DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT, **By and through PARENTS,**[1] ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA** **PUBLIC SCHOOLS,** ***Respondent.***	)	**Bruce Ryan, Hearing Officer** **Issued: September 26, 2011**

HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed June 29, 2011, on behalf of a year old student (the "Student") who has been determined to be eligible for special education and related services as a child with a disability under the IDEA. She currently attends her neighborhood DCPS middle school ("School A"). Petitioner is the Student's mother.

Petitioner claims that DCPS has denied the Student a free appropriate public education ("FAPE") by: (1) failing to comply with the terms and conditions of a January 18, 2011 settlement agreement ("SA"); (2) failing to convene a manifestation meeting; (3) failing to develop an appropriate individualized education program ("IEP") on or about May 6, 2011; and (4) failing to provide an appropriate educational placement for the Student.[2]

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

[2] A prior complaint raising some of the same issues was filed on June 3, 2011, and was withdrawn without prejudice on June 29, 2011. *See Case No.* .

DCPS filed its Response on July 14, 2011, which denied the allegations. DCPS asserts (*inter alia*) that it issued a Prior Written Notice ("PWN") on May 9, 2011 placing the Student at School B, a DCPS special education school, and that School B was appropriate and could implement the IEP for the 2010-11 school year. DCPS held a resolution meeting on July 13, 2011, which did not resolve the Complaint.

A Prehearing Conference ("PHC") was then held on July 18, 2011, and a Prehearing Order was issued July 21, 2011. After discussing the issues and the time necessary to hear this matter, it was determined that approximately one full day of hearing time would be sufficient. The parties filed five-day disclosures as required on August 17, 2011; and the Due Process Hearing was held on August 24, 2011. Petitioner elected for the hearing to be closed.

At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence:

Petitioners' Exhibits: P-1 through P-25.[3]

Respondent's Exhibits: R-1 through R-11.[4]

In addition, the following Witnesses testified on behalf of each party:

Petitioners' Witnesses: (1) Parent-Petitioner; (2) the Student's Educational Advocate ("EA"); (3) Clinical Psychologist; and (4) Director of Education, Private School.

Respondent's Witness: DCPS' Compliance Case Manager ("CCM").

[3] Exhibits P-3 and P-9 were admitted into evidence over DCPS' objections for the reasons stated on the record.

[4] Exhibits R-2, R-3, R-6, R-7, and R-9 were admitted into evidence over Petitioner's objections for the reasons stated on the record. Petitioner's objection to Exhibit R-12 was sustained.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. The statutory HOD deadline is September 26, 2011.

III. ISSUES AND REQUESTED RELIEF

The following issues were presented for determination at hearing (*Prehearing Order* ¶ 5):

> **(1) Failure to Comply With 01/18/2011 SA.** — Did DCPS deny the Student a FAPE by failing to comply with the terms and conditions of a January 18, 2011 settlement agreement, in that DCPS failed to convene a manifestation meeting and failed to determine compensatory education as required?
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> **(2) Manifestation Meetings.** — Did DCPS deny the Student a FAPE by (a) failing to determine that his behavior was a manifestation of his disability, and (b) failing to provide an alternative educational setting at a January 24, 2011 meeting? In addition, Petitioner alleges that DCPS failed to convene a manifestation meeting following subsequent disciplinary suspensions on 03/24/2011 and 04/11/2011.[5]
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> **(3) Inappropriate IEP.** — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP (*i.e.*, one that was reasonably calculated to provide educational benefit), as of May 6, 2011? Petitioner alleges that the IEP does not contain appropriate goals, objectives, and baselines in math, reading, written expression, and social/emotional/behavioral areas of concern. *See Complaint,* p. 3.
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> **(4) Inappropriate Placement.** — Did DCPS deny the Student a FAPE by failing to provide an appropriate educational placement as of May 9, 2011, the date of DCPS' Prior Written Notice?

Petitioner requests (*inter alia*) the following relief: (a) funding and placement of the Student at a full-time, private, therapeutic school; and (b) compensatory education as specified in the Complaint. *See Complaint,* p. 4; *Prehearing Order,* ¶ 6. As the party seeking relief, Petitioner was required to proceed first at the hearing and had the burden of proof on each issue specified above. Petitioner also had the burden of proposing a well-articulated plan for compensatory education, in accordance with *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

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[5] At hearing, Petitioner withdrew her allegation that DCPS also failed to convene a manifestation meeting following an alleged suspension on May 2, 2011.

IV. FINDINGS OF FACT

1. The Student is a year old student who has been determined to be eligible for special education and related services under the IDEA as a child with a disability.
2. During the 2010-11 school year, the Student attended School A, his neighborhood DCPS middle school.
3. On or about December 27, 2010, Petitioner filed a due process complaint alleging various denials of FAPE by DCPS. *P-1.*
4. On or about January 18, 2011, the parties agreed to settle Petitioner's 12/27/2010 complaint. A written settlement agreement ("SA") was entered into, by which the parties agreed (*inter alia*) to the following:
    a. Specific types and amounts of compensatory education for alleged missed services following a 12/15/2010 suspension;
    b. that DCPS would convene a Manifestation Determination Review ("MDR") within 15 business days of the SA; and
    c. that Petitioner was authorized to obtain an independent comprehensive psychological evaluation of the Student;
    d. that DCPS would convene an IEP team meeting within 20 business days of receiving Petitioner's independent evaluation to review the evaluation (as well as a DCPS FBA and BIP) and to "review and revise the Student's IEP, if necessary; discuss and determine site location, if necessary; and discuss and determine compensatory education, if warranted, for the remaining alleged violations in the December 27, 2010 Due Process Complaint." *P-2,* ¶ 4.
5. On or about January 24, 2011, DCPS convened an MDR meeting for the Student. At this meeting, DCPS determined that the Student's behavior was not a manifestation of his disability. Petitioner disagreed with this determination.
6. On or about March 24, 2011, DCPS suspended the Student for two days; and on or about April 11, 2011, DCPS suspended the Student for an additional four days. *See Parent Test.; P-13.*
7. On or about April 11, 2011, DCPS convened a meeting of the Student's MDT/IEP team to review a 02/03/2011 independent psychological evaluation and to address the Student's continued eligibility, behavioral issues, and other items related to the 01/18/2011 SA. The independent evaluator diagnosed the Student with a mood disorder and recommended a

higher level of support. *See P-12; Psychologist Test.* IEP team concluded that the Student continued to be eligible for special education services, but decided to change his disability from Specific Learning Disability ("SLD") to Emotional Disturbance ("ED"), based on the evaluation and other information. *See R-2* (04/11/2011 meeting notes); *R-3.*

8. On or about May 6, 2011, DCPS reconvened the Student's IEP team to complete the meeting initiated on April 11. *R-3.* At the 05/06/2011 meeting, the team reviewed and revised some of the goals and baseline data from the Student's previous IEP, and the team revised the IEP to provide a full-time, out of general education program. The 05/06/2011 IEP provides 28.5 hours of specialized instruction and 1.5 hours of related services per week (30 minutes of speech/language and 60 minutes of counseling). *Id.; R-4, p. 9.* DCPS also recommended placement for the full-time services at School B. *R-3, p. 4.*
9. At the May 6, 2011 meeting, DCPS also discussed compensatory education services. *See R-3, p. 3.* DCPS indicated that it would offer 25 hours of independent counseling for the remaining violations alleged in the 12/27/2010 complaint. *See P-7* (advocate meeting notes), *p. 2.* Petitioner disagreed with this determination. Petitioner's educational advocate then requested to submit an alternate plan to be considered that would include services at the Linda Mood Bell program, plus independent mentoring as compensatory education. *R-3, p. 3.*
10. On or about May 9, 2011, DCPS issued a Prior Written Notice ("PWN") proposing to change the Student's "location of services" from School A to School B. The change was made because the Student's IEP had been revised to a full-time program pursuant to the SA, School A could not implement a full-time IEP, and School B offered an appropriate full-time program for ED students. *See P-8; CCM Test.*
11. On or about May 13, 2011, DCPS convened an MDR meeting to review an incident that occurred on 04/29/2011 involving additional behavior (hitting) resulting in disciplinary action against the Student. DCPS found that the behavior was a manifestation of the Student's disability because it was either caused by, or had a direct and substantial relationship to, the disability. *P-9; R-10.*
12. On or about July 13, 2011, on the date of the resolution meeting, DCPS issued a Compensatory Education Authorization for the Student, authorizing 15 hours of

specialized instruction and eight (8) hours of counseling by independent providers. *See R-11; CCM Test.*

13. On or about August 4, 2011, after School B had closed, DCPS issued another PWN. The 08/04/2011 PWN "proposes to place student at [School C] for the 2011-12 school year." *R-9.* The PWN states that the Student requires a location of services that can implement a full-time, self-contained IEP for ED students. *Id.*

V. DISCUSSION AND CONCLUSIONS OF LAW

Issue 1 – Failure to Comply With 01/18/2011 SA

"The IDEA does not specifically address enforcement by hearing officers of settlement agreements reached by the parties." *Letter to Shaw,* 50 IDELR 78 (OSEP 2007). However, it is generally recognized that a complaint alleging a failure to implement a settlement agreement is within the jurisdiction and authority of a hearing officer if it amounts to a dispute over the provision of FAPE. [6] In such action, District of Columbia law governs the interpretation and enforcement of the terms of the contract. *See Hester v. District of Columbia,* _ F.3d _ (D.C. Cir. 2007); *see also Howard Univ. v. Best,* 484 A.2d 958, 967 (D.C. 1984) ("the written language embodying the terms of an agreement will govern the rights and liabilities of the parties…").

In this case, the evidence shows that DCPS carried out the agreed terms of the 01/18/2011 SA. DCPS convened a Manifestation Determination Review on January 24, 2011; and DCPS convened IEP team meetings on April 11 and May 6, 2011, to (a) review the independent evaluation, (b) review and revise the Student's IEP, (c) discuss and determine site location/placement, and (d) discuss and determine compensatory education for the remaining alleged violations in the 12/27/2010 complaint.

To the extent Petitioners complain about the ***results*** of DCPS' implementation of the 01/18/2011 SA – in the form of the 05/06/2011 IEP, placement, and/or compensatory education authorization – those claims are discussed further below.

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[6] *See* 34 C.F.R. 300.507 (a); *Letter to Shaw, supra; Blackman-Jones* Consent Decree, Section II, A., pp. 10-11 (including within the "Jones class" any children who have been denied a FAPE because DCPS "failed to fully and timely implement agreements concerning a child's identification, evaluation, educational placement, or provisions of FAPE that DCPS has negotiated with child's parent or education advocate.").

Issue 2 – Manifestation Meetings

34 C.F.R. §300.530(b) provides that school personnel "may remove a child with a disability who violates a code of student conduct from his or her current placement ...***for not more than 10 consecutive school days***...as long as those removals do not constitute a change of placement under §300.536." Section 300.536, in turn, provides that a "change of placement" occurs if either (1) the removal is for more than 10 consecutive school days, or (2) the child is subject to a series of removals totaling more than 10 school days in a school year that constitute a "pattern," determined on a case-by-case basis consistent with the factors spelled out in the rule. 34 C.F.R. §300.536. If such a "change of placement" occurs, the LEA must then convene a meeting of the IEP team to make a "manifestation determination" as provided in Section 300.530 (e).

Petitioner has proved by a preponderance of the evidence that DCPS' January 24, 2011 MDR decision was wrong, and DCPS offered no contrary evidence. The Student's was suspended for "rude and disrespectful" behavior when he walked out of class, creating a "major disruption" in the halls and classroom. *P-5* (advocate meeting notes). DCPS then determined that the behavior was ***not*** a manifestation of his disability. The undisputed evidence shows that this determination was based solely on the DCPS School Psychologist's position that the Student's SLD disability did not qualify him for a manifestation finding. *See P-5; P-20; EA Test.* However, the IDEA specifically directs the LEA to "review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents" to determine whether the conduct in question either (i) was "caused by, or had a direct and substantial relationship to, the child's disability," or (ii) was the "direct result of the LEA's failure to implement the IEP." 34 C.F.R. §300.530(e); *see* 20 U.S.C. §1415(k)(1)(E).

Here, the Student's then current IEP (dated 06/16/2010) specifically recognized that the Student "presents with behavioral and academic challenges in the school setting as evidenced by oppositional and defiant behaviors, non-compliance, poor self control impulsivity and difficulty following school and classroom rules." *P-4, p. 5; see P-20.* Similarly, the 02/01/2011 FBA completed only a week later confirmed that the Student "demonstrates impulsivity and engages in attention seeking and disruptive behavior. He presents with defiance, non-compliance, verbal

and physical aggression, being out of the seat, various objects, and leaving the classroom without permission." *P-11, p. 1.* The FBA also notes that the BASC-2 completed by his teacher in October 2010 reflected "scores in the clinically significant range for hyperactivity, conduct problems, depression and aggression." *Id., p. 3.* DCPS could not reasonably ignore such information relating to the Student's disability and come to a different conclusion in the MDR process based simply on a narrow and mechanical application of his SLD classification.

Had DCPS properly determined that the Student's behavior was a manifestation of his disability, it would have been required to return him to the placement from which he had been removed (*i.e.,* School A) or at least to an appropriate interim alternative educational setting. *See* 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530 (b), (f). By keeping the Student on a long-term suspension, DCPS' actions deprived the Student of the benefit of such educational setting and services for an extended period between January and March 2011.

Beyond that, however, Petitioner has not alleged or shown that the Student was subjected to any other suspension or removal of more than 10 consecutive school days, or to any series of removals totaling more than 10 school days, since the disciplinary actions preceding the 01/18/2011 SA took place. The March 24, 2011, suspension was for two days, and the April 11, 2011 suspension was for an additional four days. Thus, DCPS was not obligated to conduct a further manifestation determination review with respect to these two incidents.[7]

Accordingly, to the extent set forth above, the Hearing Officer concludes that Petitioner has met her burden of proving a denial of FAPE under Issue 2.

Issue 3 – Inappropriate IEP

The "primary vehicle" for implementing the goals of the IDEA is the IEP, which the statute "mandates for each child." *Harris v. District of Columbia,* 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (*citing Honig v. Doe,* 484 U.S. 305, 311-12 (1988)). An IEP is a comprehensive written plan that must include, among other things: (1) "a statement of the child's present levels

[7] To the extent Petitioner and the Advocate testified about disciplinary actions or suspensions occurring prior to the 01/18/2011 SA, those claims are barred by the parties' release and settlement. *See R-2,* ¶ 10. And to the extent Petitioner attempts to introduce evidence of any post-SA suspensions other than 03/24/2011 and 04/11/2011 (*see Parent Test.; EA Test.; P-17*), such allegations are beyond the scope of the Complaint and Prehearing Order.

of academic achievement and functional performance, including ... how the child's disability affects the child's improvement and progress in the general education curriculum"; (2) "a statement of measurable annual goals, including academic and functional goals, designed to ... 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 meet each of the child's other education needs that result from the child's disability"; (3) "a description of how the child's progress toward meeting the annual goals...will be measured"; (4) "a statement of the special education and related services and supplementary aids and services ...and a statement of the program modifications or supports for school personnel that will be provided for the child"; and (5) an explanation of the extent, if any, to which the child will not participate with non-disabled children in any regular classes. 20 U.S.C. 1414(d)(1)(A)(i) (emphasis added). *See also* 34 C.F.R. 300.320; DCMR 5-E3009.1.

To be sufficient to provide FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Anderson* v. *District of Columbia,* 109 LRP 18615 (D.D.C. 2009), slip op. at 6, *quoting Board of Education* v. *Rowley,* 458 U.S. 176,200,207 (1982); *see also Kerkam v. McKenzie,* 862 F. 2d 884 (D.C. Cir. 1988). Judicial and hearing officer review of IEPs is "meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was 'reasonably calculated to enable the child to receive educational benefits.'" *Schaffer* v. *Weast,* 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley,* 458 U.S. at 207). An LEA also must periodically update and revise an IEP "in response to new information regarding the child's performance, behavior, and disabilities."*Maynard v. District of Columbia,* 54 IDELR 158 (D.D.C. 2010), *slip op. at* p. 6; *see* 34 C.F.R. 300.324.

Moreover, the issue of whether an IEP is appropriate is a question of fact for hearing. *See, e.g., S.H.* v. *State-Operated School Dist. of Newark,* 336 F. 3d 260, 271 (3d Cir. 2003). "Ultimately, the question ...is whether or not [the] defects in the ...IEP are so significant that [DCPS] failed to offer [the Student] a FAPE." *N.S. v. District of Columbia,* 709 F. Supp. 2d 57, 70 (D.D.C. 2010).

In this case, Petitioner does not disagree with the amount or type of any services provided in the May 6, 2011 IEP. However, she claims that the IEP contains "inappropriate goals and

objectives" and "inappropriate baselines" in the areas of math, reading, written expression, as well as social/emotional/behavioral. *Complaint,* p. 3. More specifically, the Educational Advocate testified that she expressed concerns at the 05/06/2011 meeting that certain goals seemed a "little ambitious" for the Student. [8] She also testified that she expressed concerns about the wording of certain baselines, but noted that the team did change some of the baselines after discussion to make them more quantifiable. *See EA Test.*

While some of the Advocate's points may well have merit and should be carefully considered at the next IEP team meeting, the Hearing Officer concludes that Petitioner has not proved by a preponderance of the evidence that these proposed refinements of the goals are "so significant that [DCPS] failed to offer [the Student] a FAPE." *N.S. v. District of Columbia, supra.* Accordingly, Petitioners have not prevailed on its inappropriate IEP claim under Issue 3.

Issue 4 – Inappropriate Placement

"Designing an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes offering ***placement in a school that can fulfill the requirements set forth in the IEP.***" *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (emphasis added). In determining educational placement, DCPS must ***place*** a student with a disability in "an ***appropriate special education school or program***" in accordance with the IDEA, including "placements [in] DCPS schools." D.C. Code §38-2561.02 (emphasis added). *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005), *citing McKenzie v. Smith*, 771 F.2d 1527, 1534-35 (affirming "placement based on match between a student's needs and the ***services offered at a particular school***") (emphasis added). Among other things, DCPS must ensure (*inter alia*) that the placement decision is "based on the child's IEP," and that it is in conformity with Least Restrictive Environment ("LRE") provisions. 34 C.F.R. §

[8] In the Math area, she cited Annual Goal 3, which indicates that the Student "will explain different interpretations of fractions as a ratio of whole numbers, as parts of unit wholes, as parts of a collection, as division of whole numbers by whole numbers, and as locations on the number line four out of 5 trails." *P-6, p. 3.* The EA believed that the Student does not understand what ratios are and needs to "spend more time bringing up his basic skills." *EA Test.* Similarly, she testified that certain Reading goals were "too sophisticated" for the Student because he needed to work on reading "basics," rather than "interpret[ing] a character's traits, emotions, or motivations," as in Annual Goal 1. *Id.; P-6, p. 3.* And in Written Expression, she testified that it would be more appropriate for the Student to write a topic sentence than to create a paragraph (Annual Goal 3). *Id.; P-6, p. 5. See also P-7* (EA meeting notes).

300.116. "If no ***suitable public school*** is available, the District must pay the costs of sending the child to an appropriate private school." *Jenkins v. Squillacote*, 935 F. 2d 303, 305 (D.C. Cir. 1991) (emphasis added).

In this case, Petitioner testified that she believed School B was "not an appropriate school for [Student]" because it would not meet his needs as of May 9, 2011. *Parent Test.; see also EA Test.* (testifying that School B was not appropriate because it was not a "therapeutic placement," and Student should not move to a "failed school" that was closing for only a month). As a result, Petitioner decided to keep the Student at School A to finish up the reminder of the 2010-11 school year pursuant to her stay-put rights. *Id.; see also CCM Test.* However, she never visited School B and never spoke with anyone at DCPS regarding the program that was available there. *Parent Test. (cross examination).* Nor did Petitioner demonstrate any specific respect in which School B could not implement the Student's full-time, out of general education IEP. The evidence indicates that School B had a full-time special education program for ED students and could generally implement the services in the Student's 05/06/2011 IEP. *See CCM Test.; EA Test.* (cross examination).

Accordingly, the Hearing Officer concludes that Petitioner failed to prove that the placement/location of services proposed in the 05/09/2011 PWN was not an appropriate educational placement reasonably calculated to provide educational benefit to the Student for the remainder of the 2010-11 school year.[9] Moreover, even assuming *arguendo* that Petitioner was correct, the Student did not suffer any educational harm from such placement since Petitioner elected to have the Student remain at his previous school.

Nor has Petitioner shown that DCPS' latest proposed placement at School C, *see R-9* (08/04/2011 PWN), would be inappropriate to meet the demonstrated needs of the Student for the 2011-12 school year. School C is "a new program developed to service the needs of ED students that require a full-time, out of general education setting." *Id.* The testimony indicates

[9] This failure of proof makes it unnecessary to resolve the familiar "placement" vs. "location" debate in this case, although the Hearing Officer notes his disagreement with DCPS' assertion that the choice of an appropriate school in circumstances like this is merely a "site location assigned to the student ...and is at the discretion of the LEA." *Response, p. 1.* As the bolded language in the above authorities indicate, such position is at odds with D.C. Code §38-2561.02 (enacted in 2007, *after* adoption of the 2006 DOE rules under IDEA), as well as consistent judicial decisions in this Circuit and IDEA's mandate to ensure parental participation in all decisions on the educational placement of their child.

that School C can implement the 05/06/2011 IEP, fits his needs, and would be reasonably calculated to provide educational benefit to the Student. *See CCM Test.*

Appropriate Relief

The IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter,* 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia,* 401 F.3d 516, 521-23 (D.C. Cir. 2005). One of the equitable remedies available to a hearing officer, exercising his authority to grant "appropriate" relief under IDEA, is 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.'" *Reid v. District of Columbia*, 401 F. 3d at 521 (quotations omitted*)*. "In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." 401 F. 3d at 524; *see also Friendship Edison Public Charter School v. Nesbitt*, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'"). Thus, compensatory education awards are equitable in nature. They should be qualitative and they should be flexible. They should be crafted so as to address the educational harm suffered by the Student as a result of the violation of IDEA/denial of FAPE.

In this case, Petitioner has met her burden of establishing the harm caused by the absence of any special education services during the long-term suspension from January through March 2011, and of proposing a well-articulated compensatory education plan that can remedy the harm. The Educational Advocate testified that 30 hours of individual tutoring and 10 hours of counseling/mentoring would help provide the educational benefits that likely would have accrued from the special education services that the Student missed during this period. *See EA Test.* These services are well suited to remedy the specific harm suffered by the Student and are supported by the record evidence.

However, to the extent Petitioner seeks to recover compensatory education for any denials of FAPE alleged to have occurred ***prior*** to the 01/18/2011 SA, the SA constitutes Petitioner's complete remedy. The parties agreed in the SA that DCPS would award specific amounts of compensatory education for alleged missed services following the Student's 12/15/2010 suspension, and that the IEP team would "discuss and determine" any further compensatory education ("if warranted") for the remaining violations in the 12/27/2010 complaint. *See P-2.* Petitioner argues in closing that the subsequent award was not "appropriate," but the Hearing Officer lacks authority to second-guess such award. [10]

VI. ORDER

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

1. Unless the parties agree in writing otherwise, Respondent shall pay for **30 hours of individual academic tutoring services** and **10 hours of individual counseling or mentoring services** for the Student, all to be provided by independent providers of the parent's choice, at hourly rates not to exceed the current established market rate in the District of Columbia for such services. These services shall be completed by **September 26, 2012.**
2. All other requests for relief in Petitioner's June 29, 2011 Due Process Complaint are **DENIED;** and
3. This case shall be, and hereby is, **CLOSED.**

IT IS SO ORDERED.

Dated: September 26, 2011

Impartial Hearing Officer

[10] By entering into the 11/25/2010 SA, the Parent agreed to exchange the right to have her prior claims litigated in a due process hearing for the right to have a discussion about compensatory education at a team meeting with no certain outcome. In order for the Hearing Officer to judge the appropriateness of DCPS' compensatory education award, Petitioner would essentially need to re-litigate all of the underlying FAPE claims that were previously settled, since a reasonable amount and type of compensatory education cannot be fashioned without assessing the specific harm suffered from a specific denial of FAPE over a specific period of time. Moreover, the SA expressly provides that it is "in full satisfaction and settlement of all claims contained in the pending Complaint, including those claims under IDEA and §504 the Parent now asserts or could have asserted within the statute of limitations as of the date of the signed Settlement Agreement." *P-4,* p. 2.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415 (i) (2).