DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., Second Floor
Washington, DC 20002

Parent, on behalf of STUDENT,[1]	)	Case Number:
Petitioner,	)	
v.	)	Hearing Dates: January 6, and January 21, 2011 Room 2004
DISTRICT OF COLUMBIA	)	Hearing Officer: Frances Raskin
Respondent.	)	

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STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act of 2004 ("IDEA"), codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; the federal regulations at 34 C.F.R. §§ 300.1 *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

II. BACKGROUND

Petitioner is the parent of an -year-old student ("Student") with a disability who attends a District of Columbia elementary school. On October 8, 2010, Petitioner filed a Due Process Compliant ("Complaint") against District of Columbia pursuant to IDEA.

This Hearing Officer was appointed to preside over this case on October 13, 2010. Respondent filed a response to the Complaint on October 20, 2010.

The parties participated in a resolution meeting on October 27, 2010. The parties were unable to resolve the Complaint but agreed to continue to attempt to reach a settlement. The parties agreed that November 7, 2010, was the last day of the resolution session and the date they decided to proceed to a due process hearing. Thus, the resolution period ended on November 7,

[1] Personal identification information is provided in Attachment A.

2010. The parties agreed that the forty-five day, due process hearing timeline began on November 8, 2010.

The due process hearing commenced on January 6, 2011. At the outset of the hearing, this Hearing Officer admitted into evidence the parties' exhibits. Petitioner presented the testimony of four witnesses. Respondent presented the testimony of six witnesses. After the parties presented oral closing arguments, the due process hearing concluded on January 21, 2011.

III. ISSUES PRESENTED

A. Whether denied the Student a free, appropriate, public education ("FAPE") by failing to timely identify him as a student with a disability, conduct evaluations in all areas of suspected disability, and develop an individualized educational program ("IEP");

B. Whether denied the Student a FAPE by failing to address his behavioral problems by conducting a functional behavioral assessment ("FBA") and developing a behavior intervention plan ("BIP") during the 2009-2010 school year; and

C. Whether denied the Student a FAPE by failing to implement the Student's IEP from August 17, 2010, to September 30, 2010, when the parent unilaterally removed the Student from

Petitioner requests relief in the form of an order requiring to fund her compensatory education plan and reimburse her for the services of an aide she provided the Student at her own expense during the 2009-2010 school year.

V. FINDINGS OF FACT

1. Petitioner is a year-old, special-education student who attends a District of Columbia Public Schools ("DCPS") elementary school in the District of Columbia.[3] During the 2008-2009 and 2009-2010 school years, the Student attended a District of Columbia charter school ("Charter School").[4] The Student was in pre-kindergarten during the 2008-2009 school year and kindergarten during the 2009-2010 school year.[5] Petitioner withdrew the Student from the Charter School on October 1, 2011.[6]

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[2] This Hearing Officer certified a fourth issue in the Prehearing Order, i.e., whether Respondent denied the Student a FAPE by failing to develop an appropriate IEP on August 17, 2010, e.g., by failing to address the Student's escalating behaviors, provide the Student a full-time therapeutic setting, and failing to provide the Student a dedicated aide. Petitioner withdrew this claim during the due process hearing after she testified that she agreed with the contents of this IEP.

[3] Testimony of Petitioner.

[4] Stipulation of parties. *See* joint "Stipulations," filed December 1, 2010.

[5] Testimony of Petitioner, Pre-Kindergarten Teacher, and Kindergarten Teacher.

[6] Stipulation of parties.

2. During the fall of 2008, the Student was doing well in class and had good relationships with his peers and teachers.[7] The Student began exhibiting behavioral difficulties in school, including tantrums, in January 2009.[8] He became more withdrawn and did not want to interact with his peers.[9]

3. By February or March 2009, the Student erupted into tantrums with no provocation.[10] This disruptive behavior generally occurred in the afternoons.[11] When the Student erupted into a tantrum, he banged on desks, kicked chairs, slapped himself, and shouted. On some of these occasions, he became so disruptive that school personnel had to remove him from the classroom or call his mother to take him from school.[12] At other times, the Student would calm down after taking a short walk with a school employee.[13]

4. In February or March 2009, the Pre-Kindergarten Teacher wrote a letter to the School Counselor expressing her concerns about the Student's behavior.[14] The School Counselor then began counseling the Student at various times of the day.[15] Whenever the Student began to exhibit disruptive behavior, the Pre-Kindergarten Teacher would call the School Counselor, who would then remove the Student from his class.[16]

5. During this time, the Student's father had a drinking problem, and eventually entered a rehabilitation program.[17] Petitioner informed the Pre-Kindergarten Teacher that she believed that the Student was imitating the behaviors his father exhibited when intoxicated.[18] Petitioner also informed the Pre-Kindergarten Teacher that she believed these issues were affecting Student emotionally.[19]

6. During the remainder of the 2008-2009 school year, the Pre-Kindergarten Teacher tried various strategies to address the Student's disruptive behaviors.[20] placed the

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[7] Testimony of Pre-Kindergarten Teacher.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

Student on a half-day program for about two weeks.[21] In May or June 2010, the Student returned to his full-day schedule and had no further disruptive behaviors.[22]

7. Although the Student had behavioral difficulties between January and May or June 2009, his tantrums did not affect his academic performance.[23] For this reason, the Pre-Kindergarten Teacher did not consider referring the Student for evaluation for special education.[24] The Pre-Kindergarten Teacher did not contact anyone at regarding conducting evaluations for the Student, nor did she refer the Student for evaluations.[25] She followed the school procedure, which required her to share her concerns with the School Counselor, who would then contact the parent.[26]

8. The Student was not performing on grade level at the beginning of the 2008-2009 school year.[27] By the end of this school year, he was performing on grade level and met all of the pre-kindergarten benchmarks.[28] Thus, the Student made academic progress during the 2008-2009 school year.

9. The Student's father was killed in a shooting in September 2009.[29] The Student then began acting out in school.[30] After some of these incidents, would call Petitioner, tell her that the Student could not remain in school for the rest of the day, and ask her to take him home.[31] However, most of these incidents were minor during fall 2009.[32]

10. In January 2010, the Student's disruptive behaviors became more extreme and more frequent.[33] He often became frustrated when he did not finish his work on time and refused to move on to the next task.[34] His behavior would escalate, and he would scream and cry.[35] At other times, he would throw tantrums with no provocation.[36] The Student was not violent toward others but he often was a danger to himself.[37] It often required more than one

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[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Testimony of Petitioner.
[30] *Id.*
[31] *Id.*
[32] Testimony of Kindergarten Teacher.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*

adult's assistance to get control of the Student.[38] During January 2010, the Kindergarten Teacher first suspected that the Student might need to be evaluated for a disability.[39]

11. On January 13, 2010, the Student refused to follow the instructions of the Kindergarten Teacher.[40] When the Student failed to follow his classmates to the bathroom, the Kindergarten Teacher reminded him to follow instructions, and he responded by kicking the walls and screaming.[41]

12. That month, Petitioner enlisted her cousin ("Cousin") to aid the Student a school.[42] With the permission of Cousin accompanied the Student to school, and often sat in his classroom and assisted him with his schoolwork.[43] The Cousin's presence helped stabilize the Student to a degree but his behavior was still inconsistent.[44]

13. Petitioner paid Cousin to stay at school with the Student.[45] She paid Cousin per month for January and February 2010, for the month of March 2010, and for the month of April 2010.[46] Petitioner never informed that she was paying Cousin to accompany the Student at school.[47] Because Cousin had other family obligations, he was unable to assist the Student after April 2010.[48]

14. In April 2010, Petitioner's cousin left town for a week.[49] The Student became disruptive, and had several tantrums, which resulted in a one-week suspension from school.[50] This was a turning point for the Student as he became more aggressive and started screaming, yelling, hitting the wall, and walking out of the classroom.[51] He refused to listen to adults or pay attention.[52] often called Petitioner to inform her that the Student ran out of his classroom and adults had to then search for him.[53]

15. Throughout the second half of the 2009-2010 school year, the Student would have tantrums about twice a week in which he would fall on the floor, kick, scream, and throw

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[38] *Id.*
[39] *Id.*
[40] Petitioner Exhibit 8 at 1 (behavior incidents during spring semester 2010).
[41] *Id.*
[42] *Id.*
[43] Testimony of Kindergarten Teacher.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Testimony of Petitioner.
[49] Testimony of Petitioner.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*

objects.[54] often called Petitioner and asked her to remove the Student from the school as a result of his behavior.[55] If the Student had tantrums on a Wednesday, often asked Petitioner to keep him out of school for the rest of the week so that he would calm down.[56] On most of these occasions, did not issue suspension notices for the Student as it had not suspended him.[57]

16. During this time, the Kindergarten Teacher would prepare behavior reports each day.[58] These reports included a summary of his behavior during each academic subject and indicated whether he had problems during a particular subject.[59]

17. The Kindergarten Teacher also implemented a system to reward the Student for good behavior.[60] Sometimes these rewards were effective in improving the Student's behaviors for weeks at a time.[61] At other times, the Student did not respond to the rewards system.[62] The Kindergarten Teacher did not conduct an FBA of the Student.

18. began the process of evaluating the Student on February 26, 2010.[63] On June 17, 2010, the Student's IEP team met to review evaluations and determine the Student's eligibility for specialized instruction and related services.[64] Petitioner attended the meeting without her Educational Advocate or attorney.[65]

19. At the end of the 2009-2010 school year, the Student had mastered all of the kindergarten benchmarks as well as the early first-grade benchmarks.[66] He exceeded the benchmarks in letter naming fluency, phoneme segmentation fluency, nonsense word fluency, and word use fluency.[67] Thus, the Student made academic progress during the 2009-2010 school year.

20. On August 17, 2010, the Student's IEP team determined he was eligible for special education as a student with an emotional disturbance.[68] That same day, the IEP team

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[54] Testimony of Petitioner.
[55] *Id.*
[56] *Id.*
[57] *Id.* The Student was suspended twice during the 2009-10 school year. *Id.* Each of these suspensions was for one week. *Id.*
[58] Testimony of Kindergarten Teacher.
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Stipulation of parties.
[64] Stipulation of parties.
[65] Testimony of Petitioner; Respondent Exhibit 2 at 5 (August 17, 2010, emails).
[66] Testimony of Principal.
[67] Respondent Exhibit 6 at 14 (Summary of Reading Assessments).
[68] Stipulation of parties; Testimony of Compliance Specialist.

developed an IEP for the Student.[69] This IEP provides the Student five hours per week of specialized instruction outside the general education setting, one hour per week of behavioral support services, and forty-five minutes per week of occupational therapy.[70] The IEP also provides that the Student is to receive two and a half hours per month of behavioral support consultative services and one hour per month of occupational therapy consultative services.[71] Petitioner signed this IEP and had no objection to its contents.[72]

21. Petitioner's Education Consultant developed a proposed compensatory education plan for the Student.[73] This plan recommends that the Student receive two hours per week for one year of specialized instruction in written expression, reading, and mathematics, for a total of 104 hours.[74] The plan also recommends one hour per week of occupational therapy services for a total of twenty hours.[75] Finally, it recommends on hour per week of behavioral support services for a total of twenty hours.[76]

22. The Education Consultant has a master's degree in special education.[77] He has no background, training, or expertise in social work, psychology, or occupational therapy.[78] The Educational Consultant developed the proposed compensatory education plan after reviewing the Student's August 27, 2010, IEP, and conducting assessments of the Student.[79] He did not review the Student's evaluations, grades, progress reports, testing, or other assessments of the Student.[80]

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible.

VII. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[81] FAPE is defined as:

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[69] Stipulation of parties.
[70] Joint Exhibit 9 (August 17, 2010, IEP).
[71] *Id.*
[72] Testimony of Petitioner.
[73] Testimony of Education Consultant.
[74] Petitioner Exhibit 1 at 2 (Compensatory Education Proposal).
[75] *Id.*
[76] *Id.*
[77] Testimony of Education Consultant.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

> [S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..."[82]

In deciding whether DCPS provided Petitioner a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether Petitioner's IEP is reasonably calculated to enable Petitioner to receive educational benefit.[83]

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.[84] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[85]

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant to second-guess the judgment of education professionals.[86] The court should not "disturb an IEP simply because [it] disagree[s] with its content."[87] The court is obliged to "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides."[88]

The burden of proof is properly placed upon the party seeking relief.[89] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[90]

VIII. DISCUSSION

A. Petitioner Failed to Prove that the Charter School Denied the Student a FAPE When It Failed to Timely Evaluate the Student.

FAPE "consists of educational instruction specially designed to meet the unique needs of

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[82] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[83] *Rowley,* 458 U.S. at 206-207.
[84] 34 C.F.R. § 300.513 (a)(2).
[85] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[86] *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).
[87] *Id.*
[88] *Id.*
[89] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[90] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[91] The IEP is the centerpiece of special education delivery system.[92]

The term "educational placement" refers to the type of educational program prescribed by the IEP.[93] "Educational placement" refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school.[94]

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[95] establishes annual goals related to those needs,[96] and provides appropriate specialized instruction and related services.[97] The program must be implemented in the least restrictive environment ("LRE").[98] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[99]

In developing an IEP, the IEP team must consider the strengths of the child; concerns of the parents for enhancing the education of the child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.[100] An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.[101]

The considerations relevant to determining whether a particular placement is appropriate for a particular student include 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.[102]

Here, was aware of the Student's behavioral problems as early as January 2009. However, the Student was exposed to a stressful situation at home due to his father's alcoholism. When the Pre-Kindergarten Teacher discussed the Student's behavioral issues with Petitioner,

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[91] *Rowley*, 458 U.S. at 188-89 (citation omitted).
[92] *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).
[93] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[94] *Id.*
[95] 34 C.F.R. § 300.320 (a) (1).
[96] 34 C.F.R. § 300.320 (a) (2).
[97] 34 C.F.R. § 300.320 (a) (4).
[98] 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).
[99] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[100] 34 C.F.R. § 300.324 (a).
[101] 34 C.F.R. § 300.320 (a) (1); 5 D.C.M.R. § 3007.2 (a).
[102] *Branham v. Dist. of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005) (citing *Rowley*, 458 U.S. at 202).

Petitioner explained that his behaviors may be a result of his home situation and that the Student may be imitating his father's drunken behaviors. Thus, it is plausible that the Pre-Kindergarten Teacher could have assumed that the Student's tantrums were a result of environmental factors as opposed to a suspected disability.

Even if this Hearing Officer could find that should have begun the evaluation process in January 2009, Petitioner has failed to show that its failure to do so denied the Student a FAPE. Petitioner produced no evidence to show that the Student failed to make academic progress as a result of the failure to evaluate him in January 2009. Instead, the evidence shows that the Student made progress and met all the pre-kindergarten benchmarks.

The Student's behavior appeared to improve at the outset of the 2009-2010 school year. However, after his father died in September 2009, the Student again began experiencing behavioral difficulties, albeit intermittently. Because the staff at could reasonably have assumed his behavioral difficulties were due to the death of his father, this Hearing Officer finds that Petitioner failed to prove that they should have suspected the Student had a disability at this time.

The Student's behavior escalated in January 2010, including a serious incident on January 13, 2010. As of this date, it is undisputed that the Kindergarten Teacher was on notice that the Student may have a disability. Six weeks passed before issued a Prior Written Notice indicating its intent to evaluate the Student on February 26, 2010.[103] Petitioner provided consent to evaluate on March 4, 2010. concluded the evaluations on May 28, 2010. Thus, within 120 days of the date it was on notice that the Student may have a suspected disability, concluded the Student's evaluations.[104]

Moreover, it is undisputed that the Student exceeded all of the kindergarten benchmarks by the end of the 2009-2010 school year. Thus, Petitioner failed to show that denied the Student a FAPE.

B. Petitioner Failed to Prove that Denied the Student a FAPE by Failing to Appropriately Address his Behavioral Problems During the 2009-2010 School Year.

A public agency must be deemed to have knowledge that a child is a child with a disability if (1) the parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child requested an evaluation of the child pursuant; or (3) the teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.[105] School personnel should refer children for evaluation when the child's behavior or performance indicates that he or may have a disability.[106]

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[103] Joint Exhibit 1.
[104] See D.C. Code § 38-2561.02 (LEA must conduct initial evaluations within 120 days).
[105] 34 C.F.R. § 300.534 (b).
[106] 34 C.F.R. §300.534 (b)(3) (U.S. Department of Education comments at 71 Fed. Reg. 46727).

IDEA requires local education agencies to ensure that the child is assessed in all areas related to his or her suspected disability, including, if appropriate, social emotional status.[107] In other words, if a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted.[108] Decisions regarding the areas to be assessed are determined by the suspected needs of the child.[109] In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.[110] In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.[111]

Here, DC Prep should have conducted an FBA of the Student in January 2010 at the latest. However, for the reasons explained above, Petitioner failed to show that this denied the Student a FAPE.

C. Petitioner Failed to Prove that Denied the Student a FAPE by Failing to implement his IEP from August 17, 2010, through September 30, 2010.

Each public agency must ensure that, as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with the child's IEP.[112] Petitioner presented no evidence to show that failed to implement the Student's IEP. Thus, Petitioner failed to prove by a preponderance of the evidence that denied the Student a FAPE by failing to implement his IEP from January 26, 2010, to May 21, 2010.

D. Petitioner Failed to Prove that her Compensatory Education Plan Was Reasonably Calculated to Place the Student in the Place Where He Would Have Been but for the Denial of FAPE.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place."[113] An award of compensatory education "should aim to place disabled children in the same position they would have occupied

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[107] 34 C.F.R. § 300.304(c)(4).
[108] 34 C.F.R. §300.304 (c)(4) (U.S. Department of Education comments at 71 Fed. Reg. 46643).
[109] *Id.*
[110] 34 C.F.R.§ 300.324 (a)(2)(i).
[111] *Id.*
[112] 34 C.F.R. § 300.323 (c) (2).

[113] *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

but for the school district's violations of IDEA."[114]

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award."[115] This inquiry is only the first step in determining whether the Student is entitled to compensatory education.

A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA."[116]A compensatory education "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."[117] This standard "carries a qualitative rather than quantitative focus," and must be applied with flexibility rather than rigidity.[118]

Here, Petitioner presented no evidence at the due process hearing to show that this compensatory education plan would to place the Student in the same position he would have occupied but for the failure by DCPS to develop an FBA for the Student in January 2010, begin the evaluation process for the Student prior to February 2010, or implement his IEP between August 27, 2010, and September 30, 2010. The Educational Consultant who drafted the plan failed to even review the Student's evaluations, progress reports, or any other information that provided insight into the Student's educational performance, either before, during, or after the alleged denials of FAPE. Thus, this Hearing Officer finds that the Educational Consultant failed to develop a "reasonably calculated" compensatory education plan.

ORDER

Based upon the evidence and testimony at the due process hearing, it is this 31st day of January 2011 hereby:

ORDERED that the Complaint is DISMISSED WITH PREJUDICE.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

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[114] *Id.*
[115] *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).
[116] *Reid*, 401 F.3d at 518, 523.
[117] *Id.* at 524.
[118] *Id.*

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).

Distributed to:

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Lauren Baum, counsel for Respondent
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