

**DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT
OFFICE OF COMPLIANCE AND REVIEW**

STUDENT, a minor, by and through
her Parent¹

Petitioner,
v

SHO Case No:
Erin H. Leff, Hearing Officer

DISTRICIT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

2011 FEB 18 AM 8:59
STUDENT HEARING OFFICE
OSSE

HEARING OFFICER DETERMINATION

DECISION

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STATEMENT OF THE CASE

On December 17, 2010 Parent,² on behalf of her child (“Student”), filed an Administrative Due Process Complaint Notice (“Complaint”). HO 1.³ requesting a hearing to review the identification, evaluation, placement of 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)

¹ Personal identifying information is provided in Appendix A, attached hereto.

² Student’s grandmother is his guardian and served as Parent throughout this hearing process.

³ 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.

(Supp. 2010). Respondent filed a Response to Parent's Administrative Due Process Complaint Notice (HO 2) on December 21, 2010. A resolution meeting was held and a Due Process Complaint Disposition was executed by DCPS on January 10, 2011.⁴ The parties were not able to reach an agreement. HO 3.

At all times relevant to these proceedings Petitioner was represented by Alana Hecht, Esq., and Cherie Cooley, Assistant Attorney General, represented DCPS. I held a telephone prehearing conference on January 24, 2011. HO 7. Petitioner's counsel and Respondent's counsel were present. By agreement of the parties, the due process hearing was scheduled for February 11, 2011, and I held the hearing as scheduled..

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (Supp. 2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUES

The issues are:

1. Whether DCPS denied the student a FAPE by failing to provide an IEP designed to address his identified needs, specifically by limiting the special instruction in the IEP to 13 hours rather than the full time program recommended by the comprehensive psychological.
2. Whether DCPS denied the student a FAPE by failing to provide a full time placement in a program for students with learning disabilities.
3. Whether DCPS denied the student a FAPE by failing to provide compensatory education at the December 15, 2010 meeting.

⁴ This Due Process Complaint Disposition form signed by Petitioner references a pupil other than Student whose education is at issue in this due process case. However, the form both identifies Petitioner and is signed by her so I accept this form as memorializing the resolution meeting regarding Student.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are found in Appendix B.

Exhibits admitted on behalf of Respondent are found in Appendix C.

Exhibits admitted on behalf of Hearing Officer are found in Appendix D.:

B. Testimony

Petitioner testified and presented the following witnesses:

- Educational Advocate
-
- Natasha Nelson, Psy.D., Parker Diagnostics, admitted as an expert in administering and analyzing results of comprehensive psychological evaluations
- Student
- Admissions Director,

DCPS presented the following witness:

- Special Education Coordinator

FINDINGS OF FACT

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

1. Student was years old at the date of hearing. He is now HO 1. He has attended the same DCPS high school for three years. Testimony of Student. He is currently considered

a grade student because he has not passed algebra. Testimony of

Different school records identify him as being in or grade. R 6, R 9, R 13.

2. Student would like to attend college. He aspires to be an artist or animator. His current skill level will have a significant negative impact on his aspirations if not addressed. P 5.
3. Student is polite and well behaved in his classes. His teachers like him. His teachers recognize he is struggling academically. He receives passing grades, at least in part, because he is polite and well-behaved. Testimony of Petitioner.
4. Student has a 1.57 Grade Point Average. He has failed several classes including Geometry, Spanish II and World History. Student subsequently has taken two of these classes (World History and Geometry) in summer school and received passing grades. R 11.
5. Student was able to pass classes in summer school because the classes were smaller and content was explained in more detail. Testimony of Student.
6. Student's academic achievement is significantly below his cognitive abilities. On the Wechsler Adult Intelligence Scale – Fourth Edition, Student's Student earned a Full Scale IQ of 81 which is in the Low Average range of intellectual ability. In contrast, standardized testing reveals Student is generally 6 to 7 years behind his peers in academic achievement with significant learning disabilities in the areas of reading, math and written language. On the Woodcock Johnson III Student's Broad Reading score is at the 3.7 grade equivalent level. His standard score of 64 is within the Very Low Range. His Broad Math score is at the 4.2 grade equivalent level, and his standard score of 63 again is in the Very Low range. Student's Broad Written Language score is at the 4.1 grade

equivalent level, and his standard score of 63 is in the Very Low Range. R 6, P 4;

Testimony of

7. Student was found eligible for special education in elementary school. He has been receiving special education services since then. Testimony of Petitioner.
8. On December 15, 2010, a multidisciplinary team (“MDT”) meeting was held to review independent evaluations provided pursuant to a Settlement Agreement of September 2010 resolving a prior due process complaint of August 2010. Testimony of [redacted] The evaluations reviewed were a speech-language evaluation, a psycho-social evaluation, a vocational evaluation and a comprehensive psychological evaluation. P 8. At the meeting the team also was to review and revise Student’s individualized education program (“IEP”), if appropriate, discuss the location of Student’s services and determine whether he should receive compensatory education. Testimony of [redacted] At the meeting it was determined that Student required additional IEP services. Testimony of [redacted]
9. The IEP developed at the December 15, 2010 meeting increased Student’s services from 5 hours of special education instruction in an inclusion setting to 19.5 hours of special instruction in an inclusion setting and 6.5 hours of special instruction outside the general education environment⁵. R 1, p.5; Testimony of [redacted] The increase in instructional services was delayed until January 24, 2011 when classes changed at the start of the second semester. R 1, p.5. Student’s December 15, 2010 IEP provides a full time special education program in that all education hours are to be special education hours. R 1, p. 5; Testimony of [redacted] The IEP also includes 48 hours of tutoring to be provided for a duration of 6 months as compensatory education. R.1, p.15.

⁵ Student was to receive 6.5 hours of special instruction in the general education classroom between December 15, 2010 and January 24, 2010.

10. Due to the magnitude of Student's disabilities he requires full time, self contained special education instruction in a program for students with learning disabilities focused on providing Student with intensive support in the areas of reading, math and written language. Student requires specialized instruction appropriate to his current skill level. All written materials should be compatible with Student's functional third grade reading level. Student needs academic work to improve his decoding skills and phonemic awareness. He requires practice with word recognition skills. Student should be presented materials in small increments with frequent repetition. P 4; Testimony of
11. The IEP developed at the December 15, 2010 meeting does not include the specific academic supports recommended in the Comprehensive Psychological Evaluation and reviewed at the December 15, 2010 MDT meeting. P 4; R 1; Testimony of
12. Student is not in an English class this semester. Testimony of Student.
13. Student has not received pull out instruction under his current IEP. Testimony of Student.
14. Student does not receive support in his inclusion classes that is distinguishable from the support provided to his non-handicapped peers. Testimony of Student.
15. Student tends to avoid class participation that would bring attention to his educational deficits. This includes not attending classes, such as culinary arts, that do not provide him with support and accommodations. Testimony of Petitioner.
16. Student's counselor at _____ has helped Student develop structures and plans to address timely school attendance and focus on improving his academics. His attendance has improved. Testimony of _____

17. Petitioner and Student visited _____ Student also spent one day following a class schedule at _____ Student has been accepted at _____
Testimony of _____
18. _____ has a full- time program for students with learning disabilities. It is separate from the program for students with emotional disabilities. Testimony of _____ Student responded to the educational approach taken by _____ during the one day he spent following a class schedule. Testimony of _____ Testimony of Student. _____ is able to provide the courses Student needs to graduate with a high school diploma as well as remedial courses. In the alternative _____ has a certificate based, vocational program. Testimony of _____ Student would receive instruction in both math and reading for the entire academic year at _____ Testimony of _____

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. I find all witness testimony presented in this matter, with the limitations expressed below, to be credible.

I. *Whether DCPS denied the student a FAPE by failing to provide an IEP designed to address his identified needs, specifically by limiting the special instruction in the IEP to 13 hours⁶ rather than the full time program recommended by the comprehensive psychological.*

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:

⁶ Testimony at hearing revealed that Petitioner had not misinterpreted the number of hours of service provided by the IEP. Rather than 13 hours of service it provides 26 hours of service on a combined inclusive/oull out program. The appropriateness of this service delivery will be discussed below.

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. 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).

While the content of an IEP is a team decision 34 C.F.R. §§ 300.320 – 300.323.

See also, D.C. Code §§ 30.3007.1 & 3008.1, teams are required to consider all the relevant information before them. *Id.* In the instant matter, Student has been classified as a student with Specific Learning Disabilities for many years. He has a well documented history of academic issues that are reflected in the independent comprehensive psychological (“IEE”) of September 2010. Student’s test scores show he is functioning six to seven years below grade level.

Student started the 2010-2011 SY with an IEP from March 5, 2010 that provided 5 hours of specialized instruction outside the general education environment per week. At the December 15, 2010 MDT meeting the team, over the objections of Petitioner, and the educational advocate, modified the IEP to include 6.5 hours of specialized instruction outside the general education environment and 19.5 hours of specialized instruction inside the general education environment per week. The total of 26 hours of specialized instruction constitutes a full time special education program. The implementation of this increase in specialized instruction hours was delayed, however, until January 24, 2011 at the change of semester. In addition the team changed the goals on Student’s IEP to be more specific than they had been under the prior IEP. The team also added 48 hours of tutoring for 6 months to the IEP as compensatory education. *See* discussion of compensatory education, *infra* at pp. 16 -19.

The IEE provided DCPS with evidence that Student was significantly behind academically when compared to his peers. The review of the IEE by a DCPS school psychologist supports the IEE finding. The IEE makes several recommendations regarding Student’s instructional needs. Yet the IEP developed at the December 15, 2010 MDT meeting continued to provide Student a program that consisted primarily of general education classes with the modification that Student was to receive specialized instruction in these classes as well as one-pull-out class required by his IEP. It is difficult to understand how this December 15, 2010 IEP

addressed the factors presented in the IEE. While it is clear there was a significant increase in the hours of service from 5 to 26 and while it is clear there were modifications to the goals on the IEP that provided greater specificity, the time spent in directed, separate, specialized instruction, the goals on the IEP and the classroom accommodations barely touch upon the intensity of need identified in the IEE and testified to by Petitioner's expert witness. One goal, for example, on the December 15, 2010 IEP does address Student's learning to identify the main idea in a passage, as recommended in the IEE. The goals, overall, however, do not address increasing Student's decoding skills and related skill development as recommended in the IEE. Moreover, while the IEE recommends support, encouragement and redirection while Student is completing school tasks, one reading goal and one math goal specifically note limiting teacher support. Another example of the December 15, 2010 IEP's limitations is its failure to require that written materials be provided at Student's functional reading level as recommended in the IEE. In the instant matter, these recommendations cannot be viewed as anything but essential. Student is functioning academically at a mid-elementary school level yet he is in high school. His low skill development is at variance with his abilities and will have significant impact on his future if not remediated.⁷ Moreover, with Student's low skills in reading and the IEE recommendations for many remedial efforts in this area, it is noteworthy that Student does not have an English class on his schedule this semester. He may have completed his English requirement for the year, but he is not a Student whose program, like most high school students, should only focus on meeting his high school requirements. He needs on-going intensive

⁷ While implementation of the IEP is not an issue before me, it is concerning to hear testimony from Student indicating he is not receiving the pull out services identified on his IEP and, further, the supports he is receiving in his general education classes are minimal.

remedial services. Student's schedule demonstrates DCPS has not recognized the extent of Student's academic need.

The testimony of the Special Education Coordinator ("Coordinator") from Student's current high school while credible did not reflect the knowledge and understanding of Student demonstrated by the other witnesses. She did not appear to know, for example, that Student is polite and well-behaved and that teachers like having him in their classrooms. When asked about Student's behavior, the Coordinator responded that she was unaware of any discipline referrals. While this lack of specific knowledge of each student in special education at a large urban high school is understandable, it does reveal the Coordinator's lack of specific knowledge of Student as an individual. This lack of specific knowledge of Student impacts her ability to assess the educational benefit that Student is receiving, at least to some degree, because it is Student's good behavior that Petitioner points to as one basis for Student's passing grades.

The Special Education Coordinator points to Student's good grades as evidence that Student is receiving educational benefit from his educational program, a program that until the development of the December 15, 2010 IEP has consisted of 5 hours of specialized instruction per week. It is difficult to view the program as providing educational benefit in that Student has a 1.57 grade point average and his assessed skill levels are very low. The program as required by the December 15, 2010 IEP continues to be inclusion based in that Student is to have specialized instruction in three inclusion classes and pull-out instruction in one class. This is, as the Coordinator testified, a full time special education program because all hours in Student's school day are designated special instruction. However, it is a far cry from the full time separate program for learning disabled students recommended in the IEE. The Coordinator states Student has been successful in school. Yet neither his grades nor his test scores support this position.

Furthermore, it is difficult to reconcile the large increase in hours of specialized instruction provided in the December 15, 2010 IEP with the Coordinator's testimony that Student has been able to access and benefit from his education program. If this were true there would have been no basis to increase the hours. Moreover, when asked to reconcile the grades Student has received in his classes with his academic achievement scores, the Coordinator was unable to do so. She could merely restate DCPS' position that the IEP developed on December 15, 2010 was designed to provide educational benefit as had been the prior IEP and that Student was receiving passing grades in general. DCPS also attempted to show that Student had poor attendance that was impacting his education. However, the coordinator's testimony did not support this view, and, no action was taken at the MDT meeting to address his attendance

In reviewing whether an IEP provides a student a FAPE as required by IDEA, a hearing officer must consider whether the district complied with IDEA's procedural requirements and determine whether the program was reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 207. Here, there is no question raised regarding the district's compliance with IDEA procedural requirements. The only question is whether the IEP is calculated to enable the student to receive educational benefit. I find that in order for Student's IEP to be found reasonably calculated to convey educational benefit, DCPS had to incorporate the specific recommendations found in the IEE, including but not limited to the remedial approaches and techniques and the accommodations or, in the alternative, provide a reasonable explanation for not including these recommendations in the IEP. I find the DCPS did neither. DCPS did not include the IEE recommendations in Student's IEP, and, when given the opportunity to provide testimony regarding Student's needs and how the IEP was designed to address these needs, DCPS could only reiterate that Student received educational benefit because

he received passing grades. Yet *Rowley* makes clear that when a student is educated in regular classrooms passing grades are but one factor to be considered in the determination of educational benefit. *Id.* Where, as here, the student's achievement is so far behind his grade level peers, passing grades cannot be determinative of educational benefit. Rather, it is likely the grades reflect, as posited by Petitioner, Student's good behavior and his teachers' appreciation of that behavior. It is unlikely, that a student whose achievement is six to seven years behind his grade placement could genuinely access the curriculum and receive any real educational benefit from general education, high school classes.

As discussed above, the IEP developed at the December 15, 2010 meeting does not provide Student a FAPE. It is a continuation, though expanded to cover more hours in the day, of the same unsuccessful educational process that has been provided Student in the past. The IEP does not provide some educational benefit as required under *Rowley*. I, therefore, find by a preponderance of the evidence that Student was denied a FAPE by DCPS' failure to provide an appropriate IEP

II. Whether DCPS denied the student a FAPE by failing to provide a full time placement in a program for students with learning disabilities.

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.

Petitioner argues that the MDT did not use the recent evaluations of Student to inform its decision regarding Student's placement. The IEE, as noted above, indicates Student requires

placement in a full-time program for learning disabled students because he requires very intensive services in order to succeed. The testimony of Petitioner's expert further supports the IEE recommendation for a full-time program for students with learning disabilities. Petitioner's expert indicated the recommendation for the full-time program for students with learning disabilities is based on the severity of Student's disability and the added benefit that would accrue to him by being in a program with students with learning disabilities in that he would not be different from or stand out in comparison to his classmates due to his limited academic skills. Moreover, she stated the students in such a class would still have a range of abilities and skills that would allow for scaffolding of material presented and for students to learn from each other.

DCPS counters this position by arguing, as with Student's IEP, that he has received educational benefit from his program and placement and, therefore, the least restrictive environment in which an appropriate IEP can be implemented is the combination general education and pullout program specified in Student's December 15, 2010 IEP. DCPS' argument as to placement suffers from the same weaknesses as its argument as to IEP program. DCPS does not account for Student's extremely low achievement scores. Moreover, DCPS did not offer an alternative placement. Rather than presenting the possibility of a less restrictive setting than the full time separate, private school requested by Petitioner, DCPS persisted in arguing that the only option was the primarily general education program presented in Student's IEP. DCPS' position, it must be noted, was taken despite the Special Education Coordinator's testimony that there was a fulltime, separate program for students with learning disabilities in Student's high school. DCPS unwillingness to consider options and provide evidence as to alternative placements has set the parameters for the hearing officer's decision.

Appropriate placement

At hearing, Petitioner presented the testimony of [redacted] Admissions Director, [redacted] who testified Student had been accepted for admission to [redacted] a full time special education school. [redacted] reviewed the [redacted] program highlighting those areas that met the recommendations in the psychologist's report, noting [redacted] small classes, the availability of remedial instruction and the alternative of a certificate based vocational program should Student not be able to complete the requirements to obtain a high school diploma. [redacted] stated, is able to provide all classes offered by DCPS and would assure Student is able to continue on the diploma track at the current time. He further testified that Student's visit to [redacted] on the day he followed the class schedule had been successful. The teachers found him to be engaged in the instruction and amenable to assistance when he was struggling.

Respondent revealed through cross examination that [redacted] may not be the appropriate placement for Student in that there are many students with emotional disabilities in the school. However, [redacted] testified that the program for students with learning disabilities and the program for students with emotional disabilities are physically separate. Therefore, there is no basis to be concerned that Student's placement would include students with emotional disturbance.

DCPS provided no evidence explaining its reasons for not accepting the IEE recommendation for a full time placement in a program for students with learning disabilities other than the Coordinator's testimony, as reviewed above, that Student was receiving educational benefit in general education classes and the program in his IEP was, therefore, the appropriate LRE.

Based on the evidence presented, I find Student is not a child who can, at this point, be successfully educated in a general education environment. I have all ready found DCPS' proffered IEP does not offer Student a FAPE. I now find that the placement in a combination inclusion/pull –out program offered by DCPS does not provide student a FAPE. I further find is a placement that can offer Student the program and placement to meet Student's needs and thereby provide him a FAPE. I therefore, conclude by a preponderance of the evidence is the appropriate placement for Student.

III. Whether DCPS denied the student a FAPE by failing to provide compensatory education at the December 15, 2010 meeting.

Under IDEA, a parent may file a due process complaint regarding any matter relating to the identification, evaluation, placement or provision of FAPE to a child with a disability. 34 C.F.R. § 300.507(a), D.C. Code § 30.3029.1. Compensatory education, on the other hand, is “discretionary, prospective, injunctive relief crafted . . . to remedy what might be termed an educational deficit created by an educational agency’s failure over a given period of time to provide a FAPE to a student.” *Reid v. District of Columbia*, 401 F. 3d 516, 518, 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). By definition, a remedy for a failure to provide FAPE is not an issue involving the identification, evaluation, placement or provision of FAPE to a child with a disability that is cognizable in a due process hearing under IDEA. Thus the simplest answer to the issue raised here is: No, DCPS did not deny Student a FAPE by failing to provide compensatory education at the December 15, 2010 meeting because compensatory education is a remedy. However, it is my opinion that this simple approach misses the intent of the issue raised regarding providing

Student compensatory education. The issue is really a two-fold question: 1) whether the team should have provided Student with compensatory education at the December 15, 2010 MDT meeting because that MDT meeting and the determination regarding compensatory education occurred as a result of the Settlement Agreement of September 8, 2010 settling the due process complaint of August 19, 2010 and the MDT meeting demonstrated Student had experienced educational harm; and 2) whether Student is entitled to compensatory education because the December 15, 2010 IEP and proposed placement do not provide Student a FAPE.

The Settlement Agreement

A settlement agreement is essentially a contract between the parties, and, generally, State law controls contract enforcement. The District of Columbia treats settlement agreements as contracts, and “general principles of contract law govern their resolution.” *Cain v. Arts & Technology Academy Public Charter School*, 46 IDELR 163 (2006), citing *Foretich v. American Broadcasting Companies, Inc.* 198 F. 3d 270, 274 (D.C. Cir. 1999), Moreover, IDEA expressly provides for the enforcement of settlement agreements in state court or federal district court when the agreement at issue was entered into through the mediation process, 34 C.F.R. § 300.505(b)(7), or at a resolution session, 34 C.F.R. § 300.510(d)(2).

The process at the December 15, 2010 MDT meeting to determine the amount of compensatory education pursuant to the Settlement Agreement, took the form of a classic contract negotiation with offers and counter offers. Ultimately the parties agreed Student should receive 48 hours of tutoring over the course of six months. For Petitioner to now argue that this was not an award of compensatory education because there was debate at the MDT meeting, is to elevate words over substance. After first denying compensatory education, the team agreed to provide the tutoring hours after the educational advocate indicated Student had suffered

educational harm. Moreover, the tutoring hours are included on the IEP under the Compensatory Education section. I find the IEP includes an award of compensatory education to which Petitioner and the advocate agreed. I further find, for the reasons stated above, I lack the authority to review a compensatory award granted under the Settlement Agreement of September 8, 2010.

Failure to provide an appropriate IEP and placement

IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* “. . .the 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 that 1) Student’s IEP finalized on December 15, 2010 does not provide student a FAPE; and 2) the placement offer made by DCPS at the December 15, 2010 MDT meeting does not provide Student a FAPE. Further, Petitioner has established that as a result of these failures to provide FAPE Student was harmed in that his significant academic issues were not addressed appropriately. I find Student has not had an appropriate IEP and placement since the December 15, 2010 MDT meeting. The harm resulting from this lack of appropriate program and placement is the hours of appropriate special instruction services lost from the date of the development of the inappropriate IEP and placement until the present. I have all ready determined Student should have been provided a full time placement in a special education program for students with learning disabilities. He was, instead, provided with 6.5 hours of specialized instruction outside general education beginning on January 24, 2011. All other instruction was to be provided in the general education classroom. None of these hours were to be provided in a separate program for

students with learning disabilities. As I have already found Student should be placed at a private, full time separate day school that has a program for students with learning disabilities that includes remedial services, an award of compensatory education for the loss of approximately two months of instructional services is not appropriate in these specific circumstances. Any harm from December 15, 2011 through the present will be addressed through the _____ program. I, therefore, find by a preponderance of the evidence that Student is not entitled to compensatory education beyond that included in the December 15, 2010 IEP.

CONCLUSIONS OF LAW

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

1. Student was denied a FAPE by DCPS' failure to provide Student with an appropriate IEP and placement, as discussed above; and
2. Student is not entitled to compensatory education beyond the tutoring included in the December 15, 2010 IEP, as discussed above.

ORDER

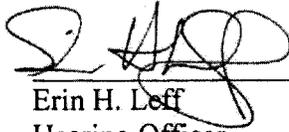
Based upon the above Findings of Fact and conclusions of law, it is hereby **ORDERED** that:

1. Within 10 business days, DCPS shall provide Student a prior notice of placement to _____ Student shall attend _____ at DCPS expense for the remainder of the 2010-2011 school year and for the 2011-2012 school year, at a minimum;

1. DCPS shall provide Student transportation to and from _____ as required, for educational and IEP program purposes; and
2. DCPS is to convene an MDT meeting, to include relevant _____ staff and Petitioner and her educational advocate, if Petitioner so chooses, in cooperation with _____ within 30 days of Student's enrollment at Accotink.

IT IS SO ORDERED:

February 17, 2011
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).