

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

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

OSSE  
Student Hearing Office  
June 26, 2014

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PETITIONER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: June 25, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Student Hearing Office,  
Washington, D.C.

Respondent.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came for a hearing upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (DCMR). In her due process complaint, Petitioner seeks a compensatory education and a private placement award for Respondent District of Columbia Public Schools' (DCPS) alleged failure to implement Student's last Individualized Education Plan (IEP) after he moved

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<sup>1</sup> Personal identification information is provided in Appendix A.

to the District from Prince George's County, Maryland during the 2013-2014 school year.

On May 2, 2014, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters. Pursuant to the IDEA, the due process hearing was convened before this Impartial Hearing Officer on June 19, 2014 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Petitioner and Student appeared in person, and were represented by PETITIONER'S COUNSEL. DCPS was represented by DCPS' COUNSEL. Mother testified, and called as witnesses Student, NONPUBLIC SCHOOL ADMISSIONS DIRECTOR, LICENSED PSYCHOLOGIST, EDUCATIONAL ADVOCATE, PROBATION OFFICER and VOLUNTEER ADVOCATE. DCPS called no witnesses. Petitioner's Exhibits P-5 through P-11, P-13 through P-20, P-23, P-26 through P-31, and P-34 through P-41 were admitted into evidence. DCPS' objections to Exhibits P-13, P-14, P-16, P-23, P-29, and P-32 were overruled. DCPS' objections to Exhibits P-1 through P-4, P-12, P-21 and P-22 were sustained. Exhibits P-24, P-25, P-33 and P-42 were not offered. DCPS' Exhibits R-1, R-2, R-4 and R-5 were admitted into evidence without objection. Exhibit R-6 was admitted over Petitioner's objection. Petitioner's objection to Exhibit R-3, which was identical to Exhibit R-2, was sustained. Counsel for both parties made opening statements and closing argument. At the due process hearing, neither party requested leave to file a post hearing memorandum. The day following the due process hearing, Petitioner's Counsel requested leave to file a written summation. I advised counsel that further written argument would not assist the Hearing Officer in reaching a decision.

**JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

**ISSUES AND RELIEF SOUGHT**

- Whether DCPS has failed to implement Student’s August 30, 2013 Maryland IEP which provides for stand-alone, full-time, special education services outside of the general education setting;
- Whether DCPS has denied the student a FAPE by failing to timely conduct a triennial special education reevaluation including a comprehensive psychological evaluation and a functional behavioral assessment; and
- Whether DCPS has failed to develop an appropriate transition plan as part of Student’s IEP.

For relief, Petitioner requests an order for DCPS to fund Student’s placement, with transportation, at Nonpublic School; for DCPS to immediately implement Student’s Maryland IEP and/or for DCPS develop an appropriate IEP for Student; for DCPS to fund or complete triennial reevaluations, including but not limited to a comprehensive psychological evaluation, a vocational evaluation, a social history, and any other assessments deemed necessary; and for DCPS to fund or complete a functional behavioral assessment (FBA) and then convene a IEP team meeting to review the FBA and develop an appropriate Behavior Intervention Plan (BIP); and for DCPS to develop and implement an appropriate transition plan for Student and to provide him appropriate transition counseling services. In addition, Petitioner seeks an award of compensatory education services to compensate Student for denials of FAPE since he moved to the District in the current school year.

**FINDINGS OF FACT**

After considering all of the evidence, as well as the argument of counsel, this

Hearing Officer's Findings of Fact are as follows:

1. Student, a AGE youth, resides with Mother in the District of Columbia. He is in the GRADE at CITY HIGH SCHOOL. Testimony of Mother.

2. Student is eligible for special education and related services as a student with an Other Health Impairment (OHI) primary disability. Exhibit P-28.

3. Until December 2013, Student and Mother resided in Prince George's County Maryland. From an early age, Student had a Prince George's County Public Schools (PGCPS) IEP. For a number of years, Student was placed at MARYLAND NONPUBLIC SCHOOL 1. From the beginning of the 2013-2014 school year, until the family moved to the District in December 2013, Student was placed at MARYLAND NONPUBLIC SCHOOL 2. Testimony of Mother.

4. Student's last PGCPS IEP was developed at an August 30, 2013 IEP team meeting (the "Maryland IEP").<sup>2</sup> The Maryland IEP identified Student's primary disability as OHI and the areas affected as Math Calculation, Math Problem Solving, Reading Comprehension, Reading Vocabulary, Written Language Content and Social Emotional/Behavioral. The Maryland IEP provided Student 29 hours per week of special education classroom instruction and one hour per week of counseling services by a school social worker. Exhibit P-28.

5. With regard to Student's Least Restrictive Environment (LRE), the Maryland IEP states that the IEP team considered Resource room/Combined program, Separate room, Public Separate Day School and Private Separate Day Program as IEP

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<sup>2</sup> The August 30, 2013 IEP from PGCPS is identified in the Prehearing Order as Student's last Maryland IEP. DCPS introduced in evidence a September 4, 2012 PGCPS IEP for Student (Exhibit R-1). Although DCPS' Counsel represented that DCPS was working off of this September 4, 2012 IEP, this IEP was not in effect when Student moved to the District in December 2013.

placement options for Student. The IEP team determined that Student needed full-time, 30 hours per week, of special education services, all outside of General Education and that he required a Private Separate Day School for the implementation of his IEP. The IEP team agreed that Student's IEP required "a highly structured small group learning environment with a low student-teacher ratio as well as a behavioral management component, therapeutic counseling support, adaptive daily living skills, social skills training, motor control and communication (speech/language therapy)" [sic]<sup>3</sup>. The Maryland IEP indicates that Maryland Nonpublic School 2 would be Student's service school. Exhibit P-28.

6. The Maryland IEP states that for Social/Behavioral Supports, Student will have a Behavior modification system with rewards and consequences. In the comments section, the IEP states that Student is successful when he has clear consequences and rewards for his behavior and that, due to Student's behavior, crisis intervention to include exclusion, or seclusion, per parental consent, will be used in order to keep the student and others safe. Exhibit P-28.

7. The August 30, 2013 IEP team deferred a decision on whether Student would receive Extended School Year (ESY) services. Exhibit P-28.

8. The Maryland IEP Transition section references an interview with Student and states that Student's projected exit category was Maryland High School Diploma and that his employment goal was to be employed as a game designer. His education goal was identified as to attend college and complete a course of study in business and computer programming. Exhibit P-28.

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<sup>3</sup> The Maryland IEP states that Student does not have special communication needs and does not include goals or related services for motor control or communication (speech/language therapy). I find that this language was inserted by error in the IEP.

9. Before the beginning of the 2013-2014 school year, Mother and Student visited several private schools and chose Maryland Nonpublic School 2 as the private separate day school that Student would attend because that school was able to implement Student's IEP. Testimony of Mother. Student entered Maryland Nonpublic School 2 on July 1, 2013. Exhibit P-18. Student earned all passing grades for the first two terms at Maryland Nonpublic School. On the mid-first term progress report, his teacher commented that Student had great potential and that he needed to work on his behavior when he became upset. Student's grades for the second term were four C's (English, History, Physics and Journalism), A in Algebra and B in Health. Exhibit P-19. Student liked Maryland Nonpublic School 2 because the teachers had time for him and the school offered small class size. His grades and behavior were better at Maryland Nonpublic School 2 than at City High School. Testimony of Student.

10. In December 2013, Mother bought a home in Washington, D.C. The family moved to the District after Christmas 2013. When Mother informed PGCPS about the move, the Maryland school division informed her it would no longer pay for Student to attend Maryland Nonpublic School 2. Mother went to City High School several times for meetings with the special needs staff person. That person never showed up for the scheduled meeting. The school secretary set up an appointment for the end of January 2014 for Mother to enroll Student. Mother provided Student's Maryland school records and IEP and Student was allowed to start school in February. Testimony of Mother.

11. When Student moved to the District, DCPS elected to "piggyback" on the Maryland IEP and did not develop a new IEP for him. Testimony of Mother.

12. Student began attending City High School around February 10, 2014.

Exhibit P-8. From the beginning of his enrollment at City High School, Student was placed in City High School's SPECIAL EDUCATION UNIT. The Special Education Unit is contained in a part of the school building separate from the general education classrooms. At City High, School Student receives all of his instruction for core academic courses, outside the general education setting, in the Special Education Unit. He is in general education classes for physical education and music. Testimony of Educational Advocate. Student is able to freely access the general education parts of City High School. Testimony of Student.

13. Student has performed very poorly at City High School. For the third term, ending March 28, 2014, Student received F's in Environmental Science and Algebra, D's in Literacy, English, Music and Physical Education, a C in World History and a B in Advisory. For the fourth term, ending May 9, 2014, he received F's in Environmental Science, English, Music, Algebra and Physical Education, D's in Literacy and World History and a C- in Advisory. Exhibits P-5, P-39. Student's behavior issues also have worsened. He displays oppositional and defiant behaviors characterized by refusing to complete work, walking out of class, leaving school without permission, and sleeping in the classroom. Exhibit R-2. On May 1, 2014, Student was involved in a behavior incident allegedly including verbal and physical aggression toward school staff. Exhibit P-9. As a result of that incident, Student was arrested and placed by a court on supervisory probation status. Testimony of Probation Officer.

14. Since enrolling at City High School, Student has not received any counseling services. Testimony of Student. Student was added to the City High School Clinical Social Worker's case load on May 16, 2014. Exhibit R-2.

15. Student's most recent IDEA reevaluation date was September 4, 2012 when Student's PGCPs IEP team completed a full and comprehensive review of all assessment materials. Evaluation data considered included prior assessments, parent concerns, teacher observations, classroom performance, report card grades, performance on state and district wide assessments and health concerns. Exhibit P-28. Student was also referred for a psychological reassessment by a PGCPs school psychologist, whose report was completed on November 12, 2012. Exhibit P-27.

16. At the May 22, 2014 Resolution Session Meeting for this case, DCPS proposed to authorize a comprehensive psychological reevaluation and vocational assessment of Student to be conducted independently, subsequent to which Student's IEP team would be convened to review the evaluations, review his IEP and discuss the location of Student's IEP services. Exhibit R-4.

17. Nonpublic School is a full-time therapeutic private school in suburban Virginia. It has an enrollment of 113 students in grades 1 through 12, including 61 high school students. The school services students with IDEA disabilities including learning disabilities, emotional disabilities, Other Health Impairment, and autism spectrum disorder. It has a significant behavioral component, with seven psychologists, 6 behavior specialists and a licensed social worker on staff. There are no general education students who attend the school. Testimony of Admissions Director.

18. All classes at Nonpublic School have 6 to 8 Students and two teachers. Testimony of Admissions Director.

19. Nonpublic School operates a summer program for an additional charge. Testimony of Admissions Director.

20. Student has been accepted at Nonpublic School. The annual tuition is around \$55,000 plus individual therapy costs. The school has a current Certificate of Approval from the D.C. Office of the State Superintendent of Education (OSSE).

Testimony of Admissions Director.

### **CONCLUSIONS OF LAW**

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

#### **Burden of Proof**

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

#### **Analysis**

1. Has DCPS failed to implement Student's August 30, 2013 Maryland IEP which provided for stand-alone, full-time, special education services outside of the general education setting?

For most of his school years before moving to the District in 2013, Student was provided special education services under IEPs in Prince George's County, Maryland public schools. When Mother and Student moved to the District in December 2013, Mother learned that PGCPs would no longer fund Student's enrollment at Maryland Nonpublic School 2. Mother promptly attempted to enroll Student at City High School, his neighborhood school. Student's enrollment was delayed until February 2014 due to the unresponsiveness of and lack of communication from DCPS and City High School Staff. In February 2014, City High School placed Student in its Special Education Unit,

a special education program in the same building with, but separate from, the City High School general education program. Student's core academic courses are taught in self-contained classrooms in the Special Education Unit. His music and physical education classes are provided in the General Education setting with nondisabled peers. At City High School, Student is able to roam the entire school and he is not fully segregated from his nondisabled peers.

Mother contends that DCPS has denied Student a FAPE by failing to implement the Maryland IEP's requirement that Student be placed in a "Private Separate Day School." I agree. When a child with a disability, who had an IEP that was in effect in another state, transfers to DCPS in the middle of the school year, DCPS may elect to evaluate the child as needed and develop a new IEP. Otherwise, DCPS must provide the child with FAPE, including services comparable to those described in the child's IEP from the other state. *See* 34 CFR § 300.323(f).<sup>4</sup> As used here, "comparable" services means services that are "similar" or "equivalent" to those that were described in the child's IEP from the previous public agency, as determined by the child's newly-designated IEP Team in the new public agency. *See* Department of Education,

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<sup>4</sup> IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

34 CFR § 300.323(f).

*Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46681 (August 14, 2006).

The Maryland IEP specified that Student's Least Restrictive Environment (LRE) is a Private Separate Day School and that Student would not participate with nondisabled peers in the academic setting. When Student moved to the District, DCPS elected to "piggyback" on the Maryland IEP and did not develop a new IEP for him. DCPS was therefore required to provide Student services similar or equivalent to those described in the Maryland IEP. Unlike the private Special school in Maryland, City High School is a general education school where Student has interaction with nondisabled peers. Although he received most of his instruction in self-contained classrooms in the Special Education Unit, for his "Specials" classes, currently music and physical education, Student was placed with nondisabled peers in the general education setting. Student could also interact with nondisabled peers in the school corridors. Clearly, Student's placement at City High School was significantly less restrictive than the private special school placement specified in the Maryland IEP.<sup>5</sup> I find, therefore, that DCPS has failed to provide Student services comparable to those specified in the Maryland IEP. *Cf. Savoy v. District of Columbia*, 844 F.Supp.2d 23, 31 (D.D.C.2012) (factors relevant in determining whether a change in location amounts to a change in

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<sup>5</sup> Pursuant to the IDEA, DCPS must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, to include instruction in:

- (a) Regular classes;
- (b) Special classes;
- (c) Special schools;
- (d) Home instruction; and
- (e) Instruction in hospitals and institutions.

See 5E DCMR § 3012.

educational placement include (1) whether the child will be able to be educated with nondisabled children to the same extent; (2) whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and (3) whether the new placement option is the same option on the continuum of alternative placements.)

The Petitioner has also established that DCPS failed to implement the one hour per week of counseling services specified as a required Related Service in Student's IEP. The IDEA is violated when a school district deviates materially from a student's IEP. *See 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 *Turner v. District of Columbia*, 952 F.Supp.2d 31, 40 (D.D.C.2013). Here DCPS failed to provide Student some four months, or 20 hours, of behavioral support counseling specified in the Maryland IEP. I find that this was a material failure to implement the Maryland IEP.

2. Has DCPS denied Student a FAPE by failing to timely conduct a triennial special education reevaluation including a comprehensive psychological evaluation and an FBA?

The IDEA requires that a reevaluation of each child with a disability be conducted at least once every three years and sooner, if the child's parent or teacher requests a reevaluation or if the LEA determines that the needs of the child warrant a reevaluation. *See 34 CFR § 300.303*. Student's last IDEA reevaluation was completed in September 2012 by his PGCPS IEP team. A psychological evaluation was also conducted in November 2012. There was no evidence that the parent or a teacher requested a reevaluation before Petitioner filed her due process complaint in this case. Student's

next triennial reevaluation will be due, in the normal course, by September 2015. I find that Petitioner has not established that DCPS failed to conduct a timely reevaluation of Student.

3. Has DCPS failed to develop an appropriate transition plan as part of Student's IEP?

Petitioner also complains that DCPS has not developed an appropriate transition plan for Student. The IDEA requires that beginning not later than the first IEP to be in effect when the child turns 16, the IEP must include—

- (1) Appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 CFR § 300.320(b). Student's first IEP to be in effect when he turned 16, the Maryland IEP, does, in fact, contain a transition plan for Student, based upon an August 30, 2013 student interview that includes a discussion of his interests, postsecondary goals, a course of study and transition/services/activities. DCPS adopted the Maryland IEP and was required to implement the transition plan. There was no evidence at the due process hearing that the transition plan is inappropriate or that it is not based upon appropriate assessments and data. Petitioner has not met her burden of proof on this issue.

## REMEDIES

### Compensatory Education

Petitioner seeks an award of compensatory education for DCPS' failure to implement the Maryland IEP after Student moved to the District in December 2013. The IDEA gives Hearing Officers "broad discretion" to award compensatory education

as an “equitable remedy” for students who have been denied a FAPE. *See Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir. 2005). The award must “provide the educational benefits that likely would have accrued from special education services” that the school district “should have supplied in the first place.” *Id.* at 524. A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527.) *See, also, e.g., Turner v. District of Columbia*, 952 F.Supp.2d 31 (D.D.C.2013). 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. *Gill v. District of Columbia*, 770 F.Supp.2d 112, 116-117 (D.D.C.2011), *aff’d.*, *Gill v. District of Columbia*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011).

Licensed Psychologist recommends that Student be awarded 96 hours of academic tutoring because Student “has missed at least 480 hours of full time specialized instruction services” as a result of DCPS’ not placing Student at a special school as required by the Maryland IEP. *See* Exhibit P-30. In her analysis, Licensed Psychologist recommends a ratio of 1 hour of tutoring for every 5 hours of missed services because Student would be receiving intensive 1:1 tutoring as compensatory education. I found Licenses Psychologist to be a credible witness. However, Licensed Psychologist’ analysis posits, erroneously, that Student received no specialized instruction after he enrolled in City High School in February 2014. In fact, after Student

was allowed to enroll in City High School, DCPS provided Student specialized instruction for all core curriculum courses. I find that DCPS failed to provide Student, altogether, some 60 hours of Specialized Instruction required by his Maryland IEP, including the five-week gap in enrolling Student after Mother first contacted City High School and for some 400 minutes per week thereafter, through the end of the school year, when Student was placed in general education classes for Music and Physical Education. Applying Licensed Psychologist's recommendation for 1 hour of tutoring for each 5 hours of missed Specialized Instruction, I will order DCPS to provide Student, as compensatory education, 12 hours of 1:1 academic tutoring.

In addition, DCPS failed to provide Student some five months, or 20 hours, of behavioral support counseling specified in the Maryland IEP. Licensed Psychologist recommends that Student be awarded 32 hours of compensatory mentoring services to allow Student to learn to verbalize his feelings and to encourage the building of self-esteem. She opined that community role model mentoring would be more helpful than counseling for this student. Licensed Psychologist proposed mentoring services to compensate not only for the proven failure of DCPS to provide counseling services, but also for supposed denials of FAPE which were not proven – including failure to conduct triennial reevaluations and failure to develop a post secondary transition plan. However, a student is not required “to have a perfect case to be entitled to compensatory education.” *See Cousins v. District of Columbia*, 880 F.Supp.2d 142, 148 (D.D.C.2012) (citations omitted.) I find that Licensed Psychologist's proposal for 32 hours of mentoring is reasonably calculated to provide the educational benefits that likely would have accrued from special education services, including counseling services and placement at a more restrictive special school, which DCPS should have supplied

Student in the first place. *See Gill, supra*, 770 F.Supp.2d at 116-117. Accordingly, as compensatory education, I will order DCPS to provide Student 12 hours of 1:1 tutoring services and 32 hours of 1:1 mentoring services, to be completed before the end of the DCPS 2014 summer break.

### Prospective Placement

Petitioner requests that DCPS be ordered to fund Student's private placement at Nonpublic School for summer 2014 ESY and for the 2014-2015 school year, as a remedy for DCPS' failure to implement requirements for special school placement and counseling services in the Maryland IEP. "Where a public school system has defaulted on its obligations under the IDEA, a private school placement is 'proper under the Act' if the education provided by said school is 'reasonably calculated to enable the child to receive educational benefits.'" *Wirta v. District of Columbia*, 859 F.Supp. 1, 5 (D.D.C. 1994), quoting *Westchester County v. Rowley*, 458 U.S. 176, 2030 (1982). *See, also, e.g., N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (D.D.C. 2008). An award of private-school placement is "prospective relief aimed at ensuring that the child receives tomorrow the education required by IDEA." *Branham v. Gov't of the District of Columbia*, 427 F.3d 7, 8, 11 (D.C.Cir. 2005) (citations omitted). However, if there is an "appropriate" public school program available, *i.e.*, one "reasonably calculated to enable the child to receive educational benefits," DCPS need not consider private placement, even though a private school might be more appropriate or better able to serve the child. *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir.1991) (citing *Rowley*, 458 U.S. at 207).

DCPS' failure to implement Student's Maryland IEP can be more aptly addressed in this case with a compensatory education award than by public funding for a private

school placement. The DCPS 2013-2014 school year is now over and the Maryland IEP will expire on August 30, 2014. DCPS needs to ensure that Student's IEP is reviewed and revised, as appropriate, before the beginning of the 2014-2015 school year. See 34 CFR § 300.324(b) (Requirement to review IEP not less than annually). At the resolution session meeting in this case, DCPS agreed to fund independent reevaluations of Student and to convene Student's IEP team to review his IEP and discuss the location of services. I conclude that it is appropriate to defer to Student's IEP team, including the parent, to review Student's IEP, based on current data and reevaluations, and to make appropriate decisions on Student's placement for the 2014-2015 school year, including whether instruction at a special school continues to be appropriate to meet Student's needs. See *T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. 2007) (DCPS personnel had special education expertise requiring deference.)

#### Extended School Year

At the due process hearing, Petitioner's counsel represented, mistakenly, that the Maryland IEP specified that Student should receive Extended School Year (ESY) services.<sup>6</sup> In fact the Maryland IEP states that Student's future need for ESY services was to be determined. Accordingly, I will also order DCPS to promptly convene Student's IEP team to determine whether he requires ESY services for summer 2014.

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<sup>6</sup> Student's September 4, 2012 Maryland IEP did specify that Student required Extended School Year services. However that IEP was no longer in effect, and had been superseded by the August 30 2013 Maryland IEP, when Student transferred to DCPS in the middle of the 2013-2014 school year.

## **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

**ORDERED:**

1. As compensatory education for its denials of FAPE since December 2013, DCPS is ordered to provide Student 12 hours of 1:1 academic tutoring in academic subjects and on a schedule as may be reasonably agreed with Petitioner, and to provide Student 32 hours of 1:1 mentoring services with a qualified independent mentor from the community. These compensatory education services shall be made available to Student during DCPS' 2014 summer break and must be used before the beginning of the 2014-2015 school year;
2. Within 10 calendar days of entry of this order, DCPS shall convene Student's IEP team to determine whether Extended School Year services are necessary in summer 2014 for the provision of FAPE to Student;
3. DCPS is ordered to convene Student's IEP team, including the parent, in accordance with 34 CFR § 300.324(b), to review and revise, as appropriate, his Maryland IEP in time to ensure that a revised DCPS IEP is in place for Student at the beginning of the 2014-2015 school year. The IEP team shall give due consideration to whether, in order to meet the needs of Student, the revised IEP should provide for instruction in a special school;
4. Petitioner's request that DCPS be ordered to fund Student's placement for the 2014-2015 school year at Nonpublic School is denied without prejudice to Petitioner's right to again seek that relief, should she disagree with the placement determination made by Student's IEP team convened pursuant to this order; and
5. All other relief requested by the Petitioner in this matter is denied.

Date: June 25, 2014

s/ Peter B. Vaden  
Peter B. Vaden, 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 U.S.C. §1415(i).