District of Columbia
Office of the State Superintendent of Education
Student Hearing Office
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In Re the Matter of :	
[1]**Parent on behalf of Student,**	
Petitioner,	**Date of Complaint:** June 4, 2010 **Date Decision Issued:** August 3, 2010 **Date of Hearing:** July 27, 2010,
v.	
The District of Columbia Public Schools,	**Hearing Rooms:** 7A **Student Case Number:**
Respondent.	**Student Identification Number:**
	Hearing Officer: Attorney Ramona M. Justice

*HEARING OFFICERS' DECISION

I. JURISDICTION

This proceeding was invoked pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; 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; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5 of the District of Columbia Municipal Regulations ("DCMR").

II. INTRODUCTION

The above-captioned matter came before this Special Education Due Process Hearing Officer, Attorney Ramona M. Justice, pursuant to "Petitioner's Notice of Due Process Complaint", filed on June 4, 2010. On June 8, 2010, the complaint was assigned to this Hearing Officer; and on June 9, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for July 6, 2010, at 3:30 p.m...

[1] *Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution. *This decision is amended merely to accurately reflect the identities of the individuals that participated in the hearing, as identified in Appendix A of this decision.*

On June 14, 2010, Respondent filed "District of Columbia Public Schools' Response". On July 6, 2010, the prehearing conference was held; and during the prehearing conference, Petitioner withdrew Issue 2 of the complaint. On July 6, 2001, the Hearing Officer issued to the parties, the prehearing conference order. The due process hearing convened on July 27, 2010, at 9:00 a.m., as scheduled; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. Petitioner's Exhibits 01 through Petitioner's Exhibits 27 and a witness list dated July 20, 2010; and Respondent's witness list dated July 20, 2010; were admitted into the record as evidence. Dr. Ida Jean Holman, Educational Advocate, James E. Brown & Associates, PLLC, was admitted as an expert witness in Special Education.

III. BACKGROUND

The student attends a public high school located in the former in the District of Columbia; hereinafter referred to as The student is identified as disabled and eligible to receive special education and related services. This due process complaint was filed by the parent on behalf of the student, challenging the appropriateness of the student's educational program and placement at during the 2009/10 school year.

The due process hearing convened on July 27, 2010. Prior to proceeding with a hearing on the merits of the issues in the complaint, the Petitioner advised the Hearing Officer that a full-time IEP, outside general education, was developed for the student on June 30, 2010; and a meeting was scheduled for July 28, 2010 with the Office of the State Superintendent of Education (OSSE), to discuss the student's placement. However, Petitioner requests this Hearing Officer issue an order for interim placement at pending a decision by the OSSE; and provide the student compensatory education services for services the student failed to receive from March 20, 2010 through the end of the 2009/10 school year.

represents that prior to completion of the Vineland Assessment, the school posited that the placement decision was premature, however, in light of the May 17, 2010 Adaptive Behavior Evaluation the student's disability classification changed, supporting a determination by the Multidisciplinary Development Team (MDT) that the student requires a full-time special education program, outside general education; and that is no longer an appropriate placement for the student. advised the Hearing Officer that a referral was made to the Office of the State Superintendent of Education, requesting an appropriate full-time special education program, outside general education, for the student.

also advised the Hearing Officer that the student is not denied a free appropriate public education, entitled to compensatory education services because schools are not in session during the Summer and therefore the student is not denied educational services; and the OSSE will identify a placement for the student prior to August 23, 2010, the beginning of the 20010/11 school year. also represents that the student is not entitled to compensatory education services, because the MDT, including the parent and her Attorney, agreed to an interim IEP and the student's placement at the school, pending further evaluation.

Stipulations of Fact Standard

The parties stipulated that the student requires a full-time special education program, outside general education; and that is no longer an appropriate placement for the student. When the parties enter into stipulations of fact upon which they intend to rely, the court will, absent persuasive reason to the contrary, deem the material facts claimed and adequately supported by the moving party to be established except to the extent that such material facts are disputed by affidavit or other written or oral evidence. Additionally, by stipulating to these facts, the parties decided that this issue would be decided by the court, on the basis of the stipulated facts, and the parties would not proceed to a hearing on the merits on the issue in the complaint. The parties agree that it is appropriate for the court to treat the case as a trial on stipulated facts, [this court] of necessity draws – and bases legal conclusions on factual inferences." *Saab Cars USA, Inc. v. United States, 434 F.3d 1359, 1372 (Fed. Cir. 2006)*.

IV. ISSUE

As a result of the stipulated facts, the issue in dispute and remaining for the Hearing Officer to decide is as follows:

Whether the student was *denied a free appropriate public education* as a result of failure to provide the student a full-time special education program and outside general education placement, during the 2009/10 school year, entitling the student to compensatory education services, and if the student was denied a FAPE, *the nature and amount of compensatory education services the student is entitled to receive.*

V. FINDINGS OF FACT

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

1. The student is years of age, and a grade student at a public high school located in the former in the District of Columbia. is its own local education agency, for special education. The school was established in 2000, and serves students in grades 9-12.

2. The student is identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is multiple disabilities (MD), including intellectual disability (ID) and other health impaired (OHI), identified as Attention Deficit Hyperactivity Disorder (ADHD).

3. The student formerly resided in the District of Columbia; and attended Educational Center, a D.C. public school; however, subsequently moved to the state of Maryland, where he attended school, also located in the state of Maryland.

4. On August 6, 2009, the student returned to the District of Columbia, where he currently resides with his mother, the Petitioner in this matter. During an interview with the parent regarding the student attending the parent provided the school a copy of the students April 10, 2008 IEP, which recommended a full-time special education program, outside general education. advised the parent at that time, that it was unable to provide the student a full-time special education program, outside general education, as recommended in the April 10, 2008 IEP. However, at the parent's insistence that the student needed to be in a school, accepted the student at the school; which he began attending during the second week of September, 2009.

5. On March 21, 2008, while attending a ***"Confidential Report of Comprehensive Psychological Evaluation"*** was completed.[2] The evaluator determined that cognitively the student's abilities were in the extremely low range, full scale IQ 59 and percentile rank, 0.3%., with verbal abilities in the same range, and his working memory and processing speed abilities were also in the borderline range. The evaluator reported that academically, the student's performance was between the borderline and low average range; and overall, he was performing far below age expectations and seems to be impacted by his emotional difficulties.

   As for the emotional findings, the determined that the student has mostly mild emotional difficulties, however, he continued to have *significant* difficulties, as endorsed in the 2005 report; and that such difficulties remain under reported. The evaluator recommended *small classes to provide the student more opportunities for individualized assistance*; counseling; *a program for children with ADHD, and possible medication intervention.*

6. On April 10, 2008, developed an IEP for the student recommending a full-time special education program, outside general education, consisting of 26 hours of specialized instruction per week, 1 hour of psychological services, and .5 hours of occupational therapy services, weekly. The student's disability classification was identified as learning disabled (LD).

7. On September 15, 2009, convened a MDT meeting to review the student's records, IEP and determine if additional evaluations were warranted.[3] The MDT reviewed the student's April 10, 2008 IEP, services, and goals, with the parent, her Attorney, and the student's Education Advocate. The MDT advised the parent that the April 10, 2008 IEP had expired; and based on a review of the student's records he was transferring from where it was recommended that the student receive a full-time placement at The Special Education Coordinator (SEC) advised the parent that because the school was unfamiliar with the student, it would develop an interim IEP, pending further evaluation.

   The student's Education Advocate and petitioner's Attorney requested an updated IEP, reevaluation of the student, a Functional Behavior Assessment (FBA), and interim Behavior Intervention Plan (BIP). The MDT decided to reduce the 26 hours of specialized instruction recommended in the student's April 10, 2008 IEP, to 18 hours of specialized-

[2] Petitioner's Exhibit 11.
[3] Respondent's Exhibits 3 and 4.

instruction, and maintain the 1 hour of psychological services; pending reevaluation of the student. [4] The MDT decided to remove Occupational Therapy (OT) services from the student's IEP, pending reevaluation; and if determined that OT services are necessary the team would amend the IEP accordingly. The MDT agreed to conduct the following reevaluations: Psycho-educational, Speech and Language, Occupational Therapy, Functional Behavioral Assessment; and an interim BIP.

According to the MDT and Education Advocate's meeting notes, a Student Evaluation Plan and "Consent to Evaluate" form was completed and signed by the parent, agreeing to reevaluate the student; and the interim IEP cover sheet signed, with the team agreeing that the SEC would complete the interim IEP consistent with the team's decisions. Petitioner's Attorney offered to request the student's records from D.C. Public Schools.[5] The MDT meeting notes reflect that the parent, parent's Attorney, student's Education Advocate, and remaining team members agreed to the interim IEP, reduction in services, and student's placement at pending further evaluation; and reconvene within 45 to 60 days to review the evaluations; and develop an appropriate IEP for the student.[6]

8. A "***Speech and Language Evaluation***" was completed on October 2, 2009[7]. Formal and informal analysis suggested that the student may be experiencing difficulty in the overall area of working memory; and he has several specific areas of comprehension of language that falls below average range of performance and may cause the student to display performance difficulty within the classroom. The evaluator recommended a complete audio logical examination to rule out hearing loss; a complete neurological examination to rule out CND; an examination of his behavior and a functional plan to address any deficits; and discussion of Speech and Language Therapy in light of a behavioral assessment.

9. On October 6, 2009, a "***Functional Behavioral Assessment (FBA)***" was completed, indicating that the student had difficulty maintaining focus during instruction-task avoidance/escape (e.g. hall walking, slow transitions, cutting school); difficulty controlling impulses during transitions, down time, or unstructured activities; and negative peer attention.[8] The assessment concluded that the student's behavior appeared to be the result of poor attention skills/impulse control and task avoidance related to deficits in comprehension abilities.

10. A "***Social History Report***" was completed on October 8, 2009, wherein the evaluator indicated that due to glaring inconsistencies between teachers, parent, and self-report, it may be necessary to implement behavioral strategies designed to address/confront dishonesty in the classroom and at home. The evaluator also recommended that the student's teachers adhere strictly to his behavior intervention plan in order to promote positive behavior, promote positive character building, and reduce distractibility in the classroom.[9]

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[4] Respondent's Exhibit 3, page 2.
[5] Respondent's Exhibit 3, page 3; and Respondent's Exhibit 4, pages 1 and 2 of 2.
[6] Testimony of parent and Respondent's Exhibits 3 and 4.
[7] Respondent's Exhibit 6, and Petitioner's Exhibit 15.
[8] Petitioner's Exhibit 19, and Respondent's Exhibit 8.
[9] Petitioner's Exhibit 18, and Respondent's Exhibit 7.

11. On October 27, 2009, a "***Comprehensive Occupational Therapy Evaluation***" was completed.[10] *Occupational therapy* was recommended to assist the student in development of classroom skills and strategies and compensatory techniques to support his deficits and enhance his overall sensory processing, handwriting skills, keyboarding, visual motor integration, visual perceptual skills, organizational skills, and self esteem building. The evaluator also recommended *classroom accommodations and a current Ophthalmological Evaluation to rule out any potential vision difficulties* that may be impacting the student' academic achievement.

12. On November 10, 2009, an "***Educational Evaluation***" was completed. [11] The evaluator determined that the student's sight reading ability, math calculation skills, and spelling are limited; his ability to apply academic skills is within the low range of others at his age level; and the student's academic skills and fluency with academic tasks are both within the low average range; and when compared to others at his age level, his performance is low average in broad reading, basic reading skills, written language, and written expression; and low in reading comprehension, mathematics, and math calculation skills.

13. On November 12, 2009, an ***"Intervention Behavior Plan"*** was developed for the student, targeting the student's difficulty initiating tasks and making transitions between activities; avoiding challenging tasks by having poor behavior, defiance; and failing to complete class work and homework assignment.[12]

14. On ***November 13, 2009***, a MDT/IEP team meeting convened to review IEP goals and objectives; and determine the student's eligibility for special education services for the 2009/10 school year. The parent and student attended the meeting; independent of an Education Advocate, Attorney, or other representative. The school Psychologist reviewed the Social History assessment; however the team failed to review the April 10, 2008 IEP, prior evaluations, current evaluations including the October 2, 1009 Speech and Language, October 6, 2009 Functional Behavioral Assessment, October 27, 2009 Comprehensive Occupational Therapy, or November 10, 2009 Educational evaluations, as agreed at the September 15, 2009 MDT meeting.

    The MDT/IEP team developed an IEP for the student recommending 18 hours of specialized instruction in an *inclusion/ combination resource general education setting*; and 1 hour of counseling, .5 hours of speech and language, and .5 hours of occupational therapy services weekly. The student's disability classification was identified as multiple disabilities (MD), including *learning disabled* and other health impaired, identified as Attention Deficit Hyperactivity Disorder (ADHD).

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[10] Respondent's Exhibit 5 and Petitioner's Exhibit 13.
[11] Petitioner's Exhibit 12 and Respondent's Exhibit 9.
[12] Petitioner's Exhibit 17.

15. On May 17, 2010, an ***"Adaptive Evaluation"*** was completed by to rule out an intellectual disability.[13] Tests revealed very poor and above average ranges in adaptive behavior, compared to the normal intelligence population for his age; which reflect significant impairment in the domain of adaptive functioning in the school setting, and may also indicate an intellectual disability in conjunction with this FSIQ of 59. The evaluator concluded that the student qualified for special education services as a student with an intellectual disability (Mild Mental Retardation); and recommended that the MDT determine whether or not this diagnosis is warranted and determine what changes, if any, should be made to his IEP to address deficits in *adaptive functioning*.

16. During the first week of May, 2010, the student was placed in the program, a program at where the student received special education services from general and special education teachers for core subjects; and was pulled out of class for four (4) hours a day to participate in elective subjects, with non-disabled students. The student made little to no progress during his participation in the program, which may be attributed to the delay in the student beginning the program; and the limited period of time the student participated in the program.[14] Nonetheless, is unable to provide the student the full-time special education program, outside general education, which he requires; and as recommended in his April 10, 2008 or June 30, 2010 IEPs.

17. A MDT/Resolution meeting was held on June 25, 2010. Petitioner's Attorney requested a full-time IEP; and placement. The team discussed the Psycho-educational evaluation, clarified the start date of the program, and reviewed the Adaptive Evaluation[15]. The team agreed to change the disability classification for the student from Multiple Disabled/Learning Disabled/Other Health Impaired/Attention Deficit Hyperactivity Disorder to Multiple Disabled/Intellectual Disability/Other Health Impaired/Attention Deficit Hyperactivity Disorder; and reconvene an IEP/MDT meeting on June 30, 2010.

18. On June 30, 2010, a Multidisciplinary Development Team convened to review and amend the student's IEP for the 2010/11 school year. The team reviewed the November 10, 2009 ***"Educational Evaluation"***, which reflected that although the student was in the grade, according to the evaluation the student was functioning on a 5.1 grade level in math calculations, 4.5 grade level in math reasoning, 3.9 grade level in reading comprehension, 4.8 grade level in basic reading, a 6.2 grade level in written expression. The team agreed that the annual goal for the student was to increase his academic levels within one year by one grade level.[16]

    The team also reviewed the student's speech and language, occupational therapy, and social/emotional goals; discussed transition goals, FBA/BIP, and recommended that the student attend the Program for ESY services beginning July 6, 2010 and ending August 6, 2010. The Special Education Coordinator agreed to prepare a placement packet and forward the same to the Office of the State Superintendent for Education.

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[13] Petitioner's Exhibit 14, and Respondent's Exhibit 15.
[14] Testimony of Student and Special Education Coordinator at
[15] Petitioner's Exhibit 14.
[16] Petitioner's Exhibit 8, page 2.

An IEP was developed for the student recommending a full-time special education program, outside general education, consisting of 26 hours of specialized instruction, 30 minutes of occupational therapy, 30 minutes of speech/language therapy, and 1 hour of psychological services, weekly. The parent, advocate, and disagreed regarding the student's entitlement to compensatory education services.

VI. CONCLUSIONS OF LAW

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

1. The burden of proof in this matter is properly placed on the Petitioner, the party seeking relief in this matter.[17] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[18]

2. The student is a child with disabilities entitled to receive special education and related services, pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq., the federal statute governing the education of students with disabilities. The Federal regulations promulgated under the IDEA are codified at 34 C.F.R. Part 300.

3. The IDEA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.[19] States receiving federal assistance under the IDEA are obligated to (1) provide a "free appropriate public education" to each disabled child within its boundaries, and (2) ensure that such education is in the "least restrictive environment" possible. In the District of Columbia a FAPE must be made available to all disabled children residing in the District of Columbia, between the ages of 3 and 21.

   The IDEA defines a free appropriate public education ("FAPE"), as follows:

   > Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA… include an appropriate preschool, elementary school, or secondary school education in the State involved; and *are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.*[20]

   The Supreme Court, in Rowley[21] provides:

   > Insofar as a Sate is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing *personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.* Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in

[17] Shaffer v. Weast, 546 U.S. 49, 56-057 (2005) and 5 D.C. M.R. §3030.3.
[18] 20 U.S.C. §14115(i)(2)(c). See also Reid v. District of Columbia, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)
[19] 20 U.S.C. §1400(d)(1)(A) and §1412(a)(1).
[20] IDEA, 34 C.F.R. §300.17.
[21] Board of Education v. Rowley, 458 U.S. 176, 203-204 (1982).

the State's regular education, and *must comport with the child's IEP*. In addition, the IEP, and therefore, the personalized instruction, should be formulated in accordance with the requirements of the Act *and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.*

Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA is tailored to the unique needs of the student by means of an IEP. *See, Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176, 203-207 (1982).*

4. The FAPE requirement under the IDEA applies to procedural and substantive violations, which may result in denial of a FAPE. In *Rowley*, the Supreme Court held that when parents challenge the appropriateness of a program offered to their disabled child by a school district under the IDEA, as in this instance, a reviewing court must undertake the following two-step inquiry in determining whether the student's educational program is appropriate: (1) whether the local education agency complied with the procedural requirements of the IDEA (Procedural FAPE); and (2) whether the individualized education program ("IEP"), offered by the LEA, is reasonably calculated to enable the child to receive educational benefit (Substantive FAPE).

   In this matter, the Petitioner alleges that failure to develop an appropriate Individualized Education Program (IEP) for the student; and provide the student an appropriate placement during the 2009/10 school year represents not only a procedural violation, however, also represents a substantive violation of the IDEA, and denial of a FAPE, entitling the student to compensatory education services.

5. **Procedural FAPE (Procedural compliance)**

   The procedural prong of the FAPE analysis, and the ***first*** prong of ***Rowley***, requires the Hearing Officer to determine whether the local education agency complied with the procedural requirements of the IDEA, including the creation of an IEP that conforms to the requirements of the Act; and if not, whether the procedural violations are to such an extent that they are serious and detrimentally impact upon the child's right to a free appropriate public education; or seriously infringe upon the parents' opportunity to participate in the IEP process. Procedural violations that deprive an eligible student of an individualized education program or result in the loss of educational opportunity will also constitute 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.*

   A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds; and the 2004 amendments to the IDEA, at 34 C.F.R. §300.513 specifically limit the authority of hearing officers to make findings that a child did not receive FAPE due to procedural violations, unless it can be determined that the inadequacies:

   (I) impeded 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. *See, 34 C.F.R. §300.513(a)(2).*

6. The record supports a finding that in ***developing*** the student's November 13, 2009 IEP, Friendship PCS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324 (a) because the MDT/IEP team failed to consider: 1) the strengths of the student; 2) the results of the initial and most recent evaluations of the student; and 3) the academic, developmental, and adaptive functioning needs of the student.

   In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, *and the educational needs of the child*, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information regarding the child's physical condition, social or cultural background, and *adaptive behavior*; and ensure that the information obtained from all of these sources is documented and carefully considered.[22]

   Review and careful consideration of information from the various sources was necessary for the MDT/IEP team to determine the level of services the student required, develop an appropriate IEP, and determine placement; however, this failed to occur. There is also no indication that the September 15, 2009 interim IEP was actually completed, as agreed at the September 15, 2009 meeting; or reviewed by the team in developing the November 13, 2009 IEP.

7. The record supports a finding that in ***reviewing and revising*** the student's November 13, 2009 IEP, Friendship failed to comply with the procedural requirements of the IDEA, at 34 C.F.R. §300.324 (b) by failing to review and revise the IEP to address: 1) the student's *lack of expected progress* toward the annual goals as reflected in the first quarter of his report card; 2) the student's lack of progress in the *general education curriculum* which is reflected in his behavior; 3) results of prior and current evaluations, 3) the April 10, 2008 IEP provided to the school by the parent, and 4) the student's anticipated academic, developmental, and adaptive functioning needs.

   According to the student's 2009/10 Report Card, throughout the school year the student failed or nearly failed the majority of core subjects, except Biology and Weight Training; and by the end of the school year had a grade point average of 0.893. The student also received several in school suspensions, because of his behavior; which had an adverse impact on his learning.[23] At the time that the student's November 13, 2009 IEP was developed, was aware that the student was regressing and not progressing, academically and behaviorally; and was having difficulty adapting and functioning in the inclusion environment, however, it failed to review and revise the student's IEP, as appropriate.

8. In determining the educational ***placement*** of the student, failed to comply with the ***Least Restrictive Environment (LRE)*** requirements of the IDEA, including §§300.114 through 300.118;[24] by failing to ensure that the students' placement was based on the April 10, 2008 IEP, his most current IEP of record; and failing to consider any potential harm that may-

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[22] 34 C.F.R. §300.306(c).
[23] Testimony of SEC at Friendship PCS.
[24] 34 C.F.R. §300.116.(1)(2) and *Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

result to the student or the quality of services he requires, by maintaining his placement at although aware that the student required a more restrictive setting, which was not available at the school.

First, acknowledge that prior to accepting the student at the school, it was aware of the April 10, 2008 IEP; and advised parent that it was unable to provide the student a full-time special education program, outside general education, as recommended in the April 10, 2008 IEP. However, at the parent's insistence that the student needed to be in a school,- accepted the student at the school; in violation of the LRE requirements of the IDEA.

Second, on September 15, 2009, developed an interim IEP for the student, changing the student's educational program, by reducing the level of services the student required and as recommended in his April 10, 2008 IEP, and changing the student's placement from outside general education to a combination/Resource/General Education setting. This change in program and placement were not based on a change in the educational needs of the student, however, were merely to conform to the level services and educational setting available at

Third, although it is argued that the student's April 10, 2008 IEP was outdated at the time the student returned to the District of Columbia, the fact remains that the April 10, 2008 IEP was the student's last IEP of record, and therefore, should have served as the basis in deciding whether to accept the student at the school, in developing an IEP for the student, and determining an appropriate placement for the student, consistent with the LRE requirements of the IDEA, which failed to occur.

Fourth, although Respondent represents that the parent, her Attorney, and the student's education advocate agreed to a reduction in the level of services, and placement of the student at in a less restrictive environment; the IDEA places primary responsibility for providing the student a FAPE, upon the LEA; and not the parent or his/her Attorney or advocate.

9. The record supports a finding that failed to comply with the procedural requirements of the IDEA, including the creation of an IEP that conforms to the requirements of the Act; and determining the educational placement of the student. It is evident that failed to comply with the procedural requirements of the IDEA in developing the student's IEP and determining his placement, because prior to accepting the student at the school, it determined that the school was unable to provide the student the full-time special education program, outside general education, recommended in the April 10, 2008 IEP; and therefore, it would develop an IEP for the student to conform with the level of services and educational setting available at

10. The record also supports a finding that the procedural violations are to such an extent that they are serious and detrimentally impact upon the child's right to a free appropriate public education. The procedural violations deprive an eligible student of an individualized-

education program specifically designed to address his unique academic, developmental, and functional needs; and resulted in the loss of educational opportunity, constituting 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.

The procedural violations also result in substantive harm to the student because the violations occurred over such an extended period of time, from September 15, 2009 through June 30, 2010, impeding the student's right to a free and appropriate public education; and causing a deprivation of educational benefit to the student. *See, 34 C.F.R. §300.513(a)(2).*

11. **Substantive FAPE (Conferral of Educational Benefit)**

The ***second*** prong of Rowley, requires that the court determine whether the individualized education program ("IEP"), offered by the LEA, is reasonably calculated to enable the child to receive educational benefit. The benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177, 206-207. For the benefit to be sufficiently meaningful, the IDEA was enacted to assure that all children with disabilities have available to them a (FAPE), which emphasizes special education and related services designed to meet their unique needs, supported by such services, as are necessary to permit the child to benefit from the instruction.

The November 13, 2009 IEP offered by the LEA, is not reasonably calculated to enable the child to receive educational benefit. Any benefit the student may have received from attending and the Program", was not sufficiently meaningful, for the following reasons: 1) the level of special education and related services are insufficient to meet the student's academic, developmental, and functional needs; 2) the student requires a more restrictive environment because the nature and severity of the student's disabilities are such that education in the general education curriculum, even with the use of supplementary aides and services cannot be achieved satisfactorily; 3) the special education and related services are not specifically tailored to meet his unique needs, and 4) are not supported by such services, as are necessary to permit the student to benefit from the instruction.

12. According to *Rowley*, in order for FAPE to be offered, the school district must show it complied with the statutory elements of an IEP, and the goals and objectives in the IEP are reasonable, realistic and attainable. The FAPE requirement is satisfied when the State provides personalized instruction that is reasonably calculated to permit the child to benefit educationally. *See, Hendrick Hudson Board of Education v. Rowley, 458 U.S. 176, 203-204 (1982)* The special education and related services must be reasonably calculated to enable the child to receive educational benefit, and must be likely to produce progression, not regression. *M.S. ex rel S.S. v. Bd. Of Educ. of the City of Yonkers*, 231 F.3d 96, 103 (2df Cir. 2000).

failed to demonstrate that it complied with the statutory elements of an IEP, or that the goals and objectives in the student's November 13, 2009 IEP are reasonable, realistic and attainable; because the IEP fail to include personalized instruction that is reasonably calculated to permit the student to benefit educationally.

13. Based on the aforementioned, it is the Hearing Officers' decision that failed to comply with the procedural and substantive requirements of the IDEA, in developing an appropriate IEP for the student (i.e. full-time special education program); and in determining the student's placement (i.e. outside general education setting), during the 2009/10 school year; and as a result of these violations, the student was denied a FAPE, and is entitled to compensatory education services from September 15, 2009 through June 30, 2010. *M.S. ex rel S.S. v. Bd. Of Educ. Of the City of Yonkers*, 231 F.3d 96, 103 (2d. Cir. 2000).

14. **Compensatory education.**

Compensatory education services is a form of equitable relief, intended to assist a child in making the progress that he/she would have made if an appropriate program had been available. The amount of compensatory services provided should reflect the student's specific learning needs, and should relate to the amount of services the student has missed, and therefore, a day for each day of services missed, may not be appropriate. *Reid.*

Petitioner's expert witness for compensatory education, testified that she is not prepared at this time to provide a recommendation regarding the nature and amount of compensatory education services the student should receive; however, recommend further evaluation to develop baseline data, assess the student's progress, and provide a recommendation regarding.[25]

Petitioner satisfied its burden of proof by presenting evidence that failed to provide the student an appropriate IEP and placement from September 15, 2009 through June 30, 2010, resulting in denial of a FAPE, and an entitlement to compensatory education services. However, Petitioner failed to satisfy its burden by presenting evidence regarding the nature and amount of services necessary to assist the student in making the progress he would have made, if he received the services and placement he was entitled to receive under the IDEIA; in accordance with the standard established in *Reid.*

VII. ORDER

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

1. **ORDERED**, that prior to August 23, 2010, shall ensure that parent receives a Prior Notice of Placement authorizing funding of the student's tuition and transportation, for the student to attend a full-time special education program, outside general education, for the 2010/2011 school year; and it is further

2. **ORDERED**, that should fail to ensure that parent receives a Prior Notice of Placement by August 23, 2010, authorizing funding of the student's tuition and transportation, for the student to attend a full-time special education program, outside general education, for the 2010/2011 school year; no later than August 23, 2010, shall issue to parent a Prior Notice of Placement for placement of the student to attend located in Springfield, Virginia, with transportation, for the 2010/2011school year; and it is further

[25] Testimony of Dr. Ida Jean Holman.

3. **ORDERED**, that within ten (10) business days from the date of this decision, shall issue to parent an independent educational evaluation letter authorizing funding of an independent comprehensive audio logical examination to rule out hearing loss; and an independent comprehensive neurological examination to rule out Chronic Neuroimmune Disease (CND); and it is further

4. **ORDERED**, that in the event of failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at in an effort to obtain compliance prior to filing a complaint, alleging failure to comply with this decision and order; and it is further

5. **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. Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

VIII. NOTICE OF RIGHT TO APPEAL

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

Date: *August 3, 2010*

Attorney Ramona M. Justice

Ramona M. Justice, Hearing Officer