

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

Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
July 30, 2013

PETITIONER,
on behalf of STUDENT,¹

Date Issued: July 29, 2013

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the “Petitioner” or “MOTHER”), under the Individuals with Disabilities Education Act, as amended (the “IDEA”), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“DCMR”). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (“DCPS”) has denied Student a free appropriate public education (“FAPE”) by failing to offer an appropriate IEP and location of services, failing to provide Student a dedicated aide and failing to implement the speech-language services required by Student’s IEP.

¹ Personal identification information is provided in Appendix A.

Student, an AGE boy, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on May 16, 2013, named DCPS as respondent. The parties met for a resolution session on May 30, 2013 and did not reach an agreement. The 45-day deadline for issuance of this Hearing Officer Determination began on June 16, 2013. On June 25, 2013, the Hearing Officer convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was convened before the undersigned Impartial Hearing Officer on July 23, 2013 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. DCPS was represented by ABA COORDINATOR and DCPS COUNSEL.²

Petitioner testified and called as witness EDUCATIONAL ADVOCATE. DCPS called as witnesses, ABA Coordinator, SPEECH-LANGUAGE PROGRAM MANAGER, and SPECIAL EDUCATION TEACHER. Petitioner's Exhibits P-1 through P-30 were admitted into evidence without objection, with the exceptions of Exhibits P-12, P-13 and P-28, which were admitted over DCPS' objections; Exhibits P-11, P-17, and P-26, which were not offered; Exhibits P-29, P-31 and P-32 which were withdrawn; and Exhibit P-33, as to which DCPS' objection was sustained. DCPS' Exhibits R-1 through R-11 were admitted without objection.

Counsel for both parties made opening and closing statements.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

² A DCPS summer law clerk also attended the due process hearing.

ISSUES AND RELIEF SOUGHT

This issues be determined in this case are:

- Whether DCPS’ October 4, 2012 IEP for Student was inappropriate because it failed to provide behavior support services outside of the general education setting;
- Whether DCPS’ October 4, 2012 IEP for Student was inappropriate because it failed to provide Student the services of a dedicated aide;
- Whether DCPS denied Student a FAPE by failing to implement, during the third reporting period of the 2012-2013 school year, the requirement in the October 4, 2012 IEP for speech-language services;
- Whether, during the 2012-2013 school year, DCPS denied Student a FAPE by failing to ensure that Student participated with nondisabled children in the arts and music program at Off-Site Center³; and
- Whether DCPS has denied Student a FAPE because CITY ELEMENTARY SCHOOL is not a suitable placement/location of services able to implement Student’s October 4, 2012 IEP due to lack of speech-language services and inability to assure Student’s safety.

For relief, Petitioner seeks an order for DCPS to revise Student’s IEP to include appropriate behavior support services and for DCPS to provide a dedicated aide for Student. In addition, Petitioner seeks a compensatory education award to compensate for the alleged loss of educational benefit to Student during the 2012-2013 school year due to DCPS’ alleged denials of FAPE.

³ In the June 25, 2013 Prehearing Order, I identified this issue as “failing to ensure that Student participated with nondisabled children in extracurricular services and activities to the maximum extent appropriate to the need of Student.” Petitioner’s evidence at the hearing, as well as her due process complaint allegations, are clear that the issue complained of was the failure of City Elementary School to allow Student to participate in the arts and music program at Off-Site Center. I have restated this issue accordingly. DCPS had ample notice of the nature of this complaint and is not prejudiced by this amendment.

FINDINGS OF FACT

After considering all of the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student, an AGE boy, resides with Mother in the District of Columbia.

Testimony of Mother.

2. Student is eligible for special education and related services under the primary disability classification, Autism Spectrum Disorder ("ASD"). Exhibit P-3. Student has also been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). Exhibit P-19.

3. Student is a very smart child and has the ability to make academic progress. He does not have a profound intellectual disability. Testimony of ABA Coordinator.

4. Student was first found eligible for special education and related services in January 2011. Since February 2011, Student has been enrolled in the autism program at City Elementary School. Testimony of Mother.

5. For the 2012-2013 school year, Student was in GRADE at City Elementary School. He was placed in the school's self-contained autism spectrum classroom, which is a special class within the regular elementary school. There are a total of 7 students in the class with 4 staff members, including Special Education Teacher, two aides and a dedicated aide assigned primarily to another child. Testimony of Mother, Testimony of Special Education Teacher.

6. Student's October 4, 2012 IEP identified his Primary Disability as Autism Spectrum Disorder. For Special Education and Related Services, the IEP provides:

Special Education Services

Service	Setting	Begin Date	End Date	Time/Frequency
Specialized Instruction	Outside Gen. Education	10/05/2012	10/03/2013	25.75 hr per wk

Related Services

Service	Setting	Begin Date	End Date	Time/Frequency
Occupational Therapy	Outside Gen. Education	10/05/2012	10/03/2013	240 min per mon
Speech-Language Path.	Outside Gen. Education	10/05/2012	10/03/2013	180 min per mon

The IEP stated Student did not require the support of a dedicated aide and that extended school year (“ESY”) services were not required. Exhibit P-3.

7. The October 4, 2012 IEP was drafted by Special Education Teacher, who is also Student’s case manager. In preparing the document, Special Education Teacher went through Student’s goals from the prior school year, spoke to his IEP team members and his teacher from the prior year and reviewed his data sheets. Testimony of Special Education Teacher.

8. Student’s October 4, 2012 IEP team agreed that Student’s Least Restrictive Environment was the self-contained classroom setting. Testimony of Special Education Teacher. The autism program at City Elementary School has an Applied Behavioral Analysis (“ABA”) framework, which is applied by the behavior analyst throughout the school day. In the opinion of ABA Coordinator, other behavioral support services, such as talk therapy and cognitive behavioral therapy, are not appropriate for Student with this model of services. Testimony of ABA Coordinator.

9. Student’s prior year IEP did not provide for a dedicated aide. Exhibit P-2. Mother testified that she requested a dedicated aide for Student at the October 4, 2012 IEP meeting. Special Education Teacher testified that Mother did not request a dedicated aide at that time and that Mother expressed no disagreement with the IEP. Mother signed the October 4,

2012 IEP, which indicated her consent for service implementation, Exhibit P-3, and the evidence contains no documentation of Mother's request for a dedicated aide in the fall of 2012. I find the testimony of Special Education Teacher to be more credible on this issue.

10. Student has a history of interfering behaviors, including Dropping (Falling on the floor from a sitting or standing position), Elopement (separating more than ten feet from the supervising adult) and Aggression (throwing an item, swiping or kicking). A Functional Behavioral Assessment was conducted in 2011, which concluded that Student engaged in these behaviors to gain access to attention. A Behavior Intervention Plan ("BIP") was developed for Student in October 2011 to deter these behaviors. Exhibit P-15. For most of the 2012-2013 school year, Special Education Teacher followed Student's 2011 BIP. Testimony of Special Education Teacher.

11. During the first three reporting periods for school year 2012-2013, ending March 29, 2013, Student was progressing on almost all of his IEP annual goals. On his Communication/Speech and Language goals, after progressing in the first and second reporting periods, Student showed no progress in the third reporting period. Exhibit P-10, Testimony of Special Education Teacher.

12. For most of the 2012-2013 school year, Student's tardiness was a concern because his arriving late interfered with maintaining Student on a regular school routine. Testimony of Special Education Teacher. For children with autism disorders, it is important to maintain consistency in routine. Testimony of ABA Coordinator. Student's tardiness was due to the difficulty of getting him ready for school in the mornings. Testimony of Mother. Most children in Special Education Teacher's classroom arrived on time because they used DCPS-provided bus

transportation. Mother declined to send Student to school on the school bus because she had safety concerns. Testimony of Special Education Teacher.

13. Special Education Teacher has rearranged her classroom set-up to deter Student's elopement behaviors. She also provided Student a lot of 1:1 instruction. At the beginning of the school year, Student was running out of the classroom three to four times a day. From October 2012 until February 2013, Student's elopement decreased. During this period, he would still occasionally leave the classroom without permission, to run across the hall to the Occupational Therapy ("OT") room or run to the bathroom or water fountain. His problem behaviors, including elopement, escalated again in February 2013, including running out of the classroom outside to the playground. Except for one elopement incident at Off-Site School at the beginning of the 2012-2013 school year, Student was never out of the line of sight of the teachers when he eloped. Testimony of Special Education Teacher.

14. In May 2013, ABA Coordinator conducted an FBA reassessment and developed a new BIP for Student. Student's behaviors targeted by the FBA were noncompliance, elopement, leaving seat or area, and tantrums. ABA Coordinator concluded that the function of Student's problem behaviors was most likely to escape from demands and activities and access attention from staff. In the new BIP, ABA Coordinator recommended, *inter alia*, adopting a "5 minutes on / 5 minutes off" schedule, wherein for 5 minutes, Student would be engaged in teacher-led activities, followed by a 5-minute break. The percentage of work time would be gradually increased, based upon Student's progress and reduction in problem behaviors. Exhibit R-5, Testimony of ABA Coordinator.

15. ABA Coordinator trained Special Education Teacher and the classroom instructional aides to implement the May 2013 BIP. Testimony of ABA Coordinator. Special

Education Teacher began implementing this BIP on May 30, 2013. The new BIP has been effective in reducing Student's elopement behaviors. He still will run out of the classroom to the OT room across the hall, but no longer runs out to the playground.

16. Student needs a dedicated aide for the 2013-2014 school year to implement his "5 minutes on / 5 minutes off" BIP, at least until he is able to transition into needing less break time. Testimony of ABA Coordinator, Testimony of Special Education Teacher.

17. Student was not provided his IEP speech-language services from January 21, 2013 through April 19, 2013 due to his therapist's being away on medical leave. He missed a total of 540 minutes of speech-language services. DCPS' efforts to reschedule the services over the rest of the school year and during spring break and ESY have not worked out. DCPS is willing to make up all of the 540 minutes of speech-language services which Student missed. Exhibit R-4, Testimony of Speech-Language Program Manager.

18. During the 2012-2013 school year, the children in Student's self-contained classroom were taken to Off-Site Center on Wednesdays for art, music, and drama ("Specials Curriculum"). This program was a regular part of the children's curriculum. Because of Student's increasing non-compliance and concerns for Student's safety at Off-Site Center, Special Education Teacher decided to stop sending Student to Off-Site Center after DCPS' 2013 spring break. For the rest of the school year, Special Education Teacher instructed Student 1:1 in her classroom, while his classmates went to the Off-Site Center program. Special Education Teacher taught Student other things to substitute for Off-Site Center. Testimony of Special Education Teacher.

19. For the 2013-2014 school year, DCPS has offered to place Student in the self-contained program for children with autism spectrum disorder at PUBLIC ELEMENTARY SCHOOL 2. Mother has agreed to this placement/location of services. Stipulation of Parties.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

BURDEN OF PROOF

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006). *See, also, Hinson ex rel. N.H. v. Merritt Educational Center*, 579 F.Supp.2d 89, 95 (D.D.C.2008) (Plaintiff, as the party challenging the IEP, had the burden of proof to show that the plan was inappropriate, citing *Schaffer v. Weast, supra*, 546 U.S. at 62.)

ANALYSIS

1. APPROPRIATENESS OF OCTOBER 4, 2012 IEP

Petitioner contends that DCPS' October 4, 2012 IEP was inappropriate for Student because (a) the IEP did not offer behavior support services outside of the general education setting; and (b) the IEP did not provide for the services of a dedicated aide. I find that Petitioner has not met her burden of proof on this issue.

The IDEA requires that to provide a FAPE, “[t]he IEP must, at a minimum, ‘provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.’” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516,

519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *N.T. v. District of Columbia* 839 F.Supp.2d 29, 33 (D.D.C.2012), quoting *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir.2003). The IEP issues asserted by Petitioner in this case concern only the second prong of the inquiry.

- a. Was DCPS' October 4, 2012 IEP inappropriate for Student because it failed to provide behavioral support services outside of the general education setting?

Educational Advocate opines in her proposed Compensatory Education Plan (Exhibit P-27) that because Student exhibited aggressive behavior during the 2011-2012 and 2012-2013 school years, his IEP team should have included behavior support services in his October 4, 2012 IEP. She maintained that the IEP should have included counseling services. The IDEA requires the IEP team, in the case of a child whose behavior impedes the child's learning or that of others, to consider the use of positive behavioral supports, and other strategies to address that behavior. *See* 34 CFR § 300.321(a)(2)(i). Whether a child needs positive behavioral interventions and supports is an individual determination that is made by each child's IEP Team. *See* Department of Education, Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46683 (August 14, 2006). When Student's IEP team met on October 4, 2012, the school was then implementing his October 2011 Behavior Intervention Plan. The evidence does not establish that any member of the IEP team thought that Student required individual counseling. In the Opinion of ABA Coordinator, who was qualified as an expert in Applied Behavior Analysis and interventions for children with autism, counseling therapy would

not have been appropriate for Student, who was placed in a full-time, self-contained, ABA program. I found ABA Coordinator to be more credible on this issue than Educational Advocate, who was not qualified as an expert on autism services. I find that the evidence does not support Petitioner's contention that when the October 4, 2012 IEP was developed, Student required additional behavior support services in his IEP in order to receive educational benefits.

- b. Was the October 4, 2012 IEP inappropriate because it did not provide a dedicated aide for Student?

Petitioner also contends that DCPS' October 4, 2012 IEP was inappropriate because Student's IEP team determined that he did not require the support of a dedicated aide. The IEP team must include a dedicated aide if required "to permit the child to benefit educationally from [his IEP personalized] instruction." *See Rowley, supra* 458 U.S. at 203. In this case, the evidence does not establish that Student required a dedicated aide to benefit educationally. He was placed in a self-contained classroom setting with a 7:4 student-to-teacher ratio and he was regularly instructed 1:1 by the special education teacher. Over the 2012-2013 school year, Student made progress on almost all of his IEP goals.

Mother argues that Student should have been provided a 1:1 aide to prevent his elopements from the classroom. Mother's concern that Student's elopements posed a safety risk is understandable. However, Special Education Teacher, whom I found to be a very credible witness, emphasized that Student was able to make educational progress despite his elopements and that the elopements did not pose a safety risk. At his worst periods, Student would run out of the classroom 3 to 4 times a day and he remained in the staff's line of sight. Undoubtedly, Student's elopements interfered with his learning and that of his classmates. In such circumstances, the IDEA requires the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See* 34 CFR §

300.324(a). Here, the school had a BIP in place for Student the entire school year. After Student's elopements and other behaviors worsened beginning in February 2013, ABA Coordinator conducted an updated FBA and developed an entirely new BIP for Student, which appears to have effectively addressed the behaviors. I conclude, therefore, that the evidence does not establish that, at the time the October 4, 2012 IEP was developed, Student required a dedicated aide to permit him to benefit educationally from his instruction. The IEP team's decision not to provide a dedicated aide was not a denial of FAPE.⁴

In summary, I find that Petitioner has not met her burden of proof to establish that October 4, 2012 IEP was not reasonably calculated to provide Student educational benefits or that the IEP was inappropriate due to its not including behavioral support services or a dedicated aide.

2. DID DCPS DENY STUDENT A FAPE BY FAILING TO IMPLEMENT, DURING THE THIRD REPORTING PERIOD OF THE 2012-2013 SCHOOL YEAR, THE REQUIREMENT IN THE OCTOBER 4, 2012 IEP TO PROVIDE SPEECH-LANGUAGE SERVICES?

From January 21 through April 19, 2013, DCPS failed to provide Student the 180 minutes per month of Speech-Language Pathology Services required by his October 4, 2013 IEP. The parties agree that Student missed a total of 540 minutes of speech-language services and, before Petitioner filed her due process complaint in this case, DCPS agreed to make up the missed services. I find that DCPS' failure to provide Student speech-language services was a material deviation from his IEP, and therefore a denial of FAPE. *See Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), *aff'd sub nom. E.C. v. District of Columbia*, No. 07-7070 (D.C.Cir. Sept. 11, 2007) (In reviewing failure-to-implement claims,

⁴ The evidence establishes that Student would benefit from a dedicated aide under his new, May 2013, BIP until he is able to increase his periods of work time without breaks. DCPS has agreed to provide Student an aide, at least for the beginning of the 2013-2014 school year.

Hearing Officer must ascertain whether the aspects of the IEP that were not followed were “substantial or significant,” or, in other words, whether the deviations from the IEP’s stated requirements were “material.”) I will order DCPS to make up the missed speech-language services.

3. DID DCPS DENY STUDENT A FAPE, DURING THE 2012-2013 SCHOOL YEAR, BY FAILING TO ENSURE THAT STUDENT PARTICIPATED WITH HIS PEERS IN THE SPECIALS CURRICULUM AT OFF-SITE CENTER?

The visual arts/music/drama curriculum for children in Student’s self-contained class was provided every Wednesday at Off-Site Center. After the 2013 spring break, Special Education Teacher did not allow Student to go to Off-Site Center because his behaviors at Off-Site Center had become unsafe. While the other children were at Off-Site Center, Special Education Teacher taught Student “other things” in her self-contained classroom. Special Education Teacher did not testify that she instructed Student in the same curriculum as his peers were provided at Off-Site Center. Petitioner contends that DCPS’ failure to ensure that Student received the same curriculum as his peers was a denial of FAPE. I agree.

The IDEA “focuses on ensuring that children with disabilities achieve to high academic standards and have access to the same curriculum as other children.” *See* Assistance to States for the Education of Children with Disabilities, *supra*, 71 Fed. Reg. 46556; 34 CFR § 300.320(a)(1)(i). The IDEA regulations place great emphasis on ensuring that children with disabilities have access to the general education curriculum. *Id.* at 46577. If the child’s disability makes it necessary, his IEP team must examine whether adaptations in content, methodology, or delivery of instruction to address the child’s unique needs are necessary to ensure the child’s access to the general curriculum. *See Letter to Anonymous*, 51 IDELR 194 (OSEP May 6, 2008). However, the IDEA does not permit school officials, whether out of

concern for the child's safety or otherwise, to fail to provide to a child with a disability access to the same curriculum as other children. DCPS' failure, after the 2013 spring break, to ensure that Student had access to the same Specials Curriculum which his peers received at Off-Site Center was a denial of FAPE.

4. DID DCPS DENY STUDENT A FAPE BECAUSE CITY ELEMENTARY SCHOOL WAS NOT A SUITABLE PLACEMENT/LOCATION OF SERVICES DUE TO LACK OF SPEECH-LANGUAGE SERVICES AND INABILITY TO ASSURE STUDENT'S SAFETY?

Petitioner's last contention is that the self-contained classroom at City Elementary School was not a suitable placement for Student because of the school's failure after January 21, 2013 to provide Student speech-language services and the school's alleged inability to assure Student's safety. I find that this claim has no merit.

Under the IDEA, DCPS is obligated to match each child with a disability with a school capable of fulfilling the child's IEP needs. *See Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991). However, although the IDEA requires an appropriate education, it "does not require a perfect education." *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 328 (4th Cir. 2009). Instead, the child's program must, at a minimum, "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 525 (D.C.Cir.2005). It is therefore "highly relevant whether [the child] was making progress and experiencing meaningful educational benefit" from his placement at City Elementary School. *See A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005).

With regard to Student's safety in the City Elementary School program, if safety issues with a school setting interfere with the child's right to receive a free appropriate public education, the setting may be inappropriate. *See, e.g., Lillbask ex rel. Mauclair v. State of Conn.*

Dept. of Educ. 397 F.3d 77, 93 (2nd Cir. 2005) (Declaring hearing officer’s jurisdiction to review safety challenges to IEPs where they related to disabled child’s educational placement or provision of free appropriate public education.) Petitioner contends that City Elementary School was an unsafe environment for Student because the school failed to adequately address Student’s elopement behavior. I find that the evidence does not support this claim. Student’s eloping from the classroom is undoubtedly a problem which interferes with his learning. However, as I have found in a preceding section of this decision, Student’s elopements did not rise to a safety concern. Moreover, despite Student’s elopements and other interfering behaviors (*e.g.*, “dropping” and aggression), Student was able to make progress on his annual goals and receive educational benefit from the October 4, 2012 IEP. I conclude, therefore, that Petitioner has not established that City Elementary School was not an appropriate placement for Student due to safety concerns relating to his eloping from the classroom.

Petitioner also contends that City Elementary School was not an appropriate placement for Student because, after the school Speech-Language Pathologist went on medical leave in January 2013, the school was unable to implement Student’s IEP requirement for speech-language services. I have addressed DCPS’ failure to implement Student’s speech-language services above in this decision. The fact, that in January 2013 City Elementary School was no longer able to provide speech-language services, is not relevant to whether the school was an appropriate placement when Student’s IEP was adopted in October 2012. *See S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66 (D.D.C. 2008) (“[T]he measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . . Neither the statute nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child’s placement.” *Id.*,), quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149

(10th Cir.2008).)

5. COMPENSATORY EDUCATION REMEDY

The IDEA gives Hearing Officers “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See Reid, supra*, 401 F.3d at 522-23. The award must “provide the educational benefits that likely would have accrued from special education services” that the school district “should have supplied in the first place.” *Id.* at 524. A compensatory education award must “rely on individualized assessments” after a “fact specific” inquiry. *Id.* “In formulating a new compensatory education award, the hearing officer must determine ‘what services [the student] needs to elevate him to the position he would have occupied absent the school district’s failures.’” *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527.) *See, also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10 -11 (D.D.C. July 2, 2013).

In this case, I have found that Student was denied a FAPE by DCPS’ failure to implement his IEP speech-language services between January 21 and April 19, 2013 (540 minutes missed) and by not providing Student, after the DCPS 2013 spring break, the same Specials Curriculum, which his peers received at Off-Site Center. DCPS has agreed to make up all of the 540 minutes of speech-language services which Student missed and I find that this would be an appropriate compensatory education remedy.

In addition, Student missed approximately 10 weekly sessions of Specials Curriculum, which his peers received at Off-Site Center after the 2013 Spring Break. In my June 25, 2013 Prehearing Order in this case, I informed the parties that, to establish a basis for a compensatory education award, the Petitioner must be prepared at the hearing to document with exhibits and/or

testimony “the correct amount or form of compensatory education necessary to create educational benefit” to enable the hearing officer to project the progress Student might have made, but for the alleged denial of FAPE, and further quantitatively defining an appropriate compensatory education award. The evidence from the hearing in this case does not establish what additional educational benefits likely would have accrued if Student had been allowed to continue to participate in the Off-Site Center Specials Curriculum or what services he would need to compensate him for being deprived of these services. I find, therefore, that Petitioner has failed to support her claim for compensatory education for this denial of FAPE. *See, Gill v. District of Columbia*, 770 F.Supp.2d 112, 118 (D.D.C.2011), *aff’d*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011) (Due to the lack of evidentiary support, the Court is compelled to find that Plaintiffs have failed to support their claim for compensatory education.) While a court has discretion to take additional evidence concerning the appropriate compensatory education due a student, *see Gill v. District of Columbia*, 751 F.Supp.2d 104, 114 (D.D.C.2010), *aff’d*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011), I am constrained under the DCMR to issue my final Hearing Officer Determination in this case no later than July 30, 2013. *See* DCMR tit. 5-E, § 3030.11. Therefore, based on the record before me, I will deny, without prejudice, Petitioner’s request for a compensatory education award to compensate for DCPS’ not providing Student the Specials Curriculum available to other Students at Off-Site Center.

SUMMARY

In this decision I have found that Petitioner has failed to establish that DCPS’ October 4, 2012 IEP was not reasonably calculated to provide Student Educational Benefits or that the dedicated autism spectrum classroom at City Elementary School was not an appropriate placement to implement the IEP. I have found that DCPS denied Student a FAPE by failing to implement Student’s speech-language services between January 21st and April 19th 2013 and by

not providing Student, after the 2013 Spring Break, the Specials Curriculum which his peers received at Off-Site Center. I will award Student 540 minutes of compensatory speech-language services. However, Petitioner has not provided sufficient evidence to establish an appropriate compensatory education remedy for the period that DCPS denied Student access to the Specials Curriculum provided other students.

ORDER

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

1. As compensatory education relief for DCPS' denial of FAPE to Student by not offering speech-language services from January 21 through August 19, 2013, DCPS is ordered to provide Student 540 minutes of speech-language services by a speech-language pathologist, on a schedule to be reasonably agreed upon by Petitioner and DCPS. These services shall be in addition to any ongoing speech-language services provided to Student under his current IEP;
2. Petitioner's request for compensatory education services to compensate for DCPS' failure to provide Student the Specials Curriculum after the 2013 spring break is denied without prejudice. I encourage, but do not order, the parties to come to a voluntary agreement on appropriate compensation to Student for this denial of FAPE; and
3. All other relief requested by the parties in this matter is denied.

Date: July 29, 2013

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

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).