DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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Confidential

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STUDENT HEARING OFFICE
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STUDENT[1], by and through Parent Petitioners, v. District of Columbia Public Schools Respondent.	**HEARING OFFICER'S DECISION** **Date: January 21, 2010** **Hearing Officer: Wanda I. Resto**

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

I. PROCEDURAL BACKGROUND

On November 16, 2009, parent's counsel filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent"), pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE").[2] The Petitioner claims failures to provide the Student with an appropriate individualized education program ("IEP") and educational placement for the 2008/2009 and 2009/2010 school years; not complying with a June 6, 2009, Hearing Officer Decision ("HOD") and failure to provide an appropriate compensatory education plan for the missed services of the 2008/2009 and 2009/2010 school years.

The Petitioner requested the Respondent fund a full time special education private placement of her choice, convene a multidisciplinary team ("MDT") meeting to review the clinical evaluation, complete an appropriate IEP for the Student and provide her with appropriate special education and related services. Additionally the Petitioner requests that the Respondent provide a compensatory education plan for the Student.

On November 27, 2009, the DCPS filed a Response to the Parent's Due Process Complaint. [3]The Respondent argued the Student was provided 27.5 hours weekly of specialized instruction; one hour of behavioral support service with two goals for emotional, social and behavioral development. The Respondent further argued that the IEP team met on August 17, 2009 to comply with the HOD and again on October 16, 2009, and the parent attended both meetings by phone. At the meeting, the Clinical Psychological evaluation provided on September 24, 2009 was reviewed, an IEP and the meeting notes were generated; the School Psychologist was present and the parent was in agreement at the meeting. [4]

On November 27, 2009, the Respondent filed a Motion to Dismiss based on the doctrines of collateral estoppel and *res judicata*: claiming the Complaint contained issues and factual allegations included in a previous Complaint, dated April 20, 2009, *and* decided upon by the Hearing Officer in the June 7, 2009 HOD. Additionally, the Respondent claimed that the Petitioner withdrew the request for compensatory education in the previous hearing; and therefore is precluded from presenting the same issue for litigation in this Complaint.

On December 1, 2009, the Petitioner filed a Response to the Motion to Dismiss, the Petitioner argued that, the HOD ordered that upon the Student attending the School for 30 consecutive days, a MDT be convene to review the Student's progress and make adjustments to the IEP. The Petitioner argued that although the Respondent was aware that the Law Offices of Christopher Anwah represented the Petitioner with her educational rights, it failed to notify the office of a meeting that was held on October 16, 2009 and the Petitioner was without an advocate at that meeting and neither placement nor compensatory education was discussed.

A telephonic pre-hearing conference call for the above reference matter was conducted December 16, 2009 at 3:00 PM. Attorney Christopher Anwah participated on behalf of the Petitioner. Attorney Tanya Chor participated on behalf of the District of Columbia.

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[2] 20 U.S.C. §1415(c)(2)(B)(i)(I)

[3] Supplemented on December 7, 2009 to include the August 2009 meeting date.

[4] Respondent attachment B

The Petitioner reiterated her claims and alleged that the Student's IEP continues to contain multiple disability ("MD") as the primary category without specifying which disability. The Petitioner argued that the clinical evaluation was reviewed by a social worker and not a licensed psychologist. Additionally the Petitioner claimed that the Respondent has ignored recommendations made in the Student's evaluations; therefore the 2008-2009 and 2009-2010 IEP are inappropriate.

The Respondent argued the Petitioner is barred by a prior decision that addressed issues now raised in the present Complaint. The Respondent further argued that the compensatory education could have been requested at the prior Hearing; yet, the Petitioner withdrew the claim. Furthermore, argued the Respondent it complied with the HOD and held two MDT meetings and, the MDT reviewed the clinical evaluation, there has not been a denial of a FAPE, and the IEP can be implemented at the current placement.

A December 17, 2009 Order reaffirm*ed that a prior HOD* [5] *ordered a* MDT meeting, the parent was to be given an opportunity to present evidence towards the appropriateness of the placement she chose. The MDT had to discuss the placement options in the DCPS system and non public schools and document the pros and cons for the Student of each educational placement discussed. Petitioner's claims relating to IEP and placement during school year 2008-2009 were decided in the June 2009 HOD, and a final judgment on the merits of the issues was rendered. [6] The Hearing Officer found no showing was made that a hearing was held on the merits of the issue of the DCPS's failure to provide the Petitioner compensatory education, or that the undersigned Hearing Officer in the prior proceeding, rendered a final judgment on the merits of this issue. [7]

On December 28, 2009, the Petitioner filed a Motion requesting the December 21, 2009 Order be amended. A December 31, 2009, Order granted the Petitioner Motion to Amend in part: it allowed the Petitioner to present evidence on the noncompliance with the HOD and on the relevance of the attorney not participating in the October 16, 2009 meeting.

A hearing was held on January 15, 2010, the Petitioner presented a disclosure letter dated January 8, 2010 to which twenty-eight documents were attached, labeled P-1 through 28 and lists eight witnesses; three witnesses testified. The Respondent presented a disclosure letter dated January 8, 2010, to which fourteen documents were attached, labeled DCPS-1 through 14 and identifying eight witnesses; two witnesses testified.

The identifying witnesses and to which were attached, DCPS 1 through 14The Respondents documents were admitted without objections. Petitioner's document P1through13 where admitted without

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[5] June 7, 2009- the Petitioner at the Hearing withdrew the request for compensatory education. The HOD found the Respondent denied the Student a FAPE *inter alia* by failing to provide an appropriate IEP and placement during the 2008-2009 school year. The parties were ordered by August 21, 2009 to convene a meeting to review the clinical evaluation, discuss the Student's disability classification, update the IEP and make an educational placement decision for the 2009-2010 school year.

[6] In both the April 20, 2009 and the November16, 2009 Complaints, the thing sued for, among others, was for Respondent failing to provide the Student with an appropriate IEP and educational placement for the 2008/2009 school year .

[7] The Petitioner was instructed that to sustain the request for a compensatory education award the Petitioner must satisfy the standard set out in Reid v. District of Columbia, 401 F.3d 516 (2005).

objection, P 27 was withdrawn, P28 was excluded, and the remaining documents were subsequently accepted into evidence.[8]

The hearing was conducted in accordance with the rights established under the IDEIA and the implementing federal and local regulations, and the SOP. [9]

II. ISSUE(S)

1. Did the Respondent comply with a June 7, 2009 HOD?

2. Whether the Respondent failed to implement an appropriate IEP, and to provide related services for the 2009-2010 school year?

3. Did the Respondent fail to provide an appropriate educational placement for the Student during the 2009-2010 school year?

4. Was the Student denied a FAPE?

5. Can the school chosen by the Petitioner meet the unique needs of the Student?

6. Is the Student entitled to receive compensatory education services?

III. FINDINGS OF FACT

1. Both the parent and the Student reside within the District of Columbia. The Student is attending a DCPS during the 2009-2010 school year. The Student is a Student with disabilities under the IDEIA. The Student's most recent IEP is dated October 16, 2009 and provides 27.5hours of specialized instruction in Mathematic, Reading, and Written Expression outside of the general education; with 60 minutes of behavioral support services weekly and providing for extended school year services. According to the IEP the Student's disability classification is multiple disabilities and the areas of concern to be addressed are emotional, social and behavioral development. The Student's BASC-t scores fall within the clinically significant for the following behaviors: hyperactivity, aggression, conduct problems depression attention problems, learning problems, withdrawal, anger control, bullying, developmental social, emotional self control, executive function, negative emotionality and school problems. The IEP indicates the Student requires assistance in the areas of Mathematics, Reading, and Written Expression and help with self control, appropriate expression of feelings, compliance with teachers and outside of general education classroom in order to address her severe education and emotional needs. The Petitioner did not sign the IEP.[10]

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[8] The Hearing Officer sustained DCPS' objections to Petitioner's proposed exhibit No. 28, (witness not to be called). The Hearing Officer deferred ruling on the admission of Exhibit Nos. P 16-25 and No, 27 until offered into evidence, and were subsequently admitted.

[9] IDEIA and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

[10] DCPS 5 October 16, 2009, IEP

2. A June 7, 2009 HOD found the Respondent denied the Student a FAPE by failing to provide an appropriate IEP and placement during the 2008-2009 school year. The undersigned Hearing Officer *inter alia* ordered the Respondent to convene a meeting by August 21, 2009 update the IEP and make an educational placement decision for the 2009-2010 school year. At that MDT meeting, the parent was to be given an opportunity to present evidence towards the appropriateness of the placement she chose. The MDT had to discuss the placement options in the DCPS system and non public schools and document the pros and cons for the Student of each educational placement discussed. It also required the Respondent upon the Student attending the School for 30 consecutive days to convene a MDT to review the Student's progress and make adjustments as necessary to the IEP.[11]

3. On August 7, 2009, there was a meeting to discuss the Students least restrictive environment as a Student with an emotional disturbance. At the meeting it was discussed that the Student would be going to an ED cluster program. That the class would be from 7 to 8 Students with two educational aides; and the Student would have inclusion with the general education Students during lunch. It was stated that MacFarland can implement a full time ED IEP; with mental health workers and full-time psychologist. The parent felt that Accotink will provide a 1 to 1 teacher ratio and the bus to pick up the Student. The MDT notes indicate the meeting was to share information about MacFarland and provide the parent an opportunity to discuss with the MDT team an appropriate placement. [12]

4. At the August 2009 meeting the prior notice of placement had been issued to MacFarland. The SEC spoke about the placement but there was no opportunity to visit or discussion about the parent choice of school and the pro/cons were not documented. The Student is not receiving counseling and has mostly Ds and F as grades. During various observations of the Student; she was seen roaming the halls; defiant with staff and in fights with peers. The Student tends to leave her classroom and go to another floor of the school to be with friends in the general education population. The Student behavior has worsened since at MacFarland. At the August 2009 MDT meeting the prior notice of placement had been issued to MacFarland before a discussion on the appropriateness of the placement. The SEC spoke about the placement but there was no opportunity to visit or discussion about the parent choice of school. The Student is not receiving counseling and has mostly Ds and F as grades. [13]

5. The Student is cognitively functioning within the borderline range as measured on the Wechsler Intelligence Scale for Children — Fourth Edition ("WISC-IV") with a Full Scale Intelligence Quotient ('FSIQ") of 71; also within the borderline range are Students verbal comprehension index of 75 and have working memory index of 71. Strength as noted in her perceptual reasoning index of 90 with average abilities. The deficit is reflected in the Student's processing speed index of 65 which is within the border line range. The Visual Motor Integration, 5th Ed. ("VMI") yielded a borderline standard score of 75. The Behavior Assessment System for Children, Second Edition ("BASC") reveals behaviors within the "at risk" range and the teachers' reports demonstrated numerous behaviors from within the clinically significant range. The Scale for Assessing Emotional Disturbance (" SAED") revealed the Student exhibits socially maladjusted behaviors.[14] A Clinical psychological evaluation *provides a* diagnostic impression of the Student it indicates on Axis I - Attention –Deficit/Hyperactivity Disorder Nos; Learning Disorder, Nos; Generalized Anxiety

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[11] June 7, 2009 HOD.

[12] P 13 August 7, 2009 MDT/placement notes.

[13] Testimony of the education advocate and Petitioner, P-8, and P10.

[14] P10 comprehensive reevaluation December 11, 2008.

Disorder; Axis II: None; Axis III : None; Axis IV- school problems of longstanding duration and Axis V GAF current =55. [15]

6. The Student has deficits reading compared to others in her grade level; she is in a self-contained classroom outside the general education setting, the SEC by the Counselor the Student is provided behavior support. The Student is the only girl in her class of 6 students, there is a SET, teacher's aide and a dedicated aide assigned to one of the students. The Student has expressed her discomfort with being the only female in the class. A female instructional staff was assigned to the class. The Student regularly leaves the classroom or does not enter the building. When the staff tries to redirect the Student into class or to modify her behavior she becomes violent. The staff has attempted interventions by speaking with the Student and with the Mother who indicates she does not want the Student in that school. The Student gravitates to other floors in the school to friends in the general education and she tends to roam the halls.[16]

7. Two to three hours of tutoring can address the Student's Math, Reading and Writing deficiencies; counseling and one hour weekly of mentoring can address the Student's behavior problems. The compensatory education plan for the Student as articulated by the Education Advocate. [17]

8. DCPS psychologist testified she had not reviewed the Student's evaluations. [18]

9. Accotink Academy *is* a private therapeutic day school for students with learning and emotional disabilities in Springfield, Virginia serving Students with special education full time needs, who range in age from five to twenty-one. The school places a strong emphasis upon social-emotional development. The Student-to-teacher ratio is small and intensive; the Students will receive individualized attention and group counseling and work at her level. The classroom the Student would be placed in has 2 other girls and 3 boys with a special education teacher and a co-teacher. There are seven behavior counselors, Language and Speech, Occupational Therapy, Physical Therapy and Psychological Counseling can be provided. The teachers are certified in the state of Virginia. The intervention used for abating attendance and roaming the hallway problems is constant adult supervision and the announcement of the missing Student's name via the intercom system with little opportunities to wander. The Student's educational records, clinical psychological, FBA were reviewed and the team determined that the Student can benefit from the placement at Accotink. [19]

IV. CONCLUSIONS OF LAW

FAPE Determination

The Respondent is required to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 22, determine their eligibility for special education and related services and, if eligible, provide special education and related services through an appropriate

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[15] P 8 September 9, 2009 Clinical Evaluation.

[16] Testimony of the Special Education Coordinator.

[17] Testimony of the Education Advocate

[18] Testimony of the DCPS Psychologist.

[19] Testimony of the Private school representative.

IEP and Placement, designed to meet their unique needs and prepare them for further education, employment, and independent living.[20]

The applicable regulations define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)." [21]

In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the Student to receive educational benefits.[22]

Burden of Proof

The burden of proof is the responsibility of the party seeking relief, in this case the parent. It requires that based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the Student a FAPE.[23]

Compliance with a June 7, 2009 HOD

The Petitioner demonstrated that the Respondent did not document the pros and cons of the proposed educational program as ordered June 7, 2009 HOD at the August 2009 or the October 16, 2009 MDT/IEP meetings.

Individualized Education Program

The Petitioner asserted the Respondent fail to implement an appropriate IEP, and to provide related services for the 2009-2010 school year?

In accordance with the IDEIA an Individualized Education Programs or IEP "means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

aa. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

bb. Meet each of the child's other educational needs that results from the child's disability."

The LEA must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals...and in the general

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[20] 20 U.S.C. § 1400 et seq. and 5 D.C.M.R. § 3000.2 (2006) .

[21] 34 C.F.R. § 300.17

[22] *Bd. of Educ. v. Rowley,* 458 U.S. 176, 206-07 (1982); and *Jalloh v. District of Columbia,* 535 F. Supp. 2d 13, 16 (D.D.C. 2008).

[23] 5 D.C.M.R. § 3030.3.

education curriculum, if appropriate; the results of any reevaluation conducted ...; information about the child provided to, or by, the parents...; the child's anticipated needs; or other matters.[24]

The Respondent met in August 2009 and again in October 2009; discussed and updated the Student's IEP. The Petitioner failed to provide evidence that the October 16, 2009 IEP is inappropriate.

Educational Placement

Did the Respondent fail to provide an appropriate educational placement for the Student during the 2009-2010 school year?

According to the IDEIA the determination of the educational placement of a child with a disability should be done annually and must be based on a child's IEP. The IDEIA and its regulation requires the Respondent as the local state education agency, to make certain that the educational placement, for the child with a disability within its jurisdiction, is able to implement the Student's individualized educational program. The LEA shall ensure that the educational placement decision for a child with a disability is ...based on the child's IEP." Additionally when determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that— (a) The placement decision— (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[25]

The uncontroverted evidence was that the Student continues to be disruptive, roams the halls, and is not going to the counseling sessions. The Student is not attending classes, has not improved attendance or behavior, and is fighting with peers in her special education classroom. The Respondent has obligation to provide an appropriate placement and if the Student is not responding with to the placement consider other options. The educational placement is interfering with her learning, and it is not tailored for this Student. The Student's evaluations demonstrate the Student is far behind peers academically and is not showing progress as required in the IDEIA.[26]

Counsel for the Respondent suggested a lateral placement at a DCPS school may be an option but there was never one offered. A MDT Meeting was held for the Student on October 19, 2009, in which the IEP Team reviewed the Student's evaluations, and revised and updated the Student's IEP yet there was no evidence that he unique needs of the Student was address when the Respondent's members of the MDT made the placement decision. While in the present case the placement may be base on an appropriate IEP, this Student's placement is not appropriate because it is not implementing the IEP.

The Respondent has failed to provide the Student with an educational placement according to its IDEA obligations. The Parent has sought and the Student has been accepted in a private special education program. Accotink Academy has accepted the Student for placement. The student can receive services in accordance with the IEP in a full time placement with a low student teacher ratio.

The Respondent has had at least two opportunities two make a proper placement decision for the educational placement of the Student during 2009-2010 school year. Petitioner's choice of educational placement is the Accotink Academy a full time special education private school outside of the District of Columbia, with no opportunity for the Student to interact with disable peers. While the IDEIA, has a

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[24] 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), and 34 C.F.R. § 300.324(b)(1).

[25] 20 U.S.C. 1412(a)(5), 34 C.F.R. § 300.17, 34 C.F.R. § 300.116 and 5 D.C.M.R. § 3013.1(e).

[26] P 8 Clinical, P 9 Educational, P 10 Comprehensive Re-evaluation, and P 12 Functional Behavior Assessment.

preference for educating children with disabilities in regular classes with appropriate aids and supports; and to ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. The evidence was that the least restrictive environment for this Student requires she has a full time specialized instruction outside of the general population and that the Accotink can provide educational benefit for the Student.[27]

In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child's home. *Id.;* see also 20 U.S.C. ? 1412(a)(5). [28]Further, mainstreaming of children eligible for special education services under the IDEA is "'not only a laudable goal but is also a requirement of the Act.'" *Roark v. District of Columbia,* 460 F. Supp.2d 32, 43 (D.D.C. 2006) *(quoting DeVries v. Fairfax County Sch. Bd.,* 882 F.2d 786, 878 (4th Cir. 1989)); *Rowley,* 458 U.S. at 201 ("The Act requires participating States to educate handicapped children with nonhandicapped children whenever possible."). If no public school can accommodate the student's needs, the government is required to place the student in an appropriate private school and pay the tuition. *see also Sch. Comm. of Burlington v. Dep't of Educ.,* 471 U.S. 359, 369 (1985).

Compensatory Education

The failure to comply with June 7, 2009 HOD established a presumption of harm that the Respondent must rebut. A Consent Decree in Blackman v. District of Columbia, 2006 WL 2456413 (D.D.C. Aug. 24, 2006) ("Consent Decree") established "a rebuttable presumption of harm ... for students who failed to timely implementation of HODs and SAs." In Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005) the Court held that, once a finding has been made that a student has been denied FAPE, the student is entitled to compensatory education services.

After reviewing the documents in the record, the representations made by counsel for the parties and the findings of fact, this Hearing Officer determines that the Respondent failed to present evidence to rebut the facts; the presumption of harm has not been refuted consisting therefore in a denial of FAPE to the Student.

Compensatory education award is an equitable relief. A Petitioner must demonstrate the student's specific educational deficits resulting from a loss of FAPE and the specific compensatory measures needed to best correct those deficits, if any. The Petitioner has an obligation to argue the need and reasonableness of the amount of compensatory education requested and how the hours would be integrated into the student's current educational program.

"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." See, G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 308 (4th Cir. 2003). More specifically, as the Fourth Circuit has explained, "[c]ompensatory education involves discretionary, prospective, injunctive relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." G. ex rel. RG, 343 F.3d at 309 **(emphasis supplied).**

In every case, the inquiry as to the compensatory education must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits

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[27] 20 U.S.C. 1412(a)(5) , and 34 C.F.R. 300.114 through 300.118.

[28] 20 U.S.C. 1412(a)(5), and 1412(a)(10)(B)(I);

that likely would have accrued from special education services the school district should have supplied in the first place. Reid Id.

A Hearing Officer cannot determine the amount of compensatory education that a student requires unless the record provides him with "insight about the precise types of education services [the student] needs to progress." Branham v. D.C., 427 F.3d 7, 12 (D.C. Cir. 2005).

The evidence in this Complaint to support a request for compensatory education consisted of the Education Advocate requesting compensatory education award of one-one tutoring. The witness suggested two to three hours of tutoring can address the Student's Math, Reading and Writing deficiencies; counseling and one hour weekly of mentoring can address the Student's behavior problems. The compensatory education plan for the Student as articulated by the Education Advocate

The *Reid* decision demands substantial evidence of a link between the compensatory education sought and the expected educational benefit. The student "is not entitled, however, to an amount of such instruction predetermined by a cookie-cutter formula, But rather to an informed and reasonable exercise of discretion regarding what services he needs to elevate him to the position he would have occupied absent the school district's failures." The student did not provide evidence to meet the qualitative standard imposed by the Reid case.

The Petitioner did not offer any evidence on the level of proficiency the Student would have reached but for the violation or where the Student is currently. There was no information on the hours needed or 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 and how the hours would be integrated into the Student's current educational program.

The Hearing Officer's responsibility to determine a compensatory education services is based on receiving sufficient evidence which includes the appropriate assessments, records, an explanation of the calculations of hours and information on the programs available to address the individual needs of the Student. The Petitioner failed to provide the evidence that would allow the Hearing Officer to draft a compensatory education plan that would suffice the *Reid* standard.

V. SUMMARY OF DECISION

The Petitioner demonstrated that the Respondent did not document the pros and cons of the proposed educational program as ordered in a June 7, 2009 HOD. The Petitioner failed to provide evidence that the October 16, 2009 IEP is inappropriate. The Petitioner proved that the Student's continues to have behavior and academic problems, and there was no evidence that this Student's unique needs were addressed in the current placement. The educational placement is interfering with the Student's learning and there is no progress as required in the IDEIA. The Respondent must issue a prior notice of placement to the Accotink Academy. The Petitioner did not provide the Hearing Officer with the *Reid* standard nor does the record provide sufficient information to form insight about the precise types of education services needed to build a compensatory education plan for the Student; the request for compensatory education is denied.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the DCPS has denied the Student a FAPE and issues the following:

VI. ORDER

ORDERED, the Respondent shall within 20 school days issue a prior notice of placement to the Accotink Academy. The Respondent shall fund the placement of the Student at the Accotink Academy with transportation and related services for the 2009-2010 school year, **it is further;**

ORDERED, upon the Student attending the School for 30 consecutive days a MDT will convene to review the Student's progress, discuss attendance and make adjustments as necessary to the IEP, **it is further;**

ORDERED, the Petitioner's request for compensatory education is denied, **it is further;**

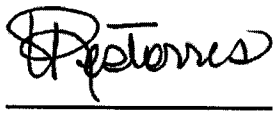
ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives, **it is further;**

ORDERED, in the event that the Respondent should fail to comply with the terms herein, and an issue arises out of the noncompliance the Petitioner may file a request for a hearing and the hearing will be scheduled within 20 calendar days.

This order resolves all matters presented in the Petitioner's November 16, 2009, due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)



Wanda Iris Resto - Hearing Officer **Signed: January 21, 2010**

APPENDIX A

INDEX OF NAMES

In the MATTER OF "Student" V. DCPS

Student Name: SHO DPC# 2009-1496 STARS Student's ID 9089934	Markia Whitfield Date of Birth: 3/19/96
Student's legal guardian	Carla Whitfield Mother
Student /Parent's Representative	Joy Freeman Coulbary, Esquire
School System's Representative	Tanya Chor, Esquire
Special Education Coordinator at MacFarland	* Julienne Fields
Education Advocate	*Samara Malik
School Psychologist	*Jennifer Penn
Private School Representative	*Anne Warnke
Attending School	MacFarland Middle
	*Testified via telephone

Brown, Pamela M. (OSSE)

From: admin@dcsho.i-sight.com
Sent: Thursday, January 21, 2010 8:36 AM
To: Chor, Tanya (DCPS); Canwah@chrisanwahfirm.com; Due, Process (OCTO); Student Hearing Office (OSSE)
Subject: DCSHO: Re: Case # 2009-1496 From <Wanda.Resto@dc.gov>

Attachments: WMHOD1-21-10.pdf

OSSE
STUDENT HEARING OFFICE
2010 JAN 21 AM 9:48

WMHOD1-
10.pdf (485

** NOTE: Please do not modify subject line when replying **
** This email was sent by Wanda Resto-Torres <mailto: Wanda.Resto@dc.gov>
**

Counsels
Attached the HOD for MW. WResto