District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
Student Hearing Office

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STUDENT HEARING OFFICE

Confidential

STUDENT[1], by and through his Parent Petitioners, v. DCPS Respondent. Case	HEARING OFFICER'S DETERMINATION Hearing Date: June 30, 2009 Representatives: Counsel for Petitioners: Domiento Hill, Esq. 1220 L Street, NW Suite 700 Washington, DC 20005 Counsel for DCPS: Blair Matsumoto, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002 Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened June 30, 2009, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on May 15, 2009, alleging the issues outlined below. [2]

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-26 and DCPS Exhibits 1-13)[3] which were admitted into the record. The parties presented post hearing closing arguments in writing to the Hearing Officers by July 6, 2009.[4]

ISSUE(S): [5]

1. Did DCPS deny the student a free and appropriate public education by failing to comply with the April 25, 2009, Hearing Officer's Decision and Order? Specifically, Petitioner alleges that DCPS failed to provide the student with his recommended assistive technology equipment as part of his educational program?

2. Did DCPS deny the student a free and appropriate public education by failing to develop an IEP that included the student's compensatory education services plan? Petitioner alleges the student is due compensatory education for denials of FAPE that are prior to the April 25, 2009, HOD when the student attended School B.

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[2] DCPS filed a pre-hearing motion to dismiss as a component of its response to the complaint. Petitioner filed a response thereto. This Hearing Officer considered the motion as argument of DCPS's defenses and part of its case in chief and did not rule on the motion, as DCPS's assertions are addressed in the Findings and Conclusion of this HOD.

[3] DCPS also submitted a rebuttal document at the due process hearing that was admitted.

[4] A pre-hearing conference was attempted prior to the due process hearing; however, both parties were not available and therefore no pre-hearing order was issued.

[5] The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn.

FINDINGS OF FACT [6]:

1. The student is years old, currently attends School A, a private full time special education school, whose cost for this student is funded by DCPS. The student resides in the District of Columbia with his parent(s). He is currently eligible to receive special education and its related services as a result of his other health impairment and speech and language services. (Petitioner's Exhibit 2, DCPS Exhibit 3 – April 25, 2009, HOD[7])

2. On November 19, 2008, a multidisciplinary team (MDT) meeting was convened on behalf of the student. At the meeting, the MDT, after a review of the student's recent evaluations and progress, developed an individualized educational program (IEP) which prescribed the student receive, inter alia, 1 hour a week of speech and language services, 45 minutes a week of psychological counseling services, 1 hour a week of occupational therapy services, and 1 hour a week of physical therapy services. (Petitioner's Exhibit 2)

3. Additionally, at the November 19, 2008, meeting the MDT discussed and determined that the student would benefit from receiving an assistive technology ("AT") evaluation in order to determine if he could benefit from receiving AT as a part of his educational program. (Petitioner's Exhibit 2)

4. The MDT created a student evaluation plan (SEP) which called for the student to be assessed with an AT evaluation, and the parent executed a consent to evaluate form. (Petitioner's Exhibit 2)

5. The MDT request for assistive technology was to address and assist the student due to his the inability to write, his limited vision, and limited mobility as a result of his medical condition upon which his OHI disability classification is based. Even prior to the AT evaluation was completed the student's teachers emailed the parent frequently regarding the need for modifications and to inform her of equipment the school had provided to assist the student in the classroom. The school staff also frequently inquired of the parent whether action was being taken by her counsel to assist in getting the evaluation completed more promptly so that the student's needs could be more fully addressed. (Petitioner's Exhibit 2)

6. On or about January 21, 2009, as a follow-up to the MDT meeting, the parent, by and through counsel, sent to DCPS correspondence requesting a copy of the AT evaluation. (Petitioner's Exhibit 2)

7. On January 22, 2009, DCPS responded to the parent's correspondence by stating that the assistive technology assessment was scheduled to take place on January 28, 2009 and that

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[6] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. This Hearing Officer may only cite one of the party's documents for efficiency although a document may have been submitted by both parties.

[7] Hereafter this HOD is cited in the Findings of Fact as Petitioner's Exhibit 2

a DCPS representative would be forwarding a copy of the assessment to the parent's counsel. (Petitioner's Exhibit 2)

8. Petitioner's counsel then requested a copy of the evaluation report be provided by DPCS by January 29, 2009. On January 23, 2009, DCPS responded stating that the assessment could not be provided by January 29, 2009, because the evaluation was to be done in three phases. DCPS stated a copy should be available within two weeks after the evaluation was conducted. (Petitioner's Exhibit 2)

9. On March 10, 2009, the parent, through counsel, wrote to DCPS requesting a copy of the assistive technology evaluation. DCPS responded stating the evaluation had been conducted but the report was not available. Petitioner's counsel filed the due process complaint on March 12, 2009. (Petitioner's Exhibit 2)

10. On February 9, 2009, and March 17, 2009, DCPS conducted the AT evaluation. The evaluation report was completed on March 23, 2009. (Petitioner's Exhibit 15)

11. DPCS made the report available to Petitioner's counsel on March 23, 2009. The evaluation recommended several items of assistive technology be provided the student and incorporated in his educational program. DCPS sent letters of invitation to Petitioner proposing several dates to convene a MDT meeting by April 16, 2009. (Petitioner's Exhibit 2)

12. The student had not been provided several items of assistive technology that are recommended in the AT evaluation. The student was harmed in that he is not able to use standard education equipment in the classroom and had the evaluation been conducted more promptly the student would have benefited from the recommended equipment and been better able to assess the curriculum in his existing educational program. (Petitioner's Exhibit 2)

13. An administrative due process complaint hearing was convened on behalf of the student on or about April 15, 2009, based on the March 12, 2009, due process complaint. As a result of that hearing the impartial due process hearing officer issued a decision and order ("HOD") in which DCPS was ordered to do, inter alia, within fifteen (15) business days of the issuance of the HOD, convene a MDT meeting for the student, review the student's AT evaluation, determine the AT equipment that will be provided the student and the date by which the AT equipment will be provided, determine if any other part(s) of the AT evaluation need to be conducted and if so determine when the remainder of the evaluation will be completed, and review the student's IEP as appropriate. (Petitioner's Exhibit 2)

14. The MDT meeting was convened for the student on April 21, 2009. At the MDT meeting, the IEP team reviewed the student's neuropsychological evaluation as well as the student's AT evaluation. The IEP team, after a review of the evaluations, agreed that the student would benefit from receiving, as part of his educational program, all of the equipment that was recommended in the assistive technology evaluation that was conducted by DCPS. The DCPS placement specialist/monitor who was present at the

MDT meeting, when asked when the equipment was going to be provided to the student, informed the IEP team that she would need to speak with the appropriate persons from her downtown office and get back to the parent. (Mr. Carter's testimony, Parent's testimony, Ms. James's testimony, Petitioner's Exhibit 9)

15. Additionally, the IEP team agreed that the parent through her educational advocate would present a compensatory education program to DCPS and DCPS would respond to the proposed program shortly thereafter. (Mr. Carter's testimony, Parent's testimony, Ms. James's testimony, Petitioner's Exhibit 9)

16. As agreed, the parent, through her educational advocate wrote to DCPS on April 28, 2009, providing what she felt was a compensatory education plan crafted to meet the unique needs of the student in order to address the periods of time in which the student failed to receive FAPE. Specifically, the compensatory education program called for the student to receive a laptop computer with a warranty and service agreement; Intellikeyboards; iMac Mouse to accommodate the student's small hand size; Mavis Beacon Teaches typing software; Word Prediction and Talking word Processor; Co-Writer and Write: Out Loud Software; Kidspiration graphic organizer; 2 weeks at the Camp Holiday Trails for medically fragile students for the 2010 summer; a diagnostic assessment form the Linda Mood Bell Reading Program; 25 hours of individual tutoring instruction in mathematics; and 25 hours of individual tutoring instruction in written expression at DCPS' prevailing rates. DCPS did not respond to the proposed program. (Petitioner's Exhibit 10)

17. At the April 21, 2009, MDT meeting the MDT reviewed the assistive technology evaluation. The DCPS representative, Ms. McCutchin, stated that she was in support of the recommendations and the acknowledged the student was due compensatory education. Ms. McCutchin requested Mr. Carter submit a compensatory education plan, that she would support it and would discuss it with her superiors. The MDT agreed the team should have access to the software and technology both at school and at home. (Mr. Carters' testimony, Petitioner's Exhibit 9)

18. Ms. Kimberly James, the IEP coordinator at School A participated in the April 21, 2009, MDT meeting. The AT evaluation was reviewed and its recommendations discussed. School A had already implemented many of the recommendations of AT evaluation. The MDT discussed that the evaluation recommended the student have use of the AT equipment both at school and at home. There was no disagreement at the meeting that the student was due some compensatory education but Mr. Carter was to present the plan. There was also a discussion of technology the student was not ready to use. The word prediction software did not seem appropriate at the time. The team anticipated the student using Mavis Beacon by July 2009. Ms. James did not sense a dispute at the meeting as to any compensatory education but only that it would be presented to DCPS after the meeting. The IEP team discussed that the student would receive ESY from during the time that he was in attendance at School A during the summer of 2009. DCPS did not respond to the discussion to determine the student's attendance at (Ms. James's testimony)

19. The parent also attended the April 21, 2009, MDT meeting. The MDT determined that the student's curriculum from school needs to be mimicked at home. The parent acknowledged the student does not have the computer at home and without the computer the student has no use of the software DCPS has and will provide. The DCPS representative at the meeting agreed the student would benefit from Mavis Beacon and word prediction would be introduced in the coming school year. The MDT discussed the home internet connection and concluded that the internet connection would be the parent's responsibility. (Parent's testimony)

20. The student has progressed tremendously since attending School A. Since the MDT meeting the student has not begun the and DCPS has not communicated with the parent about the student's attendance there. There was not a disagreement or agreement regarding the student being provided the compensatory education. The student has not been provided any compensatory education since the MDT meeting. (Parent's testimony)

ASSERTIONS OF THE PARTIES:[8]

Petitioner asserted the following:

- DCPS has denied the student a free and appropriate public education by failing to provide the student his assistive technology. Specifically, a personal PC, the alternative keyboard, Mavis Beacon Teaches Typing Deluxe 17 software; Word Prediction and a Talking Word Processor; Co-Writer and Write: OutLoud; graphic organizers; Kidspiration; Numbers Concepts 1 software; KidPort; and AplusMath.
- At the MDT meeting, the entire IEP Team agreed that the student should have the assistive technology recommended by the DCPS evaluator for use both at school and home. Additionally, the parent noted that she would need a computer for the student as she did not have a computer at home for the student to use and the student needed a computer to access the software. To date, while the student's school has supplied the student's AT for use at school, the student has only been provided the Kidspiration software for home use.
- At the student's due process hearing of June 30th, 2009, DCPS acknowledged that numerous pieces of the student's assistive technology was outstanding, including, but not limited to, the following: a home computer, intellikeys keyboard, Mavis Beacon Teaches Typing Deluxe 17 software, Word Prediction and Talking Word Processor, Co-Writer and Write: OutLoud, graphic organizers, and numbers Concepts 1. At the hearing DCPS acknowledged that with the exception of the Kidspirations, the remaining AT equipment has yet to be provided. With regards to the computer, it is axiomatic that if the student does not have a computer to use the software identified and recommended, the AT equipment will be useless as the mother stated at the hearing.[9]

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[8] These assertions are not findings or conclusions of this Hearing Officer but merely a statement of the parties' arguments.

[9] The parent stated that because she has no computer for [redacted] the software she has received to date from DCPS is not being used because he has no computer.

- In *Brown v. District of Columbia* 568 F.Supp.2d 44, 236 Ed. Law Rep. 798 (2008) the Court held that the hearing officer was in error when he failed to consider the parent's request for compensatory education services which included a timeframe for a period of services that were at issue in a previous hearing officer's determination. In ruling, the Court stated "[B]ecause compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether [the student] was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award." *Peak v. Dist. of Columbia*, 526 F.Supp.2d 32, 36 (D.D.C.2007), *see also Anthony v. Dist. of Columbia, 463 F.Supp.2d 37, 43 (D.D.C.2006)* (finding that the hearing officer erred in formulating a compensatory education award based only on the denial of services after 2003, where the plaintiffs had alleged the denial of a FAPE beginning in 1996, and remanding "the case so that the hearing officer can formulate an appropriate compensatory education award in light of any additional FAPE denials within the limitations period"). In the instant matter, such as the case in *Brown*, the plaintiff is well within her right to seek compensatory education for past denials of FAPE.

DCPS asserted the following:

- DCPS acknowledge that it failed to provide the student all of the items listed under the Assistive Technology (AT) summary created by the School A. (DCPS Disclosure 11) including the mouse, the keyboard and a Kidspiration software program. The student has since been provided with Kidspiration program. DCPS concedes that the student is owed the following items: an Apple Mac Mouse and An Intellikeys Keyboard
- CPS denied the student is owed the following items: a computer, internet service, Mavis Beacon typing program, co-writer and write out loud-
- These items were based upon an AT evaluation done by DCPS. Like any evaluation, the findings are considered and taken into account when fashioning an IEP plan for a student based upon individual needs, skills, and limitations. Here, the MDT discussed the items with the School A occupational therapist, Jennifer McCarty. She summarized the items in a reported dated 4/27/2009. (DCPS 11)
- Many programs discussed in the AT evaluation were beyond the academic reach of the student when the complaint was filed. At an appropriate time, these items will be worked into the student's curriculum and then the items may be needed at home. Until such time, providing the items for petitioner is premature.
- Petitioner contends that compensatory education is owed to the student back to his time at School B. DCPS argues that any awarding of compensatory education is limited to the failure to implement the Hearing Officer's determination (HOD) of April 25, 2009.
- A due process complaint was filed against DCPS for inappropriate placement on April 18, 2008. The main issue of the complaint was the student's placement was inappropriate for him based on his needs and what the school was able to provide in relation to educational and related services. Included in the prayer for relief was #11- "DCPS shall fund parent's compensatory education plan."

- A due process hearing was held on the following dates: May 7, May 29, and June 5. The Hearing Officer issued his decision on June 13, 2008. The major finding of the HOD was that the student's placement was inappropriate and the Hearing Officer ordered the student placed at School A, where the student is currently attending. In paragraph six of the order portion of the HOD, it states "[t]his order **resolves all issues raised in the student's 04/18/08 Due Process Complaint** that is dismissed; and the hearing officer made no additional findings." Further, the order states "[t]his is a FINAL ADMINISTRAIVE DECISION. An appeal can be made to a court of competent jurisdiction within ninety days from the date of this Decision and Order pursuant to 20 U.S.C. §1415 (i)(1)(A), (i)(2)(B); 34 CFR §300.516 (b)."
- The Hearing Officer, in his written decision, specifically stated "[t]his order **resolves all issues raised in the student's 04/18/08 Due Process Complaint..."** Where an issue has been fully litigated, courts have used the doctrines of collateral estoppel and res judicata to block parties from re-litigating issues.
- In this matter Petitioner raises a compensatory education claim that was previously raised in the April 2008 complaint. The Hearing Officer clearly stated his order resolved all the issues in the 4/18/2008 complaint. If Petitioner was unhappy with that decision, the proper recourse would have been to appeal to a court of competent jurisdiction. "A decision made in a hearing ... is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516." 34 CFR 300.514 *Finality of Decision; Appeal; Impartial Review*. Paragraph (b) of that section requires the SEA to conduct an impartial review of the record. Section 300.516 requires an aggrieved party to appeal a final decision in a court of law. Id. at §300.516(a).
- Petitioner relies on *Brown v. District of Columbia* 568 F. Supp. 2d 44, 236 Ed. Law Rptr.798 (2008) for the premise that this Hearing Officer can award compensatory education for past deficiencies. DCPS contends that this case can be distinguished factually from the case at hand. In *Brown*, the previous HOD had an order by the Hearing Officer for DCPS to "determine whether compensatory education was warranted, and if so, would develop a compensatory education plan for E.M.." *Brown* at 51. Also, the court in Brown looked at the conduct of the parties at the hearing. The court found "no one argued the issue was not properly raised." Brown at 52. The dispute was not whether compensatory education was owed, but rather how much.
- In this case the previous HOD did not order development of a compensatory education plan as in *Brown*. It was requested as relief in the Due Process Complaint, but the Hearing Officer made no orders relating to compensatory education for the child's time at School B. Unlike in *Brown*, Respondent DCPS objected to the inclusion of the time at School B in the compensatory education discussion at the due process hearing. Counsel objected to the relating back of the time.
- DCPS was not on notice that previous issues were to be litigated because while Petitioner's due process complaint was ten pages in length, no mention of the Ludlow Taylor issues were included in the pleading. Failure to include facts to be used in later formulating relief in the form of compensatory education prejudices DCPS and the Hearing Officer should disregard such facts in crafting his order.

- The touchstone of compensatory education is that a hearing officer may award compensatory education services that compensate for a past deficient program. *Reid v. Dist. of Columbia*, 401 F.3d 516, 365 U.S. App. D.C. 234 (D.C. Cir. 2005) *citing G. ex. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 309 (4th Cir. 2003). Compensatory education "must be reasonably calculated to provide the educational benefits that likely would have been accrued from special education services the school district should have been supplied in the first place" and is a "fact specific exercise" by the hearing officer. *Id.*
- This student is making progress at School A as attested to by mother testified during the hearing. Clearly, there is no deficiency. DCPS asked this Hearing Officer to find that the student is owed a Mac mouse and an Intellikeys keyboard; further, DCPS requested that all other forms of relief be denied; and that any compensatory education order use the April 25, 2009 (HOD issue date) as the relevant time period for calculating compensatory education claims if any are warranted for the case at hand.

CONCLUSIONS OF LAW:

Pursuant to IDEIA §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 IDEIA §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.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief. [10] 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.

1. Did DCPS deny the student a free and appropriate public education by failing to comply with the April 25, 2009 Hearing Officer's Decision and Order? Specifically, Petitioner alleges that DCPS failed to provide the student with his recommended assistive technology equipment as part of his educational program? Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence.

The Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004 requires that all students be provided with a Free Appropriate Public Education ("FAPE"). FAPE means:

[10] 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 that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

> [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. § 300.17.30 DCMR Sec § 3001.1.

Special education is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability." 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, 30 DCMR Sec. § 3001.1. The FAPE requirement is satisfied when the State provides personalized instruction that is reasonably calculated to permit the child to benefit educationally. *See* Hendrick Hudson Board of Education v. Rowley, 458 U.S. 176, 203-204 (1982).

DCPS pursuant to April 25, 2009, was to, inter alia, provide the parent a date in which the student's assistive technology equipment would be provided. At the April 21, 2009, MDT meeting the MDT agreed the student should be provided the assistive technology equipment identified in the DCPS evaluation. However, the DCPS representative present at the MDT meeting was unable to provide a date in which the equipment was to be provided. To date, DCPS has yet to provide the parent a date in which all the equipment will be provided or provide the student with the equipment thereby violating the Order and denying the student a FAPE. DCPS presented no testimony that countered the credible testimony of three witnesses who stated the MDT agreed to all the AT equipment Petitioner alleged should have been provided.

According to the *Blackman/Jones* Consent Decree a rebuttable presumption of harm is created whenever DCPS fails to, inter alia, comply with hearing officer determinations. *See also Hawkins v. District of Columbia,* Civil Action No. 07-0278 (JDB)(March 7, 2008)

2. Did DCPS deny the student a free and appropriate public education by failing to develop an IEP that included the student's compensatory education services plan? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

The Individuals with Disabilities Education Improvement Act ("IDEIA") of 2004 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, 30 DCMR Sec § 3001.1.

Special education is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of child with a disability." 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, 30

DCMR Sec. § 3001.1. The FAPE requirement is satisfied when the State provides personalized instruction that is reasonably calculated to permit the child to benefit educationally. *See* Hendrick Hudson Board of Education v. Rowley, 458 U.S. 176, 203-204 (1982).

In this matter a MDT meeting was convened on behalf of the student on April 21, 2009. At the MDT meeting, the IEP team discussed the student being provided, compensatory education services, through a compensatory education plan. In order to develop the compensatory education plan, DCPS requested that the parent's educational advocate propose a compensatory education program for its review in order to develop a plan and provide it as a part of IEP. The parent through her educational advocate provided DCPS a plan on April 28, 2009. As of the due process hearing DCPS has yet to respond to the proposed compensatory education plan. It neither accepted, rejected, or proposed modifications to the plan.

The Hearing Officer is not convinced, however, that the Petitioner plead compensatory education beyond the April 15, 2009, HOD or presented sufficient evidence of the alleged loss to the student. Petitioner did not present the HOD or the complaint that related to the alleged loss for which the compensatory education plan was proposed. Although the drafted compensatory education plan speaks of alleged missed services during the time the student was at School B, this Hearing Officer concludes that the document is insufficient as well as the testimony of Mr. Carter and the parent to prove the loss for which the student was not provided a FAPE under the previous HOD. Neither the HOD, nor its underlying complaint was submitted into the record.

This Hearing Officer surmises that the student was placed at School A, a private s full time special education placement, as a remedy under the prior HOD. Mr. Carter testified that as result of the prior complaint and HOD the student was placed at School A and testified the student was making process there. However, Mr. Carter had not observed the student at School A. This Hearing Officer concludes that Mr. Carter's testimony and the proposed plan was not sufficient to prove the alleged loss and there was insufficient evidence that any alleged loss was not already addressed in the HOD that placed the student at School A.

Neither was this Hearing Officer convinced by the testimony that all the compensatory education was due the student and justified for the student. The testimony did not specifically relate the proposed services to position the student where he would have been in but for the loss. The DCPS representative at the meeting may have committed to advocate for the plan but did not promise that the DCPS would provide the student the requested compensatory education.

If a disabled student is denied special education services, he or she is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place." *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C.Cir.2005); see also *Walker v. Dist. of Columbia*, 157 F.Supp.2d 11, 30 (D.D.C.2001). An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." Reid, 401 F.3d at 518.

In Reid, when the D.C. Circuit rejected the student's cookie-cutter formula for compensatory education but determined that he was entitled "to an informed and reasonable exercise of discretion regarding what services he needs to elevate him to the position he would have occupied absent the school district's failures," the court remanded the matter for further proceedings. 401 F.3d at 527. The D.C. Circuit stated that on remand each party must have some opportunity to present evidence to aid in the computation of an appropriate compensatory education award. Id. at 526.

Although Petitioner is perhaps, under IDEIA and the interpreting case law in the District of Columbia, not precluded from seeking a separate compensatory education claim for a prior denial of FAPE; however, such a claim was not sufficiently plead or proved in this due process hearing as the underlying HOD and denials of FAPE for which the alleged compensatory education relates were not disclosed and presented to this Hearing Officer.

The only claim that was legitimately before this Hearing Officer was the claim related to delay in the conducting the assistive technology evaluation and the delay in providing the assistive technology that the MDT agreed the student would be provided. Although the parent testified of difficulties regarding the student attendance at School B, this Hearing Officer concludes that this evidence was not related to a claim that was legitimately the subject of the current due process complaint. Although there was a claim that DCPS did not provide compensatory education, neither the complaint nor the documentary evidence included facts to which the prior due process hearing and HOD applied. Consequently, the relief granted below is limited to that the failure to provide the assistive technology and the delay in providing the evaluation and the AT equipment.

Because the evidence in the record is that DCPS requested a proposed compensatory education plan and has not yet responded to the proposal, this Hearing Officer directs in the Order below that DCPS convene a MDT meeting to specifically respond to the proposed plan.

ORDER:

1. DCPS shall, within 30 calendar days of the issuance of this Order, provide or fund or reimburse the parent for the cost of the following assistive technology equipment for the student: a personal computer, Intellikeyboards; iMac Mouse; Mavis Beacon Teaches typing software; Word Prediction and Talking word Processor; Co-Writer and Write: Out Loud Software; Kidspiration graphic organizer within any DCPS cost guidelines that may apply.

2. DCPS shall, within ten (10) business days of the issuance of this Order, convene a MDT meeting with a DCPS representative in attendance who is capable of making decisions to respond to the proposed compensatory education program that DCPS requested be presented to DCPS for its review at the April 21, 2009, MDT meeting.

3. DCPS shall schedule the MDT meeting through counsel for the Petitioner.

4. DCPS will be given a day for a day extension of any of the prescribed time frames in this Order for any delay caused by the student, the parent(s) and/or their representative(s).

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. § 415(i)(2).

Coles B. Ruff, Esq.
Hearing Officer
Date: July 10, 2009