

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on May 12, 2014, and concluded on May 14, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

BACKGROUND AND PROCEDURAL HISTORY:

The student _____ resides with his parent in the District of Columbia. The student was first found eligible under IDEA with a disability classification of emotional disturbance (“ED”) in January 2014. The student is currently assigned to his neighborhood DCPS middle school (“School A”) where he began attending at the start of school year (“SY”) 2013-2014. The student is repeating sixth grade.

Prior to attending School A the student attended a private school in the District of Columbia (“School B”) where he attended only one year _____. The student has attended a number of different schools prior to School B and was retained in third grade and fourth grade. He has had a history school absences, poor academics and being teased and bullied at school.

For the first month of SY 2013-2014 the student attended school regularly but soon began a pattern of absenteeism and eventually stopped attending School A by October 2013. The student’s parent had an independent psychological evaluation conducted of the student.

The independent psychological evaluation was provided to DCPS in November 2013. On January 14, 2014, DCPS convened a meeting at which the independent evaluation was reviewed and the student’s eligibility for special education services was determined. The team determined the student met the criteria for the ED classification

On February 5, 2014, DCPS convened a meeting and developed an IEP for the student. The IEP team included goals in the area reading, math, written expression and emotional/social and behavioral development. The IEP prescribed a total of seven hours of specialized instruction outside general education: 5 hours per week in math and 1 hour per week each in reading and written expression. The IEP also included 2 hours per month of behavior support outside general education and 2 hours per month inside general education.

On February 27, 2014, Petitioner filed the due process complaint alleging, inter alia, that the student’s IEP was inappropriate because it did not prescribe a full time out general education placement due to the student’s school avoidance behaviors related to his disability. Petitioner seeks as relief that the student’s IEP be revised to a full-time out of general education placement in a therapeutic environment and revised to include appropriate present levels of performance and goals including goals to addresses the student’s school avoidance. Petitioner seeks the

student's placement at private full time special education day school ("School C") and compensatory education.

DCPS filed a timely response to the complaint on March 7, 2014. DCPS asserted there has been no denial of a free and appropriate public education ("FAPE") to the student; his IEP is reasonably calculated to provide educational benefit and the IEP team tailored the academic goals to the student's deficits as identified in the independent evaluation. DCPS asserted that there was no medical documentation supporting any clinical diagnosis of "school avoidance" that was available to the IEP team and the team complied with the IDEA's least restrictive environment ("LRE") requirements. The IEP team determined that the appropriate educational placement for student for his initial IEP is a combination setting and the appropriate special education and related services can be provided to the student at School A.

A resolution meeting was held March 18, 2014. The complaint was unresolved. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on March 29, 2014, and originally ended (and the Hearing Officer's Determination ("HOD") was due) on May 13, 2014. DCPS counsel submitted an unopposed motion to continue the hearing from May 6, 2014, to May 14, 2014, and extend the HOD due date by ten calendar days. With granting of the motion the HOD due date is May 23, 2014. The Hearing Officer convened a pre-hearing conference on April 11, 2014, and issued a pre-conference order outlining, inter alia, the issues to be adjudicated.

ISSUES: ²

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to develop an appropriate IEP on February 5, 2014, because: (1) DCPS limited the IEP to information from one assessment and would not consider any other data, (2) the IEP fails to provide a sufficient amount of hours of specialized instruction outside of the general education setting and fails to designate that the student's LRE is a full-time separate special education day school, (3) the IEP fails to include specific information about the student's social-emotional deficits and fails to include information about the student's school avoidance anxiety that is the major impediment to him accessing the general education curriculum, (4) the IEP goals are not individualized and do not address the student's deficits and are inappropriately based on random common core standards and not the student's deficit areas, (5) the IEP present levels of performance are not accurate or relevant to the area of concern on the IEP, (6) the IEP does not contain a behavior intervention plan ("BIP") to address the main behavior that is impeding the student being able to access any curriculum.

² The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

2. Whether DCPS denied the student a FAPE on February 5, 2014, by refusing to offer an appropriate school placement capable of meeting the student's need for a restrictive and therapeutic setting.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 28 and Respondent's Exhibits 1 through 11) that were all admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

FINDINGS OF FACT:³

1. The student _____ resides with his parent in the District of Columbia. The student was first found eligible under IDEA with a disability classification of ED in January 2014. (Respondent's Exhibit 4-1)
2. The student is currently assigned to School A where he began attending at the start of SY 2013-2014. The student is repeating sixth grade. Prior to attending School A the student attended a private school, School B where he attended only one year in sixth grade. (Respondent's Exhibit 2-2, Petitioner's Exhibit 21-1)
3. The student has attended a number of different schools prior School B and was retained in third grade and fourth grade. He has had a history school absences, poor academics and being teased and bullied at school. (Petitioner's Exhibits 3-3, 4-3, 21-1)
4. For the first month of SY 2013-2014 the student attended school regularly but soon began a pattern of absenteeism and eventually stopped attending School A by October 2013. (Petitioner's Exhibit 5)
5. On September 30, 2013, an independent psychological evaluation was conducted of the student that revealed that his intellectual abilities fall within the extremely low range with a full-scale IQ score of 69. The student's adaptive functioning was age appropriate. His broad reading and broad written language skills fell within the average range for sixth grade. However, his scores were nearly two years below his age level. His broad math skills fell within the borderline range at about fourth grade level. (Petitioner's Exhibit 22-1, 22-7, 22-11, 21-12, 22-13, 22-14, 22-15)
6. The evaluator diagnosed the student with a cognitive disorder and a depressive disorder and recommended the student receive specialized instruction in math and behavioral supports in the school setting to focus on improving his social and coping skills. The

³ The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

evaluator also recommended the student have an updated psychiatric evaluation to determine the appropriateness and effectiveness of medication and a neuropsychological evaluation to better determine the severity of his cognitive deficits. The evaluator noted that the student “appears to experience unspecified cognitive impairments that are neurological in nature and negatively impact his working memory, processing speed and visual motor integration.” (Petitioner’s Exhibit 22-1, 22-7, 22-11, 21-12, 22-13, 22-14, 22-15, 22-16)

7. The student had the following scores on the Woodcock Johnson-III (“WJ-3”). At the time of testing he was in sixth grade and age 13 years - 8 months:

Cluster/Test	Standard Score	Grade Equiv.	Age Equiv.
Broad Reading	92	6.3	11-9
Letter -Word Identification	91	6.0	11-5
Reading Fluency	100	8.3	13-9
Passage Comprehension	87	4.8	10-2
Broad Math	73	4.1	9-5
Math Fluency	92	6.8	12-2
Calculation	88	5.9	11-3
Applied Problems	66	2.5	7-10
Broad Written Language	95	7.1	12-5
Writing Fluency	97	7.6	13-0
Spelling	103	9.3	14-9
Writing Samples	85	4.4	9-9
Word Attack	93	4.9	10-3

(Petitioner’s Exhibit’s Exhibit 22-15)

8. The independent psychological evaluation was provided to DCPS in November 2013. A DPCS psychologist conducted a review of the independent evaluation. The DCPS psychologist noted that the student’s teacher reported that the student was experiencing significant concerns with peer interactions, anxiety and depression and concluded that the student likely met the criteria for ED classification. (Respondent’s Exhibit 1)
9. On January 14, 2014, DCPS convened a meeting at which the independent evaluation was reviewed and the student’s eligibility for special education services was discussed and determined. The team determined the student met the criteria for the ED classification. (Respondent’s Exhibit 3-2, 4)
10. On February 5, 2014, DCPS convened a meeting and developed an IEP for the student. The IEP team included goals in the area reading, math, written expression and emotional/social and behavioral development. The IEP prescribed a total of seven hours of specialized instruction outside general education: 5 hours per week in math and 1 hour per week each in reading and written expression. The IEP also included 2 hours per month of behavior support outside general education and 2 hours per month inside general education. (Respondent’s Exhibit 5)

11. The IEP team discussed the student's attendance issues and DCPS agreed that something should be done to address his attendance and school avoidance issues. The entire team acknowledged that the student's absences were related to his disability. DCPS suggested that the student should receive home instruction through the Home, Hospital Instruction Program ("HIP"). The home instruction did not take place because the student's physician did not provide documentation DCPS required to support the home instruction. (Witness 1's testimony)
12. The parent's representatives disagreed with the levels of service in the IEP and wanted social emotional goals to address the student not coming to school; but no specific goals were proposed. DCPS did not offer any other school or interventions to assist the student in getting to school. The parent's representatives also requested that the team conduct a functional behavior assessment ("FBA") and develop and BIP. The School B staff offered to conduct the FBA but stated that the student would have to attend school in order to conduct it. (Witness 1's testimony)
13. During the IEP meeting the parent's representatives requested changes to the student's present levels of performance and changes to the IEP goals. As result School B staff added additional goals in reading and written expression to the student's IEP. The DCPS team members determined based on the student's WJ-3 scores that the student was only in need of 5 to 7 hours of specialized instruction as they were considering grade equivalents and not the student's deficits compared to his age. (Witness 2's testimony)
14. The student's IEP goals were based on information from the independent psychological evaluation and his WJ-3 scores and his academic goals addressed his deficits and referenced common core standards because they are related to the academic targets the student should meet. There were no specific goals that were proposed by the parent or her representatives at the IEP meeting. The student's teachers at School B had limited interaction with him because of his poor attendance but when he did attend he displayed average academic abilities and displayed no behavioral problems. He would raise his hand and ask and answer questions. (Testimony of Witnesses 7 & 8)
15. The student has not receive any services in the IEP because he has not attended school. The School B social worker visited the student at his home and encouraged him to attend school. The student's community based worker and his psychiatrist were to help to get him to school. The student's parent has asked for a smaller school setting and stated that the school location was part of the problem of the student's non-attendance. The student verbalized that he felt unsafe and that was the reason he has not attended school. (Testimony of Witnesses 6 & 9)
16. The student started off the school year at School A pretty well and he liked attending school. However, the student soon realized he is the tallest and oldest boy in sixth grade and he began getting teased and even bullied by other students. Soon after he started attending a boy assaulted him in the school cafeteria. The school security was called but the student's family felt nothing was done about the other student and from then on the

student felt no one at the school cared about him including his teachers. The student is vulnerable and immature and is on-line talking to older people. He is looking for attention and is easily swayed by anyone who is paying him attention. (Grandmother's testimony)

17. While attending School A the student felt uncomfortable in his classes because he is so much older than the other students. He stopped attending School A sometime in September 2013 because he felt unsecure, other students were teasing him and he felt unsupported by the school staff. The student was assaulted by another student and believed that student was not given a sufficient punishment. The student felt bullied. He would typically take public transportation to school but often experienced anxiety in doing so. He would sometimes leave home for school and instead would go to a hospital or his doctor's office because of the anxiety and the physical symptoms he experienced. (Student's testimony)
18. The student's parent has instructed him to return to school but he has refused because of his fear. He has no friends except those he has on-line. He believes he was depressed before he began attending School A but his depression has worsened since he began attending School A. The student is hopeful that he may be able to pass sixth grade if he can attend summer school and he hopes to be in a classroom with students his age and that can provide him instruction on his academic level. The student's believes he would change his behavior and stay in school if he was allowed to go to different school other than School A. The School A social worker visited the student at his home and encouraged him to attend school and stated that if he did not attend he would be referred to the court system for truancy. (Student's testimony)
19. The student has been interviewed by and accepted at a private full time special education therapeutic day school, School C. School C serves students kindergarten through twelfth grade and all student's are on diploma track. School C has a total of 45 students. There are two middle school classrooms with four students each and a special education teacher and assistant. School C has related service providers and holds an OSSE certificate of approval ("COA"). The approximate tuition is \$45,000. 00 annually and is set by OSSE. School C would provide the student instruction based on common core curriculum and can provide reading intervention services. School A has a clinical staff that can provide counseling services to address the student's anxiety and school phobia. The counseling services include individual and family counseling. Any students who display truancy issues are placed on an attendance plan. (Witness 4's testimony, Witness 5's testimony)
20. The parent's educational consultant proposed a compensatory education to compensate the student for the alleged denials of FAPE related to the alleged inappropriate IEP and the student's non-attendance in school. The proposed plan contemplates time the student missed from school prior to his eligibility determination. The consultant proposed that the student be provided mentoring to address his immaturity and tutoring. (Witness 2's testimony, Petitioner's Exhibit 1)

21. The parent's educational consultant also proposed a truancy intervention program for the student with a summer component that can provide the student courses on-line and career exploration that can assist him to reengage in school. The program could provide mentoring services to prepare him to attend the summer program to ensure his completion of this 6-week - 20 hour per week program (120 hours total). (Witness 2's testimony, Witness 3's testimony, Petitioner's Exhibit 25-1)

CONCLUSIONS OF LAW:

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

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. ⁴ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

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

⁴ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

ISSUE 1: Whether DCPS denied the student a FAPE by failing to develop an appropriate IEP on February 5, 2014, because: (1) DCPS limited the IEP to information from one assessment and would not consider any other data, (2) the IEP fails to provide a sufficient amount of hours of specialized instruction outside of the general education setting and fails to designate that the student's LRE is a full-time separate special education day school, (3) the IEP fails to include specific information about the student's social-emotional deficits and fails to include information about the student's school avoidance anxiety that is the major impediment to him accessing the general education curriculum, (4) the IEP goals are not individualized and do not address the student's deficits and are inappropriately based on random common core standards and not the student's deficit areas, (5) the IEP present levels of performance are not accurate or relevant to the area of concern on the IEP.

Conclusion: Petitioner did not sustain the burden of proof by preponderance of the evidence that the student's IEP is inappropriate because (1) DCPS limited the IEP to information from one assessment and would not consider any other data, (2) the IEP fails to provide a sufficient amount of hours of specialized instruction outside of the general education setting and fails to designate that the student's LRE is a full-time separate special education day school, (3) the IEP fails to include specific information about the student's social-emotional deficits and fails to include information about the student's school avoidance anxiety that is the major impediment to him accessing the general education curriculum, (4) the IEP goals are not individualized and do not address the student's deficits and are inappropriately based on random common core standards and not the student's deficit areas, (5) the IEP present levels of performance are not accurate or relevant to the area of concern on the IEP.

However, Petitioner presented sufficient evidence that the student's IEP was inappropriate because it did not include a BIP to address the student's school avoidance and non-attendance.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits." *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009).

The evidence demonstrates that the student's IEP was based upon the information from the independent evaluation that was provided to DCPS and the evaluation set forth the student's

cognitive abilities and academic achievement and social emotional issues. There was insufficient evidence presented that DCPS should have considered additional data in developing the student's IEP and no additional data was provided to the team. The student's academic levels were commensurate with the student's grade level when he arrived at School A. Although it was apparent he had been retained several times prior in previous schools, it was reasonable and appropriate to prescribe as an initial IEP that the student be provided the level of services the team determined should be prescribed in his initial IEP. There was no information in the independent evaluation that supported the need for the student to be in a full time out of general education placement. In addition, there was insufficient evidence presented that the student's IEP present levels of performance or goals, including those related to social emotional issues, were inappropriate and not reasonably calculated to confer educational benefit to the student. The Petitioner and her representatives at the student's eligibility and IEP meeting did not propose any additional goals that the team could consider including in the student's IEP. Consequently, the Hearing Officer concludes that Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student's IEP is inappropriate for the first five factors listed in the issue above.

However, by the time the student was found eligible and his IEP developed the student had stopped attending School A. It was unreasonable at that point for DCPS to simply insist that the student attend school in order for the IEP to be implemented. The student as well as the student's parent and her representatives expressed at the eligibility meeting that the student felt unsafe and unsupported at the school. The only actions that were apparently taken thereafter was a referral to home instruction and a visit to the student's home by the school social worker. There was no action by DPCS to develop a BIP to address the student's non-attendance as the IEP team agreed would be done. Rather than follow a course of action that the team agreed should be taken School A staff simply relied on the student's non-attendance as an excuse to not take the action the team had determined should be taken. As result, the student has continued to not attend school and has suffered as result. This failure to comply with the team directive to include a BIP in the student's IEP was denial of a FAPE to the student.

ISSUE 2: Whether DCPS denied the student a FAPE on February 5, 2014, by refusing to offer an appropriate school placement capable of meeting the student's need for a restrictive and therapeutic setting.

Conclusion: Petitioner did not sustain the burden of proof by preponderance of the evidence that student is need of a full time out of general education placement. However, there was sufficient evidence presented that the student's current school, School A, is an unsafe and inappropriate school location for him attend and that DCPS should immediately determine, with the parent's and hopefully the student's concerns in mind, another school location for the student.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum

extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

34 C.F.R. § 300.324(a) provides that in developing each child's IEP, the IEP team must consider— (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child.

The standard set out by the United States Supreme Court in determining whether a child is receiving a FAPE, or the "basic floor of opportunity" is whether the child has access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley* 458 U.S. at 201. The IDEA, according to *Rowley* imposes "no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children." *Id* at 198 A.I ex rel. *Iapalucci v. District of Columbia* 402 F. Supp. 2d 152, 167 (D.D.C. 2005)

A school district is not required to implement a program that will maximize the handicapped child's potential. *Rowley*, 458 U.S. at 198-99. Rather, a handicapped child has a right to "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley*, 458 U.S. at 203. *Rowley* explained that implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. . . We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-02.

The evidence was insufficient given the student's academic functioning that he is unable to attend school with non-disabled peers and in need of a full time special education placement. However, based upon the student's and his grandparent's credible testimony that he first enjoyed attending School A but then began to feel unsafe because of an assault, teasing and bullying such that he stopped attending school, the Hearing Officer concludes that it is imperative that DCPS take immediate action to determine a more appropriate school location for the student.

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

Petitioner submitted a compensatory education plan that considered the time the student missed from school prior to him being eligible; therefore the proposed plan is appropriate. However, there was a reasonable basis that the time the student missed in instruction since his IEP was developed and he was not attending school due to DCPS' failure to adequately address his non attendance can be appropriately compensated for with mentoring and his attendance in a summer truancy intervention program. Thus, the Hearing Officer concludes that the student should have access to immediate independent mentoring and tutoring to allow him to attend that program.

ORDER:

1. DCPS shall within ten (10) school days of this issuance of this order identify and present an alternative school location at which the student's IEP can be implemented other than School A and shall consider in determining the location the parent's and the student's concerns about bullying and teasing that has characterized the student's experience at School A.
2. DCPS shall, within 10 school days of the issuance of this order convene a student evaluation plan ("SEP") meeting and determine the details of conducting a functional behavioral assessment and a BIP for the student to address his school attendance and consider other evaluations that may be conducted to address his cognitive, social/emotional and behavioral issues.
3. DCPS shall within thirty (30) calendar of the issuance of this order conduct any evaluations that are determined by the SEP and convene an IEP meeting to review and revise the student's IEP as appropriate.
4. DCPS shall within ten (10) school days of the issuance of this order provide the student as compensatory education 120 hours of independent tutoring and 10 hours of independent counseling or mentoring at the DCPS/OSSE prescribed rate to be used by Petitioner by December 31, 2014.
5. All other requested relief is denied.

APPEAL PROCESS:

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

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: May 23, 2014