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

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

Through

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: August 12, 2010

Hearing Officer: Kimm Massey, Esq.

Case No:

Hearing Date: August 2, 2010

Room: 4A

HEARING OFFICER DETERMINATION

BACKGROUND

Student is an _____ year-old young man, who has repeated the _____ grade for the past four school years.

On June 14, 2010, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS failed to develop appropriate IEPs in 2008 and 2009, failed to issue Prior Notices, failed to conduct triennial evaluations, failed to provide Student with special education and related services, failed to place Student in an appropriate school, and owed Student compensatory education as a result. DCPS did not respond to the Complaint.

On July 1, 2010, Petitioner filed Motion for Summary Judgment or in the Alternative to Shift the Burden of Proof and to Exclude Evidence based upon DCPS's failure to respond to the Complaint. DCPS failed to respond to Petitioner's motion.

On July 6, 2010, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. During the conference, Petitioner voluntarily withdrew its claim of a failure to conduct triennial evaluations due to DCPS's issuance of an IEE letter. Thereafter, the hearing officer determined that the

following claims were at issue: (1) DCPS's alleged failure to develop an appropriate IEP in 2008 due to an insufficient level of services. Petitioner is unable to state exactly when the 2008 IEP was developed because Petitioner does not have a copy of same; however, Student's 2009 IEP references a 12/08 IEP. (2) DCPS's alleged failure to develop an appropriate IEP in 2009 because Student's services allegedly were decreased without justification, his classification allegedly was changed from LD to ED without evaluations, Parent and Student allegedly were not invited to the meeting, no regular education teacher allegedly attended the meeting, no present levels of performance allegedly are listed on the IEP, and the IEP allegedly contains no current individualized transition plan because the plan is outdated and lacking in goals. (3) DCPS's alleged failure to provide sufficient prior notice in 2008 when Student's level of services allegedly was decreased, and in 2008 and 2009 in connection with the reduction in services and change in classification. (4) DCPS's alleged failure to provide special education and related services because allegedly no services were given during the 2009/10 school year. (5) Alleged inappropriate placement for 2008/09 and 2009/10. With respect to Petitioner's Motion for Summary Judgment or in the Alternative to Shift the Burden of Proof and to Exclude Evidence, the hearing officer declined to render summary judgment for Petitioner or to exclude evidence as requested; however, the hearing officer placed on DCPS the burden of proving the appropriateness of Student's school placements during the 2008/09 and 2009/10 school years, but only upon the condition that Petitioner demonstrated that DCPS was put on notice that Student is a child with a disability either at registration or shortly thereafter for each school year. The hearing officer issued the Prehearing Order on July 12, 2010.

By disclosure letters dated July 26, 2010, the parties filed Joint Exhibits (Joint Exhibits 1 through 9), as well as separate exhibits (Petitioner's Exhibits 1 through 19 and DCPS-1 through DCPS-9). The parties also filed Joint Stipulations of Fact.

The hearing officer convened the scheduled due process hearings on August 2, 2010.¹ The Joint Exhibits, the Joint Stipulations of Fact, and DCPS's disclosures were admitted without objection. DCPS objected to Petitioner's Exhibits 3, 4, 10 and 11, but the hearing officer admitted the exhibits over DCPS's objections. Thereafter, the hearing officer received opening statements, witness testimony and closing statements. The hearing officer then brought the hearing to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to IDEIA, the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUES

The issues to be determined are as follows:

1. DCPS's alleged failure to develop an appropriate IEP in 2008.
2. DCPS's alleged failure to develop an appropriate IEP in 2009.

¹ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

3. DCPS's alleged failure to provide sufficient prior notice in 2008 and 2009.
4. DCPS's alleged failure to provide special education and related services during the 2009/10 school year.
5. Alleged inappropriate placement for 2008/09 and 2009/10.

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. Student is years old. He was initially identified as eligible for special education services during school. He was placed in separate special education programs with small student/teacher ratios for the remainder of school and his initial two years in school. Thereafter, beginning in SY 2006/07, Student was removed from the separate programs he had previously attended and placed in a general education setting. From that point forward, Student began to perform poorly in school and his attendance suffered because he went to school but would not go to class. Student would not go to class because he did not understand the work and the other students teased him. In July of 2009, Parent placed Student in a military school in an effort to find a better educational environment for him, but Student did not last for two weeks at the school due to his inability to perform the physical exercises.²
2. Student learns best in a small group setting. When he is in larger classes, he feels too shy to ask questions and will just sit there. Once Student was placed in a general education environment beginning in SY 2006/07, he stopped going to class because the other students would tease him and call him names for being in special education, and sometimes he would get into fights, and he wasn't being taught and receiving the extra help he needs. Struggling in school is upsetting to Student. He tries to do better in school but always feels that something is holding him back. He wants to earn a diploma but does not think he can successfully obtain one at his current neighborhood school.³
3. Student's November 29, 2007 IEP classified him as LD and required him to receive 15 hours of specialized instruction, 1 hour of speech and language services, and 1 hour of psychological services per week.⁴
4. Student's March 19, 2008 psychoeducational evaluation report reveals that Student's scores on the Comprehensive Test of Nonverbal Intelligence placed him in the Below Average range of cognitive functioning. Moreover, although Student was repeating the 9th grade at the time of the evaluation, his performance on the Wechsler Individual

² Testimony of Parent.

³ Testimony of Student.

⁴ Joint Exhibit 8.

Achievement Test - Second Edition resulted in the following grade equivalencies ("GEs"): word reading - 2:8 GE; reading comprehension - 1:9; pseudoword decoding - 2:0; numerical operations - 5:2; math reasoning - 4:6; spelling - 2:3; written expression - 1:5; and listening comprehension - 5:5. The evaluator concluded that Student continued to meet the diagnosis for Learning Disability and would continue to benefit from an academic environment that allowed for specialized instruction and more individualized attention in all academic areas.⁵

5. Student was enrolled at his neighborhood school in northwest (neighborhood school 1) during the 2008/09 school year.⁶ DCPS's Attendance Summary for Student for SY 2008/09 shows that Student was present for only 60 of 175 membership days.⁷
6. Student's December 17, 2008 IEP classified him as ED and called for 7.5 hours of special education services in an outside of general education setting, 60 minutes of speech and language services, and 60 minutes of counseling per week.⁸
7. Parent did not attend Student's December 2008 IEP meeting because she did not receive an invitation to attend the meeting. Instead, Parent received a call at work after the meeting had taken place and DCPS faxed a copy of Student's IEP to Parent at work. Upon receiving the IEP, Parent did not realize that Student's IEP hours had been changed.⁹
8. Student had only one special education class at the neighborhood school 1, but the class did not help him because the teacher was not in class very much and did not give any work. Student asked one counselor and two teachers for help at the school, but he did not receive any assistance. Student ultimately stopped going to classes consistently and then stopped going to the school building every day because the other children were teasing him and he kept getting into fights.¹⁰
9. Student was enrolled at his neighborhood school in southeast (neighborhood school 2) and during SY 2009/10.¹¹ DCPS's Attendance Summary for SY 2009/10 shows that Student was routinely absent from class/school at the neighborhood school 2 throughout the year.¹² DCPS's October 30, 2009 Progress Report for Student indicates that Student had earned four grades of F and no grades in his remaining classes for Advisory 1; DCPS's March 26, 2010 Progress Report for Student indicates that Student earned two Fs and two Ds for Advisory 3.¹³

⁵ Joint Exhibit 2.

⁶ Joint Stipulations of Fact.

⁷ DCPS-1.

⁸ Joint Stipulations of Fact.

⁹ Testimony of Parent.

¹⁰ Testimony of Student.

¹¹ Joint Stipulations of Fact.

¹² DCPS-2.

¹³ Petitioner's Exhibits 13 and 14.

10. Student's December 16, 2009 classified him as ED and called for 7 hours of special education services in the general education setting, 60 minutes of speech and language services, and 60 minutes of counseling per week.¹⁴
11. Parent was not aware that an IEP meeting had been held for Student during SY 2009/10 because she did not receive notice of the meeting, was not informed that a new IEP had been developed, and did not receive a copy of the IEP.¹⁵
12. As reflected by the signatures on the IEP, only the following team members participated in the development of Student's December 2009 IEP: a special education teacher, a social worker, a speech language pathologist, and an SEC. In the sections reserved for Student's present level of educational performance, the IEP repeatedly states the following: "Documentation indicates that [Student] performs below grade level. He has difficulty accessing material without educational supports. [Student's] attendance negatively impacts his ability to access general education curriculum." The transition plan in the IEP contains goals that require Student to explore and list the requirements for various post high school positions, explore vocational programs, and earn community service hours; however, two of the goals list a completion date of June 10, 2008 while the third goal lists a completion date of June 10, 2009. Moreover, the transition plan does not indicate that any transition assessments were administered and does not list specific areas of interest for Student.¹⁶
13. The neighborhood school 2 received a copy of Student's 2008 IEP at the time he was registered.¹⁷ However, Student did not receive any speech and language or counseling services at the neighborhood school 2 during SY 2009/10. Moreover, Student did not have any academic classes with more than 1 teacher, and he did not have any special education/resource classes.¹⁸
14. Although Student's December 2009 IEP includes a counseling goal that focuses on improving Student's attendance, the staff at neighborhood school 2 did not work on attendance because Student was routinely absent from class. No behavioral intervention plan was drafted for Student, and no extra help was offered to help him with his academics.¹⁹
15. Student attended school at _____ from approximately February 23 to March 24, 2010 and April 15 to June 10, 2010. Student received speech and language services at _____ but no counseling services. Student performed well at _____ because he had small classes and the teachers and guards helped him with his work.²⁰ Student was actually placed in _____

¹⁴ Joint Stipulations of Fact.

¹⁵ Testimony of Parent.

¹⁶ Joint Exhibit 9.

¹⁷ Testimony of SEC at the neighborhood school 2.

¹⁸ Testimony of Student.

¹⁹ Testimony of SEC at the neighborhood school 2.

²⁰ Testimony of Student.

inclusion classes with a general education teacher and a special education teacher at

16. Student's January 29, 2010 IEP Progress Report indicates that he made "No Progress" on all of his IEP goals for Report Period 3. Student's Draft June 14, 2010 IEP Progress Report indicates that for Report Period 4 Student "Mastered" his IEP speech/language goal of demonstrating a functional vocabulary in and out of the classroom; that Student was "Progressing" on his IEP speech/language goal of identifying two words that are related when given up to 5 words from which to choose; that Student's IEP speech/language goals of expressing how two words from the same semantic class are related and providing definitions for curriculum related vocabulary words were "Not Introduced," and that Student made "No Progress" on all of his IEP goals in the academic areas of mathematics, reading, and written expression.²²
17. DCPS has no evidence that Student received specialized instruction and related services on the days when he was present during SY 2008/09.²³
18. DCPS has no service tracking logs for counseling services for Student for SY 2008/09 and SY 2009/10.²⁴
19. DCPS's service tracking logs for speech and language services for Student during SY 2008/09 show only that Student did not receive services on 21 occasions due to the unavailability of either Student or the service provider; the service tracking logs for SY 2009/10 show that Student received only 5 hours of direct speech and language services and did not receive services on 15 occasions due to the unavailability of either Student or the service provider.²⁵
20. On March 3, 2010, DCPS issued a Letter of Invitation to a Meeting, which invited Parent to attend a meeting to review the results of Student's evaluation/reevaluation and determine, *inter alia*, Student's academic achievement, functional performance, and educational needs.²⁶ This letter was sent to Parent by the SEC at [redacted] but the SEC did not receive a response from Parent.²⁷
21. Student's April 28, 2010 Transcript from DCPS indicates that Student was in the 9th grade during school years 2006/07, 2007/08, 2008/09, and 2009/10. During SY 2006/07, Student earned a C in Biology I, but he earned Fs in his remaining classes. During SY 2007/08, Student earned a B in Introduction to Computers and a D in Army Junior ROTC I, but he earned Fs in all his remaining classes. During SY 2008/09, Student earned a B

²¹ Testimony of SEC at

²² DCPS-7 and DCPS-8.

²³ Joint Stipulations of Fact.

²⁴ Joint Stipulations of Fact.

²⁵ Joint Stipulations of Fact.

²⁶ DCPS-9.

²⁷ Testimony of SEC at

in African American Music History, but he earned Fs in all his remaining classes. During SY 2009/10, Student earned a D in Art and Culture and had several courses in progress.²⁸

22. DCPS's April 28, 2010 Letter of Understanding for Student reveals that Student has earned only 3.5 of the 24 Carnegie Units he will need to graduate.²⁹
23. The SEC at [redacted] scheduled an MDT meeting for Student for June 16, 2010 and invited Parent to attend same, but Petitioner's counsel informed the SEC that there was no need to proceed with the meeting due to Student's release from [redacted]. The SEC initially contacted Parent by phone about the meeting. Parent said that she would get back to the SEC, but instead Parent's attorney contacted the SEC by email and ultimately declined to participate in the meeting.³¹
24. On July 20, 2010, Student received an independent speech/language assessment. The evaluator found that Student has significant language and language processing deficits that require remediation. Weaknesses were found in the areas of word knowledge (semantics), language (semantic) processing, expressive language processing, and social/pragmatic language processing. Language processing skills are higher level comprehension/reasoning skills, expressive language processing skills involve pulling out words from language memory, and social/pragmatic language processing involves using language in socially accepted ways at higher levels of language processing. A lot of the learning in high school involves language because there are lectures and discussions and textbooks have to be read. Student's language processing problems create issues because basic words are no longer being used in high school and a single word can have multiple meanings. Moreover, a comparison of Student's 2010 evaluation results with his 2007 speech/language evaluation does not show progress in the areas of language processing and expressive language. As a result, Student needs intervention in the form of speech and language therapy at the word (semantic) level, the sentence level, the grammatical level, and in the area of expressive language. Moreover, as Student did not receive the speech/language services he was entitled to receive during SY 2009/10, he now requires an additional one hour per week of speech/language services during SY 2010/11, in addition to the services he is entitled to receive under his IEP during SY 2010/11, to put him in the position he would have occupied had he received the speech services he was entitled to receive during SY 2009/10. These additional speech/language therapy services should be delivered by a speech/language pathologist in either a one-to-one or very small group setting.³²
25. Student is not presently registered at the neighborhood school 2 he attended during SY 2009/10, and the SEC from the school does not know why or where, if anywhere, he is

²⁸ Petitioner's Exhibit 16.

²⁹ Petitioner's Exhibit 15.

³⁰ DCPS-10.

³¹ Testimony of SEC from [redacted]

³² Testimony of speech/language pathologist; Petitioner's Exhibit 6.

actually registered.³³ Nevertheless, DCPS wants the hearing officer to return Student to the neighborhood school 2 for SY 2010/11.

26. Parent and Student have identified a full-time private school they want Student to attend for SY 2010/11. On June 24, 2010, the private school issued a letter stating that Student meets the testing requirements to continue the school's admission process, but the school cannot allow Student to participate in the two-day visit until his MDT agrees that Student requires full-time specialized instruction and a nonpublic program would be appropriate.

No representative from the school was willing to testify at Student's due process hearing. However, Petitioner submitted literature from the school for inclusion in the administrative record, which literature indicates that the school serves students from 17 to 21 years old who have an IEP, and the school offers academic remediation, an accelerated high school diploma, life skills training, and extensive vocational training with hands-on experience. The school prepares students to meet the requirements of the National External Diploma Program, which is a performance-based diploma with a life and work skills focus, and the school's goal is to raise its students' reading, math, writing and speaking skills to the equivalence of a functional 8th grade level so that the students can succeed in the workforce.

To qualify for admission to the school, students must have the academic skills to attain a 4th grade level or above on achievement testing and CASAS testing. Moreover, the school initially admits students on a 30-day Conditional Acceptance probationary status to ensure they meet the attendance, participation, work completion, and appropriate conduct requirements for final enrollment.³⁴

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:

1. Appropriateness of IEPs Developed in 2008 and 2009

An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in an IEP meeting, and that must include, *inter alia*, a statement of the child's present levels of academic achievement and functional performance. 34 C.F.R. § 300.320(a)(1). The IEP must be developed by a team that includes, *inter alia*, the child's parents and not less than one of the child's general education teachers if the child is being taught in the general education setting. 34 C.F.R. § 300.321(a). Moreover, the public agency must take steps to ensure that the child's parents are present at each IEP meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.322(a). Ultimately, the IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. *Board of Education of the Hendrick*

³³ Testimony of SEC from neighborhood school 2.

³⁴ Petitioner's Exhibit 18.

Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 (1982) (“Rowley”). Furthermore, beginning not later than the first IEP to be in effect when the child turns 16, the IEP must include a transition plan consisting of appropriate measurable postsecondary goals and the transition services needed to assist the child in reaching those goals. 34 C.F.R. § 300.320(b).

In this case, Petitioner has asserted that DCPS failed to develop an appropriate IEP in 2008 because the level of services provided were insufficient. Petitioner also asserts that DCPS failed to develop an appropriate IEP in 2009 because Student’s services were decreased without justification, his classification was changed from LD to ED without evaluations, Parent and Student were not invited to the IEP meeting, no regular education teacher attended the meeting, no present levels of performance are listed on the IEP, and the IEP contains no current individualized transition plan because the plan is outdated and lacking in goals.

A review of the evidence in this case reveals that although Student was repeating the 9th grade for the third time during SY 2008/09, Student’s hours of specialized instruction were decreased from 15 hours to 7.5 hours when his IEP was revised on December 17, 2008. Similarly, although Student had been retained yet again and was repeating the 9th grade for the fourth time during SY 2009/10, his hours of hours of specialized instruction were decreased from 7.5 hours to 7 hours when his IEP was revised on December 17, 2008. The evidence also tends to prove Petitioner’s assertions that Parent was not invited to Student’s December 2009 IEP meeting, that no regular education teacher attended the meeting, and that the IEP contains a transition plan that is outdated. With respect to the transition plan, the hearing officer also notes that the goals do not appear to be appropriate and based on transition assessments, as required by IDEIA.³⁵

On the other hand, the evidence does not support Petitioner’s assertions that Student’s disability classification was improperly changed from LD to ED on his December 2009 IEP, because the evidence proves that Student’s December 2008 IEP also classified him as ED. Moreover, as Petitioner failed to present testimonial or documentary evidence concerning the December 2008 IEP meeting, the hearing officer has no basis for determining whether or not the change in classification was justified and what data, if any, the team relied upon in making the change.

Nevertheless, as the evidence supports the rest of Petitioner’s assertions regarding Student’s 2008 and 2009 IEPs, and the evidence demonstrates that neither IEP measured up to the regulatory and judicial standards for IEPs outlined above, the hearing officer concludes that Petitioner has met its burden of proof on these claims.

2. Sufficiency of Prior Notice in 2008 and 2009

Under IDEIA, a public agency must provide written notice to the parents of a child with a disability a reasonable time before the agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 C.F.R. § 300.503(a)(1). IDEIA further provides that FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State educational agency; include an appropriate preschool,

³⁵ See Findings of Fact (“FOFs”) 3, 6, 10–12.

elementary school, or secondary school education, and are provided in conformity with an IEP. 34 C.F.R. § 300.17.

In this case, Petitioner has asserted that DCPS failed to provide sufficient prior notice prior to decreasing Student's level of specialized instruction in 2008 and 2009, and prior to changing Student's disability classification in 2009. The evidence in this case confirms that Parent did not receive advance notice of the IEP meetings DCPS held in December 2008 and December 2009 to revise Student's IEP, in violation of 34 C.F.R. § 300.322(a). However, here, Petitioner is complaining of DCPS's failure to provide prior written notice in accordance with 34 C.F.R. § 300.503(a)(1). Yet Petitioner has not explained why or how a change in a child's hours of specialized instruction necessarily constitutes a change in the identification, evaluation, educational placement of, or provision of FAPE to, a child that requires prior written notice, and the hearing officer is not persuaded that such is the case. Moreover, although the administrative record in this case does not contain prior written notice of DCPS's intention to change Student's disability classification in December 2008, Petitioner has incorrectly alleged that the classification was changed in December 2009, and IDEIA restricts the subject matter of a due process hearing to matters raised in the Complaint, unless the other party agrees otherwise. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proof on this claim.

3. Provision of Services During SY 2009/10

As noted above, FAPE means special education and related services that, *inter alia*, are provided in conformity with an IEP. 34 C.F.R. § 300.17. Hence, a public agency satisfies its obligation to provide a FAPE by providing personalized instruction with sufficient support services to permit the child with a disability to benefit educationally from that instruction. *Rowley*, 458 U.S. 176.

In this case, the evidence demonstrates that Student's December 2008 IEP required him to receive 9.5 hours per week of special education and related services from the start of SY 2009/10 through December 16, 2009 when his IEP was revised, and his December 2009 IEP required him to receive 9 hours of special education and related services from the time it was developed through the end of SY 2009/10. The evidence also proves that Student did not receive any speech and language or counseling services during SY 2009/10 while he was at neighborhood school 2, nor did he receive any inclusion services or attend any special education/resource classes at that school. On the other hand, there is evidence tending to prove that Student received inclusion services at _____ from February 23 to March 24, 2010 and from April 15 to June 10, 2010. There is also evidence tending to prove that Student received at least some of his required speech/language services at YSC.³⁶

Based on the evidence summarized herein, the hearing officer concludes that Petitioner has met its burden of demonstrating that DCPS failed to provide Student with any counseling services during SY 2009/10, and that DCPS failed to provide Student with the bulk of the specialized instruction and speech/language services he was entitled to receive during SY 2009/10.

³⁶ FOFs 6, 10, 13, 15.

4. Appropriateness of Placements for SYs 2008/09 and 2009/10

IDEIA provides that a public agency must provide an appropriate educational placement for each child with a disability, so that the child's needs for special education and related services can be met. See 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. In determining whether an appropriate educational placement has been provided, actual educational results achieved are relevant. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9th Cir. 1993).

In this case, Petitioner has alleged that DCPS failed to provide Student with appropriate placements for SY 2009/10 and SY 2010/11. The evidence reveals that Student received only one special education class during SY 2008/09 but the class did not help him, and that the neighborhood school 2 wholly and utterly failed to implement Student's IEP during SY 2009/10. The evidence further reveals that at the end of SY 2008/09, Student was retained with the result that he had to repeat the 9th grade for the fourth time during SY 2009/10. Moreover, Student's Advisory 1 and Advisory 3 Progress Reports for SY 2009/10 revealed that he primarily received Fs with a few Ds, and his January 29, 2010 IEP Progress Report revealed that he had made "No Progress" on all of his IEP goals for Report Period 3 of SY 2009/10.³⁷

Prior to the due process hearing in this case, the hearing officer placed imposed an adverse consequence upon DCPS for its failure to respond to the Complaint and Petitioner's Motion for Summary Judgment or in the Alternative to Shift the Burden of Proof and to Exclude Evidence. Said adverse consequence consisted of placing upon DCPS the burden of proving the appropriateness of Student's school placements during the 2008/09 and 2009/10 school years, but only upon the condition that Petitioner demonstrated that DCPS was put on notice that Student is a child with a disability either at registration or shortly thereafter for each school year. The evidence in this case proves that DCPS was put upon notice of Student's special education eligibility upon registering at the neighborhood school 2, and the fact that the neighborhood school 1 conducted an annual revision of Student's IEP on December 17, 2008 tends to prove that that school was placed on notice of Student's eligibility status at or shortly after he was registered there. Therefore, the burden of proving the appropriateness of the school placements rests upon DCPS, and based upon the evidence summarized above, the hearing officer concludes that DCPS has failed to meet its burden of proof.³⁸

5. Relief to be Awarded

a. Placement

Petitioner has requested a placement at the full-time private school referenced in FOF 26 for SY 2010/11. Unfortunately, the private school failed to provide testimony at the due process hearing in this case. However, the hearing officer has already determined that the neighborhood school 2 is an inappropriate school placement for Student, and DCPS is requesting that the hearing officer return Student to the neighborhood school 2 for school year 2010/11. Moreover, Petitioner

³⁷ FOFs 8, 9, 13, 16.

³⁸ In fact, the undisputed evidence is so clear in this case that it definitively proves the inappropriateness of Student's school placements for SYs 2008/09 and 2009/10, and the hearing officer would have ruled in favor of Petitioner even if the burden of proof had remained with Petitioner.

provided documentary evidence tending to prove that the private school can provide Student with the academic remediation he needs, an opportunity to obtain a performance-based diploma, and the extensive vocational training he will need to succeed subsequent to graduation. Based on this evidence, the hearing officer concludes that the private school can provide Student with educational benefit. Moreover, as DCPS has failed to provide Student with an appropriate educational placement for the two-year period at issue in this case, and DCPS has also failed to identify an appropriate placement for Student for SY 2010/11 where his needs for special education and related services can be met, the hearing officer will grant Petitioner the requested private placement for SY 2010/11. *See* 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120.

b. Compensatory Education

Under the theory of compensatory education, courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Id.* at 524.

In the instant case, Petitioner seeks compensatory education in the form and amount of 40 hours total of speech and language services for Student, to be delivered as 1 extra hour of services per week outside of school during SY 2010/11. The evidence in this case clearly demonstrates that Student did not receive all of the speech and language services he was entitled to receive during SYs 2008/09 and 2009/10. The evidence further demonstrates that Student requires the requested 40 hours of speech and language service during SY 2010/11 to be placed in he would have occupied had he received the speech services he was entitled to receive during SY 2009/10.³⁹ As a result, the hearing officer will award the requested compensatory education.

ORDER

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

1. DCPS shall fund for SY 2010/11 Student's attendance at the full-time private school which issued a June 24, 2010 letter indicating that Student meets the testing requirements to continue the school's admission process.
2. At the end of Student's 30-day probationary status at the full-time private school, DCPS shall convene an IEP meeting to develop a full-time IEP for Student that will facilitate his receipt of educational benefit at the private school.
3. DCPS shall either provide or fund 40 hours of speech and language services for Student, and said services are to be provided to Student during SY 2010/11 at the rate of 1 hour per week in an outside of school setting.

³⁹ FOFs 19, 24.

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 USC §1415(i).

Date: 8/12/2010

/s/ Kimm Massey
Kimm Massey, Esq.
Hearing Officer