



## **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 and concluded on March 24, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2005.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student is \_\_\_\_\_ with a disability pursuant to IDEA with a disability classification of autism spectrum disorder (“autism”). The student is currently in fourth grade and attending a DCPS elementary school (“School A”).

Petitioner filed the due process complaint in this matter on December 24, 2013. Petitioner alleged the student’s individualized educational program (“IEP”) and placement is inappropriate because it provides for insufficient services outside general education and contains inappropriate goals. Petitioner asserts the student is in need of a full-time out of general education IEP and placement. Petitioner also asserted the student is in need of an auditory processing evaluation that DCPS should have been on notice to perform by the fall of school year (“SY”) 2013-2014.

Petitioner seeks as relief an order directing DCPS to place and fund the student at a non-public day school (“School B”), fund an auditory processing evaluation by a date certain, and convene an IEP meeting to review the evaluation and update the student’s IEP, and fund compensatory education for the violations alleged.

DCPS filed a response to the complaint on January 6, 2014. DCPS denied any violations and asserted that the parent agreed to amend the student’s IEP in December 2013 without a meeting being convened. That IEP along with the October 2013 IEP are reasonably calculated to provide educational benefit and there is no data that supports a conclusion the student is in need of a full time out of general education IEP and placement. There is no record of a request being made for an auditory processing evaluation although other evaluations were requested.

A resolution meeting was held on January 23, 2014. The complaint was unresolved. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on January 24, 2014, and ended (and the Hearing Officer’s Determination (“HOD”) was originally due) on March 9, 2014.

The hearing was originally scheduled for March 3, 2014. Because of inclement weather the parties filed a joint motion to continue the hearing and extend the decision due date for 21 calendar days. The motion was granted. The new HOD due date is March 30, 2014.

On February 6, 2014, the Hearing Officer convened a pre-hearing conference and issued a pre-hearing order on February 12, 2014, outlining, inter alia, the issues to be adjudicated.

The parties appeared for hearing on March 24, 2014. At the outset of the hearing the parties represented that subsequent to the filing of the complaint DCPS conducted three re-evaluations of the student and a week prior to the due process hearing convened an IEP meeting to review the evaluations. At that meeting the student's IEP was revised to increase the number of hours of specialized instruction outside of general education<sup>2</sup>, but short of full-time out general education services. At that meeting the parent also granted DCPS consent to conduct an auditory processing evaluation and DCPS has agreed to conduct the evaluation but there was no agreement as to when the evaluation would be completed. Petitioner asserted that despite the recent modifications to the student's IEP and DCPS' agreement to conduct the auditory processing evaluation she desired to proceed to hearing and adjudicate the issues in dispute and to seek the student's placement in School B.

**ISSUES:** <sup>3</sup>

The issues adjudicated are:

1. Whether DCPS denied the student a free and appropriate public education ("FAPE") by failing to provide an appropriate IEP <sup>4</sup> and placement since the start of SY 2013-2014 because his IEP lacked (1) full time out of general education services, and/or (2) appropriate goals.
2. Whether DCPS denied the student a FAPE failing to provide an auditory processing evaluation by the fall of SY 2013-2014.

**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 21 and Respondent's Exhibits 1 through 3)<sup>5</sup> that were admitted into the record and are listed in Appendix A. Witnesses a listed in Appendix B.

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<sup>2</sup> The specialized instruction was increased from 7 hours per week to 17.5 hours per week.

<sup>3</sup> 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 this was the issue(s) to be adjudicated. At the outset of the hearing Petitioner withdrew her claim that the student's IEP was inappropriate because it lacked a behavior intervention plan ("BIP").

<sup>4</sup> Although not specifically stated the IEP being challenged the evidence Petitioner presented only specifically addressed the IEP dated October 30, 2013, although the amount of services were the same as the student's prior IEP 7.5 hours of specialized instruction per week out of general education.

<sup>5</sup> Respondent objected to admission to some of the documents disclosed by Petitioner. The objections were addressed at the outset of the hearing. One document was not admitted (Petitioner's Exhibit 19); all other documents were ultimately admitted into the record. Respondent withdrew the student's recent evaluations (Respondent's Exhibits 4, 5, & 6). They were not admitted into the record.

## FINDINGS OF FACT:<sup>6</sup>

1. The student is \_\_\_\_\_ with a disability pursuant to IDEA with a disability classification of autism. The student began receiving special education while in pre-kindergarten. The student is currently in fourth grade and attending School A where he has attended since second grade during SY 2011-2012. (Petitioner's Exhibits 5-1, 14-11)
2. In March 2011 DCPS conducted a comprehensive psychological evaluation of the student when he was age six, nine months and in first grade. At the time the student had a disability classification of developmental delay and one of the questions considered by the evaluator was whether the student presented with autism. The student's cognitive functioning was determined to be moderately below average (borderline) to below average and his academic achievement at the time was commensurate with his cognitive ability. His strengths were reading and written expression and his areas of weakness were math and spoken language. Based on the assessments the evaluator determined the student met the criteria for autism. (Petitioner's Exhibit 14-1, 14-9, 14-11, 14-12)
3. The student's most recent IEP is dated December 13, 2013. DCPS amended the student's previous IEP developed on October 30, 2013. Both these IEPs prescribe the following services: 7.5 hours per week of specialized instruction outside general education and 3 hours per month of occupational therapy ("OT") and 2 hours per month of speech-language pathology. The student's previous IEPs since at least February 2011 have prescribed the same amount of services.<sup>7</sup> (Respondent's Exhibit 2-9, Petitioner's Exhibits 2-7, 3-8, 4-8, 5-9)
4. The present levels of performance in the student's IEP indicate that: "When instructional delivery is given in individualized or small group instruction, [the student] seems to have amore confidence in his abilities. His motivation level adversely impacts his performances... the student is not likely to respond to directions that are stated to him only once. ...[the student works well in small group because it is much more conducive to his learning. When in whole group instruction [the student] is much more likely to get off task and miss quality instruction. However, when working in small group [the student is more focused and able to comprehend the information more rapidly. [The student is beneficiary of differentiated instruction in which he is taught on the level that he is on rather whole group instruction level." (Respondent's Exhibit 5-3, 5-5)
5. The student's has IEP goals in the following areas: math, written expression, adaptive/daily living skills, communication/speech & language. The IEP goals are the same in the student's December 13, 2013, and October 30, 2013, IEP. (Respondent's Exhibit 2-4, 2-5, 2-6, 2-7, Petitioner's Exhibit 5-3, 5-4, 5-5, 5-6, 5-7, 5-8)

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<sup>6</sup> The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. The second number following an 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.

<sup>7</sup> With one exception: the student's IEP dated 2/9/12 prescribed an additional hour per month of OT services.

6. The student has three math goals: (1) “Given a set of ten problems, [the student] will demonstrate an understanding of addition and subtraction algorithms of multi-digit numbers on 4 out of 5 attempts with 80% accuracy, as measured by teacher observation/worksheets.” (2) “(Given a list of ten numbers, [the student] will be able to read, model and write whole numbers to at least 100,000 with 80% accuracy on 4 out of 5 attempts, as measured by teacher observation/worksheets.” (3) “Given a set of data, [the student] will be able to match the data with the appropriate table, chart, or graph on 4 out of 5 trials with 80% accuracy as measured by teacher observation/worksheets.” (Respondent’s Exhibit 2-4)
7. The student has two goals in written expression: (1) “Using a topic of choice [the student] will write a narrative to develop real or imagined experiences/events, using correct capitalization and punctuation, descriptive details, and clear sequences.” (2) “[the student] will produce a clear and coherent writing in which the development and organization are appropriate to task, purpose, and audience with 80% accuracy on 4 out of 5 attempts, as measured by teacher observation.” (Respondent’s Exhibit 2-6, Petitioner’s Exhibit 5-6)
8. The student has three goals in adaptive and daily living: (1) “[the student] will demonstrate a consistent tripod grasp demonstrating distal control without adverse reaction to copy 2-3 sentences from near point with good letter formation and one verbal cue on 4 out of 5 trials.” (2) “[the student] will cut out 4” simple shapes (circle, square, triangle and rectangle) with ½ inch of the line with smooth edges with minimal assistance 4 out of 5 trials.” (3) “Given multisensory strategies to include fine motor and visual memory challenges, [the student] will copy 4-5 sentences in manuscript from a near point model with 80% line orientation and upper and lower case letter formation for greater academic success on 4/5 samples reviewed.” (Respondent’s Exhibit 2-7, Petitioner’s Exhibit 5-7)
9. The student has two goals in communication/speech & language: (1) “[the student will follow 2 to 3 step directions to complete tasks with 80% accuracy for three consecutive sessions as measured by informal and formal testing.” (2) “[the student] will recall events and answer wh-questions after a story has been read with 80% accuracy for three consecutive sessions as measure by informal and formal testing” (Respondent’s Exhibit 2-8, Petitioner’s Exhibit 5-8)
10. The student is showing some progress toward mastering is current IEP goals. However, according to his most recent IEP progress report two of the goals have yet to be introduced. (Respondent’s Exhibit 3)
11. The student’s report card for the first term of SY 2013-2014 indicates that in areas of reading, writing and language, speaking and listening and in math the student is performing significantly below grade level and does not show basic working knowledge of the skills and concepts presented. However, the student’s report card for third grade indicated that in the first three terms the student was approaching the standard and

showing at least basic working knowledge of the skills and concepts presented in all areas. (Petitioner's Exhibits 10-1, 11-1)

12. DCPS conducted reevaluations of the student in January 2014 after the due process complaint was filed. The evaluations included a comprehensive psychological<sup>8</sup>, and occupational therapy, evaluation and a speech language evaluation. The speech language evaluation revealed that the student's receptive language score was in the average range; his expressive language score was below average. (Petitioner's Exhibits 16-1, 17-1, 17-8)
13. The occupational therapy evaluation confirmed the student's strengths in visual perception, hand dominance and bilateral coordination and noted the student needs support in the following areas: visual motor integration and fine motor integration. The evaluator noted that student's fine motor integration and visual motor integration impacts his ability to complete written assignments accurately, legibly and expeditiously and recommended the student be given extended time to complete assignments and given prompts to ensure that he uses writing instrument properly. (Petitioner's Exhibit 16-6)
14. The student's 2011 speech language evaluation indicated that the student's receptive and expression language skills were both in the average range with scaled scores of 86 & 87 respectively. Prior to the student's recent speech-language and occupational therapy evaluations conducted in January 2014 there was no information that specifically indicated the student has auditory processing problems. However, as indicated above, in the recent DCPS speech-language evaluation conducted in January 2014 the student's expressive language scores were significantly lower than his receptive scores. The student's had difficulty with the subtest of recalling sentences that is a component of the expressive language score. The student's difficulty with recalling sentencings may be related to his auditory memory which is also an indicator that student may have an auditory processing problem. The most recent occupational therapy evaluation conducted by DCPS in January 2014 demonstrates the student has auditory hypersensitivity. These two factors coupled with the student's autism are strong indicators that the student should now be referred for an auditory processing evaluation. (Witness 2' testimony, Petitioner's Exhibits 15-5, 15-6, 20)
15. The student's parent expressed concerns that the student's academic progress since he has attended School A has been minimal. She believes that over the three years at School A the student mastered none of his IEP goals other than writing his first and last names. Although the IEP goals have changed over the years she believes the descriptive language in the goals has not changed much over the years. The parent believes the student was not thoroughly evaluated by DCPS because there were evaluations recommended in the 2011 psychological evaluation in social language skills working memory and attention that were never conducted. (Parent's testimony)

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<sup>8</sup> The comprehensive psychological was conducted but was not introduced in the record and thus not reviewed by the Hearing Officer.

16. After the student's parent filed a complaint in November 2013 in addition to DCPS conducted evaluations it began to provide the student additional hours of specialized instruction for a total of 17.5 hours per week outside general education. However, the additional hours were not added to the student's IEP. Although the student is now receiving more hours of specialized instruction he is still in a general education math class with 21 students for an hour each day despite the fact that math is one of the student's weakest areas. In addition, the student spends 45 minutes each day in a general education setting in his special non-core subjects including Spanish, art, music, physical education. The student's music teacher has expressed to the parent that the student is withdrawn and does not participate in her class. The parent has also observed on occasion that student is not actively participating in his physical education class. However, he enjoys and participates in his art class and he has grasped some Spanish vocabulary. The parent points out that although the student's IEP indicates the student benefits from small group instruction he remains in general education in her opinion too much of the day and where he is unfocused and prone to distractions. The parent has also experienced instances when she felt the student's safety was at risk at School A. The parent strongly believes the student is in need of a full time out of general education IEP and placement such as would be provided him at School B. (Parent's testimony)
17. The student has been interviewed by and accepted to School B, a private full time special education day school. The School B staff reviewed the student's October 29, 2013, IEP, his 2011 psychological evaluation, his 2011 speech-language evaluation and his report cards. School B has a classroom ready for the student with seven students whose disability classifications vary and some who display autism characteristics. The classroom has a head teacher and assistant teacher certified in special education. The students in the identified classroom are functioning on second to third grade and the environment allows students to learn academics and social skills in a small, structured nurturing environment. School B has licensed speech language therapist and occupational therapist on site. The classroom teacher is certified in special education and the school has an OSSE COA. The cost is \$38,145.00 annually and related services are billed separately. At School B the student would have no interaction with general education students or non-disabled peers. (Witness 3's, Petitioner's Exhibit 18)

#### **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.<sup>9</sup> *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 provide an appropriate IEP and placement since the start of SY 2013-2014 because his IEP lacked (1) full time out of general education services, and/or (2) appropriate goals.

**Conclusion:** Petitioner sustained the burden of proof by preponderance of the evidence that the student's October 1, 2013, IEP is inappropriate and should prescribe more hours of specialized instruction than currently prescribed.

"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).

To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

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

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<sup>9</sup> 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.

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 demonstrates that the student is making little academic progress based on his recent report cards. In November 2013 after the parent filed a due process complaint DCPS conducted evaluations and immediately increased the student's hours of specialized instruction from the level of services he had received for two years since he began attending School A to 17.5 per week. However, the increase in services were never officially added to the student's IEP. The student's October 2013, IEP as well as the proposed amended IEP dated in December 2013 still maintained the 7 hours per week of instruction.

Despite the fact that that student has actually received more specialized instruction than his current IEP prescribes, based upon the parent's testimony, the student remains in a general education classroom for one hour per day receiving instruction in math, a subject that is clearly a weakness for him. The student's recent report card as well indicates the student is struggling in most academic areas. The parent also testified that in at least two of his special non-core subjects, music and physical education the student is not effectively participating in the instruction being offered. The parent's testimony in this regard was unrefuted. Thus, the evidence indicates that the student is in need of even more specialized instruction than the 17.5 hours per week he has been receiving since November 2013. Based upon this evidence the Hearing Officer concludes that the student's current IEP is inappropriate and as of November 2013 not calculated to confer educational benefit and the student has been denied a FAPE as a result.

Petitioner is seeking that the student be placed in 100% out of general education private day school. Although DCPS has conducted recent evaluations of the student including a recent comprehensive psychological evaluation, that evaluation was not admitted into the record and there was no testimony about evaluation that may have offered light on whether the student's current cognitive functioning and academic achievement, based on standardized testing, supports the student being totally removed from general education.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

The student is currently demonstrating his ability to function well and gain some academic benefit in at least of couple of classes he attends with general education students. The law mandates that to the greatest extent possible a student is to be educated with his non-disabled peers. The evidence, at least at this juncture, does not support a finding that the student should be totally removed from contact with his non-disabled peers.

The evidence indicates that at School B where Petitioner is seeking to have the student placed he will have no contact with non-disabled peers. Consequently, the Hearing will not direct that the student be placed in school B. Rather, DCPS shall immediately amend the student's IEP to prescribe that student be provided 22.5 hours<sup>10</sup> of specialized instruction outside general education and that DCPS convene a meeting to review the student's progress in his other general education non-core classes to determine if he is in need of additional out of general education services beyond what is ordered here and whether the student should have additional academic and functional goals based on recent evaluations.

The student's IEP goals currently cover the areas in which math, written expression, communication and adaptive/daily living. Although the parent testified that the student's has mastered only one goal in the three years that he attended School A and that the descriptive language in the goals have not changed, this testimony alone was sufficeint to prove that the student's current IEP goals are inappropriate. However, as indicated above the IEP team should review the student's IEP goals in light of the mandate of increased instruction in this Order and determine if the student's IEP goals should be augmented and consider any changes to the goals that are requested or recommended by the student's parent and/or representatives.

**ISSUE 2:** Whether DCPS denied the student a FAPE failing to provide an auditory processing evaluation by the fall of SY 2013-2014.

**Conclusion:** Petitioner failed to sustain the burden of proof by a preponderance of the evidence that the student was denied a FAPE by DCPS not conducting an auditory processing evaluation.

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that a "a full and individual evaluation is conducted for each child being considered for special education and related services." D.C. Mun. Regs. Title. 5E, § 3005.1 (2006). "Qualified evaluators [are to] administer tests and other assessment procedures as may be needed to produce the data required" for the MDT to make its determinations. D.C. Mun. Regs. Title. 5E § 3005.5 (2006).

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general

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<sup>10</sup> These hours of derived by changing the current 5 hours per week of math instruction the student is receiving in general education to specialized instruction and adding it to the 17.5 hours of specialized instruction the student acutally currently receiving.

curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5E § 3005.9(b).

All areas "related to the suspected disability" should be assessed, including: academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5E § 3005.9(h) (2006).

Although the Petitioner's expert witness testified that the student warrants an auditory processing evaluation there was no evidence that a request for this evaluation was made or evidence sufficient to demonstrate that prior to the most recent evaluations that DCPS should have been put on notice to conduct such an evaluation.<sup>11</sup> Consequently, the Hearing Officer concludes that Petitioner did not sustain the burden of proof that DCPS' failure to conduct the evaluation prior to the complaint being filed was a denial of a FAPE to the student.

DCPS has now agreed to conduct the evaluation and the parent has consented. DCPS has a reasonable time to conduct the evaluation, but in light of the denial of FAPE herein that the student has endured, the Hearing Officer shall prescribe a time frame in which the evaluations should be conducted.

### **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 in her complaint sought compensatory education for the alleged denials of FAPE. However, at hearing Petitioner put forth no evidence of appropriate compensatory education. Even though Petitioner proposed no compensatory plan the Hearing Officer concludes that to award the student nothing would be inequitable. Thus, the Hearing Officer concludes that equity warrants that the student be provided nominal compensatory services for the time he has been without an appropriate IEP and services.

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<sup>11</sup> FOF #14

**ORDER:**<sup>12</sup>

1. DCPS shall within ten (10) school days of the issuance of this order amend the student's IEP to prescribe 22.5 hours per week of specialized instruction outside general education and begin to implement said services.
2. DCPS shall within thirty (30) calendar days of the issuance of this order conduct and complete an auditory processing evaluation of the student and convene an IEP meeting to review that evaluation and review the student's progress in his general education non-core classes to determine if he is in need of additional out of general education services beyond what is ordered herein and whether the student should have additional academic and functional goals based on recent evaluations and determine if the student's IEP goals should be augmented and consider any changes to the goals that are requested or recommended by the student's parent and/or representatives.
3. DCPS shall fund for the student as compensatory education two (2) hours per week of independent tutoring from the date of this Order through the end of SY 2013-2014.
4. 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: March 30, 2014**

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<sup>12</sup> Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis. The parties may mutually agree that any or all of the evaluations listed in this Order will be conducted independently and the parties may mutually agree to delay the meeting ordered in this Order beyond the time prescribed.