOOL UNABLE TO IMPLEMENT THE HOURS OF SPECIALIZED INSTRUCTION, OUTSIDE OF THE GENERAL EDUCATION SETTING, SPECIFIED IN STUDENT'S OCTOBER 21, 2011 IEP?

Petitioner also contended in her complaint for due process that Student is being denied a FAPE because City High School, where he was placed for the 2012-2013 school year, is unable to provide the 22.75 hours of Specialized Instruction, outside of the general education setting, specified in Student's October 21, 2011 IEP. Petitioner's evidence at the hearing, established, to the contrary, that City High School is implementing the specialized instruction provision of the IEP. Educational Advocate, who has observed Student's classes at City High School, testified that he is, in fact, receiving the specified 22.75 hours per week of Specialized Instruction outside of the general education setting and that the Assistant Principal at City High School had placed Student in a full-time special education program because she recognized the severity of Student's needs.[6] I find, therefore, that Petitioner has not established that City High School is

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[5] The due process complaint in this case was filed on October 4, 2012, apparently before Student started attending City High School. The current IEP was developed several weeks later on October 26, 2012. The appropriateness of the October 26, 2012 IEP, and the suitability of Student's continued placement at City High School under the new IEP, are beyond the scope of this due process hearing.

[6] To the extent that Petitioner asserts, as a separate issue, that DCPS has denied Student a FAPE by failing to provide him a full-time, outside of general education, placement for the

unable to implement the hours of specialized instruction, outside of the general education setting, specified in Student's October 21, 2011 IEP.[7] DCPS prevails on this issue.

3. IS STUDENT ENTITLED TO COMPENSATORY EDUCATION SERVICES AS AN EQUITABLE REMEDY FOR DCPS' NOT DEVELOPING A BEHAVIOR INTERVENTION PLAN TO ADDRESS STUDENT'S TRUANCY?

In her due process complaint, Petitioner alleges that during the 2011-2012 school year, DCPS denied Student a FAPE by failing to develop a Behavior Intervention Plan, based on a Functional Behavioral Assessment, to address Student's truancy problem.[8] The IDEA requires that, in the case of a child whose behavior impedes the child's learning, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 34 CFR § 300.324(a)(2)(i). In some circumstances, the IDEA requires the education agency to use such behavior interventions to address truancy issues. *See, e.g, Board of Educ. of Oak Park v. Ill. State Bd. of Educ.*, 21 F.Supp.2d 862, 877 (N.D.Ill. 1998) (School District's truancy interventions insufficient to meet the *Rowley* test of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.)

I find that in this case, the Petitioner's evidence did not establish Student was denied a FAPE by DCPS' not developing a BIP to address his truancy issues during the 2011-2012 school year. Last school year, Student was reported to have missed 188 classes, of which 133 were

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current school year, the evidence establishes to the contrary that all of Student's classes are provided in an outside of general education setting.

[7] The October 26, 2012 IEP also provides 22.75 hours per week of Specialized Instruction outside of the general education setting.

[8] Prior to the due process hearing, DCPS conducted a functional behavioral assessment to address Student's current school attendance issues. Although Petitioner no longer seeks an order for DCPS to conduct a functional behavioral assessment, she still requests an award of compensatory education for DCPS' failure to conduct the assessment during the 2011-2012 school year.

unexcused. Although Sister testified that Student's school attendance declined, after an alleged inappropriate contact by a female student in the second half of the school year, School Social Worker reported at the end of the year that Student's attendance was good. School records indicate that Student missed only a handful of school days in April, May and June 2012. As I noted in a previous section of this analysis, there was evidence at the hearing that Student made some academic progress under the October 21, 2011 IEP. This record does not establish that in order for Student to have benefitted from instruction under his October 21, 2011 IEP, DCPS was required to have developed a BIP to address his attendance issues. DCPS prevails on this issue.

SUMMARY

The issues before me in this case were whether the October 21, 2011 IEP was reasonably calculated to provide educational benefits when it was offered to Student, whether City High School is unable to implement the October 21, 2011 IEP's requirement to provide Student 22.75 hours of specialized instruction outside of the general education setting, and whether DCPS denied Student a FAPE by not developing a Behavior Intervention Plan to address his school attendance during the 2011-2012 school year. I have found that Petitioner has not met her burden of proof any of these issues. Because the October 26, 2012 IEP was developed after the present due process complaint was filed, I do not reach the issues of whether the October 26, 2012 IEP is appropriate or whether City High School is "a school capable of fulfilling [Student's] needs," as reflected in that IEP. *See Jenkins v. Squillacote*, *supra*, 935 F.2d at 304-305.

ORDER

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

All relief requested by the Petitioner herein is denied.

Date: December 18, 2012

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).