

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

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STUDENT,<sup>1</sup> )  
By and through PARENT, )

*Petitioner,* )

v. )

DISTRICT OF COLUMBIA )  
PUBLIC SCHOOLS, )

*Respondent.* )

Case No.

Bruce Ryan, Hearing Officer

Issued: March 5, 2011

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STUDENT HEARING OFFICE

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**HEARING OFFICER DETERMINATION**

**I. INTRODUCTION AND PROCEDURAL BACKGROUND**

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools (“DCPS”). The Complaint was filed December 23, 2010, on behalf of a    year old student (the “Student”) who resides in the District of Columbia, currently attends his DCPS neighborhood high school (the “School”), and has been determined to be eligible for special education and related services as a child with a disability under the IDEA.

Petitioner claims that DCPS has denied the Student a free appropriate public education (“FAPE”) by: (a) failing to develop an appropriate individualized education program (“IEP”) on or about November 23, 2010; and (b) failing to comply with a September 3, 2010 Hearing Officer Determination (“HOD”), as more specifically alleged under the Issues stated below.

DCPS filed its Response on January 3, 2011, which responded that DCPS has not denied the Student a FAPE. DCPS asserts, *inter alia*, that the November 2010 IEP is reasonably calculated to provide educational benefit to the Student, and that the school placement/location of services is capable of implementing the IEP.

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<sup>1</sup> Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

A resolution meeting was held on or about January 12, 2011, which resulted in an agreement in writing to end the resolution period early and proceed to a due process hearing. Accordingly, the adjusted 45-day HOD timeline began on January 12 and, absent a continuance, was scheduled to expire as of February 26, 2011.

A Prehearing Conference (“PHC”) was held on January 24, 2011, at which the parties discussed and clarified the issues and requested relief. *See Prehearing Order*, issued Jan. 31, 2011), ¶¶ 8-9. Also, in order to accommodate the parties’ agreed hearing schedule and allow adequate time for completion of the HOD in this case, the parties agreed to a seven-day continuance of the 45-day timeline, which would extend the timeline to March 5, 2011. On January 26, 2011, Petitioner filed an unopposed motion for continuance, and the Hearing Officer granted the motion.

Disclosures were filed by both parties, as directed, by February 15, 2011, and the Due Process Hearing was held in Room 2009 on February 23, 2011. Petitioner elected for the hearing to be closed. During the hearing, the following Documentary Exhibits were admitted into evidence without objection:

**Petitioner’s Exhibits:** P-1 through P-18.

**Respondent’s Exhibits:** R-1 through R-9.

In addition, the following Witnesses testified on behalf of each party:

**Petitioner’s Witnesses:** (1) Parent; (2) Student; (3) Student’s Educational Advocate (“EA”); (4) Admissions Director, Private School; and (5) Psychologist.

**Respondent’s Witnesses:** No witnesses were presented. DCPS rested on the written record and testimony of Petitioner’s witnesses.

## II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures ("SOP")*. The HOD deadline is March 5, 2011.

## III. ISSUES AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

- (1) **Inappropriate IEP** — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP on or about November 23, 2010, in that the IEP: (a) reduced related services in the areas of speech and counseling; (b) reduced the amount of specialized instruction; (c) failed to provide the appropriate educational setting to enable the Student to access his education; (d) failed to include a behavior intervention plan ("BIP"); and (e) failed to include a transition plan sufficient to address the Student's needs?
- (2) **Violation of 9/3/2010 HOD** — Did DCPS deny the Student a FAPE by failing to comply with a prior HOD dated September 3, 2010, in that DCPS failed to include a BIP in the November 23, 2010 IEP? <sup>2</sup>

As relief, Petitioner requests that: (a) the Student be provided with an IEP that provides out-of-general-education instruction in all academic areas, one hour of counseling, one hour of speech/language services, and a BIP; (b) DCPS be ordered to place and fund the Student at Private School, with transportation; and (c) the Student be found entitled to compensatory education services for the denials of FAPE that have occurred.

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<sup>2</sup> Petitioner agreed at the PHC that this claim was substantively the same as the inappropriate IEP claim asserted under Issue 1 (d) above – i.e., failure to include a BIP within the November 23, 2010 IEP. *See Prehearing Order* (issued Jan. 31, 2011), ¶ 8 (2).

#### IV. FINDINGS OF FACT<sup>3</sup>

1. The Student is a -year old student who resides with Petitioner in the District of Columbia. He has been determined to be eligible for special education and related services under the IDEA as a child with a disability. *See P-3; P-12; Parent Testimony.* His primary disability is Emotional Disturbance. *P-3, p. 1.*
2. The Student is currently enrolled at and attends his DCPS neighborhood high school (the "School"). *See P-6; Parent Testimony.*
3. On or about September 3, 2010, an HOD was issued requiring that, within 30 calendar days of the HOD, DCPS convene an IEP team meeting to review and finalize the Student's IEP. DCPS was specifically required at such review to (a) develop and incorporate appropriate annual goals in the area of Emotional, Social, and Behavioral Development; (b) develop and incorporate an appropriate behavioral intervention plan ("BIP"); and (c) determine whether speech/language pathology services should continue to be included in the IEP for the 2010-11 School Year. *See P-6, p. 15.*
4. At a November 23, 2010 IEP team meeting, attended by Petitioner, DCPS developed the Student's current IEP. *P-4.* The IEP provides for 13 hours per week of specialized instruction in the General Education setting, 120 minutes per month of behavioral support services in an Outside General Education setting, and 120 minutes per month of speech-language pathology services. *P-3, p. 7.* In addition, the IEP requires certain post-secondary transition activities and services. *Id., pp. 11-12.*
5. In developing the 11/23/2010 IEP, DCPS reduced the level of specialized instruction from the 17.5 hours per week (10 hours outside general education and 7.5 hours in general education) that was specified in the Student's prior, non-finalized IEP document dated March 3, 2010. *See P-12, p. 5.* Petitioner objected to this reduction. *See P-4; Parent Testimony.*
6. In developing the 11/23/2010 IEP, DCPS also reduced the level of counseling services from one hour (60 minutes) per week to 120 minutes per month, and changed the

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<sup>3</sup> A prior HOD involving this Student issued September 3, 2010, in Case No. 2010-0707, contains a more extensive factual background of his educational experience at the School. *See P-6.* The Findings of Fact in this case are limited to the relevant events surrounding the November 23, 2010 IEP that is being challenged in the present complaint.

speech/language services from 30 minutes per week of direct services to 120 minutes per month of consultation services. *See P-12*, p. 5. Petitioner objected to these changes. *See P-4; Parent Testimony*.

7. At the 11/23/2010 meeting, the IEP team developed and incorporated a behavioral intervention plan into the IEP. *See R-3* (11/23/2010 MDT meeting notes); *R-4* (BIP dated 11/23/2010); *see also EA Testimony* (cross examination). The evidence indicates that Petitioner did not receive a copy of the BIP until the five-day disclosures were filed, but the BIP has been effectively made a part of the Student's IEP. *See* <sup>4</sup>
8. At the 11/23/2010 meeting, the IEP team also developed and incorporated into the IEP a one-page post-secondary transition plan. *See R-2*, p. 14.
9. As found in the September 3, 2010 HOD, due in large part to his excessive absences from classes, the Student has struggled academically and has remained a grade student for the past three years. *P-6*, p. 8, ¶ 21. The Student had a total of 647 unexcused class absences from August 2009 through May 2010. *Id.* This pattern has continued during the current school year, with 327 unexcused class absences thus far between September 2010 and mid-February 2011. *See R-8* (attendance summary). As of November 23, 2010, attendance records indicated that the Student had been absent for 120 of 148 days he was enrolled. *R-5*, p. 3. The Student's level of non-attendance has had a great impact on his academic progress. *See EA Testimony* (cross examination); *Parent Testimony*.
10. In December 2010, DCPS again dropped the Student from the School's enrollment records for excessive truancy. *See Parent Testimony* (cross examination). In January 2011, Petitioner re-enrolled the Student at the School. *Id.*

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<sup>4</sup> There is no claim in the present complaint that the BIP is inappropriate to address the Student's behavioral needs. However, Petitioner had not received a copy of the BIP at the time the complaint was filed.

V. **DISCUSSION AND CONCLUSIONS OF LAW**

A. **Summary**

For the reasons discussed below, the Hearing Officer concludes that Petitioner has met her burden of proof *in part* on the issue of whether the November 23, 2010 IEP was inappropriate. Petitioner has shown by a preponderance of the evidence that: (a) the reduction in counseling services was inappropriate; (b) the reduction in hours of specialized instruction was inappropriate; and (c) the post-secondary transition plan is not sufficient to address the Student's unique needs, as of the 11/23/2010 MDT/IEP Team meeting.

On the other hand, Petitioner has *not* shown by a preponderance of the evidence that a full-time, out of general education setting is required to meet the Student's unique special education needs at that time. Nor has Petitioner shown that it was improper for DCPS to reduce the speech/language services to consultation services under the circumstances. The Hearing Officer concludes that, in these respects, the 11/23/2010 IEP was reasonably calculated to provide the Student with meaningful educational benefit.

With respect to the BIP, it appears that DCPS did develop and incorporate a BIP into the IEP at the November 23, 2010 meeting, *see R-3*, but that Petitioner did not receive a copy of the BIP at that time. The Hearing Officer concludes that any failure to provide Petitioner with a copy of the BIP at the 11/23/2010 IEP meeting was a procedural violation, which did not result in a substantive denial of FAPE. *See* 34 C.F.R. 300.513 (a) (2); *Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006).<sup>5</sup>

B. **Burden of Proof**

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to develop an appropriate IEP. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must

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<sup>5</sup> As confirmed at the PHC, Petitioner does not claim in the present complaint that the BIP is inappropriate to address the Student's behavioral needs. Thus, this issue would need to be addressed, if at all, in a separate due process complaint. *See* 34 C.F.R. 300.511(d), 300.513 (c).

determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-E3030.3. The recognized standard is preponderance of the evidence.<sup>6</sup>

**C. Issues/Denials of FAPE**

**1. Inappropriate IEP**

The IDEA requires that all students be provided with a Free Appropriate Public Education (“FAPE”). FAPE means:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...” 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; DCMR 5-E3001.1 (emphasis added).

The “primary vehicle” for implementing the goals of the IDEA is the IEP, which the statute “mandates for each child.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). An IEP is a comprehensive written plan that must include, among other things: (1) “a statement of the child’s present levels of academic achievement and functional performance, including ... how the child’s disability affects the child’s improvement and progress in the general education curriculum”; (2) “a statement of measurable annual goals, 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...and meet each of the child’s other education needs that result from the child’s disability”; (3) “a description of how the child’s progress toward meeting the annual goals...will be measured”; (4) “a statement of the special education and related services and supplementary aids and services ...and a statement of the program modifications or supports for school personnel that will be provided for the child”; and (5) an explanation of the extent, if any, to which the child will not participate with non-disabled children in any regular classes. 20 U.S.C. 1414(d)(1)(A)(i).

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<sup>6</sup> *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

To be sufficient to provide FAPE under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.”<sup>7</sup> Judicial and hearing officer review of IEPs is “meant to be largely prospective and to focus on a child’s needs looking forward; courts thus ask whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’”<sup>8</sup> In addition, “[b]ecause the IEP must be ‘tailored to the unique needs’ of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), it must be regularly revised in response to new information regarding the child’s performance, behavior, and disabilities, and must be amended if its objectives are not met. See 20 U.S.C. 1414 (b)-(d).”<sup>9</sup>

In this case, Petitioner claims that the November 23, 2010 IEP was inappropriate because it: (a) reduced the amount of specialized instruction; (b) reduced related services in the areas of speech and counseling; (c) failed to provide the appropriate educational setting to enable the Student to access his education; (d) failed to include a behavior intervention plan (“BIP”); and (e) failed to include a transition plan sufficient to address the Student’s needs.

**(a) *Reduced level of specialized instruction***

As noted in the prior HOD, at the May 5, 2010 MDT meeting, the DCPS School Psychologist reviewed the Student’s independent Comprehensive Psychological Evaluation and found that he continued to qualify for special education services as a student with an Emotional Disturbance (“ED”), that his symptoms of depression and agitation impeded his academic success, and that he required specialized instruction for his deficits in all academic areas. *See P-6*, p. 6; *P-7*. These findings do not appear to have changed between May and November. Indeed,

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<sup>7</sup> *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176, 200, 207 (1982). See also *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988); *J.G. v. Abington School*, 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 (“while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit.”).

<sup>8</sup> *Schaffer v. Weast*, 554 F.3d 470, 477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207); see also *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) (whether an IEP is appropriate “can only be determined as of the time it is offered for the student, and not at some later date”).

<sup>9</sup> *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010), slip op. at p. 6. The issue of whether an IEP is appropriate is a question of fact for hearing. See, e.g., *S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003). “Ultimately, the question ... is whether or not [the] defects in the ... IEP are so significant that [DCPS] failed to offer [the Student] a FAPE.” *N.S. v. District of Columbia*, 2010 WL 1767214, Civ. Action No. 09-621 (CKK) (D.D.C. May 4, 2010), p. 20).

DCPS' analysis of this information as of November 23, 2010, indicated that such needs were continuing in all academic areas. *See R-5* (11/23/2010 Analysis of Existing Data). *See also R-2*, pp. 3-5 (11/23/2010 IEP present levels of performance & annual goals).

Despite these continuing needs and evident failure to achieve prior goals, DCPS decided to reduce the level of specialized instruction from 17.5 hours per week (with 10 hours outside general education and 7.5 hours in general education) to 13 hours per week (all in general education). Of course, DCPS may, and indeed must, revise an IEP "in response to new information regarding the child's performance, behavior, and disabilities." *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010), *slip op. at p. 6*. But there is no evidence suggesting that is what was done here with respect to the hours of specialized instruction. The meeting notes cite no new information and provide no explanation for the reduction in services, *R-3*; the unexplained reduction does not appear consistent with DCPS' own analysis of existing data on the same date, *R-5*; and DCPS presented no witness to testify on this issue at hearing.

Accordingly, the Hearing Officer concludes that Petitioner has met her burden of proving that DCPS' unexplained reduction in specialized instruction hours was not reasonably calculated to provide meaningful educational benefit to the Student as of November 23, 2010.

**(b) *Reduced levels of speech/language and counseling***

With respect to speech/language therapy, the September 3, 2010 HOD found that the Student was not available for such services because he would not attend any of the sessions provided by the DCPS therapist, even when he was in school. The HOD further found no evidence to suggest that the Student would avail himself of any additional speech services if they continued to be offered by DCPS. The HOD therefore concluded that it was not inappropriate for DCPS to discontinue speech/language services under these circumstances. *See P-6*, pp. 12-14.

There is no evidence in the present record to suggest that this situation had materially changed between September and late November, when the IEP team met. *See, e.g. R-7* (Service Tracker). The speech/language pathologist commented in 11/23/2010 progress notes that the Student "rarely attends school and when in attendance the best approach is to observe and consult with teachers to assist the student in academics." *Id.*, p. 1 (11/23/2010 Progress Note). The pathologist reiterated these views at the IEP team meeting, stating that under his current IEP the Student "receives consultative services, due to him not making himself available for

services.” R-3 (11/23/2010 meeting notes), pp. 1-2. While the Student’s educational advocate disagreed and wanted direct services to continue, the Hearing Officer concludes that the IEP team’s actions were not unreasonable under the circumstances,<sup>10</sup> and that the consultative services will provide educational benefit to the Student. Thus, Petitioner has failed to prove that the 11/23/2010 IEP is not reasonably calculated to confer meaningful educational benefits on the Student in this respect.

The reduction in counseling services presents a different situation. The 11/23/2010 IEP team found, *inter alia*, that the Student “has a very serious attendance problem” and “needs emotional support for his attendance problem.” R-2, p. 9. This is essentially the same finding the team made in March 2010 to justify 60 minutes per week of counseling services outside the general education setting. R-12, p. 6. Yet there is no discussion or explanation in the November meeting notes to support reducing the counseling services to 30 minutes per week, and DCPS presented no witness to testify on that subject. Moreover, once again, the reduction appears inconsistent with DCPS’ own analysis of existing data in this area. See R-5, p. 5, Summary of Concerns for Emotional, Social, and Behavioral Development (“He engages in rule breaking behaviors, is easily upset and frustrated. He has difficulty controlling his behavior and mood, in addition to depression, {Student} has feelings of anxiety.”). Finally, until the November 23, 2010 meeting took place, the Student’s IEP did not contain any Emotional, Social & Behavioral Development goals at all. Thus, DCPS had no basis upon which it could even measure the Student’s progress in this area as of November 23. See P-6 (9/3/2010 HOD), pp. 12-13.

Under the above circumstances, DCPS could not reasonably find that fewer hours of counseling services would meet the Student’s unique needs. Accordingly, the Hearing Officer concludes that Petitioner has met her burden of proving that the reduction in counseling services from 60 to 30 minutes per week is not reasonably calculated to provide meaningful educational benefit as of November 23, 2010, and hence constitutes a denial of FAPE.

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<sup>10</sup> Cf. *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 104 (D.D.C. 2008) (conclusion that student “was not ‘availing himself of educational benefit’ due to extended absences was a reasonable determination.”); *Garcia v. Board of Educ. of Albuquerque Public Schools*, 520 F.3d 1116 (10<sup>th</sup> Cir. 2008) (affirming decision not to award denial of FAPE remedy in light of student’s severe truancy).

**(c) *Inappropriate educational setting***

Petitioner next alleges that the November 23, 2010 IEP fails to provide the appropriate educational setting to enable the Student to access his education. Petitioner claims that the Student needs to be placed in a more restrictive setting, given his history and inability to conform his behavior in a general education setting. *See Administrative Due Process Complaint*, filed Dec. 23, 2010, p. 9. However, the Hearing Officer concludes that Petitioner did not carry her burden of proof on this issue, in part due to the Student's extremely poor attendance record. Petitioner failed to prove that the Student is unable to make satisfactory progress on IEP goals and objectives in the general education setting, consistent with LRE requirements (*e.g.*, 34 C.F.R. 300.114 (a) (2)), when he generally has not made himself available for services in that setting.

**(d) *Failure to include a BIP***

Petitioner claims that DCPS denied the Student a FAPE because a behavior intervention plan (BIP) was not included in the November 23, 2010 IEP. However, as confirmed at the PHC, Petitioner does not claim (at least in the present complaint) that the BIP is inappropriate to address the Student's behavioral needs. Because the evidence shows that a BIP was developed and incorporated into the IEP at the 11/23/2010 IEP meeting, *see R-3* (meeting notes); *R-4* (copy of BIP), the Hearing Officer concludes that Petitioner has failed to meet her burden of proof on this claim. Moreover, assuming *arguendo* that DCPS failed to provide a copy of the BIP to Petitioner at the 11/23/2010 meeting, the Hearing Officer concludes that this would have constituted a procedural violation, which has not been shown to have resulted in a substantive denial of FAPE. *See* 34 C.F.R. 300.513 (a) (2); *Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006).

**(e) *Inappropriate transition plan***

Petitioner claims that the post-secondary transition plan included in the November 23, 2010 IEP is not sufficient to address the Student's individualized needs. More specifically, Petitioner claims that the IEP team did not address the feasibility of the Student's remaining on diploma track with the limited credits he has earned to date; that the transition plan contains only two goals, one of which DCPS left to the parent to implement; and that the plan does not contain

any goals relating to independent living skills. *See Administrative Due Process Complaint*, filed Dec. 23, 2010, p. 5. The Hearing Officer agrees with Petitioner on this issue.

Under the IDEA, “[b]eginning not later than the first IEP to be in effect when the child turns 16... the IEP “*must include – (1) appropriate measureable postsecondary 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) (emphasis added). *See* 20 U.S.C. § 1414 (d)(1)(A)(i)(VII). “**Transition services,**” in turn, are defined under IDEA as a “*coordinated set of activities* for a child with a disability that –

(A) is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities...;

(B) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and

(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of living skills and functional vocational evaluation.”

20 U.S.C. §1401(34) (emphasis added); *see also* 34 C.F.R. §300.43; *Virginia S. v. Department of Education*, 47 IDELR 42 (D. Haw. Jan. 8, 2007) (statute requires more than a “generic and somewhat vague formula of post-high school goals and services, equally applicable to almost any high school student”).

IDEA thus requires that a written plan be included in the IEP, containing “appropriate measureable postsecondary goals” that are geared *specifically* to the “individual child’s needs.” That plan (commonly called a “Post-Secondary Transition Plan”) then serves as the guide for a coordinated set of transition activities. The primary intent underlying these IDEA provisions is to afford individual students the opportunity to reach measureable post-secondary goals of self-sufficiency as adults. Since the Student is now      years old, his November 2010 IEP was required to incorporate such a plan.

In this case, the Student’s Post-Secondary Transition Plan contained in the 11/23/2010 IEP is one page in length and contains no more than a passing reference to the Student’s interest

in “computer networking and mechanic training.” R-2, p. 14. Beyond that, it does not appear to be based on any real assessment of his individual needs, taking account of his particular strengths, preferences and interests. Under “Age Appropriate Transition Assessments,” DCPS lists a “Skills Inventory Assessment” administered on 11/23/2010, but then the “Results” of that assessment are left entirely blank. *Id.* And the vocational assessment was not discussed at the team meeting. *See EA Testimony.* Under “Courses of Study to Support Post-Secondary Transition Goals,” it appears that the plan merely lists all of his 9<sup>th</sup> and 10<sup>th</sup> grade academic courses. The plan contains no other specific post-secondary transition activities and services, including identification of any specific vocational courses available to the Student to help him achieve his goals.

Accordingly, the Hearing Officer concludes that the post-secondary transition plan included in the 11/23/2010 IEP is not reasonably calculated to provide meaningful educational benefit to the Student. Thus, Petitioner has met her burden of demonstrating a denial of FAPE to the Student in this respect.

## **2. Failure to Comply with 09/03/2010 HOD**

Petitioner agreed at the PHC that this claim was substantively the same as the inappropriate IEP claim asserted under Issue 1 (d) above – i.e., failure to include a BIP within the November 23, 2010 IEP. *See Prehearing Order* (issued Jan. 31, 2011), ¶ 8 (2). Under Issue 2, Petitioner simply claims that this same failure also means that DCPS has “failed to fully and timely implement the determination of [this] hearing officer,” which may constitute a denial of FAPE under the terms of the *Blackman/Jones* Consent Decree. *Blackman/Jones v. District of Columbia*, Civil Action Nos. 97-1629 & 97-240 (D.D.C. Aug. 24, 2006), p. 10.

However, for the reasons already discussed under Issue 1 above, the Hearing Officer concludes that DCPS did develop and incorporate a BIP at the 11/23/2010 IEP meeting. Thus, DCPS appears to have complied with this provision of the 9/03/2010 HOD.

## **D. Appropriate Relief**

The IDEA authorizes the Hearing Officer to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v.*

*District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). Based on the findings and record developed at hearing, the Hearing Officer has exercised his discretion to order appropriate equitable relief, as described in the Order issued below, which requires DCPS to reconvene a meeting of the MDT/IEP Team to review and revise the Student's IEP with respect to the above deficiencies.

The Hearing Officer concludes that compensatory education relief has not been shown to be warranted in this case. First, Petitioner did not prove that the Student suffered any significant educational harm during the three-month period between November 23, 2010, and February 23, 2011 (the date of the hearing), largely because the Student was not attending school. The evidence shows that the Student was absent from classes through mid-December, was then dropped from the School's rolls for excessive truancy, and was again absent on most school days from late January to mid-February, 2011, after he was re-enrolled. *See R-8; Parent Testimony*. Thus, Petitioner could not prove a causal relationship between any current educational deficits and the 11/23/2010 IEP deficiencies forming the basis for the denial of FAPE.<sup>11</sup> In addition, Petitioner failed to meet her burden of "proposing a well-articulated plan" for compensatory education, in accordance with the standards of *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005) ("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"). *E.g., Phillips v. District of Columbia*, 55 IDELR 101 (D.D.C. Sept. 13, 2010); *Friendship Edison Public Charter School v. Nesbitt*, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'"). The Hearing Officer therefore concludes that no compensatory services award should issue in this case. *See Phillips, supra*, slip op. at note 4.

Petitioner's proposed placement at Private School also has not been shown to be necessary and appropriately tailored to meet the specific needs of the Student at this time. *See Branham v. District of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005). As noted above,

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<sup>11</sup> Petitioner's counsel argued in closing that the Hearing Officer could compare psycho-educational testing results in the record from 2007 and 2010 for relevant evidence of regression and educational harm, but such evidence has no bearing on the proposed compensatory education period of November 2010 to February 2011.

Petitioner has not demonstrated in this hearing that the Student requires a full-time, out of general education, "therapeutic" setting for delivery of all services. The Student does not currently have a full-time IEP, and Petitioner has not demonstrated that full-time services are required to meet the Student's needs. In addition, Petitioner has not shown that Private School represents the least restrictive environment (LRE) capable of meeting the Student's special education needs, especially where the Student's failure to access services in the public school has effectively precluded assessment of its suitability. Finally, with respect to the Student's serious attendance issues, there appears to be no significant differences between the intervention steps taken by Private School and DCPS to address such issues (e.g., telephone calls to the home, use of metro cards, attendance cards, etc.). See R-9-2; *Private School Testimony*.

#### VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Within **30 calendar days** of this Order (*i.e.*, by **April 4, 2011**), DCPS shall convene a meeting of the Student's MDT/IEP Team with all necessary members (including Petitioner) to review and revise the Student's IEP dated November 23, 2010.
2. At the meeting held pursuant to paragraph 1 above, the Team shall: (a) restore the 17.5 hours of specialized instruction previously provided in the Student's IEP; (b) restore the 60 minutes per week of Behavioral Support Services (counseling); and (c) review and revise the Post-Secondary Transition Plan contained in the 11/23/2010 IEP, consistent with this HOD.
3. All other requests for relief in Petitioner's December 23, 2010 Due Process Complaint are hereby **DENIED**; and
4. This case shall be, and hereby is, **CLOSED**.



Dated: March 5, 2011

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Impartial Hearing Officer

#### NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).