

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, Second Floor
Washington, DC 20002

on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

**BACKGROUND AND
PROCEDURAL HISTORY**

Student is an _____ year-old male, who attends sixth grade at his neighborhood DCPS middle school.

On November 9, 2011, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS denied Student a free appropriate public education ("FAPE") by failing to develop an appropriate IEP on or about October 31, 2011 in that (a) the individualized educational plan ("IEP") does not provide sufficient specialized instruction to address his significant deficits, (b) the IEP does not provide Student with appropriate aids and services as required as a result of his disability, and (c) does not provide Student with an appropriate placement in his LRE. As relief for these alleged denials of FAPE, Petitioner requested a finding in its favor; placement and funding at a specified private school for the remainder of SY 2011/12, amendment of the IEP to include placement in a full-time separate day school, increased instructional hours in reading, math and written expression, and the aids and supports included in Student's July 25, 2011 psychological report and his February 27, 2011 IEP; in the event of a lack of space at the specified private school, then DCPS to fund independent tutoring for at least 2-3 hours per day until a spot becomes available or a suitable alternative school is identified and approved by Parent; and compensatory education.

On December 12, 2011, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. The hearing officer issued the Prehearing Order on December 14, 2011.

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On December 13, 2011, DCPS filed its Response to the Complaint, which denied all allegations and claims asserted, denied any denial of FAPE, asserted Student's IEP is appropriate and valid, noted that a behavioral intervention plan ("BIP") has been provided for Student, asserted that Student's educational and support services needs are being met, and stated that Student's placement is appropriate and Student is making progress at his current DCPS middle school.

The parties concluded the Resolution Meeting process by failing to reach agreement on December 20, 2011, which was subsequent to the end of the 30-day resolution period. The 45-day timeline began on December 10, 2011 and will end on January 23, 2012, which is the HOD deadline.

By their disclosure letters dated January 4, 2012 and January 5, 2012, respectively, Petitioner disclosed twenty documents (Petitioner's Exhibits 1 – 20) and DCPS disclosed ten documents (Respondent's Exhibits 1 - 10).

The hearing officer convened the due process hearing on January 12, 2012.¹ Both parties' disclosed documents were admitted into the record without objection. Thereafter, the hearing officer received opening statements, testimonial evidence from each party, and closing statements prior to concluding the hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUE(S)

The issue to be determined is as follows:

1. Placement: Has DCPS denied Student a FAPE, in that his 10/31/11 IEP (a) does not provide sufficient specialized instruction to address Student's significant deficits because he requires full-time out of general education services, (b) does not provide appropriate aids and services Student requires due to his disability, and (c) does not provide Student with an appropriate placement in his LRE, which allegedly is a separate day school.

FINDINGS OF FACT²

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

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

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

1. Student attended the same DCPS elementary school for pre-K through 1st grade and 2nd through 5th grades. Thereafter, for SY 2011/12, Student was sent to his neighborhood DCPS middle school.³
2. Student's February 7, 2011 IEP was his last IEP at the DCPS elementary school he attended. That IEP identified Student's primary disability as specific learning disability ("SLD") and required him to receive 5 hours per week of specialized instruction in an outside general education setting in each of the following academic areas: reading, written expression, and mathematics, as well as 30 minutes of related services per week outside of general education in each of the following areas: behavioral support services and occupational therapy ("OT"). The IEP further provided that Student required the support of a dedicated aide and was entitled to the following Other Classroom Aids and Services: "access to computer, word processor and/or laptop to be used for tasks involving written composition, constructed responses, and behavior modification; spell checker, calculator, open book quizzing/testing/examining; reduced de-crowded tasks/worksheets/tests; modified projects to fit the attention threshold available to student at this time; dictated responses to tests, assessments, quizzes, and state mandated evaluations (DC BAS, DC CAS), and additional aids and services to be determined by the service providers as they deem fit (at their own discretion)."⁴
3. Pursuant to Student's February 7, 2011 IEP, Student received pullout services in a smaller setting, as well as the support of a dedicated aide.⁵
4. Student's second term report card for SY 2010/11 rated him as "proficient" in Language Development, Science, and Social Studies, Music, Health, and Physical Education, and "basic" in Mathematics and Art.⁶
5. On May 17, 2011, a DCPS school psychologist issued a confidential data evaluation review for Student, in which the psychologist noted Student's history of having difficulty maintaining focus and concentration but noted that Student's attitude about himself and school was becoming more positive. The psychologist opined that Student requires continued access to the general education curriculum and recommended a controlled environment and small group or one-on-one instruction, among other things, for Student.⁷
6. On June 3, 2011, DCPS convened an IEP meeting for Student, at which the team members present reviewed Student's performance and evaluations. Parent and her counsel did not attend the meeting, and the advocate declined to remain at the meeting in their absence. The team noted that Student had participated in an overnight trip and exhibited excellent behavior. The team determined that Student's OT test scores, together with his academic achievement scores in written expression, revealed that OT

³ Testimony of Grandmother.

⁴ Petitioner's Exhibit 9 at p. 8.

⁵ Testimony of Grandmother.

⁶ Petitioner's Exhibit 8 at 3.

⁷ Petitioner's Exhibit 13.

therapy was no longer warranted. With respect to Student's educational progress, the team determined that Student had mastered 80% of the goals on his IEP; his March 2011 DC BAS scores were in the Below Basic range in math and the Basic range in reading; a comparison of his August 2010 and May 2011 written language test scores revealed that he could spell more words correctly, write complete sentences and write a paragraph that made logical sense; a reading test revealed that Student could answer questions about a story at 95% accuracy; and Student could also solve math word problems and perform math calculations with 80% accuracy.⁸

7. Student made progress during SY 2010/11 at his DCPS elementary school.
8. During summer 2011, prior to Student's transition to the neighborhood middle school, the SEC from the middle school called Grandmother and asked Grandmother's opinion as to whether Student should be placed in an inclusion setting or the resource room during SY 2011/12. Grandmother consulted with the SEC and one of the special education teachers from Student's previous elementary school, both of whom recommended inclusion instead of the resource room. Accordingly, grandmother agreed to have Student receive inclusion services at the neighborhood middle school.⁹
9. On July 25, 2011, an independent evaluator issued a comprehensive psychological evaluation report for Student. The evaluator rendered diagnoses of Attention-Deficit/Hyperactivity Disorder, Combined Type and Learning Disorder for Student. Student received scores ranging from 1st to 3rd grade equivalencies on the academic subtests of the Wechsler Individual Achievement Test – Third Edition ("WIAT-III") that were administered during the evaluation; however, on a March 2010 administration of the Woodcock-Johnson III Tests of Achievement ("WJ-III"), Student received scores representing grade equivalencies ranging from kindergarten to 3rd grade, with one score representing a grade equivalency of 5.1, on the subtests administered.¹⁰
10. On August 31, 2011, shortly after Student began attending his neighborhood middle school, DCPS convened an IEP meeting for Student. The team reviewed Student's comprehensive psychological evaluation, the IEP, class sizes, and related matters. The team determined that Student would continue with his dedicated aide, that his disability classification would be changed to multiply disabled ("MD") for Other Health Impairment (for ADHD) and SLD, and that Student's IEP would be changed to reflect the decision made in conjunction with Grandparent to place Student in inclusion classes.¹¹
11. On September 28, 2011, DCPS reconvened Student's IEP meeting to review the FBA and develop a BIP. The FBA revealed off-task behaviors with the need for redirection. Grandparent expressed her concern that Student wasn't performing well at the middle school, was struggling with the homework, and was not grasping the instructions for

⁸ Petitioner's Exhibit 10.

⁹ Testimony of Grandmother.

¹⁰ Petitioner's Exhibit 8 at 16, Petitioner's Exhibit 12 at 5; testimony of SEC.

¹¹ Testimony of Grandmother; Petitioner's Exhibit 6.

homework when they were given in class. When Parent and the advocate suggested full-time pullout services for Student, the SEC indicated that the middle school's full-time program consists of a resource room for intellectually deficient ("ID") and mentally retarded ("MR") students that would not be appropriate for Student. The team agreed to implement the BIP and reconvene in approximately 30 days on October 31, 2011 with data from the school and observation reports from the advocate to determine Student's progress.¹²

12. During Student's September 28, 2011 IEP meeting, DCPS determined that Student's hours of specialized instruction would be reduced to 2.5 hours per week in the academic areas of reading and written expression but would remain at 5 hours in the academic area of math. DCPS subsequently changed the IEP to provide Student with 2.5 hours of specialized instruction in reading and writing and 5 hours of specialized instruction in math, with all instruction to be provided in the general education setting. DCPS also changed Student's OT services from 30 minutes per week of direct services to 60 minutes per month of consultation services. Finally, DCPS changed the Other Classroom Aids and Services section of the IEP so that it stated as follows: [Student] needs access to a list of commonly mis-pelled [sic] words, hand manipulatives, graphic organizers, and fill in the blank notes. Test should be modified and written at his reading level with word banks, extra time allotted, and study guides should be given two to three days in advance. [Student] needs a daily checklist for his events . . . He does need a homework checklist. Self-monitoring checklist to help him monitor his own behaviors." Neither Parent nor the advocate noticed that the changes in the other classroom aids and services had been made.¹³
13. Instead of changing Student's location of services to one that could implement his IEP for SY 2011/12, DCPS changed Student's IEP to match the availability of services at his neighborhood DCPS middle school.
14. The educational advocate conducted observations of Student at his DCPS middle school on October 18, 2011 and October 26, 2011. During the observations, the advocate observed that Student's aide did not offer much redirection and offered Student no academic assistance. The advocate further noticed that, in general, Student was often off-task and inattentive in his classes, and the classwork was not differentiated to his level.¹⁴
15. DCPS convened Student's 30-day review IEP meeting on October 31, 2011. The team reviewed Student's progress and noted that one of his biggest problems is rushing through his work. Moreover, Student had received a score on a Lexille reading test that revealed he was reading at the end of 1st grade to beginning of 2nd grade level. The advocate requested a full-time program outside of the general education classroom for Student, while acknowledging that the resource room at that particular school would not be the best setting. The middle school SEC replied that research shows being with peers in general education is more beneficial. At the time of this meeting, Parent and the

¹² Testimony of advocate; testimony of Grandmother; Petitioner's Exhibits 4 and 5.

¹³ Testimony of advocate; Petitioner's Exhibits 4 and 5; Petitioner's Exhibit 3 at p. 8.

¹⁴ Testimony of advocate; Petitioner's Exhibit 11.

advocate still had not realized that changes had been made to the Other Classroom Aids and Services section of Student's IEP.¹⁵

16. Student's current middle school offers either a resource setting with ID students or a co-taught setting in general education classroom, neither of which is appropriate for Student. At present, the only pullout services offered are for a History class.¹⁶
17. Student's October 31, 2011 IEP is his current IEP. It requires Student to receive the same specialized instruction and related and consultations services and other classroom aids and services as the September 28, 2011 IEP. The IEP indicates that Student does not require extended school year services.¹⁷
18. In general, Student has a hard time focusing in his classes at his current DCPS middle school. He has a lot of energy and likes talking to his peers. He also tries to walk around the classroom. In particular, Student is having a really hard time staying focused in his 7th period math class. On the other hand, Student has demonstrated that he has the capacity to complete the work in his current co-taught English class so long as the work is broken down for him.¹⁸
19. Petitioner's proposed compensatory education plan requests 300 hours of one-on-one tutoring for Student in the areas of math, reading, and written expression to compensate Student for the 425 hours of specialized instruction Student allegedly missed as a result of DCPS's reduction of Student's IEP hours from 15 hours per week of specialized instruction outside of general education to 10 hours per week of specialized instruction in the general education setting.¹⁹

CONCLUSIONS OF LAW

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

1. The Appropriateness of Student's 10/31/11 IEP

IDEA provides that a FAPE consists of special education and related services that, *inter alia*, include an appropriate preschool, elementary school, or secondary school education in the State involved and are provided in conformity with an IEP. 34 C.F.R. § 300.17. An IEP is a written document for a child with a disability that must include, *inter alia*, a statement of the child's present levels of performance, a statement of measurable annual goals for the child, and a statement of the special education and related services and supplementary aids and services to be

¹⁵ Testimony of advocate; testimony of Grandmother; Petitioner's Exhibit 2, Respondent's Exhibit 5.

¹⁶ Testimony of SEC.

¹⁷ Petitioner's Exhibit 1; Respondent's Exhibit 6.

¹⁸ Testimony of special education teacher.

¹⁹ Testimony of advocate; Petitioner's Exhibit 19.

provided to or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided. 34 C.F.R. § 300.320(a).

The FAPE required by IDEA is tailored to the unique needs of the handicapped child by means of an IEP. *Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982) (“*Rowley*”). However, in *Rowley*, the United States Supreme Court rejected the notion that a school district must furnish every special service necessary to maximize each handicapped child’s potential. *Id.* at 199. Instead, the court held that IDEA is designed to provide a “basic floor of opportunity,” and that the requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the handicapped child to benefit educationally. *Id.* at 201-203. Hence, a disabled child’s IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. *Id.*

IDEA requires each public agency to ensure, to the maximum extent appropriate, that children with disabilities are educated with children who are nondisabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs 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). In determining the educational placement of a child with a disability, each public agency must ensure that the child’s placement is determined at least annually, is based on the child’s IEP, and is as close as possible to the child’s home. 34 C.F.R. § 300.116(b). Unless the IEP of a child with a disability requires some other arrangement, the child is to be educated in the school that he or she would attend if nondisabled. 34 C.F.R. § 300.116(c).

“Courts have identified a set of considerations relevant to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the school, the placement's cost, and the extent to which the placement represents the least restrictive environment.” *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (quoting *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005), citing *Rowley, supra*, 456 U.S. at 202).

a. Does the 10/31/11 IEP Provide Insufficient Specialized Instruction for Student?

In the instant case, Petitioner argues that Student’s IEP is not reasonably calculated to confer educational benefit on Student. More specifically, Petitioner contends that Student was not making progress under his previous IEP, which offered 15 hours per week of specialized instruction outside general education, and therefore, it was not reasonable for DCPS to reduce Student’s IEP hours, eliminate many of his classroom aids and services, and change his placement from 15 hours outside general education to inclusion. Petitioner maintains that Student needs a full-time separate day school where he receives full-time services outside of general education to avoid the negative impact participating in pullout services allegedly has on his self-esteem and confidence.

On the other hand, DCPS points out that Parent agreed to allow Student to receive his services in an inclusion setting at his neighborhood DCPS school and also agreed that the resource room at the middle school was inappropriate for Student. DCPS disputes that Student requires a full-time separate day school and points out that there has been no attempt to implement pullout services for the current school year to see how that would work. DCPS notes that Student is LD, so it's no surprise that he's performing below grade level, and DCPS also questions whether it is reasonable to expect Student to have made extensive progress at the current middle school when he has only been there for four to five months.

A review of the evidence in this case reveals that Student made progress at his former elementary school under his previous IEP that provided him with 15 hours per week of pullout services. The evidence further reveals that DCPS offered Student a location of services for SY 2011/12 that could not implement his IEP, which called for 15 hours of pullout services, and subsequently changed Student's IEP to provide for inclusion services to match the availability of services at his neighborhood DCPS middle school.

Although Petitioner initially agreed to allow Student to receive inclusion services instead of the pullout services required under his IEP, the evidence shows that Student has a hard time focusing in his inclusion/general education classes at his current DCPS middle school. As a result, he is often off-task and inattentive in his classes. Moreover, the classwork is not being differentiated to his level. This evidence demonstrates that the services Student is receiving under his current IEP are not sufficient to provide him with educational benefit. As a result, the hearing officer concludes that Petitioner has met its burden of demonstrating that Student's current IEP is inappropriate.

Petitioner has requested an IEP that requires Student to receive full-time out of general education specialized instruction. However, the evidence in this case proves that Student's previous IEP, which provided him with 15 hours per week of pullout services and a dedicated aide, was sufficient to enable Student to achieve passing marks and advance from grade to grade. Hence, that IEP afforded Student the basic floor of opportunity IDEA requires. Therefore, the hearing officer will order DCPS to convene an IEP meeting and revise Student's IEP so that it provides Student with a dedicated aide and 15 hours per week of specialized instruction to be delivered as follows: 5 hours each in the academic areas of reading, math, and written expression. To further ensure the appropriateness of the IEP, the hearing officer will also order DCPS to ensure the IEP team to reviews and revises, as appropriate, Student's current IEP goals, and reviews and revises, as appropriate, the Other Classroom Aids and Services portion of Student's IEP, taking into account the other classroom aids and services listed on Student's February 7, 2011 IEP and determining whether, and to what extent, those aids and services should be re-included on Student's IEP.

b. Does the 10/31/11 IEP Fail to Provide Appropriate Aids and Services Student?

Petitioner further argues that Student's IEP is inappropriate for failure to provide appropriate aids and services for Student. However, Petitioner has failed to present any evidence demonstrating that the changes DCPS made to the Other Classroom Aids and Services portion of Student's IEP have prevented Student from receiving educational benefit under his IEP. For

example, there is no evidence of record proving that the lack of access to the computer, word process or laptop previously required by Student's IEP has somehow prevented Student from receiving educational benefit at his current DCPS middle school. Moreover, the undisputed evidence in this case demonstrates that neither Parent nor the educational advocate even noticed that Student's September 28, 2011 and October 31, 2011 IEPs contained revisions in the Other Classroom Aids and Services portion of the IEP. Hence, Petitioner has failed to meet its burden of proof on this claim. Nevertheless, as it is possible that some of the items that were removed from Student's IEP, such as de-crowded tasks/worksheets/tests and modified projects to fit Student's attention threshold, may be required to permit Student to receive educational benefit from his IEP, the hearing officer will, as indicated above, require DCPS to ensure that Student's IEP team reviews and revises, as appropriate, the Other Classroom Aids and Services portion of Student's IEP, taking into account the other classroom aids and services listed on Student's February 7, 2011 IEP and determining whether, and to what extent, those aids and services should be re-included on Student's IEP.

c. Does the 10/31/11 IEP Fail to Provide Placement in Student's LRE?

As noted above in subsection (a), Petitioner's position in this case is that Student requires a full-time separate day school where he receives full-time services outside of general education to avoid the negative impact participating in pullout services allegedly has on his self-esteem and confidence. Indeed, Petitioner notes that Parent requested a full-time out of general education setting for Student at several of his recent IEP meetings, but DCPS denied Parent's requests.

Not surprisingly, DCPS disagrees with Petitioner's position. DCPS argues that an array of choices are available for Student, especially since pullout services were never implemented during the current school year and Student was successful with pullout services at his previous DCPS school. DCPS maintains that Student does not require a full-time special education program or a full-time separate day school.

IDEA requires children with disabilities to be educated with nondisabled children to the maximum extent possible and permits removal of disabled children from the regular educational environment only if the nature and severity of the disabled child's disability requires such removal. The hearing officer has already ruled above, in subsection (a), that although Student has been unable to receive educational benefit in the inclusion/general education setting he has been placed in at his neighborhood DCPS middle school, the evidence in this case reveals that he previously was able to receive educational benefit pursuant to an IEP that provided him with 15 hours per week of specialized instruction outside general education. Based on this evidence, the hearing officer concludes that Student's LRE is a school that can provide him with the opportunity to be educated with his non-disabled peers at all times, except for the 15 hours per week that he requires specialized instruction outside of general education. See 34 C.F.R. § 300.114(a)(2). Therefore, Petitioner has met its burden of proof on this claim, and the hearing officer will order DCPS to place Student in either a DCPS or a non-DCPS school that can provide Student with 15 hours per week of pullout instruction, as specified above, and all remaining instruction in a general education environment with his non-disabled peers. As the evidence in this case proves that Student's current DCPS middle school offers either a resource setting with ID students or a co-taught setting in general education classrooms only, neither of

which is appropriate for Student, the location of services offered by DCPS pursuant to this decision must be something other than Student's current DCPS middle school. *See* 34 C.F.R. § 300.116(c) (IDEA does not require child with disability to be educated in school he would have attended if nondisabled where his disability requires some other arrangement).

2. Compensatory Education

Under the theory of compensatory education, courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3d 516, 522 (D.C. 2005). "Compensatory awards should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." *Id.* at 518.

In the instant case, Petitioner has requested that DCPS be ordered to provide Student with 300 hours of one-on-one tutoring for Student in the areas of math, reading, and written expression. However, Petitioner failed to demonstrate how such an award will place Student in the same position he would have occupied but for DCPS's violation of IDEA. Instead, Petitioner tied the award to the number of hours of specialized instruction Student allegedly missed as a result of changes DCPS made to Student's IEP that reduced his hours of specialized instruction and changed his setting for that instruction from out of general education to inclusion.

Upon a careful review of the evidence in this case, the hearing officer has determined that Student will require 4.5 hours per week of one-on-one tutoring for the remainder of the current school year, as well as 7.5 hours per week of one-on-one tutoring during Summer 2012, to be placed in the same position he would have occupied but for DCPS's violation of IDEA in this case. The 4.5 hours per week of one-on-one tutoring during the current school year are to be provided in 1.5 hour sessions three times per week to assist Student with his homework in any/all classes and to provide any required reinforcement/additional instruction in the academic areas of reading, math and written expression. The 7.5 hours per week of one-on-one tutoring during Summer 2012 are to be provided in 2.5 hour sessions three times per week that address Student's skills in the academic areas of reading, math and written expression. In crafting this award of compensatory education, the hearing officer has taken into account that Student will require one-on-one assistance, including help with homework, for the remainder of the current school year to compensate for his inability to receive educational benefit in the inclusion/general education classes he attended at his neighborhood DCPS middle school during the first semester of SY 2011/12. The hearing officer also has taken into account that Student's current IEP does not entitle him to receive ESY, so he will need further one-on-one assistance during Summer 2012 to continue to make up for the educational benefit he was unable to receive during the 1st semester of SY 2011/12 and to ensure that he is prepared to enter 7th grade at the start of SY 2012/13.

ORDER

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

1. Within 14 calendar days of the issuance of this Order, DCPS shall convene an IEP/Placement meeting for Student to: (1) revise Student's IEP so that it provides Student with a dedicated aide and 15 hours per week of specialized instruction to be delivered as follows: 5 hours each in the academic areas of reading, math, and written expression; (2) review and revise, as appropriate, Student's current IEP goals; (3) review and revise, as appropriate, the Other Classroom Aids and Services portion of Student's IEP, taking into account the other classroom aids and services listed on Student's February 7, 2011 IEP and determining whether, and to what extent, those aids and services should be re-included on Student's IEP; and (4) place Student in either a DCPS or a non-DCPS school besides his current DCPS middle school that can provide Student with 15 hours per week of pullout instruction, as specified above, and all remaining instruction in a general education environment with his non-disabled peers. In reviewing and revising Student's IEP, DCPS shall ensure that Student continues to receive the behavioral support services and occupational therapy consultation services listed on his current IEP.
2. As compensatory education, DCPS shall provide Student with 4.5 hours per week of one-on-one tutoring for the remainder of school year 2011/12, beginning within 14 days of the issuance of this Order, as well as 7.5 hours per week of one-on-one tutoring during Summer 2012. The 4.5 hours per week of one-on-one tutoring during the current school year are to be provided in 1.5 hour sessions three times per week to assist Student with his homework in any/all classes and to provide any required reinforcement/additional instruction in the academic areas of reading, math and written expression. The 7.5 hours per week of one-on-one tutoring during Summer 2012 are to be provided in 2.5 hour sessions three times per week that address Student's skills in the academic areas of reading, math and written expression. The one-on-one tutoring specified herein shall be provided on days and times and at a location agreeable to Parent, although Parent shall not unreasonably withhold her agreement to days/time and the location proposed by DCPS to the extent that they are workable. DCPS shall provide transportation to and/or from the tutoring services for Student to the extent necessary. At its option, DCPS may either provide a tutor or provide Parent with funding sufficient to secure an independent tutor to provide the tutoring services specified herein.
3. All other requests for relief in Petitioner's November 9, 2011 Complaint are **DENIED**.

NOTICE OF RIGHT TO APPEAL

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

Date: 1/23/2012

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