DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
1150 Fifth Street, S.E.
Washington, DC 20003

STUDENT, through the legal guardian[1]	)	
	)	
Petitioner,	)	Case Number:
	)	
v.	)	Hearing Date: February 18, 2010
	)	Hearing Room: 4B
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
	)	Hearing Officer: Frances Raskin
	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

Counsel for Petitioner: Iris Barnett, Attorney at Law
15 Fourteenth Street, S.E.
Washington, D.C. 20003

Counsel for DCPS: Kendra Berner, Attorney at Law
Office of the Attorney General
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

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

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. §§ 1400 *et seq.*, and its implementing regulations at 34 C.F.R. §§ 300.1 *et seq.*

II. BACKGROUND

Petitioner is the father of a -year-old, special education student ("Student") at a District of Columbia senior high school.[2] Both Petitioner and the Student are residents of the District of Columbia.[3]

On December 3, 2009, Petitioner filed a Due Process Complaint Notice ("Complaint") alleging violations of IDEIA.[4] Petitioner alleges that the District of Columbia Public Schools ("DCPS") denied the Student a free, appropriate, public education ("FAPE") by failing to develop an appropriate individualized educational program ("IEP") for the Student. Petitioner alleges that the Student's January 30, 2009, IEP is inappropriate because it lacks individualized and measurable goals, fails to provide the Student with a small structured classroom, and is otherwise inadequate to address the Student's needs. Petitioner alleges that the Student failed all of his classes during the 2008-2009 school year, is currently repeating the ninth grade for the third time, and has made no educational progress since August 2008.

---

[2] Petitioner Exhibit 10 (January 13, 2009, Individualized Educational Program ("IEP").

[3] Testimony of Petitioner.

[4] Petitioners frame the legal issues as whether DCPS denied the Student a FAPE by:

A. Improperly exiting the Student from speech-therapy and counseling services;

B. Failing to revise the Student's May 8, 2007, IEP in light of the results of the triennial evaluation reviewed on June 6, 2007;

C. Failing to develop IEPs for the Student for the 2005-2006 and 2006-2007 school years;

D. Failing to provide the Student with an IEP that lacked a description of his then-current levels of academic achievement and no measurable annual goals; and

E. Failing to provide the Student with a small structured classroom notwithstanding the facts that an IEP team came to that conclusion in 2004, a DCPS psychologist reiterated that conclusion in 2007, and that the Student is repeating ninth grade for the third time and failing all of his classes.

The statute of limitations for claims arising under IDEA is two years. 34 C.F.R. § 300.507 (due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint). During the prehearing conference, counsel for Petitioner acknowledged that many of these claims are time barred and agreed that the Hearing Officer should dismiss claims A, B, C, and the portions of D and E that concern actions that occurred before December 3, 2007.

In the Complaint, Petitioner alleges that DCPS has failed to review a November 2009 psychological evaluation by the District of Columbia Superior Court Child Guidance Clinic.[5] Petitioner also alleges that DCPS agreed to conduct a speech-language evaluation of the Student in November 2009 but has failed to conduct the evaluation.

Petitioner seeks relief including an order requiring DCPS to convene a meeting of the IEP team to review the Student's November 2009 psychological evaluation and revise his IEP to include appropriate measurable goals. Petitioner requests an order requiring DCPS to complete a speech-language evaluation within ten days or authorizing Petitioner to obtain an independent evaluation at DCPS expense. Petitioner also requests an order placing the Student in a full-time, non-public school for the remainder of the 2009-2010 school year at DCPS expense. Finally, Petitioner requests compensatory education.

On December 16, 2009, DCPS filed a Response to Petitioner's Due Process Complaint ("Response"). DCPS asserts that the Student's IEP developed in January 2009 contains present levels of performance and measurable annual goals. Finally, DCPS asserts that the Student's present IEP, including the educational setting, is reasonably calculated to provide him educational benefit. DCPS asserts that the Student rarely attends school to obtain the benefit of the services offered or for the IEP team to determine if different services are warranted.

On January 26, 2010, counsel for DCPS filed an Amended Response to Petitioner's Due Process Complaint ("Amended Response"). The Amended Response asserts that the IEP was based on the evaluations and reports available at the time, and that it provides the services and supports that the IEP team believed were necessary for the Student to be successful in his least restrictive environment. The Amended Response acknowledges that DCPS must review the Student's recent evaluations and update the present levels of performance and goals on the Student's IEP. The Amended Response asserts that the Student's educational setting is reasonably calculated to provide him educational benefit. The Amended Response further asserts that the Student rarely attends school and, although DCPS has reached out to the Student and his family to encourage him to attend class, the Student's attendance has not improved. Finally, the Amended Response asserts that because the Student has not availed himself of the educational benefit offered by DCPS, Petitioners cannot prove that the Student's IEP or placement is inappropriate.

The remedies Petitioner seeks include a finding by this Hearing Officer that the Student is multiply disabled with mental retardation, learning disability, and other health impairment (Attention Deficit Hyperactivity Disorder). Petitioner seeks and order from this Hearing Officer requiring DCPS to fund independent speech-language and vocational assessments and to reimburse Petitioner for an independent educational evaluation she obtained at her own expense in June 2009. Petitioner further seeks an order from this Hearing Officer that (a) places the Student in a non-public, full-time, special education setting at DCPS expense; and (b) provides the Student compensatory education at DCPS expense.

---

[5] Petitioner later stipulated that DCPS reviewed the Student's psycho-educational evaluation with Petitioner during the DCPS resolution session on January 4, 2010. See also DCPS Exhibit 8 (January 4, 2010 MDT Meeting Notes).

The due process hearing convened on February 18, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing.[6]

Petitioner presented four witnesses: Petitioner, the Student, an expert in psychology, and a representative from the non-public placement. DCPS presented one witness, a special education coordinator ("SEC") from District of Columbia senior high school the Student currently attends.

III. RECORD

Due Process Complaint Notice, filed December 3, 2009;
DCPS filed a Response to Petitioner's Due Process Complaint, filed December 16, 2009;
DCPS Amended Response to Petitioner's Due Process Complaint, filed January 26, 2010;
Prehearing Order, issued January 14, 2010;
Revised Prehearing Order, issued January 28, 2010;
Second Revised Prehearing Order, issued February 3, 2010;
Motion for Continuance, filed February 1, 2010;[7]
Petitioner's Five-Day Disclosure Statement, listing five witnesses and including twenty-two proposed exhibits, filed February 1, 2010;
DCPS Five-Day Disclosure Statement, filed February 1, 2010;
Petitioner's Motion for Partial Summary Judgment, filed with the Hearing Officer on February 10, 2010;
Interim Order on Continuance Motion, issued on February 15, 2010;
DCPS Opposition to Petitioner's Motion for Partial Summary Judgment, filed on February 16, 2010;
DCPS Supplemental Disclosure Statement, listing thirteen witnesses and including ten proposed exhibits, filed on February 17, 2010; and
Interim Order on Summary Judgment, issued on February 18, 2010.

IV. ISSUE PRESENTED

Whether DCPS failed to provide the Student an appropriate IEP for the 2008-2009 and 2009-2010 school years.

V. FINDINGS OF FACT

---

[6] Petitioner's Exhibit 4-7 and 9-22 were admitted into evidence. Petitioner's Exhibits 1-3, and 8 were excluded from evidence at the due process hearing by agreement of the parties after the Hearing Officer deemed that were not relevant to the issues before the Hearing Officer. DCPS exhibits 1-10 were admitted into evidence.

[7] Counsel for Petitioner styled this Motion as "Consent to Continue Due Process Hearing."

1. The Student is a -year-old, -grade, special-education student who attends a District of Columbia senior high school.[8] The Student attended school in another state during the 2007-2008 school year.[9] He began attending school in the District of Columbia in the 2008-2009 school year.[10] The Student has repeated ninth grade three times due to excessive absences and failing grades.[11]

2. DCPS developed an IEP for the Student on January 30, 2009, when the Student was sixteen years old.[12] This IEP provides that the Student was to receive ten hours of specialized instruction per week outside the general education setting in a small group setting with low student-teacher ratio.[13]

3. The January 30, 2009, IEP contains present levels of performance in mathematics and reading, although the descriptions were not detailed.[14] The IEP states that the Student's "can add, subtract, and multiply basic number (sic)" and was unable to calculate problems at grade level.[15] The Student's math knowledge is limited to basic math facts, such as adding and subtracting to twenty.[16] The Student treats fractions like whole numbers and when presented with an algebra problem performs basic addition.[17] He cannot perform problems involving algebra or ratios without understanding fractions.[18]

4. Yet, on the January 30, 2009, IEP, the Student's annual goals in mathematics anticipated that within one year the Student would be able to "demonstrate growth in algebra with 80 percent accuracy," and " [d]emonstrate an understanding of relations and functions.[19] The IEP anticipated that the Student would be able to "[i]dentify the domain, range, and dependent and independent variables of functions."[20] One of the mathematics goals anticipated that the Student would be able to "[a]dd, subtract, and multiply polynomials with emphasis on 1st and 2nd- degree polynomials."[21] Finally, the IEP contains no baselines for any of the mathematics goals.[22]

5. In reading, the Student's January 30, 2009, IEP states that the Student's present level

---

[8] DCPS Exhibit 10 (January 25, 2010 IEP).
[9] Testimony of Petitioner; Petitioner Exhibit 10 (MDT Meeting Notes, January 29, 2009).
[10] *Id.*
[11] Petitioner Exhibit 15 (November 16, 2009, Report on Confidential Psycho-educational Evaluation).
[12] Petitioner Exhibit 12 (January 30, 2009, IEP).
[13] *Id.*
[14] *Id.* The IEP states the Student's present level of educational performance in mathematics was "Math Cal. 4 E."
[15] *Id.*
[16] Testimony of Psychological Expert.
[17] *Id.*
[18] *Id.*
[19] Petitioner Exhibit 12.
[20] *Id.*
[21] *Id.*
[22] *Id.*

of educational performance in reading was "Reading Com. less than 3rd grade."[23] It states that the Student "can identify words on Dolch list" and was unable to "read and comprehend at a (sic) grade level."[24] Yet, one of the Student's reading goals anticipated that within one year he would be able to "[c]ompare (and contrast) classic works of literature that deal with similar topics and problems (e.g., individual and society, freedom and responsibility)."[25] None of the Student's reading goals contained a baseline.[26]

6. The January 30, 2009, IEP contains no transition plan, other than stating that the Student would like to graduate with a diploma and attend Howard University and is interesting in working in a store.[27] It lists no transition assessments that were used to determine the Student's post-school goals and no transition activities other than a career fair during the week of March 23, 2009.[28] The postsecondary education annual goals on the IEP were that the Student would "learn strategies to enhance his study skills" and "learn organizational strategies."[29] The IEP projected that the Student would earn a high school diploma by June 12, 2012.[30]

7. Petitioner signed the Student's January 30, 2009, IEP and indicated that he agreed with its content.[31] Petitioner was not familiar with special education at the time he signed the IEP, and he would not have signed the IEP had he been more familiar with special education.[32] Petitioner is not satisfied with the specialized instruction the Student has been receiving since January 30, 2009.[33]

8. Despite that the January 30, 2009, IEP reflected that the Student was reading at a third-grade level and that his mathematics performance was limited to adding, subtracting, and multiplying basic numbers, the Student's 2008-2009 classes included algebra, world history and geography, biology, conceptual physics, and algebra.[34]

9. The Student's full scale IQ is between 68 and 77, which indicates that he is functioning in the borderline range of intelligence.[35] The Student's academic skills fall at the second-grade level and his academic fluency is at the third-grade level.[36] These scores show that the Student's academic performance is below the first percentile of student in his age group.[37]

---

[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Petitioner Exhibit 13.
[35] Petitioner Exhibit 15.
[36] *Id.*
[37] Testimony of Psychological Expert.

10. The Student has very low phonological awareness and performs at the second-grade level.[38] He is still sounding out words.[39] These scores demonstrate an inability to perform effectively in the academic environment.[40] The Student language fundamentals and vocabulary are in the borderline to average range.[41] His language is delayed in all areas.[42]

11. The Student may avoid school due to embarrassment and the tediousness of attempting to understand advanced materials.[43] The Student walks the halls at school and rarely attends his classes.[44] He would attend all of his classes if he had a special education teacher in all of his classes.[45] The Student knows that tutoring is available after school but he never attends the tutoring.[46]

12. The Student avoids school because he does not have good coping skills.[47] Avoidance is common in students with low cognitive scores.[48] Students with these low cognitive scores have difficulty reflecting on their behavior, understanding their behavior, and making a sequential plan to overcome it.[49]

13. The Student has a less mature personality development, including poor frustration tolerance and limited problem-solving skills.[50] He will solve problems in unpredictable ways.[51] This inconsistency in coping places the Student at risk for anxiety, tension, and irritability.[52] Additionally, the Student has poor ego development and ego integration, and thus requires very structured settings to function adequately.[53] He also is experiencing a disturbance in his ability to think logically and connect relationships between events.[54] He may be at risk of developing schizophrenia.[55]

14. The Student shows a tendency to misperceive events and misinterpret intentions of other individuals.[56] He has limited ability to recognize appropriate responses and to anticipate

---

[38] Petitioner Exhibit 15.
[39] Testimony of Psychological Expert.
[40] Petitioner Exhibit 15.
[41] DCPS Exhibit 3 (January 21, 2010 Report of Speech and Language Evaluation).
[42] *Id.*
[43] Petitioner Exhibit 15.
[44] *Id.*; Testimony of Student.
[45] Testimony of Student; DCPS 1 (Attendance Summary showing that the Student had 228 unexcused absences from his classes between August 17, 2009, and February 1, 2010).
[46] *Id.*
[47] Testimony of Psychological Expert.
[48] *Id.*
[49] *Id.*
[50] Petitioner Exhibit 15.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*

consequences of actions.[57] He exhibits behavioral problems in his school and home environments, and fails to comply with basic rules such as remaining in the classroom.[58] Thus, his impaired perception of reality impinges on his ability to manage daily living tasks. He may require a significant amount of assistance or structure to ensure adequate adjustment.[59]

15. The Student needs a structured environment that would help delay the onset of schizophrenia.[60] Stress can expedite mental illness.[61] If the Student is in a structured environment, he will be better able to manage his stress.[62] Delaying the onset of schizophrenia until after he reaches adulthood will improve the Student's prognosis.[63]

16. The Student should participate in individual or group counseling and he needs to develop effective coping skills.[64] He would benefit from life skills and job training interventions.[65] Social skills training would help the Student learn to be more assertive and appropriate in interpersonal relations.[66]

17. It is unlikely the Student will be able to earn a high school diploma.[67] In order to earn a diploma, all of the Student's instruction must be presented orally, and his answers recorded and then typed for him.[68] The Student would be unable to perform math problems without a calculator and these problems must be presented orally to him.[69] He would require intensive instruction, learning games, and a slow instructional approach.[70] All of his instruction must be provided verbally and in small steps.[71]

18. On February 17, 2010, DCPS held an IEP meeting to develop a new IEP for the Student.[72] The IEP meeting did not start on time due to the late arrival of Petitioner, and thus Petitioner and his counsel had to leave the IEP meeting before it concluded.[73] The team had not finalized the IEP before Petitioner and his counsel left the meeting.[74] The IEP provides that the Student will receive 27 hours of specialized instruction and thirty minutes of behavioral support

---

[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] Testimony of Psychological Expert.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] Petitioner Exhibit 15.
[65] *Id.*
[66] *Id.*
[67] Testimony of Psychological Expert.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] DCPS Exhibit 10 (February 17, 2010, IEP).
[73] DCPS Exhibit 10; representation by counsel.
[74] *Id.*

services per week.[75]

19. The Student's February 17, 2010, IEP would place him in a self-contained, certificate program for special education students.[76] The Student would be in classes with 8-12 special education students that are taught by special education teachers.[77] This program is on a separate floor of the school and the Student would have no contact with general education students except when he enters and exits the school building.[78] The program offers life skills and vocational training.[79]

20. The Student has been accepted in a full-time, non-public, therapeutic, structured program with vocational components.[80] The Student would be in a classroom with seven other students, one special education teacher, and one teacher's aide.[81] The school has attendance and behavioral incentive programs.[82] The Student would be in a program designed to provide him a certificate of completion rather than a diploma.[83] If the Student shows progress toward earning a diploma, he could be moved to the diploma track.[84] The non-public school could implement the Student's IEP.[85]

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible. DCPS presented no testimony that contradicted the testimony of Petitioner's witnesses.

VII. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.[86] Under IDEIA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[87]

---

[75] DCPS Exhibit 10.
[76] Testimony of DCPS SEC.
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] Testimony of non-public school representative.
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[87] 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).

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[88] FAPE is defined as:

> [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)..."[89]

Special education is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability."[90] FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[91]

DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."[92] In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEIA; and (b) whether the Student's IEP is reasonably calculated to enable the Student to receive educational benefit.[93]

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.[94] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[95]

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.[96] The court should not

---

[88] 20 U.S.C. §§ 1400(d)(1)(A),1412(a)(1).
[89] 20 U.S.C. § 1401(9), 34 C.F.R. § 300.17, 30 DCMR Sec. § 3001.1.
[90] 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, 30 DCMR Sec. § 3001.1.
[91] *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).
[92] 34 C.F.R. § 300.101.
[93] *Rowley* at 206-207.
[94] 20 U.S.C. § 1415 (f)(3)(E)(ii).
[95] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").
[96] *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).

"disturb an IEP simply because [it] disagree[s] with its content."[97] 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."[98]

VIII. DISCUSSION

A. DCPS Failed to Develop an Appropriate IEP for the Student for the 2008-2009 School Years.

Petitioner proved by a preponderance of the evidence that DCPS failed to develop an appropriate IEP for the Student for the 2008-2009 school year. The defects in the Student's January 30, 2009, IEP are so numerous as to render this IEP utterly inappropriate. This IEP is not specially designed to meet the unique needs of the Student or reasonably calculated to provide the Student meaningful educational benefit.

The adequacy of the student's IEP is determined by whether the student has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child."[99] IDEIA does not require that the services provided maximize each child's potential.[100]

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.[101] 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.[102] An IEP also must include a statement of measurable annual goals.[103]

Here, the Student's academic functioning is seven to eight years behind his grade. The Student's math knowledge is limited to basic math facts, such as adding and subtracting to twenty. The Student treats fractions like whole numbers and when presented with an algebra problem performs basic addition. He cannot perform problems involving algebra or ratios without understanding fractions.

Yet, the Student's January 30, 2009, IEP anticipated that, within one year, the Student would be able to "demonstrate growth in algebra with 80 percent accuracy." The IEP team expected the Student to demonstrate an understanding of relations and functions, and identify the

---

[97] *Id.*
[98] *Id.*
[99] *Rowley,* 458 U.S. at 201 (1982).
[100] *Id.* at 198.
[101] 34 C.F.R. § 300.324 (a).
[102] 34 C.F.R. § 300.320 (a) (1); 5 D.C.M.R. § 3007.2 (a).
[103] 34 C.F.R. § 300.320 (a) (2) (i); 5 D.C.M.R. § 3007.2 (b) (annual goals must include short-term instructional objectives).

domain, range, and dependent and independent variables of functions." One of the mathematics goals on this IEP anticipated that the Student would be able to "[a]dd, subtract, and multiply polynomials with emphasis on 1st and 2nd- degree polynomials." These goals are clearly beyond the Student's ability now, much less in 2009. Moreover, the January 30, 2009, IEP contains no baselines for any of the mathematics goals.

Presently, the Student has very low phonological awareness. In reading, he performs at the second-grade level and is still sounding out words. Yet, the January 30, 2009, IEP, anticipated that, within one year, the Student would be able to "[c]ompare (and contrast) classic works of literature that deal with similar topics and problems (e.g., individual and society, freedom and responsibility)." This goal is clearly beyond the ability of a student performing on the second-grade level. It appears to be tied to the ninth-grade curriculum instead of the Student's level of functioning.

Moreover, even though the January 30, 2009, IEP reflected that the Student was reading at a third-grade level and that his mathematics performance was limited to adding, subtracting, and multiplying basic numbers, the Student's 2008-2009 classes included algebra, world history and geography, biology, conceptual physics, and algebra.[104] The Student did not pass enough classes in the 2008-09 school year to be promoted and is repeating the ninth grade for the third time.

Finally, the January 30, 2009, IEP contains no transition plan, other than stating that the Student would like to graduate with a diploma and attend Howard University and is interesting in working in a store. It lists no transition assessments that were used to determine the Student's post-school goals and no transition activities other than a career fair during the week of March 23, 2009. The postsecondary education annual goals on the IEP were that the Student would "learn strategies to enhance his study skills" and "learn organizational strategies."

Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to develop an appropriate IEP for the 2008-2009 school year.

However, the remedy for this denial of FAPE would be compensatory education. 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." *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." *Reid*, 401 F.3d at 518. "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." *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007). Here, counsel for Petitioner failed to present any evidence of the amount of compensatory education the Student is due.

---

[104] Petitioner Exhibit 13.

DCPS Failed to Develop an Appropriate IEP for the Student for the 2009-2010 School Year.

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.[105] One of the policies underlying the need for an accurate written IEP is "to serve a parent's interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child's progress and determine if any change to the program is necessary.[106]

Thus, DCPS must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.[107] Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a free and appropriate public education ("FAPE").[108]

> If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.[109] A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.[110]

Here, DCPS developed the Student's February 17, 2010 IEP without the parent's full participation. Although the team discussed the IEP with the participation of Petitioner and his counsel, the team developed the IEP after Petitioner left the IEP meeting. Although DCPS accepted Petitioner's suggestion that the Student receive a full-time IEP that provides him specialized instruction outside the general education setting for 100 percent of the time, DCPS failed to include Petitioner in the development of the IEP. Thus, DCPS failed to ensure that Petitioner was a part of the IEP team that made decisions on the educational placement of the parent's child. As a result, the Student's February 17, 2010, IEP is inappropriate.

Thus, Petitioner established by a preponderance of the evidence that DCPS denied the Student a FAPE by impeding Petitioner's right to participate in his child's educational planning.

C. Petitioner Failed to Prove that DCPS Denied the Student an Appropriate Educational Placement.

The IDEIA requires that unless the IEP of a child with a disability requires some other

---

[105] 20 U.S.C. § 1414(f), 1415(b).
[106] *Alfano et al. v. District of Columbia,* 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citation omitted).
[107] 34 C.F.R. § 300.501 (c)(1).
[108] *See, e.g., W.G. v. Board of Trustees,* 960 F.2d 1479, 1484 (9th Cir. 1992).
[109] 34 C.F.R. § 300.501 (c)(3).
[110] 34 C.F.R. § 300.501 (c)(4).

arrangement, the child is educated in the school that he or she would attend if nondisabled.[111] In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.[112] A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.[113]

Placement decisions must be made in conformity with the child's IEP.[114] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[115] In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEIA:

> (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
>
> (2) Private or residential District of Columbia facilities; and
>
> (3) Facilities outside of the District of Columbia.[116]

Here, DCPS has offered the Student the small, therapeutic, special education setting with intensive, individualized special education instruction that he requires. Thus, Petitioner failed to provide by a preponderance of the evidence that DCPS denied the Student a FAPE.

ORDER

Upon consideration of Petitioner's requests for a due process hearing, the exhibits and the testimony admitted at the hearing, it is this 28th day of February 2010 hereby:

ORDERED that within 10 school days, DCPS shall convene the MDT to review and revise the Student's IEP with the full participation of Petitioner and his counsel;

IT IS FURTHER ORDERED that DCPS shall ensure that Petitioner and the Student are present at all future IEP/MDT meetings before proceeding with any meeting regarding the Student's IEP; and

IT IS FURTHER ORDERED that this Order is effective immediately.

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

---

[111] 34 C.F.R. § 300.116 (c).
[112] 34 C.F.R. § 300.116 (d).
[113] *Id.* at (e).
[114] 34 C.F.R. § 300.116 (a)(2)(b), 5 D.C.M.R. § 3013 (2006).
[115] *See, Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (D.D.C. 2006).
[116] D.C. Code § 38-2561.02.

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. § 415(i)(2).

Distributed to:

Iris Barnett, Attorney at Law
Kendra Berner, Attorney at Law
Hearing Office