

I. JURISDICTION

This proceeding was invoked in accordance with the rights established pursuant to “The Individuals with Disabilities Education Act (“IDEA”)”, Public Law 101-476, reauthorized as “The Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”)”, Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations (“DCMR”), Chapter 30, Subtitle VII, Chapter 25.

II. BACKGROUND

The student is _____ years of age, and a resident of the District of Columbia. The student attends _____ a District of Columbia Public School, located in the District of Columbia; and is identified as disabled and eligible to receive special education and related services, as a student with a disability classification of mental retardation (“MR”); pursuant to “The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)”.

On October 26, 2009, Petitioner through her Attorney, initiated a due process complaint, alleging that the District of Columbia Public Schools, hereinafter referred to as “DCPS” or “Respondent”, denied the student a free and appropriate public education (“FAPE”), by failing to: (1) conduct and review age-appropriate transition assessments related to training, education, employment, and independent living skills; (2) timely review and revise the student’s November 28, 2007 Individualized Education Program (“IEP”); (3) develop an appropriate IEP; (4) implement the student’s November 28, 2007 IEP; (5) provide an appropriate placement; and (6) comply with parent’s request for access to student records; in violation of “The Individuals with Disabilities Education Act (“IDEA”)”, reauthorized as the “The Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”).”

On December 16, 2009, the Petitioner through her Attorney, initiated an amended due process complaint, alleging that District of Columbia Public Schools, hereinafter referred to as “DCPS” or “Respondent”, denied the student a free and appropriate public education (“FAPE”), by failing to: (1) conduct and review triennial evaluation; (2) conduct and review age-appropriate transition assessments related to training, education, employment, and independent living skills; (3) review and revise a qualified child’s IEP; (4) develop an appropriate IEP; (5) implement a qualified child’s IEP; (6) provide an appropriate placement; and (7) comply with parent’s request for access to student records.

The due process hearings were held on February 18, 2010, at 9:00 a.m.; February 22, 2010, at 11:30 a.m., and February 23, 2010, at 9:30 a.m., at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003, as scheduled.

III. PROCEDURAL POSTURE

A due process complaint was filed in this matter on October 26, 2009; and the Hearing Officer issued a pre-hearing conference notice, scheduling the pre-hearing conference for November 24, 2009. Respondent filed a response to the complaint on November 5, 2009. The prehearing conference was held on November 17, 2009; and on November 19, 2009, the Hearing Officer issued a prehearing conference order, confirming the due process hearing for December 15, 2009 at 9:00 a.m...

On December 1, 2009, DCPS filed "District of Columbia Public Schools' Motion to Dismiss Parent's Administrative Due Process Complaint Notice", alleging that Petitioner failed to respond to requests for a resolution meeting; and failed to prosecute the complaint. On December 4, 2009, Petitioner filed "Petitioner's Opposition to DCPS' Motion to Dismiss". On December 5, 2009, the Hearing Officer issued an Order denying Respondent's motion to dismiss the complaint, due to failure to prosecute.

On December 16, 2009, Petitioner filed an amended due process complaint; and on December 18, 2009, a resolution meeting was held, resolving issues 1 and 2 of the complaint of the amended complaint. On January 3, 2010 the Hearing Officer issued a prehearing notice scheduling the prehearing conference for January 22, 2010 at 4:00 p.m... The prehearing conference was rescheduled to February 1, 2010, at 4:00 p.m...

On January 6, 2010, Petitioner filed "Petitioner's Motion for Partial Summary Adjudication", with regard to issues 1 and 2 of the amended complaint. On January 8, 2010, Respondent filed "District of Columbia Public Schools' Opposition to Petitioner's Motion for Partial Summary Adjudication". On January 15, 2010, the Hearing Officer issued an Order granting Petitioner's motion, on issues 1 and 2 of the amended complaint, and ordered Respondent to fund independent evaluations, and convene a meeting to review the evaluations, among others.

The prehearing conference convened on February 1, 2010, at 4:00 p.m., as scheduled, and a prehearing conference order issued on that date. On February 10, 2010, Respondent filed a motion for continuance of the February 11, 2010 due process hearing to February 18, 2010, due to the unavailability of witnesses, due to the inclement weather on February 5, 2010 and February 10, 2010. Absent objection from Petitioner, and based upon a finding of good cause, the Hearing Officer granted Respondent's motion for continuance. The due process hearing convened on February 18, 2010, at 9:00 a.m.; however, due to the lateness of the hour when Petitioner concluded its case, Respondent's witnesses were no longer available, necessitating a continuance of the hearing. Absent objection from Petitioner, and based upon a finding of good cause, the Hearing Officer granted Respondent's motion for continuance, continuing the hearing to February 22, 2010 at 11:30 a.m...

On February 22, 2010, the due process hearing convened as scheduled, however, after the hearing was called to order and after discussion of preliminary matters, Respondent's Attorney was advised that there was a fire at _____ and all students and staff were evacuated from the building. As a result, the location and availability of the LEA's witnesses-

could not be determined, and the hearing was continued to February 23, 2010, at 9:30 a.m... The due process hearing convened on February 23, 2010, at 9:30 a.m., at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003, as scheduled.

IV. ISSUES

The following issues are before the court for decision?

- (1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to convene an Individualized Education Program team meeting with parent to review and revise the student's Individualized Education Program (IEP), from December 16, 2007 through December 16, 2009?
- (2) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to develop an appropriate IEP for the student from December 16, 2007 through December 16, 2009?
- (3) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to implement the student's IEP's (i.e. November 28, 2007, and December, 11, 2008)?
- (4) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate placement from December 16, 2007 through December 16, 2009?

V. RELIEF REQUESTED

1. Declaratory: DCPS to be found to have denied the student a FAPE by failing to review and revise the student's November 28, 2007 IEP, in a timely manner; failing to develop an appropriate IEP, failing to implement the student's November 28, 2007 IEP, and failing to provide the student an appropriate placement.
2. Injunctive:
 - a. DCPS immediately fund and place the student at a full-time special education school of the Petitioner's choosing;
 - b. Within 30 days of the student's placement at an appropriate school or within 10 days of DCPS' receipt of the last of the student's independent evaluations, whichever is later, DCPS, DCPS to convene an IEP meeting to:
 - i. Review all current evaluations,
 - ii. Review and revise the student's IEP as appropriate, and
 - iii. Discuss and determine appropriate compensatory education to compensate the student for DCPS' denials of FAPE as established through this proceeding;
 - c. DCPS to pay reasonable attorney's fees and related costs incurred in the matter.

3. Miscellaneous

VI. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties; and whether there were any objections to the disclosures. Receiving no objections, the following disclosures were admitted into the record as evidence:

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibits 15; and witness list dated
- December 8, 2009; and Petitioner's Exhibits 01 through Petitioner's Exhibits 20; and witness list dated February 8, 2010.

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF RESPONDENT

- Respondent's Exhibits 01 through Respondent's Exhibits 14; and a witness list dated December 8, 2009; and Respondent's Exhibits 01 through Petitioner's Exhibits 24; and witness list dated February 8, 2010.

VII. FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER

ISSUE 1

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to convene an Individualized Education Program team meeting with parent to review and revise the student's Individualized Education Program (IEP), from December 16, 2007 through December 16, 2009?

Findings of Fact

1. According to the IDEA, 34 C.F.R. §300.507, a parent or a public agency may file a due process complaint on any of the matters described in §300.503(a) (1) and (2); and the complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint.

Petitioner filed the amended complaint on December 16, 2009; therefore, consistent with the two (2) year statute of limitations for filing a complaint, the court will consider all violations occurring within (2) years preceding filing of the complaint, specifically, December 16, 2007 through December 16, 2009.

2. The student is _____ years of age; and an _____ grade student at _____ a public school located in the District of Columbia. The student

resides in the District of Columbia with his biological sister; the legal guardian and Petitioner in this matter.

The student is identified as disabled and eligible to receive special education and related services, as a student with a disability classification of mental retardation ("MR"); pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)".

The student's December 11, 2008 and December 1, 2009 IEPs recommend a full-time special education program, in an out of general education setting.

provides instruction to disabled and nondisabled student, in an integrated general education setting. offers a reading resource class for disabled and nondisabled students; and a "cluster" class for mentally retarded students. is unable to provide the student a full-time special education program, in an out of general education setting, as recommended in his IEPs. The student attends school, albeit on an inconsistent basis, however, consistently fails to attend classes; resulting in his continued academic and behavioral regression.

3. On *November 28, 2007*, DCPS convened a Multidisciplinary Development Team ("MDT") meeting with parent. The MDT meeting notes reflect that the MDT discussed the student's academic weaknesses, noncompliant behavior, and poor attendance. The MDT also developed an Individualized Education Program ("IEP") for the student, recommending that the student expend 84% of his time *out of the general education setting; 26 hours of specialized instruction; and 1 hour of speech/language services*, each week.

The MDT issued a "Prior to Action Notice" indicating that the student would continue receiving services in a combination general education and resource classroom setting, at and the evaluation procedures utilized to measure the student's performance would consist of documented observation. The MDT also developed and attached to the student's IEP, an incomplete "DCPS Transition Services Plan".

On *December 11, 2008*, DCPS developed an IEP for the student recommending 26 hours of specialized services, and 60 minutes of speech-language services, per week; outside the general education environment. The IEP meeting participant section of the cover page of the IEP suggests that a MDT meeting was held, including *parent*, the student, Special Education Coordinator, Social Worker, and the student's teacher; and although the team recommended speech language services for the student, the Speech/Language Pathologist was not a member of the team. A completed District of Columbia Postsecondary Transition Plan is also attached to the IEP.

The parent's signature is on the IEP cover page, in addition to the signature of the other participants; and directly akin to each meeting participant's signature is a notation describing the manner of their participation in the meeting (i.e. attending meeting, or participated by phone); however, there is no notation next to the parent's signature

indicating the manner in which she participated in the meeting. Additionally, the IEP reflects that the student attended the meeting; however, the student's signature is not on the IEP.

The DCPS parent contact log reflects that on December 11, 2008, the date of the IEP team meeting and development of the IEP, a telephone contact was made by school personnel to the guardian, and there was no response; and on this date a letter was sent to the guardian; reason unknown.

4. The guardian testified that she failed to attend any IEP team meetings for the student, since November 28, 2007, or during the 2008/09 school year; however, in December, 2008 it was requested that she visit the school to discuss an altercation involving the student; and during this time, it was requested that she visit all of the student's classes to discuss his progress, and sign the December 11, 2008 IEP.

The guardian also testified that she complied with DCPS' request by visiting the student's classes, and signing the IEP, however, did not participate in an IEP team meeting on that date. The guardian's testimony was not refuted, therefore, based on the evidence, the IEP team meeting that convened on December 11, 2008, failed to include parent as a participant.

5. The current Special Education Coordinator (SEC), and the student's Special Education Teacher from the 2008/2009 school year, testified that she attended two meetings where the student's IEP was discussed, and she made a telephone call to the guardian; and sent a certified letter of invitation regarding one of the meetings; however, presented no testimony regarding the dates of the two meetings, or whether the guardian attended the meetings; dates of the telephone call to parent, or a copy of the certified letter of invitation.
6. On *December 1, 2009*, DCPS developed an IEP for the student recommending 26 hours of specialized services, 60 minutes of speech-language services, and 30 minutes of behavioral support services, per week; outside the general education environment. A "Classroom Accommodations and State Assessment (DC-CAS) Participation and "Post-Secondary Transition Plan" are attached to the IEP.

The IEP meeting participant section of the cover page of the IEP indicates that a MDT meeting was held, and the following individuals attended the meeting: the Special Education Coordinator, Case Manager/Teacher, Social Worker, Speech Language Pathologist, and the student's special education teacher. The IEP cover page includes the following handwritten notation: "*sister/guardian could not be reached for meeting. See communication log*". The IEP indicates that the evaluation procedures and schedule would include "log/each nine weeks test/at opportunity".

7. The DCPS parent contact log reflects that on December 1, 2009, a telephone call was made by the student's teacher to the guardian, and the guardian could not be reached; purpose of call not indicated.

The contact log also reflects that on December 3, 2009, two (2) days following development of the December 1, 2009 IEP, a telephone call was made by DCPS school personnel to the guardian, and there was no response; and a letter was sent on this date; purpose of telephone call and letter unknown. Detailed information regarding the telephone calls and letter is not available.

8. A resolution meeting was held on December 18, 2009. Meeting participants included: DCPS Compliance Manager, Compliance Case Manager, Social Worker, Special Education Coordinator, parent, Education Advocate, and the student's special education teacher. The resolution meeting notes reflect that the student's IEP was reviewed at the meeting; however, there is no evidence that the IEP was reviewed and revised consistent with the notice and procedural requirements of the IDEA, 34 C.F.R. §300.322.
9. The record reflects that DCPS convened an Individualized Education Program team meeting on December 11, 2008 and December 1, 2009, without the parent; however, failed to initiate efforts necessary to ensure that the guardian was present at the IEP team meetings or was afforded the opportunity to participate, including notifying the guardian of the meetings in writing, early enough to ensure that she would have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place.

DCPS also failed to present evidence of written notice of the meetings to the parent, including the purpose, time, and location of the meetings and who would attend; although it presented numerous telephone logs reflecting telephone calls to the guardian and the results of those calls, without indicating the purpose of the calls; a certified mail receipt dated November 27, 2009, addressed to the guardian, purpose unknown; and Letters of Invitation to the guardian dated *December 3, 2008, for a meeting held on November 5, 2008; December 11, 2008 for a meeting held on December 11, 2008; and March 19, 2009, for a meeting held on March 12, 2009.*

10. DCPS may conduct an IEP team meeting without parent in attendance, if unable to convince the parents that they should attend, however, it **must** maintain a record of its attempts to arrange a mutually agreed on time and place; such as ***detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received;*** and detailed records of visits made to the parent's home or place of employment and the results of those visits; which failed to occur in this matter.

Although there are numerous telephone logs documenting telephone calls to the guardian, the logs are not sufficiently detailed to determine the nature and outcome of the calls; do not reflect calls far in advance of the December 11, 2008 and December 1, 2009 IEP team meetings, to provide the guardian an opportunity to attend the meetings; and telephone logs, without any other documentation, are insufficient to satisfy the requirements of the IDEA, by taking steps to ensure that the guardian is present at each IEP team meeting and afforded the opportunity to participate in the IEP team meetings.

11. DCPS failed to convene an Individualized Education Program team meeting with parent to review the student's IEP, periodically, but not less than annually, to determine whether the annual goals for the student were being achieved; *or* revised the student's IEP to-

address any lack of expected progress toward the annual goals, and in the general education curriculum; the results of any reevaluations conducted, the student's anticipated needs, information regarding the student provided to, or by, the parent, or other matters; from December 16, 2007 through December 16, 2009.

Conclusions of Law

1. DCPS failed to comply with the IDEIA, 34 C.F.R. Section 300.321(a) which provide that the public agency must ensure that the IEP Team for each child with a disability includes the *parents of the child*; and in this instance, the student's guardian.
2. DCPS failed to comply with 34 C.F.R. §300.322 of the IDEA, which requires that each public agency *take steps to ensure* that the guardian was present at each IEP team meeting and afforded the opportunity to participate.
3. DCPS failed to convene a meeting with parent to *review* the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved, in violation of the IDEA, 34 C.F.R. §300.324(b)(i).
4. DCPS also failed to comply with the IDEA, Section 300.324 (b)(ii); which provides that each public agency must ensure that subject to paragraphs (b)(2) and (b)(3) of this section, an IEP team meeting is held with parent to *revise* the student's IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum, if appropriate; the results of any reevaluation conducted; information about the child provided to, or by, the parents; the student's anticipated needs; or other matters; which failed to occur in this matter.
5. IDEA, at 34 C.F.R. §300.101 provides that a "free appropriate public education" ("FAPE") must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d). 20 U.S.C. §1412(1).

A free appropriate public education "consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Bd. Of Education v. Rowley*, 458 U.S. 176, 188-89, 73 L.Ed. 2d 690, 102 S.Ct.3034 (1982).

6. According to *Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982)*, a child is deprived of a free and appropriate public education:
- (a) If the LEA violated the IDEA's procedural requirements to such an extent that the violations are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE), or
 - (b) If the IEP is not reasonably calculated to enable a child to receive educational benefits.

In this matter, although it may be argued that the student's poor attendance attributed to DCPS' inability to provide the student the special education and related services recommended in his IEPs, its failure to comply with the procedural requirements of IDEA, specifically, failing to conduct periodic and annual reviews and revisions of the student's IEPs with the guardian; and failing to initiate measures to address the student's truancy and academic regression, over such an extended period of time, are to such an extent that the violations are serious, having a detrimental impact upon the child's right to a free and appropriate public education (FAPE).

7. Additionally, the FAPE requirement under the IDEA is applicable to procedural and substantive violations, which may result in a denial of a FAPE. The 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, if the inadequacies:
- (I) impede the child's right to a free and appropriate public education;
 - (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
 - (III) caused a deprivation of educational benefit."

The Hearing Officer finds that the procedural violations in this matter, impede the student's right to a FAPE; significantly impede the guardian's opportunity to participate in the decision making process regarding the provision of a FAPE to the student; and deprives the student the educational benefit he is entitled to receive under the IDEA.

The procedural violation also resulted in substantive harm to the guardian and student because the procedural violations in question seriously infringed upon the guardians' opportunity to participate in the IEP process; and as a result, deprives the student an individualized education program specifically designed to address his unique academic and functional needs; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

Decision

It is the Hearing Officers' Decision that Petitioner satisfied its burden of proof, presenting evidence that DCPS denied the student a free appropriate public education (FAPE) by failing to convene an Individualized Education Program team meeting with parent to review and revise the student's Individualized Education Program (IEP), from December 16, 2007 through December 16, 2009; in violation of IDEA, 34 C.F.R. §300.321, §300.322, and §300.324; entitling the student to compensatory education services.

ISSUE 2

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to develop an appropriate IEP for the student from December 16, 2007 through December 16, 2009?

Findings of Fact

1. The record reflects that on December 3, 2008, DCPS drafted a letter to the guardian, inviting her to attend a meeting on November 5, 2008, at 2:00 p.m., at the school to discuss student's IEP, behavior, placement, ESY, exit, compensatory education services, and post secondary transition.

The record reflects a Letter of Invitation dated December 11, 2008, indicating that attempts to contact her prior to the letter to set up a meeting had failed, and that the school intended on that date to proceed with the meeting on December 11, 2008, at 2:00 p.m., at the school. The record reflects a Letter of Invitation dated March 19, 2009, indicating that she was contacted on November 19, 2008, to no avail; and to prevent further delay the IEP team meeting would be held on March 12, 2009, at 9:00 a.m., at the school.

The record reflects several notes of telephone calls to the guardian; and a note of a telephone contact with the guardian on December 10, 2008, confirming her attendance of the December 11, 2008 IEP team meeting. However, the record does not reflect letters of invitation sent to the guardian far enough in advance of the December 11, 2008 and December 1, 2009 IEP team meetings, inviting her to attend the meetings, as required by the IDEA.

2. In developing the student's December 11, 2008 IEP DCPS failed to properly convene an IEP team which included the Speech and Language Pathologist, and the student's guardian. As a result, the IEP was developed without input from the student's guardian; or the Speech and Language Pathologist, regarding the student's speech and language needs.
3. In developing the student's December 1, 2009 IEP DCPS failed to properly convene an IEP team which included the student's guardian; or initiate measures to ensure that the guardian participated in the meeting, or was provided the opportunity to attend the meeting. As a result, the IEP was developed without input from the student's guardian.

4. The record reflect that the student's truancy impedes his learning, however, there is no evidence that the IEP teams considered the use of positive behavioral interventions and supports, or other strategies to address the student's truancy; and its impact on his learning. From December 16, 2007 through December 16, 2009, DCPS failed to complete a Functional Behavioral Assessment, develop an Intervention Behavioral Plan, convene a manifestation determination meeting with the guardian, initiate truancy proceedings, or implement other behavioral interventions and strategies to address the students' issue of truancy; and as a result, the student attends school periodically, however fail to attend classes; and failed to receive the special education and related services recommended in his IEPs. *See, IDEA, 34 C.F.R. §300.324.*

DCPS school officials testified that the student is often observed in the school hallways, however, failed to attend classes, which is evidence that the student wants to pursue his education; however, has social emotional or other issues precluding him from attending the classes; which are not being met. However, DCPS initiated no measures to ensure that the student received the special education and related services he requires and is entitled to receive, in an out of general education setting, as recommended in his IEPs. Instead, since November 28, 2007, DCPS allowed the student to languish in the hallways; not receive the services he is entitled, however, failed to receive; without any intervention or support from DCPS. The student's December 11, 2008 IEP does not include behavioral support services to address the student's truancy; and although DCPS included behavioral support services in the student's December 1, 2009 IEP, it failed to address the student's truancy, and as a result, the student remains truant, and receives no special education or related services.

According to the student's testimony, he fail to attend classes because he does not receive the one on one instruction and support he requires; and upon learning that the school offered an afterschool tutorial program, he enrolled in the program which he attended regularly, and received the one on one support he requires. This is further evidence that it is the student's desire to pursue his education; and when he receives the one on one academic support he requires, he attends school and is able to access the general curriculum.

5. There is no evidence that the student ever received comprehensive evaluations, in all areas of suspected disability; was reevaluated annually; or at least once every three (3) years. The record reflects that on January 8, 2010, after the complaint was filed, DCPS issued an independent educational evaluation letter, authorizing the guardian to obtain an independent comprehensive psychological evaluation, speech and language, and level III vocational assessment, at its expense.
6. There is no evidence that in developing the student's November 28, 2007, December 11, 2008, and December 1, 2009 IEPs, comprehensive evaluations were available for the team to review and revise the student's IEPs. Additionally, although an independent Educational Evaluation was completed for the student on November 16, 2009; and reviewed by the IEP team on December 1, 2009, the DCPS failed to revise the IEP consistent with the findings and recommendations in the evaluation. The team merely included 30 minutes daily, of behavioral support services, for the student, and failed to address the student's anxiety disorder, or placement.

The November 28, 2007, December 1, 2008 and December 1, 2009 IEPs were developed without the benefit of comprehensive evaluations, as a result the team developed the IEPs without the information necessary to determine the nature and extent of the special education and related services the student continued to require; whether the annual goals for the student were being achieved; and whether the student's IEPs warranted revision due to the lack of expected progress towards meeting the annual goals, or in the general education curriculum.

7. In developing the student's November 28, 2007, December 11, 2008 and December 1, 2009 IEPs, the IEP teams failed to consider the strengths of the child, concerns of the guardian for enhancing the student's education, results of prior and recent evaluations of the child; and the academic, developmental, and functional needs of the child; in violation of IDEA, 34 C.F.R. §300.324.
8. The November 28, 2007, December 11, 2008, and December 1, 2009 IEPs indicate that the student's performance would be measured by conducting documented observations; however, there is no evidence in the record of documented observations conducted by the LEA.
9. The November 28, 2007, December 11, 2008, and December 1, 2009 IEPs recommend the student's placement in an out of a general education setting; and DCPS is aware that _____ is unable to provide the student a full-time special education program; however, at each IEP team meeting it decided to maintain the student's placement at _____ in a general education setting, denying the student access to the general education curriculum and educational benefit.
10. The IEPs fail to comply with the IDEA, 34 C.F.R. §300.320 which provide that an IEP must include: a statement of the child's ***present levels of academic achievement and functional performance***, a statement of measureable annual goals, including academic and functional goals designed to meet the child's needs, ***a description of how the child's- progress toward meeting the annual goals will be measured***; and ***a statement of the special education and related services and supplementary aids and services***, and a statement of ***program modifications and supports*** for school personnel ***to enable to child to advance appropriately towards attaining the annual goals***, among others.

The student's teacher from last year testified that the goals in the student's IEPs are based on DCPS standards, and assessments are not in the student's educational records, however, she administered several informal classroom assessments to determine the student's present levels of performance; and monitored his progress utilizing charts and reports. The student's current teacher also testified that he administered informal classroom assessments to determine the student's present levels of academic performance.

On November 28, 2007, December 11, 2008, or December 1, 2009, when the IEP teams developed the student's IEPs, the teams did not have available to review and consider comprehensive evaluations, including reliable data upon which the IEP teams could refer and rely, in developing the student's IEPs, as a result, the teams failed to have the information necessary to determine the students' present levels of academic and functional performance,-

develop appropriate goals and objectives, include in the IEPs a statement of the manner in which the student's performance would be measured, or to develop an appropriate IEP for the student, consistent with the requirements of the IDEA.

11. The student's IEPs fail to provide the student a plan for educational services tailored to that student's unique needs (i.e. IEPs fail to address the student's anxiety disorder).
See, 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii).
12. The student's IEP does not provide "a basic floor of opportunity", some educational benefit, or access to the general curriculum, as articulated by Respondent, because the IEP is not specifically designed and tailored to meet the student's unique needs; denying him access to the general curriculum, and educational benefit. 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii).
13. For the reasons represented herein, the student's November 28, 2007, December 11, 2008 and December 1, 2009 IEPs are not reasonably calculated to enable the student to receive educational benefit, because they were developed without the benefit of prior or current evaluations, periodic and annual reviews and revisions, input from individuals having knowledge of the student and his needs, classroom observations, or information sufficient for the IEP teams to develop an appropriate IEP for the student.

Additionally, the IEPs are not appropriate, specifically designed to meet the student's unique needs, supported by such services, as are necessary to permit the child to access the general curriculum; and receive educational benefit.

Conclusions of Law

1. To ensure that each eligible student receives a FAPE, the IDEA requires that an individualized education program ("IEP") be developed to provide each disabled student with a plan for educational services tailored to that student's unique needs. 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii); which failed to occur in this matter.
2. According to IDEA, 34 C.F.R. §300.15 evaluations are procedures used in accordance with §§300.304 through 300.311 as a means of determining whether a child has a disability and the nature and extent of the special education and related services the student requires. Upon completion of the administration of assessments and other evaluation measures IDEA requires that a group of qualified professionals and the parent of the child must meet to determine whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and... *See, IDEA, 34 C.F.R. §300.306(a).*

DCPS failed to complete evaluations or implement other evaluation measures necessary to determine the nature and extent of the special education and related services the student continues to require; or to assess the student's progress towards meeting his annual goals, from December 16, 2007 through December 16, 2009.

3. DCPS failed to comply with the IDEA, 34 C.F.R. §300.320 which requires that an IEP include: 1) a statement of the child's present levels of academic achievement and functional performance based on reliable data obtained from various sources, including among others, student evaluations and input from the guardian, 2) a statement of measureable annual goals, including academic and functional goals designed to meet the child's needs, 3) a description of how the child's progress toward meeting the annual goals will be measured; and 4) a statement of the special education and related services and supplementary aids and services, and a statement of program modifications and supports for school personnel to enable to child to advance appropriately towards attaining the annual goals, among others.

Additionally, the November 28, 2007, December 11, 2008 and December 1, 2009 IEPs fail to include services to ensure that student is able to make functional use of what he learns, in addition to ensuring academic growth; as a result, the student is denied access to the general curriculum and educational benefit.

4. DCPS failed to comply with the IDEA, 34 C.F.R. §300.324, in developing each child's IEPs, because the IEP teams failed to consider: 1) the strengths of the child; 2) concerns of the guardian for enhancing the student's education; 3) results of the initial or most recent evaluation of the student; and 4) academic, developmental, and functional needs of the child.
5. The IEP team failed to comply with the *Least Restrictive Environment (LRE)* provisions of the IDEA, including Sections 300.114 through 300.118; in developing the student's IEP; by failing to identify and place the student in a full-time special education program as recommended in the November 28, 2007, December 11, 2008, and December 1, 2009 IEPs.
6. DCPS failed to comply with IDEA, 34 C.F.R. §300.324(a)(2)(i) and 34 C.F.R. §30.324(a)(3)(i), which provides that if the child's behavior impedes his learning or the learning of others, the IEP team must include strategies, including positive behavioral interventions, supports, and other strategies to address that behavior.

If the child's behavior that impedes learning is not addressed in the IEP, as in this instance, the IEP team must review and revise the student's IEP to ensure that the student receives appropriate positive behavioral interventions and supports and other strategies; which are developed based on a Functional Behavioral Assessment, which failed to occur.

7. DCPS failed to comply with the procedural requirements of the IDEA, by failing to comprehensively evaluate the student, in accordance with IDEA §§300.304 through 300.311, as a means of determining the nature and extent of the special education and related services the student continued to require.

This procedural violation impedes the student's right to a free and appropriate public education; causes the student a deprivation of educational benefit; and deprives an eligible student of an individualized education program, reasonably calculated to provide educational benefit; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

8. A free appropriate program or FAPE is defined as special education and related services provided at public expense, under public supervision, and without charge; that meets the standards of the State Education Agency (SEA), including an appropriate school; and are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324; which the student failed to receive.

IDEA, at 34 C.F.R. §300.101 provides that a “free appropriate public education” (“FAPE”) must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d). 20 U.S.C. §1412(1).

A free appropriate public education “consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction.” *Bd. Of Education v. Rowley*, 458 U.S. 176, 188-89, 73 L.Ed. 2d 690, 102 S.Ct.3034 (1982).

9. According to ***Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982)***, a child is deprived of a free and appropriate public education:

- (a) If the LEA violated the IDEA’s procedural requirements to such an extent that the violations are serious and detrimentally impact upon the child’s right to a free and appropriate public education (FAPE), or
- (b) If the IEP is not reasonably calculated to enable a child to receive educational benefits.

Additionally, although it may be argued that the student’s poor attendance of classes attributed to DCPS’ ability to provide the student the special education and related services recommended in his IEPs, it is not arguable that DCPS’ failure to comply with the following procedural requirements of the IDEA, are to such an extent that the violations are serious; and detrimentally impact upon the child’s right to a free and appropriate public education (FAPE):

- 1) failure to comprehensively evaluate the student in all areas of suspected disability, prior to development of the December 11, 2008 and December 1, 2009 IEPs, 2) failure to conduct periodic and annual reviews and revisions of the student’s IEPs with the parent, 3) failure to develop IEPs for the student based on reliable data received from comprehensive evaluations, 4) failure to develop IEPs including the student’s presents levels of academic and functional performance, upon which the goals and objectives were based and determined, and 5) failure to initiate behavioral interventions and strategies to address the student’s truancy.

10. Additionally, the FAPE requirement under the IDEA is applicable to procedural and substantive violations, which may result in a denial of a FAPE. The 2004 amendments to IDEA, at Section 615(f)(ii) specifically limits the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, if the inadequacies:

- (I) impede the child's right to a free and appropriate public education;
- (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
- (III) caused a deprivation of educational benefit."

In this matter, DCPS failed to ensure that this student, although eligible to receive a FAPE, actually received a FAPE, because it failed to comply with the procedural and substantive requirements of the IDEA, 34 C.F.R. Sections 300.320 through 300.324 (a)(1) and (2), in developing, reviewing, and revising the student's November 28, 2007, December 11, 2008 and December 1, 2009 IEPs; and failed to develop an IEP for the student, tailored to his unique needs. See, 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii).

The procedural violations in this matter, impede the student's right to a FAPE; significantly impede the guardian's opportunity to participate in the decision making process regarding the provisions of a FAPE to the student; and causes the student a deprivation of educational benefit. Substantive harm to the guardian and student also resulted, because the procedural violations in question seriously infringe upon the guardians' opportunity to participate in the IEP process; deprives the student an individualized education program specifically designed to address his unique academic and functional needs; results in the loss of educational opportunity, and denial of a FAPE under the IDEA. See, *Babb v. Knox County Sch. Sys.*, 965 F.2d 104, 109 (6th Cir. 1992); *W.G.*, 960 F.2d at 1484.

Decision

It is the Hearing Officer's Decision that Petitioner satisfied its burden of proof, presenting evidence that DCPS denied the student a free appropriate public education, by failing to develop an appropriate IEP for the student from December 16, 2007 through December 16, 2009, in violation of IDEA, 34 C.F.R. §300.320 and 300.324; entitling the student to compensatory education services.

ISSUE 3

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to implement the student's IEP's since December 16, 2007?

Findings of Fact

1. The student's November 28, 2007 IEP recommends 26 hours of specialized instruction, 60 minutes of speech and language services, each week; and a full-time special education program, in an out of general education classroom. On November 28, 2007, DCPS issued a Prior to Action Notice indicating that the student remained eligible for special education services, and would continue receiving services in a combination setting.
2. The student's December 11, 2008 IEP recommends 26 hours of specialized instruction, 60 minutes of speech and language services, each week; and assistive technology for learning and studying. The IEP also recommends a full-time special education program; in an out of general education classroom for the student.

3. The student's December 1, 2009 IEP recommends 25 hours of specialized instruction, 60 minutes of speech and language services, each week; and 30 minutes per day of behavioral support services.
4. The student's special education teacher from last year; and case manager for this year testified that last year the student was assigned to her transitions and daily independent class; and once a month, she worked with the student in reading. The teacher also testified that during the 2008/09 school year she was the student's teacher only half of the year.

The student's current teacher testified that this year, during the 1st period the student is in a dynamics and relationship class; and twice a week a Social Worker visits the student's class and conducts group counseling, focusing on emotional and family issues. The teacher also testified that during the 4th period the student attends a reading resource class.

5. A full-time special education program, in an out of general education setting, is unavailable at _____ as a result, the student failed to receive the 26 hours of specialized instruction; 60 minutes of speech and language services, or 30 minutes per day of behavior support services, as recommended in his November 28, 2007, December 11, 2008, and December 1, 2009 IEPs.

DCPS failed to implement the student's November 28, 2007, December 11, 2008, and December 1, 2009 IEPs, by failing to provide the student a full-time special education program, in an out of general education setting, as recommended in his IEPs.

6. The DCPS presented several service provider tracking forms, however, there are no service provider tracking forms verifying that the student received the speech and language services and behavioral support services, as recommended in his IEPs.

The student testified that he failed to receive speech and language services; and the December 11, 2008 IEP indicates that compensatory education services was discussed at the December 11, 2008 IEP team meeting; and the student may require compensatory education services, because speech and language services were not available at _____ at that time. The speech and language services tracking forms reflect that the speech and language services were not provided the student from January 26, 2009 through December 25, 2009, primarily due to the unavailability of the student.

7. The student's Social Worker testified that the student was referred to him to address truancy, panic attacks, and peer interaction difficulties; and he began providing the student behavioral support services in August, 2009, as part of a group of approximately 10-15 students, within the student's class. The Social Worker also testified that he provided the student one on one services, on an as needed basis, approximately once or twice a month, consisting of formal or informal meetings; he had an individual session with the student on December 4, 2009; and a group session on December 10, 2009.

The Social Worker testified that since August, 2009 he has had 10-12 informal sessions with the student, which may consist of encountering the student in the hallways; and 6-7 formal individual sessions with the student, which is documented in the school's data base. The Social Worker concluded that he meets with the student 30 minutes weekly, as part of a group or individually. There is no documentary evidence reflecting that the student received 30 minutes of counseling services, each week.

8. DCPS failed to implement the student's November 28, 2007, December 11, 2008, and December 1, 2009 IEPs, by failing to provide the student related speech and language and behavioral support services, as recommended in his IEPs.

Conclusions of Law

1. Based on the evidence and testimony presented, DCPS failed to implement the student's November 28, 2007, December 11, 2008 and December 1, 2009 IEPs; by failing to provide the student 26 hours per week of specialized instruction; 60 minutes of speech and language services, each week; and 30 minutes per day of behavioral support services, in a full-time special education setting, as recommended in his IEPs.
2. DCPS failed to comply with the procedural requirements of IDEIA, at 34 C.F.R. Section 300.323(c) (2), by failing to ensure that as soon as possible following development of a student's IEPs, special education services were made available to the child in accordance with the child's IEP.
3. DCPS failed to comply with the D.C. Code of Municipal Regulations, Title 5, §3010.2 (2003), which provides that DCPS *shall* implement an IEP ***as soon as possible after the meeting where the IEP is developed special education and related services are made available to the student in accordance with his IEP....***
4. The FAPE requirement under the IDEA is applicable to procedural and substantive violations, which may result in a denial of a FAPE. The 2004 amendments to IDEA, at Section 615(f)(ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, if the inadequacies:
 - (IV) impede the child's right to a free and appropriate public education;
 - (V) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
 - (VI) caused a deprivation of educational benefit."

In this matter, DCPS failed to ensure that this student, although eligible to receive a FAPE, actually received a FAPE, because it failed to comply with the procedural requirements of the IDEA, which required implementation of a student's IEP as soon as possible after the IEP is developed; which failed to occur in this matter.

The procedural violations in this matter, impede the student's right to a FAPE; significantly impede the guardian's opportunity to participate in the decision making process regarding the provisions of a FAPE to the student; and causes the student a deprivation of educational benefit.

Substantive harm to the student also results, because failure to implement the student's November 28, 2007, December 11, 2008, and December 1, 2009 IEPs deprived the student an individualized education program specifically designed to address his unique academic and functional needs; the loss of educational opportunity; and denial of a FAPE under the IDEA. See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.

Decision

It is the Hearing Officers' Decision that Petitioner satisfied its burden of proof, presenting evidence that DCPS denied the student a free appropriate public education, by failing to implement the student's December 11, 2008 and December 1, 2009 Individualized Education Programs (IEPs); in violation of the IDEA, 34 C.F.R. §300.323 (c)(1); and D.C. Code of Municipal Regulations, Title 5, §3010.2 (2003); entitling the student to compensatory education services.

ISSUE 4

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate placement from December 16, 2007 through December 16, 2009?

Findings of Fact

1. The student's November 28, 2007, December 11, 2008 and December 1, 2009 IEPs recommend a full-time special education program, *in an out of general education setting*. _____ is unable to implement the student's IEP because it cannot provide the student a full-time special education program, *in an out of general education setting*, as recommended in his IEPs.
2. The IEP teams developed IEPs for the student, recommending an out of general education setting because the student is significantly below grade level in reading, math, and written language, and requires smaller settings and supervision; weaknesses prohibit him from accessing grade-level curriculum; and the student requires support in literacy, numeracy and life skills on available in the special education setting.

The IEP teams also reasoned that an out of general education setting would improve the student's expressive and receptive skills to assist his achievement levels; and would use counseling to improve his social emotional functioning.

Although the student's IEPs recommend an out of general education setting for the student; the student's truancy worsened; and the student fail to receive the special education and related services he is entitled to receive and requires, since development of the November 28, 2007 IEP, DCPS has maintained the student's placement at

a general education setting. And, as of the date of the complaint, DCPS failed to identify and place the student in a full-time special education program, and out of general education setting, as recommended in his IEP; where his IEP can be implemented; he can receive access to the general curriculum; and educational benefit.

3. DCPS failed to convene an IEP team meeting with a group of persons, *including the guardian*, and other persons *knowledgeable about* the child, to discuss the meaning of any available evaluation data; the student's placement, and *placement options*; from December 16, 2007 through December 16, 2009.

On December 11, 2008 and December 1, 2009, the guardian was denied the opportunity to provide "meaningful" input in the decision to maintain the student's placement at and decisions regarding the provision of a FAPE to the student.

4. DCPS has not ensured that an alternative placement is available to meet the student's need for special education and related services, in violation of the IDEA.
5. The nature of the student's disability is such that education in a general education environment even with the use of curricular modification, accommodation and/or supplemental aids and services cannot be accomplished satisfactorily, which is evidenced by the student's poor class attendance, truancy, poor academic performance, and failure to thrive, in the combination general education/resource classroom setting. Therefore, integrating the student with non-disabled students for educational instruction denies the student access to the general curriculum, denies him educational benefit, and is inconsistent with his IEPs.

Additionally, recent evaluations support a finding that the nature and severity of the student's disabilities are such that the student requires an intensive, specialized, special education placement in a therapeutic environment; and the assistance of a reading and math specialist; to access the general curriculum and receive educational benefit.

6. DCPS failed to develop an appropriate IEP, upon which the student's placement can be determined, as required by the IDEA; however, the record is sufficient to find that is not an appropriate placement for the student. The school is unable to implement the student's IEP by providing the student a full-time special education program; or the small, structured, intensive, specialized, therapeutic, special education placement he requires; and which is necessary for the student to access the general curriculum and receive educational benefit.

7. The student's former teacher and current Case Manager testified that the student functions very, very low and is not showing any growth; requires a setting for mentally retarded students; and if placed in the MR cluster at _____ the student can receive more resources. The former teacher testified that last year the student's transition class included many mentally retarded students, however, not all the students were mentally retarded

The student's current special education teacher testified that the student is assigned to his Reading Resource class and is reading between a 1st and 2nd grade level, attendance is problematic, mastered 70-75 of the first 100 words frequently used in the English language. The teacher also testified that the student missed approximately four full weeks of instruction over the Fall 2009/2010 school year; and had not seen the student more than once or twice this semester. The teacher also testified that when in class the student requires a significant amount of attention to stay focused and on task, and requires supervision; and the student could make progress if he attended class, although he could not commit that the student would ultimately learn to read. The record consistently reflects that the student performs at a 1st and 2nd grade level, although he is currently in the _____ grade, and _____ years of age.

8. An independent Educational Evaluation was completed on November 16, 2009. The Educational Evaluation provides that when compared to others at his grade level, the student's fluency with academic tasks and his ability to apply academic skills are both within the very low range. The evaluator also concluded that when compared to others at his grade level, the student's standard scores are very low in broad reading, brief reading, broad mathematics, math calculation skills, brief mathematics, and written expression. Overall, results of the Woodcock-Johnson III achievement test reflect grade equivalents in all areas from 1.3 to >3.4; and an age equivalent of 6.7 to >8.9.

The evaluator recommended reading instruction presented within the middle to late 1st grade range; math instruction presented within the late 1st grade to middle second grade range; and writing instruction presented within the early to late 2nd grade level.

9. On December 1, 2009, the IEP team reviewed the Educational Evaluation findings and recommendations, and revised the student's IEP to include 30 minutes per day of behavioral support services, however, failed to discuss placement options, or issue a Prior Notice placing the student in a full-time special education program, and out of general education setting, as recommended in his IEP, as recommended by his teacher, and consistent with the findings, and recommendations in the Educational Evaluation.

The placement decision was not made by a group of persons, including the guardian, and other persons knowledgeable about the child, the meaning of the evaluation data, or individuals qualified to discuss *placement options*.

10. In deciding to maintain the student's placement at _____ although the IEP recommends a full time special education program in an out of general education setting, DCPS failed to consider any potential harmful effects on the child or on-

the quality of the services he requires, by maintaining his placement in a general education setting; and failed to provide the student an out of general education placement, based on the child's needs; and as recommended in his November 28, 2007, December 11, 2009 and December 1, 2009 IEPs.

11. is a full-time special education therapeutic day program, for students ages 5-21, with disabilities ranging from learning disabled, emotionally disturbed, multiple disabilities, other health impaired, attention deficit hyperactivity disorder, speech and language impaired, mental retardation, and others; with a small student to teacher ratio, and behavior improvement and modification program.

Related service providers on staff include: Speech and Language Pathologist, Occupational Therapist, seven full-time behavioral counselors, resources classes where the student can receive assistance with reading, and other academic areas,- individual counseling services, certified special education teachers, Summer programs, 2-3 staff per class, one on one support for students, additional support services.

offers an accredited high school, grades 1-12. The high school program consists of 10 classes, self contained, with one lead and one co-teacher; and a designated aide for students as needed. offers an array of certificate programs, a reading specialist, vocational programs, reading math, and on the job training. The class proposed for the student consists of 6 -9 students, with three (3) teachers, including two (2) co-teachers, and one aide. The student would be assigned a Career Coach and Job Coach. The teachers are certified in special education by the State of Virginia. is an appropriate placement for the student, can implement the student's IEP, provide the student access to the general curriculum, and educational benefit.

Conclusions of Law

1. In determining the educational placement of the student, DCPS failed to ensure that the guardian of the student was a member of the IEP team, responsible for making decisions regarding the educational placement of the student, in violation of the IDEA, §300.327.
2. DCPS failed to ensure that parent was afforded the opportunity to provide "meaningful" input in the placement decision; consistent with the requirements of the IDEA, at 34 C.F.R. §300.116, and 34 C.F.R. §300.501 (c).
3. On November 28, 2007, December 11, 2008 and December 1, 2009, DCPS erred in its decision to maintain the student's placement at and not place the student in a full-time special education program; and out of general education setting; as recommended in his IEPs.

4. DCPS failed to ensure a continuum of alternative placements were available to meet the student's need for special education and related services; in violation of IDEA, 34 C.F.R. §300.115 (a) and (b).
5. In determining the student's placement, DCPS failed to comply with the least restrictive environment requirements of the IDEA; or consider any *potential harmful effects on the child* or on the *quality of services that he needs*; in violation of the IDEA, 34 C.F.R. Section 300.116.
6. The FAPE requirement under the IDEA is applicable to procedural and substantive violations, which may result in a denial of a FAPE. The 2004 amendments to IDEA, at Section 615(f)(ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, if the inadequacies:
 - (VII) impede the child's right to a free and appropriate public education;
 - (VIII) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
 - (IX) caused a deprivation of educational benefit."

In this matter, DCPS failed to ensure that this student, although eligible to receive a FAPE, actually received a FAPE, because it failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.116, in determining the student's placement.

The procedural violations in this matter, impede the student's right to a FAPE; significantly impede the guardian's opportunity to participate in the decision making process regarding the student's placement; and the provision of a FAPE to the student; resulting in a deprivation of educational benefit to the student.

The procedural violation also resulted in substantive harm to the guardian and student because the procedural violation in question seriously infringed upon the guardians' opportunity to participate in the placement decision; and as a result, deprives the student an individualized education program specifically designed to address his unique academic and functional needs, in a full-time special education program, and out of general education setting; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. See, *Babb v. Knox County Sch. Sys.*, 965 F.2d 104, 109 (6th Cir. 1992); *W.G.*, 960 F.2d at 1484.

Decision

It is the Hearing Officer's Decision that Petitioner satisfied its burden of proof, presenting evidence that DCPS denied the student a free appropriate public education by failing to provide the student an appropriate placement, from December 16, 2007 through December 16, 2009, in violation of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", 34 C.F.R. §300.116; entitling the student to compensatory education services.

IIX. ORDER

Based on the aforementioned, it is hereby:

- (1) **ORDERED**, that no later than March 15, 2010, DCPS shall issue the guardian a prior notice of placement for the student to attend . and DCPS shall fund the student's placement and transportation to attend . and it is further
- (2) **ORDERED**, that DCPS shall conduct a review of the student's IEP, within thirty (30) school days from the date of the student's placement at Accotink; or within 10 days of receipt of the final independent evaluation, review all evaluations, and revise the student's IEP based on the findings and recommendations in the evaluations, and consistent with IDEA, 34 C.F.R. §300.324; address his anxiety disorder; and order any additional evaluations as warranted, and recommended;; and it is further
- (3) **ORDERED**, that DCPS shall develop and fund a compensatory education plan for the student to compensate the student for special education and related services he failed to receive from December 16, 2007 through December 16, 2009, to include however not limited to, the provision and funding of a Reading Specialist for the student, tutorial services in math and reading; and it is further
- (4) **ORDERED**, that DCPS shall schedule all meetings through the parent's counsel, Attorney Zachary Nahass, in writing, via facsimile at (202) 742-2098; and it is further
- (5) **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at , and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further
- (6) **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further
- (7) **ORDERED**, that this decision and order are effective immediately.

IX. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date this decision was issued.

Ramona M. Justice

3-2-10

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Tanya Chor, Office of the Attorney General
Attorney Zachary Nahass: Fax: 202-742-2098