

RECEIVED

AUG 23 2010

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

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

---

<b>STUDENT, through his legal guardian,<sup>1</sup></b>	)	
	)	
<b>Petitioner,</b>	)	Case Number:
	)	
<b>v.</b>	)	Hearing Dates: August 9 and 10, 2010
	)	Hearing Room 4A
<b>THE DISTRICT OF COLUMBIA</b>	)	
<b>PUBLIC SCHOOLS,</b>	)	Hearing Officer: Frances Raskin
	)	
<b>Respondent.</b>	)	

---

**HEARING OFFICER DETERMINATION**

**Counsel for Petitioner:** Katherine Zeisel, Attorney at Law  
The Children's Law Center, Inc.  
616 H Street, N.W., Suite 300  
Washington, D.C., 20001

**Counsel for DCPS:** Laura George, Attorney at Law  
Office of the Attorney General  
1200 First Street, N.E., Tenth floor  
Washington, D.C., 20002

---

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

## I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act (“IDEA”) of 2004, codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; and the regulations at 34 C.F.R. §§ 300.1 *et seq.*; and D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

## II. BACKGROUND

Petitioner is the mother of a -year-old, -grade, special-education student (“Student”) with multiple disabilities and borderline intellectual functioning.<sup>2</sup> The Student attended a full-time, non-public, special education school until June 2010.<sup>3</sup>

On May 23, 2010, the District of Columbia Public Schools (“DCPS”) convened a meeting of the Student’s individualized educational program (“IEP”) team to review the Student’s current IEP, develop a reintegration plan, and discuss his placement and location of services for the 2010-2011 school year.<sup>4</sup> At this meeting, DCPS informed Petitioner that, despite her objections, the Student would attend a DCPS school for the 2010-2011 school year.<sup>5</sup>

On July 2, 2010, Petitioner filed a Due Process Complaint against DCPS pursuant to the Individuals with Disabilities Education Act (“IDEA”). The parties participated in a resolution meeting on July 9, 2010. The parties did not resolve the Complaint and agreed to proceed to a due process hearing. The due process hearing timeline began on July 10, 2010.

On July 12, 2010, this Hearing Officer held a prehearing conference in the above matter. During the prehearing conference, the parties agreed that the due process hearing would be closed to the public. The parties also agreed that the due process hearing would be held on August 9-10, 2010. On July 25, 2010, this Hearing Officer issued a Prehearing Order.

The due process hearing commenced on August 9, 2010. This Hearing Officer admitted the parties’ set of joint exhibits,<sup>6</sup> Petitioner’s exhibits,<sup>7</sup> and a list of joint stipulations of material facts<sup>8</sup> into evidence at the inception of the hearing.<sup>9</sup> Six witnesses testified at the hearing, five on Petitioner’s behalf and one on behalf of DCPS. The due process hearing concluded on August 10, 2010. Counsel for DCPS filed a written closing argument on August 11, 2010. On August 12, 2010, Petitioner filed a response to DCPS’s closing argument.

---

<sup>2</sup> Joint stipulation of Material Facts (“Joint Stipulation”); Joint Exhibit 2.

<sup>3</sup> Joint Stipulation.

<sup>4</sup> Joint Exhibit 2.

<sup>5</sup> *Id.*

<sup>6</sup> The joint exhibits admitted into evidence were J-1 through J-12.

<sup>7</sup> This Hearing Officer admitted into evidence Petitioner’s exhibits P-1 through P-5.

<sup>8</sup> The “Joint Stipulation of Material Facts,” filed on August 2, 2010, included thirteen stipulations of fact.

<sup>9</sup> A previously undisclosed exhibit, which Petitioner produced during her testimony, was marked as Joint Exhibit 13 and admitted into evidence after Petitioner testified.

### III. RECORD

Due Process Complaint Notice, filed July 2, 2010;  
DCPS's Response to Parent's Due Process Complaint Notice, filed July 8, 2010;  
Due Process Complaint Disposition, filed July 12, 2010;  
Prehearing Notice, issued July 12, 2010;  
Prehearing Order, issued July 25, 2010;  
Joint Stipulation of Material Facts, filed August 2, 2010;  
Joint Exhibits, including twelve exhibits, filed August 2, 2010;  
Petitioner's Disclosure Statement, listing six witnesses and including five proposed exhibits, filed August 2, 2010;  
DCPS's Disclosure Statement; listing one witness, filed August 2, 2010;  
Joint Exhibit 13, admitted at due process hearing (and filed) on August 9, 2010;  
Respondent's Closing Argument, filed August 11, 2010; and  
Petitioner's Citations and Response to DCPS Closing, filed August 12, 2010.

### IV. ISSUES PRESENTED

A. Whether DCPS denied the Student a free, appropriate, public education ("FAPE") by developing IEPs on February 23, 2010, and May 28, 2010, that failed to provide the Student extended school year services and appropriate accommodations, services, and supports;<sup>10</sup> and

B. Whether DCPS denied Petitioner an opportunity to participate in the decision-making process regarding the provision of FAPE to the Student by failing to (i) provide Petitioner sufficient information about the Student's placement and location of services for the 2010-2011 school year, and (ii) consider the placement and location of services Petitioner proposed.

### V. FINDINGS OF FACT

1. The Student is a .year-old, .grade, special-education student with multiple disabilities.<sup>11</sup> Presently, the Student has three disability classifications, ADHD, post-traumatic stress disorder, and borderline intellectual functioning.<sup>12</sup> The Student attended a full-time, non-public, special education school until June 2010.<sup>13</sup> He aged-out of the program, which serves students from kindergarten through the grade.<sup>14</sup>

---

<sup>10</sup> Petitioner also alleged that DCPS denied the Student a FAPE by failing to provide him appropriate placements for the 2010 summer and 2010-2011 school year. As discussed herein, this claim is subsumed into Petitioner's claim that DCPS failed to develop appropriate IEPs for the Student.

<sup>11</sup> Joint Stipulation.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

2. The Student spent his early years with his mother and then his maternal grandmother.<sup>15</sup> The Student's mother and grandmother physically abused and neglected him.<sup>16</sup> At age three, the Student was placed in foster care.<sup>17</sup> He was placed in thirteen different homes in three years.<sup>18</sup> While in foster care, the Student was physically and sexually abused on multiple occasions.<sup>19</sup> At age the Student was placed with Petitioner, who later adopted him.<sup>20</sup>

3. In 2000, when the Student was years, seven months old, he was diagnosed with attention deficit hyperactivity disorder ("ADHD") and oppositional defiant disorder ("ODD").<sup>21</sup> In 2001, the Student was hospitalized after trying to harm himself by wrapping an electric cord around himself and placing it in his mouth.<sup>22</sup> He was depressed and attempting to harm himself.<sup>23</sup>

4. In 2002, the Student was hospitalized for depressed mood, agitation, and suicidal thoughts.<sup>24</sup> In 2003, he hospitalized for agitation and uncontrollable behavior.<sup>25</sup> Since 2003, he has not reported suicidal thoughts, but he has had recurrent problems in school, including impulsive behaviors, disrupting class, and difficulty focusing on his schoolwork.<sup>26</sup>

5. By September 2007, the Student had a history of uncontrollable behavior, hyperactivity, poor impulse control, and difficulty managing his anger.<sup>27</sup> He was diagnosed with ADHD, mood disorder, and suspected post-traumatic stress disorder ("PTSD").<sup>28</sup>

6. In March and April 2008, DCPS conducted a psychological re-evaluation of the Student.<sup>29</sup> The evaluation revealed that the Student's overall cognitive functioning fell in the borderline range as his full-scale IQ was 75.<sup>30</sup> However, because the Student was uncooperative and refused to participate fully in the evaluation, his scores may not accurately reflect his

---

<sup>15</sup> Joint Exhibit 7 (Sept. 19, 2007, Psychiatric Evaluation).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; testimony of Petitioner; testimony of Educational Expert.

<sup>20</sup> *Id.*

<sup>21</sup> Joint Exhibit 6 (April 14, 2008, Report of Psychological Re-Evaluation).

<sup>22</sup> Joint Exhibit 7(the cord may not have been plugged into an electric socket).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; Joint Exhibit 6.

<sup>26</sup> Joint Exhibit 7.

<sup>27</sup> Joint Exhibit 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

abilities.<sup>31</sup> His effort during the academic testing was limited and, at times, violated the standardized procedures.<sup>32</sup>

7. The Student's verbal reasoning skills fell within the low average range while his nonverbal reasoning skills fell within the borderline range.<sup>33</sup> His verbal skills fell within the low average range.<sup>34</sup> He performed in the far below average range on tasks that required perceptual organization and visual discrimination skills.<sup>35</sup>

8. On a test of academic achievement, the Student's performance in reading ranged from the very low to low range.<sup>36</sup> His reading identification skills fell within the very low range compared to same-aged peers.<sup>37</sup> His passage comprehension fell within the low range.<sup>38</sup> The Student's spelling abilities fell within the low range.<sup>39</sup> His math skills were evenly developed and fell within the low range.<sup>40</sup> However, he refused to write the answers down himself, instead stating the answer out loud.<sup>41</sup>

9. Based on classroom observations and the Student's performance in school, he actually perform at a higher level that reflected on the 2008 psychological re-evaluation.<sup>42</sup> He is probably at a fifth-grade level in mathematics, and a -grade level in reading.<sup>43</sup> The Student's written language skills are at grade level 4.5, as this is the most challenging area for him.<sup>44</sup> He dislikes writing in class.<sup>45</sup>

10. The Student also has expressive and receptive speech-language deficits.<sup>46</sup> His expressive/receptive vocabulary scores fall in the low average range of functioning.<sup>47</sup> His overall core language score also is in the low average range.<sup>48</sup> He has the most difficulty on

---

<sup>31</sup> *Id.* He was easily frustrated and exerted minimal effort, sometimes to the extent where he refused to write the responses down. *Id.* When asked to draw a person, he drew a stick figure and scribbled all over the page. *Id.* He cursed profanely throughout the evaluation and twice left the room in frustration. *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* He refused to cooperate with this subtest unless he could spell the word out loud while the examiner wrote down the words. *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Testimony of Educational Expert.

<sup>43</sup> Joint Exhibit 1 (February 23, 2010, IEP Meeting Notes); testimony of Educational Expert.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Joint Exhibit 5 (June 8, 2009, Report on Speech and Language Evaluation).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

subtests that require him to use language that depends on memory, i.e., repeating sentences that increase in complexity without substitutions or omissions, using a word presented orally in a complete sentence, and identifying relationships based on word and sentence meaning.<sup>49</sup>

11. The Student exhibits basic pragmatic skills to engage in social conversation, although he requires verbal prompts.<sup>50</sup> During conversations, he is unable to sit still and often walks around the room.<sup>51</sup> He does not maintain proper eye contact or body position during conversations and had difficulty interpreting nonverbal clues.<sup>52</sup> These deficits affect his ability to interact and communicate appropriately with his teachers and peers.<sup>53</sup> He relies on his paraprofessional for assistance in communicating with others.<sup>54</sup>

12. The Student also has difficulties with visual-motor integration.<sup>55</sup> His motor coordination and handwriting skills are below average, and he functions at a second-grade level.<sup>56</sup> His letters are misshapen, possibly due to impulsivity.<sup>57</sup> He needs assistance with the physical act of writing, although he is able to write numbers.<sup>58</sup>

13. Currently, the Student presents as a hyperactive, impulsive, and oppositional adolescent.<sup>59</sup> In the classroom, he is disruptive and defiant.<sup>60</sup> He acts without thinking, loses control, disrupts others' activities, and cannot wait his turn.<sup>61</sup> He exhibits low frustration tolerance, angry outbursts, and poor emotional regulation.<sup>62</sup> He has significant problems with attention and concentration, is easily distracted, does not pay attention during lectures, and has difficulty focusing on his schoolwork.<sup>63</sup>

14. The Student is severely emotionally disturbed and exhibits symptoms of mood disorder, including depression and irritability.<sup>64</sup> He often wants to sleep in class, and becomes irritated when his sleep is interrupted to the point where he uses profanity, threatens violence,

---

<sup>49</sup> *Id.* His semantic knowledge, articulation, voice, and fluency are all in the average range of functioning. *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Testimony of Educational Expert.

<sup>52</sup> Joint Exhibits 1 (February 23, 2010, IEP); Joint Exhibit 5.

<sup>53</sup> *Id.*

<sup>54</sup> Testimony of Educational Expert.

<sup>55</sup> Joint Exhibit 4 (June 8, 2009, Occupational Therapy Evaluation).

<sup>56</sup> *Id.*; testimony of Educational Expert.

<sup>57</sup> Joint Exhibit 12 (February 2, 2010, Occupational Therapy Related Service Progress Summary).

<sup>58</sup> Testimony of Educational Expert.

<sup>59</sup> Joint Exhibit 6.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Joint Exhibit 7.

<sup>64</sup> *Id.*

and is physically aggressive toward staff and peers.<sup>65</sup> He also has moments when he wants to be left alone and, when peers disturb him, he responds by trading insults and threatening violence.<sup>66</sup>

15. If the Student gets upset or is frightened, he uses profanity, swings his arms, has fits of crying, moves furniture around, or makes a lot of noise.<sup>67</sup> He engages in these behaviors three to four times a week at home and school.<sup>68</sup>

16. The Student remembers the physical and sexual abuse he suffered as a child.<sup>69</sup> As a result, he is extremely afraid of all physical contact.<sup>70</sup> If anyone touches him, even gently, or provokes him with language, he exhibits disproportional responses and may stay out of control for an hour or more.<sup>71</sup>

17. The Student's behavior escalates when someone tries to restrain him.<sup>72</sup> Any type of physical restraint would result in retraumatization, increasing his PTSD symptoms worse.<sup>73</sup> The same is true for horseplay at school, although to a lesser extent.<sup>74</sup>

18. The Student exhibits provocative behavior, including exposing himself to a female classmate.<sup>75</sup> He is preoccupied with sexual topics, spends a lot of time talking about sex.<sup>76</sup>

19. In his speech-language therapy sessions during the 2009-2010 school year, the Student often was disruptive, used profanity, and discussed sexual activities.<sup>77</sup> He was oppositional and refused to complete tasks.<sup>78</sup> When verbally prompted to attend to the task, he used profanity and insults.<sup>79</sup> He is often unaware of other student's feelings throughout small-group language activities and often speaks to them inappropriately.<sup>80</sup>

---

<sup>65</sup> Joint Exhibits 1, 9 (April 16, 2010, Related Service Progress Summary); testimony of Educational Expert. The Student does not sleep well, and spends much of his time at night wandering around the house or moving furniture to release his frustrations. Testimony of Educational Expert, testimony of Petitioner.

<sup>66</sup> *Id.*

<sup>67</sup> Testimony of Petitioner.

<sup>68</sup> *Id.*

<sup>69</sup> Testimony of Educational Expert.

<sup>70</sup> *Id.* He is so afraid of being touched that must be medicated to endure routine physical contact such as a visit to the dentist. *Id.*

<sup>71</sup> Testimony of Educational Expert, testimony of Petitioner.

<sup>72</sup> Testimony of Petitioner.

<sup>73</sup> Testimony of the Student's treating psychiatrist ("Psychiatrist").

<sup>74</sup> *Id.*

<sup>75</sup> Testimony of Educational Expert.

<sup>76</sup> *Id.*; testimony of Petitioner.

<sup>77</sup> Joint Exhibit 10 (April 9, 2010, Speech and Language Related Service Report).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Joint Exhibit 1.

20. In his occupational therapy sessions, he refused to participate in most visual-perceptual activities.<sup>81</sup> When given the option to choose a task, he put his head down on the desk.<sup>82</sup>

21. The Student's behavior has improved since he was assigned a one-to-one aide.<sup>83</sup> However, he continues to require constant redirection and attention.<sup>84</sup> He leaves class without permission, instigates arguments with classmates, and has difficulty controlling his frustration.<sup>85</sup>

22. The Student requires significant accommodations and interventions in order to learn.<sup>86</sup> He also requires the assistance of a one-to-one paraprofessional for thirty hours per week.<sup>87</sup> He is unable to remain engaged and on task during the school day without the assistance of a paraprofessional.<sup>88</sup>

23. During the 2009-2010 school year at Non-Public School 1, the Student was in a class of five students and one teacher.<sup>89</sup> The staff in each classroom included a behavioral therapist who provided crisis intervention.<sup>90</sup> The therapists collaborated with classroom teachers to ensure therapeutic services were integrated into the curriculum.<sup>91</sup>

24. The Student requires a low student-teacher ratio, integrated related services, and a social worker or psychologist in the classroom at all times to address his behavioral and social challenges.<sup>92</sup> Due to his history of trauma, the Student requires a full-time, therapeutic, special education setting that does not utilize physical restraints.<sup>93</sup> He must be continuously supervised by staff trained to work with children with a high level of psychiatric disorders.<sup>94</sup>

25. Because the Student responds well to behavioral modeling and adopts the behaviors of his peers, he must be in a setting where his peers behave appropriately.<sup>95</sup> His IEP must provide group therapy with a focus on social skills training,<sup>96</sup> intensive social skills therapy,

---

<sup>81</sup> Joint Exhibit 12.

<sup>82</sup> *Id.*

<sup>83</sup> Joint Exhibit 6.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Joint Exhibit 1; Testimony of Educational Expert.

<sup>88</sup> Joint Exhibit 1.

<sup>89</sup> Testimony of Educational Expert.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*; Joint Exhibit 11.

<sup>93</sup> Joint Exhibit 11.

<sup>94</sup> *Id.*; Testimony of Educational Expert.

<sup>95</sup> Testimony of Educational Expert; Joint Exhibit 1.

<sup>96</sup> Joint Exhibit 7.

and social skills groups with same-age peers.<sup>97</sup> His IEP must incorporate a social skills component that is provided by a behavioral therapist rather than a special education teacher.<sup>98</sup>

26. The Student's IEP also must include behavioral component that has clear goals and consequences and is facilitated by a behavioral therapist.<sup>99</sup> This will enable him to develop an emotional understanding of consequences for violating behavioral goals.<sup>100</sup>

27. Because the Student's behavioral difficulties are equally present at school and in the home, Petitioner and the Student must participate in school-based family therapy.<sup>101</sup> This provides an opportunity for school staff to inform Petitioner and the Student of the strategies that have been successful in addressing the Student's behavioral and emotional challenges.<sup>102</sup>

28. Petitioner must receive training in the strategies that are successful in the school setting and in implementing these strategies.<sup>103</sup> Petitioner also must ensure the Student's behavioral goals and consequences in the home are consistent with those implemented at school.<sup>104</sup>

29. Due to the severity of the Student's emotional difficulties, the Student will regress unless his academic, behavioral, and social program are consistently implemented throughout the year.<sup>105</sup> If he does not receive a year-round program, the Student will regress and will take a long time to recoup the skills he developed by the end of the school year.<sup>106</sup> He will have difficulty initiating tasks and refuse to engage in classroom activities.<sup>107</sup> Thus, his IEP must provide for extended school year services.<sup>108</sup>

30. Without all of these interventions, the Student will be at great risk for escalating emotional and behavioral problems, which would severely impair his academic progress and his ability to develop and maintain age-appropriate relationships.<sup>109</sup>

31. The Student's current IEP, developed on February 23, 2010, provides that he will receive 28 hours of specialized instruction and two hours of related services outside the general education setting.<sup>110</sup> He is working toward obtaining a high school diploma.<sup>111</sup>

---

<sup>97</sup> Joint Exhibit 11.

<sup>98</sup> Testimony of Educational Expert.

<sup>99</sup> *Id.*; Joint Exhibit 11.

<sup>100</sup> Testimony of Educational Expert.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*; testimony of Non-Public School 2 Clinical Director ("Clinical Director").

<sup>103</sup> Testimony of Educational Expert.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*; Joint Exhibit 1.

<sup>107</sup> *Id.*

<sup>108</sup> Joint Exhibit 11.

<sup>109</sup> Testimony of Educational Expert.

<sup>110</sup> Joint Exhibit 1.

32. The IEP prescribes one hour of individual and group counseling with an emphasis on communications, social skills, and problem solving.<sup>112</sup> It also provides that the Student is to receive thirty minutes each of occupational and speech-language therapy.<sup>113</sup>

33. The IEP provides that the Student will receive full-time support from a dedicated aide/paraprofessional.<sup>114</sup> It also provides that he receives transportation to and from the non-public school he attended during the 2009-2010 school year.

34. The IEP includes a behavior implementation plan (“BIP”) that aims to address his defiance, moodiness, physical aggression, social skills, noncompliance, depression, low motivation, and inability to stay on task.<sup>115</sup> It further provides that he will receive crisis management of exclusion, seclusion, and restraint.<sup>116</sup> Petitioner provided consent to restrain the Student while he is on school property and a danger to himself or others.<sup>117</sup>

35. The IEP did not provide the Student ESY services for the 2010 summer even though it acknowledges that he will “regress academically and behaviorally without a consistent academic routine.”<sup>118</sup> At the February 23, 2010, IEP meeting, the DCPS representative and the staff at Non-Public School 1 agreed that the information presented at the meeting did not justify providing ESY services to the Student.<sup>119</sup> They suggested that the Student participate “in some kind of camp activity such as skateboarding.”<sup>120</sup> Petitioner disagreed with the team’s decision not to provide the Student ESY for the 2010 summer.<sup>121</sup>

36. On May 28, 2010, the Student’s IEP team reconvened to determine the Student’s placement and location of services for the 2010-2011 school year.<sup>122</sup> Petitioner informed the IEP team that the Student had been accepted at Non-Public School 2 for the 2010-2011 school year.<sup>123</sup> She stated that it was a small school of about eighty students, had small classes, can meet his needs, and can provide him vocational training.<sup>124</sup>

37. At the May 28, 2010, IEP meeting, the DCPS School Coordinator (“DCPS Coordinator”) described the program at the DCPS School.<sup>125</sup> He stated that all classes have a dually certified special education teacher or are co-taught by a special education and general

---

<sup>111</sup> *Id.* (IEP Meeting Notes).

<sup>112</sup> *Id.* (February 23, 2010, IEP).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* (February 23, 2010, IEP Meeting Notes).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Joint Exhibit 2 (May 28, 2010, IEP Meeting Notes).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

education teachers.<sup>126</sup> He asserted that the DCPS School has about ninety students with a maximum of ten students per class, and that all students are on a diploma track.<sup>127</sup> He added that the DCPS School provides transition services.<sup>128</sup>

38. The DCPS Coordinator informed the IEP team that DCPS School has on-staff social workers and a school psychologist, itinerant speech-language and occupational therapists, and crisis management specialists.<sup>129</sup> He further informed the team that the DCPS School has a time-out room staffed by a teacher.<sup>130</sup>

39. Petitioner responded by requesting that DCPS fund the Student's tuition at Non-Public School 2.<sup>131</sup> The DCPS Local Education Agency ("LEA") Representative refused to allow Petitioner to provide further information about the Non-Public School, stating that the Student would be attending the DCPS School for the 2010-2011 school year and that the DCPS School can implement his IEP.<sup>132</sup>

40. The Student's teacher and school counselor recommended phasing out his one-to-one paraprofessional.<sup>133</sup> The DCPS LEA Representative agreed that the Student should not receive a one-to-one paraprofessional at the outset of the 2010-2011 school year.<sup>134</sup> She recommended re-evaluating this decision thirty days after the Student transitions to the DCPS School.<sup>135</sup>

41. Petitioner and the Student visited the DCPS School on June 14, 2010.<sup>136</sup> She has limited mobility and could not find a navigable access into the school.<sup>137</sup> She ended up crawling up a set of steps to gain entrance, which took her about ten minutes and upset the Student.<sup>138</sup>

42. Petitioner then met with the DCPS Coordinator while the school principal attempted to talk to the Student and show him around the DCPS School.<sup>139</sup> The Student began using profanity and stated that he did not want to attend the DCPS School.<sup>140</sup> The principal

---

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*; testimony of Petitioner.

<sup>133</sup> Joint Exhibit 2 (May 28, 2010, IEP Meeting Notes).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Testimony of Petitioner, DCPS Coordinator.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

responded by stating that all he needed was one day with the Student, implying that he could correct the Student's behavioral problems in one day.<sup>141</sup>

43. The DCPS Coordinator explained to Petitioner that the DCPS School was a "hands-on school."<sup>142</sup> Upon hearing this, the Student's behavior escalated, and the DCPS Coordinator requested that Petitioner and the Student leave and return another day.<sup>143</sup> Petitioner and the Student never returned to tour the DCPS School.<sup>144</sup>

44. The program in which the Student would be enrolled in the DCPS School is on the third floor of the school building.<sup>145</sup> Due to Petitioner's limited mobility, she would be unable to access the Student's classes because the school does not have an elevator.<sup>146</sup>

45. All of the students at the DCPS School are on a diploma track and receive Carnegie units.<sup>147</sup> The students all have an emotional disturbance ("ED") disability classification, while some also have an "other health impairment" classification due to their ADHD diagnoses.<sup>148</sup> None of the students have speech-language or visual-motor integration impairments.<sup>149</sup>

46. The student-teacher ratio at the DCPS School is generally ten students to two adults.<sup>150</sup> These adults may be a special education and a general education teacher, two teachers and two teachers' aides, or a single teacher and a teacher's aide.<sup>151</sup> The teachers who teach elective classes, including physical education, art, music, computers/keyboarding, and horticulture are not all certified special education teachers.<sup>152</sup>

47. The DCPS School has seven social workers and a school psychologist on staff.<sup>153</sup> The school nurse is a former psychiatric nurse.<sup>154</sup> The DCPS School has itinerant speech-language and occupational therapists.<sup>155</sup>

48. The curriculum at the DCPS School does not include a social skills component.<sup>156</sup> The DCPS School has designated rooms where Students are sent for time-outs for bad

---

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Testimony of Petitioner, DCPS Coordinator.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Testimony of DCPS Coordinator.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

behavior.<sup>157</sup> Older students may be left alone in these rooms, although ninth grade students must be supervised by behavior technicians, teachers, or teachers' aides.<sup>158</sup> The DCPS School uses restraints when students are a danger to themselves or others.<sup>159</sup>

49. The students at the DCPS School occasional engage in horseplay and get into fights.<sup>160</sup> If there is a fight, the school staff break it up and then follow up with student mediation.<sup>161</sup>

50. Non-Public School 2 has a total of fourteen students.<sup>162</sup> Most of the classes have a five-to-one student-teacher ratio. Students may earn either diplomas or certificates of completion.<sup>163</sup>

51. Non-Public School has a therapeutic curriculum in which therapeutic support is the highest priority.<sup>164</sup> All therapy is provided in groups.<sup>165</sup> Small group therapy is provided every day.<sup>166</sup> Students expect to work on their own issues while helping others to work on their issues.<sup>167</sup> The school also implements peer-modeling for students with behavioral problems.

52. When a student has difficulty accessing the classroom curriculum, whether the student is falling asleep or distracting others, the student may ask for a large group therapy session.<sup>168</sup> The teacher also may call for large group therapy session.<sup>169</sup>

53. The curriculum at Non-Public School 2 also focuses on building social skills. The students work on these issues in small and large group therapy sessions.<sup>170</sup> Non-Public School 2 also offers family therapy during the day and in the evenings.<sup>171</sup> Family therapy is mandatory and occurs once a week for two hours.<sup>172</sup>

54. Non-Public School 2 also provides occupational and speech-language therapy to students as required by their IEPs.<sup>173</sup> It has two registered nurses and a psychiatrist on staff.<sup>174</sup>

---

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Testimony of DCPS Coordinator.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Testimony of Non-Public School 2 Clinical Director ("Clinical Director").

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

The cost of the psychiatrist, who can serve as a student's primary treating psychiatrist, is included in the tuition.<sup>175</sup> Social workers are assigned to each class to monitor and assess student behavior.<sup>176</sup>

55. Non-Public School 2 is a hands-off facility, and students understand that none of the staff will use physical restraints.<sup>177</sup> Most of these students have been bullied in the past but soon learn that they do not have to show aggression to avoid being bullied because the school is such a calm environment.<sup>178</sup> Students and staff are not allowed to engage in horseplay.<sup>179</sup>

56. When students use profanity, the Non-Public School 2 provides them space to calm down, usually in a therapist's office.<sup>180</sup> They are never left alone in a room.<sup>181</sup> Students also are allowed to walk off their frustrations.<sup>182</sup>

57. Students at Non-Public School 2 face consequences for using profanity in group settings, including being required to perform sit ups or push ups.<sup>183</sup> Students also may enter into contracts that provide incentives to decrease their foul language.<sup>184</sup>

58. The Student has been accepted by the Non-Public School 2.<sup>185</sup> The school can implement the Student's IEP, and provide him a full-time dedicated aide.<sup>186</sup> He would be in a classroom with two other students, and one special education teacher.<sup>187</sup> If he requires a class for lower-functioning students, he would be in a classroom with four to five students.<sup>188</sup>

59. Since the end of the 2009-2010 school year, the Student's behavioral problems have escalated.<sup>189</sup> For the last two and a half months, he has refused to take his ADHD and anxiety medications and his behavior has declined.<sup>190</sup> He is using profanity more often, and has become rude and disrespectful.<sup>191</sup> He ran away from home, has become more oppositional and

---

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Testimony of Petitioner.

<sup>190</sup> *Id.*; testimony of student's treating psychiatrist ("Psychiatrist"). The Student has expressed that he believes he does not have to take his medication because he is not in school. Testimony of Petitioner.

<sup>191</sup> *Id.*

defiant, and is taking advantage of Petitioner's poor health.<sup>192</sup> He has no regular routine, and stays out late, and refuses to go to sleep at night.<sup>193</sup>

60. This behavior was in stark contrast to his regular routine during the school year.<sup>194</sup> He is usually compliant with his medication and household rules, does his homework, and goes to sleep early.<sup>195</sup>

## VI. CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses testified credibly. The sole witness for Respondent testified consistently with the testimony of Petitioner, her investigator, and her educational expert.

## VII. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.<sup>196</sup> FAPE is defined as:

[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)...<sup>197</sup>

In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEIA; and (b) whether the Student's IEP is reasonably calculated to enable the Student to receive educational benefit.<sup>198</sup>

In matters alleging a procedural violation, a hearing officer may find that the 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.<sup>199</sup> In

---

<sup>192</sup> Testimony of Psychiatrist.

<sup>193</sup> Testimony of Petitioner.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Education v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

<sup>197</sup> 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

<sup>198</sup> *Rowley*, 458 U.S. at 206-207.

<sup>199</sup> 34 C.F.R. § 300.513 (a)(2).

other words, an IDEA claim is viable only if those procedural violations affected the student's substantive rights.<sup>200</sup>

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.<sup>201</sup> The court should not "disturb an IEP simply because [it] disagree[s] with its content."<sup>202</sup> The court is obliged to "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides."<sup>203</sup>

The burden of proof is properly placed upon the party seeking relief.<sup>204</sup> Under IDEA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.<sup>205</sup>

## VIII. DISCUSSION

### A. Petitioner Proved that DCPS Failed to Develop an Appropriate IEP and Provide the Student an Appropriate Educational Placement for the 2010-2011 School Year.

FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."<sup>206</sup> The IEP is the centerpiece of special education delivery system.<sup>207</sup>

The term "educational placement" refers only to the general type of educational program in which the child is placed.<sup>208</sup> "Educational placement" refers to the general educational program, such as the classes, individualized attention and additional services a child will receive, rather than the "bricks and mortar" of the specific school.<sup>209</sup>

---

<sup>200</sup> *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Krivant v. District of Columbia*, 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").

<sup>201</sup> *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

<sup>205</sup> 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

<sup>206</sup> *Rowley*, 458 U.S. at 188-89 (citation omitted).

<sup>207</sup> *Lillbask ex rel. Mauclair v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).

<sup>208</sup> *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).

<sup>209</sup> *Id.*

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,<sup>210</sup> establishes annual goals related to those needs,<sup>211</sup> and provides appropriate specialized instruction and related services.<sup>212</sup> The program must be implemented in the LRE.<sup>213</sup> For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."<sup>214</sup>

Courts have identified a set of considerations relevant to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the school, the placement's cost, and the extent to which the placement represents the least restrictive environment.<sup>215</sup>

The Student's February 23, 2010, IEP is fundamentally flawed. It fails to provide the Student a one-to-one paraprofessional even though the 2008 psychological evaluation, which was available to the IEP team, states that the Student's behavior has improved since he was assigned a one-to-one aide. This evaluation provided ample evidence that the Student continued to require the services of a paraprofessional because he continues to require constant redirection and attention.

The February 23, 2010, IEP also fails to provide a curriculum that focuses on social skills and small group, both of which were recommended by the Student's 2007 psychiatric evaluation. Perhaps most egregious is that the Student's IEP indicates that restraint and seclusion may be used for disciplinary infractions even though Petitioner informed the team that these techniques would further exacerbate the Student's behavioral problems.

Petitioner proved by a preponderance of the evidence that DCPS failed to develop an appropriate IEP and provide an appropriate educational placement for the Student for the 2010-2011 school year. Petitioner further proved that DCPS caused the Student significant emotional harm by failing to provide him ESY services for summer 2010. Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE.

Moreover, the DCPS School cannot provide the supports the Student requires, including peer modeling, a therapeutic setting, and a hands-off approach to discipline, and group therapy with an emphasis on social skills and family therapy. These are exactly what Non-Public School 2 provides. For these reasons, this Hearing Officer will order DCPS to fund the Student's costs of attending Non-Public School 2 for the 2010-2011 school year.

However, Petitioner failed to establish that the Student requires the services of a

---

<sup>210</sup> 34 C.F.R. § 300.320 (a) (1).

<sup>211</sup> 34 C.F.R. § 300.320 (a) (2).

<sup>212</sup> 34 C.F.R. § 300.320 (a) (4).

<sup>213</sup> 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).

<sup>214</sup> *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

<sup>215</sup> *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202).

psychiatrist in the classroom for educational purposes.<sup>216</sup> Thus, DCPS will not be held responsible for the cost of the Non-Public School psychiatrist's services during the 2010-2011 school year.<sup>217</sup>

**B. Petitioner Failed to Prove that Petitioner Was Denied an Opportunity to Participate in the Decision-Making Process Regarding the Provision of FAPE to the Student.**

In enacting the IDEA, "Congress sought to protect individual children by providing for parental involvement in . . . the formulation of the child's individual educational program."<sup>218</sup> Congress' emphasis on the full participation of the parent(s) in the IEP process "demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP."<sup>219</sup>

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.<sup>220</sup> One of the important policies underlying the need for an accurate written IEP is "to serve a parent's interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child's progress and determine if any change to the program is necessary."<sup>221</sup> Thus, DCPS must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.<sup>222</sup> Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a free and appropriate public education ("FAPE").<sup>223</sup>

Here, Petitioner participated in both IEP meetings, the February 23, 2010, meeting at which the Student's IEP was developed, and the May 28, 2010, meeting at which the IEP team determined his placement and location of services for the 2010-2011 school year. The DCPS

---

<sup>216</sup> See 34 C.F.R. § 300.34 (a) (related services include medical services for diagnostic and evaluative purposes only); § 300.34 (c) (5) (medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services).

<sup>217</sup> See *Cedar Rapids Cmty. Sch. Dist. v. Garrett F.*, 526 U.S. 66, 76 (1999) (LEA's liability for medical services provided by a physician are limited to services that are "for diagnostic and evaluation purposes.") (citing *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 892-894 (1984)); see also *Max M. v. Thompson*, 529 F. Supp. 1437, 1445 (N.D. Ill. 1984) (services that can only be provided by a psychiatrist are properly classified as medical services and need only be provided for diagnostic and evaluative purposes.)

<sup>218</sup> *Rowley*, 458 U.S. at 208.

<sup>219</sup> *Hinson v. Merritt Educational Ctr.*, 579 F. Supp. 2d 89, 102 (D.D.C. 2008) (citing *Rowley*, 458 U.S. at 206).

<sup>220</sup> 20 U.S.C. § 1414(f), 1415(b)

<sup>221</sup> *Alfano et al. v. District of Columbia*, 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Gov't of Dist. Of Columbia*, 360 F. Supp. 2d 138, 143 (D.D.C. 2005).

<sup>222</sup> 34 C.F.R. § 300.501 (c)(1).

<sup>223</sup> See, e.g., *W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

Coordinator attended the May 28, 2010, meeting and provided Petitioner ample information about the size of the student body, curriculum, and therapeutic supports at the DCPS School. He also provided information about the class in which the Student would be placed at the DCPS School.

While Petitioner may have disagreed with the decision of the IEP team regarding the provision of a dedicated aide to the Student, the content of his IEP, or his educational placement, this does not amount to procedural inadequacies that seriously infringe her opportunity to participate in the provision of FAPE to the Student. Thus, Petitioner failed to prevail on this claim.

**C. Petitioner Failed to Prove that the Student is Entitled to Compensatory Education.**

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). 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.

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award." *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007). Here, DCPS denied the Student a FAPE in failing to provide the Student ESY for summer 2010.

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Reid*, 401 F.3d at 518, 523. A compensatory education "award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d at 524. This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity." *Id.* at 524.

Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. *Reid*, 401 F.3d at 524. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE. *Id.* See also *Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

Here, Petitioner failed to present a compensatory education plan, much less a plan that

comports with the *Reid* standard. She presented no testimony that the remedy proposed by the Educational Expert would provide the Student the educational benefits that he likely would have accrued had DCPS provided him ESY during summer 2010. Thus, Petitioner failed to establish that the Student is entitled to compensatory education.

### **ORDER**

Based upon the Findings of Fact and Conclusions of Law herein, it is this 20th day of August 2010 hereby:

**ORDERED** that the Student shall attend Non-Public School 2 at DCPS expense for the 2010-2011 school year;

**IT IS FURTHER ORDERED** that DCPS shall not be required to fund the portion of the tuition that is related to provision of a psychiatrist in the Student's classroom during the 2010-2011 school year;

**IT IS FURTHER ORDERED** that on or before September 1, 2010, DCPS shall revise the Student's IEP in accordance with the factual findings herein, including but not limited to providing the Student a one-to-one paraprofessional for the 2010-2011 school year; and

**IT IS FURTHER ORDERED** that this Order is effective immediately.

By: /s/ Frances Raskin  
Frances Raskin  
Hearing Officer

### **NOTICE OF APPEAL RIGHTS**

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).

Distributed to:

Katherine Zeisel, counsel for Petitioners  
Laura George, counsel for Respondent  
Hearing Office  
dueprocess@dc.gov