

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, NE, 2nd Floor
Washington, DC 20002

STUDENT, by and through
MOTHER, his Attorney-in-Fact,¹

Date Issued: December 4, 2015

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2015-0312(A)

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Hearing Dates: November 18-19, 2015

Respondent.

Office of Dispute Resolution, Room 2003
Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

A due process hearing was held on November 18-19, 2015 on the non-expedited issues asserted in the Administrative Due Process Complaint Notice filed in this case by Student, by and through Mother, his attorney-in-fact, 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 his Due Process Complaint, Student asserted several alleged denials of a free appropriate public education (FAPE) by Respondent District of Columbia Public Schools and NONPUBLIC SCHOOL including both discipline and non-discipline issues. By order of October 2, 2015, I bifurcated the case and set the non-discipline issues to be heard on November 18, 2015. An expedited due process hearing on the discipline issue alleged by Petitioner was

¹ Personal identification information is provided in Appendix A.

held on October 14, 2015. I issued my Hearing Officer Determination on the expedited part of the case on October 18, 2015 (October 18, 2015 HOD).

As discussed in the October 18, 2015 HOD, Petitioner named both DCPS and Nonpublic School as parties respondent in this case and reportedly served the due process complaint on both entities. At the beginning of the due process hearing on October 14, 2015, I granted DCPS' motion to dismiss Nonpublic School as a party respondent.

Student, an AGE adult, is a resident of the District of Columbia. By an educational power of attorney dated October 5, 2015, Student conferred educational decision making powers upon Mother, who initiated and prosecuted the present due process proceedings on Student's behalf. Petitioner's due process complaint was filed on September 22, 2015. The undersigned Hearing Officer was appointed on September 23, 2015. The parties were scheduled to meet for a resolution session on October 9, 2015. However, they did not resolve the due process complaint. On October 2, 2015, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters. Following the prehearing conference, I ordered that the case would be bifurcated in order for the discipline issue to be heard on the expedited calendar required for discipline appeals under the IDEA. *See* 34 CFR § 300.532(c)(2).

The non-expedited due process hearing was held before the undersigned Impartial Hearing Officer on November 18-19, 2015 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on a digital audio recording device. Mother appeared in person and Student was represented by PETITIONER'S COUNSEL and LAW STUDENT 2. Respondent DCPS was represented by DCPS' COUNSEL.

Petitioner testified and called as witnesses TRANSITION PLANNER, PRIVATE SCHOOL 3 PRINCIPAL and INDEPENDENT PSYCHOLOGIST. DCPS called as witnesses Nonpublic School FOUNDER and LEA REPRESENTATIVE. Petitioner's Exhibits P-1 through P-53 were admitted into evidence, including Exhibits P-4 through P-6, P-36, P-39 through P-45 and parts of P-18² which were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-5 were admitted into evidence without objection. In addition, I determined that all exhibits admitted in the expedited portion of this case would also be considered as part of the evidentiary record in this non-expedited part of the case. (Exhibits from the October 14, 2015 Expedited Hearing are identified in this decision as "Expedited Exhibit ____".) Counsel for the respective parties made opening and closing statements. Neither party requested leave to file post-hearing written argument.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The issues to be resolved in this non-expedited part of this case, and relief requested, are:

Whether DCPS and/or Nonpublic School failed to ensure that the requirements of Student's IEP were implemented during the 2013-2014 school year, including the provision of a full-time dedicated aide, the provision of behavioral support services, and the provision of other Individualized Education Program (IEP) accommodations and services, including, clinical crisis intervention, anger management training, management of low frustration tolerance, proximity management, cognitive restructuring, frequent rewards for positive behavior, therapeutic restraint in emergency situations, social skills training, and training in

² DCPS did not object to Pages 98 through 106 and Page 112 of Exhibit P-18.

self-regulation skills³ and

Whether DCPS and/or Nonpublic School denied Student a FAPE by failing to develop and implement an appropriate post-secondary transition plan.

For relief for the past denials of FAPE alleged in the complaint, Petitioner seeks an award of compensatory education.

FINDINGS OF FACT

The following relevant Findings of Fact made in the October 18, 2015 HOD, based upon testimony and exhibits admitted at the October 14, 2015 due process hearing, are incorporated herein:

1. Student is an AGE adult. He resides in the District of Columbia with Mother. Testimony of Mother.
2. During the 2013-2014 school year, Student was eligible for special education and related services under the primary disability classification Specific Learning Disability (SLD). Expedited Exhibits P-6, P-5. Student's February 11, 2013 IEP provided that he would receive full-time, 29.5 hours per week, of Specialized Instruction and 1.5 hours per week of Behavioral Support Services, all outside general education. Expedited Exhibit P-6.
3. At the beginning of the 2013-2014 school year, Mother enrolled Student in GRADE at Nonpublic School where his tuition expenses were paid by DCPS. Initially Student seemed to be doing well at Nonpublic School although he did exhibit some behavior issues. Student was suspended from school from October 18 through 22, 2013 for allegedly making threatening gestures to a teacher. Testimony of Mother, Expedited

³ The Prehearing Order stated that the failure-to-implement claim was for the 2014-2015 school year. Petitioner's Counsel clarified at the due process hearing that this claim concerned implementation of Student's IEP for the 2013-2014 school year.

Exhibit P-18.

4. On Friday, April 11, 2014, the day before the private school's Spring Break, Nonpublic School Founder wrote a termination of educational services letter to Student stating,

This is to inform you that today I have decided to terminate the educational services that you, [Student], receive from [Nonpublic School]. This decision is due to the negative behavior you display as well as your lack of academic progress.

We have informed [DCPS] of our decision to terminate your educational services. Over the next 15 days, DCPS will work with you to find a new placement for service.

On the same day, Founder wrote Mother by email informing her,

After speaking with my staff about [Student] and his progress as well as his increasingly negative behaviors coupled with the increase of his verbal threats. We [*sic*] here at [Nonpublic School] are terminating his placement. We will work with the family to find a more suitable school for [Student]. . .

Founder attached a copy of the termination letter to the email to Mother.

Expedited Exhibit P-20.

5. On April 12, 2014, Mother responded by email to Founder informing him that she had advised Student to return to Nonpublic School after the Spring Break. She wrote,

This is rather unfortunate that you, and your staff feels this way, and came to this conclusion without inviting [Student], and myself or anyone else for that matter, to have some kind of input as well as putting something in place for [Student]. This is a direct violation of my son's rights. In light of this breaking news so close to the end of the school year my son has the right to an education, and this matter has to be handled properly. . . .

Mother requested, *inter alia*, a meeting with Founder and his team.

Expedited Exhibit P-21.

6. After Mother notified Founder that she had advised Student to return to

the private school after Spring Break, Nonpublic School neither revoked the April 11, 2014 termination letter nor attempted to keep Student from returning. Student returned to Nonpublic School on April 22, 2014, the first school day after Spring Break, and he was allowed to resume his studies there. Testimony of Mother. Student attended school at Nonpublic School from April 22, 2014 through May 5, 2014. Expedited Exhibit R-1.

7. On May 5, 2014, the Metropolitan Police were summoned to Nonpublic School and Student was arrested for an April 29, 2014 incident of allegedly threatening a teacher. Expedited Exhibits P-31, P-32. Student was released from custody on May 6, 2014. In a Stay-Away Order issued May 6, 2014, the Superior Court of the District of Columbia ordered Student to remain at least 100 yards away from the complaining teacher, the teacher's home and/or his place of employment, pending a June 2, 2014 court hearing. Expedited Exhibit P-33.

8. On May 5, 2014, Mother went to Nonpublic School and, on her own initiative, cleaned out Student's locker. She had decided at that point that Nonpublic School was not a good fit for Student. Student never returned to Nonpublic School. Testimony of Mother.

9. Since the beginning of the 2014-2015 school year, Student has attended Private School 3 as a DCPS-funded student. Student started at Private School 3 in its summer jobs program in the summer of 2014. Testimony of Mother.

Additional Findings of Fact

After considering all of the evidence admitted at the November 18-19, 2015 non-expedited due process hearing in this matter, as well as the arguments of counsel, this Hearing Officer's additional Findings of Fact are as follows:

10. Nonpublic School is a very small program with 26-27 students and an

average class size of 6 to 7 students. Testimony of Founder.

11. Student's February 11, 2013 IEP described his Present Levels of Performance for Emotional, Social and Behavioral Development as the Student's demonstrating difficulty remaining in his assigned area, completing his class and homework consistently, and difficulty demonstrating on task behaviors. One of the services provided in the IEP to address this area of concern was to provide Student a dedicated aide. The February 11, 2013 IEP provided that Student required the support of a dedicated aide on a full-time daily schedule. Exhibit P-7. Student's April 30, 2014 IEP⁴ provided, *inter alia*, that he required the support of a dedicated aide for 31 hours per week. Exhibit P-8. During the 2013-2014 school year at Nonpublic School, Student was never provided a dedicated aide. Admission of DCPS. This was an "oversight" by Nonpublic School. Testimony of Founder.

12. Student's February 11, 2013 IEP provided that for Other Classroom Aids and Services, Student required Clinical Crisis Intervention, Frequent Behavioral Feedback, Anger Management Training, Management of Low Frustration Tolerance, Proximity Management, Frequent Verbal Redirection, Cognitive Restructuring, Reduction of External Stimulation, Increased Staff Support when needed, Daily Monitoring of Student Behavior, Frequent Rewards for Positive Behavior, Therapeutic Restraint and Seclusion in Emergency Situations, Social Skills Training, Training in Self-Regulation Skills, Repeated Oral Directions, Step-by-Step written directions, Simplified Directions, Reduced Length and Breadth of Assignments, Modified Pacing of Materials,

⁴ Nonpublic School Founder proposed a revised IEP at a meeting with Mother and Student on March 20, 2014. Mother informed Founder that this was not a proper IEP team meeting because there was no DCPS representative and there were no teachers present. Mother refused to participate further. The proposed March 20, 2014 IEP was not finalized. Testimony of Mother.

Frequent Academic Feedback, Rephrasing/Simplification of questions/Materials.

Exhibit P-7. Founder testified, that because of its very small student population, during the 2013-2014 school year, Nonpublic School was able to provide all of these Other Classroom Aids and Services to Student. Testimony of Founder.

13. Student's February 11, 2013 IEP provided that he would receive 1.5 hours per week of Behavioral Support Services. Founder testified that to his Knowledge, Behavioral Support Services were provided as required by Student's IEP. Service tracker logs offered by Petitioner showed only some 660 minutes of Behavioral Support Services provided to Student for the school year. Exhibit P-19. I did not find credible Founder's testimony that Student received Behavioral Support Services as required by his IEP.

14. Student enrolled in Private School 3 in the summer of 2014. At Private School 3, Student has been provided a dedicated aide and one hour per week of therapy. At Private School 3, Student has not exhibited any behavior issues. He has been able to pass all of his classes and to progress on his IEP goals. Student is expected to earn his high school diploma from Private School 3 in June 2017. Testimony of Principal.

15. At Private School 3, Student is provided all of his academic instruction in a 1:1 setting with a dedicated teacher in a community library. He receives these services daily from 8:00 a.m. to 3:00 p.m. He only goes to the school building for Behavioral Support Services. This change in instruction delivery was made because Student's behavior is such that being in a classroom setting does him more harm than good. Student's IEP has not been amended to reflect this change from the classroom setting to the community-based setting in a library. Testimony of Principal.

16. Independent Psychologist conducted of neuropsychological evaluation of Student in October and November 2014. She determined that Student has a long

standing developmentally-based disorder which is likely neurological – brain based – in nature. Student has an extremely low IQ, about in the first percentile, and low language capability. These factors have an impact on his behavior – trouble communicating thoughts, difficulty reading other people, poor impulse control and ability to manage emotions. As a result Student tends to exhibit behaviors expected of a much younger person and does not have a good hold on his emotions. Cognitively and behaviorally, Student is functioning at a level far below age and grade norms (about seven grade levels behind) for academics, attention and behavior. Testimony of Independent Psychologist (in October 14, 2015 and November 18, 2015 hearings).

17. When Student enrolled in Nonpublic School at the beginning of his 2013-2014 school year, his IEP from PRIVATE SCHOOL 1 was carried over to Nonpublic School. That IEP included a Post Secondary Transition Plan which included the Long Range Goals for Student to enlist in the U.S. Army upon completion of High School and to live independently by the age of twenty. Transition services in the IEP included exploring admission requirements for the U.S. military, taking career interest inventories/surveys, and assistance with locating information for his post secondary career. Exhibit P-7.

18. Student's IEP was revised at Nonpublic School on April 30, 2014. The Post-Secondary Transition Plan in the 2014 IEP repeated that Student would like to make the U.S. Army his long term career and added that Student's back-up plan was to become a plumber or maintenance technician because he enjoys working with his hands. The plan included short-term goals including researching the requirements to enlist in the military and to become a maintenance technician, and to complete daily living activities and assignments pertaining to budgeting and money management. Exhibit P-

8.

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 normally 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

A.

Did DCPS and/or Nonpublic School fail to ensure that the requirements of Student's IEP were implemented during the 2013-2014 school year, including the provision of a full-time dedicated aide, the provision of behavioral support services, and the provision of other IEP accommodations and services, including, clinical crisis intervention, anger management training, management of low frustration tolerance, proximity management, cognitive restructuring, frequent rewards for positive behavior, therapeutic restraint in emergency situations, social skills training, and training in self-regulation skills?

For the non-expedited part of this case, Petitioner alleges first that DCPS failed to ensure that Nonpublic School implemented the requirements of his February 11, 2013 IEP for a full-time dedicated aide, other IEP accommodations and services, and weekly Behavioral Support Services. DCPS admits that Nonpublic School did not provide Student a dedicated aide, but denies that Behavioral Support Services and other IEP accommodations and services were not implemented.

The standard for failure-to-implement claims, used by the courts in this

jurisdiction, was formulated by the Fifth Circuit Court of Appeals in *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir.2000). This standard requires that a petitioner “must show more than a *de minimis* failure to implement all elements of [the student’s] IEP, and instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP” in order to prevail on a failure-to-implement claim. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 (Aug. 27, 2013) (quoting *Bobby R.*, 200 F.3d at 349). Courts applying this standard have focused on the proportion of services mandated to those actually provided, and the goal and import, as articulated in the IEP, of the specific service that was withheld. *Johnson, supra*. See, also, *Catalan v. District of Columbia*, 478 F.Supp.2d 73, 75 (D.D.C.2007) (“Thus, a court reviewing failure-to- implement claims under IDEA must ascertain whether the aspects of the IEP that were not followed were ‘substantial or significant,’ or, in other words, whether the deviations from the IEP’s stated requirements were ‘material.’” *Id.* at 75 (D.D.C.2007) (quoting *Bobby R.*)).

Here, I find that Petitioner did not meet his burden of proof that the list of “Other Accommodations and Services” required by his IEP were not implemented. Founder testified that these services were in fact provided to Student and Founder’s testimony was not rebutted by any knowledgeable witness. (The adult student, who is likely the person most knowledgeable about the aids and services he was provided at Nonpublic School, did not attend the due process hearing.) As to the other failure-to-implement claims, DCPS has admitted that, for the entire time Student attended Nonpublic School, he was not provided a dedicated aide. I have also found that Petitioner has established that it is more likely than not that Student was not provided most of the hours of Behavioral Support Services required by his IEP.

Independent Psychologist opined that as a result of Nonpublic School's failure to provide Student a dedicated aide and most of his IEP Behavioral Support Services, Student developed problem behaviors, including significant difficulties controlling impulses, managing conflict, and eschewing aggression and conflict. By April 2014, Student's behavior had escalated to the point that school officials complained to the Metropolitan Police and Founder attempted to expel Student. Independent Psychologist opined that as a result of Student's not being provided a dedicated aide and Behavioral Support Services, he made no progress academically in the 2013-2014 school year. Principal likewise opined that Student made neither educational nor social-emotional progress in the 2013-2014 school year at Nonpublic School. Although Student's DCPS transcript shows that he was awarded passing grades for the 2013-2014 school year – all C's except for a D in mathematics, Exhibit P-21, I find that these grades do not reflect Student's actual progress for the school year. In fact, Student did not even attend school after May 5, 2014. I find entirely credible the testimony of Independent Psychologist and Principal that Student did not make any academic progress for the 2013-2014 school year. I conclude that Nonpublic School's failure to provide Student a dedicated aide for the year and its failure to provide most of the Behavioral Support Services required by his IEP constituted a failure to implement substantial or significant provisions of Student's IEP and that Student was denied a FAPE as a result.

B.

Did DCPS and/or Nonpublic School deny Student a FAPE by failing to develop and implement an appropriate post-secondary transition plan?

When Student enrolled in Nonpublic School at the beginning of his 2013-2014 school year, his IEP from Private School 1 was carried over. That IEP included a Post-

Secondary Transition Plan which had long range goals for Student to enlist in the U.S. Army upon completion of High School and to live independently by the age of twenty. On April 30, 2014, the Nonpublic School IEP team revised Student's IEP Transition Plan to add a back-up goal of Student's becoming a plumber or maintenance technician. Transition services in the April 30, 2014 IEP included exploring admission requirements for the U.S. military, taking career interest inventories/surveys, and assistance with locating information for his post secondary career. Transition Planner opined that the April 30, 2014 transition plan was not appropriate because it was narrowly focused on Student's enlisting in the U.S. Military, which Transition Planner considered unrealistic given Student's disability and school history.

The IDEA's transition services provisions require that beginning not later than the first IEP to be in effect when the student turns 16, the IEP must include—

- (1) Appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR § 300.320(b). The IDEA, 20 U.S.C. § 1414(d)(1)(A)(viii), "imposes three distinct duties on school districts with respect to transition services. First, a school district must conduct 'age appropriate transition assessments related to training, education, employment, and . . . independent living skills.' Second, the district must draft a transition plan, including 'appropriate measurable postsecondary goals. . . .' Third, a school district must actually provide transition services reasonably calculated to aid student in achieving those goals." *Forest Grove Sch. Dist. v. Student*, No.

3:12-CV-01837-AC, 2014 WL 2592654, at 27 (D. Or. June 9, 2014). "[I]n considering the

adequacy of a myriad of transition services, an inquiring court must view those services in the aggregate and in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits.” *Lessard v. Wilton Lyndeborough Coop. School Dist.*, 518 F.3d 18, 30 (1st Cir.2008) (citations omitted).

I did not find Transition Planner’ opinion on the adequacy of the April 30, 2014 IEP transition plan to be persuasive. The requirement, that the IEP transition services must be individualized and based on the student’s needs taking into account his strengths, preferences and interests, was met in this case. Specifically, the April 30, 2014 IEP plan identified Student’s employment interests in a career in the U.S. military or to be a plumber or maintenance technician, as well as his interest in developing the ability to live independently. Plan services included exploring admission requirements for the U.S. military, taking career interest inventories/surveys, and assistance with locating information for his post secondary career. Transition Planner’s opinion that Student’s goal to serve in the military was unrealistic is not dispositive. A student with a disability should not be barred from choosing his career goal even if that goal seems to be beyond his grasp. Further, an IEP is not required to offer Student the “best” transition plan – but only services reasonably calculated to confer the student with meaningful benefit. *See K.S. v. District of Columbia*, 962 F.Supp.2d 216, 220-222 (D.D.C.2013). I find that the transition plan and services offered in the April 30, 2014 IEP were reasonably calculated to confer meaningful benefit on Student.

In closing argument, Petitioner’s Counsel contended that DCPS was required to ensure that Student’s February 11, 2013 IEP from Private School 1 was reviewed, and that the transition plan was revised, after he enrolled in Nonpublic School at the beginning of

the 2013-2014 school year. This is incorrect, DCPS was Student's Local Education Agency (LEA) both when he attended Private School 1 when the February 11, 2013 IEP was developed, and after Student enrolled in Nonpublic School for the 2013-2014 school year. The IDEA requires that an LEA must ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate. *See* 34 CFR § 300.324(b). Absent a request from the parent, DCPS was not required to ensure that Student's February 11, 2013 IEP was reviewed sooner than annually, just because Student changed schools within the same LEA.

Remedy

In this decision, I have concluded that DCPS denied Student a FAPE by not ensuring that Nonpublic School provided Student a dedicated aide and the Behavioral Support Services required by his IEP. Independent Psychologist opined that Student's not having a dedicated aide and not being providing most of his Behavioral Support Services resulting in the deterioration of Student's behavioral functioning and his failing to make academic progress over the 2013-2014 school year. The evidence establishes that Student's behavior regressed to the point that by April 2014, Founder sought to expel him from school and Student was arrested for allegedly threatening a teacher. Student stopped attending school after May 5, 2014. Petitioner seeks a compensatory education award to compensate Student for the harm of missing a school year of educational progress.

Compensatory education is educational service that is intended to compensate a disabled student, who has been denied the individualized education guaranteed by the IDEA. The proper amount of compensatory education, if any, depends upon how much

more progress a student might have shown if he had received the required special education services and the type and amount of services that would place the student in the same position he would have occupied but for the school district's violations of the IDEA. *See Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011) (citing *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir. 2005).

According to Principal, Student earned 3.5 credits for the school year at Nonpublic School when he should have been able to complete 8 credits. To an extent, Private School 3 has been able to address this harm by providing accelerated services since the 2014-2015 school year. Private School 3 provides Student full-time one-on-one instruction in an outside of school setting. This has enabled Student to progress academically and he is expected to earn his high school diploma by June 2017. However Student is still entitled to compensatory education for the harm resulting from the denial of FAPE for the year he was at Nonpublic School. *See Boose v. District of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (Compensatory education is remedy for "undoing damage done by prior violations.")

Three of Petitioner's witnesses made compensatory education recommendations. Transition Planner submitted a written compensatory education plan, Exhibit P-16, to compensate for Nonpublic School's allegedly not developing an appropriate post-secondary transition plan. Because I concluded that Petitioner did not meet his burden of proof on this issue, I discount Transition Planner's compensatory education proposal. Principal recommended that Student should receive an additional hour per week of behavioral support therapy and two hours per week of job coaching/job application counseling while he remains in school. Student is already receiving 7 hours per day of one-on-one teaching through Private School 3 and weekly Behavioral Support Services at

the school. Principal acknowledged on cross-examination that Student was already pushing back against an “overwhelming” workload. Therefore, I discount Principal’s compensatory education proposal. Independent Psychologist opined that Student should receive services that are focused on vocational training so that he can be productive after he graduates from high school. She recommended that Student receive, *inter alia*, some 15 months of vocational training, to include pre-vocational training and the support of a job coach. Although none of the witnesses proposed a specific job training program for Student, I found Independent Psychologist’s general recommendation for such a program most persuasive. Through Private School 3, Student appears to be receiving all of the Specialized Instruction and counseling services that he can reasonably handle at this time. I find that an award of vocational training for Student after he graduates from high school would be a more appropriate remedy to compensate Student for the harm in this case.

In closing argument, Petitioner’s Counsel posited that the Seeds of Tomorrow program could be an appropriate program to provided compensatory education services to Student in employment readiness and vocational training. However, there was no evidence about this program offered at the due process hearing. Therefore, I decline to order that Student be placed in this program or any specific program. However, I conclude, based especially upon the testimony of Independent Psychologist, that an award of employment readiness/vocational training would be a remedy reasonably calculated to compensate Student in this case for the effective loss of a school year and I will so order. *See Joaquin v. Friendship Public Charter School*, 2015 WL 5175885, 5 (D.D.C. Sept. 3, 2015) (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.) Although Independent Psychologist recommended that Student be awarded 15 months of such services, being mindful that Student lost one school year of academic benefit due to Nonpublic School's failure to provide a FAPE and the fact that these compensatory services will be provided after Student has graduated from high school, I find that one school year of employment readiness/vocational training would be an appropriate remedy reasonably calculated to compensate Student for the denial of FAPE in this case.

ORDER

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

ORDERED:

- i. As compensatory education for the denial of FAPE in this case, following Student's graduation from high school, DCPS shall fund one school year of tuition and related expenses at an institution approved by OSSE and/or accredited by District or state licensing authorities to provide workplace readiness, vocational training or similar training designed to prepare students for entry into the workforce. Unless otherwise agreed by Student, the institution shall be a non-governmental institution. This award shall be used within 24 months of the earlier of (a) Student's graduation from high school or (b) Student's 22nd birthday, or shall be forfeited; and
- ii. All other relief requested by the Petitioner herein is denied.

Date: December 4, 2015

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

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).

cc: Counsel of Record
Office of Dispute Resolution
Chief Hearing Officer
OSSE - SPED
DCPS Resolution Team