

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
State Enforcement and Investigation Division  
Student Hearing Office  
Van Ness Elementary School  
1150 5<sup>th</sup> St., S.E., Washington, D.C. 20003  
Phone: (202) 698-3819      Facsimile: (202) 698-3825

**In Re the Matter of :** )  
) )  
**Parent on Behalf of Student,** )  
) )  
**Petitioner,** )  
) )  
**Date of Complaint:** June 10, 2009 )  
**Date of Pre-hearing:** July 13, 2009 )  
**Dates of Hearing:** July 15, 2009 )  
and September 2, 2009 )  
) )  
**Student Case Number:** )  
**Student Identification Number:** )  
**The District of Columbia Public Schools** )  
**825 North Capitol Street, N.W.** )  
**Washington, D.C. 20002** )  
**("DCPS")** )  
) )  
**Respondent.** )  
) )

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STUDENT HEARING OFFICE

**HEARING OFFICERS' DECISION(HOD)**

**Student Hearing Officer:** Attorney Ramona M. Justice

**Attorney for Petitioner:** Attorney Miguel Hull  
James Brown and Associates, PLLC  
1220 L Street, Suite 700  
Washington, D.C. 20005

**Attorney for Respondent:** Attorney Daniel Kim, Assistant Attorney  
General, Office of the Attorney General  
825 North Capitol St., N.E., 9<sup>th</sup> Floor  
Washington, D.C. 20002

1 Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution.

**INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF  
2004 (IDEIA), (Public Law 108-446)  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS  
IMPARTIAL DUE PROCESS HEARING**

**I. INTRODUCTION**

The student is \_\_\_\_\_ years of age, and attends \_\_\_\_\_ of Washington, D.C., a private provider of specialized education services for children and youth facing learning, language, and social challenges. Prior to attending \_\_\_\_\_ of Washington, D.C., the student attended \_\_\_\_\_ a public school located in the District of Columbia.

The student is a resident of the District of Columbia, and identified as 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 Disabled (MD), Emotionally Disabled (ED), and Specific Learning Disability (SLD).

On November 24, 2008, Petitioner, through counsel, filed a due process complaint with the D.C. Public Schools, hereinafter referred to as “DCPS”, Student Hearing Office, alleging the DCPS denied the student a free appropriate public education (“FAPE”); by failing to: (1) complete reevaluations and convene a meeting to review the evaluations, in a timely manner; (2) provide the student an appropriate IEP; and (3) provide the student an appropriate placement. Petitioner also requested that the court determine whether the student was denied a free appropriate public education (FAPE); and therefore, is entitled to compensatory education services.

The court determined that the student was denied a FAPE, and therefore, was entitled to compensatory education services; however, the court failed to determine the nature and amount of compensatory education services the student was entitled to receive.

On June 10, 2009, Petitioner, through her Attorney, initiated a due process complaint on behalf of the student, alleging that D.C. Public Schools, hereinafter referred to as “DCPS” or “Respondent”, failed to provide the student appropriate compensatory education services, for the denial of a free appropriate public education (FAPE), which occurred during the 2007/08 and 2008/09 school years; 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”)”.

The due process hearing initially convened on July 15, 2009, at 9:00 a.m.; and reconvened on September 2, 2009, at 1:00 p.m.; at Van Ness Elementary School, located at 1150 5<sup>th</sup> Street, S.E., Washington, D.C. 20003.

## II. JURISDICTION

The due process hearings were held, and the decision written, 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.

## III. DUE PROCESS RIGHTS

At the hearing, Petitioners’ Attorney waived a formal reading of parent’s due process rights.

## IV. ISSUE

**The following issue is identified in the *June 10, 2009* due process complaint:**

Whether DCPS failed to provide the student appropriate compensatory education services, for the denial of a free appropriate public education (FAPE), which occurred during the 2007/08 and 2008/09 school years?

## V. RELIEF REQUESTED

- (1) That DCPS be ordered, or agree to:
  - a. award reasonable compensatory education as relief for having an inappropriate IEP and placement for the period addressed in the HOD issued in February, 2009, 2007/08 and part of the 2008/09 school years;
  - b. that DCPS provide any other relief deemed appropriate and relating to the violations committed here; and
  - c. pay parent’s reasonable attorney’s fees and costs.
- (2) All meetings shall be scheduled through counsel for the parent, Miguel A. Hull, Esquire, in writing, via facsimile, at 202-742-2097 or 202-742-2098.

## VI. DISCLOSURES

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

## **DISCLOSURES SUBMITTED BY STUDENT**

Petitioner's Exhibit 01 through Petitioner's Exhibit 31; and a witness list dated July 8, 2009.

## **DISCLOSURES SUBMITTED INTO EVIDENCE BY DCPS**

Respondent's Exhibit 01 through Respondent's Exhibit 2, and a witness list dated July 13, 2009.

## **VII. PRELIMINARY MATTERS**

As a preliminary matter, Petitioner withdrew from its disclosures the Professional Resume of [REDACTED] identified as Petitioner's Exhibit 31; and Respondent requested clarification of the time period in which the court determined the student was denied a free appropriate public education, and entitled to compensatory education services; which the court provided.

## **VIII. PROCEDURAL POSTURE**

On June 10, 2009, Petitioner, through her Attorney initiated a due process complaint on behalf of the student, alleging that D.C. Public Schools, hereinafter referred to as "DCPS" or "Respondent", failed to provide the student appropriate compensatory education services, for the denial of a free appropriate public education (FAPE), which occurred during the 2007/08 and 2008/09 school years; 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")". On June 15, 2009, Respondent filed "DCPS Resolution Session Waiver"; and on June 18, 2009, Respondent filed "District of Columbia Public Schools' Response to Parent's Administrative Due Process Complaint Notice and Motion to Dismiss".

On June 18, 2009, the Hearing Officer issued a Pre-hearing Conference Notice scheduling the pre-hearing conference for July 7, 2009, at 5:00 p.m.. \*The pre-hearing conference was rescheduled, convening on July 13, 2009, at 5:20 p.m.; and on July 13, 2009, the Hearing Officer issued a Pre-hearing Conference Order, confirming the due process hearing for July 15, 2009; and denying Respondent's Motion to Dismiss, finding that the issue in the complaint was not barred under the Doctrine of Res Judicata, because in the prior complaint, the court determined that the student was denied a FAPE, and therefore, is entitled to compensatory education services; however, failed to determine the nature and amount of compensatory education services the student is entitled.

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\* According to paragraph 76(b)(iii) of the Blackman/Jones Consent Decree, if the class member chooses to pursue compensatory education through the process in paragraph 76b above, "addressing compensatory education at an IEP meeting", the class member may request a due process hearing if dissatisfied with the resolution of his/her request for compensatory education at the IEP meeting or by the Central Administration personnel. At the due process hearing the Hearing Officer will decide and include in his/her decision in the HOD whether the student is entitled to compensatory education (taking into account the rebuttable presumption of harm) and if so, the type and duration of the compensatory education to which the student is entitled.)

The due process hearing initially convened on July 15, 2009; and reconvened on September 2, 2009. The parties were provided the opportunity to submit written closing arguments, due by September 14, 2009.

On September 8, 2009, Petitioner filed with the Student Hearing Office a letter advising the court of its intent to file a joint motion for extension of time to prepare a written closing statement. On September 10, 2009, Petitioner filed "Petitioner's Closing Statement"; and on September 11, 2009, Respondent filed "District of Columbia Public Schools' Closing Argument".

## IX. STATEMENT OF THE CASE

1. The student is \_\_\_\_\_ years of age, and attends \_\_\_\_\_ of Washington, D.C., a private provider of specialized education services for children and youth facing learning, language, and social challenges. Prior to attending \_\_\_\_\_ of Washington, D.C., the student attended \_\_\_\_\_ a public school, located in the District of Columbia.

The student is a resident of the District of Columbia, and identified as 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 Disabled (MD), Emotionally Disabled (ED), and Specific Learning Disability (SLD).

2. On November 24, 2008, Petitioner, through counsel, filed a due process complaint with the D.C. Public Schools, hereinafter referred to as "DCPS", Student Hearing Office, alleging the DCPS denied the student a free appropriate public education ("FAPE"); by failing to: (1) complete reevaluations and convene a meeting to review the evaluations, in a timely manner; (2) provide the student an appropriate IEP; and (3) provide the student an appropriate placement. Petitioner requests that the court also determine whether the student is entitled to compensatory education services.

The due process hearing was initially held on January 14, 2009, at 9:00 a.m., and reconvened on January 23, 2009, at 1:00 p.m., at Van Ness Elementary School, located at 1150 5<sup>th</sup> Street, S.E., Washington, D.C. 20003. On February 2, 2009, the Hearing Officer issued a decision finding that Petitioner satisfied its burden by presenting evidence sufficient for a finding that DCPS failed to provide the student an appropriate IEP and placement during the 2007/08 and 2008/09 school years, resulting in denial of a FAPE; and entitling the student to compensatory education services.

The Hearing Officer granted the following relief, in part:

1. **ORDERED**, that no later than February 13, 2009, DCPS shall issue a Prior Notice of Placement, *authorizing funding of the student's placement at the \_\_\_\_\_ with transportation*, until such time as DCPS develops an appropriate IEP, and provides an appropriate placement for the student, consistent with the findings in this decision; and it is further

2. **ORDERED**, that DCPS shall convene an MDT meeting within 30 days of the student's enrollment at the \_\_\_\_\_ to review and revise the student's IEP, to provide for a higher level of special education services to ensure that the student receives specialized instruction services in every class requiring reading and writing, to accommodate his learning disability; support services of a reading specialist; the student's participation in a Reading program; extended school year, and tutoring services, to provide the student additional academic support.

At the MDT meeting referenced herein, DCPS shall also determine an appropriate permanent placement for the student in a small structured therapeutic setting that accommodates the student's learning disability in reading, and he can receive one on one instruction; and ADHD, where there are minimum distractions; and it is further

3. **ORDERED**, that DCPS shall issue a Notice of Placement being issued within 5 days if the permanent placement is at a public school, or 30 days if the permanent placement is in a non-public school; and it is further
4. **ORDERED**, that DCPS shall fund an independent Physical Therapy Evaluation or other assessment, deemed appropriate to address the student's writing deficits; and provide parent funding to obtain an independent Clinical Psychological Assessment, and/or any other assessments warranted to determine the student's cognitive levels, and "rule out" Dyslexia; and it is further

3. On May 14, 2009, DCPS proposed a compensatory education plan consisting of three hours of tutoring services weekly by an independent provider for six months as well as two credits through an online credit recovery program. This plan was rejected by Petitioner.

4. On June 10, 2009, Petitioner's Attorney initiated a due process complaint alleging that D.C. Public Schools, hereinafter referred to as "DCPS" or "Respondent", failed to provide the student appropriate compensatory education services, for the denial of a free appropriate public education (FAPE), during the 2007/08 and 2008/09 school years; 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")".

5. On July 1, 2009, DCPS proposed a second compensatory education plan, developed in conjunction with the student's teachers and upon a review of the student's academic file; consisting of three hours of tutoring services per week, by an independent provider of parent's choice for the entire 20098-2010 academic year. This plan was rejected by Petitioner.

Additionally, on July 1, 2009, DCPS provided the student with interim authorization for tutoring support services during the Summer, to support the student's Summer school studies; interim authorization for three hours of individual tutoring instruction per week by an independent provider for six weeks at its expense; which Petitioner failed to utilize.

6. On July 2, 2009, DCPS presented a compensatory education plan consisting of 3 hours per week of private tutoring to conclude by June 30, 2010, for a total amount of 150 hours (3 hours per week x 50).

## **X. WITNESS TESTIMONY**

### **Education Advocate**

The Education Advocate testified that the student would have received 1500 hours of services, representing 56 weeks of services, had he not been denied a FAPE. The advocate also testified that during the thirty (30) day review meeting, he recommended 1100 hours of compensatory education services, to compensate the student for the denial of a FAPE, from September, 2007 through February 2009. The advocate testified that the student is entitled to compensatory education services for a denial of a FAPE, from September, 2007 through the end of the 2007/08 school year; and from the beginning of the 2008/09 school year, ending in February, 2009.

The advocate also testified that he requested 5 hours per week of tutoring services for the student, throughout the remainder of his school life, at \_\_\_\_\_ for the next two (2) school years, including extended school year (ESY) services for six (6) weeks, for a total of 36 weeks; and recommended 420 hours of tutoring services, while DCPS offered 150 hours of services. The advocate also testified that DCPS proposed a compensatory education plan consisting of tutoring and a credit recovery program, accessible online.

The advocate opined that 5 hours per week of one on one tutoring in reading, writing, and mathematics, for a two (2) year period, is fair; however, the student can adequately manage 1-1.5 hours of tutoring, as opposed to 5 hours per week of tutoring at the Linda Mood Bell program. The advocate also concluded that DCPS withdrew its proposal of the credit recovery program; and although it proposed the Linda Mood Bell-program to address the student's reading deficit; logistics, transportation, schedules, and the fact that the program is very intense and strict three month program, and no services would be provided after the three month period, renders the program inappropriate for the student.

### **Director of Admissions,**

The Director testified recommended 5 hours per week of 1 on 1 tutoring services in reading, comprehension, reading fluency, and decoding for two a two (2) year period. The evaluator also recommended a total of 84 weeks for a two (2) year period of time, 5 hours per week, for a total of 420 hours of compensatory education services. During cross examination the evaluator recommended 2-3 1.5 hour sessions per week, for an hour or 5 sessions at 1 hour each, depending on the student's concentration and level of tolerance, and the need for a program that allows for flexibility.

The Director testified that his recommendations are based on the fact that he reviewed the student's educational assessment completed in 2005 and 2007; spent a total of 2-2.5 hours with the student, and 45 minutes to an hour with parent; failed to observe the student in the classroom; failed to communicate with the student's teachers regarding the student's needs; and reviewed the student's 2007/08 IEP, which suggested the student had made one year of academic progress. The Director also testified that he reviewed the student's April 30, 2009 IEP and goals, and compared them with test scores and various evaluations; however, failed to contact \_\_\_\_\_ to determine whether the student is making academic progress, when he developed the June, 2009 report.

The Director testified that he is of the opinion that compensatory education services are warranted because of the Hearing Officers' prior decision, and the student's regression; and bases his opinion on test scores, the student's regression while at \_\_\_\_\_, interviews with student and parent, advocate, his training and education.

The Director also testified that he failed to review the student's 2008 Comprehensive Psychological Assessment or evaluations, except the student's prior Educational Evaluations, therefore, he is unaware of the student's diagnosis of Attention Deficit Hyperactivity Disorder (ADHD); and merely focused on the student's learning disability. The Director also testified that the ADHD diagnosis will impact the student's academic performance; and a compensatory education plan must consider the impact on a student with ADHD, participating in a full-time special education program.

### **Parent**

Parent testified recommending 360 hours of compensatory education services, based on the amount of time the student attended \_\_\_\_\_ and the amount of services missed; and is of the opinion that the student can tolerate 4-6 hours of 1 on 1 tutoring, per week. Parent also stated that two (2) hours of tutoring, after each school day is sufficient. Parent testified that she based her recommendation on the fact that there are 185 days in an academic school year, and the student has two (2) years of school remaining. Parent testified that during the 2007/08 school year the student passed certain classes; and received passing grades when he attended class.

### **Student**

The student testified that he requires 360 hours of compensatory education services; and when questioned regarding how he arrived at the number, the student testified that he was "just guessing". The student also testified that reading affects everything that he does in class; and that he could benefit from 2-3 hours per day, 3 days a week of tutoring in reading, spelling, and writing; and a computer to assist in completing assignments.

## XI. DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

### ISSUE 1

#### **Whether DCPS failed to provide the student appropriate compensatory education services, for the denial of a free appropriate public education (FAPE), during the 2007/08 and 2008/09 school years?**

Petitioner represents that 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.” Reid v. District of Columbia, 401 F.a4d 516 (D.D.C. 2005); quoting G. ex rel. RG v. Fort Bragg Dependent Schools, 343 F.3<sup>rd</sup> 295, 308 (4<sup>th</sup> Cir. 2003). See also Miener v. State of Missouri, 800 F.2d 749, 753 (8<sup>th</sup> Cir. 1986); and Burr v. Ambach, 863 F.2d 1071 (2<sup>nd</sup> Cir. 1989).

Petitioner represents that in *Reid*, that the Court reasoned that “[a]ccordingly, just as IEPs focus on disabled students’ individual needs, so must awards compensating past violations rely on individualized assessments...this flexible approach will produce different results in different cases depending on the child’s needs. Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.”

Petitioner represents that “if a parent presents evidence that her child has been denied a FAPE, she has met her burden of proving that he is entitled to compensatory education.” Mary McLeod Bethune Day Academy Public Charter School v. Bland, Memorandum Opinion February 20, 2008, Civil Action No. 07-1223 (D.D.C. 2007).

Petitioner represents that DCPS failed to offer an appropriate compensatory education award; and despite the information and findings in the February, 2009 Hearing Officers’ Decision, DCPS offered the student minimal compensatory education services, for the past violation. Petitioner also represents that the compensatory education award proposed by DCPS is not an award based on the student’s unique needs, is not calculated to compensate the student for the harm resulting from the year and half denial of a FAPE, and is otherwise inappropriate.

At the hearing, during its opening statement, Petitioner represented that the student has two (2) years remaining in school, consisting of Summer school, extended school year (ESY) programs; and 82 weeks of school, entitling the student to 420 hours of compensatory education services. Petitioner also represented that Respondent’s offer of three (3) hours per week of tutoring services, through the end of the 2009/2010 school year, totaling 150 hours of compensatory education services, fail to address the student’s unique needs.

In its closing statement (Page 7, paragraph 5), Petitioner “asserts that appropriate compensatory education would consist of approximately 360 hours of one-on-one tutoring, or some other reasonable amount over the 150 hours that DCPS has offered, with a focus on reading skills. The Petitioner also requests computer with internet capability and word processing software”.

Respondent denies allegations that it denied the student a FAPE by its alleged failure to offer appropriate compensatory education for the 2007/08 and 2008/09 school years; asserting that the issue of compensatory education for the aforementioned time period has already been litigated and resolved by the Hearing Officers’ Decision dated February 10, 2009.

Respondent represents that no provision of the February 9, 2009 Hearing Officers’ Decision, orders DCPS to either provide compensatory education services or directs a multidisciplinary team (MDT) to discuss compensatory education; and Petitioner is precluded from relitigating this issue under the Doctrine of Res Judicata.

At the hearing, during its opening statement, Respondent represented that it proposed three (3) compensatory education plans, which were rejected by Petitioner; and its’ last proposal included three (3) hours per week of tutoring services, through June 30, 2010. Respondent also represents that the proposed plan is an appropriate plan to meet the student’s needs, and remedy any denial of a FAPE; the student was unavailable for instruction, and exhibited attendance and tardiness issues while attending and the student received academic benefit while attending Respondent represents that notwithstanding, DCPS lastly asserts another MDT meeting has been scheduled for June 30, 2009, to discuss the student’s compensatory education plan.

In its closing statement, Respondent represented that Petitioner failed to show the inappropriateness of DCPS’ compensatory education proposal or the appropriateness of its own compensatory education proposal. Respondent argued the purpose of compensatory education and the applicable *Reid* standard; the reasonableness and appropriateness of its compensatory education proposal; failure of Petitioner’s compensatory education plan to meet Reid’s guidelines; and the inconsistencies in the testimony of Petitioner’s witnesses, in their requests for compensatory education services; concluding that their collective testimonies still failed to meet the standards outlines in *Reid*.

### **Discussion**

Under IDEA, a disabled student is entitled to a free, appropriate education until he or she reaches age twenty-one. See, 20 U.S.C. §1412(2)(b). IDEA’s primary goal is that disabled students receive an appropriate education, not merely an appropriate IEP. When an IEP fails to confer some (i.e. more than de minimis) educational benefit to a student, that student has been deprived of the appropriate education guaranteed by IDEA.

A school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem. In this matter, the court determined that the student is entitled to compensatory education services, for denial of a FAPE, during the 2007/08 and 2008/09 school years, ending February, 2009.

The District Court has held that there is no equitable limitation on compensatory education. See, Amanda A. v. Coatesville Area School Dist., 2005 WL 45090, at \*6 (E.D. Pa. Feb. 23, 2005) (“[T]here is no limitations period, whether equitable or legal, on a disabled child’s claim for compensatory education pursuant to the IDEA.”); Jonathan T. v. Lackawanna Trail School Dist., 2004 WL 384906, at \*2 (M.D. Pa. Feb. 26, 2004) (applying Ridgewood over Bernardsville and refusing to apply time limit on requests for compensatory education); Kristi H. V. Tri-Valley School Dist., 107 F.Supp.2d 628,633-34 (M.D. Pa. 2000)(same).

A courts’ award of compensatory education requires a school district to provide education past a child’s twenty-first birthday to make up for any earlier deprivation; and rejects arguments that all compensatory education claims more than two years old are barred by the two (2) year statute of limitations established by IDEA; finding that the right to compensatory education accrues from the point that the school district knows or should know that the student has an inappropriate educational program or is not receiving more than a de minimis educational benefit for the educational program.

The prerequisite of a compensatory education award has not been the gross, egregious, or bad faith conduct of the school district; but rather a simple finding that a child has received an inappropriate education, which was this court’s finding in the February 9, 2009, Hearing Officers’ Decision.

### **Compensatory Education**

Under the theory of compensatory education, courts and hearing officers may award “educational services...to be provided prospectively to compensate for a past deficient program.” See G. ex rel. RG v. Fort Bragg Dependent Schs. 343 F.3d 295, 308 (4<sup>th</sup> Cir. 2003). Its purpose is to help the child make the progress that he/she would have made if an appropriate program had been available. The specific services provided must be tailored to the child’s needs. Compensatory education can mean extra instruction or related services (such as therapies) provided during the school year or summer.

A Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides him with “insight about the precise types of education services [the student] needs to progress.” Branham, 427 F.3d at 12. Relevant evidence includes “the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement-

represents the least restrictive environment.” Id. In *Nesbitt*, the Court found that an “award was not adequately individualized or supported by the record”, when the Hearing Officer was not provided with any information regarding the student’s current grade level of functioning.

According to *Mary McLeod Bethune Day Academy PCS v. Terri Bland, Civil Action No. 07-1223 (2008)*, a compensatory education award is an equitable remedy that “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of the IDEA.” *Reid*, 401 F.3d at 518, 523. Compensatory education is not a contractual remedy, but an equitable remedy that is part of the court’s resources in crafting appropriate relief. *Reid v. District of Columbia, 401 F.3d 516, 523 (D.C. Cir. 2005)*.

*Reid* provides that a compensatory education “award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid*, 401 F.,33d at 524. This standard “carries a qualitative rather than quantitative focus,” and must be applied with “[f]lexibility rather than rigidity.” According to *Reid*, in crafting an appropriate remedy for denial of FAPE, the Hearing Officer must engage in a fact intensive analysis that is qualitative rather than quantitative. *Branham v. D.C., 427 F.3d 7, 11 (D.C. Cir 2005); Reid, 401 F.4d at 524*.

*Reid* also stresses that the Hearing Officer must take into account individual individualized assessments of the student so that the ultimate award is tailored to the student’s unique needs; and must be reasonably calculated to provide the student the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. The crafting of an award of compensatory education under IDEA simply cannot be nebulous; and an arbitrary compensatory education award will never pass muster under the *Reid* standard.

In *Reid*, the Court rejected the “cookie-cutter” or mechanical remedies, such as awarding one hour of compensatory instruction for each hour that the student was denied FAPE. As the D.C. Circuit recognized in *Reid*: “Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.” *Reid*, 401 F.3d at 524. *Reid*, explicitly rejects the “cookie-cutter approach[es],” such as “a presumption that each hour without FAPE entitles the student to one hour of compensatory instruction.”

The court explains further that there is no obligation to provide a day for day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. A compensatory award constructed with the aid of a formula is not per se invalid, and a formula-based award may in some circumstances be acceptable if it represents an individually tailored approach to meet the student’s unique prospective needs.

## Findings of Fact

1. The nature and severity of the student's disabilities are established.
2. Petitioner presented evidence of the student's current grade level of functioning.
3. Petitioner failed to present evidence of the nature and amount of services the student was entitled to receive in a full-time special education program, and therapeutic environment, however failed to receive while attending  
except to the extent that the student failed to receive a full-time special education program, in a therapeutic environment.
4. The student's specialized educational needs and areas of weakness are identified in the evaluations. However, Petitioner failed to establish a link between the student's educational needs, while attending  
and the services offered the student at his private school placement.
5. The evidence reflects that the student would benefit from tutoring services, however, Petitioner failed to present consistent, reliable, and credible evidence regarding the amount of compensatory education and tutoring services are necessary to bring the student to the grade level he would have attained but for the violation.
4. Witnesses were inconsistent in their recommendations for specific amounts of compensatory education services; and disagreed regarding the recommended amount of tutoring services the student requires or would benefit from. There exists no documented or verifiable basis for the number of hours recommended by Petitioner or the witnesses.

Each witness utilized different time periods in which the student failed to receive services, as a basis for determining and recommending a specific number of hours of tutoring and/or compensatory education services for the student.

The witnesses were unable to articulate with any certainty or specificity, how each arrived at the number of hours of tutoring or compensatory education services recommended for the student; and their testimony failed to meet the *Reid* standard. Petitioner failed to establish a nexus between the student's current needs; and the amount of services requested by Petitioner and each witness.

The student's testimony was the most reliable and credible in articulating an individually tailored approach to meeting his unique *prospective* needs; also consisting of a definitive plan that would remedy some of the harm resulting to the student, from the past violation.

The student advised the court that he would benefit from a computer with internet capability, which would assist in his efforts to complete and transmit school assignments; and educational software specifically designed to address his educational deficits.

The student also testified that he would benefit from receiving 2-3 hours of tutoring per day, 3 days a week, in reading, spelling, and writing. The proposed compensatory education plan presented by the student satisfies the *Reid* standard; and assists the court in crafting an appropriate remedy.

5. Petitioner's proposed compensatory education plan offers a "cookie-cutter" and "mechanical" approach to crafting an appropriate compensatory education award for the student; and fails to comply with the Reid standard in provide evidence sufficient for the Hearing Officer to determine the appropriate nature and amount of compensatory education services, the student would most benefit from receiving.

Petitioner's proposed compensatory education plan does not represent an individually tailored approach to meeting the student's unique *prospective* needs; or consists of a definitive plan that would remedy the harm resulting to the student.

6. Petitioner failed to present evidence that the compensatory education plans proposed by DCPS are not uniquely tailored to remedy the harm resulting from denial of a FAPE, to the student, during the 2007/08 and 2008/09 school years.
7. The February 9, 2009 HOD ordered DCPS to review and revise the student's IEP, to include, among others, tutoring services, to provide the student additional academic support. DCPS proposed three (3) compensatory education plans, including among others, tutoring services for the student, however, Petitioner rejected the proposals representing that the amount of tutoring services recommended by DCPS were insufficient.

### **Conclusion of Law**

It is the Hearing Officers' Decision that Petitioner failed to satisfy its burden by presenting evidence sufficient for a finding that DCPS failed to provide the student appropriate compensatory education services, for the denial of a free appropriate public education (FAPE), during the 2007/08 and 2008/09 school years.

It is also the Hearing Officers' Decision that Petitioner presented evidence sufficient for a finding that the student is entitled to compensatory education services; would benefit from tutorial services, albeit failing to present sufficient evidence regarding the amount of tutorial services necessary to remedy harm to the student resulting from the past violation.

The court finds that compensatory education is an equitable remedy, and in this matter, equity dictates that the court craft an appropriate compensatory education award for the student; based on the evaluations, and evidence of record.

## XII. ORDER

Based on the aforementioned, it is hereby:

1. **ORDERED**, that DCPS shall fund for the student the purchase of a desktop computer, with internet capability, and printer, of the parent's choice, in an amount not to exceed \_\_\_\_\_ and computer software specifically designed to address the student's academic deficits in reading, spelling, writing, and written expression; and a computer based reading tutorial, not to exceed \_\_\_\_\_ and it is further
2. **ORDERED**, that DCPS shall provide the student three (3) hours per day of tutoring in reading, spelling, writing, and written expression, three (3) times a week, by an independent provider, of the parent's choice, at a rate not to exceed \_\_\_\_\_ per hour, until the student either graduates with a diploma or receives a certificate of completion from high school; or the parent determines that the student has received the most benefit from the tutoring services, and terminates the services, whichever occurs first; and it is further
3. **ORDERED**, that DCPS shall provide the student with four credits through an online credit recovery program of the parent's choice, at a total cost not to exceed \_\_\_\_\_ to be completed by June, 2012; and it is further
4. **ORDERED**, that this decision and order are effective immediately

## XIII. APPEAL PROCESS

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*

9/17/09

Date Filed: \_\_\_\_\_

\_\_\_\_\_  
Attorney Ramona M. Justice  
Hearing Officer

cc: Attorney Daniel Kim, Office of the Attorney General  
Attorney Miguel Hull: Fax: 202-742-2098