



### **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 (“D.C.M.R.”), and 38 D.C. Code Section 2561.02(b), 2561.02(c).

### **Procedural History**

The due process complaint was filed on 11/07/13. This Hearing Officer was assigned to the case on 12/20/13, replacing the initial hearing officer who had been assigned to the case on 11/12/13. DCPS filed a response to the complaint on 11/18/13 and made no challenges to jurisdiction.

Petitioner waived the resolution meeting, but DCPS did not. The resolution meeting took place on 11/21/13, 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 12/07/13, the 45-day timeline to issue a final decision began on 12/08/13 and the final decision was due by 01/21/14. A prehearing conference took place on 11/22/13. A Prehearing Order was issued on 11/25/13 by the initial Hearing Officer. A Second Prehearing Order was issued on 12/20/13 by the undersigned Hearing Officer.

The due process hearing was a closed hearing that took place on 01/06/14 and 01/08/14. Petitioner was represented by Alana Hecht, Esq. DCPS was represented by Lynette Collins, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person.

Petitioner’s Five-Day Disclosures, dated 12/30/13, contained a list of seven witnesses and documents P-1 through P-23. P-1 through P-22 were admitted into evidence without objection. P-23 was admitted into evidence over objection.

DCPS’ Disclosure Statement, dated 12/30/13, contained a witness list of six witnesses and no documents as exhibits. DCPS’ disclosures were admitted into evidence without objection.

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

Petitioner presented seven witnesses in her case in chief: Petitioner; Student; Assistant Principal at School B (“assistant principal”); special education teacher at School B (“special education teacher”); Director of Academics at School C; paralegal; and an educational advocate who qualified as an expert in IEP development for students with special education needs (“expert in IEP development”). Petitioner offered no rebuttal evidence.

DCPS presented one witness: Dean of Students at School A (“Dean at School A”).

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

Issue #1 - Whether the Respondent denied the Student a FAPE because it failed to provide the Student with an IEP reasonably calculated to enable the Student to be involved in and make progress in the general education curriculum, and meet each of his other educational needs resulting from his disability, when:

(A) The IEP revised in January 2012 lacked: a statement of the Student's present levels of academic achievement and functional performance; measurable academic goals; a goal addressing attendance; and sufficient behavioral support services or a Behavioral Intervention Plan ("BIP");

(B) The IEP revised in January 2013 lacked: a statement of the Student's present levels of academic achievement and functional performance; measurable academic goals; a goal addressing attendance; sufficient behavioral support services or a BIP; and sufficient specialized instruction outside of the general education setting in a therapeutic environment; and

(C) The IEP revised in June 2013 lacked: a statement of the Student's present levels of academic achievement and functional performance; measurable academic goals; sufficient behavioral support services or a BIP; and sufficient specialized instruction outside of the general education setting in a therapeutic environment?

Issue #2 - Whether the Respondent denied the Student a FAPE when it failed to provide the Student with special education and related services in conformity with his IEP since the start of the 2013/14 school year because no specialized instruction outside of the general education setting has been provided?

Issue #3 - Whether the Respondent failed to ensure the Student's placement for the 2013/14 school year was based on the Student's IEP when he was placed at a school program that could not implement his IEP?

For relief, Petitioner sought: an independent educational evaluation ("IEE") consisting of a Functional Behavioral Assessment ("FBA") and a subsequent meeting to review and revise the IEP and the February 2011 BIP; prospective placement at School C; and compensatory education consisting of credit recovery, tutoring, and mentoring to address Student's lack of credits toward graduation and regression in functional performance in order to compensate Student for DCPS' failure to provide appropriate IEPs and school placement since January 2012 and DCPS' failure to implement the IEP during the 2013/14 school year.

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:

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#1. Student is a resident of the District of Columbia who has attended a DCPS school since 2009. Student is a child with a Specific Learning Disability who has received special education services his entire educational career.<sup>2</sup>

#2. The purpose of a Functional Behavior Assessment (“FBA”) is to identify behaviors that interfere with learning. The purpose of a Behavior Intervention Plan (“BIP”) is to have a plan for addressing behaviors in a systematic manner. The FBA and BIP are site specific, i.e., they pertain specifically to a student’s current educational environment. The BIP should be reviewed every 60-90 days to see if the BIP is working or if the behavior has been corrected.<sup>3</sup>

#3. In December 2009, a FBA was conducted by DCPS and a BIP was developed. In February 2011, DCPS developed a BIP that was identical to the December 2009 BIP. Both BIPs addressed Student’s disruptiveness and off task behaviors that included non compliance, refusal to follow directions, disrespect of staff, being out of assigned location, skipping classes, lack of ability to focus and stay on task, negative peer interactions and refusal to complete assignments. These BIPs were attachments to the then existing IEPs. The BIPs provided for intervention strategies that included, but were not limited to an academic skills contract, data collection, assistance in the classroom with utilizing appropriate coping and conflict resolution skills, verbal redirection and rewards and incentives to encourage positive behavior. The special education teacher was responsible for monitoring the BIP.<sup>4</sup>

#4. Student attended School A during the 2011/12 SY and 2012/13 SY.<sup>5</sup> Student continued to exhibit the same types of behaviors during the 2011/12 SY and the 2012/13 SY that the December 2009 BIP and the February 2011 BIP were designed to address. While Student attended School A, Student’s behaviors were consistently noted to be disruptive to the extent of interfering with his learning and his ability to access the curriculum. The impact of Student’s negative behaviors was specifically noted in Student’s IEPs and IEP progress reports.<sup>6</sup>

#5. School A employed behavior interventions that consisted of conferences with Student, conferences with Petitioner via telephone, meeting with the school counselor, a home visit, a truancy referral to the court, meeting with the attendance counselor, the use of attendance contracts that had to be signed by each teacher, referral to a community collaborative that provided community and school based interventions for students with truancy problems, redirection if Student was out of location (which was quite frequently), and pulling Student aside and talking with him about the undesirable behaviors. Student was unsuccessful in responding to the interventions that School A provided.<sup>7</sup>

#6. While at School A, Student received all failing grades during the 2011/12 SY and all but two failing grades during the 2012/13 SY.<sup>8</sup> From April through June 2012, Student’s academic growth in reading, written language and mathematics could not be measured because

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<sup>2</sup> Petitioner, P-5, P-10, P-P-11, P-12, P-17.

<sup>3</sup> Expert in IEP development.

<sup>4</sup> P-5.

<sup>5</sup> Student, Petitioner, Dean at School A.

<sup>6</sup> P-5, P-9, P-10, P-11, P-12.

<sup>7</sup> Dean at School A.

<sup>8</sup> P-4-1.

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of Student's habitual absences from class.<sup>9</sup> Student's behavior of excessive absences from class and failure to complete assignments, contributed to Student's failing grades at School A.<sup>10</sup>

#7. Petitioner withdrew Student from School A because she was dissatisfied with the progress that Student was making at School A. DCPS advised Petitioner to enroll Student in School B after Petitioner withdrew Student from School A and was unable to enroll Student in the school of her choice because enrollment was full.<sup>11</sup>

#8. Student attended School B during the 2013/14 SY.<sup>12</sup> During the 2013/14 SY, Student demonstrated the same behaviors of excessive absences from class but not from school, refusing to participate in formal academic achievement assessments, and never completing class assignments or homework.<sup>13</sup> As a result, DCPS was unable to collect current educational performance data on Student until December 2013, when Student finally participated in formal academic achievement testing.<sup>14</sup> The IEP developed in December 2013 was based on current academic achievement and functional performance data.<sup>15</sup> The December 2013 IEP was developed with the participation of Petitioner.<sup>16</sup>

#9. Student's 01/13/12 IEP and 01/11/13 IEP both provided for 15 hours/week of specialized instruction and 120 minutes/month of behavioral support services, with all services to be provided outside of general education.<sup>17</sup> Student's 06/20/13 IEP provided for 9.5 hours/week of specialized instruction and 120 minutes/month of behavioral support services, with all services to be provided outside of general education.<sup>18</sup> The three IEPs had specific goals in the areas of reading, mathematics, written language and emotional/social/behavioral functioning.

#10. School B was capable of implementing Student's 06/20/13 IEP during the 2013/14 SY. Although School B, a non-traditional high school for mature adults, typically provided specialized instruction within the general education setting (inclusion model), School B could implement an IEP with up to 15 hours/week of specialized instruction.<sup>19</sup> School B made the necessary arrangements to implement Student's IEP by offering Student specialized instruction outside of general education.<sup>20</sup> Student was very embarrassed about receiving special education services.<sup>21</sup> Initially, Student did not want to work with the special education teacher at all. Student even went so far as to take forms home for Petitioner to sign in an effort to revoke special education services.<sup>22</sup> In an effort to provide specialized instruction to Student, School B offered Student the option of receiving his specialized instruction outside of the general

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<sup>9</sup> P-9.

<sup>10</sup> Dean at School A, P-10, P-11, P-12.

<sup>11</sup> Petitioner, advocate.

<sup>12</sup> Student, special education teacher.

<sup>13</sup> Special education teacher, assistant principal.

<sup>14</sup> P-17, Student.

<sup>15</sup> P-17.

<sup>16</sup> P-17, Petitioner.

<sup>17</sup> P-10-7, P-11-13.

<sup>18</sup> P-12-7.

<sup>19</sup> Assistant principal.

<sup>20</sup> Assistant principal.

<sup>21</sup> Special education teacher, Petitioner.

<sup>22</sup> Special education teacher.

education setting, within the general education setting with the special education teacher by his side, or within the general education setting with the special education in the room but not primarily focused on Student. Student declined all three options.<sup>23</sup>

#11. The IEPs developed in January 2012, January 2013, and June 2013, while Student attended School A, all contained present levels of academic achievement and functional performance levels based on 2011 data. The 2011 data was the most current data that DCPS had available to it. Due to Student's excessive absences, more current data could not be obtained.<sup>24</sup> Notably, both Petitioner and Student were absent from the IEP development meetings in January 2012 and January 2013,<sup>25</sup> which meant that DCPS couldn't consider or include their input in the development of the IEPs. The June 2013 IEP was administratively amended by DCPS solely at Petitioner's request to reduce the hours of specialized instruction so that Petitioner could enroll Student in the school of her choice.<sup>26</sup>

#12. The baseline information in the goals section of the IEP provides information on where a student is functioning at the time the IEP is developed. The baselines are necessary to measure progress towards meeting IEP goals over the year. Student's January 2012 IEP, January 2013 IEP and June 2013 IEP did not contain baselines in reading, written language and mathematics, but did contain baselines in emotional/social/behavioral development.<sup>27</sup>

#13. Student is currently interested in a vocational program of barbering or carpentry.<sup>28</sup> School B has a barbering program and it was offered to Student. Student refused to even meet with the head of the barbering program on several occasions.<sup>29</sup>

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

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<sup>23</sup> Assistant principal, special education teacher.

<sup>24</sup> P-10, P-11, P-12.

<sup>25</sup> P-10-1, P-11-1.

<sup>26</sup> Petitioner.

<sup>27</sup> Expert in IEP development, P-10, P-11, P-12.

<sup>28</sup> Special education teacher, Student.

<sup>29</sup> Special education teacher.

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).

The first issue to be determined is whether the Respondent denied the Student a FAPE because it failed to provide the Student with an IEP reasonably calculated to enable the Student to be involved in and make progress in the general education curriculum, and meet each of his other educational needs resulting from his disability, when:

(A) The IEP revised in January 2012 lacked: a statement of the Student's present levels of academic achievement and functional performance; measurable academic goals; a goal addressing attendance; and sufficient behavioral support services or a Behavioral Intervention Plan ("BIP");

(B) The IEP revised in January 2013 lacked: a statement of the Student's present levels of academic achievement and functional performance; measurable academic goals; a goal addressing attendance; sufficient behavioral support services or a BIP; and sufficient specialized instruction outside of the general education setting in a therapeutic environment; and

(C) The IEP revised in June 2013 lacked: a statement of the Student's present levels of academic achievement and functional performance; measurable academic goals; sufficient behavioral support services or a BIP; and sufficient specialized instruction outside of the general education setting in a therapeutic environment?

The IEP must contain a statement of the special education and related services and supplementary services 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).

The testimony of the assistant principal and the special education teacher from School B was very credible and uncontroverted. Neither hesitated in their response to questioning and both gave the impression of good working familiarity with Student. Their testimony was given great weight. The testimony of the Dean of Students at School A was also credible and uncontroverted.

The evidence in the record revealed that the present levels of academic achievement and functional performance in the January 2012, January 2013 and June 2013 IEPs were based on data from 2011. DCPS had no choice but to include this outdated data on the aforementioned IEPs. Although Student came to school on a regular basis, he had excessive absences from class, he refused to participate in formal academic achievement testing, and he failed to complete any class assignments and homework. DCPS' hands were tied. Current information was

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unavailable. Without the cooperation of Student, DCPS was unable to develop IEPs that reflected Student's current level of academic achievement and functional performance. The rationale for DCPS including the outdated data on Student's IEPs were clearly stated on each IEP. It was not a mistake or oversight. It was intentional and justified by the circumstances.

The baseline information in academic areas on the IEPs was essentially unavailable to DCPS. The Hearing Officer determines that the omission of baseline information did not render the IEP inappropriate. DCPS was simply unable to obtain the information due to Student's lack of cooperation. The IEP data was up to date in the emotional/social/behavioral functioning area. That information could be gleaned from observation of Student's behaviors.

DCPS took the necessary steps to comply with the requirements of the IDEA to include current achievement and functional performance data. During the 2013/14 SY, School B actively tried to engage Student in formal academic assessment testing, but Student refused until December 2013. The Hearing Officer determines that DCPS did not deny Student a FAPE by failing to include current levels of achievement and functional performance or baselines in academic areas on Student's January 2012, January 2013 and June 2013 IEPs.

Petitioner alleged that the IEPs did not contain measurable goals. The evidence in the record supported the conclusion that the goals could not be measured due to the absence of baseline information in the academic areas of reading, written language and mathematics; however, the lack of baseline information was through no fault of DCPS. The baseline information simply did not exist because Student refused to undergo formal academic achievement testing and Student refused to complete any homework or class assignments; all of which would have provided the necessary baseline information. It was Student's lack of cooperation that caused the goals to be un-measurable. The Hearing Officer concludes that although the IEP contained goals that were not measurable, it was not due to an action of inaction of DCPS. Petitioner failed to meet her burden of proof that DCPS denied Student a FAPE by having academic goals in the IEP that could not be measured.

Petitioner alleged that the January 2012 IEP and the January 2013 IEP were inappropriate because they failed to include a goal that addressed attendance. Petitioner failed to meet her burden of proof that Student was denied a FAPE because the IEPs lacked an attendance goal. Student's attendance problem was essentially a problem with him attending class. Student regularly came to the school building. The January 2012 and January 2013 IEPs were in effect when Student attended School A. School A employed many interventions to curtail Student's behaviors of skipping class and being out of location. Student was redirected, talked to, given an attendance contract, etc. A goal on the IEP would have resulted in the very initiatives that School A had already taken to address Student's class attendance problems. School A addressed Student's attendance problem appropriately and extensively.

Petitioner alleged that the January 2012 IEP, January 2013 IEP and the June 2013 IEP all lacked sufficient behavioral support services or a BIP. Petitioner presented no evidence that the 120 minutes/month of behavioral support services was insufficient to address Student's behavioral needs. The evidence in the record indicated that Student was generally non-compliant with all services. He didn't like being a special education student. No one testified about the

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extent of emotional/social/behavioral services that Student actually received or his actual progress or lack of progress with respect to meeting emotional/social/behavioral goals. One document in the record, an IEP progress report from the 2011/12 SY, indicated that Student made progress towards achieving IEP goals in the area of emotional/social/behavioral development.<sup>30</sup> Student's December 2013 IEP, formulated after the complaint was filed and not factored into the analysis of whether or not Student was denied a FAPE with respect to the allegation of insufficient behavioral support services, indicates that Student has not been making himself available to participate in counseling.<sup>31</sup> Petitioner failed to meet her burden of proof that the relevant IEPs were not reasonably calculated to provide Student with educational benefit due to insufficient behavioral support services.

The Hearing Officer determines that Petitioner met her burden of proof that the January 2012, January 2013 and June 2013 IEPs should have included a BIP.

In developing each child's IEP, the IEP Team must, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. 300.324(2)(i).

According to School A, none of the interventions it employed were successful in curtailing Student's behaviors that interfered with learning. School A, to its credit, employed many interventions and should be commended for that. However, the BIP goes one step further. The BIP, site specific, assures a consistent approach to addressing behavior so that data can be collected and the effectiveness of the BIP can be measured and evaluated every 3-6 months, with modifications made to the BIP as necessary. Student had lots of behaviors that interfered with learning and these behaviors were consistently demonstrated from 2009 through 2013. Student had a BIP as part of his IEP in December 2009 and December 2011, and should have had a BIP as part of his January 2012, January 2013 and June 2013 IEPs. The lack of a BIP on the relevant IEPs impeded Student's right to an educational benefit. Student was denied a FAPE by the omission of the BIPs from the IEPs. Student's off task behaviors that consistently interfered with learning warranted the development and use of a BIP.

Petitioner alleged that the January 2013 IEP and June 2013 IEP lacked sufficient specialized instruction outside of general education in a therapeutic setting. Petitioner seeks placement of Student at School C as the school that can provide Student with the full-time therapeutic educational setting that he needs to make educational progress.

Petitioner failed to meet her burden of proof that Student was denied a FAPE because the January 2013 IEP and June 2013 IEPs lacked sufficient specialized instruction outside of general education in a therapeutic setting.

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

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<sup>30</sup> P-9-5.

<sup>31</sup> P-17-6.

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).

Due to Student's lack of cooperation in the formal assessment testing process and due to Student's lack of cooperation in completing any class or homework assignments, it was impossible for DCPS to ascertain whether or not Student required more specialized instruction either inside or outside of special education. DCPS lacked adequate current data to justify even an increase in IEP services, let alone a change to a more restrictive, therapeutic setting. At the time the complaint was filed, there was no current data on Student's academic and functional achievement levels.

Student's December 2013 IEP, formulated after the complaint was filed, included current academic achievement testing results. The services in the 2013 IEP replicate the services found in the June 2013 IEP, i.e., 9.5 hours/week of specialized instruction outside of general education and 120 minutes/month of behavioral support services outside of general education. This level of services does not warrant placement in a full-time, therapeutic school. Student first must avail himself of the existing services so that the adequacy of the services can be measured. Student's non-compliance with DCPS' attempts to provide services is amply illustrated by Student's refusal on several occasions to meet with the head of the barbering program at School B, a program Student purports to be interested in. Student wouldn't even comply with the most non-threatening of educational interactions, a simple meeting. Student's genuine interest in pursuing a diploma or a vocational trade is highly questionable. His behaviors suggest otherwise.

The second issue to be determined is whether the Respondent denied the Student a FAPE when it failed to provide the Student with special education and related services in conformity with his IEP since the start of the 2013/14 school year because no specialized instruction outside of the general education setting has been provided?

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.

Petitioner failed to meet her burden that DCPS failed to provide Student with specialized instruction outside of general education during the 2013/14 SY. The evidence in the record revealed that specialized instruction outside of general education was made available to Student at School B during the 2013/14 SY, but Student elected not to participate in the services. The testimony of the special education teacher and the assistant principal at School B was credible that although the school followed a model wherein specialized instruction was provided within the general education setting, special provisions were made by the school for Student to receive all of his specialized instruction outside of general education.

The third issue to be determined is whether the Respondent failed to ensure the Student's placement for the 2013/14 school year was based on the Student's IEP when he was placed at a school program that could not implement his IEP?

Petitioner failed to meet her burden of proof on Issue #3 for the reasons stated in the discussion of Issue #2. DCPS referred Student to School B to receive instruction for the 2013/14 SY. School B was capable of implementing Student's IEP. School B offered specialized instruction to Student outside of the general education setting, as was required by his IEP. DCPS provided Student with a school that could provide services in conformity with Student's IEP.

### **Compensatory Education**

“When a school district deprives a disabled child of 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 is appropriate on this record for DCPS' failure to provide Student with a BIP since January 2012. Petitioner proposed 75 hours of mentoring by a vendor of Petitioner's choice to help Student with self-esteem issues due to Student failing the ninth grade twice.<sup>32</sup> Petitioner did not propose any counseling services to address Student's behaviors that interfere with learning.

Student has been without a BIP for two years. Student is unable to accept the fact that he requires special education services to access the general education curriculum. When Student testified at the due process hearing, Student did not admit that he was unable or had difficulty completing schoolwork. It clearly is a very embarrassing subject for him. Student would benefit from extended counseling and mentoring services. Student's view of himself needs to change so that he can properly avail himself of special education services.

Student is not entitled to funding for School C due to DCPS' failure to provide Student with a BIP over a two-year period. DCPS has made services available to Student that will allow him to access the general education curriculum. Student must take advantage of the public education services offered. The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

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<sup>32</sup> P-1, Expert in IEP development.

**ORDER**

(1) DCPS shall complete a Functional Behavioral Assessment (“FBA”) within 20 school days, or within 20 school days of obtaining Petitioner’s consent if Petitioner’s consent to evaluate is required; or

(2) DCPS may authorize funding for the FBA to be completed, and if so, authorization for funding of the FBA shall be issued by DCPS no later than 5 school days from the date of this Order. Failure to issue authorization for funding within 5 school days shall obligate DCPS to complete the FBA within 20 school days of receipt of this Order or of obtaining Petitioner’s consent, whichever is necessary to begin the FBA process; and

(3) Within 20 school days of receipt of the completed FBA, DCPS shall convene a Multidisciplinary Team meeting to review the FBA, develop a BIP, and review and revise the IEP as necessary; and

(4) As compensatory education, DCPS shall fund 30 hours of independent counseling services and 30 hours of independent mentoring services, with a letter of funding or its equivalent to be provided to Petitioner within 10 school days of the date of this Order, and Petitioner shall have nine (9) months from the date of receipt of the authorization of funding to complete the counseling and mentoring services, or the requirement for DCPS to provide funding shall expire; and

(5) Any delay caused by Petitioner or Petitioner’s representative shall extend the deadline for DCPS’ performance, day for day; and

(6) 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 19, 2014

*/s/ Virginia A. Dietrich*  
Hearing Officer