District of Columbia
Office of the State Superintendent of Education
Student Hearing Office

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In Re the Matter of :	
[1]Parent on behalf of Student,	
Petitioner,	
v.	**Date of Complaint:** April 19, 2010 **Date Decision Issued:** July 3, 2010
	Dates of Hearings: June 22, 2010 and June 23, 2010
	Hearing Room: 4A **Student Case Number:**
Respondent.	**Student Identification Number:**
	Hearing Officer: Attorney Ramona M. Justice

HEARING OFFICERS' DECISION

I. JURISDICTION

This proceeding was invoked and this decision is written pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act , Section 145, effective October 21, 10098; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Title 5, Chapter 30 of the District of Columbia Municipal Regulations ("DCMR").

II. BACKGROUND

The student is years of age; and in the grade at a full inclusion/general education, para-military, independent charter school, located in the District of Columbia. The student is a resident of the District of Columbia; and is identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)", under the disability classification of multiple disabilities (MD), including emotionally disturbed, learning disabled, attention deficit hyperactivity disorder, and disruptive behavior disorder.

[1] *Personally identifiable information is provided in the "Appendix" which is located on the last page of this Order and must be removed prior to public distribution.*

The student began attending the on August 28, 2009, and was enrolled as a regular education student, and placed in a full-inclusion classroom of 18 students, and one teacher; and subsequent IEPs recommended the student's placement in a general education setting. The student was disciplined due to his behavior, as early as September 8, 2009; and since the beginning of the 2009/10 school year, has had thirty seven (37) incidents of school discipline; forty-five discipline referrals due to problematic behavior; and may be retained in the grade, due to absences associated with the out of school suspensions; and failure to pass his Science class, which is necessary for advancement to the grade.

On May 5, 2009 and May 7, 2009, a Clinical and Psycho-Educational Evaluation was completed to examine the student's cognitive, academic, and emotional functioning. The evaluator determined that the student may be eligible for special education services under the disability classification of emotionally disturbed; and recommended a rule out of Attention Deficit Hyperactivity Disorder (ADHD). The evaluator indicated that the student has considerable difficulty processing the trauma of his brother's accident and dealing with his emotions related to guilt and anxiety, warranting medication; and that psychopharmacological interventions may assist the student with his depressive symptomatology and anxiety. The evaluator strongly recommended individual therapy to assist the student in development of a healthy and secure self-concept and adaptive ways of processing his painful emotions; and group therapy.

The evaluator also indicated that as an adolescent attempting to develop his personal identity, the student may perceive discipline and punishment as confusing, threatening and unfair; adults in his life should consider extending a balance between encouraging the student's autonomy and maintaining appropriate boundaries; teachers and other adults should assist him to reflect on his behaviors in a *nonjudgmental or punitive way*; the student will require ongoing reassurance and encouragement; complimented for positive behaviors and *should not be penalized for minor errors or deviations from the norm*; and teachers should make time to speak alone with the student and when possible send positive notes home. The evaluator concluded that the student faces academic challenges that need to be addressed in a *stable, consistent and supportive environment;* and recommends encouragement to study new information, particularly with respect to reading and writing; and classroom accommodations.

On September 8, 2009, the school had a conference with the parent, wherein the parent requested evaluation of the student to determine his eligibility for special education services. On September15, 2009, a Functional Behavior Assessment (FBA) was completed, indicating that the student has a longstanding history of acting out behaviors, poor impulse control, physical restlessness; difficulty with anger management; and is disrespectful to peers and adults. The evaluator determined that *the student's persistent behavior difficulties impact his ability to fully access the school curriculum; the student performs best when fully engaged in the instructional process, and feels rewarded for his efforts by teacher praise and reassurance; and direct reprimands for inappropriate behavior meet with little success.*

The evaluator also determined that *the student's motor restlessness, playfulness, and impulse control difficulties lead to some disruption in the classroom daily; and will sometimes lead into more serious behavioral difficulties such as peer or teacher disrespect or throwing of objects.* The evaluator concluded that the student's *behavioral concerns impact his ability to fully benefit from classroom instruction.*

On September 24, 2009, an Individualized Education Program (IEP) meeting was held to review the student's academic progress, attendance, review evaluations, and obtain parent, teacher, advocate, and Case Manger input; to determine the student's eligibility and identify the least restrictive environment. The school Psychologist discussed the FBA findings and recommendations; and the team developed an IEP for the student recommending 5.5 hours of specialized instruction in English, 2.75 hour of specialized instruction in reading, *1.5 hours of counseling services*, and 3.0 hours of tutoring, for a total of 12.75 hours of services weekly, excluding the 5.5 hours of specialized services recommended for mathematics. The team also recommended accommodations and extended school year (ESY) services in reading. The least restrictive environment (LRE) identified for the student is *full inclusion services, with pull out services for counseling.*

On October 7, 2009, an IEP at a glance was developed for the student, reflecting the following levels of student functioning: 3.5 in basic reading, 2.5 in reading fluency, 3.5 in reading comprehension, 4.4 in written expression, 5.9 in math calculation, and 6.2 in math reasoning. In September/October, 2009, the school began utilizing an "Academic/Behavior Monitoring Sheet" to monitor the student's behavior throughout the school day.

On October 15, 2009, October 20, 2009, and November, 4, 2009, a Confidential Comprehensive Independent Psychological Evaluation was completed, to assist in determining an appropriate educational placement and need for special education services. The student was diagnosed with Attention Deficit Hyperactivity Disorder (By History), and Disruptive Behavior Disorder. The evaluator recommends a classification of multiple disabilities, including emotionally disturbed and learning disabled; specialized instruction to address phonemic awareness, reading comprehension, and written language skills; *implementation of a behavior intervention plan* in coordination with home; individual psychosocial counseling to assist in improving his coping skills and ability to manage his own behavior; positive reinforcement at home; encouragement to participate in supervised extracurricular sport activities; mentoring services; and continued parent involvement.

The evaluator also recommended a stable, consistent and supportive environment; and classroom accommodations to include seating the student near his teacher, granting the student extended time on exams, seating near a good role model, breaking long assignments or work periods into smaller intervals, ignoring minor disruptions, and close supervision during times of transition.

The student continued to regress academically and behaviorally, prompting parent to request another IEP team meeting. On December 3, 2009 an IEP team meeting was held and an IEP developed for the student recommending 10 hours of specialized instruction, 5.5 hours of mathematics, and 1.5 hours of behavioral support services, weekly, in a *general education environment*; with classroom and statewide assessment accommodations. The team agreed that full inclusion for math was inappropriate, and placed the student in a full inclusion math class, in a small setting; and the student was successful.

On March 17, 2010, the student was referred for discipline because of an incident involving the Principal of the and on March 18, 2010 a letter was issued placing the student on a ten (10) day out of school suspension, pending expulsion, because the student had been referred to the discipline office on thirteen (13) occasions, since January 4, 2010; and three (3) times for gambling. A manifestation determination meeting convened on March 24, 2010, to discuss the incident occurring on March 17, 2010; and to review incident reports, the student's behavior, and academics; and reconvened on April 9, 2010, wherein the team determined that the student's behavior was a manifestation of his-

disabilities. The team developed an IEP for the student, marked, albeit, marked "DRAFT"; identifying the student's disability as multiple disabilities; and recommending 15.5 hours of specialized instruction in a *general education setting*, 2.5 hours of reading in a *general education setting*, and 1.5 hours of behavior support service, *outside general education.*

On April 13, 2010, the parent met with the SPED Coordinator to discuss the proposed expulsion of the student from school; and left the meeting with the understanding that the student would be allowed to return to school on April 19, 2010.

On April 15, 2010, the Education Advocate forwarded a letter to the indicating that although the school provided the Academic/Behavior Monitoring Sheet which merely reports the student's behavior, there was no BIP; which should include strategies to be implemented by the teachers and staff to redirect and diffuse the student's problematic behavior.

On April 19, 2010, the student attempted to return to school, however, was denied access to the school building. On April 19, 2010, Petitioner, filed a due process complaint alleging that District of Columbia Public Schools ("DCPS"), denied the student a Free Appropriate Public Education ("FAPE"), by failing to: 1) develop an appropriate Individualized Education Program (IEP), for the student during the 2009/10 school year; 2) adhere to proper procedures in suspending the student; and 3) provide the student an appropriate placement.

On April 20, 2010, the complaint was assigned to this Hearing Officer; and on April 23, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for May 21, 2010, at 3:00 p.m... On April 19, 2010, Petitioner filed a motion for stay put protection requesting an Order allowing the student to return to the IDEA; and receiving no response from Respondent within three (3) business days from the date the motion was filed, on April 23, 2010, the Hearing Officer issued an Order granting the motion.

On May 4, 2010, IDEA PCS filed its response and affirmative defenses to the complaint, and request for a resolution meeting. The prehearing conference was held on May 21, 2010 at approximately 3:00 p.m., as scheduled, and on this date, a prehearing conference order was issued. The due process hearing convened on June 22, 2010 and June 23, 2010, at 9:00 a.m., at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. At the conclusion of Petitioner's case, Respondent entered on the record a motion for directed verdict; and after hearing argument from both parties, the motion was denied. At the conclusion of Respondent's case, Respondent entered on the record a Motion for Summary Judgment, which the Hearing Officer denied. Written closing arguments were submitted by the parties on June 25, 2010.

II. ISSUES

The following issues are before the Hearing Officer:

(1) Whether denied the student a free appropriate public education by failing to develop an appropriate Individualized Education Program ("IEP"), for the student, during the 2009/10 school year?

(2) Whether denied the student a free appropriate public education by failing to adhere to the proper procedures in suspending the student, during the 2009/10 school year?

(3) Whether denied the student a free appropriate public education by failing to provide the student an appropriate placement, during the 2009/10 school year?

III. DISCLOSURES

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF PETITIONER

Petitioner's Exhibits 01 through Petitioner's Exhibits 61; and a witness list dated June 15, 2010.

DISCLOSURES ADMITTED INTO THE RECORD AS EVIDENCE ON BEHALF OF RESPONDENT

Respondent's Exhibits 01 through Respondent's Exhibits 32, and a witness list dated June 16, 2010.

IV. FINDINGS OF FACT

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

1. The student is years of age; and in the grade at and a full inclusion, para-military, independent charter school, located in the District of Columbia; which he began attending in August, 2009; and has a history of problematic behavior, impacting his learning.

   The student is identified as disabled and eligible to receive special education and related services; and has a disability classification of multiple disabilities (MD), including emotionally disturbed, learning disabled, attention deficit hyperactivity disorder, and disruptive behavior disorder.

2. failed to develop an appropriate Individualized Education Program ("IEP") for the student, during the 2009/10 school year.

   - The March 9, 2009, December 3, 2009, and April 9, 2010 IEPs, developed for the student during the 2009/10 school year, are not specifically designed and tailored to meet the unique educational, developmental, and *functional* needs of the student; or provide the student access to the general curriculum and educational benefit.

   - The student's persistent behavioral difficulties impede his learning, and ability to fully access the general education curriculum, and receive educational benefit, his motor restlessness and impulsive style was consistently disruptive in the classroom, and the behavioral interventions utilized by the SPED and discipline office consistently proved ineffective; however, the failed to develop a BIP, or consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior.

completed a FBA on September 15, 2009, however, failed to develop a BIP, and include it in the student's IEPs. The Academic/Behavioral Monitoring Sheet which the school refers to as the student's Behavioral Intervention Plan, is not a BIP.
Once an IEP team determines that a BIP is necessary; the IEP team members generally use information regarding the problem behavior's function gathered from takes the observations, findings, and recommendations made in the Functional Behavioral Assessment , and turns them into a concrete plan of action for managing the student's behavior.

The BIP includes strategies to be implemented by the teachers and staff to redirect and diffuse the student's problematic behavior; and may include ways to change the *environment* to keep behavior from starting in the first place, *provide positive reinforcement* to promote good behavior, employ planned ignoring to avoid reinforcing bad behavior, and *provide supports* needed so that the student will not be driven to act out due to frustration or fatigue. As a result of the failure to develop a BIP for the student, the IEP includes no strategies to: (a) teach the student more acceptable ways to get what he or she wants; (b) decrease future occurrences of the misbehavior; and (c) address any repeated episodes of the misbehavior; or additional interventions designed to address these three aspects of the student's problem behavior.

The failed to initiate this step in the process of creating a positive behavioral intervention plan and supports for the student consisting of a discussion of information on strategies to address different functions of a student's behavior and how to select the appropriate interventions; skill deficits and performance deficits; student supports; and reinforcement considerations and procedures; which failed to occur in the matter. The BIP also addresses special considerations, such as the use of punishment and emergency/crisis plans; which the IEP teams failed to consider.

- The level of behavioral support services identified in the March 9, 2009, December 3, 2009, and April 9, 2010 IEPs is insufficient to address the student's social/emotional needs.

- The goals in the March 9, 2009, December 3, 2009, and April 9, 2010 IEPs are not reasonable, realistic, or attainable by the student because they cannot be implemented for this student, in a full inclusion or general education setting.

- The FBA and evaluations reflect that the nature and severity of the student's disabilities are such that the educational needs of the student cannot be achieved satisfactorily in a full inclusion, general, or para-military education setting; even with the use of supplementary aids and supports, however, the IEPs developed for the student during the 2009/10 school year, recommend maintaining the students' placement at a full inclusion, general education, para-military school; in a non-therapeutic environment.

- In developing, reviewing, and revising the student's IEPs, reviewed the student's IEPs periodically, however, failed to determine whether the annual goals for the student were being achieved; and failed to revise the student's IEP, as appropriate, to address his lack of expected progress toward the annual goals, and in the general education curriculum; inability to function effectively in the full inclusion and general education non-

therapeutic para-military setting; or to include appropriate positive behavioral interventions and supports; and placement in a small, structured, therapeutic environment.

- In developing, reviewing and revising the student's IEPs, failed to carefully consider the strengths of the student, concerns of the parent for enhancing the education of the student, initial or most recent evaluations of the student, or the academic, developmental and functional needs of the student.

3. failed to adhere to the proper procedures in suspending the student, during the 2009/10 school year.

- The student received 45 disciplinary infractions from September, 2009 through March 18, 2010; and was referred to the discipline office on thirteen (13) occasions, since January 4, 2010, and three (3) times for gambling.

- On March 18, 2010, the student received a ten (10) day out of school suspension, pending expulsion, as a result of an incident occurring on March 17, 2010, involving the school Principal; and because the student was referred to the discipline office on thirteen (13) occasions, since January 4, 2010, and three (3) times for gambling. The ten (10) day suspension was due to expire on or about April 8, 2010, excluding the Spring Break.

- was required to convene a manifestation determination meeting within ten (10) school days of the March 18, 2010 decision to change the student's placement; which was April 8, 2010, the same date the suspension was due to expire. The school convened the meeting on March 24, 2010, in a timely manner; and reconvened the meeting on April 9, 2010, wherein the team determined that the students' behavior was a manifestation of his disabilities; however, the team failed to implement a behavioral intervention plan for the student.

- Although notified parent that the student was suspended for ten (10) days, pending expulsion, and the parent appealed the decision; the school subsequently decided to extend the students' suspension; or expel the student from school because it refused to allow the student to return to the school; however, the school failed to provide parent prior written notice of the decision to change the students' placement.

- The SPED Coordinator had reason to suspect that the LEA Charter may be unable to meet its obligation to provide FAPE to the student in the full inclusion setting, prior to the December 3, 2009 IEP team meeting; however, failed to provide OSSE notice at least 30 days prior to the meeting.

- There is no evidence that the student was carrying a weapon to or at school, or on school premises; possessed, used, sold, or solicited the sale of illegal drugs; or inflicted serious bodily injury upon another person, while at school, therefore, was precluded from changing the student's placement; and was required to maintain the student's placement at the school, pending a decision by the OSE regarding an alternate placement.

4. The Hearing Officer finds that the failed to provide the student an appropriate placement, during the 2009/10 school year.

- The nature of the student's disabilities are such that education in a full inclusion and/or general education, para- military non-therapeutic setting, where direct discipline and reprimands are utilized as a means of addressing student behavior, cannot be accomplished successfully. The student requires a small, structured, therapeutic environment; which is not available at the

- failed to consider the potential harmful effects on the student or on the quality of the services he requires, by maintaining the student's placement at in a full inclusion and/or general education, non-therapeutic, para-military environment, for an entire school year

- The discipline staff is not qualified to implement a BIP or positive behavioral interventions or supports for special education students, or address problematic behavior of special education students; have no knowledge regarding the requirements of the IDEA, or the nature of the various disabilities under the or qualified to discipline special education students.

- The discipline office staff utilizes direct reprimands for inappropriate behavior, which was repeatedly met with resistance from the student, and proved unsuccessful. The disciplinary methods and procedures utilized at the may be appropriate for typical students, however, are in effective in addressing the behavior of special education students, particularly this student who presents with multiple disabilities (MD), including emotionally disturbed, learning disabled, attention deficit hyperactivity disorder, and disruptive behavior disorder.

  Additionally, the had 65 special education students enrolled at the beginning of the 2009/10 school year, including this student, however, the Student Handbook developed for the 2009/10 school year, by the Supervisor of the discipline office, does not include positive behavior strategies, or information regarding the manner in which the behavior of special education students is addressed.

V. CONCLUSIONS OF LAW

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

1. The burden of proof is the placed on the party seeking relief, in this case, the parent. *See Shaffer v. Weast, 546 U.S. 49, 56-57 (2005)*. [2]Under the IDEIA, the Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.

2. In developing the student's IEPs, the IEP team failed to consider the strengths of the child, concerns of the parents for enhancing the student's education, results of prior and recent evaluations of the child; and the academic, developmental, and ***functional needs*** of the child; in violation of IDEA, 34 C.F.R. §300.324 (a)(1).

[2] 20 U.S.C. §1415 (i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d. 516, 521 (D.C. Cir. 2005).

In reviewing and revising the student's March 9, 2009, December 3, 2009, and April 9, 2010 IEPs, failed to comply with the procedural requirements of the IDEA, 34 C.F.R. §300.324 (b), which provides that each public agency must ensure that the IEP team ***review*** the student's IEP periodically, but not less than annually, *to determine whether the annual goals for the child are being achieved*; and ***revised***, as appropriate, to address *any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate; the results of any reevaluation conducted under §300.303;* information about the child provided to, or by, the parents, as described under §300.305(a)(2); and *the child's anticipated needs*; or other matters.

also failed to comply with subparagraph (a)(2)(i) of this provision which provides that in the case of a child whose behavior impedes the child's learning, as in this matter, the IEP team ***must*** consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

3. complied with the IDEA at 34 C.F.R. §300.530(e) and 20 U.S.C. §1415(k) (4) (A) (ii), which provides that where the school contemplates disciplinary action of a student with a disability involving a change in the student's placement for ***more than (10) ten days***, the ***schools are required to conduct a manifestation determination*** to review the relationship between the student's disability and the behavior which is subject to the disciplinary action. However, according to 20 U.S.C. §1415 (k)(l)(g), an LEA may only remove a student to an interim alternative educational setting for not more than 45 days, if the student was carrying a weapon, possessing or using illegal substances, or inflicted serious bodily injury on another, which failed to occur in this matter. Therefore, the student should have been allowed to return to school after the ten (10) day suspension; pending a decision by the OSE.

failed to comply with 20 U.S.C. §1415(k)(l)(g) in disciplining the student; and the procedural requirements of the IDEA, 34 C.F.R. Section 300.503(a) (1) and (b), which provides that whenever the public agency *proposes to initiate or change*, or refuses to initiate or change the identification, evaluation, or educational placement of the child *or the provision of FAPE to the child*; *written notice* that meets the requirements of paragraph (b) of this section must be given by the public agency to the parents of a child with a disability within a reasonable time before the proposed action; which failed to occur in this instance.

The SPED Coordinator had reason to suspect that the school may be unable to meet its obligation to provide the student a FAPE in a full inclusion non-therapeutic setting, prior to the December 3, 2009 and April 9, 2010 IEP team meetings; however, did not contact the OSSE until May, 2010. failed to comply with Chapter 30, of Title 5, §3019.8b of the D.C. Municipal Regulations which provides that as soon as any member on the IEP team has reason to suspect that the LEA Charter may be unable to meet its obligation to provide FAPE the LEA Charter shall provide notice to the OSEE at least 30 days prior to the IEP meeting at which a possible change in placement to a more restrictive environment will be discussed.

4. The IDEIA and its implementing regulations require that when determining the educational placement of a child with a disability, the decision is made by a group of persons, including the parents. It also requires that the determination of the educational placement of a child with a disability must be based on the child's IEP. Once developed the IEP is then implemented-

through appropriate placement of a student in an educational setting tailored to the student's needs; which failed to occur in this instance. *See Roark ex rel. Roark v. District of Columbia, 460 F.Supp. 2d, 32-35, (D.D.C. 2006).*

The IDEA also seeks to educate disabled children with non-disabled children "to the maximum extent possible." §1412(a)(5)(A). "Special classes, separate schooling, or other removal...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;*" as in this matter. Id.

"The proper inquiry" in every mainstreaming case is "whether a proposed placement is appropriate under the Act." *See, Doe v. Arlington County Sch. Bd.., 41 F. Supp. 2d 599, 604 (E.D. VA. 1999)*. However, assessment of whether the child is placed in the least restrictive environment is [**94] "ultimately a goal subordinate to the requirement that disabled children receive educational benefit." *Hartmann by Hartmann v. Loudoun County Bd. Of Educ., 118 F.3rd 996, 1002 (4th Cir. 1997).* The educational benefit to be provided a child must be "meaningful" and it "must be assessed based on the educational capacity of each individual student." *J.P. v. County Sch. Bd. Of Hanover County, 447 F.Supp. 2d 553, 584 (E.D. VA. 2006)*.

In this matter, failed to comply with the procedural requirements of the IDEA in determining the student's placement; and failed to comply with the ***Least Restrictive Environment (LRE)*** requirements of the IDEIA, identified at 34 C.F.R. §300.116.

The evaluations and evidence support a finding that the student presents with multiple disabilities, including emotionally disturbed, learning disabled, attention deficit hyperactivity disorder, and disruptive behavior disorder, therefore the nature and severity of the students' disabilities are such that education in a full inclusion, general education, or para-military,-non-therapeutic environment, even with the use of supplementary aids and supports, cannot be accomplished successfully. The student requires education in a small, structured, therapeutic environment; which is not available at the

5. IDEIA provides that a "free appropriate public education" must be made available to all disabled children residing in the District of Columbia, between the ages of 3 and 21. IDEIA defines a free appropriate public education ("FAPE"), as special education and related services provided, inter alia, in conformity with the IEP. See 34 C.F.R. §300.16 (d). Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA is tailored to the unique needs of the student by means of an IEP. *See Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982)*.

   In determining whether the student received a FAPE, a Hearing Officers' inquiry is twofold. *First*, has the State complied with the procedural requirements of the IDEIA. *Second*, whether the IEP developed for the student is reasonably calculated to provide the student educational benefit. If these two (2) requirements are satisfied, the State has complied with the obligation imposed by Congress and the courts can require no more.

Here, the failed to comply with the procedural requirements of the IDEIA; and the September 24, 2009, December 3, 2009, and April 9, 2010 IEPs are not reasonably calculated to provide the student access to the general education curriculum; or enable the child to receive educational benefit. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

The violations also result in substantive harm to the student because the student is deprived an individualized education program specifically designed to address his unique academic, developmental, and functional needs; resulting in the loss of educational opportunity, and denial of a FAPE under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

The Petitioner satisfied its burden of proof by presenting evidence that the student was denied a FAPE during the 2009/10 school year, entitling the student to compensatory education service, however, failed to satisfy its burden by presenting evidence regarding the nature and amount of compensatory education services the student is entitled to receive, consistent with the standard established in *Reid v. District of Columbia*.

VI. ORDER

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

1. **ORDERED**, that within ten (10) calendar days from the date of this decision, the shall convene an IEP and placement team meeting with the D.C. Public Schools, Office of Special Education (OSE), parent, and a placement specialist to discuss request for a meeting to discuss the students' placement, and the provision of a FAPE to the student; identify an interim alternative placement for the student, in a special education program for emotionally disturbed, ADHD, and learning disabled students, in a therapeutic environment; and issue to parent a Prior Notice of Placement for the interim placement, and ESY services; and it is further

2. **ORDERED**, that the students' tuition and transportation at the interim and permanent placements shall be the responsibility of should the student remain a student at its school; or the OSE, should it assume responsibility for the provision of a FAPE for the student; and it is further

3. **ORDERED**, that the student shall remain at the interim and/or permanent placement, until such time as the or OSE identifies an appropriate alternative permanent placement for the student, in a small, structured, therapeutic environment for emotionally disturbed, ADHD, and learning disabled students; and it is further

4. **ORDERED**, that the shall fund an independent Functional Behavioral Assessment, and Psychiatric Evaluation for the student; and it is further

5. **ORDERED**, that within thirty (30) days of the student's enrollment at the interim alternative placement, the Special Education Coordinator at the interim placement shall convene an IEP team meeting with and/or OSE to:

review all current evaluations; review and revise the student's IEP, consistent with all evaluation findings and recommendations; develop a Behavioral Intervention Plan (BIP), based on the findings and recommendations in the independent Functional Behavioral-Assessment; revise the IEP to include individual and family counseling; identify an appropriate permanent placement for the student, in a therapeutic environment for emotionally disturbed, ADHD, and learning disabled students; and issue a Prior Notice of Placement to the parent, authorizing tuition funding and transportation, within five (5) school days, if the placement is a public school, and thirty (30) calendar days, if the placement is a non-public or private school; and it is further;

6. **ORDERED**, that /OSE shall schedule all meetings through the parent's counsel, Attorney Pamela Halpern, in writing, via facsimile at (202) 742-2000; and it is further

7. **ORDERED**, that in the event of failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at the student's placement; and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

8. **ORDERED**, that 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, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

VII. NOTICE OF RIGHT TO APPEAL

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

Date: *June 3, 2010*

Attorney Ramona M. Justice

Hearing Officer