

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office
Frances Raskin, Due Process Hearing Officer
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Confidential

STUDENT, through the legal guardian¹)
)
 Petitioner,)
)
 v.)
)
 THE DISTRICT OF COLUMBIA)
 PUBLIC SCHOOLS,)
)
 Respondent.)
)

Hearing Date:
November 23, 2009

OSSE
STUDENT HEARING OFFICE
2009 DEC -4 AM 9: 51

HEARING OFFICER DETERMINATION

Counsel for Petitioner: John Straus, Attorney at Law
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¹ Personal identification information is provided in Attachment A.

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioner is the parent of a sixteen-year-old student ("Student") at who receives visiting instructional services. Both Petitioner and the Student live in the District of Columbia.

On July 14, 2009, Petitioner filed a Due Process Complaint Notice ("Complaint") alleging violations of the IDEIA. On September 17, 2009, Petitioner filed an Amended Complaint.²

The issues the Petitioner raised in her Amended Complaint, including the relief requested, resulted in the following issues and requested relief being presented for determination:

- A. Whether DCPS failed to comply with a hearing officer determination ("HOD") issued on August 22, 2008, by failing to: (i) provide Petitioner educational records for the 2006-2007, 2007-2008 and 2008-2009 school years; and (ii) review the Student's individualized educational program ("IEP") to incorporate compensatory services for any failure by DCPS to provide the Student appropriate specialized instruction during the 2007-2008 school year.
- B. Whether DCPS failed to implement the Student's January 15, 2008, IEP.
- C. Whether DCPS failed to provide the Student a free, appropriate, public education by failing to provide an appropriate educational placement.

Petitioner seeks relief in the form of an order placing the Student at a non-public, special education school at DCPS expense, including transportation. Petitioner also seeks compensatory education.

On July 22, 2009, Respondent filed a timely Response to Petitioner's Due Process Complaint ("Response"). In the Response, DCPS asserts that it had complied with the August 22, 2009, HOD by holding a meeting, discussing the services that DCPS did not provide the Student during the 2007-2008 school year, and determining that the Student was not entitled to compensatory education. DCPS asserts that it had implemented the Student's IEP and was in the process of scheduling a meeting to review the Student's evaluation and make an necessary changes to his IEP. DCPS filed a Supplemental Response on October 6, 2009. The Supplemental

² Petitioner filed a Motion to Amend Complaint on August 26, 2009. On September 8, 2009, this Hearing Officer issued an order granting Petitioner leave to file the Amended Complaint.

Response simply stated that the “team believes the Student can be successful in a DCPS school with services targeted to [emotionally disturbed] student and supplemental supports.”

The due process hearing convened at 10:00 a.m. on November 23, 2009. At the inception of the hearing, all of the parties’ disclosures were admitted into evidence with the exception of Petitioner’s Exhibit 16 and DCPS Exhibit 5. The due process hearing concluded after five hours of testimony.

III. RECORD

Due Process Complaint Notice, filed July 14, 2009;
DCPS Response to Petitioner’s Due Process Complaint, filed July 22, 2009;
DCPS Opposition to Expedited Hearing, filed August 28, 2009;
Petitioner Motion for Amended Complaint, filed August 26, 2009;
Interim Order, issued September 8, 2009;
Amended Due Process Complaint, filed September 17, 2009;
DCPS Supplemental Response to Petitioner’s Due Process Complaint, filed October 6, 2009;
Prehearing Order, issued November 3, 2009;
DCPS Motion to Dismiss Petitioner’s Due Process Complaint, filed November 5, 2009;
DCPS Withdrawal of Motion to Dismiss Petitioner’s Due Process Complaint, filed November 6, 2009;
Petitioner Motion for Continuance, filed November 9, 2009;
Continuance Order, issued November 20, 2009;
Order Denying Motion to Dismiss, issued November 20, 2009;
DCPS Five-Day Disclosure; listing fourteen witnesses and including sixteen proposed exhibits, filed November 18, 2009s; and
Petitioner’s Five-Day Disclosure Statement, listing six witnesses and including twenty-seven proposed exhibits, filed November 18, 2009;

IV. ISSUES PRESENTED

At the outset of the due process hearing, Petitioner withdrew her claim that DCPS failed to implement the Student’s January 15, 2008, IEP. This Hearing Officer interprets Petitioner’s remaining claims as essentially:

A. Whether DCPS failed to comply with a hearing officer determination (“HOD”) issued on August 22, 2008; and

B. Whether DCPS failed to provide the Student a free, appropriate, public education by failing to provide an appropriate educational placement.

V. FINDINGS OF FACT

1. The Student is a [REDACTED], special-education student who is currently receiving visiting instructional services (“VIS”) from DCPS.³ The Student’s individualized educational program (“IEP”) requires that he receive 25.5 hours of specialized instruction and two hours of behavioral support services each week.⁴ The Student’s IEP further requires that the Student be educated outside the general-education environment in a self-contained classroom.⁵

2. At age [REDACTED] the Student enrolled in a DCPS senior high school (“DCPS School”).⁶ At this school, the Student’s peers attacked him repeatedly.⁷ As a result, the Student missed many school days to avoid his peers due to his concerns for his safety.⁸ As a result of the tension between the Student and his peers, and the stress of being physically attacked, the Student’s academic productivity declined.⁹

3. The Student experienced several deaths of close relatives.¹⁰ The Student also lost two friends who committed suicide.¹¹ A vehicle struck one of the Student’s acquaintances in front of their school.¹² Now, the Student avoids people and no longer wants to make new friends.¹³

4. Due to his history of trauma and loss, the Student developed social anxiety and started avoiding school.¹⁴ In about April 2009, DCPS agreed to provide the Student visiting instructional services so that he could be educated at home.¹⁵ Since he started working with the VIS instructors, the Student has been more motivated to learn.¹⁶

5. Both Petitioner and DCPS agree that the Student should be placed in a less restrictive

³ Testimony of Petitioner; Petitioner Exhibit 10 (Individualized educational program dated February 10, 2009). This IEP likely was developed on April 17, 2009, as evidenced by Petitioner’s signature on the IEP dated April 17, 2009. The April 17, 2009, MDT Notes (Respondent’s Exhibit 9) state the purpose of the MDT meeting was to update the Student’s IEP. In any event, it is the Student’s most recent IEP.

⁴ Petitioner Exhibit 10.

⁵ *Id.*

⁶ Petitioner Exhibit 12 (March 9, 2009, Report of Psychiatric Evaluation).

⁷ *Id.*

⁸ *Id.* The Student may have been sexually assaulted by the father of one of his friends when he was nine or ten years old. *Id.*; Petitioner Exhibit 14 (January 9, 2009, Report on Confidential Comprehensive Psychological Evaluation).

⁹ Petitioner Exhibit 12.

¹⁰ Petitioner Exhibit 14.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Testimony of Psychologist.

¹⁵ Testimony of Educational Advocate.

¹⁶ Testimony of Petitioner.

environment than home-based instruction.¹⁷ The behavioral objective of moving the Student into a school setting is to strengthen him intellectually and emotionally.¹⁸

6. The Student requires a therapeutic educational environment.¹⁹ The Student must be placed in a structured, small setting that can provide him individual attention emotionally and academically.²⁰ The Student should not be returned to setting where he would have interactions with general education students.²¹ The Student needs to be in a school environment where the teachers are able to provide continuous individual academic instruction by an individual sensitive to his emotional needs.²²

7. The DCPS proposed school provides specialized instruction and related services to Students, like the Student, who have full-time IEPs.²³ All of these students have behavior intervention plans.²⁴ At this school, the Student would be in a class with a total of ten students.²⁵ The Student would interact with non-disabled peers in transitioning between the two classrooms in which he would receive instruction and at lunch.²⁶ The SEC of this school is not sure whether the Student's proposed teacher provides language-based instruction.

8. DCPS issued a prior notice of placement ("PNOP") to its proposed school in October 2009.²⁷ DCPS did not hold a placement meeting prior to issuing the PNOP.²⁸

9. Petitioner visited the DCPS proposed senior high school.²⁹ At the DCPS proposed school, the Students are unsupervised in the hallways and at lunch.³⁰ The teachers also cannot control whether and when the Students arrive in class.³¹

10. The non-public school is a ten-month day program.³² It offers special education and therapeutic services to students in grades K-12.³³ The Student would be able to earn a diploma at the non-public school.³⁴ All of the students at the non-public school receive counseling on their

¹⁷ Stipulation of parties.

¹⁸ Testimony of Psychologist.

¹⁹ Testimony of Psychologist.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Testimony of DCPS Special Education Coordinator (SEC).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*; DCPS Exhibit 14 (October 26, 2009, PNOP).

²⁸ See DCPS Exhibit 11 (August 5, 2009, MDT Meeting Notes). These notes do not evidence that the placement discussion ever occurred.

²⁹ Testimony of Petitioner.

³⁰ *Id.*

³¹ *Id.*

³² Testimony of non-public school Program Director.

³³ *Id.*

³⁴ *Id.*

IEPs. The Student would receive individual and group counseling.³⁵ The school also implements the Maryland bullying protocol and counselors assess students regularly to detect potential suicide risk and homicide threats.³⁶

11. At the non-public school, all Students eat lunch in their homeroom.³⁷ When the students are transitioning from class to class, they are closely supervised by school staff.³⁸

12. At the non-public school, the Student would be in a class of no more than nine students.³⁹ The Student would not be exposed to non-disabled peers at this school.⁴⁰

13. An August 22, 2008, HOD ordered DCPS to convene an IEP meeting within fourteen calendar days to assure Petitioner access to all existing educational records for the Student for the 2007-2008 school year and all existing educational records to date for and 2008-2009 school year.⁴¹ The HOD ordered DCPS to determine what, if any, services were missed during the 2007-2008 school year by review of all existing service logs.⁴²

14. The HOD further ordered DCPS to incorporate into the Student's IEP the services required for any and all periods during which the Student did not receive appropriate specialized instruction during the 2007-2008 school year.⁴³ In other words, the HOD ordered DCPS to determine the amount of compensatory education to which the Student was entitled.

15. On April 14, 2009, DCPS convened a meeting of the multidisciplinary team ("MDT") to determine what services the Student missed in school year 2007-2008 and school year 2008-2009.⁴⁴ At this meeting, the MDT reviewed the Student's educational records, which it had provided Petitioner's advocate at the prior meeting.⁴⁵

16. At the April 14, 2009, MDT meeting, the team discussed the services that DCPS failed to provide the Student during the 2007-2008 school year and found that the Student received all of the specialized instruction and related services to which he was entitled.⁴⁶ Petitioner and her advocate disagreed with the MDT's determination. The MDT further found that the Student received all of the specialized instruction and related services to which he was entitled in the 2008-2009 school year.⁴⁷ Petitioner and her advocate disagreed with this

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Petitioner Exhibit 18 (August 22, 2008, HOD).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Petitioner Exhibit 11 (April 14, 2009, MDT Meeting Notes).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

determination as well.⁴⁸ The MDT did not proceed to discuss compensatory education for the Student because it found that the Student received all of the specialized instruction and related services required by his IEPs for the 2007-2008 and 2008-2009 school years.⁴⁹

17. During the 2007-2008 school year, the Student received 5.5 hours of counseling.⁵⁰ The Student's IEP required that he receive 36 hours of counseling during the 2007-2008 school year.⁵¹ The compensatory education plan the Student's educational advocate developed concludes that, because the Student did not receive 30.5 hours of counseling during the 2007-2008 school year, he is entitled to 30.5 hours of compensatory counseling.⁵² The Educational Advocate admitted that she did not assess the effect of the missed services on the Student, but rather subtracted the hours of counseling required by the Student's IEP and subtracted the hours of counseling that DCPS actually provided the Student to arrive at the number of hours of counseling to which the Student is entitled as compensatory education.⁵³ The Educational Advocate admitted that her calculation was a one-to-one analysis, i.e., she determined that the Student is entitled to one hour of compensatory education for every hour of missed services.⁵⁴

18. During the 2008-2009 school year, the Student missed nineteen weeks of school prior to receiving VIS.⁵⁵ Petitioner's compensatory education plan concluded that the Student is entitled to receive nineteen hours of compensatory counseling to compensate for the nineteen hours of counseling that DCPS failed to provide the Student.⁵⁶ The Educational Advocate admitted that her calculation was a one-to-one analysis, i.e., she determined that the Student is entitled to one hour of compensatory education for every hour of missed services.⁵⁷

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible. DCPS presented no testimony that contradicted the testimony of Petitioner's witnesses. The sole DCPS witness, the Special Education Coordinator testified consistently with Petitioner's witnesses, and thus DCPS presented no testimony to counter Petitioner's evidence at the hearing.

VII. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.⁵⁸ Under IDEIA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Petitioner Exhibit 24 (Compensatory Education Plan).

⁵¹ *Id.*

⁵² Testimony of Educational Advocate; Petitioner Exhibit 24.

⁵³ Testimony of Educational Advocate.

⁵⁴ *Id.*

⁵⁵ *Id.*; Petitioner Exhibit 24 (Compensatory Education Plan).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

evidence.⁵⁹

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.⁶⁰ FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...⁶¹

Special education is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability."⁶² FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."⁶³

DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."⁶⁴ In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether the Student's IEP reasonably calculated to enable the Student to receive educational benefits.⁶⁵

In matters alleging a procedural violation, a hearing officer may find that the 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.⁶⁶ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.⁶⁷

⁵⁹ 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

⁶⁰ 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1).

⁶¹ 20 U.S.C. § 1401(9), 34 C.F.R. § 300.17, 30 DCMR Sec. § 3001.1.

⁶² 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, 30 DCMR Sec. § 3001.1.

⁶³ *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).

⁶⁴ 34 C.F.R. § 300.101.

⁶⁵ *Rowley* at 206-207.

⁶⁶ 20 U.S.C. § 1415 (f)(3)(E)(ii).

⁶⁷ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Krivant v. District of Columbia*, 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").

VIII. DISCUSSION

A. Petitioner Failed To Prove That DCPS Violated The August 2008 HOD.

The Blackman/Jones Consent Decree (“Consent Decree”) requires full and timely implementation of Hearing Officer Determinations and agreements concerning a child’s identification, evaluation, educational placement, or provision of a free, appropriate, public education (“FAPE”). Whenever a hearing officer finds that a Local Educational Agency (“LEA”) failed to timely implement an HOD or settlement agreement, the Hearing Officer applies a standard of “rebuttable presumption of harm” to the student. In other words, if this Hearing Officer finds that DCPS failed to timely implement the August 22, 2008, HOD, DCPS must present evidence rebutting the presumption of harm to the student.

In establishing a rebuttable presumption of harm to the student, as a result of any delay or failure to timely implement an HOD, a hearing officer considers length of delay, i.e., the amount of time over which the LEA failed to timely implement the HOD. The hearing officer also considers the services the student is entitled to receive (under the IDEIA) but did not receive as a result of the LEA’s delay in implementing the HOD.

To rebut the presumption of harm, DCPS must prove that:

- A. DCPS has already provided or agreed to provide compensatory education to Student to compensate for the delay in implementing the HOD;
- B. A Hearing Officer has already considered the harm from the LEA’s delay in implementing the HOD and either ordered compensatory education or determined that the Student is not entitled to compensatory education;
- C. The unimplemented provision of the HOD/settlement agreement concerned only reimbursement for services the parent obtained privately; or
- D. The Student:
 - 1. has been found ineligible for special education services;
 - 2. graduated with a regular diploma;
 - 3. longer resides in the District of Columbia;
 - 4. graduated with a certificate of IEP completion;
 - 5. has been in full-time, general education classes for at least one academic year because the student met his/her IEP goals; or
 - 6. has been in a non-public general education school for at least three consecutive grading periods or (27) weeks, whichever is greater.

The Consent Decree further provides that, if a respondent introduces evidence at a hearing to rebut the presumption of harm, Petitioner shall have the opportunity to present evidence to show that the student has been harmed.

Here, the MDT notes evidence that the MDT team discussed the services the Student

missed and whether he was entitled to compensatory education. Although Petitioner disagreed with the team's conclusion, the August 2008 HOD required no more. Thus, Petitioner failed to establish that DCPS violated the terms of the HOD.

B. Petitioner Failed to Prove that the Student is Entitled to Compensatory Education.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." *Reid*, 401 F.3d at 518.

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award." *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007). Here, DCPS denied the Student a FAPE in failing to develop an appropriate IEP for the Student and failing to provide an appropriate educational placement.

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. 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. 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.3d at 524. This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity." *Id.* at 524.

In *Reid*, the Court rejected "cookie-cutter" or mechanical remedies, such as awarding one hour of compensatory instruction for each hour that the student was denied FAPE. 401 F.3d at 523-24. *See also Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994) ("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.").

Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. *Reid*, 401 F.3d at 524. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE. *Id.* *See also Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

Petitioner's Educational Advocate admitted that she did not calculate the compensatory education plan to "provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." The Advocate also admitted that she simply calculated the compensatory education due to the Student "one hour of compensatory instruction for each hour that the student was denied." As discussed above, this type of analysis is inappropriate under *Reid*.

C. Petitioner Proved that DCPS Denied the Student FAPE by Failing to Provide Him an Appropriate Educational Placement.

The IDEIA requires that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.⁶⁸ In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.⁶⁹ A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.⁷⁰

In determining the educational placement of a child with a disability, DCPS must ensure that the placement decision is made by a group of persons including the parents and other persons knowledgeable about the child.⁷¹ Placement decisions must be made in conformity with the child's IEP.⁷² Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.⁷³

In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEIA:

- (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.⁷⁴

Here, DCPS has proposed placing the Student in nearly the same environment as he was before he stopped attending school. DCPS issued the PNOP without holding the meeting to discuss its proposed placement with the parent and other persons familiar with the child, which is required by 34 C.F.R. § 300.116. For this reason, the placement proposed by DCPS is invalid.

⁶⁸ 34 C.F.R. § 300.116 (c).

⁶⁹ 34 C.F.R. § 300.116 (d).

⁷⁰ . Id. at (e)

⁷¹ 34 C.F.R. § 300.116.

⁷² 34 C.F.R. § 300.116 (a)(2)(b), 5 D.C.M.R. § 3013 (2006).

⁷³ See, *Rourke v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006).

⁷⁴ D.C. Code § 38-2561.02.

DCPS also presented no evidence to rebut the evidence presented by Petitioner that the Student failed to progress in this type of environment due to his anxiety and fears for his safety. While the Student would not be in general education classes at the proposed DCPS school, he would interact with general education students between classes and at lunch. Petitioner established that this Student's anxiety prevented him from attending school for many months. Petitioner's expert witness, as well as the psychiatrist who conducted the psychiatric evaluation, recommended that the Student be placed in a therapeutic environment when he returns to school. DCPS presented no testimony or evidence to rebut these recommendations.

The alternative, i.e., returning the Student to the very environment he fears would be counterproductive. Thus, I agree with the recommendations of the Psychologist and the psychiatrist that the Student should be placed in a more restrictive environment than the DCPS proposed placement.

Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the exhibits and the testimony admitted at the due process hearing, it is this 3rd day of November 2009 hereby:

ORDERED that the Student shall attend the non-public school at DCPS expense for the 2009-2010 school year;

IT IS FURTHER ORDERED that DCPS shall provide the Student transportation services to and from the non-public school;

IT IS FURTHER ORDERED that DCPS shall ensure that Petitioner and the Student are present at all future IEP/MDT meetings before proceeding with any meeting regarding the Student's IEP;

IT IS FURTHER ORDERED that within thirty calendar days of the Student's enrollment in the non-public school, DCPS shall hold an MDT meeting to review and revise the Student's IEP and review whether the Student requires further evaluation;

IT IS FURTHER ORDERED that DCPS shall receive one day of delay for every day of delay caused by Petitioner, her counsel, or her advocate;

IT IS FURTHER ORDERED that Petitioner's compensatory education claim is **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/ Frances Raskin
Frances Raskin

Hearing Officer

NOTICE OF APPEAL RIGHTS

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. § 415(i)(2).

Distributed to:

John Straus, Attorney at Law
Kendra Berner, Attorney at Law
Hearing Office