

District of Columbia  
Office of the State Superintendent of Education  
Office of Review and Compliance  
Student Hearing Office  
810 First Street, NE – Second Floor  
Washington, DC 20002  
Tel: 202-698-3819  
Fax: 202-478-2956

OSSE  
Student Hearing Office  
December 16, 2013

**Confidential**

<p>Parent on Behalf of Student<sup>1</sup>,</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”)</p> <p>Respondent.</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Date: December 5, 2013</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
---	--

<sup>1</sup> Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

## **JURISDICTION:**

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on December 5, 2013, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2007.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student is \_\_\_\_\_ with her legal guardian (“parent”). The student is a child with disability pursuant to IDEA with a disability classification of other health impairment (“OHI”) for Attention Deficit Hyperactivity Disorder (“ADHD”). The student currently attends a DCPS school (“School A”) where she began attending at the start of school year (“SY”) 2013-2014.

The student was initially evaluated and identified by DCPS as a student eligible for special education services in 2008 when she was age three. At that time she attended a District of Columbia public charter school (“School B”).

In Fall 2008 DCPS conducted a comprehensive developmental evaluation, an occupational therapy evaluation, a speech and language evaluation and an educational evaluation and an initial individualized educational program (“IEP”) was developed for the student at School B in February 2009. The IEP was updated on December 17, 2010, to prescribe the following weekly services fifteen (15) hours of specialized instruction, thirty (30) minutes of occupational therapy and one (1) hour of speech and language therapy outside the general education, as well as extended school year (“ESY”) services.

Due to the student’s lack of progress at School B her parent enrolled her in a private school for SY 2011-2012 after receiving a scholarship through the Washington Scholarship Fund. In March 2012, parent retained counsel and a written request for re-evaluations was allegedly submitted to the student’s neighborhood school and the DCPS Office of Special Education. Petitioner asserts DCPS did not conduct re-evaluations in response to the request during SY 2011-2012.

Petitioner enrolled the student in a different private school (“School C”) located within the District of Columbia for SY 2012-2013. The student did not receive special education services at School C. During SY 2012-2013 the parent made a request to DCPS for reevaluations. On March 13, 2013, DCPS PRO convened a student evaluation plan (“SEP”) meeting and agreed to conduct the following evaluations: comprehensive psychological, speech and language, occupational therapy and a social work assessment.

On May 29, 2013, DCPS convened an eligibility meeting and determined that the student continued to be eligible. Petitioner asserted that she requested that DCPS develop an IEP for the student at the May 29, 2013 meeting and the PRO refused.

The petitioner advised the PRO that she intended to enroll the student at School A for SY 2013-2014 and the PRO advised the parent that School A would be responsible for developing the IEP when the student began attending.

During Summer 2013 the parent registered the student at School A and through counsel requested a meeting to develop an IEP and that the student be provided specialized instruction in reading, writing and math, a behavior plan and transportation services.

After the student began attending School A DCPS convened an IEP meeting and developed an IEP on September 10, 2013. The IEP prescribes seventy five (75) minutes per week of specialized instruction in math in the general education setting, one hundred (100) minutes per week of specialized instruction in the area of mathematics outside general education, thirty (30) minutes per month of behavioral support in the general education and thirty (30) minutes per month of occupational therapy consultative services.

On September 30, 2013, Petitioner filed the due process complaint challenging DCPS' alleged delay in conducting the requested reevaluations, it's alleged failure to promptly develop an IEP for the student after the May 29, 2013, eligibility meeting and challenging the appropriateness of the IEP developed on September 10, 2013. Petitioner asserted that the amount of specialized instruction and the goals are insufficient to provide the student meaningful educational benefit and it does not include a behavior plan to address the student's inattention and did not include transportation services. Petitioner asserts DCPS refused to add transportation as a related service to the IEP despite the parent's request. The parent asserts that she incurred transportation costs getting the student to and from School A.

Petitioner seeks as relief an order directing DCPS to amend the student's IEP to increase specialized instruction, include transportation services, and increase behavioral support services outside general education to one hour per week. In addition, Petitioner seeks compensatory education in the amount of 78 hours of independent tutoring and reimbursement to the parent for the out of pocket cost of transportation for the student to and from School A from the start of SY 2013-2014.

DCPS filed a timely response to the complaint on October 8, 2013. DCPS denied any alleged denial of a FAPE and asserted the student was evaluated timely and appropriately and the student's IEP was timely and is appropriate.

A resolution meeting was held on October 11, 2013. The issues were not resolved. The parties expressed no desire to proceed directly to hearing. They expressed a desire to allow the full 30-day resolution period to expire before the 45-day timeline began. The 45-day period began on October 30, 2013, and ends (and the Hearing Officer's Determination ("HOD") is due) on December 14, 2013.

A pre-hearing conference was held on November 14, 2013, and a pre-hearing conference order was issued outlining, inter alia, the issues to be adjudicated.

**ISSUES:** <sup>2</sup>

**The issues adjudicated are:**

1. Whether DCPS denied the student a free and appropriate public education (“FAPE”) by failing timely reevaluate the student based on a parent request made through counsel on March 26, 2012.
2. Whether DCPS denied the student a FAPE by failing to timely develop an IEP for the student following the May 29, 2013, eligibility meeting and failing to have an IEP in effect at the start of SY 2013-2014.
3. Whether DCPS denied the student a FAPE by failing provide the student an appropriate IEP by failing to include in the IEP the following: (1) sufficient hours of specialized instruction in all core academic areas (5 hours outside general education in math and 10 hours of specialized instruction in reading and written expression inside general education), (2) transportation services, (3) pull-out behavioral support services of 1 hour per week.

**RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties’ disclosures (Petitioner’s Exhibits 1 through 30 and Respondent’s Exhibits 1 through 11) that were admitted into the record and are listed in Appendix A

**FINDINGS OF FACT:** <sup>3</sup>

1. The student is \_\_\_\_\_ with her parent. The student is a child with disability pursuant to IDEA with a disability classification of OHI for ADHD. The student currently attends School A where she began attending at the start of SY 2013-2014. (Parent’s testimony, Petitioner’s Exhibit 2-1)
2. The student was initially evaluated and identified by DCPS in 2008 as a student eligible for special education services with a developmental delay. (Parent’s testimony, Petitioner’s Exhibits 15-1, 24, 25, 26, 27-10)

---

<sup>2</sup> The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

<sup>3</sup> The evidence that is the source of the Finding of Fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party’s exhibit.

3. An IEP was developed for the student at School B in February 2009, and updated on December 17, 2010. The December 10, 2010, IEP prescribed the following weekly services fifteen (15) hours of specialized instruction in the areas of reading and math, thirty (30) minutes of occupational therapy and one (1) hour of speech and language therapy as well as ESY services. All services were provided outside the general education. (Petitioner's Exhibit 27-1, 27-6, 27-9, 27-10)
4. The parent enrolled the student in a private school for SY 2011-2012 after receiving a scholarship through the Washington Scholarship Fund. The student did not receive special education services in the private school. (Parent's testimony, Petitioner's Exhibit 15-1)
5. In March 2012 the parent retained counsel who, on the parent's behalf, faxed a written request to the student's DCPS neighborhood school and the DCPS Office of Special Education for the student to be re-evaluated. The fax included a form dated September 23, 2011, allegedly granting the parent's consent to evaluate. (Petitioner's Exhibit 21)
6. DCPS did not conduct re-evaluations in response to the request during SY 2011-2012. Petitioner enrolled the student in second grade at School C for SY 2012-2013. The student did not receive special education services at School C. During SY 2012-2013, the parent requested re-evaluations at the DCPS PRO. (Parent's testimony, Petitioner's Exhibit 15-1)
7. On March 13, 2013, DCPS PRO convened a SEP meeting and agreed to the following evaluations: comprehensive psychological evaluation, speech and language evaluation, occupational therapy ("OT") and social work assessment. The team noted the student was struggling in all academic areas: math, reading and writing. (Petitioner's Exhibit 23-1, 23-2, 23-5)
8. In April 2013, DCPS completed a psychological evaluation (evaluation report dated May 14, 2013) that assessed the student's cognitive and academic abilities. The evaluator concluded the student's cognitive abilities were below average but she demonstrated average nonverbal and memory index performance. The student's academic functioning was deemed average in the areas of reading and written language, but she demonstrated weakness in math. The evaluator conferred with the student's teacher at School C and noted that the teacher said that the student's reading was also an area of concern. The evaluator confirmed the student's diagnoses of ADHD and concluded the student met the criteria as a student with a specific learning disability in math and OHI due to ADHD. (Petitioner's Exhibit 15-1, 15-2, 15-4, 15-12, 15-13)
9. The OT evaluation determined the student has significant difficulty receiving, processing and responding to sensory information. The speech language evaluator determined the student's receptive and expressive vocabulary and language skills were in the average range. (Petitioner's Exhibits 16-9, 17-5)

10. On April 30, 2013, DCPS conducted a social work assessment that noted that the student had a history of abandonment as possible neurological damage based on an interview with the parent. The student receives regular therapy outside of school to assist with these issues. DCPS conducted a classroom observation of the student at School C and observed the student was at times distracted and needed redirection to stay on task. The student has displayed behaviors that put her in danger of traffic while walking to and from school. The social work report recommended, inter alia, that in light of the parental concerns about the student's behaviors that jeopardize her safety that the student's neuropsychological assessment report be reviewed by a DCPS team because of its possible relevance to the student's therapeutic counseling. (Parent's testimony, Witness 2's testimony, DCPS Exhibit 6-4, 6-7, 6-9)
11. On May 29, 2013, DCPS convened an eligibility meeting and DCPS determined that the student continued to be eligible as a student with OHI. At the meeting, the student's School C teachers participated and reported that the student performed poorly in all of her core academic classes during SY 2012-2013. (Witness 1's testimony, Petitioner's Exhibit 14-5, 14-6)
12. Petitioner advised the PRO that she intended to enroll the student at School A for SY 2013-2014 school year and the PRO advised the parent that the new school would thereafter be responsible for developing the student's IEP. (Parent's testimony, Petitioner's Exhibit 14-6)
13. During the 2013 summer the parent registered the student at School A and requested an IEP be developed for the student before school started. The parent's counsel sent correspondence to DCPS in July 2013 and August 2013 requesting an IEP, and specialized instruction in reading, writing and math as well as a behavior plan and transportation services. (Petitioner's Exhibits 8, 9, 10)
14. After the student began DCPS convened an IEP meeting and developed an IEP on September 10, 2013. The IEP developed prescribes seventy five (75) minutes of specialized instruction in the area of math in the general education setting and one hundred 100 minutes per week of specialized instruction in math outside general education, thirty (30) minutes per month of behavioral support in general education and thirty (30) minutes per month of occupational therapy services. (Petitioner's Exhibit 2)
15. DCPS refused to add transportation as a related service in this student's IEP despite the parent's request that the service be added to the student's IEP. The parent incurred \$28.00 per day to transport the student to and from school during the first two weeks of school and subsequently hired someone who provides transportation at a cost of \$30.00 per week. (Parent's testimony, Witness 4's testimony)
16. The student did not begin receiving special education services at School A until after her IEP was developed on September 10, 2013. Thus the student missed specialized instruction and related services she would have received had the student's IEP been

promptly developed after the May 29, 2013, eligibility meeting. (Witness 5's testimony, Witness 6's testimony)

17. The student has adjusted well to School A, displayed no behavioral problems and has had a total of ten days absent from school during the first semester. The student is able to complete her assignments and is making progress but benefits from repetition. According to the student's general education teacher she is reading on second grade not in need of specialized instruction other than in math. (Witness 5's testimony)
18. The student has been provided 30 minutes twice per month of "pull-out" counseling service from the School A social worker. Although the student's IEP prescribes these services inside general education the school social worker recommends that the IEP be changed to reflect the services in the setting they are actually being provided. (Witness 6's testimony, Respondent's Exhibits 2, 7)
19. DCPS has agreed based upon the parent request to conduct a FBA and the parent has granted written consent. (Respondent's Exhibit 4, Petitioner's Exhibit 7)

#### **CONCLUSIONS OF LAW:**

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a FAPE. Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. <sup>4</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

---

<sup>4</sup> The burden of proof shall be the responsibility of the party seeking relief. 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.

**ISSUE 1:** Whether DCPS denied the student a FAPE by failing timely reevaluate the student based on a parent request made through counsel on March 26, 2012.

**Conclusion:** Petitioner failed to sustain the burden of proof by a preponderance of the evidence that a legitimate request for re-evaluation and provision of special education services were made to DCPS in March 2012 so as to obligate DCPS to conduct re-evaluation(s) and provide the student special education services.

The evidence<sup>5</sup> in this case demonstrates that the parent's counsel simply faxed a request that the student be re-evaluated to DCPS and the student's DCPS neighborhood school. There was insufficient evidence that any other communication was made by or on behalf of the parent to request evaluations or services for the student until nearly a year later when DCPS held an SEP meeting and conducted evaluations.<sup>6</sup> The mere faxing of document and a purported consent from the parent that was dated six months prior was not sufficient basis for DCPS to take any action to evaluate the student. There was no evidence that the parent came to DCPS, presented the student to be evaluated or took any other actions to personally verify that the faxed correspondence was ever received.

Petitioner cited *District of Columbia v. Vinyard* (D.D.C. 2013) 62 IDELR 13. In that case DCPS argued that pursuant to 34 C.F.R. § 300.137(a) and 20 U.S.C. § 1412(a)(10), the District is under no obligation to create an IEP for the student until he enrolls in a public school. Although there is no requirement that a student be enrolled in DCPS school for an IEP to be developed the Hearing Officer here concludes that there were not sufficient facts to demonstrate the parent or her counsel made sufficient efforts in 2012 to create a duty on DCPS part to re-evaluation the student, develop an IEP and offer special education services until nearly a year later in March 2013.

The Hearing Officer concludes that this scant evidence of a request for reevaluation in 2012 was insufficient to sustain the burden of proof, particularly given that the student was not attending a DCPS school, neither the parent nor her counsel made any follow up to ensure the fax was received and that a legitimate and current consent to evaluate from the parent was provided. There was violation of IDEA and no denial of a FAPE to the student in this regard.

**ISSUE 2:** Whether DCPS denied the student a FAPE by failing to timely develop an IEP for the student following the May 29, 2013, eligibility meeting and failing to have an IEP in effect at the start of SY 2013-2014.

**Conclusion:** Petitioner sustained the burden of proof by a preponderance of the evidence that DCPS failed to timely provide the student an IEP and as a result the student was harmed.

---

<sup>5</sup> Finding of Fact ("FOF") #5

<sup>6</sup> FOF #7

Once a student is determined to be eligible, pursuant to 34 C.F.R. Section 300.320(a)(4), the local and state educational agency is required to ensure that each student with a disability in need of services within its jurisdiction is provided with an IEP that contains:

“ A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--

- (i) to advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;”

In the instant matter, the PRO refused to develop an IEP for the student at or following the May 29, 2013 eligibility meeting. DCPS still refused to reconvene during Summer 2013 to ensure that the student had an IEP in place prior to the commencement of SY 2013-2014 and delayed the student’s receipt of services by appropriately three to four weeks. The evidence<sup>7</sup> demonstrates that the student was not provided any special education services until after September 10, 2013. This student was denied a FAPE as a result.

**ISSUE 3:** Whether DCPS denied the student a FAPE by failing provide the student an appropriate IEP by failing to include in the IEP the following: (1) sufficient hours of specialized instruction in all core academic areas (5 hours outside general education in math and 10 hours of specialized instruction in reading and written expression inside general education) (2) transportation services, (3) pull-out behavioral support services of 1 hour per week.

**Conclusion:** Petitioner presented sufficient proof that the student’s IEP is inappropriate because it does not provide transportation services and “pull-out” behavior support services. However, there was insufficient evidence presented that the student’s IEP when it was developed was inappropriate because in did not contain additional specialized instruction in academic areas other than math.

Pursuant to 34 C.F.R. Section 300.324 requires that in the development of the IEP, certain factors be taken into account; “The IEP team must consider:

- (i) The strengths of the child;
- (ii) The concerns of the parent for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental and functional needs of the child.”

---

<sup>7</sup> FOF #16

Because the IEP is the mechanism through which a free and appropriate public education (“FAPE”) is delivered to disabled students, failure to provide the student with an appropriate IEP, is a denial of FAPE. See Scott v. District of Columbia, (D.C. Cir) 03-1672 DAR (March 31, 2006). A parent dissatisfied with the IEP developed for his or her child has a right to a due process hearing conducted by the state or local education agency before an impartial hearing officer. 20 U.S.C. § 1415(f)(1), (3).

Related services are any services that are necessary to help a student benefit from his education program See *Irving Independent School District v. Tatro*, 104 S. Ct. 3371, IDELR 555:511 (1984) and *County of San Diego v. California*, 93 F.3d 1458 (9<sup>th</sup> Circuit 1996) as well as 34 C.F.R. Section 300.34(a); 300.34(c)(16)). Where transportation is required to access a placement selected by the public agency for a disabled student, the public agency has an obligation to make transportation available for the student at no cost to the parent. (See *District of Columbia v. Ramirez*, 377 F.Supp.2d 63, 43 IDELR 245 (US District Court for District of Columbia 2005).

Although the evidence indicates that the parent chose to place the student at School A, DCPS in turn agreed to the location and is thus obligated under these circumstances to provide transportation services where there is demonstrated need for the service. The evidence<sup>8</sup> indicates based on the parent’s credible testimony and cited in DCPS social work assessment that the student has a history of putting herself in danger while traveling to and from school and the parent repeatedly request that transportation services be provided to ensure the student got to school safely. There was no contrary evidence presented by DCPS to refute the evidence of need for the student to have transportation as a related service. Thus, the Hearing Officer concludes that Petitioner sustained the burden of proof that the student is being denied a FAPE by the failure to provide transportation services and directs in the Order below that DCPS begin to provide the student the service and it be reflected in her IEP.

Although Petitioner presented testimony that she incurred transportation costs from the start of SY 2013-2014 the Hearing Officer in his discretion in will not order reimbursement of any of these costs as there was no documentary evidence presented of the expenses and no evidence of official calculation of the total amount expended. Therefore, the relief granted will be limited to prospective services.

There was insufficient evidence presented that the student is need of additional behavioral support services. However, it is clear that the student is in need of and benefiting from the behavioral support services that are being provided outside general education.<sup>9</sup> The Hearing Officer does not conclude that there was a denial of a FAPE to the student with regard to this related service. However, based upon the testimony of the related service provider the Hearing Officer directs in the Order below that DCPS amend the student’s IEP to prescribe the services as they are currently being delivered: outside general education.

The evidence demonstrates that the student’s reading and written expression achievement levels in the 2013 psychological evaluation were average and there is evidence to support that, other

---

<sup>8</sup> FOF #10

<sup>9</sup> FOF #18

than in math, the student is operating on grade level. The Hearing Officer acknowledges that the student was retained in second grade. However, the retention occurred during the student's time at School C and her current weakness seems to be limited to math. However, because of the parent's expressed concern about the student's reading and writing abilities and because the student's prior IEP included specialized instruction in these other areas, the Hearing Officer in the Order below will direct that DCPS convene an IEP meeting to review the FBA that DCPS has agreed to conduct and the parent has consented to and that when that meeting is held, the team also review the student's academic performance to determine if there a need for any additional supports or services.

### **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*, 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.

However, "*Reid* certainly does not require [a] plaintiff to have a perfect case to be entitled to a compensatory education award"; on the contrary, "[o]nce a plaintiff has established that she is entitled to an award, simply refusing to grant one clashes with *Reid*." *Stanton*, 680 F. Supp. 2d at 207.

Petitioner has requested compensatory education for the student allegedly not being provided evaluations and an IEP since 2012. However, the Hearing Officer has concluded that the student's lack of services was only from the start of SY 2013-2014 until the student's IEP was developed on September 10, 2013. The proposed compensatory education plan significantly overstates the services the student actually missed. Even though the proposed plan has overestimated the actual missed services and proposed an inappropriate remedy, and the parties presented no alternative evidence in this regard, to provide the student nothing would be inequitable. Therefore, the Hearing Officer will provide what he considers to be nominal compensatory services and directs DCPS to provide those related services in the order below.

### **ORDER:<sup>10</sup>**

1. DCPS shall within ten (10) calendar days of the issuance of this Order, provide the student transportation services and amend the student's IEP to reflect the additional service and to change the student's behavioral support services to be provided outside general education consistent with the services she is actually receiving.

---

<sup>10</sup> Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

2. DCPS shall within thirty (30) calendar days of the issuance of this Order complete a FBA and convene an IEP meeting for the student to review the FBA and develop a behavior intervention plan if appropriate and review the student's academic progress since attending School A and determine if the student is in need of additional specialized instruction in areas other than math.
3. As a result of DCPS not promptly providing an IEP after the student was found eligible on May 29, 2013, and the student not being provided special education services at the start of SY 2013-2014 DCPS shall provide the student the following services as compensatory education: 15 hours of independent tutoring at the DCPS/OSSE prescribed rate.
4. All other requested relief is hereby denied.

**APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

*/S/ Coles B. Ruff*

---

**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: December 14, 2013**