DISTRICT OF COLUMBI3
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,[1] through the Parent,	)	
Petitioner,	)	Date Issued: July 3, 2011
v.	)	Hearing Officer: Virginia A. Dietrich
District of Columbia Public Schools	)	Case No:
Respondent.	)	Hearing Dates: June 22, 2011 Room 2009 June 23, 2011 Room 2004

HEARING OFFICER DETERMINATION

Background

Petitioner, the father of year old Student, filed a due process complaint notice on March 7, 2011 alleging that the District of Columbia Public Schools ("DCPS") had denied Student a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA").

Petitioner alleged that as far back as March 2009, absences from school, school incident reports and suspensions indicated that Student was in need of special education services, and that DCPS should have identified and evaluated Student and provided him with special education services. Petitioner further alleged that Student's educational needs were so severe as to warrant a full-time Individualized Education Program ("IEP") and removal from the community and placement in a residential treatment facility since 2009.

For relief, Petitioner requested a determination that Student requires an IEP with 100% specialized instruction outside of general education, placement at a full-time nonpublic therapeutic residential school, and compensatory education in the form of wrap around services to begin when Student returns to the community from his current residential placement.

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

Hearing Officer Determination

DCPS asserted that although Student had behavior problems in school, Student's high cognitive ability and ability to easily master the general education academic curriculum without the necessity of specialized instruction precluded him from qualifying for special education services in 2010. And, at the time that the February 2011 IEP was developed, Student still did not need specialized instruction to access the general education curriculum. Rather, the only services that Student really required were behavioral support services. DCPS asserted that under the IDEA, behavioral support services are categorized as related services, and the need for related services alone does not qualify Student for the full-time IEP and placement at a residential treatment facility that Petitioner desires.

DCPS also asserted that Student's placement at a residential treatment facility by the Department of Mental Health ("DMH") in April 2011 was for psychiatric or medical reasons and not for educational reasons. As such, DCPS asserted that it does not have the responsibility of funding a residential placement at this time because Student's current part-time IEP is appropriate and sufficient to meet Student's educational needs and it can be implemented at the residential facility where Student currently resides.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

On 03/07/11, Petitioner filed an Expedited Due Process Hearing Complaint Notice. This Hearing Officer was assigned to the case on 03/08/11. On 03/20/11, an Order on Petitioner's Amended Motion for Expedited Hearing was issued that denied Petitioner's request for an expedited hearing as Petitioner had not alleged sufficient facts to warrant an expedited hearing for either disciplinary or non-disciplinary reasons. The case was placed on the non-expedited hearing calendar that allows for a 30-day resolution period followed by a 45-day period to issue a final decision. See 34 C.F.R. 300.515. Petitioner waived the resolution meeting, but DCPS did not. A resolution meeting took place on 03/21/11 at which time both parties indicated that no agreement was reached by the end of the 30-day resolution period and the case should proceed to a due process hearing. Therefore, the resolution period ended on 04/06/11, the 45-day timeline began on 04/07/11, and the final decision was initially due on 05/21/11.

The due process hearing was originally scheduled for 05/04/11 and 05/05/11. On 05/02/11, Petitioner requested a continuance based on the unavailability of an essential witness. The unopposed continuance request was granted and the hearing was rescheduled to 06/22/11 and 06/23/11. The continuance extended the final decision due date to 07/03/11.

The due process hearing was a closed hearing that began on 06/22/11 and concluded on 06/23/11. Petitioner was represented by Pierre Bergeron, Esq. and DCPS was represented by

Linda Smalls, Esq. Neither party objected to the testimony of witnesses via telephone. Petitioner participated in the hearing in person.

Petitioner presented six witnesses: Petitioner; a psychoeducator expert; a psychiatrist; the Executive Director at Capitol Region Children's Center; Student; and Student's therapist at Newport News Behavioral Health Center ("NNBHC"). DCPS presented two witnesses: The residential placement program manager for the Office of Special Education for DCPS; and a DCPS clinical psychologist.

Petitioner's Five Day Disclosure, dated 04/27/11, containing a witness list and Exhibits P-1 through P-34, was admitted into evidence without objection. Petitioner's Five-Day Amended Disclosure dated 04/27/11, that includes Exhibits P-35 and P-36, was admitted into evidence without objection. Petitioner's 2nd Amended Disclosure, filed on 04/28/11, containing the name of an additional witness, was admitted into evidence without objection. Petitioner's 3rd Amended Disclosure, filed on 04/29/11 and containing Exhibits P-37 and P-38, was admitted into evidence without objection. Petitioner's 4th Amended Disclosure, filed on 05/03/11, containing Exhibit P-39, was admitted into evidence without objection. Petitioner's 5th Amended Disclosure, filed on 05/03/11, containing Exhibit P-40, was admitted into evidence without objection. Petitioner's Five Day Amended Disclosure of 06-15-11, containing Exhibits P-41 through P-45 was admitted into evidence without objection, with the proviso that P-43 be resubmitted as a complete document. P-43 was resubmitted on 06/27/11.

DCPS' Disclosure Statement dated 04/27/11, containing a witness list and Exhibits R-01 through R-17, was admitted into evidence without objection.

The six issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS failed to timely evaluate Student in all areas of suspected disability since March 2009; whether DCPS failed to timely identify Student's disability in April 2010 and failed to determine the extent of Student's disability in February 2011; whether DCPS failed to provide Student with an IEP in April 2010 and failed to provide Student with a full-time IEP in February 2011; whether DCPS failed to provide Student with a Behavior Intervention Plan ("BIP") since 2009; whether DCPS failed to provide Student with a full-time therapeutic residential placement since March 2009; and whether Student is entitled to compensatory education for DCPS' failure to provide Student with an appropriate IEP and placement since March 2009.

Parties agreed to the following stipulations of fact:

#1. On 11/15/10, Student was involved in a disciplinary incident involving theft of school or personal property without force. On 11/22/10, Student was suspended for 25 days and was informed to enroll at to receive educational programming while on suspension.

#2. Student received a court ordered psycho-educational assessment dated 01/28/11 that recommended that Student receive special education services.

#3. On 02/22/11, DCPS convened an IEP meeting at that included Petitioner and Petitioner's advocate, at which time the MDT reviewed an independent psycho-educational assessment dated 01/28/11 and a psychiatric evaluation dated 02/05/11, and developed an IEP that prescribed 10 hours/week of specialized instruction in general education and 2 hours/week of behavioral support services outside of general education.

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. Student attended and grades at a public middle school in the District of Columbia from March 2009 until 12/06/10.[2] Student's education wasn't impacted by his disability of Bipolar Disorder in the 7th and 8th grades.[3]

#2. When the Multidisciplinary Team ("MDT") met on 04/06/10 to determine Student's eligibility for special education services, the information before the MDT was that Student had been disruptive in class, had presented with acting out behaviors, had been suspended for fighting and throwing objects in class, had been walking the hallways and incurring out-of-location incidents, and Student had had two psychiatric hospitalizations due to difficulties controlling his anger, disrespect for authority, fighting, stealing and noncompliant behavior. Additionally, the information before the MDT was that in April 2010, Student's academic skills were average as indicated by his then current and previous report cards, and Student's academic achievement testing indicated that Student's academic skills were high average, and his fluency with academic tasks and his ability to apply academic skills were both within the average range, with average academic performance in broad reading, mathematics, math calculation skills, written language, and written expression. In April 2010, Student's school history was unremarkable for attendance problems or school retentions. Based on this conglomeration of data, the MDT determined on 04/06/10 that Student was ineligible for special education services[4] because Student did not have any processing deficits and his behavior had not impacted his ability to achieving adequately and meet grade level standards, and although he did have a general pervasive mood of unhappiness or depression, it had not adversely affected his educational performance.[5]

#3. In April 2010, the MDT indicated that Student would benefit from (a) counseling in conjunction with classroom support, teacher re-direction and teacher support for time-on-task and other activities, and (b) classroom accommodations that would include redirection, preferential seating, teacher cues and repetition that could make Student more available for learning.[6]

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[2] P-7; Petitioner.
[3] Psychoeducator expert.
[4] P-31.
[5] R-6; R-8; R-9; P-10.
[6] R-8; R-9; P-30.

#4. In January 2011, Student's cognitive and academic functioning was assessed. Student had average to advanced cognitive functioning, and average to advanced academic achievement performance. His emotional and personality testing indicated that he had significant difficulties, including irritability, impulsivity and distractibility. Student was diagnosed with Bipolar Disorder. The evaluating psychologist indicated that Student's behaviors associated with Bipolar Disorder prevented him from functioning appropriately in a standard classroom even though Student's cognitive and achievement scores were within the average range, but the psychologist did not recommend any type of educational services or an educational setting where services should be provided.[7]

#5. In February 2011, a psychiatric evaluation was completed by the DMH wherein Student was diagnosed with Bipolar Disorder. The evaluating psychiatrist recommended intensive therapeutic and behavioral interventions in a fully secure 24 hours therapeutic residential program because of Student's inability to participate in mental health treatment in the community due to his Bipolar Disorder and Student's failure to accept his diagnosis of Bipolar Disorder, three acute psychiatric hospitalizations, inconsistency in taking medications for Bipolar Disorder, repeated running away from home behavior, failure to engage in drug treatment, and history of substance abuse. In February 2011, Student's mood was unstable and he required medical stabilization through the use of individual therapy, group therapy and medication management to stop behaviors of running away from home and impulsivity. None of the psychiatrist's reasons or recommendations for treatment at a residential facility pertained to education, and specific educational services could not be recommended because Student's educational needs were outside of the psychiatrist's area of expertise.[8]

#6. From August 2010 to February 2011, Student had a significant number of absences from class and school.[9] In October 2010, Student had three grades of "F", three grades of "C" and one "D." When Student withdrew from public middle school in Dec 2010, he had a final grade of "F" in Science and English.[10] From August 2010 to December 2011, Student missed a lot of classes in school because he didn't attend school when he frequently ran away from home and the reason he ran away from home was to escape the rules and regulations of lawful authority.[11] Student was suspended from school for 25 days beginning on 11/22/10 for stealing from another student's locker and provided with an alternative educational location for services, but Student chose not to attend.[12]

#7. An IEP is based on what a student needs at the time the IEP is developed.[13] On 02/22/11, the MDT met at a juvenile detention facility, and reviewed existing data and developed an IEP that provided Student with specialized instruction in general education and behavioral support services outside of general education in order to provide Student with counseling and establish social emotional goals that would help Student learn to control his

[7] P-9.
[8] P-8; Psychiatrist.
[9] P-4; R-16.
[10] P-7.
[11] Student.
[12] P-3; Stipulation #1; Petitioner.
[13] Psychoeducator expert.

anger.[14] While on medication at Student did not display the misbehavior or tantrums that Student generally exhibited when in the community and not on medication. In the general education setting at Student did not exhibit the need for specialized instruction and could be redirected successfully when necessary. While at Student's Bipolar Disorder did not affect his ability to achieve academically. The only reason that Student was found eligible for special education services and an IEP developed on 02/22/11 was because the MDT wanted to help Student achieve better academically in the long run by providing him with intensive counseling services, and the only way to do that was through an IEP.[15]

#8. While detained at Student was determined eligible for special education services on 02/22/11 with a disability classification of Emotional Disturbance ("ED"). An initial IEP was developed that prescribed 10 hours/week of specialized instruction in the general education setting and 2 hours/week of behavioral support services outside of general education. At that time, Student did not need any modifications or accommodations to the general education curriculum in order to access it.[16] The only specialized instruction that Student actually required was in the social emotional area. Student's IEP prescribed goals for social emotional development and it is in this area of functioning that Student's disability impacted his ability to comply with rules and expectations in the school setting, his adjustment to school, behavior and academic performance. The IEP recommended the following modifications and/or accommodations to mitigate the impact of Student's disability: help in predicting the outcome of problems or alternative solutions with adult assistance, help in accepting adult intervention and/or guidance, help with strategies to maintain self-control, and help in dealing with lack of motivation and persistence.[17]

#9. On 04/08/11, Student was placed at NNBHC, a residential treatment center, pursuant to a Level of Care Determination issued by the DMH on 03/09/11.[18] The DMH determined that Student met the medical necessity for a psychiatric residential level of care for the following reasons: (1) frequent absconding from home, (2) lack of engagement in community-based services based on the youth and family's alleged resistance to treatment and (3) high risk factors involved with the youth's offenses that indicate that "...proper treatment of the youth's psychiatric condition require services on an inpatient basis under the direction of a physician."[19]

#10. On 04/27/11, the IEP team that included a DCPS representative, met at Student's residential placement. At that time, Student's most current achievement testing, dated April 2011, indicated that Student had an average level of performance in reading comprehension, math calculation, spelling and writing, with above average scores in writing and spelling. Student did not demonstrate any weaknesses in academic areas at that time.[20] Student's IEP was revised, but the specifics of the revised IEP are unknown on this record. Student's current part-time IEP can be implemented at Student's residential placement and Student does not need a

[14] R-3; DCPS clinical psychologist.
[15] DCPS clinical psychologist.
[16] P-1; DCPS clinical psychologist; Psychoeducator expert.
[17] P-1.
[18] P-20; Petitioner.
[19] R-17.
[20] P-34; Psychoeducator expert.

full-time IEP or residential placement for educational reasons at this time.[21] Student's anticipated discharge date from NNBHC is 12/18/11.[22] Prior to Student being discharged, the IEP team that includes DCPS, will meet approximately one month prior to discharge and determine what educational services will be necessary to meet Student's needs upon discharge.[23]

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:

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast,* 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

The first issue to be determined is whether Student was denied a FAPE by DCPS failing to timely evaluate Student in all areas of suspected disability beginning in March 2009.

Petitioner alleged that Student was failing classes, receiving suspensions from school and exhibiting serious emotional problems that interfered with learning since March 2009, and these problem behaviors were sufficient indicators to DCPS that Student needed to be evaluated for special education services. And, pursuant to 34 C.F.R. 300.311, D.C.M.R. 3002.1(d), DCPS is obligated to identify, locate and evaluate all children with disabilities residing in the District of Columbia. Petitioner also cited DCPS' responsibility to reevaluate Student based on his behavior and upon the request of Petitioner, pursuant to 34 C.F.R. 300.303, stating that since April 2010, Student's problems in school persisted and were indicators that Student should have been reevaluated for special education services and Petitioner kept asking for help.

[21] DCPS residential placement program manager.
[22] P-42.
[23] DCPS residential placement program manager.

Hearing Officer Determination

Petitioner failed to meet his burden of proof on this issue. The evidence in the record revealed that from March 2009 until December 2010, Student's education wasn't impacted by his disability.[24] Despite problem behaviors in school, Student was able to access the general education curriculum and achieve adequately and meet grade level standards.[25] In April 2010, the MDT appropriately determined that Student only needed behavior support services to address Student's behavior problems.[26] The Hearing Officer determines that Student was not denied a FAPE by DCPS' failure to first determine eligibility until April 2010.

Student was again evaluated for special education services less than one year later, in February 2011, and at that time Student was found eligible for special education services although arguably, Student was not entitled to an IEP because all he really needed was behavioral support services.[27] Under the IDEA, 34 C.F.R. 300.8, 300.334(a) and 5 D.C.M.R. 3001.1, a child who does not require specialized instruction, but requires only a related service, is not a child with a disability under the IDEA. From April 2010 through February 2011, Student was able to access the academic general education curriculum without any modifications to the curriculum.[28] The Hearing Officer determines that Student was not denied a FAPE by DCPS failing to determine eligibility from April 2010 through February 2011.

The second issue to be addressed is whether DCPS denied Student a FAPE by failing to timely identify Student's serious emotional and learning disabilities beginning in March 2009. Petitioner alleged that DCPS failed to identify Student's disability in April 2010 when DCPS determined Student to be ineligible for special education services. Petitioner also alleged that in February 2011, DCPS failed to determine the extent of Student's emotional and learning disabilities by not determining that Student required full-time special education services.

In April 2010, the MDT determined that Student was ineligible for special education services and in February 2011, the MDT determined that Student had a disability of Emotional Disturbance and required 10 hours/week of specialized instruction in the general education setting and 2 hours/week of behavioral support services outside of general education.[29]

Under the IDEA, Emotional Disturbance is defined as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance; (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teacher; (C) Inappropriate types of behavior or feelings under normal circumstances; (d) A general pervasive mood of unhappiness or depression; and (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

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[24] Finding #1.
[25] Finding #2, #6.
[26] Finding #3, #7.
[27] Finding #7, #8.
[28] Finding #4, #8, #10.
[29] Finding #2, #8.

Hearing Officer Determination

Pursuant to 34 C.F.R. 300.8, 5 DCMR 3001.1, a child with a disability means a child who has...an emotional disturbance...and who, by reason thereof, needs special education and related services. If it is determined, through an appropriate evaluation, that a child has one of the disabilities identified in the IDEA, but only needs a related service and not special education, the child is not a child with a disability under the IDEA. Related services means transportation and such developments, corrective, and other supportive services as are required to assist a child with a disability to benefit form special education and includes...psychological services...counseling services...social work services in school. 34 C.F.R. 300.34(a), 5 D.C.M.R. 3001.1.

The evidence in the record was that in April 2010, Student had average cognitive ability and average academic achievement performance despite acting out behaviors, suspensions from school, walking the hallways, fighting and throwing objects in class and dropping grades. Moreover, at that time, Student's school history was unremarkable for attendance problems or school retentions. Student did not require any modifications or accommodations to access the general education curriculum because he showed no academic deficits. What Student did need, and what was recommended by the MDT, was that Student receive a behavior support plan to address Student's problem behaviors.[30] What the psychoeducator expert stated during her testimony was that Student only needed counseling or a social coach as special education services to address problem behaviors. The record was clear that the only services that Student needed in order to improve his school behavior and performance were behavior support services, and under the IDEA, behavior support services or counseling falls under the category of related services, and the need for related services alone does not qualify a student for special education services.

The Hearing Officer determines that in April 2010, Student did not meet the criteria for a child with a disability of Emotional Disturbance under the IDEA because despite a general pervasive mood of unhappiness or depression, Student's academic performance was not adversely affected by his disability and the only services that Student needed were related services in the form of counseling services.[31] Petitioner did not meet his burden of proof that DCPS failed to identify Student as a child with a disability in April 2010.

There was no evidence in the record that Student had or has a learning disability under the definition of the IDEA. There is evidence in the record that on 02/22/11, the IEP team determined that Student had a disability of Emotional Disturbance and developed an IEP that prescribed 10 hours/week of specialized instruction in general education and 2 hours/week of specialized instruction outside of general education solely to assist Student in receiving counseling services. The credible testimony of the DCPS school psychologist who participated at the IEP team meeting on 02/22/11 was that Student didn't really qualify for an IEP because all he really needed was behavioral support services and they couldn't give Student an IEP on that basis alone.[32]

An IEP is based on a student's needs at the time it is developed. When the IEP was developed at on 02/22/11, Student's cognitive ability and academic achievement were in

[30] Findings #2, #3.
[31] Findings #1, #2.
[32] Finding #7.

the Average range. At Student was compliant with authority, he had not had any behavioral incidents while attending school at and he could be redirected when necessary.[33]

The Hearing Officer determines that at the time the part-time IEP was developed on 02/22/11 at it was more than sufficient to meet Student's educational needs in that particular school setting and Student did not require a full-time IEP to address his educational needs. In actuality, Student required no specialized instruction to access the general education curriculum. Testing administered to Student while he resided at revealed that Student had Average cognitive ability, was performing at grade level and completing class work without incident. Petitioner failed to meet his burden of proof that Student required a full-time IEP on 02/22/11 to address his educational needs at that time.

The third issue to be addressed is whether DCPS denied Student a FAPE by failing to provide Student with an appropriate IEP in April 2010 when DCPS determined Student ineligible for special education services and in February 2011 when DCPS determined that Student did not require a full-time IEP with placement in a residential setting.

Petitioner failed to meet his burden of proof on this issue. 34 C.F.R. 300.323 and 5 D.C.M.R. 3002.3(c) requires that an IEP be developed for a child who has been determined to be a child who requires special education and related services. In this case, the MDT appropriately determined in April 2010 that Student did not meet the statutory requirements for a child with a disability.[34] As such, DCPS was not required to provide Student with an IEP.

34 C.F.R. 300.320 requires DCPS to develop an IEP that meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. The evidence in the record clearly demonstrated that in February 2011, Student's educational needs were more than adequately being addressed with an IEP of 10 hours/week of specialized instruction in the general education setting and 2 hours/week of behavioral support services outside of general education, when all that Student really needed were behavioral support services. On 02/22/11, Student's educational needs were being adequately addressed by a part-time IEP; Student was performing on grade level and with no behavioral incidents with the services provided by the part-time IEP. Residential placement for educational reasons is only appropriate when all interventions in the community have been tried and have been unsuccessful.[35] The Hearing Officer determines that on 02/22/11, Student did not require residential placement to address his educational needs.

The fourth issue to be addressed is whether DCPS failed to provide Student with a Behavior Intervention Plan ("BIP") beginning in March 2009.

Petitioner alleges that Student's behaviors that led to suspensions and behaviors in class that interfered with learning should have been addressed with an IEP that included a BIP,

[33] Finding #7.
[34] Finding #2.
[35] DCPS residential placement program manager.

pursuant to 34 C.F.R. 300.324 that requires the IEP team to consider strategies to address Student's problem behaviors.

Until February 2011, Student did not qualify as a student with a disability under the IDEA. As such, he was not entitled to a BIP as a child with a disability, and DCPS' failure to provide him with one from March 2009 through February 2011 was not a denial of a FAPE.

There was insufficient evidence in the record to determine whether or not DCPS had developed a BIP for Student when the IEP was developed on 02/22/11. However, when the IEP was developed in February 2011 while Student was detained at Student did not demonstrate any behavior problems that would require a specific BIP; in fact, he did not demonstrate any behavior problems at all.[36]

There was evidence in the record that Student has been demonstrating behavior problems at his current residential placement and some of these problems occurred in the school setting. However, there was insufficient evidence in the record to determine whether or not a BIP was developed when Student's IEP was revised on 04/27/11. The contents of the 04/27/11 IEP are unknown on this record.[37] No evidence was presented by Petitioner with respect to any behavior interventions or strategies currently being used or required in Student's current educational setting. Petitioner failed to meet his burden of proof on this issue.

The fifth issue to be addressed is whether DCPS failed to provide Student with a full-time therapeutic residential placement beginning in March 2009.

Petitioner asserted that since March 2009, Student's behaviors of failing grades, absences from school and/or class and suspensions indicated that Student required a full-time therapeutic residential placement. 34 C.F.R. 300.17 requires DCPS to provide Student with an educational program and school that can provide him with a FAPE.

In determining the educational placement of a child with a disability, each public agency must ensure that (1) the placement decision is made by a group of persons, including parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (2) is made in conformity with the Least Restrictive Environment, and the child's placement is based on the child's IEP and is as close as possible to the child's home...and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modification in the general education curriculum. 34 C.F.R. 300.116.

Petitioner did not meet his burden of proof that Student required a full-time therapeutic residential placement since March 2009 in order to address any educational deficits. There was no evidence in the record that Student ever required modifications to the general education curriculum.[38] At Student was able to function adequately and appropriately in a general education classroom. Student was placed at his current residential treatment facility for

[36] Finding #7.
[37] Finding #10.
[38] Findings #2, #4, #7, #8, #10.

psychiatric and/or medical reasons, and Student's part-time IEP is being implemented there.[39] There is no evidence in the record that Student requires residential placement to meet his educational needs. Moreover, the record was bereft of any discussion of the type of classroom setting in which Student currently receives educational services at the residential treatment facility, or the nature and extent of behavioral supports that are in place there. The Hearing Officer determines that from March 2009 until the date of the due process hearing, Student did not require residential placement for educational reasons.

The sixth issue to be determined is whether Student is entitled to compensatory education for DCPS' failure to provide Student with an appropriate IEP and placement beginning in March 2009.

Petitioner asserted that Student is entitled to compensatory education in the form of wrap around services that should begin when Student returns to the community from residential placement, as compensation for the lack of a full time IEP and therapeutic day or residential placement during the 2009-2010 school year and the lack of a full-time IEP and residential placement during the 2010-2011 school year.

"When a school district deprives a disabled child of free appropriate public education in violation of the Individuals with Disabilities Education Act, a court fashioning "appropriate" relief, as the statute allows, may order compensatory education, i.e., replacement of educational services the child should have received in the first place." *Reid v. District of Columbia,* 43 IDELR 32 (2005). Student is not entitled to compensatory education because Petitioner failed to prove by a preponderance of the evidence that Student had been denied a FAPE.

Petitioner failed to meet his burden of proof that DCPS violated any provision of the IDEA and denied Student a FAPE. Therefore, the Hearing Officer determines that Student is not entitled to compensatory education on this record.

ORDER

Petitioner failed to meet his burden of proof that DCPS denied Student a FAPE on any of the issues alleged in the complaint, and as a result, all of Petitioner's requests for relief are **DENIED.**

The complaint is **DISMISSED** with prejudice.

IT IS SO ORDERED.

[39] Findings #9, #10.

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 U.S.C. §1415(i).

Date: July 3, 2011

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioner's Attorney: Pierre Bergeron, Esq. (electronically)
DCPS' Attorney: Linda Smalls, Esq. (electronically)
DCPS (electronically)
SHO (electronically)