

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

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

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STUDENT HEARING OFFICE  
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STUDENT,<sup>1</sup>  
through the Parent,

Petitioner,

v.

District of Columbia Public Schools,

Respondent.

Date Issued: January 22, 2011

Hearing Officer: Virginia A. Dietrich

Case No:

Hearing Date: 01/13/11 Room: 2008

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, the parent of Student, filed a due process complaint notice on 11/02/10, alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA").

Petitioner complained that the District of Columbia Public Schools ("DCPS") did not convene a meeting or otherwise inform her about where Student would go to school after he graduated from middle school in June 2010. Petitioner alleged that after enrolling Student at the neighborhood high school in August 2010, Student's placement was effectively changed when Student received only 19.5 hours/week of specialized instruction instead of the 26.5 hours/week prescribed by his Individualized Education Program ("IEP"), thereby denying Petitioner participation in the placement decision. Petitioner also alleged that the neighborhood high school is an inappropriate placement because it cannot service Student's full-time IEP hours and it cannot provide the intensive behavior management services that Student needs to address maladaptive behaviors associated with his diagnoses of Attention Deficit Hyperactivity Disorder ("ADHD") and Oppositional Defiant Disorder ("ODD"). Petitioner further alleged that the IEP in effect at the high school until 11/09/10 was insufficient and not in compliance with the IDEA because it did not contain any baselines, it did not establish new goals, and the stated goals were non-specific, non-measurable and did not address Student's academic deficiencies. Lastly, Petitioner alleged that DCPS' failure to provide Student with a dedicated aide in high school, as

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

## Hearing Officer Determination

was required by his IEP, resulted in Student being denied a FAPE. For relief, Petitioner seeks placement of Student in a non-public, full-time special education school and appropriate compensatory education to remedy Student's past deficient program.

DCPS, on the other hand, argued that DCPS' failure to provide a dedicated aide for the first four months of the 2010-2011 school year and DCPS' failure to provide Student with 26.5 hours/week of specialized instruction outside of general education for the first three months of the 2010-2011 school year, did not harm Student. DCPS' position was that Student had adjusted well to the reduced services environment provided at the high school, to such an extent that his IEP hours were reduced to 19.5 hours/week in November 2010. DCPS also argued that the goals in Student's 12/01/09 IEP were sufficient and the absence of baselines did not deprive Student of a FAPE because Student was making progress towards mastering his IEP goals.

### **Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; Title V, Chapter E30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.02.

### **Procedural History**

This Hearing Officer was assigned to the case on 11/04/10. A resolution meeting took place on 11/19/10, at which time both parties agreed in writing to proceed to a due process hearing. Thus, the 45-day timeline to issue a decision began on 11/20/10, with the hearing officer final decision due no later than 01/03/11. Upon the granting of Petitioner's Consent Motion For Continuance on 12/08/10, the case was continued for a hearing on 01/13/11 and 01/14/11, with the final decision due by 01/24/11.

A prehearing conference was held on 12/02/10, and a Prehearing Order was issued on 12/04/10 that specified that failure to object to the disclosures of the opposing party by 01/11/11 would result in the disclosures being admitted into evidence without objection. Neither party filed written objections to disclosures.

The due process hearing was a closed hearing that began and concluded on 01/13/11. Petitioner was represented by Alana Hecht, Esq. of James E. Brown & Associates and DCPS was represented by Laura George, Esq.. Neither party objected to the testimony of witnesses via telephone.

Petitioner presented five witnesses: Petitioner (in person); Paralegal at James E. Brown & Associates (via telephone); Petitioner's educational advocate (via telephone); Psychologist who qualified as an expert in clinical psychology (via telephone); and the Director of (via telephone). DCPS presented three witnesses from Student's neighborhood high school: DCPS school psychologist (via telephone); Student's special education case manager and biology teacher (in person); and Student's mathematics teacher (via telephone).

## Hearing Officer Determination

Petitioner's disclosures dated 01/06/11, containing a witness list and Exhibits P-1 through P-23, were admitted into evidence without objection. DCPS' disclosures dated 01/06/11, containing a witness list and Exhibits R-01 through R-07, were admitted into evidence without objection.

Both parties declined to discuss settlement prior to the due process hearing; however, parties were able to agree upon the following stipulations:

Stipulation #1 – DCPS began providing the services of a dedicated aide on 12/13/10.

Stipulation #2 – Student's 12/01/09, 11/09/10 and 12/10/10 IEP all provided for the services of a dedicated aide.

Stipulation #3 – DCPS did not have a meeting to discuss where Student would go to school for the 2010-2011 school year.

Stipulation #4 – Student's neighborhood school is \_\_\_\_\_ and Petitioner enrolled Student at Anacostia HS on 08/23/10.

Stipulation #5 – Student's 12/01/09 IEP prescribed 26.5 hours/week of specialized instruction outside of general education and 1 hour/week of behavioral support services outside of general education. (This stipulation corrected the inaccuracy of R-04).

Stipulation #6 – Student's 11/09/10 and 12/10/10 IEP both prescribed 19.5 hours/week of specialized instruction outside of general education and 1 hour/week of behavioral support services outside of general education.

Stipulation #7 – Student's 12/01/09 IEP does not contain baselines.

Stipulation #8 – Petitioner never received a copy of DCPS' Prior Written Notice dated 06/22/10. (P-02).

Stipulation #9 – Student's elective class at his neighborhood high school is Art & Design.

Both parties waived opening statements and agreed to the presentation of witnesses out of turn.

There were no challenges to standing even though Petitioner was not the biological mother of Student. Student had been living with Petitioner since the age of 7 months and Petitioner qualified as the "parent" pursuant to 34 C.F.R. 300.30(a)(4).

The three issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS failed to provide Student with an appropriate placement for the 2010-2011 school year?

## Hearing Officer Determination

Whether DCPS' failure to develop an IEP on 12/01/09 that included baselines, new goals, specific, measurable, and defined goals, and goals that addressed Student's current academic deficiencies, denied Student a FAPE?

Whether DCPS' failure to provide Student with a dedicated aide from the beginning of the 2010-2011 school year until 12/13/10, as was required by his IEP, denied Student a FAPE?

Petitioner withdrew the issue of whether DCPS' failure to conduct a speech and language evaluation since 12/01/09 denied Student a FAPE and this issue was dismissed with prejudice by the Hearing Officer, since it was withdrawn after the start of the due process hearing.

For relief, Petitioner requests that Student be placed at a non-public full-time special education school, and that Student be awarded reasonable compensatory education for the denials of a FAPE. Petitioner withdrew her request for relief that the IEP team meet to review and revise Student's IEP to include baselines and more specific and measurable goals since Student's 11/09/10 IEP included these revisions. Petitioner also withdrew her request that DCPS fund an independent speech and language evaluation and meet to review the results. Both of these requests for relief were dismissed with prejudice since the withdrawal occurred after the start of the due process hearing.

### 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. Stipulations #1 - #9 are incorporated as findings of fact.

#2. As of 07/27/09, Student, with diagnoses of ADHD Disorder, Oppositional Defiant Disorder, Reading Disorder and Mathematics Disorder, was functioning academically at the second grade level in reading, at the 4<sup>th</sup>-5<sup>th</sup> grade levels in mathematics and at the second grade level in written language expression.<sup>2</sup>

#3. The Prior Written Notice issued by DCPS on 06/22/10 was insufficient because it lacked the following information: it did not contain a relevant explanation of the reasons that DCPS was proposing \_\_\_\_\_ as the next school setting for Student; the description of the evaluation procedures used was not germane to the content of the notice; it did not contain a description of other options that the IEP Team considered and why those options were rejected; and it did not contain a description of other factors that were relevant to the agency's decision to place Student at \_\_\_\_\_. Additionally, the Prior Written Notice erroneously identified \_\_\_\_\_ as the next school setting for Student, instead of \_\_\_\_\_ As of 08/19/10, Petitioner,

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<sup>2</sup> P-4-10

<sup>3</sup> P-2

## Hearing Officer Determination

through Petitioner's Attorney, was aware of the Prior Written Notice and that DCPS intended to implement Student's IEP at

#4. DCPS did not have a meeting to discuss where Student would go to school for the 2010-2011 school year.<sup>5</sup> On 08/23/10, the first day of school, Petitioner enrolled Student at the neighborhood high school upon the advice of her educational advocate and DCPS personnel from the middle school that Student had recently graduated from.<sup>6</sup>

#5. When Student, age      began high school on 08/23/10, he was a special education student with a primary disability classification of Emotional Disturbance ("ED") and an IEP dated 12/01/09 that prescribed 26.5 hours/week of specialized instruction outside of general education, 1 hour/week of behavioral support services outside of general education, and the services of a dedicated aide.<sup>7</sup>

#6. A dedicated aide was not provided to Student at high school from 08/23/10 through 12/13/10, as was required by his IEP.<sup>8</sup> Despite Student's IEP prescribing 26.5 hours/week of specialized instruction, the neighborhood high school provided him with only 19.5 hours/week of specialized instruction from 08/23/10 through 11/09/10 because the school was programmatically unable to provide more.<sup>9</sup>

#7. Due to diagnoses of ADHD and ODD, Student has difficulty concentrating, motivating himself and making positive decisions.<sup>10</sup>

#8. For the 2008-2009 school year and the 2009-2010 school year, Student had a full-time IEP of 26.5 hours/week of specialized instruction in a self-contained class, 1 hour/week of behavioral support services and a dedicated aide. With that program, Student exhibited behavior problems of defiance, cutting classes, incurring suspensions, and verbal disrespect to staff.<sup>11</sup> These behaviors did not improve at high school during the 2010-2011 school year when he received 19.5 hours/week of specialized instruction.

#9. At the neighborhood high school, despite being only 1 of 3 students in his biology class, Student took weeks to adjust behaviorally to class conduct expectations, and his chronic behaviors of cutting class and using his cellphone or iPod in class are on the rise again.<sup>12</sup> In his mathematics class of approximately 6 students, Student requires redirection about taking off his hat and coat and not using electronic communication devices in class at least 10-15 times per class period.<sup>13</sup> There is no school wide policy at Student's high school to address the chronic and disruptive behavior of students having and using cellphones and iPods in class. *Id.*

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<sup>4</sup> P-13

<sup>5</sup> Stipulation #3

<sup>6</sup> Testimony of Petitioner

<sup>7</sup> Stipulation #5; R-04

<sup>8</sup> Stipulations #1, #2

<sup>9</sup> P-23-1

<sup>10</sup> P-04

<sup>11</sup> Testimony of educational advocate

<sup>12</sup> Testimony of biology teacher

<sup>13</sup> Testimony of mathematics teacher



## Hearing Officer Determination

rules; and handling conflict in unhealthy maladaptive ways.<sup>18</sup> However, Student's behaviors worsened when Student was given a dedicated aide on 12/13/10 because Student did not like being shadowed by the aide, the presence of the aide made him angry, and he avoided the aide as much as possible.<sup>19</sup> The presence of the aide made Student more unavailable for learning.

### 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:

"Based solely upon 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 that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. 3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The first issue to be addressed is whether DCPS failed to provide Student with an appropriate placement for the 2010-2011 school year?

Petitioner alleges that everything started to go wrong when DCPS issued a Prior Written Notice to an inappropriate school setting after Student graduated from middle school. On 06/22/10, DCPS issued a Prior Written Notice to \_\_\_\_\_ instead of to \_\_\_\_\_

This was an error admitted by DCPS and the error was known by Petitioner, through Petitioner's Attorney, prior to the start of the 2010-2011 school year because on 08/19/10, litigation on the very issue of the defective Prior Written Notice was pending.<sup>20</sup> Since the error was known before Student enrolled at his neighborhood school, there is no demonstrated harm because the error could have easily been corrected prior to the start of the school year. Therefore, this defect in the Prior Written Notice was in and of itself not determinative that Student was denied a FAPE; Petitioner could have enrolled Student at the intended educational setting prior to the start of the 2010-2011 school year. Instead, Petitioner opted to enroll Student at the neighborhood high school.

34 C.F.R. 300.503 requires that if the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or provision of FAPE to the child, written notice must be given to the parent of a child with a disability, and the notice must include (1) A description of the action proposed or refused by the agency; (2) An

<sup>18</sup> P-4-9; P-5-2; P-6

<sup>19</sup> Testimony of Student's teachers, DCPS psychologist

<sup>20</sup> Finding #3

## Hearing Officer Determination

explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal.

As alleged by Petitioner, the Prior Written Notice was procedurally defective and insufficient because it did not comply with the content requirements of 34 C.F.R. 300.503.<sup>21</sup> However, Petitioner failed to show that the Prior Written Notice to was a change of educational placement rather than an identification of a location for services. Pursuant to *Hale v. Poplar Bluff*, 36 IDELR 61 (8<sup>th</sup> Cir. 20002), educational placement is not a matter of location, but of the setting as delineated in the continuum of services regulation. In *St. Paul Indep. Sch. Dist. #625*, 110 LRP 44949 (2010), because the transfer did not alter the student's special education program, it was merely a change in location, not a change in placement. Therefore, Petitioner failed to show that the Prior Written Notice was a change of educational setting that required prior written notice pursuant to IDEA. Petitioner failed to show harm as a result of the defects in the contents of the Prior Written Notice and failed to meet her burden of proof on this aspect of the issue.

Petitioner also alleges that she was denied participation in the determination of a FAPE for her child because DCPS never convened a meeting to discuss and determine placement, and if a meeting was convened, Petitioner was never invited to the meeting and Petitioner never received a copy of the Prior Written Notice.

Pursuant to 34 C.F.R. 300.115, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. And, pursuant to 34 C.F.R. 300.116, 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 IDEA, and that the child's placement is based on the child's IEP.

"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).

Petitioner enrolled Student at the neighborhood high school on 08/23/10. The neighborhood school, despite having knowledge that Student's IEP required 26.5 hours/week of

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<sup>21</sup> Finding #3

## Hearing Officer Determination

specialized instruction, provided Student with only 19.5 hours/week of specialized instruction because it was programmatically unable to provide more.<sup>22</sup> This reduction in service hours constituted a change in educational placement that warranted the protections of the IDEA. Petitioner had the right to have a meeting with the IEP Team to discuss the reduction in the number of specialized instruction hours or another school location where Student's full-time IEP could be implemented, and this did not occur either before or after Student enrolled at the neighborhood high school. As a result, Petitioner was denied participation in the decision-making process regarding the educational placement of her child. Petitioner was also entitled to Prior Written Notice of the reduction in service hours. See *Independent School District No. 281, Robbinsdale, Minnesota, Relator, v. Minnesota Dept. of Educ.*, 48 IDELR 222 (2007), where the court stated that the school cannot simply delete services in a student's IEP without prior written notice. Student was deprived of the educational benefit contemplated by the delivery of the services in his IEP because he did not receive his full service hours. Without a doubt, Student was denied a FAPE when after accepting Student at the neighborhood high school, DCPS failed to convene a meeting to discuss the reduction in IEP services and/or propose a school location that could implement Student's full-time IEP.

Petitioner met her burden of proof on this aspect of the issue of inappropriate placement. Student's educational placement was effectively changed at the neighborhood high school because the high school was programmatically unable to provide the 26.5 hours/week of specialized instruction required by Student's current IEP. This change of placement required a meeting pursuant to 34 C.F.R. 300.116, with Petitioner's participation, and this did not happen.

Petitioner alleged that even if the Prior Written Notice was changed to \_\_\_\_\_ is an inappropriate placement because Student's IEP cannot be implemented there. Neither Petitioner nor DCPS offered any evidence of the inappropriateness of \_\_\_\_\_ as a public placement where Student's IEP could be implemented. Therefore, Petitioner failed to meet her burden of proof that \_\_\_\_\_ was an inappropriate placement for Student.

Petitioner also alleged that the neighborhood high school is an inappropriate placement because it cannot provide the full-time therapeutic setting with a crisis intervention program that Student requires for him to receive meaningful educational benefit.

Petitioner met her burden of proof on this aspect of the issue of whether or not DCPS failed to provide Student with an appropriate placement for the 2010-2011 school year. First of all, the neighborhood high school is programmatically unable to provide more than 19.5 hours/week of specialized instruction to any student; it cannot provide full-time specialized instruction. Therefore, Student's 12/01/09 full-time IEP that prescribed 26.5 hours/week of specialized instruction could not be implemented there, as is required by 34 C.F.R. 300.323(c)(2), and Student was denied a FAPE pursuant to 34 C.F.R. 300.17. Secondly, the neighborhood high school did not have the type of crisis intervention program that Student needed to be available for learning. There was no evidence of a school wide behavior management program to curtail Student's maladaptive behaviors of cutting classes, failing to do class work, and failing to comply with the rules and regulations of the school and classroom.

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<sup>22</sup> Finding #6

## Hearing Officer Determination

Moreover, the intervention of an aide to redirect Student, as prescribed by Student's IEP, actually worsened Student's behavior in high school.

Therefore, in order for Student to get back on track behaviorally in school, the aide will have to be dispensed with and Student will have to be provided with a highly structured school and program that employs intensive and therapeutic school wide and classroom behavior management techniques. It was evident from the testimony of the mathematics teacher that she was ill equipped to provide the intensive type of intervention needed to remediate Student's behaviors in the class room. The teacher credibly said that she could not keep interrupting the class to redirect Student; otherwise, she wouldn't be able to present the lesson to the class. It was clear from the testimony of Student's teachers, that Student needed the type of constant redirection and tight structure that was not offered at the neighborhood school, in order to remain compliant and on task.

The second issue to be addressed is whether Student was denied a FAPE when DCPS developed an IEP on 12/01/09 that included goals that reiterated goals in a previous IEP and that were not specific, measurable, and defined; when DCPS failed to develop goals that addressed Student's current academic deficiencies; and when DCPS developed an IEP that failed to include baselines?

Pursuant to 34 C.F.R. 300.320(a), the IEP must contain a statement of the child's present levels of academic achievement and functional performance, including a statement of measurable annual goals, and including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.

Petitioner met her burden of proof that with respect to the 12/01/09 IEP, the goals were not clearly stated and were not observable, measurable and defined and that the goals did not contain baselines and without baselines, achievement could not be measured.<sup>23</sup> From a review of the IEP, it was unknown what Student's current level of academic achievement was at the time the IEP was developed and it was unknown what specific goals Student was expected to achieve.

Petitioner also met her burden of proof that the goal and baseline deficiencies resulted in an IEP that was not reasonably calculated to provide educational benefit. Although Student's IEP progress report dated 11/04/10 indicated that Student had mastered most of his mathematics goals and was progressing towards his reading goals,<sup>24</sup> the absence of baselines and the lack of specificity about the goals rendered meaningless the conclusion that Student had mastered or was progressing towards achieving the goals. And, the fact that Student was not progressing on his written language goals and the fact that most of his social/emotional/behavioral goals had not been introduced, meant that the services had not been provided or were insufficient to meet Student's needs.<sup>25</sup> In this respect, Student was denied a FAPE from the time Student began high school on 08/23/10 until the IEP was revised on 11/09/10.

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<sup>23</sup> Finding #12

<sup>24</sup> R-01

<sup>25</sup> Finding #11

## Hearing Officer Determination

The third issue to be addressed is whether DCPS' failure to provide Student with a dedicated aide from the beginning of the 2010-2011 school year until 12/13/10, as was required by his IEP, denied Student a FAPE?

It was undisputed that DCPS failed to implement Student's IEP by failing to provide Student with the services of a dedicated aide from 08/23/10 through 12/13/10. This was a procedural violation of the IDEA, 34 C.F.R. 300.323(c)(2), which requires services to be in place as soon as possible after the development of the IEP. However, Petitioner failed to demonstrate harm. The evidence clearly showed that the behaviors that the aide was put in place to address, i.e., cutting classes, hall walking, and failure to comply with rules and regulations, actually increased when the aide was added to Student's program on 12/13/10. Student's teachers and the DCPS psychologist who provided Student with individual counseling, provided the most reliable testimony on the adverse impact of the aide on Student's behavior and availability for learning. Petitioner failed to meet her burden of proof on this issue.

For relief, Petitioner seeks placement at a non-public full-time special education school and an appropriate award of compensatory education. Petitioner asserts and the Hearing Officer determines that Student missed 7 hours/week of specialized instruction from 08/23/10 through 11/09/10 when he received 19.5 hours/week instead of 26.5 hours/week of specialized instruction. Essentially, Student received his elective class, Art & Design, in a general education classroom where he received a grade of "D" for the first advisory of the 2010-2011 school year. Although not a stellar grade, it is passing. Petitioner did not demonstrate tangible harm from the absence of specialized instruction in Student's elective class. Therefore, no tutoring or other services are warranted.

The Hearing Officer has determined herein that there was a denial of a FAPE with respect to some of the issues raised in the complaint. Pursuant to *Henry v. District of Columbia*, 55 IDELR 187 (D.D.C. November 12, 2010), *Reid v. District of Columbia*, 43 IDELR 32 (D.C. Cir. 2005), where there has been a denial of a FAPE, Student is entitled to compensatory education. "Awards should not be based on the amount of services missed, but rather on the amount of services needed to place the student in the position he would have occupied if the district had fulfilled its FAPE obligations." *Phillips ex rel. T.P. District of Columbia*, 55 IDELR 101 (D.D.C. September 13, 2010).

Although Student has academic skill deficits in all areas as evidenced by IEP goals in reading, mathematics and written language, his main obstacle to learning is his behavior. The evidence was persuasive that Student, who had had a full-time IEP at least as far back as the beginning of the 2009-2010 school year, still requires the services of an IEP with 26.5 hours/week of specialized instruction in a school setting that has an intensive behavior management program. Student's current neighborhood school cannot implement a full-time IEP and it does not offer an intensive behavior management program, and no other public placement was offered by DCPS. Pursuant to 38 D.C. Code 2561.02, DCPS shall first place Student in an appropriate DCPS public or charter school, and if none is available, placement shall be made in a private or residential facility.

## Hearing Officer Determination

What Student needs is an intensive behavior management and behavior modification program, such as the one integrated into the school curriculum at [redacted] Petitioner has demonstrated that [redacted] is an appropriate placement where Student's educational needs can be met in the least restrictive environment. Student's academic and social/emotional/behavioral profile matches the student profile at [redacted] Student has been accepted for admission, and Student's maladaptive behaviors can be adequately addressed there.

The least restrictive environment requirements of IDEA mandate that to the maximum extent appropriate, children with disabilities are educated with their non-disabled peers. 34 C.F.R. 300.114. Schooling with non-disabled peers at the neighborhood high school proved to be problematic for Student not only because he cut classes because he was embarrassed by the presence of an aide in front of his non-disabled peers,<sup>26</sup> he also cut classes in order to hang out with his non-disabled friends. The Hearing Officer determines that [redacted] is an appropriate placement for Student as both compensatory education and prospective relief. Once Student's maladaptive behaviors are consistently and therapeutically addressed, he will undoubtedly be more available for learning. Placement at [redacted] is consistent with 34 C.F.R. 300.116 which requires that Student's placement be made in conformity with the least restrictive environment provisions of IDEA, and that the child's placement is based on the child's IEP. Student could not be satisfactorily educated at the neighborhood high school even with the use of supplementary aids and services, such as an aide. 34 CFR 300.116(e).

### **ORDER**

- (1) Within 10 business days, DCPS shall amend Student's IEP to reflect full-time or 26.5 hours/week of specialized instruction;
- (2) Within 10 business days, DCPS shall place and fund Student at [redacted] and [redacted];
- (3) DCPS shall convene an IEP Team with all necessary personnel to include a DCPS representative, within 30 calendar days of Student's enrollment at [redacted] to review and revise Student's IEP as appropriate.

**IT IS SO ORDERED.**

### **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).

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<sup>26</sup> Testimony of Petitioner

Hearing Officer Determination

Date: January 22, 2011

/s/ Virginia A. Dietrich  
Hearing Officer

Copies to:

Petitioner (U.S. mail)

Petitioner's Attorney: Alana Hecht, Esq. (electronically)

DCPS' Attorney: Laura George, Esq. (electronically)

DCPS (electronically)

SHO (electronically)