

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
February 04, 2013

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PETITIONER,<sup>1</sup>

Petitioner,

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Respondent.

Date Issued: February 2, 2013

Hearing Officer: Peter B. Vaden

Case No: 2012-0784

Hearing Date: January 10, 2013

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

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**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 “STUDENT”), 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 (“DCMR”). In her Due Process Complaint, Petitioner alleges that DCPS’ May 24, 2012 Individualized Education Program (“IEP”) is inappropriate because it does not adequately address her school phobia disability.

Petitioner, an AGE adult student, is a resident of the District of Columbia. Her Due Process Complaint, filed on November 20, 2012, named DCPS as respondent. The case was

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<sup>1</sup> Personal identification information is provided in Appendix A.

assigned to the undersigned Hearing Officer on November 26, 2012. The parties met for a resolution session on December 4, 2012 and were unable to reach an agreement. The 45-day deadline for issuance of this Hearing Officer Determination began on December 21, 2012. On December 17, 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 January 10, 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 and called as witnesses MOTHER<sup>2</sup> and PSYCHOLOGIST. DCPS called TRANSITION COORDINATOR as its only witness. Petitioner's Exhibits P-1 through P-27 were admitted into evidence without objection. DCPS' Exhibits R-1 through R-12 were admitted without objection. Petitioner's objections to Exhibits R-13, R-14 and R-15 were overruled. Counsel for both parties made opening and closing statements. There was no request for post-hearing briefing.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

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<sup>2</sup> Mother's native language is Spanish. A Spanish language interpreter provided simultaneous interpretation for her testimony.

### **ISSUES AND RELIEF SOUGHT**

- WHETHER DCPS’ MAY 24, 2012 IEP IS INAPPROPRIATE BECAUSE STUDENT’S IEP TEAM FAILED TO OBTAIN NEEDED REEVALUATIONS AND ASSESSMENTS TO ASSURE THAT STUDENT WAS ASSESSED IN ALL AREAS RELATED TO HER SUSPECTED DISABILITIES; and
- WHETHER DCPS’ MAY 24, 2012 IEP IS INAPPROPRIATE FOR STUDENT BECAUSE IT PROVIDES INSUFFICIENT SERVICES AND AN INAPPROPRIATE PLACEMENT TO ADDRESS STUDENT’S ALLEGED SCHOOL PHOBIA DISABILITY.<sup>3</sup>

For relief, Petitioner seeks an order for DCPS to provide Student 12 hours per week of homebound instruction, 1 hour per week of counseling, and an Independent Educational Evaluation (“IEE”) comprehensive psychoeducational evaluation. Petitioner also seeks an award of compensatory education services, including 2 hours per week of transition/vocational services and 2 hours per week of 1:1 tutoring, to compensate Student for services she has missed in the current school year, due to DCPS’ alleged denial of FAPE.

### **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 she resides with her parents and siblings. Testimony of Student.
2. Student is eligible for special education and related services under the primary disability classification, Emotional Disturbance (“ED”). Exhibit P-2.
3. Student was first found eligible for special education and related services on February 19, 2010, following a January 10, 2010 due process hearing. In a February 1, 2010 Hearing Officer Determination, former Impartial Hearing Officer Jane Dolkart held that DCPS

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<sup>3</sup> At the beginning of the due process hearing, Petitioner’s Counsel withdrew the remaining issues identified in the December 17, 2012 Prehearing Order.

had denied Student a FAPE by failing to find her eligible for special education under the ED classification. Exhibits P-5, P-12.

4. Student has received repeated psychological and medical evaluations confirming that she suffers from anxiety and depressive symptoms. Exhibits P-9, P-13, P-14, P-19.

5. In a May 1, 2011 IEE Comprehensive Psychological Evaluation Report, CLINICAL PSYCHOLOGIST reported: Student's difficulty with adjusting to the school environment has been reinforced over the years by a repeated ankle injury; Continued somatization – complaints of stomach aches and headaches, for example – is symptomatic of her intense anxiety about the school setting as well as feelings of depression; Although manifesting as school refusal, Student's anxiety appears to be due to deep-seated self doubt, a poor self image, and lack of confidence in herself and her abilities; Avoiding the school environment reduces the difficulty of confronting those internal and environmental difficulties; Student demonstrates emotional lability and poor impulse control, which results in a lack of assertiveness and withdrawal on one hand and emotional tirades and verbal aggressiveness on the other hand; Consequently, Student is prone to excessive anxiety and depressive feelings about herself and her relationships with others. Clinical Psychologist diagnosed Student with Major Depressive Disorder, Recurrent, Severe Without Psychotic Features; Social Phobia (Particularly School Related); Somatization Disorder; and a Learning Disorder, Not Otherwise Specified. She reported that Student required full-time special education supports outside of the school system for her difficulties [*sic*] and that Student's Emotional Disturbance kept her from accessing the school curriculum in a school-based setting. Exhibit R-3.

6. Student experiences considerable emotional distress over being in a school setting. She is overcome with anxiety – almost dysfunctional – in a traditional school setting.

Testimony of Psychologist.

7. After the January 2010 due process hearing, Student was provided 14 hours per week of Visiting Instruction Services (“VIS”) in her home by DCPS’ Office of Youth Engagement, until such time as she would be able to attend classes in a school setting. Exhibits P-5, P-7.

8. Student’s February 19, 2010 IEP provided that she would receive 20 hours per week of Specialized Instruction outside the general education setting and 2 hours per week of Behavioral Support Services. Exhibit P-5.

9. At a January 26, 2011 Multidisciplinary Team (“MDT”) meeting at FIRST CITY HIGH SCHOOL, the MDT team discussed that Student’s VIS services for the 2010-2011 school year had stopped, because Student had not completed the annual application process for VIS services, including submitting a physician’s certification. Exhibit R-1. The January 26, 2011 IEP provided that Student would receive 20 hours per week of Specialized Instruction Services, outside general education. In the IEP Present Levels of Educational Performance for Emotional, Social and Behavioral Development, it was reported that Student was currently receiving VIS services. An Annual Goal was to have weekly discussions about how Student would transition back to a school placement. Exhibit P-3.

10. Student’s IEP was revised on June 13, 2011. This IEP provided that Student would continue to receive 20 hours per week of Specialized Instruction outside of the general education setting. The June 13, 2011 IEP did not provide Behavioral Support Services or other Related Services. Exhibit R-4.

11. Student felt that the VIS services were good, but she wanted to try to go back to a school setting. Testimony of Student.

12. ALTERNATIVE SCHOOL was a DCPS alternative education program which offered self-paced student instruction. Typically, a student would come to Alternative School for either the morning or the afternoon sessions. Testimony of Transition Coordinator.

13. In October 2011, Student began attending Alternative School. At Alternative School, each student had a separate work space. Student had her own cubicle with a computer. She would attend school from 12:00 noon to 3:00 p.m. Monday through Friday. After Student clocked in, she would go to her cubicle and work independently using a computer learning program. If she needed help with anything, a teacher was available. Student was not instructed with other students. Testimony of Student.

14. By March 2012, Student had completed her Math and Science courses at Alternative School and was close to finishing English and History. At that time, her anxiety symptoms again manifested in headaches and stomach aches. Student was no longer able, physically, to tolerate attending Alternative School. She attempted to complete her courses from home. However, Student understood that to pass the courses, when she took tests, a teacher had to be present. She was unable to complete the English and History courses. Testimony of Student.

15. When Student was unable to attend Alternative School because of her anxiety issues, she would inform her Alternative School teacher by telephone. She also talked with SOCIAL WORKER several times by telephone. Social Worker tried to help her control her anxiety, but did not offer to visit Student at home or to convene an IEP meeting. Testimony of Student. Student also spoke with Transition Coordinator, whom she told that she was missing school because she was sick and had problems at home. Testimony of Transition Coordinator.

16. When Student attended Alternative School, she did very well and was able to

complete approximately 11½ credit hours. In the spring of 2012, Student's attendance declined rapidly, until she stopped attending altogether. No request was then made for home-based instruction. Neither did Student provide DCPS with a certificate from a physician indicating that she needed home-based instruction. Testimony of Transition Coordinator.

17. Alternative School closed permanently at the end of the 2011-2012 school year. On May 24, 2012, Student's IEP team met at Alternative School to revise her IEP. Student attended by telephone. She was not assisted by a relative, an attorney, or other educational advocate. Exhibits R-7, R-8.

18. At the May 24, 2012 IEP meeting, home based instruction for Student was not discussed. Neither Student nor any team member requested home-based instruction. Testimony of Transition Coordinator.

19. The May 24, 2012 IEP team was aware of the May 1, 2011 IEE Comprehensive Psychological Evaluation of Student. The IEP team did not feel that any additional assessments were needed. Testimony of Transition Coordinator.

20. At the May 24, 2012 IEP meeting, the IEP team changed Student's location of services from Alternative School to City High School. Exhibit R-7. The May 24, 2012 IEP provided that Student would receive 5 hours per week of Specialized Instruction outside general education, 14.5 hours per week of Specialized Instruction in general education, 2 hours per month of Behavioral Support Services, and approximately 44 hours per year of Transition Services (Vocational College Exploration - 4 hours per year, Build Resume - 4 hours per year, Career Exploration - 4 hours per month.) Exhibit R-8.

21. In the Emotional, Social and Behavioral Development section of the May 24, 2012 IEP, it was reported that Student struggles with significant anxiety symptoms, which

manifest in both physical and behavioral symptoms, within and outside of the academic setting. The IEP reported that historically these symptoms have impeded both Student's ability to attend school regularly and her ability to complete her work. Exhibit R-8.

22. In a May 24, 2012 Prior Written Notice to Student, DCPS changed Student's placement/location of services to City High School for the 2012-2013 school year. In the section of the Prior Written Notice discussing other options considered by the IEP Team, it was noted that the IEP team also recommended that Student investigate the City High School ADULT ALTERNATIVE PROGRAM and that Student would have to enroll herself in the program if she elected to attend there. Exhibit R-9. The Adult Alternative Program is an alternative education program that offers classes, after regular school hours, to adult students who wish to earn a high school diploma or certificate. Testimony of Transition Coordinator.

23. After Alternative School closed in June 2012, DCPS offered a summer program for all Alternative School students so they would not lose any course work as a result of the closure. This program allowed students to earn more credits using an on-line program. Student went to the summer program school one day with Mother. She had some difficulty getting to the back of the school building where the summer program was located. Student was told to bring a "doctor's note" and she would be permitted to take the on-line program using a computer at home. Testimony of Transition Coordinator.

24. Student enrolled at City High School in December 2012. Mother accompanied her to school after she enrolled. When they arrived, Student was, at first, not able to overcome her anxieties and enter the building. Eventually a school staff member came to talk with Student outside the building and escorted her in. However, Student was not able to remain at the school. Testimony of Mother. City High School is a lot larger than Alternative School and the hallways



are crowded. The school was too “scary” for Student. When she was in the school building, Student had to hold on to Mother the whole time. Testimony of Student.

25. Student needs seven more credits to graduate from high school. She wants to complete her high school education with VIS services at home. Testimony of Student.

26. Psychologist conducted a clinical interview of Student on October 22, 2012. Based upon the interview and Psychologist’s review of Student’s educational and psychological records, Psychologist concluded that Student is experiencing considerable emotional distress in terms of being in a school setting, which is a phobia based upon anxiety (severe) as to school. Psychologist opined that Student needs intensive therapy with a behavior specialist, to work toward gradually desensitizing Student to her school anxiety. Psychologist recommends that in the meantime, Student receive home-based VIS services. Testimony of Psychologist, Exhibit P-19.

27. With appropriate behavioral support, Student would be able to attend school in a setting similar to the Alternative School environment. Testimony of Psychologist.

28. At the end of August 2012, Student filed a prior due process complaint (Case No. 2012-0515) in which she alleged essentially the same claims as in the present case. That case was set for a due process hearing on October 31, 2012. On the morning of October 31, 2012, counsel for Petitioner informed the Hearing Officer, by telephone, that Petitioner, would not be able to be present for the hearing because, Petitioner’s niece had become ill the day before, and had been taken to the hospital by Petitioner’s mother. Petitioner was reported to be emotionally upset and unable to attend the hearing due to her mother’s being occupied with her niece. Petitioner requested a continuance, which this Hearing Officer denied because of untimeliness

and lack of compelling justification. I granted Petitioner's request for leave to withdraw the complaint without prejudice. Notice of record taken by Hearing Officer.

29. Psychologist developed a compensatory education plan for Student, premised on the due process complaint allegation that DCPS has not provided special education services to Student since March 2012. For her recommendations, Psychologist assumes that Student (i) missed 9 weeks of services in spring 2012 and 9 weeks of services in fall 2012, (ii) missed 36 hours of counseling services in fall 2012, and (iii) missed approximately 11 hours of transition services in fall 2012. Psychologist recommends that to compensate for DCPS' alleged failure to provide the services specified in Student's IEP, an appropriate compensatory education award would be 72 hours of additional instruction, 9 hours of additional counseling, and 4 hours of Vocational-Career counseling. Exhibit P-19, Testimony of Psychologist.

### **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:

#### **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* DCMR 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 DCPS' MAY 24, 2012 IEP INAPPROPRIATE BECAUSE THE IEP TEAM FAILED TO OBTAIN NEEDED REEVALUATIONS AND ASSESSMENTS TO ASSURE THAT STUDENT WAS ASSESSED IN ALL AREAS RELATED TO HER SUSPECTED DISABILITIES?

Petitioner contends that the May 24, 2012 IEP was inappropriate for Student because the IEP team failed to conduct a reevaluation of Student to obtain the additional data needed to determine her educational needs. DCPS responds that it had sufficient data, including the May 1, 2011 IEE Comprehensive Psychological Evaluation and that a reevaluation was not warranted. The purpose of an evaluation, under the IDEA, is to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. *See* 34 CFR § 300.15. The IDEA requires that a reevaluation of each child with a disability is conducted at least once every three years and sooner, if the child's parent or teacher requests a reevaluation or if the LEA determines that the needs of the child warrant a reevaluation. *See* 34 CFR § 300.303.

Petitioner's initial eligibility determination was completed on February 16, 2010. Additional assessments, including an IEE comprehensive psychological and IEE vocational assessments were conducted in spring 2011. Petitioner does not claim that she or her parents requested a reevaluation for the May 24, 2012 IEP meeting. DCPS' witness, Transition Coordinator, testified that the May 24, 2012 IEP team was aware of the May 1, 2011 Comprehensive Psychological Evaluation and team members did not feel any additional assessments were needed. I find that the extent of Student's emotional disability, including her school-related social phobia, was well-documented at the time of the May 24, 2012 IEP meeting. Petitioner has not met her burden of proof to show that her needs warranted a reevaluation at that time.

**2. WAS DCPS' MAY 24, 2012 IEP INAPPROPRIATE BECAUSE IT PROVIDED INSUFFICIENT SERVICES AND AN INAPPROPRIATE PLACEMENT TO ADDRESS STUDENT'S ALLEGED SCHOOL PHOBIA DISABILITY?**

Petitioner contends that the May 24, 2012 IEP, which placed her at City High School and

provided most of her special education services in the general education setting, was inappropriate because her Emotional Disability, which manifests as a school-based social phobia, inhibits her from attending a regular high school. I agree.

To provide a FAPE, the school district is obligated to devise an IEP 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* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *School Comm. of the Town of Burlington, Mass. v. Department of Educ. of Mass.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 2002, 85 L.Ed.2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir.1991); *District of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir.2010). The FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. District of Columbia*, 846 F.Supp.2d 197, 202 (D.D.C.2012) (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)). The standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the "basic floor of opportunity," is whether the child has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005) (quoting *Rowley*, 458 U.S. at 201.) The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children. *Id.* at 198 (internal quotations and citations omitted.) Congress, however, "did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*,

774 F.2d 629, 636 (4th Cir.1985). “[T]he appropriate focus of the [hearing officer’s] review should be on whether DCPS is providing [Student] with an IEP that is reasonably calculated to produce meaningful educational benefit.” *A.I. ex rel. Iapalucci, supra*, 402 F.Supp.2d at 167. A hearing officer may award appropriate equitable relief 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 at 11–12.)

In her June 13, 2011 DCPS IEP, Student had been provided 20 hours per week of Specialized Instruction, all outside of general education. During part of the 2011-2012 school year, she attended Alternative School and made substantial progress in its individual workspace setting, both in academics and in overcoming her school avoidance. However, Student had stopped attending Alternative School when her anxiety issues peaked again in spring 2012.

When Student’s IEP team met on May 24, 2012, the team had to change the location of Student’s IEP services because Alternative School was closing its doors. However, no justification has been shown for the IEP team’s decision to place Student in a less restrictive regular high school setting. The IEP team considered Student’s most recent psychological assessment, Clinical Psychologist’s May 1, 2011 evaluation, which reported that Student had a school-related Social Phobia which manifested as “school refusal” and that her Emotional Disturbance kept her from accessing the school curriculum in a school-based setting. The IEP team did not request an updated psychological assessment. The IEP team knew, as reported in the IEP, that Student still struggled with significant anxiety symptoms, manifested in both physical and behavioral symptoms, which impeded both her ability to attend school regularly and her ability to complete her work. I find that, informed by this information and Student’s

recent school avoidance history, the IEP team's decisions to reduce Student's outside of general education services from 20 hours per week to 5 hours and to place Student in a mostly general education setting at City High School were not "reasonably calculated to provide meaningful educational benefit." *A.I., supra.*<sup>4</sup> Student was therefore denied a FAPE.

## REMEDY

### i. Home Instruction

I have found in this decision that Student was denied a FAPE by DCPS' May 24, 2012 IEP, which was not reasonably calculated to produce meaningful educational benefit. A hearing officer's duty to fact-find and craft an adequate remedy entails "broad discretion" and is rooted in "equitable considerations." *See, e.g., Gill v. District of Columbia*, 751 F.Supp.2d 104, 113 (D.D.C.2010) (quoting *Florence County Sch. Dist. Four v. Carter by & Through Carter*, 510 U.S. 7, 16, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993).). *See, also, S-I by and through P-I v. Spangler*, 650 F.Supp. 1427, 1431 (M.D.N.C.1986), *vacated as moot*, 832 F.2d 294 (4th Cir.1987) (Incongruous that Congress intended the reviewing court to maintain greater authority to order relief than the hearing officer.) Petitioner seeks an order for DCPS to place Student on

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<sup>4</sup> Apparently the IEP team had concerns about placing Student in the mostly regular education setting at City High School, because in its Prior Written Notice, DCPS stated that the team recommended that Student "investigate" the City High School Adult Alternative Program. DCPS did not identify the Adult Alternative Program as an educational setting for Student in her IEP. In *Eley v. District of Columbia*, 2012 WL 3656471, 7 (D.D.C. 2012), U.S. Magistrate Judge Facciola discussed the importance of identifying a location, or particular school, where the IEP is to take place, citing *A.K. ex rel. J.K. v. Alexandria City School Board*, 484 F.3d 672, 681 (4th Cir.2007). In *A.K.*, the Fourth Circuit Court of Appeals explained that "[t]he identification of a particular school in the IEP indicates to the parents that the school district has carefully considered and selected a school that will meet the unique needs of the student. Conversely, an offer that fails to identify the school at which special educational services are expected to be provided may not be sufficiently specific for the parents to effectively evaluate." *A.K., supra*, at 680. No competent evidence was offered at the due process hearing as to whether Adult Alternative Program could fulfill Student's educational needs and I make no finding as to its appropriateness as a potential placement.

home instruction and to provide her 12 hours per week of visiting instruction services<sup>5</sup> to enable Student to earn the remaining academic credits she needs for graduation with a regular D.C. high school diploma.

The IDEA requires every LEA to ensure that a continuum of alternative placements, including home instruction, is available to meet the needs of children with disabilities for special education and related services. *See* 34 CFR § 300.115. The IDEA's Least Restrictive Environment mandate requires that removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *See* 34 CFR § 300.114(a). Home instruction, as requested by Petitioner, is on the more restrictive end of the alternative placement continuum. Notwithstanding, I find that the evidence in this case establishes that the severity of Student's Social Phobia disability is such that education in less restrictive settings cannot now be achieved satisfactorily. Furthermore, DCPS has previously provided 14 hours per week of homebound instruction to Student pursuant to the February 1, 2010 HOD and Student was able to make academic progress in that setting. I find that therefore that Petitioner's requested home instruction relief is appropriate and should be granted. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C.Cir.2005) (Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.)

ii. Compensatory Education

Petitioner also seeks an award of compensatory education to compensate for DCPS' denial of FAPE, after the May 25, 2012 IEP was adopted. Once a student has established a

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<sup>5</sup> Visiting instruction services are now known as Home/Hospital Instruction services and are provided through the DCPS Home/Hospital Instruction Program (HIP). Exhibit R-15.

denial of the education guaranteed by the IDEA, the hearing officer must undertake “a fact-specific exercise of discretion” designed to identify those compensatory services that will compensate the student for that denial. Compensatory education is educational service that is intended to compensate a disabled student, who has been denied the individualized education guaranteed by the IDEA. Compensatory education is designed to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA. The proper amount of compensatory education, if any, depends upon how much more progress a child might have shown if she had received the required special education services and the type and amount of services that would place the child in the same position she would have occupied but for the LEA’s violations of the IDEA. *See Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011) (citing *Reid v. District of Columbia*, *supra*, 401 F.3d at 518.)

In this decision, I have found that Student was denied a FAPE because DCPS’ May 24, 2012 IEP was not reasonably calculated to provide her meaningful educational benefit. The evidence establishes that Student has not received special education or related services from DCPS in the current school year. However, Petitioner must bear some responsibility for the delay in obtaining relief because she failed to appear for the original due process hearing in Case No. 2012-0515 set for October 31, 2012. *See, e.g., Reid, supra* at 524 (Equity may sometimes require consideration of the parties' conduct.)

I have reviewed Psychologist’s Compensatory Education Plan (Exhibit P-19). Although Psychologist was not qualified as an expert in education, DCPS did not object to her opining on what would be an appropriate compensatory education remedy for Student. Psychologist opined that given Student’s intellectual and academic strengths, she should be able to compensate for



any academic losses if she were provided at least 20 percent of missed services.<sup>6</sup> I find that an appropriate and equitable compensatory educational remedy should be designed to compensate Student for services she was not able to access for the approximately nine-week period, from the beginning of the 2012-2013 school year through October 31, 2012, the date set for the original due process hearing. Student's 2011-2012 IEP provided that she required 20 hours per week of Specialized Instruction services outside of the general education setting, and no change in Student's special education needs has been shown to account for DCPS' having reduced that number of hours at the May 24, 2012 IEP meeting. Accordingly, I find that Student should be compensated for not receiving some 180 hours of Specialized Instruction services in the 2012-2013 school year. Accepting Psychologist's un rebutted opinion that providing 20 percent of the missed services would suffice to compensate Student for her academic losses, I will order DCPS to provide Student 36 hours of 1:1 tutoring as compensatory education academic services.

Psychologist also recommends an award of compensatory counseling services. Student was not provided Behavior Support Services in her June 13, 2011 IEP. DCPS' May 24, 2012 IEP added 2 hours per month of Behavior Support Services to help Student better manage her anxiety symptoms so that she would be able to attend school more regularly. Since the relief requested by Petitioner – home instruction – does not now contemplate her attending school, I find that it is not appropriate to order DCPS to provide compensatory education for those missed Behavioral Support Services. I will order DCPS to convene an IEP meeting to revise Student's IEP to conform with this decision. In my order, I will direct the IEP team to consider whether

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<sup>6</sup> Psychologist proposed a Compensatory Education Plan, Exhibit P-19, based upon DCPS' alleged failure to provide special education and related services to Student since March 2012. In the December 17, 2012 Prehearing Order, Petitioner's request for compensatory education was specified as services to compensate "her for services she has missed in the current school year due to DCPS failure to offer her off school-site services." (Emphasis supplied.) Petitioner will be held to the compensatory education request identified in the Prehearing Order.

Student requires behavioral support services to benefit from her ongoing special education.

Lastly, Psychologist recommends that Student be compensated for missing the transition services specified in DCPS' May 24, 2012 IEP, including 4 hours per year of Vocational College Exploration, 4 hours per year of Build Resume Services and 4 hours per month of Career Exploration services. The evidence does not establish that Student might have shown more progress had she received those services. Accordingly, I find that no award of compensatory education transition services is warranted. However, in my order, I will direct Student's IEP team to provide for appropriate transition services in Student's revised IEP.

iii. Other Relief

In her due process complaint, Student also requested that DCPS be ordered to provide her 1 hour per week of counseling. The evidence in this case does not establish whether Student requires counseling as a related service in order to benefit from special education home services. *See* 34 CFR § 300.34(a) (Related services means supportive services as are required to assist a child with a disability to benefit from special education.) Therefore, I deny Student's request to order DCPS to provide counseling services. However, when Student's IEP team convenes, it must consider whether Student needs ongoing Behavioral Support Services to assist her to benefit from special education.

ORDER

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

1. DCPS shall provide Student 12 hours per week of home instruction for the remainder of the 2012-2013 school year, aimed at enabling Student to complete the credits she needs to earn a regular DCPS high school diploma. Notwithstanding, DCPS shall not be barred in the future from convening Student's IEP team to review her home instruction placement, if

DCPS reasonably determines that the nature or severity of the Student's disability permits her education in a less restrictive environment. If requested by DCPS, Student shall provide verification from her physician – or if she does not have a physician, from a physician provided by DCPS – of her need for home instruction services; however DCPS must begin provision of home instruction as soon as is practicable<sup>7</sup> and may not delay services pending receipt of the physician verification;

2. In addition to the aforesaid home instruction services, DCPS shall provide Student, during the current school year, 36 hours of 1:1 academic tutoring at Student's home, as compensatory education for its failure to develop an appropriate IEP for the 2012-2013 school year;

3. Within 10 school days of entry of this order, DCPS shall convene Student's IEP team to revise her IEP in accordance with this decision. The IEP team shall consider and, if needed, make appropriate provision for Student's ongoing Behavioral Support Services as may be required to assist her to benefit from special education. The revised IEP shall also provide, *inter alia*, for ongoing transition services as required by 34 CFR § 300.320(b); and

All other relief requested by the Petitioner in this matter is denied.

Date: February 2, 2013

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

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<sup>7</sup> I do not order a date certain for commencement of home instruction services because the evidence does not establish how long DCPS would reasonably require to identify and assign an instructor to provide the services. However, my intent is that these services shall begin on the earliest date that a qualified instructor can reasonably be assigned.

### **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).