District of Columbia

Office of the State Superintendent of Education

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OSSE
Office of Dispute Resolution
January 22, 2015

Confidential

Parent on Behalf of Student[1], Petitioner, v. District of Columbia Public Schools ("LEA") Respondent. Date Issued: January 21, 2015	HEARING OFFICER'S DETERMINATION Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on January 13, 2015, at the District of Columbia Office of the State Superintendent of Education ("OSSE") Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006. The record was closed with the parties' submission of written closing arguments on January 16, 2015.

BACKGROUND AND PROCEDURAL HISTORY:

The student is a child with a disability pursuant to IDEA with a disability classification of other health impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD"). The student currently attends a DCPS elementary school ("School A"). The student began attending School A at the beginning of school year ("SY") 2014-2015. Prior to attending School A, during SY 2013- 2014 and SY 2012-2013, the student attended a D.C. public charter school ("School B") for which DCPS is the local educational agency ("LEA").

During SY 2012-2013 and most of SY 2013-2014 the student's School B individualized education program ("IEP") required that he provided, inter alia, 10 hours per week of specialized instruction in the general education setting and10 hours per week of specialized instruction outside the general education setting. The student's disability classification was changed from specific learning disability ("SLD") to OHI in May 2013.

In April 2014 School B conducted a functional behavior assessment ("FBA") and developed a behavior intervention plan ("BIP") for the student in May 2014. In June 2014, a new IEP was developed for the student that increased his specialized instruction hours from 10 hours per week outside general education to 15 hours per week outside general education.

After the student's parent ("Petitioner") enrolled the student in School A for the SY 2014-2015 School A, in consultation with Petitioner, scheduled an IEP meeting for September 23, 2014. On the date of the meeting Petitioner informed School A she could not attend. School A convened the meeting without Petitioner and amended the student's IEP and thereafter began to implement the amended IEP.

School A contacted Petitioner to schedule another IEP meeting so Petitioner could be present. That meeting was convened October 28, 2014. Petitioner and her educational advocate attended. During this meeting, the parent objected to the September 23, 2014, IEP and asked to have the June 23, 2014, IEP reinstated. DCPS did not agree.

Petitioner filed this due process hearing complaint on November 7, 2014, alleging DCPS denied the student a free appropriate public education ("FAPE") by: (1) failing to develop an appropriate IEP that included sufficient instructional services outside of the general education setting on September 23, 2014, and October 28, 2014; (2) failing to include the parent in the IEP meeting on September 23, 2014; and (3) failing to implement the student's June 23, 2014, IEP.

Petitioner seeks as relief that the student's IEP be revised to provide the student with at least 15 hours per week of specialized instruction outside of the general education setting; 10 hours per week of specialized instruction inside the general education setting, and 1 hour per week of behavioral supports and compensatory education in the form of tutoring in reading, writing, math and counseling services.

DCPS filed a timely response to the complaint on November 17, 2014. DCPS denied any alleged violation(s) or that the student was denied a FAPE. DCPS asserted that School A implemented the student's June 23, 2014, IEP. On September 8, 2014, DCPS sent a letter of invitation ("LOI") to Petitioner for an IEP meeting on September 16, 2014. Petitioner rescheduled the meeting for September 23, 2014. DCPS sent another LOI for the meeting on September 23, 2014. DCPS confirmed the meeting via telephone and left a voicemail message. The petitioner did not participate in the September 23, 2014, meeting in which the IEP team revised the student's IEP. However, the IEP is appropriately based upon a review of the student's educational record and his progress at School A since the start of SY 2014-2015. September 24, 2014, DCPS sent another LOI to Petitioner for an IEP meeting on October 28, 2014. The team agreed to maintain the level of services in the September 23, 2014, IEP.

A resolution meeting was held on November 25, 2014. The case was not resolved. The parties did not mutually agree to proceed to hearing. The 45-day period began on December 7, 2014, and ends [and the Hearing Officer's Determination ("HOD") is due] on January 21, 2015.

The Hearing Officer convened a pre-hearing conference ("PHC") on December 3, 2014, on the complaint and issued a pre-hearing order on December 9, 2014, outlining, inter alia, the issues to be adjudicated.

ISSUES: [2]

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to develop an appropriate IEP that included sufficient instructional services of 15 hours outside general education on September 23, 2014, and October 28, 2014.

2. Whether DCPS denied the student a FAPE by failing to include the parent in the IEP meeting held on September 23, 2014.

3. Whether DCPS denied the student a FAPE by failing during SY 2014-2015 to implement the student's June 23, 2014, IEP.

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

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 39 and Respondent's Exhibits 1 through 16) that were all admitted into the record and are listed in Appendix A.[3] Witnesses are listed in Appendix B.

FINDINGS OF FACT: [4]

1. The student is a child with a disability pursuant to IDEA with a disability classification of OHI. The student currently attends School A. The student began attending School A at the start of SY 2014-2015. Prior to attending School A, during SY 2013- 2014 and SY 2012-2013, the student attended School B, a public charter school for which DCPS is the LEA. (Petitioner's Exhibits 11-1, 12-1, 18-1, 18-2)

2. During SY 2012-2013 and most of SY 2013-2014 the student's School B IEP required that he provided, inter alia, 10 hours per week of specialized instruction in general education and10 hours per week of specialized instruction outside general education. (Petitioner's Exhibits 6-11, 8-11)

3. In May 2013, while the student was attending School B a psycho-educational evaluation was conducted to assess the student for ADHD. The evaluation cited the student's prior psycho-educational evaluation conducted in January 2012 by the school he attended prior to School B. The student's WISC-IV FSIQ was a 74, which placed him in the 4th percentile and in the borderline range of cognitive functioning. In January 2012 when the student was in third grade his academic achievement scores indicated he was operating in math at third grade level and in reading at early second grade. The student's percentile rank in academics was below average in reading and written expression and average in math. (Petitioner's Exhibit 15-10, 15-11, 18-1, 18-2)

4. The May 2013 psycho-educational evaluation concluded the student met the eligibility criteria of OHI for ADHD. The student's disability classification was changed from SLD to OHI in May 2013. (Petitioner's Exhibits 8-1, 18-6)

5. Due to the student's behaviors including being off task and excessive movement, in April 2014 School B conducted a FBA and developed a BIP in May 2014. (Petitioner's Exhibits 9, 19, 20 May 23, 2014.

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[3] Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

[4] The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

6. In June 2014 School B developed a new IEP for the student that increased his specialized instruction hours from 10 hours per week outside general education to 15 hours per week outside general education. (Petitioner's Exhibits 10-11, 11-11)

7. The student's June 23, 2014, IEP at School B prescribed the following services: 10 hours of specialized instruction in general education, 7.5 hours each in reading and math outside general education for a total of 15 hours per week of specialized instruction outside general education.[5] (Petitioner's Exhibit 11-11)

8. Petitioner enrolled the student at School A for SY 2014-2015 because she missed the application deadline to re-enroll the student in School B. (Parent's testimony)

9. When the student began attending at School A at the start of SY 2014-2015 School A implemented the student's School B June 23, 2014, IEP until his IEP was later updated. The School A special education teacher and the student's general education teacher delivered instruction to the student in small groups of only other special education students both inside the general education classroom and in a pullout classroom. All service hours in the student's IEP were provided. There are thirteen other students in the student's general education class and when he has pull out specialized instruction he is only with special education students. (Witness 4's testimony, Witness 3's testimony, DCPS Exhibit 13)

10. School A requested and scheduled a meeting with Petitioner to review the student's IEP and his progress since attending School A. On September 8, 2014, School A sent a LOI to Petitioner for an IEP meeting to be convened on September 16, 2014. Petitioner rescheduled the meeting for September 23, 2014. School A sent another LOI for the meeting on September 23, 2014. School A confirmed the meeting with Petitioner by telephone and left a voicemail message. On the date of the meeting Petitioner informed School A she could not attend. (Petitioner's testimony, Witness 4's testimony, DCPS Exhibits 11-1, 11-2 DCPS Exhibit 13)

11. The School A IEP team met on September 23, 2014. The parent was not present. School A amended the student's IEP. The student's specialized instruction was reduced by 10 hours per week. The IEP prescribed that his specialized instruction inside general education increase from 10 hours per week to 12 per week and the specialized instruction outside general education was reduced from 15 hours per week to 3 hours per week. The student's teachers believed the student had begun to demonstrate enough progress academically and behaviorally that in their opinion it was harmful for the student to be isolated from his general education peers to the level that his School B IEP prescribed.

[5] On or about July 2, 2014, Petitioner filed a due process hearing complaint that resulted in a HOD issued September 16, 2014, that found the student's February 6, 2014, IEP was not reasonably calculated to provide some educational benefit to the student and awarded the student 32 hours of individual tutoring as compensatory education. However, the HOD did find that the student's June 9, 2014, EIP was inappropriate. (Petitioner's Exhibit 5)

They concluded that the School B level of instruction outside general education was apparently due to his behavior difficulties at School B that he was not displaying at School A. (Witness 3's testimony, Witness 4's Petitioner's Exhibit 12-11)

12. DCPS began to implement the September 23, 2014, IEP and the change in services on September 24, 2014. (Petitioner's Exhibit 12-11, Witness 4's testimony)

13. School A contacted Petitioner to schedule an IEP meeting and Petitioner agreed to an October 28, 2014, meeting date. Petitioner, her educational advocate and attorney attended the October 28, 2014, meeting. During this meeting, Petitioner objected to the September 23, 2014, IEP and asked to have the June 23, 2014, IEP reinstated. DCPS did not agree and the updated the IEP to reflect the October 28, 2014, date and continued the level of specialized instruction that School A agreed to on September 23, 2014. (Petitioner's Exhibits 12-11, 14, DCPS Exhibit 11-3)

14. At the meeting Petitioner's advocate shared his opinion with the team that they had moved too fast to reduce the student's services without sufficient data to support the reduction. There was a lot of discussion about the student turning in homework and a homework contract was drafted. The team indicated that the student was not demonstrating any violent and aggressive behavior. (Witness 2's testimony)

15. Petitioner was not aware until the October 28, 2014, IEP meeting that the student's IEP had been amended on September 23, 2014, and that School A had already implemented changes to the IEP. Petitioner had received a copy of the September 23, 2014, IEP but believed in was a draft document. (Petitioner's testimony)

16. The student's present levels of performance in math in his October 28, 2014, IEP indicate that when the student first arrived at School A his math skills were assessed for grade level skills and he scored 20%; however, within weeks he improved his performance after instruction had been provided. (Petitioner's Exhibit 12-3)

17. The student's present levels of performance in reading in his October 28, 2014, IEP indicate that the student's reading accuracy was nearly adequate but his fluency needed improvement. The student was not performing on grade level in reading but has adequate basic literacy skills. (Petitioner's Exhibit 12-6)

18. The student's report card for his first quarter attending School A reflect that the student approaches grade expectations but is operating below proficiency in reading and math. The report card indicates the student participates in class but requires frequent prompting to follow directions and complete classroom assignments and rarely practiced self-control. (Respondent's Exhibit 6)

19. The student's IEP progress report for the first reporting period for SY 2014-2015 indicate the student was making progress in most of his IEP goals; however, some of the student's goals had not yet been introduced but would be introduced in the next reporting period. (Petitioner's Exhibit 21)

20. During the first few weeks of school the School A staff telephoned Petitioner about the student's behaviors. Petitioner became irritated by the calls and directed School A staff to refer to the student's FBA and BIP and the calls to Petitioner seemed to stop. (Petitioner's testimony)

21. Relative to his general education peers the student struggles in some areas but participates regularly. The student struggles with finishing his classwork independently and is easily distracted but he is easily redirected. He is allowed extra time to complete work. His persistent problem has been turning in homework and as result he was provided a written contract to assist him in completing and turning in homework. The student strives in leadership activities. The student has been without his glasses for much of the time he has attended School A and as a result has difficulty on computer activities. (Witness 3's testimony)

22. Petitioner's expert witness offered his opinion as to when specialized instruction for a special education student would usually be reduced and opined that a reduction would be reasonable after 6 to 8 weeks of observation and informal assessment to determine if the student is making adequate progress and then a discussion should be had about a reduction of services. He would not have recommended a reduction for this student in September or October 2014 because he believed there was insufficient data of adequate and consistent academic improvement. (Witness 1's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

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

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. [6] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

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

ISSUE 1: Whether DCPS denied the student a FAPE by failing to develop an appropriate IEP that included sufficient instructional services of 15 hours outside general education on September 23, 2014, and October 28, 2014.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that the student's September 23, 2014, IEP was inappropriate. However, there was sufficient evidence that the October 28, 2014, IEP was reasonably calculated to provide the student educational benefit.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch .Dist. of the City of Newark,* 336 F.3d 260, 264 (3d Cir. 2003).

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act*." Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits." *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009).

The evidence in this case demonstrates that when the student entered School A he was assessed and his demonstrated skill level was below grade level. However, soon after the student began to receive instruction at School A from his special education and general education teachers he began to make progress in math and reading in subsequent assessments. The evidence demonstrates that the student is in a general education class with a relatively low teacher to student ratio with only 14 students. He was provided, consistent with the IEP he brought with

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[6] The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

him from School B, specialized instruction in small groups of only special education students both by his general education teacher and by his special education teacher both in the general education teacher's classroom and in the special education pullout room. The student's School A teachers credibly testified that with the method that the student's instruction was being delivered the student's IEP was being implemented and the student began to demonstrate enough progress that the teachers believed it was harmful for the student to be isolated from his general education peers to the level that his School B IEP prescribed.

Consequently, the School A staff believed it was appropriate for the student's specialized instruction outside general education to be reduced so that he could be more effectively educated. Although the student displayed symptoms of distractibility he was easyly redirected. The major issue the student's School A teachers had with the student's performance was his homework completion and submission and attempted to address this with a contract with the student hoping to enlist the help of Petitioner.

Although it appears that the student's IEP had only been recently changed at School B to include 15 hours of specialized instruction outside general education it appears that the student's behaviors at School B were the primary reason for the increased outside general education instruction. At School A, however, the student's behavior was not disruptive and he could be redirected to task and complete his classwork. The student's report card and IEP progress report for the first quarter of SY 2014-2015 reflect that he was making progress albeit gradual. Consequently, this Hearing Officer concludes that there was a sufficient basis at least by October 28, 2014, for the student's IEP to be amended to reduce the number of hours of instruction outside general education from 15 to 3, and the Hearing Officer thus concludes that the student's October 28, 2014, IEP is reasonably calculated to provide the student educational benefit.

At the time of the September 23, 2014, meeting, when Petitioner and her representative were not present it does not appear that the student's report card on IEP progress report had yet been completed. By that time the student had only been attending School A for less than one month. The Hearing Officer credits Petitioner's expert witness' opinion that a student's specialized instruction should be reduced only after there have been 6 to 8 weeks of review of the student's performance and data that indicates that the student is making sufficient enough progress for the student's services to be reduced. Consequently, the Hearing Officer concludes that School A's reduction of the student's specialized instruction outside general education by the time of the September 23, 2014, meeting was not supported by sufficient data to yet justify the reduction. Therefore, the Hearing Officer concludes that the IEP that School A developed on September 23, 2014, was not reasonably calculated to provide the student education benefit.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to include the parent in the IEP meeting held on September 23, 2014.

CONCLUSION: Petitioner sustained the burden of proof of a denial of FAPE by failing to include the parent in the September 23, 2014, IEP meeting.

34 C.F.R. 300.322(a) provides that a LEA must ensure the parents of a student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportune to attend; and (2) Scheduling the meeting at a mutually agreed upon time 34 C.F.R. 300.322(a) LEA must ensure the parents of a student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including — (1) Notifying parents of the meeting early enough to ensure that they will have an opportune to attend; and (2) Scheduling the meeting at a mutually agreed upon time (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

34 C.F.R.§300.501(c) states: Parent involvement in placement decisions. (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

Although the evidence demonstrates that School A sent the required notice to Petitioner and telephoned Petitioner prior to the meeting, the evidence demonstrates that on the day of the meeting Petitioner informed School A that she could not attend. Nonetheless, School A went forward with the meeting and actually amended the student's IEP to reduce his specialized instruction and then implemented the IEP without the benefit of Petitioner's input. Had the IEP not been implemented and the subsequent meeting on October 28, 2014, been held, giving Petitioner the opportunity to fully participate in and be present for the rationale of the proposed changes to the student's IEP, she would have been fully involved in the meeting and decision making. Additionally, based upon the conclusion above that the September 23, 2014, EIP was not reasonably calculated to provide the student educational benefit, the Hearing Officer also concludes that School A moving forward with the September 23, 2014, IEP meeting without the Petitioner present and amending and then implementing the student's IEP significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE.

ISSUE 3: Whether DCPS denied the student a FAPE by failing during SY 2014-2015 to implement the student's June 23, 2014, IEP.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS denied the student a FAPE by failing to implement his June 23, 2014 IEP.

5E DCMR 3002.3 provides that: (c) The LEA shall ensure that an IEP is developed and implemented for each eligible with a disability served by the LEA.

(d) The LEA shall ensure that special education and related services are provided to an eligible child with a disability in accordance with the child's IEP…
(f) The LEA shall make a good faith effort to assist the child to achieve the goals and

objectives or benchmarks listed in the IEP.

"To prevail on a claim under IDEA, a party challenging the implementation of an IEP must show more than a de minimus failure to implement all elements of that IEP, and, instead, must demonstrate that the …authorities failed to implement substantial or significant portions of the IEP "Savoy v. District of Columbia (DC Dist. Court) February 2012 adopted Houston Indep. School District v. Bobby R. 200 F3d 341 (5th Circ. 2000)

As previously stated the evidence demonstrates that the student is in a general education class with a relatively low teacher to student ratio with only 14 students. He was provided, consistent with the IEP he brought with him from School B, specialized instruction in small groups of only special education students both by his general education teacher and by his special education teacher both in the general education teacher's classroom and in the special education pullout room. The student's School A teachers credibly testified that with the method that the student's instruction was being delivered the student's IEP was being implemented and the student began to demonstrate enough progress that the teachers believed it was harmful for the student to be isolated from his general education peers to the level that his School B IEP prescribed. Based upon this evidence the Hearing Officer concludes that School A implemented the student's June 23, 2014, IEP until the IEP was later amended. Consequently, the Hearing Officer concludes that Petitioner did not present sufficient evidence to sustain the burden of proof on this issue.

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." Reid, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." Id. at 526. Petitioner submitted a compensatory education plan but was not able to present a witness to support the proposed plan. There was insufficient evidence from which the Hearing Officer can base a specific award of compensatory education; but to award no compensatory education when a denial of a FAPE has been established would be inequitable. Consequently the Hearing Officer grants Petitioner a nominal amount of independent tutoring as compensatory education. [7]

ORDER:

DCPS shall within ten (10) school days of this issuance of this order provide the student as

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[7] The Hearing Officer concludes that despite Petitioner's inability to establish appropriate compensatory education, to award nothing would be inequitable. (A party need not have a perfect case to be entitled to compensatory education. *Stanton v. D.C.* 680 F Supp. 201 (D.D.C. 2011). If a student is denied a FAPE a hearing officer may not "simply refuse" to grant a compensatory education award. *Henry v. D.C.* 55 IDELR (D.D.C. 2010))

compensatory education 15 hours of independent tutoring at the DCPS/OSSE prescribed rates to be used by Petitioner by June 30, 2015.

All other requested relief is denied.

APPEAL PROCESS:

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

/S/ *Coles B. Ruff*

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Coles B. Ruff, Esq.
Hearing Officer
Date: January 21, 2015