

*DC Office of the State Superintendent of Education  
Office of Compliance and Review  
Student Hearing Office*

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**Confidential**

<p>STUDENT<sup>1</sup>, by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.</p>	<p><b>HEARING OFFICER'S DETERMINATION</b></p> <p>Date: May 3, 2009</p> <p><b><u>Hearing Officer: Wanda I. Resto, Esquire</u></b></p>
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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

## I. PROCEDURAL BACKGROUND

On March 19, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent") pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. § 1415(c)(2)(B)(i)(I) alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE") by failing to timely conduct and review cognitive and speech/language evaluations; failing to include the parent in the decision-making process by convening an Individualized Education Program ("IEP") meeting in March 2007 and changing the Student's IEP without her input; failing to develop an appropriate IEP; failing to provide all necessary and prescribed specialized instruction and related services failing; and failing to provide an appropriate placement.

The Petitioner requests the Respondent be found to have denied the Student a FAPE and ordered to immediately place and fund the Student at a full-time special education placement of the Petitioner's choosing, with transportation. The Petitioner further request that within 30 days, the Respondent:

- i) conduct comprehensive psychological and speech and language evaluation of the Student and deliver the results to the Petitioner and the Petitioner's counsel,
- ii) convene a multidisciplinary team ("MDT") meeting at the Student's new placement to review all current evaluations, and review and revise the Student's IEP as appropriate,
- iii) at the ordered MDT meeting, the Respondent to discuss and determine appropriate compensatory education to compensate the Student for the Respondent's failures as identified in this proceeding,
- iv) in the alternative, the Respondent to fund an independent evaluation to determine the appropriate compensatory education, and following that evaluation, the Petitioner, at her option, to bring a due process complaint in order to present evidence and testimony on the issue of compensatory education.

The DCPS' Response to Parent's Administrative Due Process Complaint Notice was filed on March 30, 2009.

The Respondent asserted that on October 17, 2007, while the Student was attending Dunbar SHS, it convened a resolution session, as a result of which the parties agreed the Student's IEP was current and the Student's evaluations from 2006 and an IEP from 2007 were provided to the Petitioner, along with a copy Student's file.

The Respondent further asserted the Student's IEP 2007 was developed based on the current evaluations and input from the Student's teachers and multi-disciplinary team and the Student did not require speech/ language therapy and psychological counseling. The Respondent asserted the Student was not "placed" at Dunbar by DCPS. Rather, the parent enrolled the Student at Dunbar as her neighborhood school in the 2007-2008 school year and it has and is implementing the Student's IEP, and she has been making academic progress. Additionally, the Respondent contends that the IEP is sufficient as written and if any goals or objectives have been omitted, it did not constitute a denial of FAPE and that the Student's IEPs have been appropriate, and implemented. The Respondent argued that the parent's participation was sought, but it was not obtained, and it went forward with the MDT.

A telephonic pre-hearing conference for the above reference matter was conducted on April 2, 2009 at 3:00 PM. During that conference call, the parties agreed that the right to a resolution session was waived. The Petitioner chose for the Due Process Hearing ("hearing") to be held in a closed session and

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reiterated the issues as plead. The Respondent reiterated its position. The Respondent further asserted that the Student has not been denied a FAPE.

On April 6, 2009, an Order was issued that required that the Petitioner provide evidence at the hearing to demonstrate the Student needs cognitive and speech/language evaluations; how the parent was denied participation in the decision-making process; how the Student's IEP was changed without input from the parent; what specifically of the IEP is inappropriate; and what specialized instruction and related services were not provided. The Petitioner had to prove what aspect of the Student's placement is inappropriate and how her choice of placement is appropriate for the unique needs of the Student.

The Respondent was ordered to show that the Student's IEP 2007 was developed based on the current evaluations, input from the Student's teachers, and the MDT. The Respondent also had to demonstrate that the Student did not need speech and language therapy and psychological counseling. The Respondent was further ordered to explain how the IEP is sufficient as written and how it has been implemented. Additionally, it required the Respondent show that the parent was provided a meaningful participation in the decision making process and show that the placement is appropriate.

The Order determined that Petitioner's claims relating to SY prior 2006-2007, including claims for compensatory education, are barred by the two-year statute of limitations in the IDEIA.<sup>2</sup>

A hearing was held on April 24, 2009. The Petitioner presented a packet with Petitioner's disclosure letter dated April 17, 2009 including eight documents labeled P-1 through 8 and listing two witnesses. Three witnesses testified—the Mother, Education Advocate and the Admission's Director of a private school. The Respondent presented a packet with Respondent's disclosure letter dated April 14, 2009 identifying two witnesses and attaching ten documents, labeled DCPS1 through 10. One witness testified the Special Education Coordinator. The documents were admitted without objections.

The hearing was conducted in accordance with the rights established under the Individuals with Disabilities Education Act of 2004 ("IDEA"), 20 U.S.C. § 1400 et seq. and the implementing regulations, 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

## II. ISSUE(S)

1. Did the Respondent fail to conduct and review triennial evaluations in a timely manner?
2. Was the parent provided an opportunity to participate in the decision-making process?
3. Is the IEP inappropriate and was it implemented?
4. Is the placement appropriate?
5. Was the Student denied a FAPE?

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<sup>2</sup> Pursuant to 20 U.S.C. § 1415[b][6][B] of the IDEIA [2004], a parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action.

### III. FINDINGS OF FACT

1. The Student along with the Petitioner are residents of the District of Columbia.
2. The Student is a student with disabilities under the IDEIA. The Student's most recent IEP is dated May 13, 2008 and provides 6 hours of specialized instruction in the general education setting and six hours in the special education setting. The Hearing Officer determines that it is for a total of 12 hours of specialized instruction weekly, with a range of 21-60% or time in specialized instruction.<sup>3</sup> The Student's disability classification is a learning disability.
3. The Student attended \_\_\_\_\_ for the 2006-2007 and 2007-2008 school years. The Student began attending \_\_\_\_\_ School \_\_\_\_\_ at the start of the 2008-2009 school year.
4. An MDT meeting was held on March 20, 2007, the Petitioner did not attend the meeting, she was ill with a heart condition. The Petitioner has been hospitalized through-out the school year many times. The notes indicate that the Petitioner was sent five notifications and telephone calls, the team decided to prepare the file for transfer without signature and that the parent is in agreement with the IEP. The Respondent eliminated the prescription for speech and language therapy, occupational therapy and psychological counseling on the Student's IEP, and to support the decision it indicates the Student has done well.<sup>4</sup>
5. The PNOP, meeting notes, and IEP were provided to the parent, the parent had agreed on dates to meet and was not able to attend, and other attempts were made to reach the Petitioner via telephone to no avail. Along with the Completion of Services Form signed by the parent, in agreement with the termination of the speech and language therapy, occupational therapy and psychological counseling on the Student's IEP. The notes indicate all the goals were achieved. A copy of the file was made available<sup>5</sup> There was a change in services; DCPS issued a prior notice of placement for 2007. The documents were provided to the Petitioner and she was notified of results of the meeting.<sup>6</sup>
6. The Petitioner on October 17, 2007, agreed the current date of the Student's IEP was March 22, 2007, she received a copy of the Student's evaluations from 2006, acknowledged agreement with the IEP from 2007, and a copy of the Student's educational file was made available and another was to be transferred to the Student's "feeder" school \_\_\_\_\_<sup>7</sup> Although at the hearing the parent testified she doesn't know anything of why the reduction was done it and there was no determination that services were not needed.
7. The parent enrolled the Student at \_\_\_\_\_ as her neighborhood school in the 2007-2008 school year. The Student is receiving all general education classes; she has Biology, English, and Career Exploration class. The Student is not in a small classroom, does not have a special education teacher and does not receive "pullout" services. The Petitioner has not seen improvement in

<sup>3</sup> DCPS4-May 13, 2008-the document does not include the total combined hours per week.

<sup>4</sup> DCPS2 March 22, 2007 IEP and testimony of the mother

<sup>5</sup> DCPS5- May 13, 2008, MDT meeting notes.

<sup>6</sup> DCPS3 - Completion of Services Form dated March 30, 2007, signed May 16, 2007.

<sup>7</sup> DCPS10 - October 17, 2007, Resolution meeting notes

Reading or Math. The Student doesn't understand what she reads and her handwriting is that of a small child. The Student can add but she has trouble with subtraction. The Student division and multiplication skills are at a third grade level, and this semester she has no Math class. The Student is below grade level in every academic area. She is in the tenth grade and doesn't have math class and in the first semester she had Algebra I. The mother has been ill with a heart condition and has been hospitalized through-out the year many times. The mother could not attend many of the meetings and she did not receive an explanation on there was a reduction of hours in the Student's specialized instruction.<sup>8</sup>

8. The Student's Progress report of January 19, 2008 does not include a grade for English I or Algebra I class.<sup>9</sup> The Student's schedule does not include specialized instruction and in the second semester it does not include Math.<sup>10</sup>
9. On May 13, 2008, the Respondent convened an MDT the Petitioner was not present for medical reasons. At the May 13, 2008 meeting, the Respondent reduced Student prescribed specialized instruction from 20 hours per week to 12 hours per week. A WISC III report dated February 5, 2007 appears as an evaluation relied on during the May 13, 2008 meeting. A prior notice of placement was issued that day; there is no explanation of the proposed action the Respondent was taking or refusing to provide.<sup>11</sup> The IEP shows that the Student is seven grades below level and there are no math goals or objectives.<sup>12</sup>
10. The education advocate attended a February 5, 2009 meeting, to discuss the Student's progress. The Student's special education teacher was not there, Mr. Robert substituted. The Student is not receiving the 6 hours of resource and 6 hours of inclusion. No one goes into the Student's class and no one pulls her out of class. A comprehensive psychological evaluation was ordered. There are no IEP report cards during the Student's time at no progress on the IEP goals, and there's no indication that services from the Student's IEP was provided; she only received report cards from 2008, and there was nothing from
11. At the April 1, 2009 resolution session, the Respondent agreed to perform a complete psychological, and a speech and language evaluation of the Student and reconvene an MDT meeting to review current evaluations, and revise Student's IEP as appropriate.<sup>14</sup>
12. The Student's special education teacher last year is the current special education coordinator. He stated he provided the Student remedial reading and math resources for a total of 10 hours a week. He asserted that the Student is receiving remedial classes' services from the learning lab every day; the services consist of remedial reading, math, career exploration for 5 hours a week. In the January 19, 2008 report the Student has C, D's and F's and she's not doing well. There are excessive absences.<sup>15</sup>

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<sup>8</sup> Testimony of the mother

<sup>9</sup> P5- January 19, 2009, Student Progress Report,

<sup>10</sup> P3 Student timetable - dated February 5, 2009 (First and Second Semester)

<sup>11</sup> DCPS6 - May 13, 2009, Prior to Action Notice.

<sup>12</sup> DCPS 4-May 18, 2008 IEP

<sup>13</sup> Testimony of the education advocate and February 5, 2009 MDT notes.

<sup>14</sup> P2 April 1, 2009 Resolution session meeting notes

<sup>15</sup> Testimony of the special education coordinator at school and P4 Student Progress Report  
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13. The Student's schedule includes English class but not in specialized instruction. There merely the testimony of the SEC who did not know what was covered in class. The parent testified about the Student's failures through the years. In January 2009 the Student was in 10<sup>th</sup>, however, she was in between a fourth and sixth grade level in Reading and Math. A report indicates compared to others at her grade level, the Students performance is low in broad reading and math calculation skills and very low in mathematics.<sup>16</sup>
14. The Petitioner received a letter indicating that Student's 08-09 teacher did not meet the teaching requirements established by the OSSE.<sup>17</sup>
15.                   accepted the Student pending of funding authorization. The Student's evaluations and 2007 IEP were reviewed. The Student is five grades behind in Reading and Math. The school has a Reading and a Math *Specialist* that can work with Student to get her a closer to where she should be. The school focuses on Students with learning disability and all the Students in the classroom are learning disabled, there is one special education certified teacher and a teacher' assistant, the age range of the other students is consistent with the Student. Counseling can be provided through a social worker on staff. An MDT meeting can be convened in 30 days to review the student's program. The tuition for the school is approximately \$42,000 a year. The School offers a full-time special education program, the Student's IEP does not provided for a 100% out f general education. The Student's IEP would have to be adjusted to be enrolled in the program.<sup>18</sup>
16. The Respondent agreed to provide cognitive evaluation, speech and language evaluation.

#### IV. CONCLUSIONS OF LAW

##### **FAPE Determination**

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

The IDEA at 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) 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 special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living. *See id.* § 1400(d)(1)(A). The applicable regulations at 34 C.F.R. § 300.17 define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)."

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dated January 2009.

<sup>16</sup> DCPS8 -February 2, 2009- Educational Evaluation

<sup>17</sup> P7 December 12, 2008- Letter from Chancellor Rhee-DC

<sup>18</sup>Testimony of the administrative admissions of the private school.

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## **Burden of Proof**

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief, in this case the parent. It requires that 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 FAPE.

The Respondent has not met its legal obligation under the IDEIA. Here is why.

## **Triennial evaluations**

According to the IDEIA 20 USC 1414(2)(a)(b) DCPS, as the local education agency, is responsible for ensuring that every evaluation, of each child with a disability, shall occur "at least once every three years, unless the parent and the local educational agency agree that a reevaluation is unnecessary."

The parties stipulated the Respondent agreed to perform a complete psychological, and a speech and language evaluation of the Student.

## **Appropriateness of IEP**

Pursuant to 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), Individualized Education Programs or IEP "means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

- aa. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- bb. Meet each of the child's other educational needs that results from the child's disability."

Pursuant to 20 U.S.C. § 1414 (d)(2)(A), Requirement that program be in effect, "At the beginning of each school year, each local educational agency ... shall have in effect an IEP as defined by [20 U.S.C. § 1414 (d)] (1)(A)."

In the present matter the Student's IEP 2007 provided 20 hours in a self contained room. The 2007 IEP was developed based on the then current evaluations and input from the Student's teachers and multi-disciplinary team and it determined the Student did not require speech/ language therapy and psychological counseling. The evidence was that the Petitioner signed in May 2007 a completion of services form in agreement with the termination of the speech and language therapy, occupational therapy and psychological counseling from the Student IEP. Then in October 2007, the Petitioner agreed the Student's IEP March 22, 2007 was current and appropriate. Consequently the March 2007-2008 was appropriate.

In May 2008 the Respondent reduced the Student's specialized instruction hours from 20 hours per week to 12 hours per week. A prior notice of placement was issued it contains no explanation of the

action the Respondent was taking. The Student is seven grades below grade level and there are no math goals or objectives to address an identified weakness in her IEP. Her 2007 IEP had 20 hours in a self contained room. The Student's May 13, 2008 provides 6 hours of specialized instruction in the general education setting and six hours in the special education setting, for a total of 12 hours of specialized instruction weekly. The Student is currently entitled to 12 hours weekly of specialized instruction. The Respondent failed to explain its reasoning for the reduction of specialized instruction in the May 2008 IEP. There is no evidence that the team based its decision on the unique needs of the Student, the May 2008 is appropriate as written. The IEP team will reconvene with the reports of the new evaluations to determine if the Student requires additional hours and if related services are required. The IEP/MDT will provide specific information and reasoning for the total hours of specialized instruction and the need or not for related services.

### **Parent participation in the placement decision**

The IDEIA regulations require that "the parents of a child with a disability are afforded an opportunity to participate in meetings with respect to ... [the] educational placement of the child." 34 C.F.R. § 300.501(b)(1); see also 20 U.S.C. § 1414(e)

The evidence indicates that there was participation of the parent in the MDT/IEP and placement decision was considered at the MDT/IEP meeting that crafted the IEP 2007. The Student's IEP 2007 was developed based on the current evaluations and input from the Student's teachers and multi-disciplinary team and the Student did not require speech/ language therapy and psychological counseling. The Petitioner signed in May an acknowledgement of completion of the related services. Furthermore, in October 2007, the parties agreed the Student's IEP was current.

In May 2008, the Respondent convened an MDT, where the Petitioner was not present because of medical reasons. At the May 13, 2008 meeting, the Respondent reduced the Student's specialized instruction hours from 20 hours per week to 12 hours per week. A prior notice of placement was issued it contains no explanation of the action the Respondent was taking. It is clear that the Respondent did not allow the parent meaningful participation.

### **Placement**

The Petitioner alleged the Respondent failed to provide the Student an appropriate placement for the 2007-09 school years. The Student attended MacFarland for the 2006-2007 and 2007-2008 school years. The parent enrolled the Student at Dunbar as her neighborhood school in the start of the 2008-2009 school year, when she "aged out" of the middle school.

The IDEIA regulations at 34 C.F.R. § 300.116 require when determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. It also states that the determination of the educational placement of a child with a disability should be done annually and must be based on a child's IEP. 20 U.S.C. 1412(a)(5).

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."

The Petitioner prove that there was no academic progress during the prior school year, that while at the Student did not receive the total hours on her IEP, therefore the placement at was inappropriate.

The Student's Progress report of January 19, 2008 shows no grade for English I or Algebra I. The Respondent in May, 2008 reduced the Student's specialized instruction hours from 20 hours to 12 hours per week. The Student's schedule does not include specialized instruction and in the second semester does not include Math. The Student is more than 4 grades below grade level and there are no math goals or objectives to address an identified weakness in her IEP. The Student is not receiving the services she is entitled to receive at The current placement at appears to be inappropriate based on the testimony of the Mother, the special education advocate, the special education coordinator and the documentary evidence.

The courts have identified a set of considerations "relevant" to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. See *Rowley*, 458 U.S. at 202 (noting that "sufficient educational benefit" will vary from child to child); *McKenzie v. Smith*, 248 U.S. App. D.C. 387, 771 F.2d 1527, 1531 (D.C. Cir. 1985) (affirming district court's placement decision that took into consideration the student's "individual needs")

In addition, placement must be specific to the unique needs of the student. "We begin by observing that an award of private-school placement is not, like the tutoring award, retrospective relief designed to compensate for yesterday's IDEA violations, but rather prospective relief aimed at ensuring that the child receives tomorrow the education required by IDEA. Although the two forms of relief have different purposes, placement awards, like compensatory awards, see *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) at 523-25, must be tailored to meet the child's specific needs. IDEA itself so requires: It guarantees disabled students "special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A) (emphasis added).

Furthermore, the IDEIA 20 U.S.C. 1412(a)(5) and it's regulation at Section 300.114, requires each public agency to ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. The placement should be as close as possible to the child's home and made in conformity with the least restrictive environment ("LRE") provisions.

There are evaluations pending that will provide further insight as to the Student's psychological and speech and language needs, once the evaluations are performed the MDT will review the results and discuss if the current placement is with all support and services included in her IEP is appropriate for this Student.

The evidence is clear that , the school requested by the parent, is a 100% out of general education setting which is incompatible with the LRE provisions and the Student's current IEP and therefore an inappropriate placement for the Student.

## Highly Qualified Teachers Serving Children with Disabilities

The Petitioner's claims that the Student's 08-09 teacher did not meet the teaching requirements established by the OSSE.<sup>19</sup>

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) requires that all public elementary and secondary special education teachers be highly qualified as special education teachers. The definition of highly qualified special education teachers in the IDEA [20 U.S.C. 1401(10)] is aligned with No Child Left Behind's highly qualified requirements under that statute at section 9101 of the Elementary and Secondary Education Act (ESEA) [20 U.S.C. 7801(23)] and the implementing regulations at 34 CFR § 200.56. Section 300.18(g)(1) of the IDEA regulations states that a teacher who is highly qualified under section 602(10) [20 U.S.C. 1401(10)] of IDEA shall be considered highly qualified for purposes of the ESEA. Section 300.18 of the IDEA regulations establishes requirements for special education teachers in general, as well as those teaching core academic and multiple subjects and those not teaching core academic subjects. In addition, it establishes requirements for special education teachers teaching to alternate achievement standards and describes alternative routes to certification. The regulations of the IDEA at Section 300.156 also require that each SEA establish and maintain personnel qualifications.

However there is also language in the regulation that "nothing in this part shall be construed to create a right of action" means that a claim that a teacher is not highly qualified may not serve as a basis for relief for an individual Student or class of Students under IDEA.<sup>20</sup>

If concerns arise about whether a special education teacher is highly qualified, the Department encourages parents to try to resolve issues at the school level. It would make sense for them to talk to their child's principal first, before doing anything else, to find out what the school is doing to ensure that the teacher gets the training that he or she needs to meet the highly qualified standards. If they are not satisfied with the steps the LEA is taking, they could file a complaint with the State educational agency (SEA). *Id.*

### Compensatory education

The Respondent has denied the Student a FAPE. The Petitioner cites *Mary McLeod Bethune Day Academy Public Charter School v. Bland Civil* Action No. 07-1223 (D.D.C. February 20, 2008) asserting that the DCPS' violation entitles Petitioner to a compensatory education award determination to be made by the Hearing Officer. The Hearing Officer agrees that when there is a denial of FAPE a compensatory award should be granted.

"Under the theory of "compensatory education," courts and hearing officers may award educational services . . . to be provided prospectively to compensate for a past deficient program." See, *G. ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 308 (4th Cir. 2003). More specifically, as the Fourth Circuit has explained, "[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational

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<sup>19</sup> P7 December 12, 2008- Letter from Chancellor Rhee-DCPS.

<sup>20</sup> 47 IDELR 165-107 LRP 11710 Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities - Office of Special Education and Rehabilitative Services- January 1, 2007

agency's failure over a given period of time to provide a FAPE to a student." G. ex rel. RG, 343 F.3d at 309

In *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) the D.C. Circuit held, with respect to compensatory education, that, "In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."

Whichever path the court chooses, the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits. It rejected arbitrary approaches to the award of compensatory education. In consideration that the Student was denied services during the 2007-2008, her IEP is not being implemented in the school year 2008-2009 and that she is more than four years below grade level. The Respondent will fund an independent evaluation to determine where the Student is academically, where the Student should be and what services will get her there, following that evaluation, the Petitioner, may present a due process complaint to present evidence and testimony on whether compensatory education award is warranted.

#### V. SUMMARY OF DECISION

The Petitioner established that while at the IEP was not implemented; and the Student did not make reasonable academic progress. At the Student's IEP has not been implemented. The Petitioner proved the parent was denied participation in the decision-making process for the 2008-2009 school year. The Petitioner proved the Respondent failed to develop an appropriate IEP and, failed to provide specialized instruction for the 2008-2009 school year. The Petitioner proved that the Student was denied a FAPE.

The Student's IEP current provides 12 hours weekly of specialized instruction. The Petitioner choice of placement is not appropriate for the unique needs of the Student; the school only offers a full-time special education program. The Petitioner also failed to prove that her claim that a teacher is not highly qualified is properly before this Hearing and that a relief for an individual Student is actionable under the IDEIA.

The Respondent shall reconvene an IEP/MDT meeting and will discuss placement. The Respondent will provide the parent with information regarding any placement offer to include a) student teacher ratio; b) make up of disabilities; b) behavior interventions available; c) qualification of staff and service providers; d) transition services available; e) class size and f) interaction with non-disabled peers.

The Respondent will fund an independent evaluation to determine where the Student should be academically, and what services will get her there.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the DCPS has denied the Student a FAPE and issues the following:

## VI. ORDER

**ORDERED**, the Respondent by May 22, 2009 will conduct comprehensive psychological and speech and language evaluation of the Student and deliver the results to the Petitioner and the Petitioner's counsel.

**IT IS FURTHER ORDERED**, if the Respondent fails to meet the May 22, 2009 deadline the Respondent will fund independent comprehensive psychological and speech and language evaluations. The parent will schedule appointments for the student evaluations immediately. The parent will make efforts to get the evaluations and the reports sent to DCPS placement specialist assigned to Dunbar by July 15, 2009. The parent shall send to the SEC the report along with three dates when the parent is available for the MDT meeting to be held.

**IT IS FURTHER ORDERED**, within 15 calendar days of receipt of the report of the evaluations the Respondent will convene an MDT meeting to review all current evaluations, and revise Student IEP as appropriate discusses and determined if a new placement is appropriate. The Respondent shall provide the parent with information regarding any placement offer to include a) student teacher ratio; b) make up of disabilities; b) behavior interventions available; c) qualification of staff and service providers; d) transition services available; e) class size and f) interaction with non-disabled peers. The MDT must address in the Student's IEP each of her weaknesses as identified by evaluations and provide goals and objectives for each.

**IT IS FURTHER ORDERED**, DCPS will fund by May 31, 2009 an independent evaluation to determine where the Student is academically, where she should be, and what services will get her there, following that evaluation, the Petitioner, may present a due process complaint to present evidence and testimony on what compensatory education plan is warranted.

**IT IS FURTHER ORDERED**, in the event that the Respondent should fail to comply with the terms herein, and a issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days.

**IT IS FURTHER ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

This order resolves all issues raised in the Petitioner's March 19, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

### NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)

/s/WIRestorres  
Wanda I. Resto - Hearing Officer

Date: May 3, 2009