

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

OSSE
Student Hearing Office
July 01, 2013

[Student],¹

Date Issued: June 28, 2013

Petitioner,

Hearing Officer: Jim Mortenson

v

Case No:

[Local Education Agency],

Respondent.

HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed by the Petitioner on May 10, 2013. The Petitioner and Respondent are both represented by counsel. The Undersigned was appointed on May 14, 2013.

A response to the complaint was filed on May 16, 2013. A prehearing conference was convened on May 20, 2013 and a prehearing order was issued on that date. A resolution meeting was held on May 21, 2013, and resulted in no agreements.

The Respondent filed a motion to permit telephone testimony for one of her witnesses on May 28, 2013. On June 3, 2013, an order was issued denying the Respondent's motion. The parties both exchanged and filed their disclosures on June 3, 2013, and the Petitioner filed his prehearing brief on that date. The Respondent filed its prehearing brief on June 4, 2013.

The hearing was convened at 9:20 a.m. on Monday, June 10, 2013, in room 2003 at 810 First Street NE, Washington, D.C. The hearing was closed to the public. The hearing closed at 5:10

¹ All names have been removed in accordance with Student Hearing Office policy and are referenced in Appendix C which is to be removed prior to public dissemination.

p.m. on June 10, 2013. The due date for this Hearing Officer's Determination (HOD) is July 2, 2013. This HOD is issued on June 28, 2013.

II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5-E30. The case was put on an expedited track because of direction from OSSE to ensure any hearing concerning a disciplinary matter, such as whether a manifestation determination was held (as opposed to an appeal of a manifestation determination pursuant to 34 C.F.R. § 300.532), is expedited.

III. ISSUES, RELIEF SOUGHT, RESPONDENT'S POSITION, and DETERMINATION

The issues to be determined by the IHO are:

- 1) Whether the Respondent denied the Student a free appropriate public education (FAPE) when it: a) failed to convene a manifestation determination meeting within 10 school days of the first change of placement as a result of a violation of the code of student conduct during the 2012-2013 school year; b) failed to provide the Student with educational services during the Student's 18 days of suspension during the 2012-2013 school year; and c) failed to revise the Student's behavior intervention plan (BIP) during the 2012-2013 school year?
- 2) Whether the Respondent denied the Student a FAPE when it failed to provide him with special education and related services in conformity with his IEP during the 2012-2013 school year because it did not: a) provide the Student with 90 minutes per month of speech and language services; b) provide 26.5 hours of specialized instruction in an out-of-general education setting; c) provide the Student with counseling services; and d) provide transition services?

The Petitioner is seeking:

- 1) A credit recovery program, including specialized instruction, for courses the Student failed during the 2012-2013 school year.
- 2) Compensatory education to address failing grades and a lack of meaningful progress toward IEP goals resulting from the alleged violations, consisting of weekly tutoring in basic academic skills (including math) through the summer of 2013, mentoring to aid in transitioning to college, and one hour per week of speech and language services over the summer of 2013.

The Respondent contends the Student was suspended no more than 13 days during the 2012-2013 school year, and that manifestation determination meetings were held on February 5, 2013, and March 15, 2013. The Respondent also argues that the Student was chronically absent and fails to take advantage of the services he is provided. The Respondent argues that the Student is already doing credit recovery for a failed course, U.S. Government, and has been provided with transition services.

The Respondent did not deny the Student a FAPE for any of the allegations raised in Issue 1. The Respondent did deny the Student a FAPE when it failed to provide: 90 minutes per month of speech and language on a consultative basis; 26 hours per week of specialized instruction outside of the general education setting; and all of the transition services required by his IEP.

IV. EVIDENCE

Eight witnesses testified at the hearing, four for the Petitioner and four for the Respondent.

The Petitioner's witnesses were:

1. The Petitioner, (P).
2. Advocate, (M.L.).

3. Compensatory Education Provider, (C.P.).
4. Tutor, (S.P.).

The Respondent's witnesses were:

1. Speech Pathologist, (T.M.).
2. Special Education Coordinator, (Z.B.).
3. Special Education Teacher, (F.W.).
4. Transition Coordinator, (W.R.).

All of the witnesses testified credibly but for Z.B. Z.B.'s testimony is given little weight because she was inconsistent. First, she testified that the Student was in a "full-time" special education setting with only special education teachers. She then testified, and this testimony was corroborated, that the Student was in two classes taught only by regular education teachers.

The Petitioner moved for C.P.'s opinions regarding the Student's transition needs, harm to the Student resulting from the alleged failure to provide transition services, and the compensatory education to remedy that harm, to be treated as expert opinions. The motion was denied because the witness's opinions were not based on particularly technical or specialized knowledge.

The Respondent moved for T.M.'s opinion regarding the Student's needs and progress in the area of speech to be treated as expert opinions. The motion was denied because T.M. had no knowledge of the Student's most recent speech and language assessment (P 3), and so lacked the first-hand knowledge to provide an expert opinion concerning the Student.

All of the Petitioner's 27 disclosures were entered into evidence. The Petitioner's exhibits are listed in Appendix A. All of the Respondent's 12 disclosures were entered into evidence. The Respondent's exhibits are listed in Appendix B.

To the extent that the findings of fact reflect statements made by witnesses or the documentary evidence in the record, those statements and documents are credited. The findings of fact are the Undersigned's determinations of what is true, based on the evidence in the record. Findings of fact are generally cited to the best evidence, not necessarily the only evidence. Any finding of fact more properly considered a conclusion of law is adopted as such and any conclusion of law more properly considered a finding of fact is adopted as such.

V. FINDINGS OF FACT

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

1. Student is a year old learner with a disability who recently completed the 2012-2013 school year in the grade at one of the Respondent's senior high schools.² The Student has been determined by the Respondent to be eligible for special education and related services under the definition of Emotional Disturbance.³
2. The Student has a very short attention span, and is easily distracted in class.⁴ He is only able to complete small simple tasks in 20 minute increments, and often refuses assistance.⁵ His math skills are at a 3rd grade level and his reading skills are between a third and eighth grade level.⁶ He requires remediation in basic math computation, particularly involving integers, fractions, and decimals.⁷ He struggles to pronounce new vocabulary words and to spell grade level words.⁸ He has difficulty listening to instructions that contain multiple steps and

² Testimony (T) of P, P 1/R 9. (It is noted that the school year started August 27, 2012.)

³ P 1/R 9.

⁴ P 1/R 9.

⁵ P 1/R 9.

⁶ P 1/R 9, P 21.

⁷ P 1/R 9.

⁸ P 1/R 9.

comprehending the tasks asked of him.⁹ He is not able to form complex and compound sentences.¹⁰ He struggles to formulate his ideas and thoughts into coherent sentences, and requires pre-writing strategies and instruction.¹¹ He suffers from anxiety disorder, conduct disorder, and has a history of drug use and criminal behavior.¹² The Student may also have a specific learning disability, but this has not been conclusively identified.¹³

3. The parties were involved in a due process hearing that resulted in an HOD issued April 15, 2012, which required, in relevant part, that the Student's IEP would include 60 minutes of speech and language therapy per week.¹⁴ The HOD was not complied with by the Respondent as evidenced by the subsequent IEP which lacked speech and language therapy.¹⁵ The HOD was not enforced by the Petitioner.¹⁶
4. The Student's IEP was revised on May 22, 2012, and included annual goals related to math, reading, writing, communication/speech and language, and emotional, social, and behavioral development.¹⁷ Services in the IEP included: a) specialized instruction outside of the general education setting for 26 hours per week; b) behavioral support services outside of the general education setting for 240 minutes per month (which were provided in the form of counseling services); speech-language pathology consults (in-direct service) for 90 minutes per month; reading of test questions to the Student in math, science, and composition; repetition of directions; simplification of oral directions; use of calculator; writing in test books; dictated responses to examiner; preferential seating; small group testing; location with minimal

⁹ P 1/R 9.

¹⁰ P 1/R 9.

¹¹ P 1/R 9.

¹² P 1/R 9, P 20.

¹³ P 20.

¹⁴ P 5.

¹⁵ P 1/R 9.

¹⁶ (There is no evidence in the record of a complaint filed, pursuant to 34 C.F.R. § 300.152(c)(3), alleging the Respondent failed to implement the HOD, and this was not an issue raised in the present complaint).

¹⁷ P 1/R 9.

distractions; and breaks between sub-tests.¹⁸ The transition services in the IEP included: a) for post-secondary education and training - two hours per month of assistance in the classroom completing the application and essay for at least one vocational program, and compiling all required documentation to apply; b) for employment – assistance from the transition coordinator for two hours per month; and c) for independent living – instruction in the classroom, four hours per month, of functional math skills including balancing a checkbook and maintaining a monthly budget.¹⁹ The IEP team determined that the Student could be assessed on State-wide academic standards and could be awarded a diploma upon graduation.²⁰

5. In addition to the 240 minutes per month of behavior support services, the Student’s behavior intervention plan includes the following four goals: 1) increasing attending skills by following routines and following instructions and verbal directives on the first prompt; 2) asking for assistance from teachers or the social worker when appropriate, i.e. assistance with school work, ensuring work completion, frustrations, coping skills, and interactions with staff/authority figures; 3) improve interpersonal behavioral skills and appropriate communication skills to maintain positive interpersonal relationships with teachers/authority figures; 4) improving attendance at school and classes on a daily basis.²¹
6. During the summer of 2012, the Student was assessed using the Comprehensive Adult Student Assessment System (CASAS) and found to be reading at an eighth grade level (significantly higher than reported in his May 2012 IEP), and performing math at a third

¹⁸ P 1/R 9.

¹⁹ P 1/R 9.

²⁰ P 1/R 9.

²¹ P 1/R 9.

grade level.²² The same assessment was used in May 2013, and the Student's grade level performance in both skill areas remained the same.²³

7. Prior to the complaint in this matter, during the 2012-2013 school year, the Student was suspended from school three times: two days in September; eight days in January and into February for fighting; and three days in March for entering or looking into the girls bathroom.²⁴ A meeting to determine whether the Student's behavior was a manifestation of his disability was held following the first ten days of suspension on February 5, 2013, and it was determined the Student's behavior was a manifestation of his disability.²⁵ A meeting to determine whether the Student's behavior was a manifestation of his disability was held following the March incident and it was determined the behavior was not a manifestation of the Student's disability.²⁶
8. The Student's IEP was never implemented while he was suspended during the 2012-2013 school year.²⁷
9. The Student was provided with 16.25 hours of specialized instruction per week, or 63% of the 26 hours he was entitled to.²⁸ His electives, such as Spanish and a Computer class were regular classes, but included only students with disabilities, and were not taught by or did not include special education teachers.²⁹
10. The speech pathologist who was providing consultation services for the Student never reviewed the Student's most recent speech and language evaluation, conducted in August 2011, was not a member of the Student's IEP team, never evaluated the Student, and met

²² P 21, P 1/R 9, T of C.P.

²³ P 21.

²⁴ R 6, P 13/R 5, P 14/R 4, T of P.

²⁵ P 13/R 5.

²⁶ P 14/R 4.

²⁷ T of P, R 8.

²⁸ T of F.W. (13.75 hours per week were in general education classes.)

²⁹ T of F.W.

with the Student only two or three times.³⁰ She based her consults on her observations of the Student functioning in the classroom.³¹ She does not know what “accommodations” are provided to the Student in the classroom for speech and language issues, but suspects he “probably” gets the “standard” accommodations she recommends for children.³²

11. Data is in the record for the behavioral support services (counseling) provided from September 2012 through March 2013. During that span of time the Student was entitled to 1680 minutes of behavioral support services, and received or was offered 1390 minutes, or 83% of the total entitled.³³ The monthly break-down is as follows:

| | |
|------------|---------------------------------|
| September: | 100 minutes provided or offered |
| October: | 255 minutes provided or offered |
| November: | 225 minutes provided or offered |
| December: | 240 minutes provided or offered |
| January: | 90 minutes provided or offered |
| February: | 240 minutes provided or offered |
| March: | 240 minutes provided or offered |

12. The Student received some help from the Transition Coordinator in completing a college application, but this was not for a vocational program, but rather a college (which the Transition Coordinator counseled the Student to reconsider).³⁴ The Student did not receive assistance in the classroom to complete an essay and required documentation to apply for a vocational program.³⁵ The Student did not receive services to assist him in reaching the short-term goals in his IEP concerning employment.³⁶

³⁰ T of T.M.

³¹ T of T.M.

³² T of T.M.

³³ R 8. (This includes counseling sessions the Student refused or he was otherwise unaccounted for.)

³⁴ T of P. T of W.R.

³⁵ T of P, T of W.R.

³⁶ T of P, T of W.R.

13. The Student presented a compensatory education proposal completed by C.P. that her company would implement.³⁷ While the plan does provide evidence of the Student's lack of progress over the course of the 2012-2013 school year, it does not state where the Student would have been but for the denial of FAPE.³⁸ Furthermore, the proposal is based on expanded claims for denials of FAPE than even the complaint alleged, and which were not found here.³⁹ The proposal calls for the following services to be provided: a credit recovery program for 25 hours per week for five weeks; an intensive career exploration/career development program for 20 hours per week for eight weeks; two hours per week of speech and language services for five months; 40 hours of counseling services; and 100 hours of math tutoring.⁴⁰ These services are to prepare the Student for life after high school.⁴¹
14. The Respondent has authorized the Student to receive 25 hours of unspecified compensatory education to be used by July 31, 2013, "intended to remediate any educational harm through [May 23, 2013]."⁴²
15. The Student was unaccounted for in some classes (and not suspended) for as many as 20 to 52 days for the 2012-2013 school year as of June 3, 2013.⁴³ The absences decreased from a high of eight to twelve per month in September and October to two to eight during the rest of the year, indicating the counseling was having an impact on helping the Student reach his attendance goal.⁴⁴

³⁷ P 21, T of C.P.

³⁸ P 21.

³⁹ P 21.

⁴⁰ P 21.

⁴¹ P 21, T of C.P.

⁴² R 2.

⁴³ R 6.

⁴⁴ R 6, P 1/R 9.

VI. CONCLUSIONS OF LAW

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

1. The burden of persuasion in a special education due process hearing is on the party seeking relief. Schaffer v. Weast, 546 U.S. 49 (2005), *See also* D.C. Mun. Regs. 5-E3030.14. "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." D.C. Mun. Regs. 5-E3030.14. The recognized standard is a preponderance of the evidence. *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); Holdzclaw v. District of Columbia, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 34 C.F.R. § 300.516(c)(3).

2. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

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 §§300.320 through 300.324.

34 C.F.R. § 300.17. A "determination of whether a child received FAPE must be based on substantive grounds." 34 C.F.R. § 300.513(a)(1). Involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) is core to the IDEA's purpose. *See*: 34 C.F.R. §§ 300.39, 300.304, 300.305, 300.311, 300.320, 300.321, 300.324, 300.530, 300.704. "[A]n IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State's content standards." 71 Fed. Reg. 46662 (2006). In the District of Columbia all available information

must be considered when making a determination about whether an IEP is reasonably calculated to provide these education benefits. Suggs v. District of Columbia, 679 F. Supp. 2d 43, 51 (D.D.C.2010). “An IEP may not be reasonably calculated to provide benefits if, for example, a child's social behavior or academic performance has deteriorated under his current educational program, *see Reid v. District of Columbia*, 401 F.3d [516,] 519-20 [(D.C.Cir. 2005)]; the nature and effects of the child's disability have not been adequately monitored, *see Harris v. District of Columbia*, 561 F. Supp. 2d [63,] 68 [(D.D.C. 2008)]; or a particular service or environment not currently being offered to a child appears likely to resolve or at least ameliorate his educational difficulties. *See Gellert v. District of Columbia Public Schools*, 435 F. Supp. 2d 18, 25-27 (D.D.C. 2006).” Suggs, 679 F. Supp. 2d at 51-52. This line of reasoning is supported by the statute and regulations themselves. The IEP is a living document that, once initially created and consented to, is reviewed “periodically, but not less than annually, to determine whether the annual goals for the child are being achieved[.]” 34 C.F.R. § 300.324(b). The IEP must then be revised to address:

- (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
- (B) The results of any reevaluation conducted under § 300.303;
- (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
- (D) The child’s anticipated needs; or
- (E) Other matters.

34 C.F.R. § 300.324(b)(2)(ii).

3. The IDEA “is violated when a school district deviates *materially* from a student’s IEP.” Wilson v. D.C., 770 F.Supp. 2d 270, 275 (D.D.C. 2011), *citing*: Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“[A] *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services

required by the child’s IEP.”); *accord* S.S. ex rel. Shank v. Howard Road Acad., 585 F. Supp. 2d 56, 68 (D.D.C. 2008); Catalan ex rel. E.C. v. District of Columbia, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), *aff’d sub nom. E.C. v. District of Columbia*, No. 07-7070 (D.C. Cir. Sept. 11, 2007). “[T]he materiality standard *does not require that the child suffer demonstrable educational harm* in order to prevail” on a failure-to-implement claim. Wilson, at 275 (emphasis in original), *citing*: Van Duyn, 502 F.3d at 822 (emphasis added); *cf.* MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 537 n.17 (4th Cir. 2002) (rejecting the argument that parents must show actual developmental regression before their child is entitled to ESY services under the IDEA). “Rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.” Id., *See, e.g.*, Van Duyn, 502 F.3d at 822; S.S., 585 F. Supp. 2d at 65–68; Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115–16 (D.D.C. 2008); Catalan, 478 F. Supp. 2d at 76.

4. When a child with a disability has been removed from his educational placement for 10 school days in a school year for disciplinary reasons, the local education agency (LEA) must convene a team, including the parent and relevant members of the IEP team, within 10 school days to review all relevant information in the child’s file, including the IEP, any teacher observations, and any relevant information provided by the parent, to determine whether the conduct in question was caused by, or had a direct relationship to, the child’s disability, or whether the conduct in question was the direct result of the LEA’s failure to implement the IEP. *See* 34 C.F.R. § 300.530(e) & D.C. Mun. Regs. 5-E2510. When a child is removed from his educational placement for more than ten school days, the Respondent “must continue to

provide the specialized instruction and related services that are specified on the student's IEP." D.C. Mun. Regs. 5-E2510.6, *See also*, 34 C.F.R. § 300.530(d). A student's behavior intervention plan, if he has one, must be reviewed and modified, if necessary, to address the behavior that led to the disciplinary removal that resulted in a change of educational placement if the student's behavior was determined to be a manifestation of his disability. *See* 34 C.F.R. § 300.530(f)(1)(ii).

5. The Student's educational placement was changed as a result of disciplinary removals exceeding 10 days in March, 2013. A "manifestation determination" meeting was held as a result of the March incident where the Student looked into the girl's bathroom. It was determined that the Student's behavior was not a manifestation of the Student's disability. Thus, no revision of the Student's BIP was required. The IEP was required to be implemented after the 10 school days, and the Student, by the end of the March disciplinary removal, had been removed for 13 school days. The Respondent did not implement the IEP during this change, but the three days of missed services was not a material failure to implement the IEP in and of itself. Thus, there was no denial of FAPE for any of the reasons claimed under Issue 1.
6. There was a material failure to implement the IEP under some of the claims under Issue 2, however. Speech and language consultation was not provided in accordance with the IEP because the consultation was provided by someone who had not even reviewed the Student's most recent speech and language assessment. Additionally, the evidence does not show the consultation services that were provided were consistent with the IEP.⁴⁵ This was a material

⁴⁵ It is noted that speech and language services were ordered by a prior HOD, but the Respondent failed to implement that HOD when it included in-direct speech and language services as opposed to direct speech therapy for the Student. This was not an issue before the Undersigned, however, and the Petitioner has the opportunity to

failure to implement the IEP. Further, the IEP required 26 hours of specialized instruction per week, but the Respondent only provided the Student with approximately 16.25 hours of specialized instruction per week, 63% of the prescribed specialized instruction, when it failed to include specialized instruction from special education teachers in elective classes the Student was in, such as Spanish and Computer Applications. This is also a material failure to implement the IEP. Finally, the Respondent failed to provide all of the transition services required by the IEP. Of the transition services (eight hours per month), the Student received only a portion, primarily provided by the Transition Coordinator. The evidence does not show the Student received the two hours of monthly assistance in the classroom or the four hours of teaching of functional math skills, as required. This, too, was a material failure to implement the IEP. The one area that was not a material failure to implement was the provision of behavioral support services, specifically, counseling services. The Student received or was offered approximately 83% of the counseling services his IEP required. Given the trend in the reduction of absences, and the Student's refusal to often attend counseling, this difference is not significant. Overall, however, there is a material failure to implement the IEP as recited herein, thus a denial of FAPE.

7. This hearing officer has broad discretion to grant relief appropriate to ensure the Student is provided a FAPE. *See* 34 C.F.R. § 300.516(c)(3), Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369 (1985). Compensatory education is an equitable remedy that may be provided as relief in disputes under the IDEA. Reid ex rel, Reid v. District of Columbia, 401 F.3rd 516, 523, (D.C. Cir. 2005), *citing* G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 308 (4th Cir. 2003), and Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-

have the prior HOD enforced through the State Education Agency complaint procedure, pursuant to 34 C.F.R. §§ 300.151-153.

16 (1993). If, in the hearing officer's broad discretion, compensatory education is warranted, the "goal in awarding compensatory education should be 'to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.'" Wilson, at p 9, *citing Reid*, 401 F.3d at 518, and Carter at 15-16. "Once a student has established a denial of the education guaranteed by the IDEA, the Court or the hearing officer must undertake 'a fact-specific exercise of discretion' designed to identify those services that will compensate the student for that denial." *Id.*, *citing Reid*, 401 F.3d at 524; *see Stanton ex rel. K.T. v. District of Columbia*, 680 F. Supp. 2d 201, 207 (D.D.C. 2010); Phillips ex rel. T.P. v. District of Columbia, 736 F. Supp. 2d 240, 247 (D.D.C. 2010).

8. The Student failed to make any progress in reading or math skills during the 2012-2013 school year, and failed some classes. The lack of transition and speech and language services likely contributed to this lack of meaningful educational progress. It is the conclusion of the Undersigned that, based on the evidence in the record, including that the Student's academic progress would be assessed based on State-wide education standards, he should have made enough progress narrow the gap in his performance levels in reading and math, rather than increase it. The lack of progress over the course of a year has resulted in a widening of the gap. In order to put the Student in the place he reasonably would have been but for the denials of FAPE found herein, the Student will be provided the compensatory education described in the order below, which is designed to both narrow the Student's educational performance gap, provide the related service of speech therapy which is necessary to help do that, and ensure the transition services in the IEP are provided. This compensatory education plan will be implemented as ordered, regardless of the Respondent's determination about whether the Student has or will receive a diploma. (The Student clearly lacks the skills

necessary to be awarded a high school diploma at this time.) The compensatory education proposal presented by the Petitioner cannot be adopted in its entirety because it is not narrowly tailored to place the Student where he would have been but for the denial of FAPE found herein. Likewise, the compensatory education authorized by the Respondent is not specifically tailored to address any particular harm.

VII. DECISION

1. The Respondent did not deny the Student a FAPE for any of the allegations raised in Issue 1.
2. The Respondent denied the Student a FAPE when it failed to provide: 90 minutes per month of speech and language on a consultative basis; 26 hours per month of specialized instruction outside of the general education setting; and the transition services required by his IEP.

VIII. ORDER

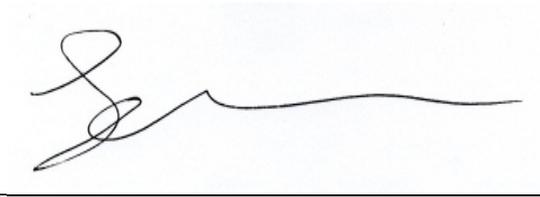
1. Beginning no later than July 15, 2013, the Student will be permitted to participate in instruction to work on math and reading skills. The instruction shall be designed to enable the Student to progress from his current math and reading levels to at least a sixth grade math level and an 11th grade reading level. This level of growth is expected because the Student should have made more than one year worth of progress on these skills during the 2012-2013 school year in order to narrow his achievement gap with standards expected of students in his grade. The instruction will be available until July 1, 2014, and the schedule for the instruction shall be designed to enable the Student to make this progress over that course of time, or

sooner. The schedule must be reviewed by the team monthly to determine whether the Student is on track as planned, and if not, the plan must be modified to provide the Student the opportunity to meet the grade level standards required within the time prescribed herein. If the Student fails to attend any instruction session without notice or legitimate explanation, he will forfeit a day from the July 1, 2014 deadline. (For example, one unexcused absence will result in the deadline for completion of the compensatory services to be June 30, 2014.)

2. The Student's progress on math and reading skills being taught shall be measured using a consistent measurement tool, as determined by the IEP team, which uses or is consistent with the District of Columbia education standards for math and reading, and not be based on subjective teacher observations, i.e., the assessment tool or procedure used to determine the Student's baseline as of the start of services will be the same assessment tool or procedure used throughout the instruction period to measure progress and determine mastery of the standards required.
3. The Student shall be permitted to obtain any missing high school credits, the specifics determined by the IEP team, for the instruction described above, or in a credit recovery program utilized in conjunction with the math and reading skills being taught.
4. All instruction will be provided using specialized instruction, and supported by related services and supplementary aids and services, as required by the Student's IEP.
5. The related service of speech and language therapy (direct service) will be provided for two hours per week for five months, beginning not later than July 15, 2013. Any unexcused absences from speech and language therapy sessions shall be forfeit.
6. The transition services, as stated in the Student's most recent IEP revision, will continue to be provided until July 1, 2014, or the Student earns a diploma, whichever occurs later.

IT IS SO ORDERED.

Date: June 28, 2013

A handwritten signature in black ink, consisting of a stylized initial 'S' followed by a long, horizontal, wavy line.

Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

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