

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT, ¹)	
through the Parent,)	
)	Date Issued: April 18, 2015
Petitioner,)	
)	Hearing Officer: John Straus
v.)	
)	
District of Columbia Public Schools (“DCPS”))	
)	
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

The Petitioner, the Student’s mother, filed a due process complaint notice on February 2, 2015, alleging that Student had been denied a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”).

The Petitioner alleged that DCPS failed to implement the student’s January 15, 2014 Individualized Education Program (“IEP”) from the beginning of the 2014-2015 school year to October 8, 2014. Specifically, the Petitioner alleged DCPS failed to provide the student with 18 hours of specialized instruction per week outside the general education setting. The Petitioner also alleged DCPS failed to provide an IEP on October 8, 2014 that was reasonably calculated to enable the student to make progress in the general education curriculum because the IEP lacks full time specialized instruction outside the general education setting. Additionally, the Petitioner alleged DCPS failed to convene an IEP team meeting by December 5, 2015 as a result of the Student’s poor behavior and lack of academic progress. Finally, the Petitioner alleged DCPS failed to propose a placement on October 8, 2014 that is reasonably calculated to enable the student to make progress in the general education curriculum; specifically the Student requires a placement in a special school.

The Petitioner requested 1) the Hearing Officer order DCPS to convene an IEP team meeting to review and revise Student’s IEP to provide a full time outside of general education setting; 2) DCPS to place the Student at Nonpublic School; and 3) the Hearing Officer to order

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DCPS to provide compensatory services to redress the lack of special education and related services as a result of DCPS' failure to provide adequate services outside the general education setting

DCPS asserts the Multidisciplinary Team convened on October 8, 2014 to review and revise Student's IEP. The team agreed the Student requires 15 hours of specialized instruction per week inside general education and 3 hours per week of specialized instruction outside general education. The Multidisciplinary Team reconvened on January 21, 2015 and revised the IEP to require 5 hours per week of specialized instruction outside general education. On January 26, 2015 DCPS completed a Functional Behavioral Assessment ("FBA") and drafted a Behavior Intervention Plan ("BIP"). DCPS agreed to provide the Student with 20 hours per week of specialized instruction outside the general education setting.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.02.

Procedural History

Neither Petitioner nor Respondent waived the resolution meeting. The resolution meeting took place on February 11, 2015; at which time the parties agreed to keep the 30-day resolution period open. The 30-day resolution period ended on March 4, 2015, the 45-day timeline to issue a final decision began on March 5, 2015 and the final decision is due by April 18, 2015.

The due process hearing took place on March 26, 2015. The due process hearing was a closed hearing.

Neither party objected to the testimony of witnesses by telephone. The Petitioner participated in person.

The Petitioner presented five witnesses: the Nonpublic School Representative, a Clinical Psychologist, the Petitioner, a Compensatory Plan Designer, and an Educational Advocate. DCPS presented one witness: a Program Manager.

The Petitioner's Disclosure Statement, filed and served on March 19, 2015, consisted of a witness list of seven (7) witnesses and documents P-01 through P-34. The Petitioner's documents were admitted into evidence without objection. The Respondent's Disclosure Statement, filed and served on March 19, 2015, consisted of a witness list of five (5) witnesses and documents R-1 through R-6. The Respondent's documents were admitted into evidence without objection.

The issues to be determined in this Hearing Officer Determination are as follows:

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1. Whether DCPS denied Student a FAPE by failing to implement the student's January 15, 2014 IEP from the beginning of the 2014-2015 school year to October 8, 2014, by failing to provide the student with 18 hours of specialized instruction per week outside the general education setting.
2. Whether DCPS denied Student a FAPE by failing to provide an IEP on October 8, 2014 that was reasonably calculated to enable the student to make progress in the general education curriculum because the IEP lacks full time specialized instruction outside the general education setting.
3. Whether DCPS denied the Student a FAPE by failing to convene an IEP team meeting by December 5, 2015 as a result of the Student's poor behavior and lack of academic progress.
4. Whether DCPS denied the Student a FAPE by failing to propose a placement on October 8, 2014 that is reasonably calculated to enable the student to make progress in the general education curriculum; specifically the Student requires a placement in a special school.

For relief, the Petitioner requested an IEP meeting to review and revise the student's IEP to provide a full time IEP, place the Student in Nonpublic School and provide compensatory services to redress the lack of special education and related services as a result of DCPS' failure to provide adequate services outside the general education setting.

Findings of Fact²

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a resident of the District of Columbia who has attended Public Charter School since the summer of 2014. The Petitioner is the Student's mother.³
2. The Student attended Previous Public Charter School during the 2013-2014 school year. He was in a full time out of general education program which was 18 hours per week.⁴
3. The IEP team at Previous Public Charter School convened on January 15, 2014. At the meeting, the Petitioner expressed concern regarding the Student's grades and behavior and about the Student's peers. The general education teacher noted the Student was suspended on January 14, 2014 for elopement from school grounds. She noted the Student does not make up missed assignments and he is often late to class; however, when he is in class, he can complete his work. The special education teacher noted the Student walks out of class

² Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

³ Petitioner

⁴ Petitioner, Educational Advocate

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or around the class and he disrupts other teachers when he is in the hall. The team noted the Student is unorganized; however, the special education teacher noted the Student can complete his work in a one on one setting. The team noted the Student used to get As easily but now he is getting Ds on his report card. The Psychologist stated the Student requires a comprehensive assessment; including projectives, to determine which areas of his emotional well-being is impacted. The team determined the Student requires 18 hours per week of specialized instruction per week outside the general education setting and 60 minutes of behavioral support services per week outside the general education setting.⁵

4. In July 2014, the Student received a psychological assessment. The assessment yielded average cognitive scores while it yielded academic achievement scores that age appropriate to mildly delayed. The evaluator noted when the Student becomes emotionally overwhelmed, his inability to adequately use his coping resources becomes evident and he begins to react impulsively; utilizing defiance as a means of expressing his feelings.⁶
5. The Student enrolled in Public Charter School during the Summer of 2014.

Records state that between September and December the Student was suspended both in school and out of school for ten full days and four half days.⁷

6. The Student received failing grades in all of his eight classes for the 2014-2015 school year. He is in only one resource class at Public Charter School.⁸
7. The IEP team at Public Charter School convened on or about October 8, 2014. The team discussed the Student's behavior and hours of special education. The special education teacher stated the Student requires a smaller environment but she will provide the student what he needs.⁹
8. On October 16, 2014 and November 18, 2014, the Student was observed and on November 20, 2014 the Student was interviewed as part of a FBA. The FBA report is not dated; however, it was reviewed by the IEP team on January 21, 2015. The evaluator noted the Student behaves in a defiant and disruptive manner in order to be removed from class to avoid classwork. The evaluator recommended the Student be placed in a smaller student hearing ratio in class in a very structured environment with specific behavioral interventions.¹⁰
9. On January 21, 2015, the school psychologist conducted a review of the Student's records and teacher interviews. The school psychologist noted the Student attended school regularly during the 2014-2015 school year (absent two days); however, he has been absent

⁵ P-10, P-11

⁶ P-20

⁷ Petitioner, P-26

⁸ P-23

⁹ Petitioner

¹⁰ P-18

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from 56 classes and tardy to 104 classes. The Student arrives late to class and is usually unable to remain in class for the duration of the class period as a result of impulsive and disruptive behaviors and poor social interactions with peers. The behaviors result in the Student experiencing difficulty accepting redirection and at times hiding within the school building in an effort to avoid attending class or accepting consequences for his noncompliant behaviors. Additionally, the Student has eight out of school suspensions and four in school suspensions. As a result the Student rarely received completed class work and homework assignments. He continues to exhibit severe impulsive and noncompliant behaviors throughout the school day which negatively impact his overall school performance.¹¹

10. On January 21, 2015, the IEP convened. The Petitioner expressed concern regarding the Student's behaviors such as walking out of class and refusing to go to class and the Student does not understand the material presented in class. The Educational Advocate noted the school staff had attempted response to intervention but the Student did not respond. The special education teacher stated the Student is failing all of his classes as a result of low tolerance to do work and not being in class. The special education teacher further stated the Student is not able to concentrate, distracted, unwilling to engage in work and defiant with adults. The special education teacher stated she uses technology, guided notes, games for guided practice, movement within the classroom and independent practice. However, the Student's behavior is too disruptive and she has asked him to leave. The general education teacher stated the Student cannot complete his work independently and is very disruptive in class. He will do his work in a one on one setting. When he understands the materials, he will participate in class.

The dean of students stated the Student is walking the halls and hiding in the bathroom to avoid security almost every day. The team agreed to make a referral to the Least Restrictive Environment ("LRE") Team (DCPS central office staff) to conduct an observation of the Student and determine whether the Student requires a full time school program. The Local Education Agency ("LEA") representative stated the process will take two and a half weeks to complete. The IEP team reviewed the FBA and BIP. The IEP team amended the IEP to provide the Student 5 hours per week of specialized instruction outside the general education setting, 15 hours per week of specialized instruction in the general education setting and 240 minutes per week of behavior support services outside the general education setting. The Educational Advocate requested the Student be placed in a full time special education day school. However, the LEA representative stated that the LRE team must first complete its observation and invitations would be sent to the Petitioner once the LRE team makes its recommendations.¹²

12. On February 4, 2015, the IEP team conducted a manifestation determination review. The team noted the Student has exhibited uniform violations, cursing and disruption. The team

¹¹ P-17

¹² Petitioner, Educational Advocate, P-8, P-9, P-12

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further noted the Student is impulsive, unable to self-regulate his emotions, continues emotional dysregulation. The team agreed that the incident of bringing alcohol to school was a manifestation of the Student's disability.¹⁴

13. On February 5, 2015, the IEP team developed a BIP. The BIP reinforces replacement behavior by allowing the Student to earn merits for completing the behavior checklist daily and allowing the Student to be present when positive phone calls are made home.¹⁵
14. On February 13, 2015, the Student was accepted at Nonpublic School on condition the Student receives a full time IEP. Nonpublic School provides a full time therapeutic environment. All of the students attending Nonpublic School are students with disabilities. Many of the students attending are DCPS students. DCPS assigns a monitor to the school and the school is certified by the Office of the State Superintendent of Education. The service providers include a psychiatrist, individual therapists and teachers with Master's degrees certified in special education and core subject areas. The school schedule consists of six 65 minute periods per day except on Wednesday which is a half day for students. Each student's progress is measured by quarterly team meetings, weekly notes, annual IEP team meetings and 30 and 60 day reviews. The school provides a school wide behavior management system that includes a levels system, point system, timeout areas and support rooms. DCPS provides transportation to the school for its students; however, the school provides transportation to the school to fill in any gaps for transportation. The Petitioner has toured Nonpublic School and met with the Nonpublic School Representative and wants the Student to attend Nonpublic School.¹⁶
15. On March 9, 2015, the IEP convened. The general education teacher stated that the Student understands his work with instruction in a one to one setting. The team noted the Student received a referral for throwing food and pushing another student during lunch. The LEA representative stated that the Public Charter School currently cannot meet the Student's needs. However, the LRE team has not determined the Student's location of services. The team determined the Student requires 25 hours of specialized instruction per week outside the general education setting and 10 hour of behavior support services per week outside the general education setting. The Educational Advocate disagreed with the IEP team's determination; stating the Student requires 30 hours of special education and related service outside the general education setting because the Student should not eat lunch in the general education setting. The Educational Advocate proposed Nonpublic School as a location of services. The vocational training service provider stated she did not agree that the Student should attend Nonpublic School.¹⁷
16. During the week of March 16, 2015, the Petitioner was notified, via telephone, that DCPS chose the Behavior and Educational Support ("BES") program at a High School as a location of services for the Student. DCPS scheduled a meeting during the week of March 30, 2015 at the BES program. No written invitation was provided to the Petitioner. The

¹⁴ Petitioner, P-14

¹⁵ P-16

¹⁶ Petitioner, Nonpublic School Representative, P-29

¹⁷ Petitioner, Educational Advocate, P-5, P-6, P-7, P-15

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Petitioner attempted to contact the program on several occasions via telephone in order to schedule a visit to the BES program; leaving a message with the Special Education Coordinator at High School. To date, her messages were not returned. The building principal determines who may visit the school.¹⁸

17. The BES program at High School is staffed with five special education teachers, paraprofessionals, and behavior technicians. Staff members receive positive interventions and support training. For example, it is staff protocol to follow students who elope from the classroom. Students receive instruction in four classrooms in a wing of the High School building outside of the general education setting. BES students interact with the general education population during entry and dismissal and lunch, unless the student is not able to interact with the general education student population during lunch. Instruction in BES classrooms is aligned to DCPS scope and sequence. A “blended instruction” model is utilized. Blended instruction combines on-line computer instruction and in-class instruction. BES classes use targeted reading interventions based on student reading levels.¹⁹
18. The Petitioner provided a proposed compensatory education plan that includes 8 hours per week for 40 weeks of one on one independent tutoring services in reading, writing and mathematics, 2 hours a week for 40 weeks of behavior support services, one hour a week for 40 weeks of one on one mentoring services and a laptop computer and/or an iPad with educational software. The recommendation was made based on Woodcock Johnson Test of Educational Achievement test scores that were undated and the plan is intended for the Student to make two years of academic progress.²⁰

Conclusions of Law

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

“Based solely upon 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 with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005).

1. **DCPS denied the Student a FAPE by failing to implement the student’s January 15, 2014 IEP from the beginning of the 2014-2015 school year to October 8, 2014, including 18 hours of specialized instruction per week outside the general education setting.**

In order to comply with FAPE requirements, the IDEA requires that districts provide special education services to every student with a disability. Special education services include

¹⁸ Petitioner, Program Manager

¹⁹ Program Manager

²⁰ Compensatory Plan Designer, P-33

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specially designed instruction, provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability. 34 C.F.R. § 300.39(a)(1). Specially designed instruction means adapting, as appropriate, to the needs of the child, the content, methodology, or delivery of the instruction to address the unique needs of the child that result from the child's disability. 34 C.F.R. § 300.39 (b)(3). In this case, the January 15, 2015 IEP team determined the Student required specialized instruction outside the general education setting. Therefore, the Student requires instruction with a certified special education teacher and with his disabled peers.

The Student's report card indicates that the Student attended general education classes with general education teacher and peers during the school day with the exception of one resource class. Therefore, the Student was in the general education setting for approximately 24 hours per week out of a 27.5 hour week and 4.5 hours per week outside the general education setting. The January 15, 2015 IEP states the Student should receive 18 hours per week of specialized instruction per week outside the general education setting. The Hearing Officer finds that failure to implement the IEP is a substantive denial of FAPE.

- 2. DCPS did not deny the Student a FAPE by failing to provide an IEP on October 8, 2014 that was reasonably calculated to enable the student to make progress in the general education curriculum because the IEPs lacks full time specialized instruction outside the general education setting.**

The Petitioner failed to meet her burden of proof on this issue. The Petitioner did not disclose the October 8, 2014 IEP, and testimonial evidence only supports the IEP team convened. To determine an IEP inappropriate, there must be evidence of the contents of the IEP. There is no evidence of any changes made to Student's IEP on October 8, 2014. The hearing officer therefore has no basis to find that Student's IEP was not reasonably calculated to provide educational benefit. By failing to prove what changes were made to Student's IEP on October 8, 2014 and failing to present any witnesses to testify to what services Student required at the time, Petitioner failed to meet her burden of proving by a preponderance of the evidence that Student's IEP was inappropriate.

- 3. DCPS denied the Student a FAPE by failing to convene an IEP team meeting by December 5, 2015 as a result of the Student's poor behavior and lack of academic progress.**

Pursuant to 34 C.F.R. § 300.530(e)(1), "within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the LEA's failure to implement the IEP." Such a meeting is referred to as a manifestation determination review.

The IDEA identifies some instances in which cumulative short-term removals totaling more than 10 days in a school year could be considered a change of placement, resulting in the

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triggering the requirement to conduct a manifestation determination. This provision prevents the use of repeated disciplinary removals of 10 consecutive school days or less as a means of avoiding the change in placement protections built into the IDEA. A change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
 2. The child is subjected to a series of removals that constitute a pattern
 - i. Because the series of removals total more than 10 school days in a school year;
 - ii. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - iii. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- 34 C.F.R. § 300.536.

An in-school suspension (“ISS”) that lasts more than 10 school days triggers the requirements in 34 C.F.R. § 300.530(e)(1), if the ISS placement meets all three factors:

1. The student is not afforded the opportunity to continue to appropriately progress in the general curriculum.
 2. The district does not provide the services specified in the student's IEP.
 3. The student does not participate with nondisabled students to the same extent as he does in his current placement.
- 71 Fed. Reg. 46,715 (2006).

The evidence supports the student was suspended both in school and out of school for more than ten days from September 12, 2014 and December 4, 2015. The series of removals constituted a pattern which triggers 34 C.F.R. § 300.530(e)(1). DCPS failed to provide the student with a placement where his IEP can be implemented during the course of the suspensions. There is nothing in the record that indicates DCPS convened a manifestation determination review until February 4, 2015.

The IEP team has an obligation to conduct a functional behavioral assessment (and implement a behavioral intervention plan) in circumstances where the manifestation determination decision-makers conclude that the child's behavior was related to his disability. 34 C.F.R. § 300.530(f)(1). The Student did receive a FBA and the evaluator recommended the Student be placed in a smaller student hearing ratio in class in a very structured environment with specific behavioral interventions. However, the FBA was not reviewed by the IEP team until January 21, 2015.

The Hearing Officer finds the meetings on January 21, 2015 and February 4, 2015 were untimely. The FBA was conducted over an approximately 35 day period with classroom observations on October 16, 2014 and November 18, 2014 and a student interview on November 20, 2014. It is unknown when the FBA reports was completed; however, the FBA report could have been completed soon after the November 20, 2014 interview. The FBA recommended the Student be placed in a smaller student hearing ratio in class in a very structured environment with specific behavioral interventions. The IEP team made a referral to the LRE team to make another observation to determine whether the Student would be placed in a more restrictive placement. The LRE team determined the Student required a more restrictive placement without an additional observation. There was no additional information available to the IEP team to determine the

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Student required a more restrictive assessment. As a result of the IEP team's inaction the Student continued to exhibit behaviors that resulted in suspension as evidenced by the January 29, 2015 suspension report and school psychologist's review of records on January 21, 2015. The Student received no academic benefit resulting in a denial of FAPE.

- 4. DCPS did not deny the Student a FAPE by failing to propose a placement on October 8, 2014 that is reasonably calculated to enable the student to make progress in the general education curriculum; specifically the Student required a placement in a special school.**

An IEP is the written document memorializing the collaborative effort between parents and district personnel to develop an educational plan for a student with a disability. The IEP describes the child's individual needs and proscribes the proper placement and services designed to meet those unique needs. *Schaffer*, 546 U.S. 49 (U.S. 2005); 34 C.F.R. § 300.320. Pursuant to *Schaffer v. West*, 554 F.3d 470 (4th Cir. 2009), the Hearing Officer must focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits. *Id.*, 554 F.3d 470 (4th Cir. 2009). Whether an IEP is reasonably calculated to provide educational benefit is determined prospectively. *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993); and *Adams v. State of Oregon*, 31 IDELR 130 (9th Cir. 1999).

On October 8, 2014, the IEP team had access to the July 2014 psychological assessment and disciplinary records. A reasonable IEP team would not have determined the Student requires placement in a special school by looking retrospectively at the Student's record. The psychological assessment provides no recommendations regarding the Student's placement. This information would not result in a reasonable IEP team to determine the Student requires placement in a special school.

The Student requires the program at Nonpublic School

The LEA representative stated that the Public Charter School cannot meet the Student's needs and that he requires a more restrictive setting. The FBA states the Student behaves in a defiant and disruptive manner in order to be removed from class to avoid classwork. The School Psychologist stated the Student arrives late to class and is usually unable to remain in class for the duration of the class period as a result of impulsive and disruptive behaviors and poor social interactions with peers. The behaviors result in the Student experiencing difficulty accepting redirection and at times hiding within the school building in an effort to avoid attending class or accepting consequences for his noncompliant behaviors. As a result the Student rarely received completed class work and homework assignments. The Petitioner expressed concern regarding the Student's behaviors such as walking out of class and refusing to go to class and the Student does not understand the material presented in class at the January 21, 2015 IEP team meeting.

DCPS offers a BES program at High School. The Petitioner attempted to observe the BES program. However, she was not allowed to observe prior to the due process hearing. Therefore, the Hearing Officer is concerned about any credibility of evidence regarding the effectiveness of the BES program. The BES program is located in four classrooms in a wing of

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the High School building. BES students interact with the general education population during entry and dismissal and lunch, unless the student is not able to interact with the general education student population during lunch. The evidence supports, the Student's behaviors are such that the Student cannot eat lunch successfully with his nondisabled peers due to his lunchroom behaviors. Therefore, he would be in the BES wing during the entire school day. Instruction in the BES program is presented on-line through a computer and in-class. Nothing in the record indicates the Student would respond positively to his approach. His teacher stated the Student can be successful with one to one support. The Student avoids instruction by running away from the classroom. BES program staff are trained to follow students who run from the classroom. However, this protocol does not indicate how the Student will be able to access the curriculum.

Nonpublic School provides a full time therapeutic environment. The service providers include a psychiatrist, individual therapists and teachers with Master's degrees certified in special education and core subject areas. The school provides a school wide behavior management system that includes a levels system, point system, timeout areas and support rooms. This is the type of milieu the Student requires to focus less on avoiding school work and more on academic success.

Compensatory Education

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. 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." *Reid v. District of Columbia*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "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." *Id.* at 526.

The Hearing Officer concludes based on the evidence offered at hearing that the student was denied a FAPE as a result of DCPS' failure to implement the Student's IEP in a full time out of general education program. Therefore, the Hearing Officer concludes that to award the student compensation for the inappropriate IEP would be equitable.

ORDER

- (1) The IEP shall be revised to provide full time hours of specialized instruction out of general education;
- (2) DCPS shall place the Student in Nonpublic school for the 2014-2015 school year;
- (3) DCPS shall fund the Student's placement at Nonpublic School, including transportation;
- (4) DCPS shall convene an IEP team meeting within 30 school days of the Student's placement at Nonpublic School to review the Student's progress and revise the Student's IEP and BIP as necessary;
- (5) For everyday of delay by the Petitioner, DCPS shall have one day to convene the IEP team meeting;

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- (6) DCPS shall fund 40 hours of independent tutoring services to be completed by the end of the 2015-2016 school year; and
- (7) No further relief is granted.

IT IS SO ORDERED.

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).

Date: April 18, 2015

/s/ John Straus
Hearing Officer