

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

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FEB 07 2009

**Confidential**

<p>STUDENT<sup>1</sup>, by and through Parent  Petitioners,  v.  District of Columbia Public Schools  Respondent.</p>	<p><b>HEARING OFFICER'S DECISION</b></p> <p><b>Date: February 7, 2010</b></p> <p><b><u>Hearing Officer: Wanda I. Resto</u></b></p>
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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

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## I. PROCEDURAL BACKGROUND

On November 24, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent"), pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE").<sup>2</sup>

The Petitioner asserted the Respondent failed to comply with an August 21, 2009 Hearing Officer Decision ("HOD"), requiring the Respondent to fund by September 18, 2009 an independent educational and vocational evaluation; to schedule a multidisciplinary team (MDT) meeting, review and discuss the Student's assessment, and prepare with the Petitioner and the Student's input an IEP that includes a transition plan and goals to address the discrepancy between the Student's capacity and academic programming. It ordered the Respondent to make an educational placement determination for the 2009-2010 school year. The Petitioner requested that the Respondent be deemed to have denied the Student a FAPE and ordered to immediately issue a Prior Written Notice for the Student to attend a full time therapeutic non public special education placement for the remainder of the 2009-2010 school year. The Petitioner also requested the Respondent to fund the placement and transportation of the Student. Additionally, the Petitioner requested that the MDT determine an appropriate compensatory education plan to address the deficit the Student may have suffered from the denial of FAPE.

On December 4, 2009, the DCPS filed a Response to the Parent's Administrative Due Process Complaint. The Respondent asserted it convened an IEP meeting and reviewed the independent evaluations; it asserted it will reconvene and revise the IEP and placement as appropriate. Additionally, the Respondent asserted that it is implementing the Student's IEP. Lastly, the Respondent argued that the Student has an appropriate placement; however it will be reviewed when the MDT meeting occurs.

A pre-hearing conference was not held because of the unavailability of Counsel for the Respondent.<sup>3</sup> A December 23, 2009 Order required the Petitioner to demonstrate at the hearing how the Respondent failed to comply with the HOD; what is inappropriate about the IEP and the educational placement; and how the Petitioner's choice of placement is appropriate. The Respondent had to show that the IEP is appropriate, was implemented and that the MDT acted appropriately when it decided the educational placement of the Student. The Respondent had to rebut the presumption of harm if the HOD was violated.

The Petitioner was reminded of her obligation to satisfy the standard set out in *Reid v. District of Columbia*, 401 F.3d 516 (2005) for compensatory education purposes.

A hearing was held on January 28, 2010. The Petitioner presented a disclosure letter dated January 21, 2010 to which eighteen documents were attached, labeled P-1 through 18 and which listed seven witnesses; three witnesses testified. The Respondent presented a disclosure letter dated January 21, 2010 identifying seven witnesses and to which four documents were attached, labeled DCPS 1 through 4; two witnesses testified. The documents were admitted over the objection of the Petitioner who claimed the documents were untimely.<sup>4</sup>

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<sup>2</sup> 20 U.S.C. §1415(c)(2)(B)(i)(I)

<sup>3</sup> Attorney Kendra Berner was not available twice to participate on behalf of the Respondent in telephonic pre-hearing conference calls.

<sup>4</sup> The documents into evidence because the Petitioner did not show she was harmed by the delay. Under the HOE

The hearing was conducted in accordance with the rights established under the IDEIA and the implementing federal and local regulations, and the SOP.<sup>5</sup>

## II. ISSUE(S)

1. Did the Respondent comply with the terms and conditions of an August 21, 2009 HOD?
2. Did the Respondent fail to develop and implement an appropriate IEP for the Student?
3. Whether the Respondent provided an appropriate educational placement for the Student?
4. Was the Student denied a FAPE?
5. Is the Student entitled to a compensatory education award?

## III. FINDINGS OF FACT

1. Both the Petitioner and the Student reside within the District of Columbia. The Student is attending a DCPS during the 2009-2010 school year.<sup>6</sup>
2. On April 7, 2009, it was determined that the Student is eligible according to the IDEIA under the disability classification of mental retardation. The Student's IEP provides 1590 minutes per week of specialized instruction, 60 minutes of behavioral support services weekly. The IEP contains levels of performance and annual goals by concern areas:
  - i. "the Student is performing on 2.8 grade level in Mathematics," and "the Student is functioning on the 3.2 grade level in math calculations;"
  - ii. "the Student is performing on the 3.2 grade level in Reading," and "the Student is functioning on the 2.4 grade level in reading comprehension;" and
  - iii. "the Student is performing on the 3.8 grade level in Written Expression" and "the Student is functioning on the 3.9 grade level in the area of written expression;"
  - b. Contains the following academic "annual goals":
    - i. "the Student will demonstrate 6-10 months growth in the areas of Math,"
    - ii. "the Student will demonstrate 6-10 months growth in the area of Reading meeting all short term objectives with 60% accuracy," and
    - iii. "the Student will demonstrate 6-10 months growth in the area of written expression meeting all short term objectives with 60% accuracy;"
  - c. Contains the following "annual goals related to post school goals":
    - i. "the Student will like to become a child care provider,"
    - ii. "the Student will attend weekly community based job development activities,"
    - iii. "the Student will acquire the daily skills needed for independent living,"

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Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP") section 500. It is within the discretion of the Hearing Officer to determine whether the evidence will be excluded.

<sup>5</sup> IDEIA 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; 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

<sup>6</sup> P1 November 24, 2009, Due Process Hearing Complaint.  
HOD

- iv. "the Student will develop time management skills," and
- v. "the Student will demonstrate an improvement in social emotional functioning within the school setting with 80% accuracy." <sup>7</sup>

These goals were found inadequate by the August 2009 HOD.

- 3. An August 2009 HOD determined, the Respondent failed to perform and review evaluations in a timely manner. The Petitioner demonstrated that the 2008-2009 IEP was not implemented. The Order concluded the Petitioner proved the IEP created in April 2009 was not calculated to provide an educational benefit to the Student. The Respondent was ordered to convene a multidisciplinary team ("MDT") meeting with the appropriate personnel to review all assessments; prepare with the Petitioner and the Student's input an IEP that includes a transition plan and goals to address the discrepancy between the Student's capacity and academic programming; discuss and determine placement for the 2009-2010 school year. The Order instructed the Respondent to within five school days issue a prior notice of placement to a DCPS school, and within 20 days if placement is to a private school. <sup>8</sup>
- 4. The Education Advocate did not observe the Student at school because she failed to schedule the visit, and the consent form was not current. She reviewed the record, spoke with the Petitioner and met the Student. She participated in a November 13, 2009 MDT meeting; the Student's evaluations, behavior and dedicated aide services were discussed. She attended a December 2009 Resolution Session but refused to stay and participate in an IEP meeting for the Student because she was not notified that the meeting was to also discuss the IEP. The Student's IEP created on December 18, 2009 contain levels of performance and annual goals by concern areas:
  - i. "the Student is performing on 2.7 grade level in Mathematics," and "the Student is functioning on the 2.6 grade level in math calculations;"
  - ii. "the Student is performing on the 3.8 grade level in Reading," and "the Student is functioning on the 3.3 grade level in reading comprehension;" and
  - iii. "the Student is performing in the 1 percentile in written Expression":
- b. Contains the following academic "annual goals":
  - i. "the Student will demonstrate progress in the area of mathematic at 60% accuracy,"
  - ii. "the Student will demonstrate progress in the area of reading at 60% accuracy rate," and
  - iii. "the Student will demonstrate progress in the area of written expression at 60% accuracy rate;"
- c. Contains the following "annual measurable goals for post secondary transition":
  - i. "Due to her disability and evaluations it is recommended that the Student pursue vocational training,"
  - ii. "it is recommended that the Student receive vocational training,"
  - iii. "the Student is performing on an average age range of 8 year-old,"
  - iv. "the Student will acquire the daily skills needed for independent living within classroom setting," and
  - v. Career exploration – 2 hours per year to being December 18, 2009.
  - vi. Career exploration in Learning Lab – 2 hours per year to being December 18, 2009.

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<sup>7</sup> Student's IEP on April 7, 2009

<sup>8</sup>P 4 August 21, 2009, HOD.

vii. Vocational training— 2 hours per year date to being December 18, 2009.

The goals are vaguer than the previous year goals, there are no markers of what tasks will be completed to demonstrate mastery.<sup>9</sup>

5. During a MDT meeting in November 2009, the Student's evaluations were reviewed and her current levels of performance were discussed. The MDT determined that the IEP was being implemented and that no changes were necessary. The MDT reviewed the vocational evaluation; but did not review the transition goals. The Student indicated she wanted a smaller setting, and no other concern was raised by either the Advocate or the Petitioner. The Student's is not attending weekly community based job activities; because she was transferred into the high school diploma track as requested by the Petitioner.<sup>10</sup>
6. The Student participated in the MDT November 2009 meeting; she told the MDT she "needs a smaller school to concentrate". She has difficulties understanding the Math and Science classes; but is doing better in Math. She is doing very well in English and the work is not hard. There are approximately 4-6 students in her classes. The Dedicated Aide greets her at the gate and accompanies her through all transition periods and all her classes; she has received her counseling service and has not received job skills development activities. The Dedicate Aide breaks down the tasks but the tasks still are difficult.<sup>11</sup>
7. A Resolution Meeting was held December 18, 2009, at the meeting it was acknowledged that the Student's IEP needs to be revised. After consulting with her attorney the Petitioner decided not to participate in an IEP meeting convened that day by the Respondent. The Respondent's members of the MDT proceed with an IEP meeting reviewed present levels of performance and goals along with the post secondary goals and transition plan and determined the placement is appropriate. <sup>12</sup>
- 8.
9. The Student is in a Math class with approximately 10-12 students. The Student is struggling and requires assistance from the Dedicated Aide and the Special Education Teacher. The Student's tasks are modified and she participates in a smaller group within the class, where she gets support from peers. <sup>13</sup>
10. The Student is doing exceptionally well; with the assistance of the Dedicated Aide in the Language Arts class. The Student's progress is measured informally every 5<sup>th</sup> day and reading comprehension is reviewed in every assignment. <sup>14</sup>
11. The Petitioner chose not to present evidence on the appropriateness of the placement for the Student and instructed the Hearing Officer to rely on the findings of facts contained in the August 2009 HOD.<sup>15</sup>

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<sup>9</sup> P 6 December 18, 2009, IEP and testimony of the Advocate.

<sup>10</sup> Testimony of the Special Education Coordinator.

<sup>11</sup> Testimony of the Student.

<sup>12</sup> DCPS 2 Resolution Meeting Notes.

<sup>13</sup> Testimony of the Special Education Teacher (Math).

<sup>14</sup> Testimony of the Special Education Teacher (English).

<sup>15</sup> Fact # 14 provides services to children ranging in the ages of 8 through 22 years with multiple disabilities, behavioral problems, emotional difficulties, learning disabilities, mental retardation, and HOD

## IV. CONCLUSIONS OF LAW

### FAPE Determination

The Respondent is required to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living.<sup>16</sup>

The applicable regulations define a FAPE as “special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP).”<sup>17</sup>

In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits.<sup>18</sup>

### Burden of Proof

The burden of proof is the responsibility of the party seeking relief, in this case the Guardian. It requires that based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student a FAPE.<sup>19</sup>

### Hearing Officer Decision violation

The Respondent failed to comply with the HOD and prepare with the Petitioner and the Student's input an IEP that reflects the discrepancies in achievement.

In this jurisdiction, there is case law applicable to the current case. DCPS entered into a Consent Decree in *Blackman v. District of Columbia*, Civil Action No. 97-1629 (D.D.C. Aug. 24, 2006), which provides that noncompliance with an HOD creates a rebuttable presumption of the harm necessary to

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autism in a non categorical program. The Admission Team reviewed the Student's history provided in the referral file including the IEP, assessments; and the Guardian and the Student were interviewed. The school offers individual and group counseling services. The school can provide occupational therapy, speech/language and other related services. The school program is a structured program with less distractions and behavioral supports within students reach. The class sizes are approximately nine students, one special education teacher and a teacher assistant. The upper school provides career counseling; the program assesses the Students skills and program with activities for life after high school. The Students in the high school diploma track have three options which incorporate behavior and program modifications. A class has not been chosen for the Student.”

<sup>16</sup> 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006).

<sup>17</sup> 34 C.F.R. § 300.17

<sup>18</sup> *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982); and *Jalloh v. District of Columbia*, 535 F. Supp. 2d 13, 16 (D.D.C. 2008).

<sup>19</sup> 5 D.C.M.R. § 3030.3.

show a denial of FAPE. In the Consent Decree, DCPS agreed among many things, that any student, "now and in the future," whose HOD has not been timely implemented is a member of the class entitled to relief, and that failure to implement a HOD creates a rebuttal presumption of harm. It also establishes that one becomes a member of the class "as a result of an untimely HOD or untimely implementation of an HOD/SA."

The decree classifies the class in two subclasses. The second subclass (referred to as the "Jones class") is defined as: "All children, now [as of January 1, 1995] and in the future, who are entitled to have DCPS provide them with a free appropriate public education (FAPE) and who have been denied same because DCPS either (a) has failed to fully and timely implement the determinations of hearing officers, or (b) ...." There is no election available to opt out of either subclass. Pursuant to Fed. R. Civ. P. Rule 23(b)(2), the Student is a member of the Jones subclass by virtue of the untimely implementation of the HOD of August 21, 2009.

### **Appropriateness of the IEP**

The HOD concluded the Petitioner proved the IEP created in April 2009 was not calculated to provide an educational benefit to the Student. It required the Respondent to prepare an IEP that includes a transition plan and goals to address the discrepancy between the Student's capacity and academic programming; discuss and determine placement for the 2009-2010 school year. <sup>20</sup>

The IDEIA defines the IEP as a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to

- aa. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- bb. Meet each of the child's other educational needs that results from the child's disability."<sup>21</sup>

Current law requires that the local education agency, make certain that the Student's IEP be in effect at the beginning of each school year, contain a statement of the Student's present level of academic achievement and functional performance. It must contain a statement of the student's measurable annual goals, a description of how the Student's progress toward meeting the annual goals will be measured, and any statement of the special education needs and related services and supplementary aids for a student to advance properly toward attaining the annual goals.<sup>22</sup>

Additionally, the IDEIA requires the IEP for a student years old include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services need to assist the child in reaching those goals. <sup>23</sup>

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<sup>20</sup>P 4 August 21, 2009, HOD.

<sup>21</sup> 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), § 1414 (d)(2)(A).

<sup>22</sup> 20 U.S.C 1412 (a)(1), 1412 (a)(12)(A)(i), 1414(d)(3), (4)(B) and (7), 1414(e) and 34 CFR § 300.320(a).

<sup>23</sup> 34 C.F.R. §300.320(b)

The purposes of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and to ensure that the rights of children with disabilities and parents of such children are protected.

The Respondent did not meet its legal obligation under the IDEA. The Respondent failed to prepare with the Petitioner and the Student's input an IEP that reflects the discrepancies in achievement, and how the high school diploma program will be integrated with the Student's special education needs. The evidence was the Student is at an age where she requires life skills to prepare her for further education, employment, and independent living; and there was no discussion of what that program would include.

### **Meetings**

The Petitioner argued that after the resolution session the Respondent attempted to discuss the IEP; but the Petitioner did not participate because the IEP was not the initial purpose of the meeting.

The IDEA demands that each public agency must provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings. It also provides that a placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision.<sup>24</sup> In which case, the public agency must have a record of its attempt to ensure their involvement; here the DCPS does not.

The IDEA requires that the notification to parents of the meeting is early enough to ensure that they will have an opportunity to attend; and that the scheduling of the meeting be at a mutually agreed on time and place. In this case there was also an HOD that required the Respondent to invite the Student's and consider her input in the development of the IEP.

In the present case the undisputed evidence was that there was a meeting to discuss the Student's IEP during November 2009; it is not clear what was discussed nor that the Student's input was considered, because a HOD required specific discussion and actions by the Respondent that were not met. The evidence showed that in December 2009 a resolution meeting was held and after that meeting the Respondent attempted to hold an IEP meeting.

There was no evidence the Respondent invited the Petitioner to an IEP meeting in December or that it was unable to convince the guardian that she should attend an IEP meeting. In which case, the public agency must have kept a record of its attempts to arrange a mutually agreed on time and place; and the Respondent in this case did not.<sup>25</sup>

The LEA is required to "take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate." *N.G.*, 556 F. Supp. 2d at 17; *Scorah v. District of Columbia*, 322 F. Supp. 2d 12, 14 (D.D.C. 2004)<sup>26</sup>

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<sup>24</sup> 20 U.S.C. 1415(a) §§ 1414(e), 1415(b)(1)), and 34 C.F.R. §§ 300.322(a)(1) and (b)(1), and 501.

<sup>25</sup> 34 C.F.R. §§ 300.322, and 328 (d).

<sup>26</sup> 20 U.S.C. §§ 1414(f), 1415(b)(1)). 34 C.F.R. § 300.322;

The Respondent produced a revised document dated December 18, 2009 and claims it is the revised IEP for the Student. The document does not contain a description of how the Student's progress toward meeting her annual goals will be measured. It does not include goals toward which an instructor can work, or a way to measure the Student's progress toward those goals. The Student testified that she told the MDT she requires a smaller setting and there is no evidence that the MDT addressed her request. It is apparent that the IEP and placement were not prepared considering the Student's unique academic, developmental and functional needs as required and ordered. The MDT notes merely mention that a placement was discussed and the IEP is being implemented; without providing details on what was considered for the placement decision and what IEP is being implemented.

In this case there was an August 2009 HOD requiring the Respondent to not only include the Petitioner in the drafting of the IEP but also the Student.

DCPS did not meet its statutory obligations. DCPS did not follow the instructions provided in the August 2009 HOD. Neither the notes nor the testimony reflect any discussion about the educational placement and elements considered. Under the IDEIA the guardian and in this case the Student is a required participant in a group discussion and decision about placement. The record is void of evidence that DCPS has effectively allowed the guardian and Student to provide input. The Respondent failed to develop an IEP to address the unique needs of the Student. It was also evident that the Advocate did not make any efforts to secure that the Student's IEP and programming be revised; although she was aware that the Student did not have an appropriate IEP.

### **Educational Placement**

In accordance with the IDEIA when determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. It also states that the determination of the educational placement of a child with a disability must be based on a child's IEP and in conformity with the LRE provisions.<sup>27</sup>

The evidence was that at the current placement the Student has a dedicated aide who accompanies the Student from the moment she gets to school, the Student is not having behavior problems, is receiving specialized instruction and modifications are in place; and the Student is getting more of her work done with less distractions. The Petitioner did prove that the Student is not receiving any vocational training or job preparedness programming; although it was a requirement of the Student's programming in the April 2009 IEP when she was not in a diploma track program.

The Petitioner did not present evidence on the appropriateness of her choice of private placement for the Student and instructed the Hearing Officer to rely on the findings of facts contained in the August 2009 HOD. The findings of fact are a general statement of what the school offers there is no information on what the Student's day would be at the private school; or even if there was a classroom available for the Student. Consequently, having no additional information on how the private school can address the Student's unique needs or if there has been a class assigned to the Student, it is determined that the current placement will continue at the DCPS. The Respondent will reconvene an IEP/MDT meeting with the Petitioner and Student and will discuss and document the Student's program and progress, and make

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<sup>27</sup> 20 U.S.C. 1412(a)(5), 34 C.F.R. §§300.116, and 114.  
HOD.

adjustments to her IEP reflecting the placement considerations and discussion; including the impact of vocational training on the Student's efforts to obtain a High School diploma.

### **Prior Written Notice**

The IDEIA demands a written notice that meets the requirements of must be given to the parents of a child with a disability a reasonable time before the public agency-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. <sup>28</sup> The Respondent failed to provide any evidence that it complied with its statutory obligations.

### **Compensatory Education**

The Respondent failed to rebut the presumption of harm established after not complying with a HOD. As a consequence the Student is entitled to a compensatory education award for the denial of a FAPE.

The Blackman Consent Decree, indicates that compensatory education is an important mechanism for addressing the loss of services caused by the denial of timely hearings and the failure to receive timely implementation of HODs.

"Under the theory of "compensatory education," courts and hearing officers may award educational services . . . to be provided prospectively to compensate for a past deficient program." See, G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 308 (4th Cir. 2003). More specifically, as the Fourth Circuit has explained, "[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." *G. ex rel. RG*, 343 F.3d at 309 (**emphasis supplied**).

The Petitioner requested that the MDT address compensatory education at an IEP meeting. Counsel for the Petitioner was offered the opportunity to present evidence at the Hearing and did not.

In Reid v. District of Columbia, 401 F.3d 516 (2005), the Circuit Court considered a fact pattern in which a hearing officer had ordered compensatory education and in the order, empowered the MDT to "reduce or discontinue" the compensatory education that had been ordered. The D.C. Circuit held that a hearing officer may not authorize an MDT to reduce or discontinue compensatory education awards. It mentioned in dicta that likewise, it could not increase compensatory education over the school district's objection. The *Reid* court found that the hearing officer could not delegate decisions about compensatory education to the MDT because the MDT includes employees of the education agency involved in the education of the child, and such employees are barred by 20 U.S.C. Section 1415(f)(3) from conducting due process hearings and from being empowered to make the decisions that a hearing officer must make at a due process hearing, including decisions about compensatory education.

The court indicated that such a rule is required because hearing awards "shall be final" unless modified through administrative appeal or judicial action, and to permit an MDT to reduce or discontinue an award of compensatory education would run afoul with this requirement. Thus, under the reasoning of

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<sup>28</sup> 34 CFR §§300.503(a), and 503(b).  
HOD.

the *Reid* court, a hearing officer who cannot delegate to an MDT decisions to reduce, discontinue or increase compensatory education likewise cannot delegate to an MDT other decisions about compensatory education, including whether it is appropriate and if it is, what should be the content and amount.

The Petitioner failed to present any evidence for a compensatory education award. However, there was an offer made by the Respondent which provides the DCPS will fund a compensatory education plan that focuses on the Student's life skills deficits. It proposes 1 hour per week of life skills training to be provided independently, at a rate not to exceed an hour, and to be completed within 20 months. The Respondent acknowledged that because the Student is on a certificate track, it would be willing to fund 1 hour per week of academic tutoring instead of the life skills period.<sup>29</sup>

This case presents a dilemma because the Respondent in August 2009 was found to have denied the Student a FAPE and ordered *inter alia* to prepare with the Petitioner and the Student's input an IEP that includes a transition plan and goals to address the discrepancy between the Student's capacity and academic programming; and make a placement determination for the 2009-2010 school year. It is February 2010 and the Respondent did not comply, again the Respondent failed to provide the Student a FAPE. However unexplainably the Petitioner failed to provide evidence that there is a more appropriate placement to address the Student needs or that there is a school that has accepted the Student; that has designed an individualized program and designated a specific class for the Student. The Petitioner also insisted that the compensatory education award should be developed by the MDT.

However, under *Reid* the MDT/IEP is barred by law from making compensatory education awards once a Due Process Hearing has occurred. Both the IDEIA and *Reid* bar the Hearing Officers from delegating compensatory education awards to an MDT because it is an improper delegation to an unauthorized group.

In consideration to the noncompliance by the Respondent and the failures by the Petitioner to put forth evidence for a placement or a compensatory education plan. Fairness and justice pursuant to the IDEIA requires that the Hearing Officer provide the Student with some remedy. Consequently, because the evidence demonstrated that the Student is not improving in her Science class and she is not receiving vocational or life skills training although she is at an age where these skills are fundamental. The Respondent will provide the Student with the one hour per week of life skills training to be provided independently for a period of one calendar year. The Respondent will also fund 1 hour per week of independent tutoring in Science for one calendar year to allow the Student some catch up for the 2 years of failures by the DCPS.

## V. SUMMARY OF DECISION

DCPS did not meet its statutory obligations. DCPS did not follow the instructions provided in the August 2009 HOD. The Respondent failed to develop an IEP to address the unique needs of the Student. The Petitioner did not present evidence on the appropriateness of her choice of private placement. Consequently, having no additional information on how the Petitioner's choice of School can address the Student's unique needs or if there has been a class assigned to the Student, it is determined that the current placement will continue at the DCPS. The Respondent will reconvene an IEP/MDT meeting with the Petitioner and Student and will discuss and will put in writing a description of the Student's program and

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<sup>29</sup> DCPS 4 - E-mail dated 1/11/10 from Compliance Case Manager to the Advocate.  
HOD

progress, and make adjustments to her IEP reflecting the placement considerations and discussion; including the impact of vocational training on the Student's efforts to obtain a High School diploma.

The evidence demonstrated that the Student is not improving in her Science class and she is not receiving vocational or life skills training. The Respondent will also fund 1 hour per week of independent tutoring in Science for one calendar year. The Respondent will provide the Student with the one hour per week of life skills training to be provided independently for a period of one calendar year

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the DCPS has denied the Student a FAPE and issues the following:

## VI. ORDER

**ORDERED**, the Respondent will schedule a MDT/IEP meeting by March 1, 2010, for the purpose:

- a. Prepare with the Petitioner and the Student's input an IEP that includes a transition plan and goals to address the discrepancy between the Student's capacity and academic programming;
- b. Make a placement determination for the 2009-2010 school year;
- c. The Respondent will document all discussion pertaining to the development of the revised IEP for the Student;
- d. The Respondent will also document all efforts made to obtain the participation of the Guardian and Student in the IEP/MDT meeting; **it is further**

**ORDERED**, at the MDT/IEP meeting, the advantages and disadvantages with respect to each school must be discussed and put in writing, including any schools proposed by the Petitioner. The Respondent shall provide the Petitioner an explanation for the placement it proposes, and the reasons for the proposal shall be included in the Meeting Notes. The Respondent shall have five school days to issue a prior notice of placement to a DCPS school, and 20 school days to issue a prior notice of placement to a non public or private school, **it is further**;

**ORDERED**, the Respondent will fund one hour per week of life skills training for the Student for a period of one calendar year. The Respondent will also fund 1 hour per week of independent tutoring in Science for one calendar year, **it is further**;

**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. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives, **it is further**;

**ORDERED**, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days.

This order resolves all matters presented in the Petitioner's November 24, 2009, it is hereby; due process hearing complaint; and the hearing officer makes no additional findings.

**NOTICE OF RIGHT TO APPEAL**

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)



**Wanda Iris Resto - Hearing Officer**

**Signed: February 7, 2010**