DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

Petitioner, on behalf of STUDENT,[1]	)	Case Number:
Petitioner,	)	Hearing Dates: June 12, 201, Room 2006 June 13, 2011, Room 2009
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	Hearing Officer: Frances Raskin

2011 JUN 23 AM 9:01 STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), and its implementing regulations at 20 U.S.C. §§ 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioner is the parent of ("Student"), a -year-old student with a disability who resides in the District of Columbia. On May 17, 2011, Petitioner filed a Due Process Compliant ("Complaint") against the District of Columbia Public Schools ("DCPS") pursuant to the Individuals with Disabilities Education Act ("IDEA").

This Hearing Officer was appointed to preside over this case on May 18, 2011. Respondent DCPS filed a response to the Complaint ("Response") on June 3, 2011.[2] Respondent filed its Response six days after the deadline mandated by IDEA.[3]

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[1] Personal identification information is provided in Attachment A.
[2] Respondent has not challenged the sufficiency of the Complaint.
[3] *See* 34 C.F.R. 300.508(e). During the prehearing conference on June 17, 2011, Counsel for Petitioner asserted that Petitioner was not prejudiced by the failure of DCPS to file a timely response.

The parties participated in a resolution meeting on June 7, 2011. On that date, the parties were unable to resolve the Complaint and agreed to proceed to a due process hearing. Thus, the resolution period ended on June 7, 2011. The parties agreed that the forty-five day, due process hearing timeline began on June 8, 2011.

On June 17, 2011, this Hearing Officer held a prehearing conference.[4] Sarah Tomkins, counsel for Petitioner, and Tanya Chor, counsel for Respondent, participated in the prehearing conference. On June 21, 2011, this Hearing Officer issued a prehearing conference summary and order. This Hearing Officer held a second prehearing conference on June 28, 2011.

The due process hearing commenced on July 12, 2011. This Hearing Officer admitted into evidence the parties' respective and joint five-day disclosures at the inception of the hearing.[5] During the two days of hearing, Petitioner testified and presented the testimony of two other witnesses. Respondent presented the testimony of five witnesses. The due process hearing concluded on July 13, 2011.

III. ISSUES PRESENTED

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether DCPS denied the Student a free, appropriate, public education ("FAPE") during the 2010-2011 school year by failing to conduct re-evaluations after his behavior deteriorated, he began exhibiting violent outbursts, and he refused to attend school;[6]

B. Whether Respondent denied the Student a FAPE during the 2010-2011 school year by failing to implement his individualized educational program ("IEP"), including by failing to provide in-home instruction and related services; and

C. Whether Respondent denied the Student a FAPE during the 2010-2011 school year by failing to provide him an appropriate placement when it placed him in a self-contained, autism program at a DCPS Senior High School.

Petitioner requests relief in the form of an order requiring DCPS to review the Student's independent psychiatric evaluation and revise his IEP to reflect the findings of the evaluation and

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[4] This Hearing Officer made several attempts to schedule the prehearing conference for an earlier date but June 17, 2011, was the first date on which both counsel were available.

[5] This Hearing Officer noticed that Respondent included a document pertaining to another student in its disclosures. See Respondent Exhibit 34, pp. 2-24. To protect that student's privacy, the Student Hearing Office shall remove this document from the record in this case.

[6] Petitioner failed to present any testimony or other evidence to support this claim, including which evaluations Respondent should have conducted, whether Respondent failed to review existing data in lieu of conducting evaluations, and how Respondent's failure to conduct evaluations or review data denied the Student a FAPE. Thus, this Hearing Officer declines to address this claim herein.

data that DCPS has collected and provide compensatory education to the Student in the form of a dedicated aide, family therapy, and applied behavioral analysis.

For the reasons explained below, this Hearing Officer finds that Petitioner prevailed on two of the three claims certified for adjudication at the due process hearing.

IV. FINDINGS OF FACT

1. The Student is a -year-old, student who is eligible for special education and related services as a student with autism.[7] The Student has been diagnosed with intellectual disability.[8] His full-scale IQ is 42, which is below the first percentile of his same-age peers.[9] His verbal comprehension, perceptual reasoning, working memory, and processing speed are all below the first percentile of his same age peers.[10] The Student's academic performance is generally equivalent to a child six to seven years old.[11]

2. The Student presents with deficits in attention, fine motor skills, and visual motor/perceptual skills.[12] These deficits negatively impact the Student's self-care, vocational, and school functioning.[13] The Student's daily living, social skills,[14] and adaptive behavioral skills[15] also are limited.[16] His skills in managing personal needs, understanding time, money and math, and following rules and routines are low for an individual of his age.[17]

3. The Student has limited verbal communication skills.[18] He requires augmentative supports to enhance his communication skills within classroom and community settings.[19] In

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[7] Respondent Exhibit 13 at 1 (May 3, 2011, IEP).
[8] Joint Exhibit 1 at 7 (June 2, 2011, Psychiatric Evaluation).
[9] Petitioner Exhibit 18 at 3 (July 6, 2009, Report of Confidential Psycho-Educational Evaluation).
[10] *Id.*
[11] *Id.*
[12] Petitioner Exhibit 15 at 1 (December 15, 2008, Occupational Therapy Re-evaluation Note).
[13] *Id.*
[14] The socialization domain assesses how a student interacts and gets along with others and how he plays and uses leisure time. Petitioner Exhibit 17 at 4 (May 20, 2009, Vineland II Teacher Rating Form Report).
[15] Adaptive behavior refers to an individual's typical performance of the day-to-day activities required for person and social self-sufficiency. *Id.*
[16] Petitioner Exhibit 16 at 1 (May 24, 2009, Educational Assessment); Petitioner Exhibit 17 at 4. In each of these areas, the Student's skills are below the first percentile of his same-age peers. Petitioner Exhibit 17 at 7.
[17] Petitioner Exhibit 17 at 4.
[18] Petitioner Exhibit 16 at 1; testimony of Assistant Principal of Public Charter School ("Assistant Principal"), Applied Behavioral Analysis Program Coordinator ("ABA Coordinator").
[19] Petitioner Exhibit 16 at 1; Petitioner Exhibit 23 at 2 (February 27, 2008, Assistive Technology Screening); testimony of Assistant Principal.

2009, the Student used a multi-cell, voice-output device and picture symbols to assist him in communicating.[20] The Student also requires a dedicated aide to navigate his academic environment.[21]

4. During the 2009-2010 school year, the Student was enrolled in a public charter school for special education students ("Charter School").[22] He was in a class with nine other students close to his age, a special education teacher, a teacher assistant, and three paraprofessionals.[23] A dedicated aide provided the Student behavioral and academic support.[24]

5. During the 2009-2010 school year, the Student attended only sixty-seven of a total of 207 school days.[25] In July 2009, the Student started resisting boarding the school bus.[26] By October 2009, the Student took so long to get dressed for school that he regularly missed the bus.[27]

6. The Student attended school fairly consistently until November 2009, when Petitioner lost her job.[28] He attended school erratically from January to April 2010.[29] Various factors contributed to the Student's ceasing to attend school, including a family move to a new house, fixations on particular video games and a video game store near his new home, changes to his transportation route to school, and changes to his mode of transportation after his parents began driving him to school when he refused to board the bus.[30] That same month, he began showing aggression to staff, eloping from his seat on the bus, and eloping from the bus.[31]

7. Since 2009, the DCPS Cluster Manager was aware of the Student's difficulties with getting to school.[32] She also was aware of his aggression to school staff and elopement.[33] The Cluster Manager wanted to put wrap-around services in place to ensure the Student got to school.[34]

8. In January 2010, the Charter School started transporting the Student to and from school in a school van.[35] The Student's parents also tried transporting the Student in their

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[20] Petitioner Exhibit 16 at 1.
[21] Petitioner Exhibit 18 at 7.
[22] Testimony of Petitioner, Assistant Principal. The Charter School is a dependent school under the DCPS Local Education Agency. Testimony of DCPS Program Manager for Charter Schools.
[23] Petitioner Exhibit 27 at 3 (July 26, 2010, Justification for Personal Transportation Services).
[24] *Id.*
[25] *Id.*
[26] Testimony of Petitioner.
[27] *Id.*
[28] *Id.*; testimony of DCPS Autism Program Manager.
[29] Petitioner Exhibit 27 at 3.
[30] *Id.*; testimony of Petitioner.
[31] Petitioner Exhibit 27 at 4; testimony of Petitioner, Assistant Principal.
[32] Testimony of DCPS Cluster Manager.
[33] *Id.*
[34] *Id.*
[35] *Id.*

personal vehicle, which required the Student's father to miss work.[36]

9. In January 2010, the Student began showing aggression toward Petitioner at home, including, punching, hitting, kicking, and biting her on a daily basis.[37] As the aggression continued, Petitioner had to call police regularly for her safety as well as his.[38]

10. In March 2010, the Student's IEP team agreed to add a safety harness to his IEP to prevent him from engaging in self-injurious behaviors such as banging his head and attempted to get off the bus while it was en-route.[39] The Student tolerated this harness only occasionally.[40] When the Student arrived at the Charter School, he often resisted exiting the bus.[41] On one occasion, he exited the bus only after two hours of prompting and waiting.[42] Occasionally, the Student boarded the bus and traveled to school without incident.[43]

11. On July 26, 2010, the Student's IEP team agreed that the Student required an individual bus with an individual aide due to his inability to consistently and safely transition from his home to the bus, from the bus to the school, and from school to the bus.[44] The Charter School requested that DCPS transport the Student in a bus assigned only to him.[45]

12. On September 23, 2010, the Charter School convened a meeting of the Student's IEP team to review his IEP, and to discuss his current levels of functioning, behavior, and transportation needs.[46] The IEP team included Petitioner, the Student's father, and a representative of DCPS as the local education agency ("LEA").[47] The IEP team developed an IEP for the Student that provided him 28.5 hours per week of specialized instruction outside the general education environment, thirty minutes per week of occupational therapy, and one hour per week of speech-language therapy.[48]

13. At the September 23, 2010, meeting, the IEP team agreed that the Student required extended school year, including occupational therapy and speech-language pathology, to prevent regression and to improve upon his present levels of performance.[49] The IEP team also agreed

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[36] Petitioner Exhibit 27 at 4.
[37] Testimony of Petitioner.
[38] *Id.*
[39] Petitioner Exhibit 28 at 16 (September 23, 2010, IEP); testimony of DCPS Program Manager for Charter Schools.
[40] Petitioner Exhibit 27 at 4.
[41] *Id.* at 5.
[42] Petitioner Exhibit 27 at 5; testimony of Petitioner, Assistant Principal.
[43] Petitioner Exhibit 27 at 4; testimony of Petitioner.
[44] *Id.*
[45] Petitioner Exhibit 27 at 5.
[46] Joint Exhibit 5 at 1 (September 23, 2010, Annual Review/Discussion of Transportation).
[47] Petitioner Exhibit 28 at 1.
[48] *Id.* at 9.
[49] Petitioner Exhibit 28 at 12.

that the Student required a one-to-one aide.[50]

14. At the September 23, 2010, meeting the IEP team also discussed the Student's difficulties riding the school bus.[51] The team agreed that the Student continued to require a personal bus with a dedicated aide to maintain his safety.[52] The LEA representative agreed to ask the transportation division of DCPS to address this concern.[53]

15. The Student was completely reliant on his aide to participate in all activities at school as well as to transition to and from the bus in the mornings and afternoons.[54] Upon his arrival at school, he required the assistance of several adults to transition from the bus to the school.[55] He did not transition to the classroom and attempted to elope from the building.[56] When he is prevented from eloping, he attempted self-injurious behaviors such as head banging.[57] When he was at school, he required the assistance of at least two people to maintain his safety.[58]

16. At the September 23, 2010, meeting Petitioner agreed that the Student was not receiving the services he needed at the Charter School.[59] When the Student successfully entered the school in the morning, often after up to an hour of prompting, he often refused to enter his classroom.[60] By the day of the meeting, however, he lost all interest in being in the classroom and all of the interventions the Charter School attempted were unsuccessful.[61] The Student insisted on turning off all the lights wherever he was, including at home.[62] He also was becoming increasingly aggressive and unsafe.[63]

17. After the Charter School personnel expressed concern that they may not be able to meet the Student's needs, Petitioner agreed that the Student may require a residential setting in part because she was having a difficult time managing him and getting him out of the house for school.[64] In July 2010, Petitioner had taken the Student to Kennedy Krieger Institute and asked them to consider the Student for inpatient services.[65]

18. In mid-October 2010, the Student started becoming aggressive toward Petitioner on

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[50] Petitioner Exhibit 29 at 1 (September 23, 2010, Justification and Plan for Dedicated Aide).
[51] *Id.* at 16.
[52] *Id.*; Joint Exhibit 5 at 2.
[53] Joint Exhibit 5 at 2.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] Joint Exhibit 5 at 3; testimony of Petitioner.
[60] Joint Exhibit 5 at 4.
[61] *Id.* at 5.
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*; testimony of Petitioner.

the mornings he was to go to school.[66] On October 31, 2010, the Student ran out of the house wearing only his boxers, ran into the street, and was almost hit by a car.[67] Petitioner was unable to deescalate the Student and had to call the police for assistance.[68] The Student was admitted to the psychiatric ward at a hospital in Maryland and remained there for ten days.[69]

19. Prior this incident, the Student was having daily episodes of agitation and would run out of the house wearing only his boxers.[70] He also regularly left the house without permission, fully clothed, and caught a city bus to a Game Stop store.[71]

20. The Student stopped regularly attending school in November 2010.[72] In January 2011, the Student ran out of the house on a daily basis and would not return until Petitioner called the police.[73]

21. In January 2011, the DCPS Autism Program Manager and the Program Manager for Charter Schools visited the Student's home.[74] The Autism Program Manager was concerned about getting help for the Student to make sure he returned to school.[75] DCPS subsequently implemented an in-home training program for Petitioner and the Student to establish routines and encourage the Student to return to school.[76]

22. In January 2011, the DCPS Cluster Manager approached the DCPS Deputy Chancellor for Special Education to get authorization to place the Student in a residential facility.[77] The Cluster Manager then learned that DCPS was required to conduct a psychiatric evaluation of the Student prior to placing him in a residential facility.[78] DCPS authorized Petitioner to obtain an independent psychiatric evaluation on May 3, 2011.[79]

23. Between mid-April 2011 and June 2011, the DCPS Applied Behavioral Analysis ("ABA") Coordinator visited the Student's home four times.[80] The ABA Coordinator achieved

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[66] Testimony of Petitioner.
[67] Testimony of Petitioner; Joint Exhibit 1 at 5.
[68] Testimony of Petitioner.
[69] Testimony of Petitioner; Petitioner Exhibit 20 at 1 (November 9, 2010, Sheppard Pratt Health System Document Review Report)
[70] Testimony of Petitioner; Joint Exhibit 1 at 5.
[71] *Id.*
[72] Testimony of Petitioner, Assistant Principal.
[73] Joint Exhibit 1 at 3.
[74] Testimony of DCPS Autism Program Manager, DCPS Program Manager for Charter Schools.
[75] Testimony of DCPS Autism Program Manager.
[76] *Id.*
[7777] Testimony of DCPS Cluster Manager.
[78] *Id.*
[79] Joint Exhibit 2.
[80] *Id.*; Testimony of DCPS ABA Coordinator.

some success with the Student.[81] By June 2011, the Student was complying with her requests and able to focus on functional tasks for about an hour.[82]

24. On March 14, 2011, the Student's IEP team met to discuss the Student's educational placement.[83] Petitioner participated in the meeting, as did the DCPS Autism Program Manager.[84] The Charter School members of the team stated that they believed the Student required a more restrictive setting in which transitions were limited.[85] DCPS proposed placing the Student in a general education high school that is close to his home after providing him in-home services for thirty days.[86]

25. On April 28, 2011, DCPS contacted the District of Columbia Child and Family Services Agency ("CFSA") to investigate educational neglect after the Student failed to attend school.[87] The following day, CFSA opened an investigation.[88] CFSA sent an investigator to Petitioner's home.[89]

26. Since November 2010, the Student has spent most of his days playing videogames, playing with the family dog, or following his mother around the house.[90] He is obsessed with video games, especially games in which people are engaged in fighting.[91] He frequently acts out the scenes in these games, which can contribute to him becoming overstimulated.[92] He has refused to participate in structured activities and to board his personal school bus.[93]

27. By remaining out of school, the Student has created a safe routine for himself where he has minimal outside stimulation and is not in situations where he is overwhelmed or provoked.[94] He did not work on academic skills or other cognitively challenging tasks.[95] If challenged on a day that he does not want to leave home, he may become aggressive or combative.[96] Once the Student adopted these new rituals, he had extreme difficulty returning to previously learned routines established at school.[97]

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[81] *Id.*
[82] *Id.*
[83] Joint Exhibit 4 at 1 (March 14, 2011, meeting notes).
[84] *Id.* at 3.
[85] *Id.*
[86] *Id.* at 1.
[87] DCPS Exhibit 29 at 159 (April 28, 2011, call log).
[88] DCPS Exhibit 30 at 165.
[89] Testimony of Petitioner.
[90] Joint Exhibit 1 at 2.
[91] *Id.*
[92] *Id.*
[93] Joint Exhibit 4 at 1.
[94] Joint Exhibit 1 at 6.
[95] *Id.*
[96] *Id.*
[97] Petitioner Exhibit 27 at 3.

28. On June 9, 2011, a residential treatment program in Winchester, Virginia, sent a letter of acceptance to Petitioner.[98] DCPS subsequently agreed to fund the Student's placement at this facility.[99] The Student most likely required a residential placement for the entire 2010-2011 school year, and possibly the 2009-2010 school year.[100]

29. Family therapy would provide a venue for Petitioner and the Student to address the past incidents of aggression and prepare them for reunification after he leaves the residential program.[101] Routine family therapy sessions usually occur once a week, at a minimum.[102] Family therapy also will prepare the Student for his return to the home after he leaves the residential treatment facility.[103]

30. The Student requires a dedicated aide to assist him while he is in the residential treatment facility.[104] The aide would be able to assist the Student in transitions in the residential setting.[105] It is vital for a child with autism to have a safe person who understands them and can read nonverbal cues that can lead to outbursts or aggression.[106] The aide also could assist the Student by facilitating communication with others and assist in preventing him from retreating into his own world.[107]

31. Applied Behavioral Analysis is a specific form of behavioral analysis and intervention that addresses the core deficits of autism, including social skills deficits, irritability and aggression, and language deficits.[108] The Student's program must include ABA because early intervention is critical for autism students.[109]

32. This Hearing Officer finds that all the witnesses at the due process hearing provided credible testimony. Although they expressed different viewpoints, for the most part they testified consistently with each other on the facts of this case.

V. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.[110] Under IDEA, the Petitioner must prove the allegations in the due process complaint by a preponderance of the

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[98] Petitioner Exhibit 38 at 1 (June 9, 2011, Letter from Residential Treatment Program).
[99] Testimony of Petitioner, ABA Coordinator.
[100] Testimony of Psychiatrist.
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

evidence.[111] The burden of showing something by a preponderance of evidence simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before she may find in favor of the party who has the burden of persuasion.[112] In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[113] Unlike other standards of proof, the preponderance standard allows both parties to share the risk of error in roughly equal fashion,[114] except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[115]

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[116] FAPE is defined as "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability."[117] 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."[118]

DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive."[119] 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 reasonably calculated to enable the Student to receive educational benefits.[120]

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.[121] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[122]

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[111] 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).
[112] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[113] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), aff'd, 512 U.S. 246 (1994).
[114] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).
[115] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).
[116] 20 U.S.C. §§ 1400(d)(1)(A),1412(a)(1).
[117] 20 U.S.C. § 1401(28), 34 C.F.R. § 300.39, D.C. Mun. Reg. tit. 30 § 3001.1.
[118] *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89 (1982) (citation omitted).
[119] 34 C.F.R. § 300.101.
[120] *Rowley* at 206-207.
[121] 20 U.S.C. § 1415 (f)(3)(E)(ii).
[122] *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

VI. DISCUSSION

A. Petitioner Proved that Respondent denied the Student a FAPE by Failing to Implement his IEP During the 2010-2011 School Year.

The IEP is the centerpiece of special education delivery system.[123] 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."[124]

The services provided in the IEP must address all of the child's identified special education and related services and must be based on the child's unique needs and not on the child's disability.[125] An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[126] establishes annual goals related to those needs,[127] and provides appropriate specialized instruction and related services.[128] The program must be implemented in the least restrictive environment ("LRE").[129] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[130] Each public agency must ensure that as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with the child's IEP.[131]

Here, DCPS was aware that the Student was missing school regularly as early as 2009. Yet, it failed to provide any in-home services until mid-April 2011. Between mid-April 2011 and June 2011, DCPS provided only a maximum of three or four hours of service to the Student. Although the Student made some progress on the tasks on which he worked with the ABA Coordinator, he had regressed significantly during the 2010-2011 school year. He had routinely exhibited oppositional behavior, was violent toward his mother, and regularly absconded from the home. He also had retreated into a world where he was fixated on video games and refused to participate in his education even when he was at school.

(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").

[123] *Honig v. Doe, 484 U.S. 305, 311 (1988)*; *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005).

[124] *Rowley,* 458 U.S. at 201 (1982).

[125] D.C. Mun. Reg. tit. 30 § 3002.1(f).

[126] 34 C.F.R. § 300.320 (a) (1).

[127] 34 C.F.R. § 300.320 (a) (2).

[128] 34 C.F.R. § 300.320 (a) (4).

[129] 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).

[130] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

[131] 34 C.F.R. § 300.323 (c) (2).

Although DCPS made some efforts after it became involved with the Student in early 2011, this Hearing Officer finds that these efforts were few and far between. DCPS certainly did not implement the Student's IEP, did not provide the Student the related services on his IEP, and did not attempt wrap-around services. Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE.

B. Petitioner Proved that DCPS Denied the Student a FAPE by Failing to Provide Him an Appropriate Placement During the 2010-2011 School Year.

IDEA requires that, unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.[132] 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.[133]

The term "educational placement" refers to the type of educational program prescribed by the IEP.[134] "Educational placement" refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school.[135]

Placement decisions must be made in conformity with the child's IEP.[136] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[137] To the maximum extent possible children with disabilities should be educated with children who are non-disabled.[138] Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[139]

The considerations relevant to determining whether a particular placement is appropriate for a particular student include the nature and severity of the student's disability; the student's specialized educational needs; the link between those needs and the services offered by the school; the placement's cost; and the extent to which the placement represents the least restrictive environment.[140]

Here, DCPS knew that the Student's placement was inappropriate as early as 2009. The DCPS Cluster Manager testified that she was aware of the Student's refusal to board the bus, aggression toward staff, and elopement. Yet, DCPS waited a more than a year before proposing

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[132] 34 C.F.R. § 300.116 (c).
[133] 34 C.F.R. § 300.116 (d).
[134] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[135] *Id.*
[136] 34 C.F.R. § 300.116 (a)(2)(b), 5 D.C.M.R. § 3013 (2006).
[137] *See Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (D.D.C. 2006).
[138] 34 C.F.R. § 114 (a)(2)(i).
[139] *Id.* at 114 (a)(2)(ii).
[140] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202).

a change in placement even though six months had elapsed since the Charter School informed DCPS that it could no longer meet the Student's needs. After being informed of this, DCPS sought authorization to place the Student in a residential facility.

Nonetheless, in March 2011, DCPS proposed placing the Student in a regular education high school. Only after Petitioner filed the Complaint in this case did DCPS authorize a residential placement for the Student.

Thus, Petitioner proved by a preponderance of the evidence that DCPS denied the Student a FAPE by failing to provide an appropriate educational placement. As a result, between November 2011 and the present, the Student had remained at home where he has become a threat to his mother and himself, has received little academic and behavioral instruction, and has regressed.

D. Petitioner Proved that the Student Requires a Dedicated Aide and Applied Behavioral Analysis and is Entitled to Compensatory Education in the Form of Family Therapy.

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."[141] 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."[142]

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Reid*, 401 F.3d at 518, 523. A compensatory education "award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d at 524. This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity." *Id.* at 524.

Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.[143] Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.[144]

Here, DCPS denied the Student a FAPE by failing to implement the Student's IEP and offer him an appropriate placement during the 2010-2011 school year. As a result, the Student

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[141] *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).
[142] *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).
[143] *Reid*, 401 F.3d at 524.
[144] *Id. See also Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

has regressed academically and behaviorally. Thus, the Student is entitled to compensatory education.

Providing the Student applied behavioral analysis would comprehensively address the Student's academic and social-emotional needs. These services would help him to resolve the underlying issues that prevent him from attending school. Although the ABA coordinator testified that the Student should receive ABA throughout the school day, the psychiatrist testified that he should receive ABA at least once a week. For this reason, this Hearing Officer finds that Petitioner failed to present sufficient evidence to determine the amount of ABA that would be appropriate for the Student.

Petitioner also proved that the Student requires a full-time aide while he is in the residential treatment facility. However, this Hearing Officer does not believe this aide would qualify as compensatory education. Rather, the Student has required an aide as part of his IEP. The Student should continue to receive the services of an aide to assist him with transitions, social interactions, managing his frustration, and accessing the curriculum.

Finally, Petitioner proved that the Student requires compensatory education in the form of family therapy. Because DCPS allowed the Student to remain at home for more than a year, he has regressed into his own world, has become noncompliant, and has developed a dangerously aggressive and obsessive relationship with his mother. Family therapy would help address these issues and prepare the Student to maintain a safe existence in the home when he leaves the residential treatment facility.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 22nd day of July 2011, it is hereby:

ORDERED that, if Respondent has not already transported the Student to the residential treatment facility, Respondent shall transport him to the residential treatment facility on or before August 8, 2011;

IT IS FURTHER ORDERED that within seven days of the Student's transfer to the residential treatment facility, Respondent shall provide the Student a dedicated aide to assist the Student in transitions and provide academic, behavioral, and social support to the Student;

IT IS FURTHER ORDERED that within seven days of the Student's transfer to the residential treatment facility, Respondent shall ensure that the Student receives applied behavioral analysis services as necessary to address his difficulties with transitions, refusal to follow directions, behavioral difficulties including self-injury, physical force against others, and elopement; and

IT IS FURTHER ORDERED that, within thirty days of the Student's transfer to the residential treatment facility, Respondent shall hold a meeting to review the Student's academic, speech-language, and behavioral progress at the residential treatment facility, review the Student's June 2, 2011, independent psychiatric evaluation, and establish a schedule for Petitioner and the Student to participate in family therapy; and

IT IS FURTHER ORDERED that, within thirty days of the Student's transfer to the residential treatment facility, Respondent shall begin providing or funding family therapy to Petitioner and the Student for at least sixty minutes per week, with a focus that includes assisting Petitioner to set boundaries with the Student, teaching Petitioner strategies to reduce the Student's frustration and encourage his compliance with her directives, and prepare the Student for his eventual return to his home.

By: /s/ *Frances Raskin*
Hearing Officer

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:

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Student Hearing Office
DCPS