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

Student Hearing Office  
810 First Street, NE, Second Floor  
Washington, DC 20002

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on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND  
PROCEDURAL HISTORY**

Student is a                      year-old male student, who attends a DCPS high school.

On June 29, 2011, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS (1) failed to develop an IEP reasonably calculated to provide FAPE, 2) failed to determine a proper placement, 3) failed to implement Student's IEP as written, 4) failed to conduct re-evaluations upon Parent's request, 5) failed to evaluate in all areas of suspected disability and to identify all of Student's special education and related services needs, 6) failed to provide an independent FBA evaluation after Parent's request, 7) failed to conduct age appropriate transition assessments and/or a vocational evaluation, and 8) owes Student compensatory education as a result.

As relief for these alleged denials of FAPE, Petitioner requested findings in Petitioner's favor; that DCPS place and fund Student at a specified private school or another appropriate placement identified by Parent; DCPS to place and fund transportation services for Student to the selected private school; compensatory education; independent comprehensive psychological, FBA, speech and language, vocational II, and other necessary evaluations; and a meeting within 10 business days of receipt of evaluations to review evaluations, revise and update Student's IEP, and issue a Prior Notice of Placement if a change in placement proves warranted.

On June 30, 2011, DCPS filed a Motion to Reset the Filing Date for Due Process Complaint due to Petitioner's failure to make proper service of the Complaint on DCPS until June 29, 2011. On July 5, 2011, the hearing officer issued an Order Granting DCPS's Motion to Reset the Filing Deadline to June 29, 2011.

On July 15, 2011, DCPS filed its Response to the Complaint, asserting therein as follows: Petitioner signed and agreed to the IEP; DCPS administered the SLS Career Explorer Self-Assessment, Employment Skill Assessment and CITE Learning Styles Inventory and developed a transition plan based upon the results; Student's needs can be met at the assigned DCPS high school so DCPS denied Petitioner's request for the specified private placement; and DCPS denied all claims and asserted there had been no denial of FAPE.

The parties concluded the Resolution Meeting process by failing to reach agreement on July 13, 2011. However, the parties elected not to prematurely end the resolution period. Therefore, the 45-day timeline will run from July 30 through September 12, 2011. Due to a continuance granted on August 24, 2011 at DCPS's request, the HOD due date is September 17, 2011.

On July 20, 2011, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. Petitioner withdrew its claims for failure to conduct reevaluations upon Parent's request, failure to provide an independent FBA upon Parent's request, and failure to conduct age appropriate transition assessments/vocational evaluation. Petitioner also committed to providing its proposed compensatory education plan in its five-day disclosures. The hearing officer issued the Prehearing Order on July 25, 2011.

By their respective disclosure letters dated August 17, 2011, Petitioner disclosed thirty documents (Petitioner's Exhibits 1 – 30), and DCPS disclosed thirteen documents (Respondent's Exhibits 1 - 13).

The hearing officer convened the due process hearing on August 24, 2011.<sup>1</sup> DCPS's disclosures and Petitioner's Exhibits 1-11, 13-24, and 26-30 were admitted into the record without objection. Petitioner's Exhibit 12 was excluded on DCPS's incompleteness objection, and Petitioner's Exhibit 25 was excluded on DCPS's objection that the 2003 document was too old to be relevant. When DCPS pointed out that Petitioner had failed to include a proposed compensatory education plan in its five-day disclosures, Petitioner indicated that its request for compensatory education was covered by its request for funding of and transportation to and from the requested private placement, and therefore, Petitioner did not intend to seek separate compensatory education. Thereafter, Petitioner waived its opening statement and DCPS reserved its opening until the start of its case. The hearing officer received testimonial evidence from Petitioner, and then DCPS requested a continuance because its witnesses were unable to testify due to a lack of access to the disclosures caused by the unexpected closing of DCPS schools after an earthquake the day before. The hearing officer found good cause and granted the requested continuance to August 29, 2011 before adjourning the hearing.

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

The hearing officer reconvened the due process hearing on August 29, 2011. DCPS presented testimony from one witness and rested its case. Thereafter, the hearing officer received closing statements and concluded the hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., 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.").

### **ISSUE(S)**

The issue to be determined is as follows:

1. Did DCPS fail to develop an IEP reasonably calculated to provide FAPE by including an inappropriate transition plan?
2. Did DCPS fail to determine a proper placement because Student is unable to obtain educational benefit from the assigned DCPS high school and needs a placement to meet his academic, social, emotional and behavioral needs?
3. Did DCPS fail to implement Student's IEP as written by failing to administer the DC-CAS to Student during SY 2009/10 and SY 2010/11 as required by the IEP?
4. Did DCPS fail to evaluate Student in all areas of suspected disability and identify all of Student's special education and related services needs by failing to develop a BIP?

### **FINDINGS OF FACT**<sup>2</sup>

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 and his primary disability is intellectual disability ("ID"). Student's performance on recent testing administered to assess his intellectual ability suggests he has Mild ID, and is therefore consistent with his classification of ID.<sup>3</sup>
2. Student's reading, math and written language skills are on the 2<sup>nd</sup> grade level. Student is on the certificate track in high school, which means that he is slated to receive a special education certificate instead of a high school diploma.<sup>4</sup>

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<sup>2</sup> To the extent that the hearing officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>3</sup> Testimony of Student; Respondent's Exhibit 7; Respondent's Exhibit 9 at 8 and 13; Petitioner's Exhibit 24 at 8 and 13.

<sup>4</sup> Respondent's Exhibit 9 at 10; Petitioner's Exhibit 23; *see* Respondent's Exhibit 11.

3. Student's current IEP is dated May 17, 2011. The IEP requires Student to receive 24 hours per week of specialized instruction outside general education and 30 minutes per week of behavioral support services outside general education. The IEP also requires Student to take the regular statewide assessment with accommodations.<sup>5</sup>
4. The transition plan in Student's May 17, 2011 IEP indicates that Student's long range postsecondary education and training goal is to receive vocational training in computer/machine repair. The transition plan lists the following annual measurable goals for Student in the area of education and training: contact RSA to obtain information and requirements to enroll in a vocational program for computer repair; research and identify vocational programs associated with a barber license to learn about enrollment requirements; and research and locate vocational programs to learn about auto mechanics to identify enrollment requirements. The transition plan also indicates that Student will perform the following post-secondary transition activities and services: learn organizational strategies to make sure he has all his necessary personal information for employment/job training, meet with the school counselor to discuss post-secondary options, develop a career portfolio to compile all vocational-related materials, and perform necessary organizational techniques, such as calendar use, scheduling, and record keeping. The transition plan indicates that these post-secondary transition activities and services are to be completed by April 20, 2011, which is prior to the date of the IEP. Functional life skills is one of the courses of study listed to support Student's post-secondary transition goals.<sup>6</sup>
5. The transition plan in Student's May 17, 2011 IEP lists four transition assessments with September through November 2010 dates of administration, but no results are listed for the assessments. The results of transition assessments have to be listed on a student's transition plan because the assessment results indicate what is driving the transition goals. Without the assessment results, there is no baseline data to say where a student is and how he or she is to achieve the goals.<sup>7</sup>
6. Student has begun working on an Individual Graduation Portfolio in his transition class, he is taking a life skills class, he has received nutrition lessons and gone on a field trip where he prepared a dinner that he took home, he is learning how to complete a job application and resume so he can apply for a summer job, and he has completed the SDS Career Explorer Self-Assessment, Employment Skills Assessment, and the C.I.T.E. Learning Styles Inventory.<sup>8</sup>
7. Student is interested in auto mechanics and barbering.<sup>9</sup>

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<sup>5</sup> Respondent's Exhibit 7; Petitioner's Exhibit 8.

<sup>6</sup> Respondent's Exhibit 7 at 11-13; Petitioner's Exhibit 8 at 11-13.

<sup>7</sup> Respondent's Exhibit 7 at 11; Petitioner's Exhibit 8 at 11; testimony of occupational therapist/vocational evaluator.

<sup>8</sup> Respondent's Exhibit 6 at 3.

<sup>9</sup> Testimony of Student.

8. Parent requested more vocational training for Student at his DCPS high school. However, when DCPS offered Student the opportunity to receive vocational training at the \_\_\_\_\_ or the \_\_\_\_\_ Student and Parent declined the offer.<sup>10</sup>
9. Student's May 2, 2011 IEP was developed at a May 2, 2011 meeting without the input or participation of Parent and her advocate, and therefore, the IEP was revised at Student's May 17, 2011 MDT meeting that was attended by Parent and her advocate.<sup>11</sup>
10. Student attended his neighborhood DCPS high school during SY 2009/10 and SY 2010/11. During SY 2009/10, movies/cartoons were shown in Student's class approximately 1-2 times per week.<sup>12</sup>
11. At his neighborhood DCPS high school, Student's classwork would be marked correct with scores of 100, even though Student's work contained no capitalization or punctuation. Moreover, sometimes the teacher's aide would correct Student's work so that he could get a better grade. Indeed, Student cannot even sign his name, but his teachers have stated that the focus in his class is on the internet, not on cursive writing.<sup>13</sup>
12. Student's classmates at his DCPS high school are mild to severely mentally retarded ("MR"). They have Down's syndrome and other physical deformities. Student is with these classmates all day. They make noises, run the halls and act differently from other students. Student does not go on field trips because he does not want to go with his classmates because they act differently from everyone else. On one hand, Student feels that he must be like his classmates because he's in the class with them. On the other hand, Student feels that he is more mature than his classmates and he is embarrassed by them.<sup>14</sup>
13. At his DCPS high school during SY 2010/11, Student duct taped one classmate's head to the desk when the teachers were not paying attention, and he taunted another classmate about her body odor so much that the classmate wanted to kill herself.<sup>15</sup>
14. The educational advocate observed Student at his DCPS high school during SY 2010/11 and found that he was unable to focus, was playing around in class and not paying attention, and talking to nearby students.<sup>16</sup>
15. At Student's DCPS neighborhood school, Parent requested tutoring for Student several times, but then she refused the tutoring offered by one of Student's teachers because Student and the teacher did not get along. In fact, the DCPS school offered Student tutoring both after school and on Saturdays. Parent stopped the after school tutoring,

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<sup>10</sup> Testimony of SEC.

<sup>11</sup> Petitioner's Exhibit 9.

<sup>12</sup> Testimony of Student.

<sup>13</sup> Testimony of Mother.

<sup>14</sup> Testimony of Student; testimony of Mother.

<sup>15</sup> Testimony of Student; testimony of advocate.

<sup>16</sup> Testimony of advocate.

stating that Student was grounded, and she declined the Saturday school because she felt the work would be too difficult for Student.<sup>17</sup>

16. Student's May 17, 2011 IEP requires Student to receive the regular statewide assessment with accommodations.<sup>18</sup>
17. In March of 2010, Parent told DCPS not to administer the DC-CAS to Student because he was not ready. Parent never heard anything from DCPS about the DC-CAS during SY 2010/11.<sup>19</sup>
18. Student has never taken the DC-CAS at his DCPS high school.<sup>20</sup>
19. Although the DC-CAS can provide information about a student's strengths and weaknesses, classroom teachers give tests and other diagnostic measures, such as the Woodcock-Johnson III, that provide information about the strengths and weaknesses of the students.<sup>21</sup>
20. Student had attended a specific private school that Petitioner is seeking as relief for the first few weeks of SY 2011/12 at the time of the due process hearing. His teacher takes his time to help him, and he has also learned how to change oil in a car. Student wants to attend the school because he believes he can get a better education there. There are fewer students, the teacher takes time to help him, and the other students are more like him at the school in that their disability does not show. The only way one can tell the students are disabled is if they read or do not know something. Student has not had any fights or behavior incidents at the private school.<sup>22</sup>
21. The private school Student has been attending is a nonpublic day special education school with services and vocational training for children with special needs. The students receive full-time out of general education IEP services, and there are no non-disabled students at the school. The school services students with learning disability, emotional disturbance, other health impairment, and intellectual disability. The school has on-site social workers for individual and group counseling. The school charges        per day for instruction for 218 days, and        per hour for related services. The school issued a May 13, 2011 acceptance letter for Student. Student is unfunded, but he has attended the school from May 13, 2011 through the end of SY 2010/11 and he returned to the school at the start of SY 2011/12. There are a total of 7 to 8 students in Student's class. Student comes to school daily, has not had any behavior issues, and gets along with his peers and authority figures. The school can implement Student's May 17, 2011 IEP.<sup>23</sup>

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<sup>17</sup> Testimony of Parent; Respondent's Exhibit 6.

<sup>18</sup> Respondent's Exhibit 7 at 8; Petitioner's Exhibit 8 at 8.

<sup>19</sup> Testimony of Mother.

<sup>20</sup> Testimony of Student.

<sup>21</sup> Testimony of SEC; *see* Petitioner's Exhibit 26.

<sup>22</sup> Testimony of Student.

<sup>23</sup> Testimony of Executive Director of private school; Petitioner's Exhibit 21.

22. The specified private school is reasonably calculated to enable Student to receive educational benefit.
23. By letter dated June 1, 2011, Student's educational advocate advised DCPS that Student had been accepted to attend the private school he is now attending, stated that Parent had requested an alternative placement at Student's May 17, 2011 MDT meeting and felt that the private school would be an appropriate placement, and requested a PNOP placing Student at the private school. By letter to Petitioner's counsel dated June 1, 2011, DCPS acknowledged receipt of the June 1<sup>st</sup> letter regarding Student and advised counsel that DCPS did not agree to bear the cost of Student's private placement and of DCPS's position that the DCPS neighborhood high school can meet Student's educational needs and provide a FAPE.<sup>24</sup>
24. Student's April 11, 2011 FBA identifies the following behaviors of concern for Student: defiance, moodiness, noncompliance, picks on others, bullying, off task, making excuses, poor motivation, and disturbing others. Student exhibited these behaviors midday, afternoon, morning, and during lunch period. The FBA indicates that Student's IEP can address the deficits noted in the following manner: Student needs to develop an awareness and acceptance of intellectual and cognitive limitations while increasing emphasis on strength so that he is able to consistently verbalize feelings of self-worth. Incentives should be used to increase attention on student's strengths and appropriate actions.<sup>25</sup>
25. Student needs a behavioral intervention plan to address defiant and off-task behaviors. Since the FBA identifies what the problems are and the BIP identifies how to remediate the problems, an FBA without a BIP is not appropriate because the BIP should follow the FBA if a student is having problems in class.<sup>26</sup>
26. Student's DCPS neighborhood school never developed a plan or strategy to deal with Student's behavior. There is no BIP in Student's records. However, Student's June 8, 2010 psychological evaluation recommended as BIP for Student.<sup>27</sup>

### **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. IEP/Transition Plan**

Beginning not later than the first IEP to be in effect when a disabled child turns 16, the child's IEP must include appropriate measurable postsecondary goals based upon age appropriate

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<sup>24</sup> Petitioner's Exhibit 19 and 20; Respondent's Exhibit 4.

<sup>25</sup> Respondent's Exhibit 8; Petitioner's Exhibit 22.

<sup>26</sup> Testimony of clinical psychologist; testimony of SEC.

<sup>27</sup> Testimony of Mother; Testimony of SEC; Respondent's Exhibit 9 at 13.

transition assessments related to training, education, employment, and where appropriate, independent living skills, and the transition services needed to assist the child in reaching those goals. 34 C.F.R. § 300.320(b). "Transition services" includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. 34 C.F.R. § 300.43.

Petitioner has alleged that DCPS failed to develop an IEP reasonably calculated to provide FAPE by including an inappropriate transition plan because the May 17, 2011 transition plan does not list the results of the transition assessments and contains information inconsistent with the information in Student's May 2, 2011 transition plan. On the other hand, DCPS argues that Petitioner's focus on blanks and errors in the transition plan does not negate the evidence provided concerning the assessments relied upon to develop the plan and the transition activities Student has been involved in. DCPS also notes that it offered Student an opportunity to participate in vocational training programs but Parent and Student rejected the offers.

Upon a careful review of the evidence and arguments in this case, the hearing officer concludes that although Petitioner has proven that Student's May 17, 2011 transition plan contains several errors and omissions that appear to be clerical in nature, those errors do not outweigh DCPS's evidence proving that Student took several transition assessments that were considered in developing his transition plan, he has been provided with classroom and in-the-field transition and/or life skills training, and DCPS has provided him with opportunities to participate in two vocational training programs but Student and Parent rejected those opportunities. As a result, the hearing officer concludes that Petitioner has not met its burden of proving that Student's IEP is not reasonably calculated to provide FAPE because it includes an inappropriate transition plan. *See K.C. v. Nazareth Area School District*, 57 IDELR 92 (E.D. Pa. 2011) (transition plan was not inappropriate where, *inter alia*, student attended introduction to careers class that taught resume writing and interviewing skills, student participated in transition rotation that taught life skills such as nutrition, and parents rejected district's offers for student to participate in School to Mall Program and a transitions and assessments program); *Lesesne v. District of Columbia*, 447 F.3d 828 (D.C. Cir. 2006) (quoting *Roland M. v. Concord Sch. Comm.*, 910 f.2d 983, 993 (1<sup>st</sup> Cir. 1990) (*en banc*) (procedural flaws do not automatically render an IEP legally defective); 34 C.F.R. § 300.513(a)(2) (procedural inadequacies must impede right to FAPE, impede parent's participation, or cause deprivation of educational benefit to constitute denial of FAPE). Nevertheless, because Petitioner has proven that the transition plan contains several clerical errors and omissions, the hearing officer will order DCPS to convene a meeting to correct the errors and omissions.

## **2. Placement**

Under IDEA, 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 this regard, a FAPE consists of special education and related services that, *inter alia*, include an appropriate secondary school. *See* 34 C.F.R. § 300.17. However, "educational placement," as used in IDEA means the overall educational program, not the particular institution where the program is implemented. *White v.*

*Ascension Parish School Board*, 343 F.3d 373, 379 (5<sup>th</sup> Cir. 2003) (“*White*”) (citations omitted); see also, *A.K. v. Alexandria City School Board*, 484 F.3d 672, 680 (4<sup>th</sup> Cir. 2007) (citing *AW v. Fairfax County School Board*, 372 F.3d 674, 676 (4<sup>th</sup> Cir. 2004)).

Where a public school system has defaulted on its obligations under the IDEA, a private school placement is proper under the Act if the education by said school is ‘reasonably calculated to enable the child to receive educational benefits.’” *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (D.D.C. 2008) (quoting *Wirta v. District of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994) (quoting *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*, 456 U.S. 176, 207)).

In the instant case, Petitioner has alleged that DCPS provided Student with an inappropriate placement because Student cannot obtain education benefit from the assigned DCPS high school. Petitioner contends that Student has severe behavioral problems that require him to be in a more restrictive environment, and that Student’s academic, social, emotional and behavioral needs are not being met at his current DCPS high school. Petitioner also points out that DCPS has placed Student in a classroom with students who have physical disabilities such as blindness or being wheelchair bound. To the contrary, DCPS’s position is that the DCPS high school is appropriate because Student can receive the instruction and services he needs there, the school can implement the IEP, and Student is making progress at the school. DCPS further contends that Student’s dislike of the DCPS high school is not enough to warrant a different location of services.

The evidence in this case reveals that Student’s placement consists of a full-time out of general education program that is being implemented in a self-contained classroom in a DCPS high school, where movies/cartoons are being shown several times per week, Student has been unable to focus and plays in class, Student’s work is marked correct when it is not correct or changed to the correct answer, Student has engaged in undesirable behavior that has resulted in and/or classmates, and Student’s classmates have obvious physical deformities and extreme behavior that make Student feel alienated and embarrassed to participate in activities with his classmates. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving that DCPS denied Student a FAPE by providing an inappropriate location of services for implementation of Student’s IEP. See e.g., *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) (provision of FAPE requires that the education to which access is provided be sufficient to confer educational benefit upon the child). As a result, the hearing officer will order DCPS to fund Student’s placement at the specified private school for SY 2011/12 and to provide Student with transportation to and from the private school during SY 2011/12.

### **3. Implementation of IEP**

The FAPE required by IDEA is tailored to the unique needs of the handicapped child by means of an “individualized educational program.” *Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982). Hence, IDEA requires that each teacher and service provider responsible for implementation of the IEP be provided with access to the IEP, and be informed of his or her responsibilities related to

implementation of the IEP and the specific accommodations, modifications and supports that must be provided to the child in accordance with the IEP. 34 C.F.R. § 300.323(d).

In the instant case, Petitioner has alleged that DCPS failed to implement Student's IEP by failing to administer the DC-CAS, DCPS's standardized statewide assessment, to Student during SY 2009/10 and SY 2010/11. However, the evidence in this case proves that Parent instructed DCPS not to administer the DC-CAS to Student SY 2010/11. Moreover, although the evidence tends to prove that DCPS did not administer the DC-CAS to Student during SY 2010/11, Petitioner has failed to demonstrate that Student suffered harm as a result. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving that DCPS denied Student a FAPE by failing to administer the DC-CAS to Student during SY 2009/10 and SY 2010/11. *See Lesesne v. District of Columbia*, 447 F.3d 828 (D.C. Cir. 2006) (IDEA claim is viable only where procedural violations affected student's substantive rights); 34 C.F.R. § 300.513(a)(2) (procedural inadequacies must impede right to FAPE, impede parent's participation, or cause deprivation of educational benefit to constitute denial of FAPE).

#### **4. BIP**

In developing a child's IEP, in the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior. 34 C.F.R. § 300.324(a)(2)(i).

Here, Petitioner has alleged that DCPS failed to evaluate Student in all areas of suspected disability and identify all of Student's special education and related services needs by failing to develop a BIP. However, as DCPS points out, a BIP is not an evaluation. Hence, DCPS cannot be held liable for failing to evaluate due to its failure to develop a BIP for Student.

On the other hand, the evidence in this case establishes that Student is in need of a BIP to address his off-task and defiant behaviors but DCPS has failed to develop one for him. As a result of this failure, Student has continued in undesirable behaviors, some of which has resulted in harm to his classmates. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proving a denial of FAPE as a result of DCPS's failure to develop a BIP for Student, and the hearing officer will order DCPS to develop a BIP for Student without delay. *Compare Lathrop R-II School District v. Gray*, 611 F.3d 419 (8<sup>th</sup> Cir. 2010) (no denial of FAPE where school district conducted FBA, developed BIPs, and implemented suggested strategies).

### **ORDER**

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

1. For SY 2011/12, DCPS shall provide funding for and transportation to and from the specified private school that Student is currently attending, with said funding to consist of \_\_\_\_\_ per day for instruction for 218 days of instruction, and \_\_\_\_\_ per hour for related services.

2. Within 14 days of the issuance of this Order, DCPS shall develop an appropriate BIP for Student, taking into account the information contained in Student's FBA.
3. Within 21 calendar days of the issuance of this Order, DCPS shall reconvene Student's IEP team and the IEP team shall revise Student's IEP:
  - a. to correct all clerical errors and omissions in Student's transition plan by including the results of Student's transition assessments and providing a proper date subsequent to the date of the IEP as the completion date for Student's prescribed transition activities and services.
  - b. to review Student's BIP that will be developed pursuant to this Order and incorporate same into his May 17, 2011 IEP.
4. All remaining claims and requests for relief in Petitioner's June 29, 2011 Complaint are **DENIED AND DISMISSED WITH PREJUDICE.**

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Date: 9/16/2011

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