OSSE
Student Hearing Office
November 04, 2013

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

STUDENT,[1]

Petitioner,

v

Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On August 9, 2013 parent, on behalf of the student ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education ("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A). A resolution meeting was held August 19, 2013. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on the same date so indicating. HO 4. Respondent DCPS filed a Response to Petitioner's Administrative Due Process Complaint Notice (HO 5) on August 22, 2013. This was 3 days beyond the 10 day timeline for filing a response established in 34 C.F.R. § 300.508(e)(1). The 45 day timeline began to run on

[1] Student has reached the age of majority and brings this action on his own behalf. Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

September 9, 2013, the day after the 30 day resolution period ended. On September 23, 2013, the date the prehearing conference was originally scheduled, I informed the parties that Student had reached the age of majority and his mother lacked standing to pursue this matter as all rights had transferred to Student. In order to address the transfer of rights, Petitioner's counsel filed an unopposed Motion for a Continuance (HO 9) on September 24, 2013, and I granted the Motion for a Continuance on September 25, 2013. My Hearing Officer Determination is due on November 2, 2013. On September 27, 2013 Petitioner filed a Motion to Substitute Petitioner and Intent of Adult Student to Proceed as Petitioner.[3] HO 12. I granted this Motion on September 28, 2013. HO 13. Following the Prehearing Conference held on October 4, 2013, I issued a Prehearing Conference Order on October 7, 2013.[4] HO 14. My Hearing Officer Determination is due on November 2, 2013.

At all times relevant to these proceedings Petitioner was represented by Roberta Gambale, Esq., and Lynette Collins, Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled for October 21, 2013. The hearing was held as scheduled in Room 2004 of the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C. §§ 1400, *et seq*; District of Columbia Code, §§ 38-2561.01, *et seq*.; federal regulations implementing IDEA,

[3] When Petitioner was called as witness, he was at first somewhat recalcitrant in answering questions posed to him by his counsel. I called a brief recess and spoke to counsel, out of Petitioner's presence, about Petitioner's ability to understand the process and proceed as Petitioner. Petitioner's counsel assured opposing counsel and me that Petitioner understood the process. I therefore agreed to allow the hearing to proceed. Upon his return, Petitioner was appropriately responsive to counsel's questions. Furthermore, I observed Petitioner's behavior throughout the hearing and note he was following the process as evidenced, for example, by his pulling out exhibits to review as they were addressed during testimony.

[4] The Prehearing Conference Order includes, at ¶ 3, a schedule for the day of hearing to which the parties agreed. This schedule was created because it was my view that attempting to complete the instant hearing in one day would be difficult. Petitioner had stated intent to call 5 witnesses, and Respondent intended to call three. The Schedule was set in order to assure the hearing would conclude in one day. I note here that on the day of hearing it was difficult to meet the schedule as the hearing progressed, and it is unlikely the hearing would have concluded in one day were it not for the cooperation of Respondent's counsel. He facilitated the process by allowing some of the time previously scheduled for his witnesses to be used by Petitioner.

34 C.F.R. §§ 300.1, *et seq*.; and District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq*.

ISSUES

The issues are:

1) Whether DCPS' failure to develop an appropriate individualized education program ("IEP") on or about March 19, 2013 denied Student a free, appropriate public education ("FAPE") in that the IEP lacked goals related to Braille, an appropriate transition plan, appropriate behavioral support services, appropriate occupational therapy services, extended school year services, travel/mobility training and adequate life skills. This IEP was amended at a meeting on or about September 4 or 6, 2013. As a result of the amendment, three IEP based claims remain under contention: lack of occupational therapy skills, lack of mobility training and lack of adequate life skills training (such as shopping, preparing meals and developing organizational skills); and

2) Whether DCPs failed to provide Student an appropriate placement/ setting/location from on or about March 19, 2013 through the filing of the Complaint. Mamie D. Lee is not able to meet the student's visual needs due to the lighting and layout of the school.

RELIEF REQUESTED

Petitioner requested:

1) Placement at Non-DCPS School or an alternative school or a meeting of the Multidisciplinary Team ("MDT") to determine appropriate placement; and

2) Compensatory education.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:[5]

P-1 Administrative Due Process Complaint Notice, 8-9-12;
P-2 Affidavit of Parent for the Substitution of Student, 9-26-13;
P-3 Petitioner's Response to Motion to Dismiss, 11-7-12;

[5] During preliminary matters Respondent's counsel objected to the admittance of Petitioner's Exhibits 9 through 17 on relevance grounds. These exhibits, all of which are correspondence, were not admitted pending testimony establishing their relevance. There was no testimony regarding Petitioner's Exhibits 13, 15, 16, 17. Therefore, they were not introduced into evidence.

P-4 Prehearing Conference Order, 10-7-13;
P-5 Electronic Correspondence Chain from DCPS Vision Teacher 1 to Advocate, 9-5-13;
P-6 Correspondence from DCPS Vision Teacher 1 to Advocate, 8-1-13;
P-7 Correspondence from Director, Non-DCPS School, 6-18-10;
P-8 Observation of Student by Advocate, 10-9-12;
P-9 Correspondence from RN, 3-15-13;
P-10 Correspondence from Ophthalmologist;
P-11 Correspondence from Advocate to DCPS Staff, dated 7-24-2013;
P-12 Correspondence from Advocate to SEC, dated 7-31-13;
P-13 Not admitted
P-14 Correspondence from Advocate to SEC, dated 7-31-13;
P-15 Not admitted
P-16 Not admitted
P-17 Not admitted
P-18 Prior Written Notice, 5-9-13;
P-19 Individualized Education Program, 3-6-12;
P-20 Amended Individualized Educational Program, 5-9-13;
P-21 Individualized Education Program, 11-28-13;
P-22 Comprehensive Psychological Evaluation, 2-14-13;
P-23 Vocational Assessment, 1-4-13;
P-24 Occupational Therapy Evaluation, 1-4-13;
P-25 Data Evaluation Review, 11-26-12;
P-26 Independent Speech and Language Assessment Review, 3-12-13;
P-27 Speech and Language Evaluation, 12-20-12;
P-28 Eye Report for Children with Visual Problems, 6-2012;
P-29 Certificate to Return to School, 9-4-12;
P-30 Functional Vision Assessment, 1-11-13 and 1-18-13;
P-31 Record Review Report, 3-18-13;
P-32 Review of Independent Educational Evaluation, 3-17-13;
P-33 Pediatric Ophthalmology/Eye Exam Results, 6-19-12;
P-34 Review of Independent Assessment, 6-25-08;
P-35 Patient Discharge Summary, 9-5-12;
P-36 Psychological Report, 4/8/10;
P-37 Compensatory Education Plan, 11-13-12;
P-38 Compensatory Education Plan, 10-17-13;
P-39 Curriculum Vitae, Occupational Therapist;
P-40 Curriculum Vitae, Speech-Language Pathologist;
P-41 Curriculum Vitae, Vocational Assessor;
P-42 Professional Resume, Psychologist;
P-43 Professional Resume, Advocate;
P-44 Comments for Reporting Period 4, 3-30-13 through 6-21-13;
P-45 IEP Progress Report-Annual Goals, 4-19-13;
P-46 Individualized Education Program, dated 5-2-11

Exhibits admitted on behalf of Respondent are:

R01 (Blank)
R02 IEP, 3/6/12.
R03 Meeting notes, 3/6/12.
R04 Progress Report, 6/13/12
R05 IEP, 9/10/13
R06 PWN, 9/6/13
R07 Progress Report, 6/19/13
R08 PWN, 5/9/13
R09 Progress Report, 4/19/13
R10 MDT Notes, 3/19/13
R11 Review of Ind. Educational Evaluation by DCPS School Psychologist, 3/17/13
R12 Record Review Report by DCPS Occupational Therapist, 3/18/13
R13 Evaluation Summary Report, 2/12/13
R14 RSM notes, 8/19/13
R15 Psychological Report, 4/8/10
R16 Functional Orientation and Mobility Assessment[6]

Exhibits admitted by the Hearing Officer are:[7]

HO 1 Administrative Due Process Complaint Notice filed August 9, 2013
HO 2 Notice of Hearing Officer Appointment of August 12, 2013
HO 3 Prehearing Conference Scheduling Letter and Order re Timelines of August 12, 2013
HO 4 Resolution Period Disposition Form of August 19, 2013
HO 5 District of Columbia Public Schools' Response to the Administrative Due Process Complaint Notice of August 22, 2013
HO 6 Prehearing Notice of August 22, 2013
HO 7 District of Columbia Public Schools' Motion to Dismiss the Administrative Due Process Complaint of September 23, 2013
HO 8 Order of September 23, 2013 regarding results of telephone conference of the same date
HO 9 Petitioner's Motion for a Continuance of September 24, 2013
HO 10 Interim Order on Continuance Motion of September 25, 2013
HO 11 Petitioner's Response to District of Columbia Public Schools' Motion to Dismiss of September 26, 2013
HO 12 Petitioner's Motion to Substitute Petitioner and Intent of Adult Student to Proceed as the Petitioner of September 27,2013
HO 13 Order on Motion to Substitute Petitioner of September 28, 2013
HO 14 Prehearing Conference Order of October 7, 2013 with email amendment of October 8, 2013
HO 15 Prior HOD regarding instant student forwarded October 9, 2013
HO 16 Miscellaneous emails

[6] Respondent's Exhibit 16 was provided to opposing counsel on October 23, 2013,the day after 5 day disclosures were due. It was not received by Respondent's counsel until that date. I admitted it into the record, over Petitioner's objection pursuant to 34 C.F.R. §300.512(b) which allows hearing officers discretion to admit evaluations and recommendations from those evaluations after the 5-day disclosure date.
[7] Emails forwarding the documents of record to opposing counsel and the hearing officer are filed with the documents of record unless otherwise noted.

- 8/15/13 from Petitioner's counsel re scheduling of resolution meeting
- 8/21/13 from HO re need to schedule prehearing conference
- 2 Chains of 8/12 – 8/21/13 re scheduling
- Chain of 8/22/13 re prehearing notice
- 2 Chains of 9/23/13 re proceeding with telephone conference
- Chain of 9/23/13 re Motion to Dismiss
- 9/24/13 re filing requirements
- 9/25/13 forwarding chain re petitioner's filings to respondent's counsel;
- Chain of 9/25/13 re scheduling
- Chain of 9/26/13 re timeline for filing Motion for Substitution
- 10/1/33 inquiry regarding status of Motion to Dismiss
- 10/4/13 providing information on Mamie D. Lee School
- 10/18/3 HO inquiry re compensatory education plan
- 10/23/13 from teacher of the visually impaired
- 10/23/13 from Respondent re striking compensatory education claim
- Chain of 10/23 – 10/24/13 re Respondent's proposed Exhibit 16

HO 17 List of Proposed Hearing Officer Exhibits filed October 18, 2013
HO 18 Respondent's Motion to Dismiss Claim for Compensatory Education of 10/18/13
HO 19 Petitioner's Compensatory Education Plan of 10/18/13
HO 20 Notice of Appearance of Co-Counsel of 10/21/13
HO 21 Order on Motion to Dismiss Compensatory Education Claim of 10/23/13.[8]

B. Testimony

Petitioner testified and presented the following witnesses:

- Parent;
- Director;
- Advocate admitted as an expert in the creation of IEPs; and
- Psychologist admitted as an expert in clinical psychology in the area of educational evaluation.

DCPS presented the following witnesses:

- SEC; and
- Vision Services Provider.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:[9]

[8] Petitioner's Response to this Motion was filed on October 23, 2013 but was not introduced at hearing in error. It is addressed in the Order and is noted here to complete the record.

1. Student, Petitioner herein, is 18 years old. He is eligible for special education and related services under IDEA as a student with multiple disabilities. He has both a visual impairment and an intellectual disability. Student has attended Attending School, a separate, public special education school, for the last four years. Student has received special education services since kindergarten or first grade. He is on the certificate track. P 19; P 20; P 32; P 21; R 5; R 13; Testimony of Parent.

2. Attending School has a low student to staff ratio of approximately 4 or 5 to 1. Attending School has a full range of related services available. It provides a curriculum including life skills, vocational life experiences and functional academics. Vision services are available at the school. Testimony of SEC; Testimony of Vision Services Provider.

3. Student is legally blind. His vision is deteriorating but capable of improvement. He is supposed to wear glasses but does not always do so. Currently his glasses are broken. Student has an appointment on November 1, 2013 to begin the process to get a new pair of glasses. When reading or watching a DVD on television Student places the observed material within one or two inches of his eyes. P 9; P 23; Testimony of Petitioner; Testimony of Parent.

4. Student functions at the first to second grade level in mathematics, the second to third grade level in reading, and at the second grade level in written language. P 19.

5. Student requires large print reading materials, bright lighting conditions and extra time in school to compete assignments. He should be seated toward the front of the classroom. P 33.

6. During the IEP meeting held March 19, 2013, it was agreed Student would begin learning Braille the following week. He did not start learning Braille until this school year (2013 – 2014).

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[9] In the findings that follow I cite exhibit numbers and/or testimony as bases for the findings. Some exhibits were introduced by both Petitioner and Respondent. The citations to exhibits reference only one party's exhibits in those instances where both parties have introduced the same exhibit.

P 6; P 10; P 22; P 23; R 5; R 10; Testimony of Advocate; Testimony of Psychologist; Testimony of Vision Services Provider.

7. Student requires assistive technology. He has a screen magnifier (My Reader 2)[10] and a laptop that enlarges print and has a speech narrator. Each of these pieces of equipment can be moved from one classroom to another. My Reader 2 weighs about 8 pounds. Student has access to a cart to move equipment. He also can get assistance from a classroom aide.[11] Student has been observed using the My Reader 2 in homeroom and in reading which takes place in the same location. He takes the laptop to the vision services provider's office when he works with her. P 10; Testimony of Vision Services Provider

8. While Student exhibits some deficits in fine motor skills and in coordination, these can be attributed, at least in part, to his visual impairment. Student is able to navigate the Attending School and is one of the two best athletes in the school. Similarly, low scores in visual perceptual testing are reflective of Student's visual impairment. Student has functional fine motor skills for the school setting including those for keyboarding and writing. The services provided by Student's vision services provider address his needs in this area. P 24; R 10; R 12.

9. Student's March 2013 IEP, amended on May 5, 2013, requires Student receive 30 hours per week of specialized instruction in reading, math and written language outside the general education environment, one hour per week of specialized instruction in vision services outside the general education environment and 4 hours per month of speech/language services outside the general education environment. The May 5, 2013 amendment removed Extended School Year services from the IEP at parent's request. The IEP requires Student have a computer with

[10] The screen magnifier also includes an audio component.
[11] Student is extremely reluctant to ask for assistance. It is not clear, therefore, that he would ask an aide for assistance.

screen magnifier and screen reader, an audio book player and a CCTV system.[12] Goals under Adaptive/Daily Living Skills include employment related skills. The IEP also includes a transition plan with goals in the areas of post-secondary education, employment and independent living. P 18; P 20; R 14

10. As part of his program at Attending School Student has had one on-site work experience in a nursing home, and he will have another on-site work experience at the Navy Yard. P 23; Testimony of SEC.

11. On September 6, 2013 additional amendments were made to Student's IEP. Braille was added to specialized instruction and travel training[13] also was to be added. Additions were made to required assistive technology to complement the instruction in Braille. P 20; R 5; Testimony of SEC.

12. Student receives instruction in daily living skills as part of his program at Attending School. He receives instruction in, among other areas, meal planning including making a grocery list and going to the store, hygiene and functional financial skills. The specifics of this instruction do not appear on his IEP. P 20; R 5; Testimony of SEC.

13. Student does not require a dedicated aide.[14] He is independent in traveling throughout the building, can use equipment and can go up and down stairs, sometimes taking them two at a time. His self-help skills are good. He is able to play basketball. Testimony of Vision Services Provider; Testimony of SEC.

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[12] This is My Reader 2.

[13] It does not appear that travel training goals were added to the IEP on this date. However, travel training began to be implemented at this time and following the completion of the Orientation and Mobility Assessment on October 21, 2013 goals were drafted. These are to be added to the IEP. R 5; R 16; Testimony of SEC.

[14] There was no specific claim in the instant Complaint requesting a dedicated aide, but there was evidence on this alleged need provided at hearing.

14. The lighting at Attending School is similar to that in other DCPS schools. Neither Petitioner nor Parent has complained about the lighting. DCPS would be able to address specific lighting needs if they occurred. Student requires bright lighting. P 33; Testimony of Vision Services Provider; Testimony of SEC.

Student requires orientation and mobility services for orientation. An orientation and mobility assessment was to have been ordered in November 2012. A Functional Orientation and Mobility Assessment was completed October 21, 2013. Goals addressing compass direction, directional corner, landmarks and clues, and traffic signs and lights were drafted as part of this assessment process. P 21; R 16.

15. Non-DCPS School is located in Baltimore, Maryland. It provides services to students with visual impairments from birth through age 21. Students receive services on and off campus. Both day and residential programs are available. Non-DCPS School has a Certificate of Approval from the Office of the State Superintendent of Education. ("OSSE") for the District of Columbia. Student has been accepted to the day program. Student –teacher ratios in classrooms at Non-DCPS School are low. There are 4 to 8 students assigned to each classroom, and each classroom has a teacher and two aides. All students receive a current vision assessment and a functional assessment. These assessments are used to determine what assistive technology/equipment will best suit the students' individual needs. Students on the certificate track have a program that includes functional academics and career education. Job training occurs on campus and in the community.[15] Testimony of Director.

[15] The school also provides an academic program and an early childhood program that includes different components. I have not discussed them here as Student would not attend either of these programs were he to go the Non-DCPS School. I also have not discussed teacher certification as Non-DCPS School has an OSSE certificate of approval.

16. Petitioner's Compensatory Education Plan ("Plan") addresses a 3.5 month period falling between March and October, 2013.[16] It is not clear what exact dates are covered in the Plan. The Plan is based on the IEP team allegedly not considering any of the recent independent assessments at the March 19, 2013 IEP meeting and not making appropriate changes to the IEP. Alleged educational losses are based on the following identified concerns: transition plan in the March 2013 IEP lacks rigor; academic goals are repeated from previous IEPs;[17] the omission of occupational therapy; the need for increased behavior support; and inappropriate placement. According to the Plan, the March IEP would have better met Student's needs had it included instruction in functional skills. The Plan addresses many alleged issues and concerns well outside the specified timeframe, referencing for example meeting notes from 2010 and an IEP from 2012 as well as evaluations and assessments outside the time frame to be addressed in the Plan. The Plan proposes placement in an alternate location or 80 hours of one-on one tutoring and 30 hours of one-on-one vocational training as compensatory education. The one-on-one service hours are intended to help Student reach a 6th grade level in academics. P 38; Testimony of Advocate.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. I note the DCPS witnesses were particularly forthcoming in their testimony. They were clearly knowledgeable and were both forthright and candid. Their testimony was extremely helpful. In contrast Petitioner's expert psychologist was not cooperative with the process. He was often expressly

[16] The time period to be addressed in the compensatory education plan was to be March 19, 2013 through the filing of the Complaint on August 9, 2013. This time frame was stated in my email of 10/8/13 amending the Prehearing Conference Order of 10/7/13. The 10/8/13 email states it is to be read as an amendment to the 10/7/13 Order.
[17] The repetition of goals was not as issue raised in the Complaint.

disdainful of the process and nonresponsive to requests – all the while stating his intent to respond and cooperate. His oppositional testimony undercut the value his testimony could have provided and limited the weight I gave to his statements.

Whether DCPS' failure to develop an appropriate IEP on or about March 19, 2013 denied Student a FAPE in that the IEP lacked goals related to Braille, an appropriate transition plan, appropriate behavioral support services, appropriate occupational therapy services, extended school year services, travel/mobility training and adequate life skills. This IEP was amended at a meeting on or about September 4 or 6, 2013. As a result of the amendment, three IEP based claims remain under contention: lack of occupational therapy skills, lack of mobility training and lack of adequate life skills training (such as shopping, preparing meals and developing organizational skills)

Under the IDEA each local education agency is required to provide a FAPE to each student found eligible for special education and related services. A FAPE is:

> Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . .[a]re provided in conformity with an . . .IEP that meets the requirements of [the IDEA regulations].

34 C.F.R. § 300.17. *See also*, D.C. Code § 30.3001.1.

An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the effect of the student's disability on his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. *See also*, D.C. Code § 30.3009. For students with visual impairments the IEP must provide for instruction in Braille and the use of

Braille unless the IEP team determines, after evaluation, that Braille is not appropriate for the student. 34 C.F.R. § 300.324(a)(2)(iii). The IEP team also is to consider the use of positive behavioral interventions and supports for students whose behavior impedes his/her learning or that of others. 34 C.F.R. § 300.324(a)(2)(i). No later than the first IEP to be in effect when the student turns 16, the IEP is to include goals addressing postsecondary transition in the areas of education, employment and, where appropriate, independent living skills. 34 C.F.R. § 300.320(b). In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. If a student's behavior impedes the student's learning or that of other students, the team is to consider interventions and strategies to address the behavior. *Id.* An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

In the instant matter, Petitioner alleged his March 19, 2013 IEP was not appropriate because it lacked goals related to Braille, did not include an appropriate transition plan, occupational therapy services or behavior support services. Further the IEP did not include extended school year services, travel training or adequate life skills. Four of these seven areas of concern were subsequently addressed at an IEP meeting in September 2013. I address each area of concern separately below, including those addressed at the September 2013 IEP meeting. There is a claim for compensatory education from the March 19, 2013 IEP through the filing of the Complaint on August 9, 2013. Therefore, any of the initial claims could result in a compensatory education award, even those resolved at the September 2013 meeting should I find

the failure to address the area resulted in a denial of FAPE to Student at the March 19, 2013 meeting.

Braille

For students with visual impairments the IEP must provide for instruction in Braille and the use of Braille unless the IEP team determines, after evaluation, that Braille is not appropriate for the student. 34 C.F.R. § 300.324(a)(20(iii). Reports from professionals in various disciplines recommended Student receive instruction in Braille. His ophthalmologist wrote a letter so stating. The independent psychological assessment of February 14, 2013 made this recommendation as did the vocational assessment of January 4, 2013. At the March 19, 2013 IEP meeting, the team agreed Student would begin Braille instruction the following week. This did not occur. Braille instruction was not actually added to Student's IEP until the September 6, 2013 amendment meeting. Instruction in Braille began following that meeting. DCPS provided no evidence explaining this delay.

I therefore find by a preponderance of the evidence that DCPS denied Student a FAPE by failing to provide Student instruction in Braille from March 19, 2013 through the filing of the instant complaint on August 9, 2013.

Transition Plan

No later than the first IEP to be in effect when the student turns 16, the IEP is to include goals addressing postsecondary transition in the areas of education, employment and, where appropriate, independent living skills. 34 C.F.R. § 300.320(b). Petitioner alleges that the transition plan included with the March 19, 2013 IEP is not appropriate. The transition plan in the March 19, 2013 IEP, which was not changed at the September 6, 2013 meeting, includes goals related to post-secondary education, work and independent living. Petitioner provided little

evidence regarding the allegations of inappropriateness of the IEP. Advocate, testifying about the Compensatory Education Plan, stated the transition plan was not rigorous enough. In this she appeared to be concerned that the transition plan had work goals related to building job-related vocabulary. I note that although not part of the transition plan, the IEP also includes goals under adaptive/daily living skills related to employment. These goals include answering sample job interview questions and participating in community based training on job related skills in the community. While it would be desirable to include these job related goals in Student's transition plan, the intent of a transition plan is to prepare Student for postsecondary life, including work. With this intent in mind I conclude it would raise form over substance to find Student did not have a program, whether part of his core IEP or part of a transition plan, addressing his post-secondary job related needs. Not only are there goals directly focused on obtaining employment, Student has had one on-site work experience in a nursing home, and he will have another on-site work experience at the Navy Yard in the near future. These work related goals and experiences must be read in concert with the transition plan. Petitioner has provided little evidence suggesting the transition plan goals are inappropriate. He has suggested, through Advocate, that they are not rigorous. However, Petitioner has not addressed the additional job related training being provided under daily living skills and the community based work experience.

During the prehearing conference Petitioner's counsel stated the concerns regarding the transition plan had been addressed at the September 2013 meeting.[18] The transition plan accepted in September 2013 was the transition plan incorporated in the March 2013 IEP. Without evidence indicating changes that would have made the IEP appropriate in September 2013

[18] As stated in Issue 1, only three areas of concern remained following the September 2013 meeting. They are occupational therapy, mobility training and adequate life skills. Therefore, Petitioner's counsel recognized there remained no issue regarding the transition plan after the September 2013 meeting.

despite its being inappropriate in March 2013, I must conclude that the transition plan's appropriateness in September 2013 indicates it was appropriate in March 2013.

I, therefore, find, by a preponderance of the evidence, that DCPS did not deny Petitioner an appropriate IEP by failing to develop an appropriate transition plan on the March 19, 2013 IEP.

Behavior Support Services

The IEP team is to consider the use of positive behavioral interventions and supports for students whose behavior impedes his/her learning or that of others. 34 C.F.R. § 300.324(a)(2)(i). Petitioner's counsel indicated, during the prehearing conference, that concerns about behavior support services were addressed at the September 2013 meeting. At hearing, Petitioner presented little evidence regarding a need for such services at the time the March 19, 2013 IEP meeting was held. Parent testified that during Student's second year at Attending School he developed some behavior issues that were addressed by a behavior intervention plan. Parent also testified Student sometimes makes inappropriate statements to classmates, and she has received telephone calls from the school regarding these situations. Parent's testimony was unclear as to when these latter incidents occurred. Moreover, SEC testified that Student has no significant behavior issues.[19] Finally, the evidence at hearing was that Student's behavioral needs were addressed at the September 2013 meeting. While nothing was added to the IEP, there was an agreement to provide Student some informal supports, such as allowing him to go to a trusted staff's office to when he was having a difficult day in school. As there were no changes to Student's IEP in this regard I am left to conclude that these informal support services are not necessary for student to

[19] There was some testimony regarding Student's reluctance to ask for assistance which was variously attributed to shyness and/or reluctance to appear in need. This was not, however, connected to a need for behavior support services, and the DCPS review of the independent psychological expressly stated Student had no behavior issues affecting him at school. DCPS' position was not countered by Petitioner's evidence.

receive a FAPE and were not at the time the March 19, 2013 IEP was developed as they were deemed sufficient to resolve the concern raised herein.

I, therefore, find, by a preponderance of the evidence, Petitioner has failed to meet the burden of proof as to the need for additional behavior supports on Student's IEP. DCPS has not denied Student a FAPE by failing to include behavior supports in Student's March 19, 2013 IEP.

Extended School Year

Extended school year services are to be provided to a student if the public agency determines the student requires such services for the provision of FAPE. 34 C.F.R. § 300.106.

> In general, for there to be an obligation to provide ESY in a given case, it must appear "that an ESY is `necessary to permit [the child] to benefit from his instruction.'" Cordrey, 917 F.2d at 1473 (citation omitted). In general, this standard is satisfied when it is shown that the student will suffer some significant regression of skills or knowledge without a summer program, followed by an insufficient recoupment of the same during the next school year. *See id*. at 1470.

Reusch v.Fountain, 872 F.Supp. 1421 (U.S.Dist.Ct MD 1994).

Of all the claims raised by Petitioner this is the most confounding. Petitioner provided no evidence regarding the Student's need for such services. Furthermore, it is uncontested that extended school year services were removed from Student's IEP at Parent's request. The request was made to allow Student the opportunity to participate in the Mayor's summer jobs program. At the time Parent made this request Student was underage and, therefore, parent was acting on his behalf under IDEA. Parent's testimony suggested that sometime after extended school year services were removed from the IEP she learned that Student could work in the jobs program and attend summer school. There was no evidence offered suggesting that she asked extended school year services again be included in the IEP, nor was it clear that she learned this new information at a time sufficiently before the end of the summer session that would have allowed the IEP to be amended and Student to participate in extended school year services.

Petitioner did not meet his burden of proof as to including extended school year services in the IEP. Petitioner's counsel also stated, during the prehearing conference, that this area of concern had been addressed at the September 2013 meeting. I note extended school year services were not added to the IEP during the September 2013 meeting.

I, therefore, find, by a preponderance of the evidence, DCPS did not deny Student a FAPE by failing to include extended school year services on Student's March 19, 2013 IEP.

Lack of Occupational Therapy

The IEP is to include a statement of the related services required to provide a student a FAPE. 34 C.F.R. § 300.320. Petitioner provided DCPS with an independent occupational therapy assessment report regarding an assessment completed on January 4, 2013. That report noted Student's visual impairment and its impact on the skills assessed. The report identifies needs in the areas of coordination, fine motor skills and visual-perception. The evaluator recommended 60 minutes of direct occupational therapy services per week to develop compensatory skills,[20] keyboarding skills and to improve coordination.

A DCPS occupational therapist reviewed the independent assessment on March 18, 2013. The DCPS occupational therapist also interviewed staff at Attending School and observed Student on two different occasions. She stated Student's fine motor skills scores were low due to his visual impairment. She also attributed Student's low visual perceptual testing to the heavy reliance on vision required for these tasks. She added that Student is working on keyboarding and has the functional skills for this task as well as other tasks. Her review also notes that Student is considered one of the two best athletes in the school. I note Student's Vision Services Provider testified Student walks quickly and goes up stairs two steps at a time.

[20] These skills were not specified.

The independent evaluation does not address Student's adaptability. It identifies weaknesses based, in significant part, on Student's vision impairment as opposed to coordination, fine motor, or visual/perceptual abilities, and disregards the significance of Student's vision impairment in order to establish a need for occupational therapy. The independent assessment does not recognize Student is already learning keyboarding skills, his coordination as demonstrated in school athletics or the significance of Student's visual impairment. The DCPS review, however, clearly demonstrates Student does not require these services. The related services he receives from the Vision Services Provider, who obviously has experience in assisting students in fine motor and visual perception areas in relation to their vision needs, are appropriate. Student's school based activities belie the need for assistance with coordination.

I, therefore, find, by a preponderance of the evidence, DCPS did not deny Student a FAPE by failing to include occupational therapy on Student's March 19, 2013 IEP.

Lack of Mobility Training

Orientation and Mobility services are a related service. They are defined to be services provided to a student with visual impairment to allow such students to attain systematic orientation to and safe movement in his/her environment. 34 C.F.R. § 300.34(c)(7). Thus the IEP is to include orientation and mobility services if they are required for a student to receive a FAPE. 34 C.F.R. § 300.320. In the instant matter, Student requires orientation and mobility services for orientation.

An orientation and mobility assessment was to have been ordered in November 2012. A Functional Orientation and Mobility Assessment was completed October 21, 2013. It was agreed at the September 2013 meeting that travel training goals were to be added to Student's IEP, but

this did not occur. However, travel training began to be implemented following this meeting, and, following the completion of the Orientation and Mobility Assessment on October 21, 2013, goals for this related service were drafted. These are to be added to Student's IEP. In particular, these proposed goals focus on compass direction, directional corner, landmarks and clues, and traffic signs and lights.

There was no evidence presented at hearing regarding the delay in the orientation and mobility assessment. Based on the assessment completed October 21, 2013, it is clear that had an assessment been completed almost one year earlier in November 2012, at the time it was determined one should have been ordered, Student would have had these services included on his March 19, 2013 IEP. I note, moreover, this assessment was not completed in time for the September 2013 meeting and was not even completed in sufficient time to allow it to be included with the 5 day disclosures in this matter. The delay until October 21, 2013 demonstrates a lack of focus on Student's needs. It resulted in a failure to provide Student a needed service in March 2013.

I, therefore, find, by a preponderance of the evidence, DCPS denied Student a FAPE by failing to includes travel training on Student's March 19, 2913 IEP.

Lack of Adequate Life Skills Training

Student attends a full time separate special education school. The school provides training in life skills to the students in the school. Such instruction is provided to Student and his classmates to assure they receive FAPEs as required by IDEA. 34 C.F.R. § 300.101. The training provided Student includes training in planning a meal, shopping for food and meal preparation. Student is taught functional skills relating to money and hygiene. However, little of this instruction is included on Student's IEP. As these life skills are included as part of the school's

curriculum it is an area where the IEP, alone, does not establish Student's program. As I noted in my discussion of the transition plan, Supra at pp. 14 -16, it would be appropriate, even preferable, to include goals for these areas of instruction on Student's IEP as the IEP is the document that defines the program and services a student receives. It is the document defining FAPE for the student. However, in the instant matter I cannot find a denial of FAPE based on the failure to write goals for educational services the evidence establishes the student is receiving. Again this would be raising form over substance, and I decline to do so. There is at best a procedural violation which in and of itself does not create a denial of FAPE and certainly does not create an educational harm.

I, therefore, find, by a preponderance of the evidence, DCPS did not deny Student a FAPE by failing to include adequate life skills in Student's March 19, 2013 IEP.

Whether DCPs failed to provide Student an appropriate placement/ setting/location from on or about March 19, 2013 through the filing of the Complaint. Mamie D. Lee is not able to meet the student's visual needs due to the lighting and layout of the school.

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction is regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. The placement decision is to be made by a group of individuals, including the

parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform to the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2).

In the instant matter, Student attends a separate, public special education school. Petitioner contends the particular school is not appropriate because Student, who is legally blind, requires different lighting and a different floor plan. The Complaint indicates, and Parent testified, that the lights in Attending School are too bright and are a causal factor in Student's deteriorating vision. The report from Student's ophthalmologist, however, indicates that he needs bright light. Parent's testimony was clear that she had been told Student required dim light. Yet there is no documentary support for this position. I cannot make a decision based on Parent's testimony alone as this is clearly an area reliant on medical expertise, and the medical documents do not support Parent. In reaching the determination that Student does not require dim light I want to be clear that I am not criticizing Parent. Nor do I contend she is being less than forthright. On the contrary, Parent is clearly an involved and committed mother who is and has acted for the benefit of her son. I understand that she has testified to her son's needs as she understands them and accept her efforts on his behalf. However, I do conclude that her testimony regarding his need for dim lighting is not supportable.[21]

Petitioner also contends that the floor plan of Attending School is inappropriate. In this assertion, Petitioner suggests Student is not able to negotiate the steps in the school. I find little support for this contention. While an undated letter from his ophthalmologist indicates Student's visual impairment creates a lack of depth perception and he will not be able to and should not negotiate steps, Student's daily life belies this. He lives in an apartment which requires he use

[21] No concerns regarding the lighting in the school had been raised prior to the filing of this complaint. Vision Services Provider testified that the lighting could be adjusted to meet Student's needs if that were required.

steps to enter and leave the building. He has been observed going up steps two at a time when in school, and the orientation and mobility assessment indicates he is able to adapt to varying curb heights. There is simply no evidence on a functional basis that stairs are a problem for Student.[22] Finally, even were I to find that the lighting and floor plan in Attending School created difficulties for Student these factors would not be a basis for determining Student's placement was inappropriate. His placement is in a full time separate special education school. The school is able to implement his IEP. The two areas of concern regarding the physical structure of the school cannot make the placement inappropriate. Rather they address the site selected for implementation of Student's program and placement. Petitioner's request that Student be moved to Non-DCPS School is a request for a change in location not a request for a change in placement.

In *Letter to Fisher*, 21 IDELR 992, the Office of Special Education Programs ("OSEP") defines placement under the IDEA. In this letter the placement decision has three components: 1) the education program set out in the student's IEP; 2) the option on the continuum in which the IEP is to be implemented; and 3) the school or facility selected to implement the IEP. Assignment to a particular classroom or teacher is deemed an administrative decision as long as it complies with the IEP team's determination. While the Federal Register Commentary to the current IDEA regulations found at 71 Federal Register No 156, page 46687, as identified by Respondent's counsel, broadens location to include a specific school -- "the Department's longstanding position is that placement refers to the provision of special education and related

[22] Petitioner points to a time when he fell on the steps at school and sprained his knee. This accident occurred when he returned to school after staying at home for three weeks due to a sprain. The connection between these two events cannot be denied. In fact, he returned to school with a note indicating he was not to use steps. There was no evidence provided regarding how he ended up using the steps despite this note, and I reach no conclusion regarding that. I do conclude, however, that his injury on this one occasion does support a finding that Attending School is not appropriate placement for Student.

services rather than a specific place, such as a specific classroom or specific school." (*Id.*) -- the analysis of how to determine whether a particular move constitutes a change in placement should remain consistent with that found in *Letter to Fisher*. *Op. cit.*

In *Letter to Fisher*, OSEP provides four factors for determining whether the change substantially or materially alters the child's educational program thereby creating a change in placement. These factors are:

1) Whether the IEP program in the IEP has been revised. In this matter Attending School is able to implement Student's IEP as amended and Non – DCPS School would be implementing this same IEP;
2) Whether the child will be educated with non-disabled children to the same extent. In this matter there would be no change Both Non-DCPS School and Attending School are separate, full-time special education schools;
3) Whether the child will have the same opportunities to participate in non-academic and extra-curricular activities. Neither Petitioner not Respondent have addressed this factor; and
4) Whether the new placement option is the same option on the continuum of alternative placements; As discussed, Supra, it is.

DCPS has the discretion to select the site at which a student receives his/her IEP services. Petitioner's assertion is not that the placement is inappropriate. Rather it is an assertion that the particular school is inappropriate. If Student requires physical changes be made to a particular site DCPS can make necessary accommodations and modifications to address these needs or DCPS can choose to move Student to another site. Issues regarding site selection, however, are not within my authority as a hearing officer.

I, therefore, find, by a preponderance of the evidence, DCPS did not deny Student a FAPE by failing to provide him an appropriate placement from March 29, 2013, through the filing of the Complaint.

REMEDY

A hearing officer may award compensatory education services that compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3d 516, 365 U.S, App. D.C. 234 (D.C. Cir. 2005) *citing G. ex. RG v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir 2003). IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* ". . . inquiry must be fact specific and. . .the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid* at 524.

In the instant matter Petitioner has established he was denied a FAPE by DCPS' delay in beginning instruction in Braille. It was to have begun the week following the March 19, 2013 IEP meeting. Braille instruction did not begin until after the September 2013 IEP meeting. Petitioner also has established he was denied a FAPE by the failure to include travel training in the March 19, 2013 IEP. This training did not begin until after the September 2013 IEP meeting. Moreover, the Functional Orientation and Mobility Assessment upon which proposed goals were based was not completed until October 21, 2013. As a result of these delays in implementation of needed services, Student was harmed in that he did not receive these services which are necessary to provide him needed educationally related services from March 19, 2013 through the filing of this complaint. This time frame in which these services were denied totals 56 school days, spread across 12 weeks, as Student was not enrolled in extended school year services.

Petitioner's proposed Compensatory Education Plan does not meet the *Reid* requirements noted *Supra* at p. 21. It does not specify the number of hours of lost service nor how it was determined that the proposed compensatory education is reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Instead it indicates that the proposal for tutoring services will help move Student to achievement at the 6th grade level, something he could not have achieved in the 56 days he missed theses services even had these services been directed toward educational achievement. Moreover, the request for alternative placement is looks forward rather than providing compensation for what Student lost.

The IEP amendment to include Braille instruction developed in September 2013 adds one hour of specialized instruction for this specific instruction. The proposed orientation and mobility goals do not include a needed amount of time to accomplish them. However, based on the goals focus on Student's learning to orient himself in the community, it appears one hour per week is also appropriate to accomplish these goals. As each of these areas of service are provided on a one to one basis I conclude Student is entitled to 12 hours of compensatory education in Braille instruction and 12 hours of compensatory education in travel training.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. DCPS denied Student a FAPE by failing to provide Student instruction in Braille from March 19, 2013 through the filing of this complaint on August 9, 2013.

2. DCPS did not deny Student an appropriate IEP by failing to develop an appropriate transition plan as part of the March 19, 2013 IEP.

3. DCPS did not deny Student a FAPE by failing to include behavior supports in Student's March 19, 2013 IEP.

4. DCPS did not deny Student a FAPE by failing to include extended school year services in Student's March 19, 2013 IEP.

5. DCPS did not deny Student a FAPE by failing to include occupational therapy in Student's March 19, 2013 IEP.

6. DCPS denied Student a FAPE by failing to include travel training in Student's March 19, 2913 IEP.

7. DCPS did not deny Student a FAPE by failing to include adequate life skills in Student's March 19, 2013 IEP.

8. DCPS did not deny Student a FAPE by failing to provide him an appropriate placement from March 29, 2013, through the filing of the Complaint.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

1. Student is to receive 12 hours of compensatory education in Braille instruction. He is to receive one additional hour (for a total of 2 hours per week) of Braille instruction each week for twelve weeks. If a service hour, or any part thereof, is missed for any reason it shall be made up. This additional instruction is to be provided by the same person providing him Braille instruction under his IEP. The compensatory services are to begin within 10 school days of DCPS' receipt of this Hearing Officer Determination.

2. Student is to receive 12 hours of compensatory travel training. He is to receive one additional hour of travel training each week for twelve weeks. If a service hour, or any part thereof, is missed for any reason it shall be made up. This additional instruction is to be provided

by the same person providing him travel training on an on-going basis. The compensatory services are to begin within 10 school days of DCPS' receipt of this Hearing Officer Determination.

3. All other claims made in this Complaint are dismissed.

IT IS SO ORDERED:

November 2, 2013
Date

Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).