

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

Parent or Guardian, on behalf of
Student,¹

Petitioner,

V

The District of Columbia
Public Schools

Respondent.

Date Issued: June 13, 2010

Hearing Officer: Jane Dolkart

RECEIVED
JUN 14 2010

HEARING OFFICER DECISION

APPENDIX 1

¹ Personal identification information is provided in Appendix A.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a year old child presently in the grade. Her most recent IEP provides the student with 15 hours per week of specialized instruction in an out of general education setting and 1.5 hours/week of counseling. The student has a history of behavioral and academic problems during the over four years she has been at . There are four previous HODs concerning this student, in all of which Petitioner was the prevailing party. A detailed history concerning these HODs is telling evidence of DCPS' failure to provide this student with FAPE despite being given opportunity after opportunity by this Hearing Officer to comply with its legal obligations. The following history of previous DCPS actions was taken entirely from findings of fact and conclusions of law in the cited HODs to be found at documents P 18-22.

On June 16, 2007, Petitioner filed a due process complaint alleging that DCPS had failed to comply with its affirmative duty to identify and evaluate a child suspected of having a disability. A December 17, 2007, HOD held that the child find process should have been completed no later than February 1, 2007, and ordered DCPS to complete evaluations of the student within 30 calendar days. The student was finally found eligible for special education on March 13, 2008, under the classification of Other Health Impaired (OHI) as a result of her ADHD. On July 24, 2008, an IEP was developed which provided the student with .5 hours of counseling and 5 hours of specialized instruction per week. No other behavioral supports were included in the IEP. At this point the student had been denied over 1 year of specialized instruction and counseling to which she was entitled.

Neither the attorney nor the parent's advocate had been notified by DCPS of the July 24, 2008, IEP meeting and neither was present. On August 22, 2008, Petitioner's attorney requested that the IEP meeting be reconvened with the student's educational advocate present. No response was received. On October 22, 2008, a second due process complaint was filed alleging that DCPS had failed to reconvene the August 22, 2008 meeting at the parent's request. The student was suspended at least six times through November 2008 and had been moved to another class without the parent's knowledge as a result of fighting. An HOD was issued on December 11, 2008, finding that the failure to hold an IEP meeting at the request of the parent to address the student's behavioral problems was a denial of FAPE.

The ordered IEP meeting was not held until June 12, 2009, one full academic year after it had been requested. At the meeting independent psycho-educational and psychological evaluations were reviewed and the student's IEP was revised to reflect 15 hours of specialized instruction in an out of general education setting and .5 hours of counseling per week, and ESY for the summer of 2009.

On June 22, 2009, a third due process complaint was filed alleging *inter alia*, that the student's June 12, 2009 IEP contained insufficient hours of specialized instruction and

counseling and that _____ was an inappropriate placement because the student required a full-time, structured, therapeutic setting with small classes. A hearing was held on August 14, 2009, at which the student's January 2008 evaluations and extensive documentation and testimony concerning her behavioral problems was introduced. An HOD was issued on August 23, 2009. The Hearing Officer (HO) found that Petitioner had failed to meet her burden of proof that the student required additional specialized instruction beyond the 15 hours in her IEP and further found that the student had made educational progress. However, the HO found that because of the student's behavioral problems her specialized instruction was to be provided in an out of general education, structured, small class setting. The HO concluded that DCPS had denied the student FAPE by failing to provide sufficient behavioral supports for the student. The HOD ordered in relevant part that DCPS "revise the student's IEP to provide 1.5 hours of counseling per week in two 45 minute sessions" to commence no later than September 8, 2009, and that "If _____ cannot provide the student with 15 hours of specialized instruction in an out of general education, small class setting, and 1.5 hours of counseling per week, DCPS shall convene a placement meeting no later than September 1, 2009, and shall change the student's placement to a location where she can obtain the services in her IEP." Petitioner had requested that the student be placed in a full time special education setting such as _____ but the HO denied that relief.

On September 1, 2009, Petitioner filed a fourth due process complaint alleging that DCPS had failed to comply with the August 23, 2009 HOD because the student was receiving her specialized education in a general education setting and DCPS had failed to convene a placement meeting by September 1, 2009, in order to change the student's placement to a school that could provide the ordered services. On September 17, 2009, a second due process complaint was filed alleging that DCPS had failed to comply with the August 23, 2009 HOD because it had failed to revise the student's IEP to provide 1.5 hours of counseling per week, and was not in fact providing 1.5 hours of counseling per week. On September 19, 2009, the HO consolidated the two complaints, issuing an Order of Consolidation. An HOD was issued on November 12, 2009, finding that DCPS had violated the August 23, 2009, HOD by failing to provide the ordered 1.5 hours of counseling until October 2, 2009, and by failing to provide any hours of specialized instruction in an out of general education setting until October 15, 2009. Petitioner was awarded compensatory education under the Blackman-Jones decree and subsequently elected to obtain the compensatory education at the student's next IEP meeting. The HO again declined to place the student in a full time out of general education setting.

The present due process complaint was filed on March 17, 2010, and represents the fifth complaint filed by Petitioner. The complaint alleges that DCPS has violated the November 12, 2009, HOD by failing to provide all of the student's specialized instruction in an out of general education, small structured classroom. An HOD was issued on November 12, 2009, providing relief for violations of the student's IEP and a previously issued August 23, 2009, HOD. The present case concerns violations of the student's IEP commencing November 4, 2009, the day following the hearing underlying the November 12, 2009. (P 18, 19) The complaint also alleges that the student is in an inappropriate placement and requires a change to a full-time therapeutic setting.

A due process complaint disposition was not filed in the case.

An interim order on continuance was granted on May 7, 2010. The HOD is due on June 13, 2010.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.*, 34 CFR Part 300 *et seq.*, and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Has DCPS denied the student FAPE by

1. Violating the November 12, 2009, HOD by failing to provide all of the student's specialized instruction in an out of general education, small, structured classroom setting?
2. Failing to provide an appropriate placement for the student in that the student requires a full-time therapeutic placement?

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated May 26, 2010, containing a list of witnesses with attachments P 1-47. The disclosure was admitted in its entirety. Petitioner called as witnesses the student's mother, the student's educational advocate Dori Cook, the clinical psychologist who administered the student's educational evaluation Pius Ojevwe, and the supervisor of admissions at

DCPS submitted a five day disclosure letter dated April 30, 2010, containing a list of witnesses with attachments R 1-10. The disclosure was admitted in its entirety. DCPS called as witnesses the student's general education teacher _____ the student's special education teacher _____ and the SEC at _____

V. FINDINGS OF FACT

1. This is a _____ year old child presently in the _____ grade. Her most recent IEP provides the student with 15 hours of specialized instruction in an out of general education setting and 1.5 hours/week of counseling. The student has a history of behavioral and academic problems during the over four years she has been at _____ (P 10,18-22).

2. From November 4, 2009 until April 19, 2010, the student received 10 hours per week of specialized instruction in a resource out of general education classroom from 10 am – 12 noon each school day. The remaining 5 hours of specialized instruction were provided in her general education classroom. The special education teacher came to the classroom for one hour each afternoon and circulated among all special education students in the class. (Testimony of special education teacher, educational advocate, P 7, 14)

3. On April 19, 2010, an additional special education teacher was hired. Commencing April 19, 2010, the student received an additional 1 hour per day of pull out instruction in the afternoons.

4. The student presently spends approximately two hours per day in the general education classroom and eats lunch with general education students. The student is in the general education classroom from 8:45 am–10 am every morning and 1:15-2 pm each afternoon. During the morning time, students have a reading lesson, a small math activity and engage in creative writing. The student is in a small group within the larger class, which has 24 students, 1 teacher and 1 aide. (Testimony of general education teacher)

5. In an April 18, 2010, Pre-Hearing Order, this Hearing Officer noted that DCPS agreed to provide Petitioner's counsel with all documents in DCPS' possession that reflect the student's academic and behavioral progress. During the course of testimony from the student's general education and special education teacher numerous performance tests were referenced, none of which had been provided to Petitioner. These included DC-Bas testing, in class tests, every two week district-wide testing, every two week dibbles tests, a math performance test in January 2010, a reading performance test in the fall 2009, and a spelling performance test in fall 2009. (P 5, Testimony of general education teacher and special education teacher)

6. The student's general education and special education teachers both testified that the student had made academic progress although both agreed that the student was at least 2 years below grade level. Both teachers also agreed that the student does better academically and emotionally in a small class setting.

The general education teacher has taught the student for the 2009-2010sy and stated that the student had moved from the 2.1 grade level in reading to the 2.8 grade level in reading, and from the 2.5 grade level in math to the 3.5 grade level in math. The general education teacher testified that the student has made academic progress this school year.

The special education teacher (SET) has worked with the student since the 2008-2009sy in math, reading, and written expression. She is the most knowledgeable person concerning the student's academic performance. She obtained a degree in special education in August 1998, and is a certified special education teacher. Until a second special education teacher was hired in April 2010, the student's resource class had as many as 15 students with one teacher and one aide. The SET testified that as of January 2010, the student was at the beginning of the 4th grade level in math, and that the student

had moved from the 2.5 grade level to the 3.4 grade level in reading. Her writing skills "could be better." The SET believes the student has made academic progress this school year. The SET testified

The SET testified that she brought the student's portfolio to IEP meetings and showed the portfolio, including classroom tests, to the parent and educational advocate.

(R 5, 6, 7, Testimony of the general education teacher and the SET).

7. On January 3, 2008, the student was administered a psycho-educational evaluation. The student's cognitive level was ascertained through the Wechsler Intelligence Scale for Children-IV (WISC-IV). The student's full scale IQ fell in the borderline range, her verbal comprehension was in the extremely low range, and her perceptual reasoning was in the borderline range.

The student's academic achievement was measured by administering the Wechsler Individual Achievement Test-2nd Edition (WIAT-2). The student's subtest grade equivalents were as follows:

Word Reading	K:6
Reading Comprehension	<1:0
Pseudoword Decoding	PreK5:0
Numerical Operations	1:2
Math Reasoning	K:8
Spelling	K:5
Written Expression	1:5
Listening Comprehension	PreK5:2
Oral Expression	1:2

(P 11, 19)

8. At the time of the student's June 12, 2009 IEP, the student was listed as performing at the 3rd grade level in math, based on a math placement test given on January 9, 2009, on the 2.5 grade level in reading, based on the Slosson Oral Reading Test, and on the 2nd grade level in spelling based on weekly spelling tests. (P 19)

9. The HO's April 18, 2010, Pre-Hearing Order ordered DCPS to conduct a new educational evaluation of the student using the Wechsler Individual Achievement Test-2nd Edition (WIAT-2), the same test that had been administered on January 8, 2008. The evaluation was conducted on April 21, 2010, and April 23, 2010, approximately 2.3 years after the testing completed on January 8, 2010. It was brought to the HO's attention by Dr. Ojevwe that the student had taken the DC-BAS test on April 21, 2010, the same day as the first day of her educational testing. In fact, the student was sufficiently tired that testing was stopped and completed on April 23, 2010. The report was written on April 23, 2010. The test was administered by Kristine Vindua who at the time held an MA in clinical psychology. She has since been awarded her PhD in clinical psychology. The

testing was supervised by Pius Ojevwe, a licensed clinical psychologist who has conducted numerous psycho-educational evaluations. Dr. Ojevwe testified at the hearing and was qualified as an expert in educational testing. Dr. Ojevwe was a credible witness.

The student's subtest grade equivalents were as follows:

Word Reading	1:8 (1.2 yrs progress)
Reading Comprehension	1:4 (Approx .6 yrs progress)
Pseudoword Decoding	PreK 5.4 (no progress)
Numerical Operations	3:5 (2:3 yrs progress)
Math Reasoning	1 (no progress)
Spelling	2:5 (2 yrs progress)
Written Expression	2:5 (1 yrs progress)
Listening Comprehension	1:1 (.6 yrs progress)
Oral Expression	1:6 (.4 yrs progress)

(P 5, 47, Testimony of Dr. Ojevwe)

10. Dr. Ojevwe testified that the student has substantial deficits in all areas of academic skills and that the student's ADHD could be related to her academic problems and also probably negatively affected her cognitive scores. The student is 2-3 years below grade level in all subjects, a gap that has increased since her 2008 testing.. The student has made some progress but is falling farther behind her peers. The student requires a small, structured classroom setting with increased academic supports, a computer and educational software, and additional time to complete her work. (Testimony of Dr. Ojevwe, P 47)

11. Both of the student's teachers and her mother agree that the student's behavior has improved considerably over the past year, although she still has some behavioral problems, especially when she is not in the classroom setting. The student was placed on in-house suspension 5 times in September and October. The student's mother also testified that there was one out of school suspension during that same period. There are no other reports of suspensions until April 28, 2010, when the student was given a two day out of school suspension for hitting another student, yelling in the classroom and refusing to follow adult directions. (P 24-28, 34-37)

12. An Independent Functional Behavioral Assessment Report was completed on December 13, 2009. The assessor observed the student in her special education classroom for two hours. The student was observed to be compliant, friendly, cooperative, as well as mature during the observation. The student was not observed in her general education classroom or during lunch. (P 13) The report recommended that the student be placed in a full-time therapeutic school with small, structured classes. The report did not support this recommendation as related to the student's behavior.

13. an Educational Consultant and supervisor of the Admissions Office
at testified. The student has been accepted at

Prior to working with _____ was employed with DCPS for 35 years. He was a special education placement specialist for 10 years, the Executive Director of the Office of Special Education, the Assistant Superintendent of Special Education and the Superintendent of Region 4 schools. He was a credible witness.

_____ is a therapeutic day school that provides special education programs for students with ED, LD, and OHI from K-12 and ages 5-21. Classes run from 8:30 am to 2:30 pm. There are 190 students in the school, 33 in the K-6 program. All the students are from DCPS. The school has identified a class for the student that presently contains 5 students, 3 male and 2 female, ages 9-10. All the students are ED and ADHD. The student teacher ration at _____ is 1:6, there are on site therapists, behavioral specialists, and aides, and there is a school-wide structured point reward system in place. Both direct counseling and in class counseling are provided. The school is certified by OSSE and is overseen and reviewed by two DCPS monitors. The school runs a 12 month program and costs between _____ depending on the need for such services as OT and PT. The student could begin the program immediately.

14. _____ the SEC at _____ testified. She was a credible witness. DCPS has offered to place the student at _____ for the 2010-2011sy. _____ has been the SEC at _____ for 5 years. _____ has supervised the preparation of over 100 IEPs and is able to determine whether _____ can implement a particular IEP.

_____ saw a draft IEP prepared for the student in March 2010. The IEP called for the same services as the student's June 12, 2009, IEP. _____ testified that the student can be served at _____ has 2 special education teachers and provides resource pull-out services in both the morning and the afternoon. The classes have about a 1:6 teacher student ratio. The student's 15 hours of specialized instruction in an out of general education setting can be provided at _____. General education classes have about a 1:20 teacher student ration. _____ can provide the student with 1.5 hours of counseling.

_____ does not know the student and was first given her case three days before the hearing.

_____ is a SAM School which emphasizes an inclusion model of special education service delivery. _____ indicated that the student would be assessed at _____ after 30 days to determine her specific needs concerning inclusion and pull-out services. As part of the SAM model, _____ has a universal behavior intervention plan tailored to the individual child. Parents receive a copy of the plan every day.

_____ testified that _____ has an excellent principal who is involved in the provision of special education services. She also noted that she did not know if the principal would be returning next year.

(Testimony of _____)

15. Compensatory education for the student was discussed at a March 31, 2010 resolution meeting. The student was entitled to compensatory education under Blackman-Jones for violating the August 23, 2009 HOD, per the November 12, 2009 HOD. Additionally, Petitioner requested compensatory education for the alleged violation of the November 12, 2009 HOD. The student's educational advocate submitted a compensatory education proposal to DCPS requesting 120 hours of tutoring, 70 in reading and 50 in math, and payment for the student to attend a ½ day summer camp for students with behavioral problems. Petitioners plan was not submitted in either party's 5 day disclosures. (P 14, testimony of educational advocate)

16. DCPS responded to the proposed compensatory education plan on April 28, 2010, offering the student 50 hours of specialized instruction, 25 in reading and 25 in math, 2 pieces of educational software in reading and math, and 5 hours of counseling. (R 8)

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1400 *et seq.*, guarantees “all children with disabilities” “a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” 20 U.S.C. § 1400 (d)(1)(A). The IDEA defines FAPE as

Special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency..., (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEAs guarantee of FAPE “is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.” *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a “basic floor of opportunity” for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16*, 331 IDELR 10 (3rd Cir. 1988).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See*, 20 U.S.C. § 1413. In addition, school districts must develop comprehensive plans for meeting the special education needs of disabled students. *See*, 20 U.S.C. § 1414(d)(2)(A). These plans or Individualized Education Programs (IEPs), must include “a statement of the child’s present levels of educational performance, ... a statement of measurable annual goals, [and] a statement of the special education and related services ... to be provided to the child....” 20 U.S.C. § 1414(d)(1)(A).

Pursuant to IDEA § 1415 (f)(3)(E)(i), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEA § 1415 (f)(3)(E)(ii), 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.

Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast*, 546 U.S. 49 (2005).

A. Violation of the November 12, 2009, HOD

DCPS has failed to timely implement the November 12, 2009 HOD. On August 24, 2006, United States District Judge Paul L. Friedman issued an order approving a consent decree in the decade old Blackman/Jones class action law suit, filed against DCPS for its failure to meet its statutory obligations to special education students under the IDEA. *Blackman et al. v. District of Columbia*, 2006 WL 2456413 (D.D.C. 2006). The Jones (previously Curtis) subclass was defined as:

All children, now and in the future, who are entitled to have DCPS provide them with a free appropriate education [FAPE] and who have been denied same because DCPS ... (a) has failed to fully and timely implement the determination of hearing officers

Id. at 2456415 § 6.

The student is a member of the Jones subclass because DCPS failed to timely implement the November 12, 2009 HOD. The consent decree establishes a rebuttable presumption of harm for students who failed to receive timely implementation of their HODS. *Id.* at 2456413, 46-47, §§ 74, 78. DCPS was ordered to provide the student with 15 hours of specialized instruction per week in an out of general education setting. DCPS admits that

Provided only 10 hours of instruction in an out of general education setting until April 19, 2010, and that the student received her remaining specialized instruction in a general education setting. DCPS was first ordered to provide 15 hours of instruction in an out of general education setting in an August 14, 2009 HOD which found that the failure to provide the appropriate specialized instruction was a denial of FAPE. DCPS' continued intransigence constitutes an additional denial of FAPE to this student.

DCPS is required to provide the student with compensatory education as a member of the Jones subclass. Paragraph 75 of the consent decree requires that class members follow the specific procedures in § 78 of the decree in order to receive compensatory education. *Id.* Paragraph 78 provides two procedures for obtaining compensatory education.

Petitioner may elect available products from the Blackman/Jones Compensatory Education Catalog or address compensatory education at an IEP meeting. *Id.* Additionally, § 80 of the decree establishes a procedure for calculating compensatory awards, defined as the number of days between the date when the HOD was required to be implemented and the date when it was implemented, or if it is still unimplemented, the date of the calculation. *Id.* at 24564122-23. The student's award calculation for the failure to provide all of her specialized instruction in an out of general education classroom commences on November 4, 2009 and ends on April 19, 2010.

In addition to compensatory education, Petitioner is entitled to a remedy that fully implements the November 12, 2009 HOD. As of the date of the hearing, the student was receiving 15 hours of specialized instruction in an out of general education setting at

B. Placement

The Supreme Court has spoken on the level of education that the states are required to provide to disabled children. "[T]he education must be sufficient to confer some educational benefit upon the handicapped child." *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. V. Rowley*, 458 U.S. 176, 200-01 (1982). A free and appropriate education (FAPE) does not require the best possible education. It does require that the IEP and placement must confer a meaningful educational benefit gauged to the child's potential. *T.R. ex rel. N.R. v. Kingwood Township Bd. of Educ.*, 205 F.3d 572, 577 (3d Cir. 2000).

If there is an appropriate public placement available that is "reasonably calculated to enable the child to receive educational benefits," the District need not consider private placement. This is true even though a private placement might better serve the child, *See Hendrick Hudson Dist. Bd. Of Educ. V. Rowley*, 458 U.S. 176, 207 (1982). However, "[i]f no suitable public school is available [DCPS] must pay the costs of sending the child to an appropriate private school." *Jenkins v. Squillacote*, 935, F.2d 303, 305 (D.C. Cir. 1991). See also, *Burlington School Committee v. Mass. Dept. of Education*, 471 U.S. 359 (1985) and *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

In making a determination concerning placement, the IDEA requires that the student be placed in the least restrictive alternative (LRA). "[T]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are [to be] educated with children who are nondisabled". 34 CFR § 300.114 (a) (2) (i). Special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. *Id.*

Several Circuits have developed a two pronged analysis for determining the LRA. First, can the student with a disability be satisfactorily educated in the regular classroom, with the use of supplemental aids and services, If it cannot, Has the school district provided

the student with interaction with non-disabled peers to the maximum extent appropriate. Daniel RR v. State Board of Education 874 F.2d 1036, 441 IDELR 433 (5th Cir. 1989).

In conformity with the LRA, this HO has consistently rejected Petitioner's request that the student be placed in a full-time special education setting in prior HODs. DCPS has been given numerous opportunities to correct its denials of FAPE to this student and to provide the services she needs to obtain FAPE. The student has been denied the specialized instruction and behavioral supports she needs from at least February 1, 2007. DCPS has violated three HODs and has unconscionably delayed virtually every meeting it was required to hold. It is impossible to know if the sad record in this case is a result of DCPS' incompetence or intransigence. The result is the same in either case, over a period of 3 1/2 years this student has been denied some or all of the specialized instruction and the behavioral supports she needs. There is little reason to have faith that DCPS will serve this student well in the future.

The record in this case demonstrates that the student has made substantial behavioral progress. While she still has some behavioral problems and still requires the 1.5 hours of counseling on her IEP, she does not require a full-time out of general education placement because of behavioral issues. The student would benefit from a school wide behavioral intervention plan.

The record concerning the student's academic progress is far more complex. The student's special education teacher credibly testified that the student has made some progress in reading and math, however limited. The WIAT-2 testing in 2008 and 2010 shows that the progress has been more limited than suggested by the teacher. Especially troubling is the very limited progress the student has made in reading and math reasoning. Dr. Ojevwe credibly testified that the student has substantial deficits in all subjects and that the gap in her academic levels has widened between 2008 and 2010. Thus, even if she is making some progress, she is falling further and further behind. At least some of this gap can be laid at the feet of DCPS for failing to implement the student's IEP.

The student requires a more intensive educational program than she is presently receiving, small structured classes, and consistent implementation of her IEP. DCPS is not able to provide more than the 15 hours of out of general education specialized instruction listed in the student's IEP. Further, although _____ can implement the student's IEP at present, there is good reason to worry about this implementation in the future. _____ is a SAM school. The SAM model's core principle is that all students can be educated in an inclusion setting. SAM seeks to eliminate pull-out classes. Thus, it is far from certain that _____ will be able to implement the student's IEP in the future.

This student requires a full time IEP if she is ever to begin closing her achievement gap. _____ can implement a full time IEP for this student. It is an appropriate placement.

C. Compensatory Education

Per the Blackman Jones decree, the student is entitled to compensatory education for the violation of the August 14, 2009 HOD and the violation of the November 12, 2009 HOD. Petitioner has failed to provide sufficient evidence to support her request for 150 hours of specialized instruction and summer camp. DCPS has in essence agreed that the student is entitled to 50 hours of tutoring, 25 in reading and 25 in math, 2 pieces of educational software in reading and math, and 5 hours of counseling for the violation of the August 14, 2009 HOD. The student is being placed in a full time private placement in part in order to compensate for the lack of specialized instruction in the past. This is sufficient compensation for the violation of the November 12, 2009 HOD.

VII. SUMMARY OF RULING

DCPS has denied the student FAPE by violating the November 12, 2009 HOD in that DCPS failed to provide the student with all of her 15 hours/week of specialized instruction in an out of general education setting.

DCPS has denied the student FAPE because she requires a full time out of general education placement.

DCPS shall provide compensatory education to the student for violating the August 14, 2009 and November 12, 2009 HODs.

VIII. ORDER

It is hereby **ORDERED** that

1. DCPS shall fund the student to attend _____ to include transportation and funding for _____ twelve month yearly program. A PNOP to shall be issued no later than June 30, 2010. The student shall start attending _____ at the start of its summer program.
2. No later than June 30, 2010, DCPS shall revise the student's IEP to reflect 27.5 hours of specialized instruction and 1.5 hours of counseling per week.
3. DCPS shall provide the student with compensatory education to include 50 hours of tutoring, 25 in reading and 25 in math, with a tutor of the parent's choosing, 2 pieces of educational software in reading and math of the parent's choosing, and 5 hours of counseling to be provided by _____ staff and/or the student's present counselor at _____. The additional counseling shall be completed no later than September 30, 2010. The tutoring shall be completed no later than June 30, 2011.
4. Any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, shall extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: June 13, 2010