



## **JURISDICTION:**

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on February 4, 2013, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student is [REDACTED] and resides in the District of Columbia with his parent. The student is eligible for special education services with a disability classification of specific learning disability (“SLD”). The student attends a private full-time special education school (“School A”) with DCPS funding. The student’s individualized educational program (“IEP”) prescribes that DCPS provide the student transportation services to and from School A.

Petitioner alleged that from the start of school year (“SY”) 2012-2013 to November 20, 2012, the student did not receive transportation services and as a result missed over thirty days of school. Petitioner alleged that because of the lack of transportation services the student has not been provided special educational services and has regressed both academically and in related service areas. Petitioner alleged that the student’s parent made attempts to get DCPS and OSSE to provide transportation services and transportation services were finally provided beginning November 20, 2012.

Petitioner filed a complaint against DCPS on November 13, 2012. Petitioner sought as relief that DCPS be ordered to fund the following independent evaluations: psychological, vocational, speech/language and functional behavioral assessment (“FBA”) and convene a meeting to review the evaluations and update the student’s IEP as appropriate, and fund appropriate compensatory education for the student.

DCPS filed a response to the complaint on November 23, 2012. DCPS asserted that it provided the required information to OSSE for transportation services to begin at the start of SY 2012-2013 and it is OSSE, not DCPS, that failed to provide the services and thus OSSE is the responsible agency from which redress should be sought.

A resolution meeting between Petitioner and DCPS was held November 20, 2012, and was unsuccessful in resolving the issues. The parties expressed no desire to proceed directly to hearing but to allow the full 30-day resolution period expire before the 45-day timeline began. Thus, the 45-day period began on December 13, 2012, and ended on January 27, 2013.

A pre-hearing conference was conducted on December 5, 2012. The parties agreed to a hearing date of January 17, 2013. The Hearing Officer issued a pre-hearing order on December 10, 2013, outlining the issue to be adjudicated and setting the hearing date. During the prehearing

conference and in light of DCPS' response to the complaint Petitioner stated a desire to amend the complaint to include OSSE as a respondent. DCPS counsel did not object to the amendment.

On December 7, 2012, Petitioner's counsel filed, with the Student Hearing Office, an amended complaint naming both DCPS and OSSE as respondents. DCPS filed a response to the amended complaint on December 17, 2012, asserting the same defense contained in its November 23, 2012, response.

On January 2, 2013, Petitioner's counsel filed a written motion to amend the original complaint. The Hearing Officer granted the motion to amend the complaint on January 10, 2013. The second pre-hearing conference after OSSE was made a respondent was held January 7, 2013. The pre-hearing order was issued on January 10, 2013. The parties agreed to a hearing date of February 4, 2013.

A second resolution meeting was held on January 17, 2013. All parties were present for the resolution meeting. The meeting was unsuccessful in resolving the issues.<sup>2</sup> No party expressed a desire to proceed directly to hearing. The 45-day period for the amended complaint began as of the date the order was issued amending the complaint, January 10, 2012, and ends (and the HOD is due) and will be rendered as to all parties on or before February 24, 2013.<sup>3</sup>

OSSE filed a written response to the amended complaint (styled as a motion to dismiss) on January 9, 2013. OSSE asserted that although OSSE manages the bus operations for special education students in the District of Columbia, the LEA has front line responsibility to ensure implementation of transportation pursuant to a student's IEP and OSSE has not denied this student a FAPE.

OSSE filed a supplemental motion to dismiss on January 28, 2013. On January 31, 2013, DCPS filed an opposition to OSSE's motion to dismiss. On February 3, 2013, the Hearing Officer issued an order denying OSSE's motion to dismiss as a pre-hearing motion but allowing OSSE to reassert defenses and arguments made in the motion at the hearing.

Petitioner and the counsel for Respondents, DCPS and OSSE, appeared at the hearing on February 4, 2013, and presented documentary evidence and witnesses and the case was submitted to the Hearing Officer for a final decision of the issue to be adjudicated.

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<sup>2</sup> At this meeting DCPS proposed to relocate the student to his neighborhood school in light of his poor attendance at School A. Thereafter, Petitioner filed a motion for stay put protections. During a telephone conference with the Hearing Officer and all parties the day prior to the hearing DCPS stated that the change in location had been rescinded and DCPS would maintain the student at School A. The motion for stay-put was then considered moot by the Hearing Officer and was withdrawn by Petitioner. This was confirmed on the record at the outset of the hearing on February 4, 2013.

<sup>3</sup> Because the complaint was amended as of the January 10, 2012, order granting the amendment, the HOD due dates as to OSSE and as to DCPS were calculated to be 45 days from the day the order amending the complaint was issued and 75 days from that date, respectively.

## **THE ISSUE ADJUDICATED:**

Whether DCPS and/or OSSE denied the student a free and appropriate public education (“FAPE”) by not providing the student transportation services from the start of SY 2012-2013 through November 20, 2012, thus causing the student to miss more than thirty school days of special education services and to regress academically and in the areas the student was to be provided related service.

## **RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties’ disclosures (Petitioner’s Exhibits 1-6<sup>4</sup> and DCPS Exhibit 1-20)<sup>5</sup> that were admitted into the record and are listed in Appendix A. The witnesses are listed in Appendix B.

## **FINDINGS OF FACT:<sup>6</sup>**

1. The student is age [REDACTED] and resides in the District of Columbia with his parent. The student is eligible for special education services with a disability classification of SLD. (Petitioner’s Exhibit 2-1)
2. The student attends School A, a private full-time special education school with DCPS funding. (Petitioner’s Exhibit 2-1)
3. The student’s IEP prescribes that DCPS provide the student bus transportation services to and from School A. (Petitioner’s Exhibit 2-9)
4. The student’s parent and the student changed addresses from where they resided during SY 2011-2012 and moved to a new location on June 1, 2012. At the start of SY 2012-2013, the parent and the student were not staying at their new address but were temporarily staying with the parent’s mother because the parent had recently been released from the hospital. As a result the student did not attend School A at the start of 2012-2013. (Parent’s testimony)

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<sup>4</sup> Petitioner’s counsel filed a late supplemental disclosure letter attempting to substitute witnesses for some of those listed in the original disclosure letter who have now left School A and were unavailable to testify. DCPS objected to the supplemental disclosure and the Hearing Officer denied the supplemental disclosure and did not allow the substitute witnesses to testify.

<sup>5</sup> OSSE submitted no disclosed documents and presented no witnesses but cross-examined witnesses called by the other parties.

<sup>6</sup> The evidence that is the source of the Finding of Fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party’s exhibit.

5. A day or two prior to the start of SY 2012-2013, the bus driver and bus attendant for the bus route to which the student was assigned to transport him to and from School A conducted a “dry run” of the route. The bus attendant discovered that the student no longer resided at the address listed on the OSSE trip ticket. The bus driver relayed that information to the OSSE transportation department. Although the student’s name remained on the printed bus route with an old address for several weeks, because the student was no longer at that old address and no new address had been provided the student was not picked up by bus and taken to and from School A. ( [REDACTED] testimony, DCPS Exhibit 19)
6. The parent did not contact DCPS about the change of address until the parent took the student to School A herself on September 5, 2012, and informed the school administrator who stated she would inform DCPS of the change of address. The parent telephoned number she had for bus transportation once thereafter and gave her new address but she did not contact DCPS or the DCPS progress monitor at School A about bus transportation. (Parent’s testimony, DCPS Exhibit 1-1)
7. The student did not begin school when it started on August 20, 2012. When the parent brought him to school after Labor Day the parent informed the staff of her recent hospitalization. The staff did not have an accurate phone number for the parent and as result had difficulty contacting her when the student failed to attend school regularly thereafter. School A’s administrator provided the student’s change of address to the school’s DCPS progress monitor when the parent first provided the information after Labor Day. The School was not able to contact the parent and was unaware of the student’s bus transportation issues as the bus was bringing all other students to school. The school later determined that address provided by the parent and given to DCPS was correct but there was a different apartment numbers noted. ( [REDACTED] )
8. Although the parent notified School A of the change of address on or about September 5, 2012, the student was not provided bus transportation until November 20, 2012. Because there was no bus transportation and the parent had limited ability to drive the student to school the student only attended school two other days during the month of September: September 10, 2012, and September 17, 2012, for a total of three school days in September 2012.<sup>7</sup> (Parent’s testimony, DCPS Exhibit 1-1)
9. During the month of October 2012, the student attended school a total of five school days and had excused absences due to illness on two school days. Otherwise, during the month of October the student did not attend school and the student was not provided bus transportation on any of the days that he did not attend school during the month of October 2012. (Parent’s testimony, DCPS Exhibit 1-1, 1-2)

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<sup>7</sup> The facts revealed that bus trip tickets were generated with a change of address for the student as of September 12, 2012. However, the address had the wrong apartment number. Thus, after the bus ticket noted a change of address the student missed a total of 12 days in September 2012 due to no bus transportation.

10. During the month of November 2012, the student attended school one day prior to bus transportation resuming on November 20, 2012: November 6, 2012. From the time bus transportation resumed on November 20, 2012, through January 15, 2013, the student attended school a total of 19 days out of 32 school days he could have attended. The student missed 13 schools days<sup>8</sup> during this period for reasons other than lack of bus transportation. (DCPS Exhibit 1-2)
11. In total, due to a lack of bus transportation, the student missed school 15 days in September, 15 days in October and 11 days in November for a total of 41 school days missed. (DCPS Exhibit 1-1, 1-2)
12. While the student was not provided transportation he stayed home with the parent. On the days the student missed school days after bus transportation resumed some of the absences were due to the student not feeling well, doctor's appointments and him not yet being accustomed to going to school on a regular basis. (Parent's testimony)
13. The parent acknowledged that the student's failure to attend school on the days after bus transportation resumed has negatively impacted the student's academic performance. The student's has earned below average grades in all his core subjects during in the second quarter of SY 2012-2013 (October 13, 2012, to January 17, 2013). (Parent's testimony, DCPS Exhibit 2)
14. The student earned the following grades in the following subjects at School A in the second quarter of tenth grade during SY 2012-2013: (DCPS Exhibit 2)

| <b>Subject</b> | <b>Grade</b> |
|----------------|--------------|
| Keyboarding    | A            |
| World History  | D            |
| Biology 1      | D            |
| Geometry       | D            |
| English 10     | D            |
| French 1       | A            |

15. On or about November 20, 2012, the bus driver and bus attendant were provided the new address for the student and directed to pick him up. Since that time the student has been consistently provided bus transportation to and from School A. However, the student on average misses one to two days per week of school because of various reasons provided by the student's parent or other family member to the bus attendant. The bus trip tickets had the student's new address as of September 12, 2012; however, the address noted an incorrect apartment number for the student. (██████████ testimony, Parent's testimony, DCPS Exhibit 19)

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<sup>8</sup> During the hearing DCPS counsel noted that the student had missed 12 days; however, review of the attendance records indicate that he missed 13 days.

16. Because of the student's absence from School A, DCPS initiated truancy action for the student on or about September 18, 2012. DCPS attempted to send a letter of invitation to the parent for her to attend an IEP meeting on September 18 2012, to address, among other things, concerns about the student's attendance. The letter of invitation was sent to the parent's new address but noted an incorrect apartment number and the parent never received the letter of invitation and did not attend the September 18, 2012, meeting. School A has several different phone numbers for the parent and she was aware that they had difficulty contacting her. (Parent's testimony, DCPS Exhibits 6, 16)
17. On September 7, 2012, as a result of being notified of a change of address for the student by School A, the DCPS progress monitor initiated a change of address in the DCPS/OSSE transportation database and presumed that the change would take effect within three to ten school days thereafter. Although the progress monitor was aware the student wasn't attending school regularly as of the September 18, 2012, meeting, she was not aware bus transportation was a reason the student had not been attending. She presumed that the bus transportation would be implemented as a result of the change of address information she inputted into the database. However, the address put in the database for the student indicated an incorrect apartment number. ( [REDACTED] testimony, DCPS 15)
18. On September 24, 2012, Ms. [REDACTED], the DCPS truancy case manager assigned to the student's case initiated a truancy action plan in which she began to closely monitor the student's attendance. During this period she attempted to visit the student's home and reach the parent by telephone but was unsuccessful in reaching her. The student continued to miss school during the next month and finally Mr. [REDACTED] was able to reach and talk with the parent on or about October 18, 2012. ( [REDACTED] )
19. The parent informed [REDACTED] that the student was not receiving bus transportation due to a change in address. [REDACTED] checked the database to ensure the new address was entered for the student. [REDACTED] saw that the new address had been entered and thereafter presumed that the appropriate action had been taken for the student to be provided transportation. However, neither she nor the DCPS progress monitor was aware that the address in the database listed an inaccurate apartment number for the student. ( [REDACTED] testimony)
20. Prior to November 19, 2012, and the resolution meeting because of the due process complaint there was no mention to the progress monitor of a problem with the student's transportation. The notification by DCPS to OSSE that transportation was not in place was as of the resolution meeting. ( [REDACTED] testimony, DCPS Exhibit 15, 16)
21. The student's attendance in the previous school (SY 2011-2012) was problematic and School A referred for to DCPS by School A for truancy. The student's attendance during SY 2012-2013 has also been problematic. Even after the student's bus transportation was restored the student has continued to be absent from school and the school scheduled a meeting for January 17, 2013, to determine if the student should remain at School A given his truancy. Even when the student does attend school he often sleeps in class and

does not regularly participate in instruction and is currently failing classes as a result. (██████████ testimony)

22. ██████████ is the parent's educational advocate and talked to the student's current teacher at School A and reviewed the student's grades, attendance records and other educational records<sup>9</sup> and developed a written compensatory education proposal of services he believes the student should receive as a result of bus transportation not being provided to the student from September 2012 through November 20, 2012. (██████████ testimony, Petitioner's Exhibit 1)
23. Because of the lack of transportation and the resulting services the student missed ██████████ concluded the student and not been able to complete the make-up work for his current classes and had not made progress during his IEP goals. The student's teacher indicated to ██████████ that the student's make-up work packets for his core classes: World History, Geometry, Biology and English 10, for the time he missed school, would probably take 10 hours per week for 3 weeks to complete. (██████████ testimony, Petitioner's Exhibit 1)
24. ██████████ concluded that the student would need an additional 10 hours each per week for 3 weeks for his IEP goals in reading, math and written expression given his current functioning in these areas. ██████████ also spoke with the student's current therapist who has seen the student twice in the current school year. ██████████ recommended 50 hours of independent counseling at 8 hours per month from February to August 2013 to help focus on the student's school attendance because the student has continued to have truancy issues. In addition, ██████████ recommended the following evaluations be conducted comprehensive psychological, vocational and speech and language and FBA. (██████████ testimony, Petitioner's Exhibit 1)

## CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected

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<sup>9</sup> ██████████ attended the resolution meeting on January 17, 2013, and reviewed the student's IEP, DCPS' attendance intervention plan and the transportation records. He also reviewed some of the student's 2009, 2010 and 2011 evaluations. He determined that although educational assessments (Woodcock Johnson III) had been administered more recently the student's last psychological evaluation, speech-language, and social history were conducted in 2008.

the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--  
(a) Are provided at public expense, under public supervision and direction, and without charge;  
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. <sup>10</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE:** Whether DCPS and/or OSSE denied the student a FAPE by not providing the student transportation services from the start of SY 2012-2013 through November 20, 2012, thus causing the student to miss more than thirty school days of special education services and to regress academically and in the areas the student was to be provided related service.

**Conclusion:** Failure to provide the student transportation services caused the student academic harm and was a denial of a FAPE. DCPS is responsible for the student not being provided transportation services from September 7, 2012, to November 20, 2012, and the student missing a total of 41 school days of special education services. Petitioner sustained the burden of proof on this issue as to DCPS but not as to OSSE.

According to 5E DCMR 3002.1(f) the LEA must provide services to address all of a student's identified special education and related services needs. This provision is consistent with the federal regulations, which indicate that a FAPE includes the provision of related services defined as "transportation and such developmental, corrective and other supportive services" as are required to assist a child with a disability to benefit from special education 34 C.F.R. §300.34(a), (b) (16).

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<sup>10</sup> The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

In the federal regulations, transportation is specifically listed as a related service. In the District of Columbia, the applicable regulations also specifically indicate that transportation is a related service that must be made available by the LEA. 5E DCMR 3001.1. It should be pointed out that a local federal court has held that the LEA in the District of Columbia continues to have legal responsibility to provide transportation to its students. *Wilson v. District of Columbia*, 770 F. Supp. 2d 270 (D.D. C. 2011).

The evidence demonstrates that School A staff and DCPS staff had been informed of the change of address for the student at earliest September 5, 2012, and at latest on October 18, 2012, when the DCPS truancy officer, [REDACTED], talked with the parent and that parent informed her that the student had not been provided transportation services.

Although [REDACTED] checked the database to ensure the change of address was inputted, there was still no clear communication to OSSE of the new address including the correct apartment number until the complaint was filed and the first resolution meeting on the complaint was held. Once the complaint was filed and OSSE was informed of the correct address the OSSE transportation director immediately provided the student's new address to the bus driver and attendant and the student's bus transportation resumed.

The Hearing Officer concludes and that the failure to provide the student transportation services during the period from September 12, 2012, to November 20, 2012, was a denial of a FAPE to the student. The Hearing Officer also concludes based on this evidence that DCPS not OSSE was responsible for the change of address not being provided to the proper personnel and thus, DCPS and not OSSE is liable for the student not being provided transportation services.

Although OSSE provides bus transportation to special education students in the District of Columbia each LEA remains responsible ensuring that services provided under a student's IEP are in fact provided. Petitioner failed to prove a preponderance of the evidence that OSSE was responsible for the lack to transportation services to the student between September 7, 2012, when DCPS entered the change of address in the database and November 20, 2012, when transportation for the student resumed. Consequently, the Hearing Officer finds DCPS liable for the denial of FAPE and has dismissed the complaint as to OSSE in the order that follows.

### **Appropriate Relief:**

IDEA authorized District Courts and Hearing Officers 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. For v. Carter*, 510 U.S. 7, 15-16; *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005).

Petitioner seeks as relief: DCPS and/or OSSE be ordered to fund the following independent evaluations: psychological, vocational, speech/language and FBA and convene a meeting to

review the evaluations and update the student's IEP as appropriate, and fund appropriate compensatory education for the student.

### **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." "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." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

As to compensatory education, Petitioner set forth a specific request for compensatory services for funding of independent evaluations and independent tutoring and counseling. However, the student's poor academic performance cannot be attributed only DCPS failing to ensure the student was provided bus transportation to and from School A. The parent testified that she let School A know of the change of address when she took the student to school and then called the transportation phone line once to alert them to the change of address. There appears to have been little other efforts made by the parent to determine why the bus was not coming to pick the student up or to correct the problem until [REDACTED] was finally able to contact her on or about October 18, 2012.

Then after the transportation resumed on November 20, 2012, the student continued to miss school for various reasons for up to 13 school days up until January 15, 2013. The Hearing Officer is struck by what seems to be a lack urgency by the parent to ensure the student attended school after the bus transportation resumed. And the Hearing Officer notes that the student's truancy issues were not simply a problem in the current school year but a problem in the previous school year as well.

Compensatory education is not a contractual remedy, but an equitable one. "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." *Parents of Student W v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497, 21 IDELR 723 (9th Cir. 1994). Compensatory education and reimbursement for parentally supplied educational services are remedies provided to a parent and student when a district has failed to offer and/or provide a student with a FAPE. See *Lester H. v. Gilhool*, 916 F.2d 865 (3rd Cr. 1990), cert. denied, 111 S.Ct. 1317 (1991), and *Burlington Sch. Comm. v. Massachusetts Dept. Of Ed.*, 471 U.S. 359, 369 (1985). Compensatory education is a remedy designed ""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 v. District of Columbia*, 401 F.3d 516, 524, 43 IDELR 32 (D.C. Cir. 2005). It is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. Flexibility rather than rigidity is called for. *Id.* at 523-524.

Compensatory education does not need to be a day for day equivalent of the time when the education was not appropriate. *Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F3d at 1497.

Consequently, the Hearing Officer concludes that the parent's actions and/or inaction in ensuring the student attended school after the bus transportation resumed or in not making certain the School A staff and DCPS had accurate phone numbers to reach her, should be considered in determining the award of compensatory education. The Hearing Officer notes that the evidence indicates the student's last evaluations was conducted in 2008 and thus will order as relief in this case that DCPS be required to conduct the requested evaluations. The Hearing Officer concludes that the recommended tutoring necessary for the student to complete the work packets in his core subjects as his classroom teacher suggested is needed to make up what he missed during the first and second quarter of SY 2012-2013 is an appropriate compensatory education award. The additional requested hours of tutoring and counseling beyond that will not be awarded based upon the equitable reasons noted above.

**ORDER:**

1. The claim(s) against OSSE alleged in the amended complaint are hereby dismissed with prejudice.
2. DCPS shall, within sixty days of the issuance of this order, conduct the following evaluations of the student: Comprehensive Psychological, Vocational, Speech-Language, and Functional Behavioral Assessment.<sup>11</sup>
3. Within twenty school days of the receipt or completion of the last evaluations listed above DCPS shall convene an IEP meeting at which the evaluations will be reviewed and the student's IEP updated.
4. As compensatory education for the denial of FAPE determined herein DCPS shall provide the student thirty (30) hours of independent tutoring at the OSSE approved rate. This award must be used by the August 31, 2013.

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<sup>11</sup> DCPS is free choose to provide Petitioner authorization for any or all of these evaluations to be conducted independently at its discretion in lieu of conducting the its own evaluations.

**APPEAL PROCESS:**

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**

**Hearing Officer**

**Date: February 19, 2013**