



Office of Review & Compliance

Student Hearing Office
 Van Ness Elementary School
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Confidential

The Student Through their)	IMPARTIAL
)	DUE PROCESS HEARING
Parents,*)	
Case No.:)	
)	<u>DECISION AND ORDER</u>
Petitioner,)	
)	
vs.)	Due Process Compl. Filed: Feb. 6, 2009
)	Hr'g Dates: Apr. 21 & May 6-7, 2009
The District of Columbia Public Schools,)	Held at: Van Ness Elementary School
Home School: School)	1150 5th Street, S.E., 1st Floor
Attending: Academy)	Washington, D.C. 20003
)	
Respondent.)	Pre-Hr'g Conference Held By-Phone on
)	Monday, Mar. 23, 2009 at 11:30 a.m.

2009 MAY 18 AM 8:25
 OSSE
 STUDENT HEARING OFFICE

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Independent Hearing Officer:

Frederick E. Woods

*** Party identification information is stated in Appendix A of this order and Appendix A shall be removed from this order before public dissemination.**

I. Case Background and Procedural Information

A. JURISDICTION

This Decision and Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, codified at 20 U.S.C. §§ 1400 -1482, 118 Stat. 2647; and its implementing regulations codified at 34 C.F.R. §§ 300.01 – 300.818; 5 D.C.M.R. §§ 3000 - 3033; and Section 327 of the D.C. Appropriations Act.

B. DUE PROCESS RIGHTS

Before the hearing the parent had been advised of their due process rights.

C. FIVE-DAY DISCLOSURES

Petitioner: Admitted, without objection, a disclosure letter filed on 04/13/09 that list six (6)-witnesses and attached nineteen exhibits sequentially labeled and tabbed Parent-01 through Parent-19. Four witnesses were present and called to testify: (1) the student's mother; (2) the student's education advocate; (3) the student's family counselor; and (4) the Academy assistant education director.

Respondent: **The LEA** Admitted, without objection, a disclosure letter filed on 04/13/09 that list three (3)-witnesses and attached four exhibits sequentially labeled -01 through -04. One witness was present but not called to testify: (1) the student's former special education teacher.

Respondent: **The OSS E as the SEA:** Admitted, without objection, disclosure letters filed on 04/28/09 and 04/13/09 that together lists four (4)-witnesses and attached twelve exhibits sequentially labeled OSSE-01 through OSSE-12. Two witnesses were present but not called to testify. (1) the OSSE placement oversight unit manager; and (2) the OSSE change in placement coordinator.

D. STATEMENT OF THE CASE

The student, born age -years,6-months, is a student with a disability receiving special education and related services, according to her 01/09/09 initial IEP, as an grade, 100% out-of-general education, Emotionally Disturbed ("ED") and Specific Learning Disabled ("SLD") student who at the time the Due Process Complaint ("DPC") was filed was attending

located at
Parent-08.)

(R. at

Once the student became eligible for special education services on 01/09/09, the student's IEP Team determined that _____ could not implement the student's 01/09/09 initial IEP. On 01/21/09 _____ gave Notice for Assistance ("Notice") to the OSSE that it could not meet the needs of the student. The OSSE did not provide the student a change in placement after receiving that Notice until 04/21/09. (R. at OSSE-07, 09.)

Consequently, on 02/06/09 parent's counsel filed the student's 02/06/09 Due Process Complaint ("DPC") alleging that _____ as the LEA and the OSSE as the SEA both violated the IDEA and denied the student a Free Appropriate Public Education ("FAPE") by doing these things: (1) _____ failed to timely notify OSSE as the SEA that _____ could not meet the student's educational program needs when Notice to OSSE was given on Jan. 21, 2009; and (2) "**the OSSE** failed to provide the student an appropriate placement and/or ensure that the student's program [IEP] was implemented [after her Jan. 9, 2009 initial IEP was developed.]" (R. at Parent-02.)

As relief, the parent wants the OSSE to fund a private school placement for the student and provide the student with Compensatory Education. (R. at Parent-02.)

The LEA's Response: _____ oral Response to the DPC was twofold: (1) the student became eligible for special education services on 01/09/09; and (2) on 01/21/09 the LEA provided the OSSE sufficient Notice that _____ could not meet the student's educational programming needs.

The SEA's Response: The OSSE's 03/03/09 written Response to the DPC was twofold: (1) the LEA's 01/21/09 Notice to OSSE was insufficient when it failed to provide the Notice 30-days before the student's IEP Team Meeting convened where a change-in-placement was discussed; and (2) as to the parent, any delay in the OSSE placing the student did not cause the student educational harm. (R. at OSSE's 03/03/09 Response to DPC.)

The OSSE Student Hearing Office ("SHO") continued, at parent counsel's request, the due process hearing scheduled for 04/10/09 until 9:00 a.m. on Tuesday, April 21, 2009. The continued hearing was held at Van Ness Elementary School, 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003. The parties' waived participation in a Resolution Session. And parent's counsel selected to have a closed due process hearing that convened, as rescheduled, 75-days after the 02/06/09 DPC was filed.

Attorney Roberta Gambale appeared in-person representing the student who did not participate; and the student's mother who did participate. Attorney advisor Eden I.

Miller, appeared in-person representing the OSSE. And attorney Jon A. Hoppe appeared in person representing DCPS was not named as a party.

II. Issues

- 1) Did [redacted] as the LEA Charter violate the IDEA and deny the student a FAPE by failing to timely notify OSSE as the SEA that [redacted] could not meet the student's educational program needs when the student's initial IEP Team decided on 01/09/09 that it could not meet the student's needs and the school gave Notice to the OSSE of that fact on Jan. 21, 2009? (R. at Parent-02.)
- 2) Did the OSSE as the SEA violate the IDEA and deny the student a FAPE by failing to provide the student an appropriate placement and/or ensure that the student's program [IEP] was implemented [when after her Jan. 9, 2009 initial IEP was developed the OSSE received Notice from the student's LEA Charter on 01/21/09 that the LEA Charter could not meet the student's needs.]? (R. at Parent-02.)

PRELIMINARY MATTER

Before hearing the case on the merits, the OSSE argued its Motion to Dismiss or in the alternative Motion for Summary Judgment ("Motion") filed on 04/13/09. After hearing arguments for and against the Motion, a ruling on it was reserved until after the parties brief the issues underlying the Motion regarding jurisdiction.

Toward this end, the parties were asked to submit a brief by 11:59 p.m. on May 11, 2009 on the following issues:

1. Whether a hearing officer has jurisdiction under the IDEA according to 34 C.F.R. § 507 (a)(1-2), and applicable case law to resolve a dispute between the SEA and an LEA Charter raised by the SEA in defense of a parent's claim regarding the SEA's respective obligations to provide a FAPE or to ensure a FAPE is being provided to a student found eligible for special education services under the IDEA.
2. Whether a hearing officer has jurisdiction over the OSSE as the SEA under the IDEA according to 34 C.F.R. § 507 (a)(1-2); 34 C.F.R. § 300.33; 5 D.C.M.R. § 3019.9; D.C. Code Ann. § 38-2601.01 (d); 20 U.S.C. § 1413 (g)(1)(D)-(2); and applicable case law to decide the issues raised by a parent in their DPC against the OSSE as the SEA regarding the SEA's IDEA obligations to provide a FAPE or to ensure a FAPE is being

provided to a student found eligible for special education services under the IDEA.

3. Whether the Notice for Assistance given by an LEA Charter to the SEA when the LEA Charter concludes that it cannot serve a child with a disability enrolled in its facility according to 5 D.C.M.R. § 3019.9 require the LEA Charter to comply with the SEA's Policy and Procedure for Placement Review ("PPPR") issued by OSSE, the SEA on 09/19/08 but not codified into law until 04/14/09.

Directions: When analyzing each issue the parties were asked to do these things:

- (1) State the issue being analyzed;
- (2) Answer the question being analyzed yes or no before you analyze it; and
- (3) Provide the legal reasoning for your answer by using binding legal authority first before relying on primary persuasive authority from another jurisdiction.

However, albeit the Motion was pending, the parties' resolved all issues in the case based on their stipulations except for a finding that the student was denied a FAPE which was adjudicated on May 6-7, 2009. A Second Interim Order was issued to the parties on April 22, 2009 based on their stipulations.

STIPULATIONS

The parties stipulated to resolve the issues in this case without stipulating that the student was denied a FAPE as follows:

1. The OSSE would place, fund at public expense, and issue on 04/21/09 the student's Prior Notice of Change in Placement for the student to attend Academy in Springfield, Virginia effective on 04/22/09 and for the remainder of the 2008-09 school year.
2. The parties' executed, signed, and submitted a Request for Transportation Form to DCPS on 04/21/09 so that the student would be transported by school bus from home to school and from school to home within five business days from that date the Request Form was submitted to DCPS.
3. The stipulations were not based on an admission or a finding that either the LEA Charter or the SEA denied the student a FAPE.

4. And based on the stipulations that parent withdrew the two issues raised in their 02/06/09 DPC except the parent presented evidence on May 6-7, 2009 about whether the stipulations should be based on a finding that the LEA Charter and the SEA jointly or severally denied the student a FAPE.

On May 6 -7, 2009, the hearing reconvened as rescheduled to take the evidence of how the student may have been harmed by the delayed placement to Academy. The student had enrolled in Academy on April 27, 2009—10-days before the hearing. (R. at testimony of the Academy assistant. education director.)

After the parent presented their case in chief and rested, the LEA Charter and the OSSE counsels' jointly made an oral Motion for a Directed Finding that the parent did not meet their burden of proof on their claim that the student was harmed by the delay in placing her at Academy; and that neither the LEA Charter nor OSSE's alleged delay in placing the student at Academy caused the student educational harm. After hearing extensive arguments for and against the Motion, the Motion was granted on the hearing record because the parent was unable to prove harm based solely on the delay—a procedural violation of the IDEA. Consequently, the pending issues for briefing are moot based on that directed finding.

And the hearing officer made these—

III. FINDINGS OF FACT

1. The student, born age -years, 6-months, is a student with a disability receiving special education and related services, according to her 01/09/09 initial IEP, as an grade, 100% out-of-general education, Emotionally Disturbed (“ED”) and Specific Learning Disabled (“SLD”) student who at the time the Due Process Complaint (“DPC”) was filed was attending School located at (R. at Parent-08.)
2. Once the student became eligible for special education services on 01/09/09, the student’s IEP Team determined that could not implement the student’s 01/09/09 initial IEP. On 01/21/09 gave Notice for Assistance (“Notice”) to the OSSE that it could not meet the needs of the student. The OSSE did not provide the student a change in placement after receiving that Notice until 04/21/09. (R. at OSSE-07, 09.)
3. On April 21, 2009 the OSSE issued the student’s Prior Notice of Change in Placement from to Academy Therapeutic Day School and attached a completed “IEP Attachment B Transportation Form for SY 2008-09.” (R. at OSSE-07, 09.)

4. The student enrolled in _____ Academy on April 27, 2009. (R. at testimony of the _____ Academy assistant education director.)
5. In addition to the private placement the parent sought Compensatory Education as relief for the loss of special education services being provided in an appropriate educational placement for the period of February 9, 2009, 30-days after the LEA Charter said that it could not meet the student's educational needs, until April 27, 2009 when the student first enrolled at _____ Academy. There were 49-school days during that time period. Therefore the alleged harm period is 49-school days from Feb. 9, 2009 to Apr. 27, 2009.
6. According to the _____ Attendance Report from 01/09/09 thru 04/22/09, the student was absent from school 29 days—27 of those absences were between Feb. 9, 2009 – Apr. 27, 2009—the parent's alleged harm period. (R. at OSSE-11.)
7. According to the _____ Attendance Report from 08/25/08 thru 04/09/09, the student was absent from school 47 days, six (6) of them excused absences. But 27 of those absences were from Feb. 9, 2009 – Apr. 27, 2009. (R. at _____ -02; OSSE-11.)
8. However, combining the _____ Attendance Report from 08/25/08 thru 04/09/09 with the Attendance Report from 01/09/09 thru 04/22/09, the student was absent from school 57 days—27 of those absences were between Feb. 9, 2009 – Apr. 27, 2009. (R. at _____ -02; OSSE-11.)
9. And according to the student's 01/09/09 MDT Meeting Notes, the student had "53-unexcused and excused absence during the 2007-08 school year." (R. at Parent-07.)
10. Consequently, because there were 128 school days in the 2007-08 school year and the student was absent 53 of those days or 41.40% of the school year; she failed all four of her core subjects and was retained in the _____ grade at the end of her 2007-08 school year. (R. at Parent-18.)
11. And assuming there were 128 school days in the 2008-09 school year the student was absent 57 of those days or 44.53% of the school year.
12. And the _____ Academy assistant education director testified that the student enrolled at _____ Academy on April 27, 2009 and had been there five (5)-days. But there were eight (8)-school days between 04/27/09 – 05/07/09 and the student had been in school five (5)-days,

therefore she was absent from school three (3)-days. (R. at testimony of the Academy assistant education director.)

13. The student's mother said that she was aware of her daughter's absence reports. She said that her daughter had been absent because she sometimes misses the school bus and the parent does not have a car to take her to school; the student has health problems; and she visited five schools with the parent to select her new placement. (R. at parent's testimony.)
14. However, as relief for the delay in locating and receiving the new education placement at Academy the parent wants Compensatory Education ("Comp. Ed.") for her daughter. Although no formal Comp. Ed. Plan was presented at the due process hearing the student's education advocate asked for an independent tutor, for two hours per week for the three month delay in placing the student at Academy; and asked for summer 2009 Extended School Year Services ("ESY"); The two hours per week, the advocate said, is "based on talking to the student who said that is all she [the student] could tolerate." And the advocate said she did not take into consideration the student's absences from school in making the Comp. Ed. request. (R. at education advocate's testimony.)
15. Further, the advocate said that she has been an employee at the parent's counsel law firm since Dec. 2008—for five months, her first job as an education advocate; and said that she had never drafted a Comp. Ed. Plan before—[and still has not because she did not draft one for this student]. (R. at education advocate's testimony.)
16. And the sole reason for asking for Comp. Ed. and ESY services was based on the 22-day delay in obtaining the student's new placement at Academy—[49-school days – 27-absences = 22-days.] That means the student was absent from school for 55.10% of the alleged harm period time. (R. at OSSE-11.)
17. So the 22-day delay in placing the student at Academy is a procedural violation of the IDEA but there was no evidence of how the delay in placing the student harmed the student particularly when there was no evidence whatsoever about any educational harm caused to the student from the delay in placing her nor evidence about any educational harm caused to the student by the student's own unexcused excessive absences from school. And no evidence was presented about why the student needs ESY services.
18. Ergo, based on these findings the parent did not prove that either the Academy or the OSSE denied the student a FAPE.

IV. DISCUSSION and CONCLUSIONS OF LAW:

I

The LEA, is required to make a FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

The IDEA codified at 20 U.S.C. §§ 1400 1482. and 5 D.C.M.R. § 3000.1 requires the DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide them with special education and related services through an appropriate IEP and Placement.

The LEA met its legal obligation under the IDEA. Here is why.

1. “If a child’s initial evaluation suggests [s/he] is entitled to a FAPE, IDEA then requires the school district to create and implement an IEP, which is the ‘primary vehicle’ for implementing the Act.” Hoing v. Doe, 485 U.S. 305, 311 (1988).
2. Pursuant to 5 D.C.M.R. § 3002.1, LEA Responsibility, “[t]he services provided to the child must address all of the child’s identified special education and related services needs and must be based on the child’s unique needs and not on the child’s disability.”
3. Pursuant to 5 D.C.M.R. § 3013.1(e), Placement, “[t]he LEA shall ensure that the educational placement decision for a child with a disability is ...based on the child’s IEP.”
4. Pursuant to 5 D.C.M.R. § 3025, Procedural Safeguards—Prior Written Notice, DCPS shall provide written notice to the parent of a child with a disability before it proposes...an educational placement of the child.
5. Pursuant to the IDEA at 20 U.S.C. § 1414 (d) (A), (B); 34 C.F.R. § 300.323 (a) Requirement that Program be in Effect—

At the beginning of each school year, each local educational agency ... shall have in effect for each child with a disability in the agency’s jurisdiction an IEP.

6. The student’s IEP team that included her mother and her education advocate as team members complied with the IDEA when it did the following: (1) referred the student for an evaluation; (2) found her eligible for special education services on 01/09/09; (3) developed her initial 01/09/09 IEP; and (4) decided, also on 01/09/09, that its own LEA Charter, could not meet the student’s needs. (R. at Parent-07, 08.)

7. In accord with 5 D.C.M.R. § 3019.9, on or about 01/21/09 the LEA Charter gave Notice for Assistance to the OSSE, the SEA, when the LEA Charter concluded that it cannot serve a child with a disability enrolled in its facility.
8. On April 21, 2009 the OSEE issued the student's Prior Notice of Change in Placement from _____ to _____ Academy Therapeutic Day School and attached a completed "IEP Attachment B Transportation Form for SY 2008-09." (R. at OSSE-07, 09.)
9. The student enrolled in _____ Academy on April 27, 2009. (R. at testimony of the _____ Academy assistant education director.)
10. The parent sought relief for the loss of special education services being provided in an appropriate educational site placement for the period of February 9, 2009, 30-days after the LEA said that it could not meet the student's educational needs, until April 27, 2009 when the student first enrolled at _____ Academy. There were 49-school days during that time period. Therefore the alleged harm period is 49-school days from Feb. 9, 2009 to Apr. 27, 2009.
11. According to the _____ Attendance Report from 01/09/09 thru 04/22/09, the student was absent from school 29 days—27 of those absences were between Feb. 9, 2009 – Apr. 27, 2009. (R. at OSSE-11.)
12. So there was a 22-day delay in getting the student into a new placement—[49-school days – 27-absences = 22-days]. (R. at OSSE-11.)
13. That 22-day delay in placing the student is a procedural violation of the IDEA but there was no evidence of how that delay in placing the student harmed the student particularly when there was no evidence whatsoever about any harm caused to the student by the delay in light of any educational harm caused to the student by the student's own excessive absences from school. (R. at .02; OSSE-11.)
14. Because when combining the _____ Attendance Report from 08/25/08 thru 04/09/09 with the Attendance Report from 01/09/09 thru 04/22/09, the student was absent from school 57 days—27 of those absences were between Feb. 9, 2009 – Apr. 27, 2009. (R. at _____ 02; OSSE-11.)
15. And according to the student's 01/09/09 MDT Meeting Notes, the student had "53-unexcused and excused absence during the 2007-08 school year." (R. at Parent-07.) Consequently the student was absent from school 41.40% of the 2007-08 school year; absent from school 44.53% of the 2008-09 school year; and absent from school 55.10% of the alleged harm period. (R. at BJPCS-02; OSSE-11.)

16. Now albeit the delay in placing the student is a procedural violation of the IDEA, that delay alone is not a *per se* denial of a FAPE nor does it constitute *per se* educational harm. Here is why.
17. Pursuant to the IDEA at 20 U.S.C. § 1414 (E) (ii), and 34 C.F.R. § 300.513 (a) Decision of a hearing officer on procedural issues, states that, “[i]n matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education [FAPE] only if the procedural inadequacies—
- (I) impeded the child’s right to a free appropriate public education;
 - (II) significantly impeded the parent’s opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent’s child; or
 - (III) caused a deprivation of educational benefits.”
18. And pursuant to 34 C.F.R. § 300.513 (3) Hearing Decisions, “[n]othing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements.”
19. The student was not denied a FAPE because there was no evidence presented by the parent that a procedural inadequacy impeded the student’s right to a FAPE nor deprived her of educational benefit since there was no evidence presented to demonstrate that the student’s education was affected by any alleged procedural violation that may have been committed. Particularly since the 22-day delay in placing the student is overwhelmed by the student’s 57-absences from school during the 2008-09 school year; her 53-absences during the 2007-08 school year; and her 27-absences during the 49-school day alleged harm period. (R. at BJPCS-02; OSSE-11.)
20. Missing school over 40% of the 2007-08 and 2008-09 school years; and missing 55% of the 49-school days in the parent’s alleged educational harm period for the 2008-09 school year *ipso facto* is likely to result in underachievement that is directly related to the inexplicable excessive absences from school.
21. Additionally, it did not impede the parent’s opportunity to participate in the decision making process regarding the provision of a FAPE because the parent participated in the student’s 01/09/09 MDT Meeting that developed the student’s initial IEP and decided she needed a new placement that gave rise to the parent’s 02/06/09 DPC. (R. at Parent-02, 07, 08.)

22. So there is no FAPE denial because there is no evidence whatsoever to establish a nexus between the levels of services the student now receives and a resulting educational harm or an impediment to the parent's role in decision making process regarding a FAPE to the student.
23. Moreover, the D.C. Circuit Court held that: "only those procedural violations of the IDEA which result in a loss of educational opportunity or seriously deprive parents of their participation rights are actionable." Lesesne v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006) (citing Kruvant v. District of Columbia, 99 F. App'x 232, 233 (D.C. Cir. 2004) (holding that although DCPS admits it failed to satisfy its responsibility to assess the student within 120 days of the parents' request, the parents have not shown harm resulted from that error).
24. And "to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than *de minimis* failure to implement all elements of that IEP, and, instead must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. ... 'Failure to implement all services outlined in an IEP does not constitute a *per se* violation of the IDEA.'" Catalan v. District of Columbia, 478 F. Supp. 2d 73, 75-76 (D.D.C. 2007) (holding that a failure to provide all of a student's weekly speech-language therapy outlined in their IEP did not constitute a FAPE deprivation).
25. So based on this hearing record, there does not exist evidence supporting the parent's claim that her daughter was denied a FAPE because a delay in placing the student at _____ Academy alone did not result in a *per se* denial of a FAPE to her daughter.
26. Moreover, the parent did not present a Comp. Ed. Plan that complies with the IDEA.
27. Now albeit the parent did not present a written formal Comp. Ed. Plan, the student's education advocate asked for an independent tutor, for two hours per week for the three month delay in placing the student at _____ Academy; and asked for summer 2009 Extended School Year Services ("ESY"). The two hours per week, the advocate said, is "based on talking to the student who said that is all she [the student] could tolerate." And the advocate said she did not take in consideration the student's absences from school in making the Comp. Ed. request. (R. at educate advocate's testimony.)
28. That Compensatory Education request does not meet all of the requirements for awarding Compensatory Education under applicable case law. So no such relief is awarded. Moreover, now that the student's full time initial IEP is to be implemented in a full time day therapeutic special education program at a private school selected by the parent but funded at public expense, there was no evidence of what else the student needed on top of her full time therapeutic IEP services.

29. Moreover, pursuant to Reid v. District of Columbia, 401 F.3d 516, 522 (D.C. Cir. 2005), “[u]nder the theory of ‘compensatory education’ Courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program.”
30. “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 at 524.
31. Joining sister circuits, the District of Columbia Circuit Court held that “Compensatory Education awards fit comfortably within the ‘broad discretion’ of courts fashioning and enforcing IDEA remedies, see Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16 (1993).” Reid, 401 F.3d at 523.
32. In sum, the Reid decision expressly states that courts and hearing officers may award Compensatory Education. Reid, 401 F.3d at 522. However, a BLMDT, as required under the IDEA, includes the LEA and SEA representatives who are employees of the state, who, under the IDEA, cannot conduct due process hearings. So if a hearing officer ordered a BLMDT to decide the parent’s Compensatory Education claim, that team is being ordered to engage in a function reserved to courts and hearing officers. And, according to Reid, “under the statute [IDEA] a hearing officer may not delegate his authority to a group that includes an individual specifically barred from performing the hearing officer’s functions.” Reid, 401 F.3d at 526.
33. So in light of Reid, there was no qualitative evidence presented about the educational benefits that likely would have accrued [to the student] from special education services the school district should have supplied [the student] in the first place.” Reid, 401 F.3d at 524. And in the absence of an agreement between the parties that a certain type, form and amount of Compensatory Education services are warranted, no Compensatory Education is ordered.
34. Further, in light of Reid, the hearing officer cannot send the matter of Compensatory Education to an IEP Team to decide if Compensatory Education services are warranted. Reid, 401 F.3d at 526.
35. Consequently, the parent’s claim for Comp. Ed. is denied.
36. Pursuant to 5 D.C.M.R. § 3030.3, “The burden of proof shall be the responsibility of the party seeking relief; either the parent/guardian of the child or the LEA. 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 that the action and/or inaction or proposed placement is inadequate or adequate to provide the student a Free Appropriate Public Education (FAPE).”

37. The parent, who filed the Due Process Complaint, had and did not meet their burden of proof in this case because the parent:

- a. Failed to prove that the 22-day delay in providing the student a new placement resulted in a denial of a FAPE.

So in consideration of the hearing record, there is no finding that the student was denied a FAPE because the parent did not meet their burden of proof under the IDEA by proving any alleged violation of the IDEA that denied the student a FAPE. And based on the evidence and governing law the hearing officer issues this—

ORDER

1. The parent's 02/06/09, Due Process Complaint ("DPC") in Case No. _____ is dismissed, with prejudice—meaning that the issues that were or could have been raised in the 02/06/09 DPC based on the same facts against the same parties or privies that arise from the same time period that formed the basis for the 02/06/09 DPC that is resolved herein by a final judgment on the merits cannot be relitigated. See Apotex, Inc. v. FDA, 393 F.3d 210, 217 (D.C. Cir. 2004).
2. There is no finding that the student was denied a FAPE.
3. This Order resolved all issues presented at the 05/07/09, 05/06/09, and 04/21/09 due process hearings that were raised in the student's 02/06/09 Due Process Complaint in Case Number _____ that is dismissed with prejudice.
4. The 45-day time limit, from filing the Due Process Hearing Request to its Disposition after the expiration of the 30-day period under § 300.510 (b) — receipt of the final Hearing Officer's Decision (HOD) pursuant to 34 C.F.R. § 300.515 (a) (1)—was extended by the parent for good cause; and the time for disposition was extended, in accord with this Order, to accommodate the parent's requested and agreed to continuances due to the parent, the LEA Charter, and the OSSE's need to schedule multiple hearing dates at the convenience of each other and their respective witnesses' schedules.

Furthermore, pursuant to SOP § 402 (B)(2) Continuances, states that "in general the parties' agreement to a continuance constitutes 'good cause' to reschedule the hearing to another date and to extend the deadline for issuance of a final determination."

5. And the hearing officer made no additional findings.

This is the final ADMINISTRATIVE DECISION. An appeal can be made to a court of competent jurisdiction within ninety (90)-days from the date of this Decision and Order pursuant to 20 U.S.C. § 1415 (i)(1)(A); (i)(2)(B); 34 C.F.R. § 300.516 (b).

_/s/ Frederick F. Woods
Frederick E. Woods
Hearing Officer

May 17, 2009
Date

All papers returned in the student's SHO file are either the original or true copy of the original documents filed and presented to the hearing officer in this matter.

Executed this 17th day of May, 2009.

/s/ Frederick F. Woods
Hearing Officer