

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

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
January 31, 2014

STUDENT, ¹)	
through the Parent,)	
)	Date Issued: January 31, 2014
Petitioner,)	
)	Hearing Officer: Virginia Dietrich
v.)	
)	
District of Columbia Public Schools)	
)	
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of _____ male Student, filed a due process complaint notice on November 21, 2013, alleging that Student had been denied a free appropriate public education (“FAPE”) by the District of Columbia Public Schools (“DCPS”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioner alleged that the special education services in Student’s Individualized Education Programs (“IEP”) were insufficient to confer educational benefit during the 2012/13 and 2013/14 school years (“SY”) as evidenced by Student’s poor academic performance and retention in the 8th grade. Petitioner also alleged that DCPS failed to implement Student’s IEP in its entirety during the 2013/14 SY; specifically, that Student was denied reenrollment at his public charter school after failing the 8th grade and thereafter denied enrollment in the 8th grade at his neighborhood public school because he was over age for the grade. As a result, Student received no special education services because DCPS failed to provide a school for Student to attend.

DCPS took the position that Student’s IEPs were appropriate, developed timely and with parental participation, and reasonably calculated to confer educational benefit. DCPS argued that Student’s absences and failure to complete class work contributed to his failing grades. DCPS further argued that there was no basis to remove Student entirely from the general education setting. Finally, DCPS argued that ongoing court proceedings might make Student

¹ Personal identification information is provided in Appendix A.

unavailable to DCPS for placement if the Hearing Officer ordered DCPS to fund Student at the school requested by Petitioner.

Subject Matter Jurisdiction

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

Procedural History

The due process complaint was filed on 11/21/13. This Hearing Officer was assigned to the case on 11/22/13. DCPS filed a response to the complaint on 12/12/13 and made no challenges to jurisdiction.

Neither Petitioner nor DCPS waived the resolution meeting. The resolution meeting took place on 12/12/13, at which time parties agreed to let the 30-day resolution period expire prior to proceeding to a due process hearing. The 30-day resolution period ended on 12/21/13, the 45-day timeline to issue a final decision began on 12/22/13 and the final decision was due by 02/04/14.

A prehearing conference took place on 12/12/13. A Prehearing Order was issued on the same day.

On 12/20/13, DCPS filed a motion to implead School B as a necessary party to the litigation. Petitioner did not file a response to DCPS’ motion. On 12/23/13, School B filed a motion for an extension of time to file an opposition to DCPS’ motion to implead. School B filed an opposition to DCPS’ motion on 12/31/13, after having been granted an extension of time to respond. On 01/06/14, an Order on DCPS’ Motion to Implead School B was issued, denying DCPS’ motion. On 01/23/14, the day before the due process hearing, DCPS filed an amended response to the complaint, which simply identified where Student currently was attending school and what grade he had been placed in.

The due process hearing was a closed hearing that took place on 01/24/14. Petitioner was represented by Donovan Anderson, Esq. DCPS was represented by Tanya Chor, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner was permitted to participate in the hearing by telephone due to a fall that morning that incapacitated her.

Petitioner’s disclosure letter, dated 01/15/14, contained a list of five (5) witnesses and documents P-1 through P-13. Petitioner’s disclosures were admitted into evidence without objection.

DCPS’ Disclosure Statement, dated 01/16/14, contained a witness list of eight (8) witnesses and documents R-1 through R-17. The Disclosure Statement cover letter was amended

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at the due process hearing to add R-17. R-17 was included as a disclosure document, but inadvertently omitted from the index of documents.

As a preliminary matter at the due process hearing, DCPS orally challenged the Hearing Officer's jurisdiction to hear the case and order the relief requested. The initial basis of the challenge was that the Hearing Officer did not have jurisdiction because Student was a committed ward of a public agency. In support of its position, DCPS offered a court document that was admitted into the record as Impartial Hearing Officer Exhibit #1 ("IHO-1"). IHO-1 was not an order of commitment to a public agency; rather, it ordered Student to a shelter house pending further disposition by the court. The Hearing Officer identified IHO-1 to be a court order that temporarily placed Student in a shelter house/group home in the community from where he would attend a local school. DCPS' last minute argument of no jurisdiction to hear the case or order relief had no basis in fact. The Hearing Officer ruled that she had jurisdiction to hear the case and to order the relief requested.

Parties declined to engage in settlement discussions at the beginning of the due process hearing.

Petitioner presented the following three witnesses in her case in chief: Petitioner; an educational consultant who qualified as an expert in special education programming for children ("expert"); and the Program Director at School D, the prospective school placement that Petitioner sought.

DCPS elected not to present any witnesses.

The parties stipulated to the following facts:

- #1. Student attended School A for the 2011/12 school year. School A is a DCPS school.
- #2. DCPS was the local education agency ("LEA") for Student in 2011/12.

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

Issue #1 – Whether DCPS denied Student a FAPE by failing to provide Student with an appropriate Individualized Education Program ("IEP") for the 2012/2013 and 2013/2014 school years; specifically, Student's IEPs consisting of 9 hours/week of specialized instruction outside general education, 9 hours/week of specialized instruction inside general education and 30 minutes/week of behavioral support services were insufficient to confer educational benefit, as evidenced by (a) Student's poor academic performance during the 2012/13 school year, and (b) Student being retained in the 8th grade at the end of the 2012/13 school year.

Issue #2 – Whether DCPS denied Student a FAPE by failing to provide a location of services and failing to implement Student's IEP during the 2013/2014 school year; specifically, (a) Student was denied reenrollment at School B because he had failed the 8th grade, and (b) DCPS would not let Petitioner enroll Student at his public neighborhood school because he was too old to be enrolled in middle school although he was still in the 8th grade.

Petitioner sought the following relief: a finding that DCPS had denied Student a FAPE on the issues presented; DCPS to amend Student's IEP to include 100% specialized instruction outside of general education; DCPS to provide a location of services that can implement the amended IEP; and compensatory education for DCPS' failure to provide Student with appropriate specialized instruction during the 2012/2013 SY and for DCPS' failure to provide Student with any special education services from the beginning of the 2013/14 school year through December 13, 2013. As compensatory education, Petitioner sought funding at School D as well as 4 hours/week of special education tutorial services until the end of the 2013/14 SY.

Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

Findings of Fact

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

#1. Student is a resident of the District of Columbia. Petitioner is Student's mother.²

#2. During the 2010/11 school year, Student resided in State A with a caretaker and attended a public school there.³ At that time, Student's cognitive ability was in the Low Average to Average range. Per formal testing, Student's behavior was in the clinically significant range for attention and hyperactivity.⁴ Student had an IEP in State A that classified him with an Emotional/Behavioral Disorder and prescribed daily special education services in the general education curriculum in language arts/reading/writing, mathematics, and behavioral intervention.⁵ Student also had a formal behavioral intervention plan as part of his IEP that addressed self-control, stress management, organization and social skills and provided for, among other things, break time, parent contact and verbal reminders.⁶ IEP accommodations included preferential seating, adult proximity, reinforcement, peer tutor, immediate feedback, shorter assignments, extra time to respond, repetition of directions, small groups and extended time on tests.⁷ The IEP Team in State A specifically rejected any services outside of the general education setting as the least restrictive environment for Student.⁸ At the end of year in State A, Student received all passing grades, with grades of Bs and Cs in academic subjects.⁹ Student was successful academically with the IEP provided by State A.

#3. In the Fall of 2011, Student relocated to the District of Columbia and began living with Petitioner.¹⁰ Petitioner enrolled Student at School A, which was a DCPS school ("DCPS

² Petitioner, P-3.

³ Petitioner, R-1-5.

⁴ P-1-5.

⁵ R-1-8.

⁶ R-1-36.

⁷ R-1-20.

⁸ R-1-8.

⁹ R-1-1.

¹⁰ Petitioner.

School A”). DCPS was the local education agency (“LEA”) for Student during the 2011/12 SY.¹¹

#4. Within the first two months of Student’s enrollment, Petitioner provided DCPS School A with a copy of Student’s educational records from State A. Student’s records from State A included an IEP. During the 2011/12 SY, DCPS did not provide Student with any special education services. Student failed all of his classes that year.¹²

#5. Dissatisfied with DCPS School A’s handling of her child’s educational needs, Petitioner withdrew Student from DCPS School A and enrolled him at School B for the 2012/13 SY.¹³ School B was a public charter school that used the DCPS Office of Special Education to complete Student’s special education psychological re-evaluation in November 2012; therefore, DCPS was the LEA for School B for special education matters during the 2012/13 SY.¹⁴

#6. Upon enrollment of Student at School B, Petitioner advised School B that Student required IEP services; that Student had had an IEP in State A; and that she had provided a copy of the IEP to DCPS School A. School B informed Petitioner that DCPS School A did not transfer any records that indicated that Student had an IEP or should have an IEP. Within two months of enrolling Student at School B, Petitioner provided School B with Student’s educational records that she had once again retrieved from State A, which included an IEP.¹⁵

#7. School B responded to Petitioner’s request for IEP services for her child. On 10/02/12, School B developed an IEP that classified Student with an Emotional Disturbance and provided for 9 hours/week of specialized instruction outside of general education, 9 hours/week of specialized instruction inside of general education, and 30 minutes/week of behavioral support services outside of general education. Student’s specialized instruction was to be provided in the areas of reading, writing and math.¹⁶ Student’s 10/02/12 IEP specified that Student required a small structured environment in reading, writing and math in order to be academically successful.¹⁷ Accommodations consisted of interpretation and/or repetition of oral directions, calculators, location with minimal distractions, and extended time and breaks during testing.¹⁸ The 10/02/12 IEP did not contain a Behavioral Intervention Plan.¹⁹

#8. Petitioner fully participated in the evaluation process. On 10/02/12, Petitioner gave written consent for School B to evaluate Student to determine his eligibility for special education and to determine his special education needs.²⁰ School B conducted a Functional Behavioral Assessment (“FBA”) of Student’s behaviors in the classroom, based on classroom observations

¹¹ Stipulated facts.

¹² Petitioner.

¹³ Petitioner.

¹⁴ R-5

¹⁵ Petitioner.

¹⁶ P-1, P-6.

¹⁷ P-1-7.

¹⁸ P-1-8.

¹⁹ P-1.

²⁰ R-2.

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of Student on 10/02/12 and 10/16/12.²¹ The reason for the FBA was that Student was exhibiting low motivation, had difficulties with work assignments and was failing multiple classes. Student was observed to have low motivation and lack of focus, which prevented him from completing assignments. Student's intermittent lack of focus negatively impacted his ability to complete assignments, but he worked better with 1:1 assistance and encouragement.²²

#9. DCPS conducted a psychological re-evaluation of Student on 11/14/12. Student had Average cognitive functioning which suggested the ability to keep up with his peers in various thinking and reasoning tasks. Formal achievement testing revealed that Student performed in the Low Average to Very Low range of academic functioning, with academic deficits in written language and math.²³ Student was struggling academically, and experiencing difficulty with retaining information, working independently and completing all of his assignments. He was performing below grade level in reading, math and written language. Student did not present with any disruptive behaviors, but he often appeared to be disconnected from his surroundings and he required prompting and motivation to remain on task or to begin an assignment.²⁴ He worked well and on task during one-on-one instruction and during group work with his peers. Student was inattentive and displayed hyperactive behaviors such as restlessness and impulsivity. When reminded of off-task behaviors, Student immediately responded positively. Despite receiving various accommodations that consisted of use of a calculator, extended time to take tests, breaks between subtests, a location with minimal distractions, interpretation of oral directions, repetition of directions, and simplification of oral directions, Student struggled academically which affected his ability to perform on grade level.²⁵ Many accommodations were recommended to facilitate Student's learning, including non-verbal cues to address off-task behaviors.²⁶ Student's inattentiveness, learning problems, and potentially his inability to adapt easily, impacted his overall academic performance.²⁷

#10. On 01/31/13, School B convened an IEP Team meeting and developed an IEP.²⁸ Student was found eligible for special education services under the disability classification of Other Health Impairment. The 10/02/12 IEP services were duplicated in the IEP developed by School B on 01/31/13; i.e., 9 hours/week of specialized instruction outside of general education, 9 hours/week of specialized instruction inside of general education, and 30 minutes/week of behavioral support services outside of general education. Student's IEP required a small structured environment in reading, writing and math in order for him to be academically successful. The 01/31/13 IEP did not contain a Behavioral Intervention Plan.²⁹

²¹ R-6-1.

²² R-6-3.

²³ P-4-12.

²⁴ P-4.

²⁵ P-4.

²⁶ R-5-15.

²⁷ P-4-13.

²⁸ P-2, R-13.

²⁹ P-3.

#11. At the end of the 2012/13 SY, Student received all failing at grades at School B and was retained in the 8th grade.³⁰ Due to Student's failure to complete summer school, Student was denied reenrollment at School B for the 2013/14 SY.³¹

#12. At the beginning of the 2013/14 SY, Petitioner took Student to his local neighborhood school, DCPS School C, to enroll him there. Student was denied enrollment on the basis of being overage to participate in the 8th grade. Petitioner concluded that she could not enroll Student in any other DCPS middle school due to his age.³² As a result, Student did not attend school from the beginning of the 2013/14 SY through December 13, 2013.³³

#13. School D provides services to children with IEPs. School D services children living in the community, including students who residing in group homes. School D can provide Student with a small classroom setting with a 4:1 student to teacher ratio, a licensed social worker on staff to assist with behavioral problems throughout the day, a reading program with small group or 1:1 instruction, and an overall educational program individually tailored for Student's unique abilities and needs. The school employs a reading and math program that will assess Student's progress every two weeks and continually redesign Student's program to meet his identified weaknesses. The classroom setting at School D is appropriate to provide Student with the constant prompts and cues he needs to stay on task. The classroom setting is also the type of small, structured environment required by Student's IEP that will enable Student to be successful in reading, writing and math. Transportation to the school is provided. Student is an appropriate candidate for School D.³⁴

#14. On January 22, 2014, Student was court ordered to a shelter house pending further action of the court on March 6, 2014; he was not committed to a public agency as a ward.³⁵

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative

³⁰ P-5.

³¹ P-6.

³² Petitioner.

³³ Petitioner.

³⁴ Program Director at School D.

³⁵ IHO-1.

hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

DCPS was the LEA for Student while Student attended School B during the 2012/13 school year, as evidenced by DCPS completing Student's psychological re-evaluation in November 2012. See 5 D.C.M.R. E-3019.2. DCPS remained as Student's LEA during the relevant part of the 2013/14 SY. Student never transferred to another LEA. Petitioner tried to enroll Student in a neighborhood public school in the Fall of 2013, but Student was denied enrollment. Student didn't attend school after that until December 13, 2013.

The first issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an appropriate Individualized Education Programs ("IEP") for the 2012/2013 and 2013/2014 school years; specifically, Student's IEPs consisting of 9 hours/week of specialized instruction outside general education, 9 hours/week of specialized instruction inside general education and 30 minutes/week of behavioral support services were insufficient to confer educational benefit, as evidenced by (a) Student's poor academic performance during the 2012/13 school year, and (b) Student being retained in the 8th grade at the end of the 2012/13 school year.

The IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, and a statement of the program modifications or supports that will be provided to enable the child to advance appropriately toward attaining the annual goals, and to be involved in and make progress in the general education curriculum. 34 C.F.R. 300.320(a)(4).

For an IEP to be appropriate, it must be "reasonably calculated to enable the child to receive educational benefits." *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176, 206-207 (1982).

Student was a child with a disability classification of Other Health Impairment since January 2013. Other Health Impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that (1) is due to chronic or acute health problems such as...attention deficit disorder or attention deficit hyperactivity disorder...; and (2) adversely affects a child's educational performance. 34 C.F.R. 300.308(c)(9), 5 D.C.M.R. E-3001.1. Student suffered from inattentiveness and an inability to focus in the classroom throughout the 2012/13 SY, which negatively affected his academic performance.

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The 10/02/12 IEP and the 01/31/13 IEP, both in effect during the 2012/13 SY, provided for 9 hours/week of instruction outside of general education and 9 hours/week inside general education, as well as behavioral support services of 30/minutes/week outside of general education, whereas the IEP in State A provided for special education services within the general education setting in all academic areas and behavioral intervention, daily and throughout the day. Student was successful academically with the IEP from State A. Student was not successful academically with the IEPs developed by School B during the 2012/13 SY; he failed all of his classes and was retained in the 8th grade. The Hearing Officer determines that Petitioner met her burden of proof that the combination of specialized instruction formulated by School B; i.e., 9 hours/week outside of general education and 9 hours/week inside of general education, and 30 minutes/week of behavioral support services outside of general education, was insufficient to confer educational benefit. The 10/02/12 IEP and the 01/31/13 IEP did not enable Student to access the general education curriculum. Student was deprived of an educational benefit. Student was denied a FAPE.

The Hearing Officer also determines that Student's IEPs were not reasonably calculated to confer educational benefit because they failed to include a Behavioral Intervention Plan. Student's right to a FAPE was impeded. Student was denied a FAPE. Even though School B had access to Student's IEP from State A which had a Behavioral Intervention Plan incorporated into the IEP, and despite School B conducting a Functional Behavioral Assessment in October 2012 that revealed that Student's lack of focus negatively affected his ability to stay on task and complete the assignments, School B neglected to provide Student with a Behavioral Intervention Plan in either IEP it developed. Daily behavioral intervention to keep Student on task and re-directed was an integral part of Student's IEP from State A, and it worked.

Petitioner also met her burden of proof that the 01/31/13 IEP, which was in effect during the 2013/14 SY, was insufficient to confer educational benefit. As the 01/31/13 IEP was insufficient to confer educational benefit during the 2012/13 SY, the Hearing Officer determines that it was insufficient to confer educational benefit during the 2013/14 SY. Nothing had changed.

The second issue to be determined is whether DCPS denied Student a FAPE by failing to provide a location of services and failing to implement Student's IEP during the 2013/2014 SY; specifically, (a) Student was denied reenrollment at School B because he had failed the 8th grade, and (b) DCPS would not let Petitioner enroll Student at Student's public neighborhood school because he was too old to be enrolled in middle school although he was still in the 8th grade.

A child with a disability means a child who has been evaluated in accordance with the requirements of the IDEA as having a ...serious emotional disturbance...an other health impairment, a specific learning disability..., and who, by reason thereof, needs special education and related services. 34 C.F.R. 300.8(a)(1), 5 D.C.M.R. E-3001.1.

Free appropriate public education or FAPE means special education and related services that are provided at public expense, meet the standards of the State Education Agency, include an appropriate school and are provided in conformity with the IEP. 34 C.F.R. 300.17.

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, and each public agency must ensure that as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. 34 C.F.R. 300.323(c)(2), 5 D.C.M.R. E-3002.3(d).

Student was child with a disability who required special education services. DCPS was Student's LEA during the 2013/14 SY. DCPS was the public agency responsible for providing Student with the services in his IEP and the public agency responsible for providing Student with a school where his IEP could be implemented.

Petitioner's testimony was lucid, credible and uncontroverted that School B, a school for which DCPS was the LEA for special education matters, and DCPS School C, both refused enrollment to Student at the beginning of the 2013/14 SY. As a result, Student had no school to attend.

Petitioner met her burden of proof that DCPS failed to provide Student with a location of services that could implement Student's IEP from the beginning of the 2013/14 SY until December 13, 2013. Petitioner also met her burden of proof that DCPS failed to provide Student with any special education services from the beginning of the 2013/14 SY through December 13, 2013.

Relief Requested

“When a school district deprives a disabled child of a free appropriate public education in violation of the Individuals with Disabilities Education Act, a court fashioning “appropriate” relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place.” *Reid v. District of Columbia*, 43 IDELR 32 (2005).

The qualitative standard for determining compensatory education is that “compensatory awards should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.” *Id.*

Compensatory education can be awarded on this record. Student had IEPs during the 2012/13 SY and 2013/14 SY that were not reasonably calculated to confer educational benefit. Student failed all of his classes and was retained in the 8th grade. His inattentiveness in school and inability to focus impeded his ability to access the general education curriculum despite his Average cognitive ability. Appropriate behavioral interventions were not in place. Student received insufficient support in the general education setting, a setting in which he was fully capable of thriving as evidenced by his performance in the general education setting during the 2010/11 school year while living in State A. DCPS also failed to provide Student with a school to attend from the beginning of the 2013/14 SY through December 13, 2013. During that time, Student received no academic services.

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Each public agency must ensure that (1) to the maximum extent appropriate, children with disabilities are to be educated with children who are nondisabled, and (2) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300.114. In determining the educational placement of a child, the public agency must ensure that the child's placement is based on the child's IEP and is as close as possible to the child's home. 34 C.F.R. 300.116(b).

In the District of Columbia, special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) private or residential District of Columbia facilities; and (3) facilities outside of the District of Columbia. 38 D.C. Code 2561.02.

Student currently is in need of a location of services to attend school. DCPS offered no evidence in this record that a public school is available to meet Student's academic needs. Petitioner offered School D as a location of services that could meet Student's unique educational needs. The record reflects that School D can offer an appropriate school program for Student. The Hearing Officer determines that Petitioner's request for prospective placement at School D as compensatory education is appropriate based on the record in this case; i.e., the combination of an inappropriate IEP for an entire school year plus no services provided for the following one-half year means that Student essentially missed 1.5 years of schooling. The individualized programming that School D can provide for Student will help him recoup his academic losses.

Petitioner also requested tutorial services of 4 hours/week until the end of this school year to compensate Student for all missed services this 2013/14 school year resulting from DCPS' failure to provide Student with a school to attend. Petitioner's expert in special education programming for children with disabilities credibly testified that this amount of tutoring was reasonable based on Student's abilities, academic achievement levels and amount of missed services. Petitioner's request for tutorial services appears to be entirely reasonable, based on this record. Student was out of school for almost an entire semester due to DCPS' failure to provide Student with a location of services to attend school.

The evidence in the record did not indicate whether or not School D services only special education students with an IEP that prescribes 100% specialized instruction outside of general education. The evidence presented was simply that School D could provide Student with an educational program that could meet his unique needs. Since DCPS failed to provide Student with a school to attend from the beginning of the 2013/14 school year through December 13, 2013 and since DCPS offered no evidence that a public school placement currently was available to meet Student's educational needs, the Hearing Officer was left with only one option to resolve Student's lack of location of services, i.e., funding of Student at School D by DCPS.

ORDER

(1) DCPS shall fund Student at School D and provide transportation as necessary at least until the end of the 2013/14 school year,³⁶ with funding and transportation in place no later than 30 calendar days from the date of this Order; and

(2) Within 30 calendar days of Student's enrollment at School D, DCPS shall convene an IEP Team to review and revise Student's IEP as appropriate; and

(3) Within 15 business days of the date of this Order, DCPS shall provide funding for Student to receive 4 hours/week of individual tutoring for specialized instruction in all academic areas, until the end of the 2013/14 school year; and

(4) Any delay caused by Petitioner or Petitioner's representatives shall extend the deadline for DCPS' performance herein, day for day; and

(5) All other requested relief is denied.

IT IS SO ORDERED.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: January 31, 2014

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:
Petitioner: (U.S. mail)
Petitioner's Attorney: Donovan Anderson, Esq. (electronically)
DCPS' Attorney: Tanya Chor, Esq. (electronically)
DCPS (electronically)
SHO (electronically)

³⁶ The IEP Team may revisit Student's need for services at School D at any time, but cannot make a decision, if appropriate, to move Student from School D, until after the 2013/14 school year has ended.