

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

OSSE  
Office of Dispute Resolution  
February 12, 2023

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PARENT,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: February 12, 2023

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2022–0195

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Online Videoconference Hearing

Hearing Dates: December 19, 2022

January 30 and February 6, 2023

Respondent.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioner (Petitioner or FATHER) under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-A, Chapter 5-A30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In his due process complaint, Father alleges that Student has been denied a free appropriate public education (FAPE) by Respondent District of Columbia Public Schools’ (DCPS) failure to fully implement Student’s Individualized Education Program (IEP) since Student was discharged from NONPUBLIC SCHOOL 1 in March 2022 and failure to provide appropriate interim services.

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

Petitioner's Due Process Complaint, filed on November 1, 2022, named DCPS as respondent. The undersigned hearing officer was appointed on November 2, 2022. Petitioner, by counsel, filed a corrected complaint on November 3, 2022. On November 18, 2022, Father and DCPS met for a resolution session and were unable to resolve the issues in dispute. On November 22, 2022, I convened a telephone prehearing conference with counsel to discuss the issues to be determined, the hearing date and other matters.

With the parent's consent, the due process hearing was held online and recorded by the hearing officer, using the Microsoft Teams videoconference platform. On December 19, 2022, the hearing, which was open to the public, was convened before the undersigned impartial hearing officer. Father appeared online for the hearing and was represented by PETITIONER'S COUNSEL and PETITIONER'S CO-COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

After Father's complaint was filed and before the hearing date, DCPS had offered Student placement at CITY SCHOOL as an interim location of services. Before the taking of evidence, in light of developments in the case, Father, by counsel, requested to continue the hearing date to January 30, 2023 and to extend the final decision due date to February 10, 2023. I granted those requests and the hearing resumed on January 30, 2023. An additional session for closing arguments was scheduled for February 6, 2023. By order issued February 4, 2023, I granted DCPS' unopposed motion to further extend the final decision due date to February 15, 2023.

Counsel for the respective parties made opening statements. FATHER, EDUCATION ATTORNEY, PROJECT COORDINATOR, and EDUCATIONAL CONSULTANT testified as witnesses for Petitioner. DCPS called OSSE PLACEMENT COORDINATOR, RESOLUTION SPECIALIST and NONPUBLIC MONITOR as its witnesses.

Petitioner's Exhibits P-7, P-10, P-12, P-13, P-17 through P-25, P-28, P-37, P-38, P-46, P-50, P-51, P-57, P-61 through P-63, P-65 through P-68, P-73 through P-76, P-79 and P-81 were admitted into evidence, including Exhibits P-7, P-10, P-12, P-13, P-17 through P-21, P-23, P-24, P-75 and P-81 admitted over DCPS' objections. I sustained DCPS' objections to Exhibits P-14, P-15, P-39, P-52 through P-55 and video exhibits P-90 through P-95. DCPS' Exhibits R-2, R-8 through R-16, R-18 through R-25 and R-27 were admitted into evidence, including Exhibits R-12 and R-25 admitted over Petitioner's objections. On February 6, 2023, counsel for the respective parties made oral closing arguments.

### **JURISDICTION**

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-A, § 3049.1.

**ISSUES AND RELIEF SOUGHT**

The issues for determination in this case, as certified in the November 21, 2022 Prehearing Order, are:

- a) Whether DCPS denied Student a FAPE by failing to fully implement the Student's IEP after Student was discharged from Nonpublic School 1 on March 30, 2022;
- b) Whether DCPS denied Student a FAPE by failing to provide a timely and appropriate location of service in an alternate residential program and/or appropriate interim services and/or placement where Student's IEP could be implemented upon his/her discharge from Nonpublic School 1 on or about March 30, 2022.

For relief, Petitioner requested that the hearing officer order that Student shall have a one-year extension of his/her eligibility for special education services; order DCPS to immediately place and fund the student in a residential placement with transportation for the parents and student; order DCPS to send placement packets to programs outside of the D.C. Office of the State Superintendent of Education (OSSE) approved list of residential programs and/or place and fund the student in a program not on the OSSE-approved list, on an interim basis, until such time as a bed becomes available at an approved program; order DCPS to immediately provide interim services to the student including but not limited to a 1:1 home dedicated aide, specialized instruction, and appropriate related services such as Applied Behavioral Analysis (ABA) Therapy, Occupational Therapy, Speech and Language Therapy, and Counseling Services. The parent also seek compensatory education services for the denials of FAPE alleged in the complaint.

### **FINDINGS OF FACT**

After considering all of the evidence received at the due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE youth, resides in the District of Columbia with his/her parents. Testimony of Father. Student is eligible for special education under the disability classification Multiple Disabilities (MD), based on Autism Spectrum Disorder (ASD) and Visual Impairment including Blindness. Exhibit P-28. In a 2019 DCPS triennial reevaluation report, it was reported that Student's then-current disability classification, MD, was due to Autism, Intellectual Disability (ID), legal blindness and deafness in the left ear. Student was also reported to have lack of spoken language and difficulty sustaining his/her attention. Exhibit P-10.

2. Student's January 18, 2022 DCPS IEP identified Mathematics, Reading, Adaptive/Daily Living Skills, Vision, Communication-Speech & Language and Emotional-Social-Behavioral Development as areas of concern for Student. For services, the IEP provided for Student to receive 31 hours per week of Specialized Instruction and 30 minutes per month of Orientation and Mobility services. As consultation services, the IEP provided for 20 minutes per week of Occupational Therapy, 15 minutes per month of Audiology, 30 minutes per month of Speech-Language Pathology, 60 minutes per month of Behavioral Support Services and 30 minutes per month of Orientation and Mobility. The IEP provided for Student to have a dedicated aide for 14.5 hours per day. The IEP also provided for, *inter alia*, Assistive

Technology devices and support and substantial other classroom aids and services, special education transportation and extended school year services. All services were to be provided outside general education. Exhibit P-22.

3. Student's father is in the United States military. Prior to 2018, Father was stationed in Hawaii, where Student was served by that state's public school system. The family relocated to Washington, D.C. in late 2018 and Student has been enrolled in DCPS since approximately early 2019. Testimony of Father; Exhibits P-10, P-17, P-18.

4. Beginning September 2020, Student was placed by DCPS at Nonpublic School 1. In the fall of 2020, due to the COVID 19 pandemic, virtual instruction was being provided by Nonpublic School 1 to Student. Exhibit P-20. In the last quarter of the 2020-2021 school year, Student attended Nonpublic School 1 both virtually and in person. Exhibit P-24.

5. In late September or October 2021, Nonpublic School 1 started expressing concerns to Public Monitor about Student's behaviors and not being able to service him/her. Testimony of Public Monitor.

6. On or about October 25, 2021, Student's IEP team determined that Student had behavior concerns while transporting to and from school and in the school and that he/she required two dedicated aides to assist him/her with behaviors. Exhibit P-35.

7. Before January 26, 2022, Student's DCPS IEP team agreed that Student would benefit from a more restrictive educational setting and DCPS would seek

placement for Student in a nonpublic residential setting. Exhibit R-9, Testimony of Nonpublic Monitor.

8. Around early March 2022, a Nonpublic School 1 administrator notified Nonpublic Monitor that the school was not equipped to provide for Student's education and keep him/her and other students safe. The administrator wrote that Student often engaged in self-injurious behaviors such as biting and scratching him/herself to the point of bleeding that required medical attention; that Student also exhibited other severe, interfering behaviors, such as damaging furniture and flooring and fecal smearing, that put him/her and others at risk for physical harm; that the school, in partnership with DCPS, was providing all levels of intervention at their disposal; that Student's interfering behaviors had not improved and he/she was rarely available for instruction. Nonpublic School 1 gave notice that it was terminating Student's enrollment effective March 30, 2022. Exhibits P-61, P-62.

9. Student has not attended Nonpublic School 1 since March 31, 2022. In April 2022, DCPS offered funding authorization for the parents to obtain interim at-home services for Student from independent providers. The parents did not use the funding authorization because they were unable to handle education services for Student at home due to health concerns for Student's mother. Testimony of Father. DCPS offered increased funding for interim services on November 18, 2022 and November 21, 2022. These authorizations included, *inter alia*, funding for Applied Behavioral Analysis (ABA) services. Exhibits R-83, R-84. An independent provider

provided Student two days of ABA services and then said they could not provide the services. Testimony of Father.

10. By email of November 22, 2022, Petitioner's Counsel notified Resolution Specialist that Father did not accept independent services for Student. Counsel advised that the previous funding authorizations issued by DCPS in April 2022 were not utilized because it is difficult for the parent to find services for Student, considering that Student's disability required that he/she be in a residential placement setting. Exhibit R-26.

11. In late November 2022, DCPS placed Student at City School, a DCPS full-time special education day school. Exhibit R-11. This assignment was made at the request of Father and was intended to be an interim location of services while DCPS continued to seek a nonpublic school placement for Student. Testimony of Resolution Specialist. At City School, Student has been assigned two full-time dedicated aides, who are being trained by DCPS behavioral technicians. Testimony of Nonpublic Monitor. Because of health issues, including two recent surgeries, as of January 30, 2023, Student had only attended City School for a total of 10 days. Testimony of Father.

12. Beginning in October 2021, DCPS sent inquiries or referral packets to all of the nonpublic special education day schools on OSSE's approved list which served students of Student's age, with Student's disabilities. Testimony of Nonpublic Monitor, Exhibits R-27, R-20. It took a couple of months for DCPS to exhaust the OSSE-approved schools list. After only denials were received from the schools on this list,



DCPS requested OSSE to make inquiries to nonpublic schools not on the OSSE-approved list. DCPS also sent out referrals again to schools that had not responded before or which had a waiting list. DCPS has not received an acceptance for Student from any nonpublic school. Testimony of Nonpublic Monitor.

13. On January 22, 2022, DCPS made a referral to OSSE for a more restrictive educational environment for Student. Exhibit R-99. On February 9, 2022, OSSE convened a change-in-placement meeting with DCPS and the parents. The team at the meeting confirmed that Student required a residential placement. OSSE sent inquiries or admissions packets to some 50 nonpublic schools, all residential. Some of these schools held OSSE Certificates of Approval and some did not. None of the schools contacted by OSSE offered a place to Student. At the time of the due process hearing date, OSSE was continuing to research programs which might be possible referrals for Student. Change in Placement Coordinator opined that the difficulty in securing an admission for Student was due to Student's high level of sensory need due to ASD, combined with the Visual/Hearing disability component. In addition, OSSE was seeing a back-up in admissions to specialized residential schools subsequent to the COVID pandemic. Testimony of Change in Placement Coordinator.

14. From March 31, 2022 until December 18, 2022, other than two days of at-home ABA services, Student did not receive education services, for special education or otherwise, from DCPS. Testimony of Father.

### **CONCLUSIONS OF LAW**

Based upon the above findings of fact and argument of counsel, as well as this hearing officer's own legal research, my conclusions of law are as follows:

#### **Burden of Proof**

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Parents in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the parent shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. For the issues in this case, Petitioner holds the burden of persuasion. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

#### **Analysis**

- a) Has DCPS denied Student a FAPE by failing to fully implement Student's IEP after the Student was discharged from Nonpublic School 1 on March 30, 2022?
- b) Has DCPS denied Student a FAPE by failing to provide a timely and appropriate location of service in an alternate residential program and/or appropriate interim services and/or placement where the student's IEP could be implemented upon his/her discharge from Nonpublic School 1 on or about March 30, 2022?

This case concerns the District's failure to provide an ongoing nonpublic school educational placement for Student after he/she was discharged from Nonpublic School 1 on March 31, 2022. Student is a youth with very significant disabilities, including diagnoses of Autism Spectrum Disorder (ASD), blindness, intellectual disability (ID) and impaired hearing. In September 2020, DCPS had placed Student in the day program at Nonpublic School 1, a school for the visually impaired. However, by fall 2021 Nonpublic School 1 was reporting concerns about Student's disability-related extreme behaviors and DCPS started searching for alternative nonpublic day placement locations. In early March 2022, Nonpublic School 1 notified DCPS that it was not equipped to provide for Student's education and to keep him/her and other students safe. Nonpublic School 1 gave notice that it was unilaterally terminating Student's enrollment effective March 30, 2022. Student's last day at Nonpublic School 1 was March 31, 2022.

DCPS' January 18, 2022 IEP provided that Student required placement in a full-time special education program, outside of the general education setting, with a dedicated aide as well as an array of related services, consultation services and other classroom aids and services. The DCPS IEP team met again on or about January 26, 2022 and decided Student needed a residential program.

Under District of Columbia special education regulations, once a child's IEP team determines that the child requires a residential placement, it becomes OSSE's responsibility to select a residential facility to implement the IEP. *See* 5A DCMR §

3025.6. After Student's IEP team decided in January 2022 that Student needed a residential placement, OSSE took on the search for an appropriate school, reaching out to well over 50 residential facilities, including one school recommended by Educational Consultant. To date, neither DCPS nor OSSE has been able to secure Student's admission to a suitable nonpublic school.

In his due process complaint, Father contends that DCPS' failure to provide an ongoing educational placement for Student, following Nonpublic School 1's termination of his/her enrollment in March 2022, was a denial of FAPE. Father also contends that DCPS denied Student a FAPE by not providing an appropriate interim placement until it agreed to place Student at City School in November 2022. DCPS denies that it has denied Student a FAPE and asserts that under OSSE's policies and procedures, it fell to OSSE to make a location assignment for Student.

The IDEA requires that special education and related services must be made available "[a]s soon as possible following development of the IEP." 34 C.F.R. § 300.323(c)(2). *See, e.g., Holman v. Dist. of Columbia*, 153 F. Supp. 3d 386, 389 (D.D.C. 2016) (IDEA requires that as soon as possible following development of the IEP, special education and related services are made available in accordance with the IEP.) As the Second Circuit Court of Appeals explained in *D.D. ex rel. V.D. v. New York City Bd. of Educ.*, 465 F.3d 503 (2d Cir. 2006), *opinion amended on denial of reh'g*, 480 F.3d 138 (2d Cir. 2007), "as soon as possible" is not a rigid concept:

"As soon as possible" is, by design, a flexible requirement. It permits some

delay between when the IEP is developed and when the IEP is implemented. It does not impose a rigid, outside time frame for implementation. Moreover, the requirement necessitates a specific inquiry into the causes of the delay. Factors to be considered include, but are not limited to: (1) the length of the delay, (2) the reasons for the delay, including the availability of the mandated educational services, and (3) the steps taken to overcome whatever obstacles have delayed prompt implementation of the IEP.

*D.D., supra*, 465 F.3d at 513-14.

In this circuit, U.S. Magistrate Judge G. Michael Harvey, interpreting the IDEA's "as soon as possible" implementation mandate, recently explained that where the IEP placement is not available due to circumstances "entirely" outside of the LEA's control, the IDEA does not require the District to create a facility "out of whole cloth." *See Gross-Lee on behalf of D.A.-G. v. District of Columbia*, No. 22-CV-1695 (CRC/GMH), 2022 WL 3572457, at \*12 (D.D.C. July 20, 2022), citing *Davis v. District of Columbia*, No. 21-cv-2884 (D.D.C. November 19, 2021). I find that in the present case, the delay in getting Student into a residential program has been due to circumstances outside of DCPS' control. That is because OSSE – not DCPS – is responsible for selecting an appropriate residential facility to implement Student's IEP. Moreover, OSSE's inability to place Student in a residential facility is due to the dearth of available openings, not to lack of diligence on the part of OSSE or DCPS.

However, even when the educational placement decided by the IEP team is not immediately available, an LEA may not stop providing IEP services. In *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1134 (9th Cir. 2003), the Ninth Circuit Court of Appeals considered an analogous situation involving a student who transferred

between school districts within the same state. The IDEA required for this intra-state transfer that the new district provide FAPE to the child, including services comparable to those in the child's IEP from the previous LEA. *See* 34 C.F.R. § 300.323(e).

However, the new district had no program with the same structure as the child's prior school. The Ninth Circuit held that if it were not possible for the new district to implement in full the child's last IEP, the new district must adopt a plan that approximated the child's old IEP as closely as possible. *Id.* at 1134. *Cf., also, Knight by Knight v. D.C.*, 877 F.2d 1025, 1028 (D.C. Cir. 1989) (If a student's "then current educational placement" becomes unavailable, under IDEA's stay-put provision, DCPS must provide him with a "similar" placement pending administrative and judicial approval of its eventual plans.) I conclude that when OSSE was unable to immediately identify a residential placement for Student, DCPS was likewise required continue to provide services to Student that approximated his/her existing IEP. Following these principles in the present case, where a residential placement for Student was unavailable when Student left Nonpublic School 1, the IDEA required DCPS (1) to continue its efforts, through OSSE, to find an appropriate residential placement for Student "as soon as possible" *and* (2) in the interim, to provide Student a program calculated to approximate Student's January 2022 IEP as closely as possible.

I find that DCPS met the first obligation. The evidence establishes that when Student's IEP team decided in January 2022 that Student required a more restrictive placement in residential setting, DCPS made a timely referral for Student to OSSE. For

its part, beginning in February 2022, OSSE appears to have conducted a thorough, albeit to-date unsuccessful, search for a residential facility that would admit Student. OSSE has reached out to over 50 residential programs, including programs outside of OSSE's list of approved schools. That search is ongoing.

However, DCPS did not initially meet its obligation to provide Student an interim program calculated to approximate Student's IEP as closely as possible. After Nonpublic School 1 stopped serving Student, DCPS did provide funding authorization for the parents to obtain independent at-home services for Student until a permanent placement could be identified. But independent services did not meet Student's needs because, due both to the severity of Student's disability and other family health issues, Student could not be educated at home, even on an interim basis. *See Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1002 (2017) (Instruction offered must be "specially designed" to meet a child's "unique needs.") Father repeatedly informed DCPS of this fact.

At least by the start of the 2022-2023 school year, when OSSE was unable to provide a residential placement for Student, DCPS should have made an interim placement available. *Cf. Leggett v. Dist. of Columbia*, 793 F.3d 59, 72 (D.C. Cir. 2015) (Duty to offer IEP and identify placement by the start of the school year.) There was at least one school operated by DCPS, namely City School, which apparently could serve Student on an interim basis and approximate the January 18, 2022 IEP. At Father's request, DCPS agreed to place Student at City School following the November 18, 2022

Resolution Session meeting for this case. Nonpublic Monitor testified that DCPS had not proposed City School sooner because Student had attended City School in the 2019-2020 school year, and the parents had not been satisfied with the placement. I find this reasoning unpersuasive. Because it was not possible for DCPS to implement in-full the January 2022 IEP, DCPS should have offered to place Student, in the interim, at City School, the only available program capable of approximating Student's existing IEP as closely as possible. I find that by not offering Student a place at City School by the start of the 2022-2023 school year, DCPS denied Student a FAPE.

#### Remedy

For relief in this case, Petitioner requested in his complaint that the hearing officer order a one-year extension of Student's eligibility for special education services<sup>2</sup>; order DCPS to immediately place and fund Student in a residential placement; order DCPS to send placement packets to programs outside of the OSSE-approved list of residential programs and/or place and fund the student in a program not on the OSSE-approved list on an interim basis; order DCPS to immediately provide interim services to Student including but not limited to a 1-1 home dedicated aide, specialized instruction, and appropriate related services such as Applied Behavioral Analysis (ABA) Therapy, Occupational Therapy, Speech and Language Therapy, and Counseling

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<sup>2</sup> In the District of Columbia, eligibility for special education for students who have not graduated from high school generally continues through the school year in which the student turns 22 years old. *See* 5A DCMR § 3001.4. Compensatory education may include extending a student's eligibility period. *See, e.g., Harris v. District of Columbia*, No. CIV. A. 91-1660(RCL), 1992 WL 205103, at \*5 (D.D.C. Aug. 6, 1992).



Services. The parent also seek compensatory education services for the denials of FAPE alleged in the complaint.

I do not order DCPS to pursue a residential placement for Student because, under District of Columbia special education regulations, OSSE has sole responsibility for identifying a residential facility for Student. OSSE was not named as a respondent in this proceeding, but in January 2023, DCPS made a change of placement referral for Student to OSSE and it appears that OSSE continues to be diligently working to identify a residential placement location for Student.

Nor is it necessary to order DCPS to immediately provide interim services to Student. In December 2022 DCPS made an interim placement at City School available for Student and the District is providing two dedicated aides to support Student there. The parent has accepted City School as an interim placement until there is an opening for Student in an appropriate residential center.

With regard to compensatory education, when a hearing officer finds a denial of FAPE he has “broad discretion to fashion an appropriate remedy, which can go beyond prospectively providing a FAPE, and can include compensatory education. . . . [A]n award of compensatory education 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.” *B.D. v. District of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016) (internal quotations and citations omitted.) In setting the award, equity may sometimes require consideration of the parties’ conduct, such as

when the school system reasonably requires some time to respond to a complex problem. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005)

In this case, Nonpublic School 1's unilateral decision to terminate Student's enrollment certainly made for a "complex problem" for DCPS due to the unavailability of other appropriate nonpublic schools for Student and the impracticability of providing independent home-based services. However, allowing for a reasonable time to respond to this problem, DCPS should have offered Student an interim placement at City School by the start of the 2022-2023 school year. The District's failure to do so denied Student a FAPE for which Student is entitled to compensatory education.

DCPS placed Student, on an interim basis, at City School in late November 2022. By the end of January 2023, due largely to Student's health issues, he/she had only been able to spend some 10 school days at City School. On this record, the hearing officer has no fact-specific basis for "an informed and reasonable exercise of discretion regarding what services [Student] needs to elevate [him/her] to the position [he/she] would have occupied" had DCPS offered a placement at City School at the start of the 2022-2023 school year. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 527 (D.C. Cir. 2005).<sup>3</sup> I conclude that an award of compensatory education should be deferred at least

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<sup>3</sup> Petitioner's expert, Educational Consultant, proposed a compensatory education plan for Student. She testified that she had never met Student, evaluated him/her or spoken to Student's parents. Nor did she know whether Student could have made progress with a timely placement. She was also unaware of DCPS' efforts to find an ongoing placement for Student. I found that this witness' compensatory education recommendation is not entitled to weight.

until Student attends City School for a long enough period to assess the benefit from that program and determine the educational harm, if any, resulting from DCPS' not timely offering the interim placement.

To be clear, I find that Student is entitled to compensatory education for DCPS' failure to offer him/her an interim placement at City School or elsewhere from the start of the 2022-2023 school year through late November 2022. Because at the present time, there is no fact-specific basis for calculating appropriate compensatory education, I will deny without prejudice Petitioner's request for a compensatory education award. In due course, after Student has attended City School long enough to assess the benefit, or has been admitted to a residential school, I strongly urge the parties to decide collaboratively what additional compensatory services Student needs to put him/her in the position Student would be now, had DCPS provided an interim placement for Student at City School at the start of the 2022-2023 school year. *See B.D. v. District of Columbia*, 817 F.3d 792, 798 (D.C. Cir. 2016) (Compensatory education aims to put a student in the position he/she would be in absent the FAPE denial.)

**ORDER**

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

1. Petitioner's request for a compensatory education award to compensate Student for the denial of FAPE found in this decision is denied without prejudice;
2. All other relief requested by the Petitioner herein is denied.

Date: February 12, 2023

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  
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