

**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  
March 10, 2014

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PETITIONER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: March 10, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Student Hearing Office,  
Washington, D.C.

Respondent.

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**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) denied Student a free appropriate public education (FAPE) by not providing her an appropriate Individualized Education Program (IEP) in March 2013 and by not fully implementing Student's IEP in the current school year.

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

Student, an AGE adolescent, is a resident of the District of Columbia. Petitioner's due process complaint, filed on November 7, 2013, named DCPS as respondent. On December 13, 2013, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters and I issued my Prehearing Order on the same day. The original 45-day time limit for issuance of the Hearing Officer Determination in this case started on December 8, 2013. Two continuances of the decision due date have been granted. On January 4, 2014, I granted a 10-day continuance due to unavailability of counsel during the DCPS winter break period. The due process hearing was scheduled for January 21, 2014, but could not be held because the Student Hearing Office was closed for inclement weather. On January 28, 2014, the Chief Hearing Officer granted Petitioner's unopposed request for an additional 37-day continuance, in order to reschedule the hearing to a date when counsel and the hearing officer were all available. The due date for this Hearing Officer Determination is now March 10, 2014.

The due process hearing was convened before me on February 24, 2014 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 LEA REPRESENTATIVE and by DCPS' COUNSEL.

Counsel for both parties made opening and closing statements. MOTHER testified and called as witness, EDUCATIONAL ADVOCATE. DCPS called as witnesses, CASE MANAGER and SPECIAL EDUCATION COORDINATOR (SEC). Petitioner's Exhibits P-1 through P-19 and DCPS' Exhibits R-1 through R-23 were admitted into evidence without objection. I granted the parties leave until February 28, 2014 to

submit post hearing authority. Counsel for both parties submitted additional argument by email.

### **JURISDICTION**

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

### **ISSUES AND RELIEF SOUGHT**

The issues to be determined in this case and relief sought are:

Whether DCPS' March 2013 IEP was inappropriate for Student because it did not meet her alleged requirement for a more restrictive, full-time outside of general education, diploma track placement; and

Whether DCPS denied Student a FAPE by failing to fully implement Student's IEP at CITY HIGH SCHOOL from the beginning of current school year to the present, because the school has been unable to provide Student with the specialized instruction services, outside of the general education setting, specified in her IEP.

For relief, Petitioner seeks an order for DCPS to provide Student a full-time special education program, outside of the general education setting. (As of the hearing date, Petitioner had not identified an appropriate nonpublic special school for Student to attend.) In addition, Petitioner requested in her due process complaint an award of compensatory education to compensate Student for alleged denial of FAPE since she began attending City High School in the current 2013-2014 school year.

### **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 resides with Mother in the District of Columbia. Testimony of Mother. She is a "child with a disability" in need of special education and related services as defined by the IDEA. Her primary disability is Specific Learning Disability

(SLD). Exhibit R-11.

2. Student was first determined eligible for special education and related services when she was in the fifth grade at CITY ELEMENTARY SCHOOL. At the end of her sixth grade year, Student enrolled in the middle school division of NEIGHBORHOOD SCHOOL. Testimony of Mother.

3. Student's February 8, 2012 Neighborhood School IEP identified Mathematics, Reading and Written Expression as areas of concern. The IEP provided Student two hours per week of Specialized Instruction in the General Education setting and four hours per month of Specialized Instruction outside General Education. Exhibit R-1.

4. At the end of the 2011-2012 school year, Student was reported as "Progressing" on all of her IEP goals. Exhibit R-2. For her final grades, she received F's and D's in all of her core courses, except for a C+ in English. Exhibit P-13.

5. Since the last quarter of school year 2011-2012, Student has exhibited severe class attendance and truancy problems. At a May 3, 2012 school meeting, Mother was informed that Student had accumulated 92 classes absences. As a condition to admission to the high school division of Neighborhood School, Student was required to enter into a behavior contract. Testimony of Mother.

6. Near the end of the 2011-2012 school year, Student was allegedly the victim of a sexual assault by other students at Neighborhood School. Testimony of Mother.

7. Student's IEP team was convened at the high school division of Neighborhood School on November 21, 2012 for an IEP review. Mother and Student attended the meeting. EDUCATIONAL ADVOCATE attended by telephone. Petitioner's

Counsel also participated. At the meeting, Educational Advocate requested DCPS to conduct additional assessments of Student. Exhibit P-8. Subsequently, DCPS conducted Woodcock Johnson III tests of achievement (12/13/2012), a Functional Behavioral Assessment (FBA) (1/9/2013), and a Psychological Reevaluation assessment (1/11/2013). Exhibits R-7 through R-9.

8. At the November 21, 2012 IEP meeting, Educational Advocate stated that due to Student's performing below grade level, she would need a full-time IEP. The IEP team declined to increase Student's level of IEP services until the new evaluations would be completed. Exhibit P-8. The November 21, 2012 IEP continued Student's prior special education services of two hours per week of Specialized Instruction in the General Education setting and four hours per month of Specialized Instruction outside General Education. Exhibit R-6.

9. For the first quarter of school year 2012-2013, Student received grades of three B's and 1 C in her courses. Exhibit R-16. Mother attributes Student's academic success during the first quarter to the intensive support which Mother provided at home. Mother took leave from her job for the term to be able to support Student's academics, but Mother had to return to work after the first quarter and she was not able to continue to provide the same level of assistance to Student. Testimony of Mother. At the end of the second quarter of the 2012-2013 school year, Student's grades were two F's, a D and a C. Exhibit R-16.

10. A Neighborhood School teacher administered the Woodcock-Johnson III Normative Tests of Achievement (WJ-III) to Student on December 13, 2012. When compared to other students at her grade level, Student's scores were Average in broad reading and brief reading, and Very Low in broad mathematics, math calculation skills,

brief mathematics, broad written language, written expression and brief writing. She demonstrated relative strength in broad reading and significant weaknesses in broad mathematics and broad written language. Exhibit P-6.

11. SCHOOL PSYCHOLOGIST conducted a psychological reevaluation of Student to obtain an updated snapshot of Student's current cognitive, educational and social-emotional/behavioral needs. In her January 11, 2013 report, School Psychologist reported that on cognitive testing, Student's overall General Intellectual Ability (GIA) score of 92 was in the Average range at the 29th percentile. She demonstrated a relative weakness in Cognitive Efficiency. Quickly processing information and using short-term and working memory skills was more difficult for Student than for same-aged peers. This would have a negative impact on academic tasks where Student is being asked to multi-task and complete assignments (*e.g.*, listening and note taking) as well as when she is being asked to complete simple visual and verbal tasks quickly and accurately. Exhibit R-9.

12. On Educational Achievement testing, Student demonstrated academic achievement skills that were below expectations. She performed most consistently on tasks within the Broad Reading cluster, an area of strength for her. Student's performance on math tasks was significantly lower than expected for most adolescents her age. Her skill consistently fell in the Very Low to Low range on math tasks, which is an area of real and significant weakness for her. Student's performance on tasks of writing ranged from Low to Low Average, suggesting another area of significant weakness. School Psychologist predicted that, when given grade-level tasks of writing and math, Student would likely struggle more than other students at her grade level. Exhibit R-9.

13. In order to address concerns about Student's lack of focus and possible Attention Deficit/Hyperactivity Disorder (ADHD), one of Student's teachers was requested to complete the Behavior Rating Inventory of Executive Function (BRIEF) and Behavior Assessment Scale for Children-Second Edition (BASC-2) rating scales. The teacher's responses endorsed several areas in the Clinically Significant Range, including Internalizing Problems, Anxiety and Withdrawal. Conduct Problems, Depression, Learning Problems, Atypicality, Adaptability and Leadership were endorsed to fall in the At-Risk range, suggesting a need for follow-up and monitoring. Student's executive functioning was assessed with the BRIEF rating scale, completed by the teacher and Student. The responses endorsed all areas in the Elevated range. This suggested that Student exhibited difficulties with multiple aspects of executive function. Student's Global Executive Composite score suggested that her everyday behavior in school revealed multiple areas of concern and Student could be described as having difficulties managing her behavior and emotions. Exhibit R-9.

14. School Psychologist concluded that Student continued to demonstrate an SLD disability in the areas of math and written language and she also appeared to meet criteria for a disability classification of Other Health Impairment (OHI), based, in part, upon a 2010 medical report indicating that Student's profile was suggestive of Attention Deficit/Hyperactivity Disorder (ADHD). Exhibit R-9.

15. SEC conducted an FBA of Student in January 2013. The "Behavior of Concern" identified in the FBA was "Defiance, Late assignments, Noncompliance, Talking out, Disorganization, Making excuses, Leaving class without permission, and inappropriate dress. Truancy and nonattendance were not identified in the FBA as behavioral issues to be addressed. Exhibit R-8.

16. At an eligibility and IEP review meeting at Neighborhood School on March 20, 2013, Student's IEP team (MDT) determined that Student continued to be eligible for special education and related services under the primary disability classification SLD. Mother and Educational Advocate, who attended the meeting, agreed with the eligibility determination report. Exhibit R-11. The team reviewed recently completed assessments of Student, including an Occupational Therapy ("OT") evaluation, the psychological reevaluation, the WJ-III educational assessment and the FBA. At the IEP meeting, Mother argued for a full-time special education placement because Student needed serious behavioral support. Educational Advocate stated that Student needed a full-time IEP because she was failing English and her math ability was not at grade level. SEC responded that Neighborhood School was an "application school" which had a rigorous curriculum. She stated that Student's attendance directly affected her academic progress and that the IEP team would provide additional supports for Student, but not a full-time IEP. The IEP team increased Student's Specialized Instruction to six hours per week in the General Education setting and eight hours per month outside General Education. Mother and Educational Advocate did not agree with this level of services. Exhibit R-10.

17. At the March 20, 2013 IEP meeting, Mother stated initially that she did not want Neighborhood School or the D.C. Department of Mental Health to provide behavior support to Student, because Mother preferred to pursue private support. Later, during the meeting, Mother agreed to Student's receiving direct behavioral support services from the school. The team provided 60 minutes per month of Behavioral Support services as a new related service in Student's IEP. Exhibit R-10.

18. By the time of the March 20, 2013 IEP meeting, Neighborhood School staff were hardly seeing Student at all. Student had run away from home. The majority of

time, she was not coming to school at all. When she did come, she would often “duck out” the back door and leave. During this period, Mother told SEC that Student was living with someone who was pandering her for sex. Student told SEC that she was living with someone and selling goods and did not have time to go to school. Testimony of SEC.

19. During this period, Student’s parents requested an emergency Persons in Need of Supervision (PINS) meeting for Student. The school prepared a PINS packet for the D.C. Superior Court. An Habitual Runaway Referral for Student was made to the D.C. Superior Court on March 15, 2013, which was found to warrant “petitioning” under D.C. Code § 16-2305. Exhibit R-13.

20. Before the March 20, 2013 IEP meeting, to address Student’s absconding behavior, DCPS had sent the D.C. Metropolitan Police Department truancy officer to Student’s home, held a truancy meeting, put Student on an attendance “contract,” were in constant communication, by voice and email, with Mother, and provided 1:1 counseling to Student. None of these efforts was successful. Testimony of SEC.

21. Following the March 20, 2013 IEP meeting, Student’s truancy issues continued. By May 10, 2013, she had accumulated 25 consecutive full day absences. Exhibit R-13. By the end of the 2012-2013 school year, Student had made no progress on any of her IEP annual goals. Exhibit R-14. Student failed all of her second semester courses. Exhibit R-16.

22. In June 2013, Student was committed, upon a court referral, to PSYCHIATRIC INPATIENT FACILITY for 21 days for evaluation and observation. Mother does not recall any diagnoses made. Testimony of Mother.

23. Student transferred to City High School at the beginning of the 2013-2014 school year, because Student did not want to return to Neighborhood School. Student started school one or two weeks late, because Mother had requested a transfer for safety reasons, which took some time to process. The City High School principal drew up an attendance contract for Student before she was allowed to start school. Student is now repeating GRADE. Testimony of Mother.

24. For the first term of the 2013-2014 school year, Student received a B+ in World History, C+ in Army JROTC, and F's in Geometry, Culinary Arts, and World History. She had accrued eight days of unexcused absences and 37 tardies. Exhibit P-16.

25. Since September 2013, Case Manager has been providing Specialized Instruction services to Student at City High School in accordance with her IEP. He co-teaches in her geometry class and has co-taught in her English class. Case Manager also provides pull-out services for Student on a 1:1 basis or in a small group. Testimony of Case Manager.

26. In the current, 2013-2014, school year, Student still leaves her classrooms and does not return. At the beginning of the school year, this was infrequent, but now it happens two to three times per week. At least 40 percent of the time, Student is not in her classroom. Student is receiving failing grades in the current (spring 2014) semester. Testimony of Case Manager.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and oral and written 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).

### Analysis

The facts in this case present a very disturbing history of an adolescent who, since the latter part of the 2011-2012 school year, has been on a downward trajectory, marked by school truancy and behavior problems outside of school, which neither Student's family nor concerned public agencies have succeeded in turning around. In this context, counsel for both parties have presented well-reasoned arguments over the extent of DCPS' responsibility, under the IDEA, for addressing the effects of Student's injurious behaviors on her educational progress. Petitioner contends that DCPS should have offered Student a full-time special education placement to enable her to make educational progress. DCPS responds that Student's issues arise from "home life" concerns and that it offered IEPs that were appropriate to enable Student to obtain educational benefit.

The issues in this case, as certified in the Prehearing Order, are:

- Whether DCPS' March 20, 2013 IEP was inappropriate for Student because it did not meet her alleged requirement for a more restrictive, full-time outside of general education, diploma track placement; and
- Whether DCPS denied Student a FAPE by failing to fully implement Student's IEP at City High School from the beginning of the 2013-2014 school year to the present, because the school has been unable to provide Student with the specialized instruction services, outside of the general education setting, specified in her IEP.

### The March 20, 2013 IEP

Petitioner contends that the March 20, 2013 IEP, developed by Neighborhood School for Student, was inappropriate because it did not provide a full-time, outside of general education, placement. DCPS responds that at the time it was offered to Student, the March 20, 2013 IEP was reasonably calculated for Student to receive educational benefits. After a student has been determined to be a child with a disability, the IDEA requires the school district to ensure that the student's IEP Team,

(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address—

(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(II) the results of any reevaluation . . . ;

(III) information about the child provided to, or by, the parents . . .

(IV) the child's anticipated needs; or

(V) Other matters.

20 U.S.C. § 1414(d)(4)(A). The revised IEP must be “reasonably calculated to enable the child to receive educational benefits” in order to adequately confer a FAPE upon a given child. *Pinto v. District of Columbia* 2013 WL 1445344, 4 (D.D.C.2013), quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 204, 102 S.Ct. 3034 (1982)).

Whether Neighborhood School's March 20, 2013 IEP was reasonably calculated to enable Student to receive educational benefits must be considered in light of Student's performance under her prior, February 8, 2012, IEP. *See Roark v. Dist. of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C.2006) (Academic progress under a prior plan

may be relevant in determining the appropriateness of a challenged IEP.) The prior IEP identified Mathematics, Writing and Written Expression as areas of concern for Student. The IEP provided Student two hours per week of Specialized Instruction in the inclusion setting and four hours per month outside General Education. The IEP did not include Behavioral Support or other related services. Although at the end of the 2011-2012 school year, Student was reported as “Progressing” on all of her IEP goals, her final grades told a different story. Student received F’s or D’s on all of her core courses, except for a C+ in English. She had so many unexcused absences that Neighborhood School required a behavior contract for Student to be allowed to enroll in the high school division. During the first term of the 2012-2013 school year, when Mother stopped working to be able assist Student with her school work, Student made satisfactory academic progress. However, after Mother returned to her job, Student’s grades plummeted. She received two F’s, a D and a C for the second term and all F’s for the third term. Student’s behaviors outside-of-school became extreme including absconding from home and, according to Mother, engaging in child prostitution. When Student’s IEP team met on March 20, 2013, the majority of the time, Student was not going to school at all. All members of the IEP team agreed, based upon the new psychological, educational and FBA evaluations, that Student was not making any progress in school.

The IDEA requires that a Student’s IEP team revises the IEP, as appropriate, to address any lack of expected progress toward annual goals and in the general curriculum, the results of any reevaluation, information about the Student provided by the parents, the Student’s anticipated needs and other matters. *See* 34 CFR § 300.324(b), *supra*. In addition, 34 CFR § 300.321(a)(2)(i) requires the IEP team, in the

case of a student whose behavior impedes the student's learning or that of others, to consider the use of positive behavioral supports, and other strategies to address that behavior. I find that when Student's IEP team met in March 2013, the IEP team did not revise Student's IEP appropriately to address Student's needs. Academically, Student's W-J III scores showed Very Low achievement in broad mathematics, math calculation skills, brief mathematics, broad written language, written expression and brief writing and at school, she was failing her courses. Notwithstanding, for Specialized Instruction, the IEP team offered Student only eight hours *per month* of pull-out services, in addition to four hours per week in the regular classroom setting.

For Emotional, Social and Behavioral Development, the March 20, 2013 IEP provided Student only one hour *per month* of Behavioral Support services, even though the IEP team knew that the majority of the time, Student was not attending school at all. At the due process hearing DCPS appeared to blame the parent for the IEP team's not providing more behavior services because Mother was resistant to Student's receiving psychological support from a school social worker. However, an IEP team must revise an IEP, as appropriate, to address a child's anticipated needs. *See* 34 CFR § 300.324(b)(1)(ii). Even though the parent may potentially refuse offered IEP services, the IEP team must nonetheless develop an appropriate IEP. *Cf. District of Columbia v. Wolfire*, 2014 WL 169873, 4 (D.D.C. Jan. 16, 2014) (Put differently, an IEP is a written statement of the services that will be provided to the child should her parent accept the offer of a FAPE.) It appears that the March 20, 2013 IEP team offered Student so little support, because the team attributed Student's lack of progress in school to her outside-of-school problems. Tellingly, the SEC from Neighborhood School testified that the IEP team would not have recommended full time special education because a lot of Student's

concerns were “family and mother” issues, not academic concerns. It is correct that courts have stated that IDEA services need not address “problems truly ‘distinct’ from learning problems.” See *Gonzalez v. P.R. Dep’t of Educ.*, 254 F.3d 350, 352 (1st Cir.2001). But, as the Court wrote in *Gonzalez*, “as a practical matter . . . clear lines can rarely be drawn between the student's educational needs and his social problems at home. Thus, typically an IEP in cases where student’s disability is this serious . . . must address such problems in some fashion.” *Id.* at 353. See, also, *Rome School Committee v. Mrs. B.*, 247 F.3d 29, 33 n. (1<sup>st</sup> Cir. 2001) (“Language in the magistrate judge’s opinion suggests the view that unless the child “was uncontrollable both in and out of school,” thus “rendering him uneducable,” the behavior does not need to be addressed in the IEP. We know of no such rule. *The question is whether these behavioral disturbances interfered with the child’s ability to learn.*” (citing *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 991–92 (1st Cir.1990). (emphasis supplied)).

Here Student’s behavior both out-of-school and in-school (when she attended) undoubtedly interfered with her ability to learn. The IDEA required that Student’s March 20, 2013 IEP team address those behaviors by developing an IEP that would be likely to produce progress. See *Hunter v. District of Columbia*, 2008 WL 4307492, 9 -10 (D.D.C. 2008) (citing *P.K. v. Bedford Cent. Sch. Dist.*, ---F.Supp.2d ----, 2008 WL 2986408, at \*11 (S.D.N.Y. Aug. 1, 2008). I find that the IEP team’s offer of only one hour per month of Behavioral Support services and six hours per week of Specialized Instruction was insufficient to address Student’s behaviors, in and out of school, which were not allowing her to make any educational progress. I conclude that at the time the March 20, 2013 IEP was offered to Student, it was not reasonably calculated to produce educational progress or to provide Student educational benefits. Consequently, Student

was denied a FAPE.

### Implementation of March 20, 2013 IEP

For her second issue, Petitioner contends that during the current, 2013-2014, school year, DCPS has failed to implement the March 20, 2013 IEP requirement to provide Student eight hours per month of Specialized Instruction outside the General Education setting. Case Manager testified that he has been providing Student these Specialized Instruction services since Student began attending City High School in September 2013. Case Manager's testimony was not rebutted and I found no basis for questioning his credibility. Further, Mother testified that, after Case Manager told her he had been providing services to Student, Student confirmed that she was getting pull-out services. Petitioner has not met her burden of proof on this issue.

### Remedy

In this decision, I have found that Student was denied a FAPE by Neighborhood School's March 20, 2013 IEP, which was not reasonably calculated to enable Student to receive educational benefits. The only remedy requested by Petitioner, an order for DCPS to fund Student's placement at a full-time nonpublic day school, is not supported by the evidence.<sup>2</sup> The IDEA requires that children with disabilities be placed in the "least restrictive environment" "so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate." *K.S. v.*

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<sup>2</sup> In her due process complaint, Petitioner also requested an award of compensatory education for denial of FAPE to Student in the 2013-2014 school year, which I understand to be related to Petitioner's failure-to-implement claim. Petitioner did not prove that claim, and, in any event, she offered no evidence at the due process hearing in support of a compensatory education award. *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.)

*District of Columbia*, 2013 WL 4506969, 3 (D.D.C. Aug. 26, 2013) (citations omitted). See, also, *DeVries by DeBlaay v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4<sup>th</sup> Cir.1989) (“Mainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with nonhandicapped children is not only a laudable goal but is also a requirement of the Act.”) “[R]emoval of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A). Although Petitioner has been requesting DCPS to provide Student a full time, therapeutic, special education setting since the November 21, 2012 IEP meeting, Petitioner has not shown that with appropriate aids and services, Student cannot be satisfactorily educated in regular classes, or in a combination of regular classes and pull-out classes, in a District public school. To the contrary, Student was successfully educated in regular education classes during the fall of 2012, when Mother took temporary leave from her job to provide Student intensive academic support at home. To be sure, the IDEA places responsibility on the school district – not the parent – to provide children with disabilities an appropriate education designed to meet their unique needs. However, this educational history shows that with appropriate services and supports, Student can receive a satisfactory education in the public school setting. Therefore, I deny Petitioner’s request to order DCPS to fund Student’s placement in a nonpublic school.<sup>3</sup>

Special Education hearing officers have broad discretion in ordering relief for a denial of FAPE. See, e.g., *G.G. ex rel. Gersten v. District of Columbia*, 2013 WL 620379,

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<sup>3</sup> As of the hearing date, Petitioner had not identified an appropriate nonpublic school for Student to attend.

8 (D.D.C. Feb. 20, 2013) (Once a court holds that the public placement violated the IDEA, the court enjoys broad discretion in granting such relief as it determines is appropriate.) Student requires an appropriate IEP, informed by a comprehensive evaluation of her behavioral problems. The January 11, 2013 psychological reevaluation, conducted by School Psychologist, barely addressed Student's behavioral issues. (The BASC-2 rating scale was completed by only one respondent – one of Student's teachers – and addressed concerns about Student's lack of focus and possible ADHD.) The psychological reevaluation report provides no insight as to causes of or appropriate interventions for Student's pattern of absconding, truancy and class-skipping. DCPS' January 9, 2013 FBA of Student identifies as areas of concern various in-school behaviors, but it also does not address the overarching concerns of Student's absconding, truancy and skipping class.

I find that the appropriate remedy in this case is to order that Student be provided a thorough and comprehensive DCPS-funded diagnostic psychological reevaluation. In my discretion, I will order DCPS to fund an independent comprehensive psychological evaluation to determine whether there are psychological conditions underlying Student's behaviors which are impeding her learning, and to determine Student's resulting special education and related services needs. *See Analysis and Comments to the Regulations, Federal Register, Vol. 71, No. 156, Page 46643 (August 14, 2006) (Decisions regarding the areas to be assessed are determined by the suspected needs of the child. If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted.)* Upon completion of the evaluation report, DCPS must reconvene Student's IEP team to revise Student's IEP in

accordance with 34 CFR § 300.324(b).<sup>4</sup> When the IEP team reconvenes, DCPS must ensure that the IEP team is made aware that when a student's behavioral disturbances, whether in or out of school, interfere with her ability to learn, the IEP must address those problems if required for Student to make progress under the plan.

### ORDER

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

#### ORDERED:

1. Within 10 school days of this Order, DCPS shall issue a funding authorization to Mother to obtain an Independent Educational Evaluation (IEE) comprehensive diagnostic psychological evaluation of Student. Upon receipt of the evaluation report, DCPS shall promptly convene Student's IEP team to review and revise her IEP in accordance with this decision and pursuant to 34 CFR § 300.324(b).
2. All other relief requested by the Petitioner herein is denied.

Date: March 10, 2014

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).

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<sup>4</sup> Mother testified that Student's IEP team met on February 18, 2014 to review her IEP. However, the revised IEP was not offered into evidence. I make no finding as to the appropriateness of the February 2013 IEP.