

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

Office of Dispute Resolution
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
September 19, 2014

PETITIONER,
on behalf of STUDENT,¹

Date Issued: September 18, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Office of Dispute Resolution,
Washington, D.C.

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by the Individualized Education Plans (IEPs) developed for Student by Respondent District of Columbia Public Schools (DCPS) and by a failure of DCPS to evaluate Student in all areas of suspected disabilities.

¹ Personal identification information is provided in Appendix A.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on July 1, 2014, named DCPS as Respondent. The parties met for a resolution session on July 28, 2014 and did not reach an agreement. On July 17, 2014, I convened a telephone prehearing conferences with counsel to discuss the hearing date, issues to be determined and other matters. The 45-day period for issuance of this decision began on August 1, 2014. On August 28, 2014, I granted Petitioner's unopposed request for a 10-day continuance extending the due date for the final decision to September 24, 2014.

The due process hearing was held before this Impartial Hearing Officer on September 10, 2014 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner and Student appeared in person, and were represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for Petitioner made an opening statement. Petitioner testified and called Student, SCHOOL PSYCHOLOGIST and AUDIOLOGIST as witnesses. DCPS called CASE MANAGER, SPEECH-LANGUAGE PATHOLOGIST 1 and SPEECH LANGUAGE PATHOLOGIST 2 as witnesses. Petitioner's Exhibits P-1 through P-27 were admitted into evidence without objection, with the exception of Exhibit P-5, to which DCPS' objection was sustained. Respondent's Exhibits R-1 through R-28 were admitted into evidence without objection, with the exception of Exhibit R-3, which was admitted over Petitioner's objection and of Exhibit R-22 which was withdrawn. Counsel for both parties made closing arguments. Neither party requested leave to file a post-hearing memorandum.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the July 17, 2014

Prehearing Order:

- Whether DCPS failed to evaluate the student in all areas of suspected disability by failing to conduct an assessment for Attention Deficit Disorder (ADD) and a Vocational Level I or Level II assessment;
- Whether DCPS failed to develop an appropriate IEP for the student on or about April 30, 2014 in that the IEP 1) failed to provide the student with an appropriate transition plan; 2) failed to provide sufficient instructional services in an outside general education setting and 3) inappropriately reduced speech and language direct services to 60 minutes per month of consultation services and 4) failed to adequately address attendance and focus issues; and
- Whether DCPS denied the student a FAPE because its IEP developed on or about October 11, 2012 inappropriately reduced the student's speech and language services to two hours per month of consultation services without any objective data to support the reduction of services.

For relief, Petitioner requests that DCPS be ordered to revise Student's IEP to increase the hours of specialized instruction, in an outside general education setting, in mathematics, reading and writing to no less than 20 hours per week and increase the student's speech and language services to no less than 120 minutes per month of direct services; and to include strategies to address attendance, homework completion, distractibility and lack of focus issues; that DCPS be ordered to conduct or fund an assessment for ADD and a Vocational Level II or Level III assessment and all other necessary reevaluations and/or evaluations indicated by these assessments; and an order for DCPS to convene a meeting to review the completed assessments and to review

and revise, as appropriate, Student's IEP. Petitioner also seeks an award of compensatory education for DCPS' alleged failure to provide Student adequate Specialized Instruction Services during the 2013-2014 school year.

FINDINGS OF FACT

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

1. Student, an AGE youth, resides with Mother in the District of Columbia. Testimony of Mother. Student is a "child with a disability" as defined by the IDEA and is eligible for special education and related services under the primary disability classification Specific Learning Disability (SLD). Exhibit P-21.

2. For the 2013-2014 school year, Student was enrolled in GRADE at CITY HIGH SCHOOL 1. Testimony of Mother. From 2008 through the 2012-2013 school year, Student was enrolled in INCLUSION PROGRAM at RELIGIOUS SCHOOL 1 and RELIGIOUS SCHOOL 2. Exhibit p-18. Since at least 2003, Student has been identified as a child with a disability under the IDEA and has had DCPS IEPs. Throughout this period, DCPS has served as Student's Local Education Agency (LEA). Over the years, Student's primary disability classification has been identified as Speech and Language Impairment (SLI), SLD, or Other Health Impairment - Attention Deficit Hyperactivity Disorder (OHI-ADHD). Exhibit P-18. Most recently, in October 2012, Student's IEP team at Religious School 2 changed his disability classification from SLI to SLD. Exhibit P-19.

3. In the spring of 2012, Student was referred by the D.C. Disability Determination Division to LICENSED PSYCHOLOGIST for a psychological evaluation of his intellectual functioning and personality. On the Wechsler Intelligence Scale for

Children IV (WISC-IV), Student's scores indicated that his full scale functional intelligence fell within the limits of the Extremely Low range. Licensed Psychologist concluded that Student presented with an Extremely Low to borderline level of current functional intelligence and moderately slow pace of growth in all areas of communication, daily living skills and socialization. Licensed Psychologist diagnosed Student with Learning Disorder Not Otherwise Specified and Depressive Disorder (Rule Out). Exhibit P-17.

4. On August 22, 2012, a Religious School 2 special educator conducted a Woodcock Johnson III (WJ-III) educational assessment of Student. He reported that when compared to others at his grade level, Student's performance was average in basic reading skills and reading comprehension, low average in broad reading, math reasoning and basic writing skills and low average in math calculation skills. His scores indicated a grade equivalence of 4.2 for Broad Reading and 4.3 for Broad Math. Exhibit P-9.

5. In August and September 2012, Speech-Language Pathologist 1 (SLP-1) conducted a Speech and Language re-evaluation of Student to determine whether there was a communication disorder/impairment which adversely affected Student's educational performance. SLP-1 conducted an extensive record review, made a classroom observation and conducted a battery of assessments. SLP-1's assessment results indicated that Student had acquired foundational language skills and age appropriate articulation skills. She reported that Student's communication skills were challenged when he is required to think critically, abstractly and to reason. SLP-1 analyzed Student's Speech and Language testing from 2003 through 2012 and concluded that his communication skills had generally remained flat over the years. She

reported that although test results indicated weaknesses in areas of oral language skills, vocabulary and social language, there was not evidence that these weaknesses were preventing Student from accessing the educational curriculum, *i.e.*, no evidence of adverse educational impact. She concluded that based on DCPS eligibility/dismissal standards, evidence suggested that there was not an educational need for speech and language related services in order for Student to access the educational curriculum.

Exhibit P-18.

6. On September 24, 2012, Student's triennial eligibility team convened at Religious School 2. Mother attended the meeting. The team changed Student's Primary Disability Classification from SLI to SLD. At the meeting, the school social worker reported that she had done several depression inventories of Student over the years, and that the inventories had all come back negative and no problems were noted. The team decided to change Student's Speech and Language services from two hours per month of direct services to two hours per month of consultative services. Exhibits R-7, P-19. Mother executed an IEP amendment form to indicate that she agreed to amend the IEP without convening an IEP meeting. Exhibit R-8.

7. At an annual IEP review and Least Restrictive Environment (LRE) Meeting at Religious School 2 on July 19, 2013, Student was reported to have demonstrated continuous progress in all areas of concern over the preceding four years. The special educator reported that Student continued to function on the 4th grade skills level. Exhibit R-10. Student's language arts/homeroom teacher reported that over the 2012-2013 school year, Student made impressive progress socially and academically and that he experienced significant gains in language arts in the fourth quarter. Exhibit R-11. The team concluded that Student was ready to transition to a high school inclusion

program with appropriate educational supports and accommodations in place. Exhibit R-10. The July 19, 2013 IEP provided that Student would receive 5 hours per week of Specialized Instruction outside general education, 10 hours per week of Specialized Instruction inside general education, 4 hours per month of Behavioral Support Services and two hours per month of Speech-Language Pathology. Exhibit P-20. The IEP team rejected full-time specialized instruction services for Student because that was not the LRE. Exhibit R-13.

8. The IEP Team envisioned that Student would matriculate to INCLUSION PROGRAM program at CITY HIGH SCHOOL 2. However, Mother opted to send Student to City High School 1 because she considered City High School 2 to be more violent. Testimony of Mother.

9. Case Manager has been Student's special education inclusion teacher in English and his case manager at City High School 1. She has had daily interaction with Student at school. Testimony of Case Manager. The City High School 1 IEP team convened for an annual review of Student's IEP on April 30, 2014. Exhibit P-21. Prior to the IEP meeting, Case Manager conducted a Brigance transitions assessment of Student and a Woodcock Johnson III Normative Update Tests of Achievement (WJ-III). Exhibits R-17, R-19. Case Manager reported that Student's conversational proficiency seemed typical for his grade level. On the WJ-III, when compared to others of his age level, Student's overall level of achievement was low. His fluency with academic tasks was within the low average range. His academic skills and his ability to apply those skills were both within the low range. His standard scores were low average in broad reading and written expression. His standard scores were low in brief reading, broad mathematics, math calculation skills, brief mathematics, broad written language and

brief writing. His scores indicated a grade equivalence of 5.5 for Broad Reading, 5.2 for Broad Math and 5.4 for Broad Written Language. Exhibit R-17.

10. At the end of the third term of the 2013-2014 school year (March 28, 2014) at City High School 1, Student's grades in academic courses were Spanish 1 - F, Biology 1 - C, English 1 - F, World History - F, Algebra 1 - C, and Music - C and Art and Design - B. He was reported to lack initiative and to not complete assignments/homework. He was reported to have some 166 class absences for the school year. Exhibit R-18. Student's final grades for the school year in academic courses were Spanish 1 - F, Biology 1 - C, English 1 - D, World History - F, Algebra 1 - D, and Music - C- and Art and Design - B. Exhibit P-16.

11. On informal student progress reports from late April 2014, Student was reported by his teachers to be capable, but not adequately participating or completing assignments, disengaged, and unmotivated. Student's algebra teacher reported that he works best in small groups. Exhibit R-24.

12. Student's City School 1 IEP team met on April 30, 2014 for the annual IEP review. Mother and EDUCATIONAL ADVOCATE attended the meeting. Although Student's mathematics teacher reported Student had made progress over the school year, his teachers for English I, World History and Spanish all reported concerns that Student's lack of motivation, failure to complete homework, poor participation and low test scores all contributed to his falling grades. In Reading, it was reported that Student would benefit from small group instruction. The IEP team continued Student's Specialized Instruction at 5 hours per week outside and 10 hours per week inside general education. Behavioral Support Services were continued at 240 minutes per month and Speech-Language Pathology was reduced to 60 minutes per month on a

consultative basis. Exhibit P-21. At the meeting, Educational Advocate requested, *inter alia*, that Student be assessed for Attention Deficit Disorder (ADD), that he be provided direct speech services, and that he be placed in a full-time learning disabled (LD) program. Exhibit R-21.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

1. Did DCPS deny Student a FAPE by failing to evaluate him in all areas of suspected disability, specifically by not conducting an assessment for Attention Deficit Disorder (ADD) or a Vocational Level II or Level III assessment?

Petitioner first contends that DCPS denied Student a FAPE by not evaluating him for ADD. Student has a history of a diagnosis of Attention Deficit-Hyperactivity Disorder (ADHD). In 2006, Student's disability classification was OHI based upon ADHD. In 2009, his disability classification was apparently changed from OHI to Speech and/or Language Impairment. The IDEA mandates that the Local Education Agency (LEA) must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status,

general intelligence, communicative status and motor abilities. *See* 34 CFR § 300.304(c)(4). Prior to Student's triennial eligibility reevaluation in September 2012, Clinical Psychologist conducted a psychological evaluation. Neither that evaluator nor the September 24, 2012 MDT team reported ADD as a suspected disability. At the April 30, 2014 IEP meeting, Educational Advocate requested that Student be assessed for ADD. However, the only evidence at the due process hearing concerning Student's possibly having an attention deficit disorder was the testimony of School Psychologist who suggested that Student's reported lack of initiative in class and failure to complete school work could be related to ADHD, an executive functioning disorder, lack of motivation, or a depressive disorder. This witness had never met student, not evaluated him, and had not observed him in class or communicated with his teachers or other service providers. I found his testimony to be speculative at best. Neither has Petitioner alleged or shown that Clinical Psychologist's 2012 psychological evaluation of Student was inadequate or incomplete. I conclude that Petitioner has not met her burden of proof to show that DCPS failed to evaluate Student for ADD as a specific area of suspected disability.

Petitioner also alleges that DCPS has denied Student a FAPE by not conducting a Level II or Level III vocational assessment in advance of developing his April 30, 2014 IEP. The IDEA requires that, beginning not later than the first IEP to be in effect when a student turns 16, the student's IEP must include post-secondary goals and transition services (including courses of study) needed to assist the student in reaching those goals. Transition services include, "if appropriate," the provision of a functional vocational evaluation. 34 CFR §§ 300.320(b), 300.43. Student would turn 16 in the year following adoption of the April 30, 2014 IEP. The post-secondary transition plan in

Student's April 30, 2014 IEP was based upon a Brigance transitions assessment conducted by Case Manager and her interview with Student. Case Manager testified that because Student had just transitioned from middle school to high school, a full vocational assessment was not yet warranted. There was no showing at the due process hearing that when Student's IEP team met on April 30, 2014, a Level II or Level III vocational assessment was needed or appropriate as part of Student's transition services. Petitioner has not met her burden of proof on this issue.²

2. Is DCPS' April 30, 2014 IEP for Student inappropriate because the IEP i) fails to provide an appropriate transition plan; ii) fails to provide sufficient instructional services in an outside general education setting; iii) inappropriately reduced speech and language direct services to 60 minutes per month of consultation services and iv) fails to adequately address attendance and focus issues?

The IDEA requires that to provide a FAPE, "[t]he IEP must, at a minimum, 'provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *N.T. v. District of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012),

² The failure to conduct a required evaluation would be a procedural violation of IDEA. An IDEA claim is viable only if the alleged procedural violation affected the student's substantive rights. See *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C.Cir.2006). Petitioner offered no evidence that Student suffered an "educational harm" resulting in denial of FAPE from DCPS' not conducting a Level II or Level III vocational assessment. See, e.g., *Taylor v. District of Columbia* 770 F.Supp.2d 105, 109-110 (D.D.C.2011).

quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003). The measure and adequacy of an IEP must be determined as of the time it is offered to the student. *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008).

The Petitioner contends that City High School 1's April 30, 2014 IEP is inappropriate for Student because it lacks an appropriate transition plan, fails to provide sufficient instructional services in an outside general education setting; inappropriately reduced speech and language services and fails to adequately address attendance and focus issues. DCPS maintains that the IEP is appropriate and reasonably calculated to provide Student educational benefits.

Petitioner provided no evidence that the IEP's transition plan is not appropriate for Student. As noted above in this decision, the transition plan is based upon a Brigance transition assessment and Case Manager's personal interview with Student. Petitioner has not shown that the transition plan is inadequate.

Petitioner's IEP speech and languages services claim relates to the claim that the Religious School 1 IEP team inappropriately changed Student's speech-language services from direct to consultation services in the October 2012 IEP. I will address those claims in the next section.

Petitioner's concern that the April 30, 2014 IEP does not provide Student sufficient specialized instruction outside the general education classroom and, specifically, that the IEP fails to adequately address attendance and focus issues stems from Student's poor and failing grades for the 2013-2014 school year and teachers' comments on Student's April 2014 Student Progress Reports. Case Manager acknowledged in her testimony that Student was showing less progress than he had

demonstrated at Religious School 2, but maintained that considering Student was transitioning from middle school to high school, he had made progress. I am not persuaded.

The evidence establishes that Student has an “Extremely Low to borderline” level of functional intelligence. In the 12-month Inclusion Program at Religious School, Student made academic progress and the Religious School 1 IEP team agreed that Student was ready to transition to the Inclusion Program offered by the same organization at City High School 2. However, out of safety concerns, Mother elected instead to enroll Student in City High School 1. Under the July 19, 2013 IEP, which provides 5 hours per week of specialized instruction outside, and 10 hours inside, the general education setting, Student has floundered at City High School 1. In his core academic subjects, he failed Spanish and World History, and received D’s in English and Algebra and a C in Biology. His teachers reported lack of participation, lack of motivation, and failure to complete assignments and homework. Student has also been repeatedly absent from some classes. On the Woodcock-Johnson III achievement tests, Student’s Grade Equivalence Scores in Broad Reading and Broad Math improved by only approximately 1 grade-year between August 2012 and March 2014. As of the April 2014 testing, Student remained some four grade- years behind in Broad Reading, Broad Math and Broad Written Language.

The IDEA requires an LEA to ensure that the IEP team revises a student’s IEP, as appropriate, to address, *inter alia*, a student’s lack of expected progress toward the IEP annual goals and in the general education curriculum. *See* 34 CFR § 300.324(b). At the April 30, 2014 IEP annual review meeting, the IEP team failed to revise Student’s Specialized Instruction Services even though the IEP team reported that Student

required “a great deal of assistance in Mathematics” and that to successfully access the curriculum in Reading, he would benefit from small group instruction. Student’s mathematics teacher had also reported in an April 29, 2014 Student Progress Report that Student works best in small groups. The April 30, 2014 IEP team continued Student’s Specialized Instruction Services at 10 hours per week in General Education and 5 hours per week outside General Education. I find that by not revising Student’s Specialized Instruction Services and placement in the April 30, 2014 IEP, the IEP team failed to address Student’s lack of progress under the prior IEP.

Student’s teachers almost uniformly reported that his progress in the general education curriculum is hampered by repeated absences, poor participation and failure to complete assignments. The IDEA requires, in the case of a child whose behavior impedes the child’s learning or that of others, that the IEP team consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 34 CFR § 300.324(a)(2)(i); *Harris v. District of Columbia*, 561 F.Supp.2d 63 (D.D.C.2008). In *Lamoine School Committee v. Ms. Z. ex rel. N.S.*, 353 F.Supp.2d 18 (D.Me.2005), the Court considered a case of a student who had an “extensively documented” array of difficulties, particularly problems with attendance. The Court held that the Local Education Agency’s (“LEA”) IEP, which failed to address in some fashion student’s persistent absence and tardiness, could not be “adequate and appropriate.” *Id.* at 34. *See, also, Lauren P. ex rel. David P. v. Wissahickon School Dist.*, 2007 WL 1810671, 7 (E.D.Pa.2007), *rev’d in part on other grounds*, 310 Fed.Appx. 552, 2009 WL 382529 (3rd Cir. 2009) (LEA’s inconsistency of approach to Student’s behavioral problems, including lateness, absences, and failure to complete assignments, resulted in denial of FAPE.) Here instead of addressing Student’s

absences, poor participation or failure to complete assignments in the April 30, 2014 IEP, the IEP team only maintained the one hour per week of behavioral support counseling services from Student's prior IEP. In sum, I conclude that by not addressing Student's lack of expected progress toward his IEP annual goals and in the general education curriculum, and by not addressing Student's identified behavior problems, DCPS' April 30, 2014 IEP was not reasonably calculated to provide educational benefit to Student.

3. Did DCPS deny Student a FAPE because Religious School 2's October 11, 2012 IEP inappropriately reduced Student's speech and language services?

In the October 11, 2012 IEP, the Religious School 2 IEP team changed Student's Speech-Language Pathology services from 2 hours per month of direct services to 2 hours per month of consultative services. Mother contends that this IEP change from direct speech and language services was inappropriate. SLP-1 explained that the 2012 IEP team changed Student's speech and language services because, as of the fall of 2012, Student had been receiving speech and language services for about 12 years and that his speech-language assessment scores had been "flat," showing little change, since 2003. She testified that where a student's scores on speech and language assessments do not show gains from speech-language services, it indicates that the student does not have a speech and language impairment, but rather is affected by cognitive challenges.

Parent's expert, Audiologist, testified to the contrary that Student's 2012 Spoken Language score, 72, indicated improvement over his 2003 score of 64. Audiologist opined that Student would continue to grow if provided direct services. However SLP-1 explained that an increase of at least 15 points (one standard deviation) is needed to show a significant change and that the 8-point difference between the 2003 and 2012

assessments indicated that the scores were very consistent. Audiologist has never met or assessed Student. I found his opinion to be less persuasive than the testimony of SLP-1, who conducted the 2012 comprehensive speech and language assessment and personally interviewed Student's speech-language provider at Religious School 2.

Petitioner also contends that Student was denied a FAPE by the decision of the April 30, 2014 IEP team at City High School 1 to reduce Student's consultative speech-language services to one hour per month. SLP-2 has provided Student's consultative speech and language services at City High School 1 since the beginning of the 2013-2014 school year. She testified, without rebuttal, that speech-language issues are not negatively impacting Student's educational performance and that Student does not require more services than the one hour per month of consultative services specified in the April 30, 2014 IEP. I conclude that Petitioner has not met her burden of proof to establish that the consultative speech-language pathology services, provided in the respective October 11, 2012 and April 30, 2014 IEPs, were not reasonably calculated to provide Student educational benefits.

Remedy

In this decision, I have found that DCPS' failure to ensure that Student's IEP team revised his IEP in April 2014 to address his lack of expected academic progress and to address his behavior problems denied Student a FAPE. The IDEA gives Hearing Officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir. 2005). A compensatory education award must "rely on individualized assessments" after a "fact specific" inquiry. *Id.* "In formulating a new compensatory education award, the hearing officer must determine 'what services [the

student] needs to elevate him to the position he would have occupied absent the school district's failures.” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527.) See, also, e.g., *Turner v. District of Columbia*, 952 F.Supp.2d 31 (D.D.C.2013). 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. *Gill v. District of Columbia*, 770 F.Supp.2d 112, 116-117 (D.D.C.2011), *aff'd.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011).

Petitioner has proposed a compensatory education plan for Student (Exhibit P-24), devised by Educational Advocate, who did not testify at the hearing. This plan asserts, without any evidentiary support, that Student's April 20, 2014 IEP should have provided a full-time special education placement for Student. Educational Advocate proposes that Student receive, as compensatory education, four hours per week, for 10 months, of "special education services" in math, reading and written language. Although I have found that the IDEA required DCPS to ensure that Student's IEP team addressed his lack of expected progress during the 2013-2014 school year, there was no credible evidence that Student requires a full-time special education placement. I find Education Advocate's compensatory education proposal unpersuasive.

Unfortunately, Petitioner offered no evidence of what would have been an appropriate level of services in the April 30, 2014 IEP or what Student needs "to elevate him to the position he would have occupied" had the IEP team developed an appropriate IEP. I find that the evidence before me does not provide a evidentiary basis for a "fact-specific" compensatory education remedy. See *Reid, supra*. Therefore, I will deny,

without prejudice, Petitioner's request for a compensatory education award.

Because I have found that DCPS' April 30, 2014 IEP, was not reasonably calculated for Student to receive educational benefits, I will order DCPS to ensure that Student's IEP is appropriately revised to assess and address Student's unique needs and to provide an appropriate placement that meets those needs – specifically taking account of Student's lack of expected progress and reported behavior issues during the 2013-2014 school year. *See D.K. v. District of Columbia*, 983 F.Supp.2d 138, 141 (D.D.C.2013) (Local school officials utilize the IEP to assess the student's needs and assign a commensurate learning environment.)

ORDER

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

1. Within 15 school days of entry of this order, DCPS shall convene Student's IEP team to review Student's needs that result from his disability and revise his IEP, as appropriate, in accordance with this decision and 34 CFR § 300.324(b), including, but not limited to, providing an appropriate placement;
2. Petitioner's request for an award of compensatory education is denied without prejudice; and
3. All other relief requested by the Petitioner herein is denied.

Date: September 18, 2014

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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