

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

Student Hearing Office  
810 First Street NE, STE 2  
Washington, DC 20002

OSSE  
Student Hearing Office  
June 21, 2013

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[Parent], on behalf of  
[Student],<sup>1</sup>

Date Issued: June 20, 2013

Petitioner,

Hearing Officer: Jim Mortenson

v

District of Columbia Public Schools (DCPS),

Respondent.

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**HEARING OFFICER DETERMINATION**

**I. BACKGROUND**

The complaint in this matter was filed by the Petitioner on April 12, 2013. The Petitioner is represented by Alana Hecht, Esq., and the Respondent is represented by Lynette Collins, Esq. A prehearing conference was convened on April 22, 2013 and a prehearing order was issued on that date. A response to the complaint was filed, following the prehearing, on April 22, 2013.

The Respondent filed a partial motion to dismiss on April 24, 2013, because it had reversed its manifestation determination, which was an expedited issue in the complaint. The Petitioner filed an opposition to the motion on the same date. The motion was granted, in part, in a written order on April 25, 2013, because the issue requiring the expedited hearing was moot. The remaining related issue, concerning the implementation of the IEP, was to be heard in the non-expedited hearing.

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<sup>1</sup> Personal identification information is provided in Appendix C which is to be removed prior to public dissemination.

The resolution meeting was waived by both parties effective May 7, 2013.

The parties filed prehearing briefs and disclosed documents to be submitted as evidence on June 6, 2013. The due process hearing was convened and timely held at 8:30 a.m. on June 13, 2013, in room 2006 at 810 First Street NE, Washington, D.C. The hearing was closed to the public. The hearing closed just after 4:00 p.m. that day. The due date for this Hearing Officer's Determination (HOD) is June 21, 2013. This HOD is issued on June 20, 2013.

## **II. JURISDICTION**

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5-E30.

## **III. ISSUES, RELIEF SOUGHT, and DETERMINATION**

The issues to be determined by the IHO are:

1. Whether the Respondent denied the Student a free appropriate public education (FAPE) when it failed to provide special education and related services in conformity with the Student's individualized education program (IEP) during the 2012-2013 school year by not providing the Student specialized instruction and by not addressing all of her IEP goals?
2. Whether the Respondent changed the Student's educational placement to a less restrictive environment and denied the Student a FAPE because the change was made outside of the IEP team process and without prior written notice in June 2012, when staff informed the Petitioner that the Student would move from a full-time separate special education day

school for students with specific learning disabilities to a self-contained special education program for students with emotional disturbances located within a large public high school, and without justification or data to support the change?

3. Whether the Respondent denied the Student a FAPE because it failed to review and revise the Student's IEP and placement during the 2012-2013 school year when the Student's behavioral needs were not under control at Program?
4. Whether the Respondent failed to sufficiently evaluate the Student to identify all of her special education and related services needs when it did not conduct a functional behavioral assessment (FBA) during the 2012-2013 school year?

The Petitioner is seeking placement at , a non-public special education day school, and compensatory education consisting of participation in 120 to 150 hours of instruction at the Center in reading, writing, and mathematics.

The Respondent denied the Student a FAPE when it failed to provide the Student with special education in conformity with her IEP during the 2012-2013 school year by not providing the specialized instruction required. The Respondent changed the Student's educational placement to a less restrictive environment and denied the Student a FAPE because the change was made outside of the IEP team process and without prior written notice or justification when it placed her in a self-contained program at School following her 8<sup>th</sup> grade year in a separate special education day school. The Respondent's alleged failure to review and revise the Student's IEP at is moot because her placement at was not legitimate. The Respondent did not fail to sufficiently evaluate the Student when it did not perform a FBA

because the Student's behaviors throughout the school year were exactly the behaviors already identified and addressed in her IEP.

#### **IV. EVIDENCE**

Six witnesses testified at the hearing, five for the Petitioner and one for the Respondent. The Petitioner's witnesses were:

1. The Petitioner, Student's Guardian (P).
2. Advocate, providing factual testimony as well as providing an expert opinion on the compensatory education services the Student requires as a result of the educational harm suffered from the inappropriate placement for the 2012-2013 school year (I.H.).
3. Advocate (C.K.).
4. Director of Admissions, Academy (J.C.).
5. Student (S).

The Respondent's witness was (A.C.). A.C. provided no substantive testimony.

All of the witnesses testified credibly, but for the Student, whose demonstrated and recorded immaturity leads to some caution in relying on her testimony. The Respondent did not introduce any evidence controverting the Petitioner's evidence, suggesting the Respondent unreasonably protracted the final resolution of the proceeding.

24 of the Petitioner's 27 disclosures were entered into evidence. The Petitioner's exhibits are listed in Appendix A. Two of the Respondent's Four disclosures were entered into evidence. The Respondent's exhibits are listed in Appendix B.



students with specific learning disabilities.<sup>9</sup> The program at \_\_\_\_\_ was able to handle the Student's behaviors with minimal parental involvement, even though there was little academic advancement.<sup>10</sup>

3. On June 6, 2012, \_\_\_\_\_ a Special Education Teacher at \_\_\_\_\_ had a meeting with the Petitioner and Student to advise them the Student would be attending \_\_\_\_\_ School in the fall.<sup>11</sup> \_\_\_\_\_ created a prior written notice referring to "the students placement into the neighborhood school (high school)[,]" at the "placement/transition meeting[.]"<sup>12</sup> The other option presented was \_\_\_\_\_ Charter School, which the Petitioner declined.<sup>13</sup> No information about either school was provided to the Petitioner at the meeting, and she chose \_\_\_\_\_ because she was familiar with that school.<sup>14</sup> The reason for the change was that "[t]he Student meets the age requirements to exit the current middle school placement and transition into the neighborhood high school, \_\_\_\_\_ for the upcoming school year."<sup>15</sup> The Petitioner was not provided the prior written notice until it was disclosed in the present matter.<sup>16</sup>
4. The Student attended \_\_\_\_\_ School for the 2012-2013 school year, and was placed, without notice or the involvement of the Petitioner, into the

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<sup>9</sup> T of C.K., T of I.H.

<sup>10</sup> T of P, T of I.H., P 13, P 21.

<sup>11</sup> T of P, R 4. (The Respondent argues that the change from \_\_\_\_\_ to \_\_\_\_\_ was a change in location, not a change in educational placement. However, Respondent presented no evidence in support of its argument and the only evidence it presented concerning the change supports the Petitioner's position that the change was in educational placement, the lack of an IEP team meeting notwithstanding. The prior written notice references an IEP team meeting, but only the teacher, \_\_\_\_\_ and the Petitioner and Student were present.)

<sup>12</sup> R 4.

<sup>13</sup> T of P, R 4.

<sup>14</sup> T of P.

<sup>15</sup> R 4. (It is noted the reason was the Student's age, not whether she had met the academic standards for her grade to advance to the next grade.)

<sup>16</sup> T of P.

program, a self-contained program for students with emotional disturbances on its own floor in the high school.<sup>17</sup>

5. The Student's IEP, revised in June 2012, included data from the start of the 2010-2011 school year, which indicated the Student was still performing at a roughly third to fourth grade level in mathematics, a second grade level in reading, and a second to third grade level in writing.<sup>18</sup>
6. The Student's IEP required, as of the start of the 2012-2013 school year, the following services: 24.5 hours of specialized instruction per week, outside of the general education setting; four hours of speech-language pathology per month, outside of the general education setting; 240 minutes (four hours) of behavioral support services per month, outside of the general education setting; the use of a calculator for math classwork and on tests; repetition of directions; simplification of oral directions; interpretation of oral directions; reading of test questions in math, science, and composition; translation of words and phrases in math, science, and composition; preferential seating; small group testing; location with minimal distractions; extended time on subtests; breaks between subtests; breaks during a subtest; and extended school year services.<sup>19</sup> The IEP also included 16 annual academic and functional goals, including four math goals, three reading goals, and three writing goals.<sup>20</sup> As of January 25, 2013, two of the four math goals (concerning exponents and tabular and graphical representations of data, both eighth grade standards in the areas of number sense and operations, and data analysis, statistics, and probability, respectively) were not introduced.<sup>21</sup>

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<sup>17</sup> R 1, P 20, T of C.K., T of S. (Even the prior written notice, never timely provided to the Petitioner, does not reference the self-contained program.)

<sup>18</sup> P 21.

<sup>19</sup> P 21.

<sup>20</sup> P 21.

<sup>21</sup> P 8.

7. The Student had two courses, of 10, during the first three terms of the school year taught or co-taught by a special education teacher (English I and Environmental Science).<sup>22</sup> Her Algebra class included an unlicensed adult (whom the Respondent refers to as a teacher despite the lack of a teaching license) who had taken course work in the area of special education.<sup>23</sup>
8. The Student's most recent reported grades included Fs in World History, Algebra I-A, and Algebra I-B.<sup>24</sup> All other courses were passed as of the end of the third term, the most recent grades in the record.<sup>25</sup>
9. By May 2013, the Student's academic achievement in math was at a second to fourth grade level, reading was at a first to second grade level, and her writing appeared not to change and was represented by a lack of use of basic mechanics such as punctuation, capitalization, spelling, or complete sentences.<sup>26</sup>
10. The Student's behaviors continued during the 2012-2013 school year, became worse, and were not handled the same way as at <sup>27</sup> The Student was suspended from school at least three times, and was commonly sent home early when her behavior could not be managed by staff.<sup>28</sup> The Student's behavior during the 2012-2013 school year included: fighting, causing disruption and throwing things, cutting class and refusing to attend class, intimidating and bullying peers, and threatening peers and staff.<sup>29</sup> By March 2013, the

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<sup>22</sup> P 5, P 6, P 7.

<sup>23</sup> P 5, P 6, P 7.

<sup>24</sup> P 7. (It defies logic how the Student was permitted to proceed to Algebra I-B having failed to pass Algebra I-A.)

<sup>25</sup> P 7.

<sup>26</sup> P 13.

<sup>27</sup> T of I.C., T of P.

<sup>28</sup> T of P, P 9, P 10.

<sup>29</sup> T of P, T of S, P 9, P 10, P 13, P 20

Director of the self-contained program at \_\_\_\_\_ wanted the Student removed from the program due to her behaviors.<sup>30</sup>

11. A functional behavioral assessment was conducted following an order from the Undersigned based on a motion order on April 25, 2013.<sup>31</sup> The primary behaviors noted in the May 2013 FBA are verbal and physical aggression towards peers and staff.<sup>32</sup>

12. The Student would have made a year of academic progress during the 2012-2013 school year, had her placement been appropriate and IEP implemented, thus demonstrating progress to the fourth to fifth grade level in math (despite being in the ninth grade), the third grade level in reading, and second to third grade level in writing.<sup>33</sup> Between 120 and 150 hours of \_\_\_\_\_ courses, depending on what the \_\_\_\_\_ Center assesses the Student's current academic performance at, is likely to provide the Student with a year's worth of academic progress that she could have received absent the Respondent's denial of FAPE in the least restrictive environment appropriate for the Student.<sup>34</sup>

13. The Student has visited \_\_\_\_\_ Academy in \_\_\_\_\_ Virginia, and the Director of Admissions for the School believes the School can meet her needs.<sup>35</sup> \_\_\_\_\_ is a full-time therapeutic day school for students with disabilities including emotional disturbance, learning disabilities, other health impairments, and combinations of these categories.<sup>36</sup> All classes include two teachers, one a content teacher and one a special education teacher.<sup>37</sup> The school provides access to the District of Columbia curriculum, including credits toward graduation,

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<sup>30</sup> T of C.K., P 20.

<sup>31</sup> P 10, P 23.

<sup>32</sup> P 10.

<sup>33</sup> P 1, P 13, P 21, T of I.H.

<sup>34</sup> P 1, P 25, T of I.H. (This, like most of the facts herein, was based on uncontroverted evidence.)

<sup>35</sup> T of J.C., T of S.

<sup>36</sup> T of J.C.

<sup>37</sup> T of J.C.

as well as remedial course work and necessary related services for students.<sup>38</sup> Related services include behavior counselors who work with students at the classroom level, as well as psychologists who typically work with students in their offices.<sup>39</sup> There are crisis rooms in which to de-escalate students in a crisis situation, and where staff work to avoid repetition of the problem behavior.<sup>40</sup> Rather than punish students, redirection is provided immediately and students are returned to the classroom as soon as possible.<sup>41</sup> Students are not permitted to leave classrooms unattended and the halls are monitored.<sup>42</sup> The school, and its prices, have been approved by the District of Columbia for serving the Jurisdiction’s students.<sup>43</sup> The base tuition cost of \_\_\_\_\_ is \$293.09 per day, with additional costs for certain related services such as speech and language pathology and psychological counseling.<sup>44</sup>

## **VI. 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 persuasion in a special education due process hearing is on the party seeking relief. Schaffer v. Weast, 546 U.S. 49 (2005), *See also* D.C. Mun. Regs. 5-E3030.14. “Based solely upon the 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.” D.C. Mun. Regs. 5-E3030.14. The recognized standard is preponderance of the evidence. *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008);

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<sup>38</sup> T of J.C.

<sup>39</sup> T of J.C.

<sup>40</sup> T of J.C.

<sup>41</sup> T of J.C.

<sup>42</sup> T of J.C.

<sup>43</sup> T of J.C.

<sup>44</sup> T of J.C.

Holdzclaw v. District of Columbia, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 34 C.F.R. § 300.516(c)(3). The Respondent presented no evidence supporting its arguments in this case.

The evidence it did present supported the Petitioner’s arguments.

2. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

special education and related services that –

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

34 C.F.R. § 300.17. A “determination of whether a child received FAPE must be based on substantive grounds.” 34 C.F.R. § 300.513(a)(1).

3. When considering a failure to provide special education and related services in conformity with the IEP, the IDEA “is violated when a school district deviates materially from a student’s IEP.” Wilson v. D.C., 770 F.Supp. 2d 270, 275 (D.D.C. 2011), citing: Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) (“[A] material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.”); accord S.S. ex rel. Shank v. Howard Road Acad., 585 F. Supp. 2d 56, 68 (D.D.C. 2008); Catalan ex rel. E.C. v. District of Columbia, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), aff’d sub nom. E.C. v. District of Columbia, No. 07-7070 (D.C. Cir. Sept. 11, 2007). “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail” on a failure-to-implement claim. Wilson, at 275 (emphasis in original), citing: Van Duyn, 502 F.3d at 822 (emphasis added); cf. MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 537 n.17 (4th Cir. 2002) (rejecting the

argument that parents must show actual developmental regression before their child is entitled to ESY services under the IDEA). “Rather, courts applying the materiality standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld.” *Id.*, See, e.g., Van Duyn, 502 F.3d at 822; S.S., 585 F. Supp. 2d at 65–68; Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115–16 (D.D.C. 2008); Catalan, 478 F. Supp. 2d at 76.

4. The Respondent failed to provide the Student with special education and related services in conformity with her IEP, and this failure was a material deviation from the IEP. The Petitioner presented unrefuted evidence that special education teachers taught in only two of the Student’s courses for the first three terms of the year. The Petitioner has argued that because the other classes were not taught or co-taught by a special education teacher, specialized instruction was not provided in those classes in conformity with the IEP. This argument is supported by the fact that the most recent report cards in the record show the Student failed three classes not taught by a special education teacher. Further, since last year’s IEP (which used data that was then nearly two years old) the Student has not shown any academic growth and possibly regression, despite passing some of her classes. Her behaviors have not changed and became so much an impediment to learning, that the Student was repeatedly removed from school and the Director of the program in which the Student was enrolled wanted her removed permanently. Had the IEP been implemented, the Student would have likely fared better, even in her new placement. The Petitioner’s argument that because two goals in the IEP had not been introduced as of January 2013 is not persuasive as to the implementation issue, because the evidence does not show what happened during the

second half of the school year. It is noted that the Respondent has control of the Student's educational records and had progress been made on those two goals, it could have presented such evidence to show the goals were eventually addressed and met.

5. Educational placement is a concept within the Individuals with Disabilities Education Improvement Act (IDEA) that works hand-in-hand with the concept of least restrictive environment (LRE). See: 34 C.F.R. §§ 300.114-300.120, also 71 Fed. Reg. 46587, 45588 (August 14, 2006). There is a continuum of alternative placements each LEA must have, including "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions[.]" 34 C.F.R. § 300.115. Furthermore, while the placement decision is based on the IEP of the child, the IEP of the child is not based on the placement. 34 C.F.R. § 300.324. The Office of Special Education Programs (OSEP) analyzed the question of "whether a public school board has the unilateral discretion under the [IDEA] to choose the educational placement of a child with a disability as an administrative matter to the exclusion of any input from that child's parents." Letter to Veazey, 37 IDELR 10 (OSEP Nov. 26, 2001). The answer is no, but the matter is more complicated because of the vagaries of what is a "placement." Whether moving a child from one building to another is a change of placement depends on whether the program in the new building "is substantially and materially similar to the former placement" and, if it is, such a change is not a change in placement. 71 Fed. Reg. 46588-89 (August 14, 2006). According to OSEP:

Historically, we have referred to "placement" as points along the continuum of placement available for a child with a disability, and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.

Id. at 46588. A placement decision is made, in the District of Columbia, by the IEP team. *See* D.C. Mun. Regs. 5-E3001.1.

6. In this case, the Respondent made a placement change. The change was a move from one point of the continuum of alternative placements, a special school, to a less restrictive setting on the continuum, a program of special classes within the regular school. Furthermore, despite its arguments that the Student's educational placement was not changed, only the location of services, the evidence provided by the Respondent (the prior written notice dated June 6, 2012) suggests that its staff knew all along that the Student's educational placement was changing, yet it did not ensure this proposal was discussed by the IEP team. Had the Student been placed in a special school that was substantially and materially similar to the special school she was leaving she would have only changed locations. Not only was the new placement in a different setting on the continuum, it was a different kind of program, one designed for students with emotional disturbances as opposed to learning disabilities, and whose teachers were largely regular education staff, not special educators like at the former school. There was no justification for the change, and, as noted in conclusion four, *supra*, the Student has suffered educational harm as a result of the placement change and was thus denied a FAPE.

7. An IEP team must review and revise a student's IEP periodically, and not less than annually, to

- (a) Determine whether the annual goals and objectives for the child are being achieved;
- (b) Address any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- (c) Review and consider data and information from assessment procedures conducted as part of a reevaluation
- (d) Consider any information about the child provided to or by the parent;
- (e) Address the child's anticipated needs; and
- (f) Address other matters.

D.C. Mun. Regs. 5-E3008.1, 34 C.F.R. § 300.324(b)(1).

8. Because the Student was inappropriately placed, the issue concerning the review and revision of the IEP is moot. The IEP team never determined to place the Student in the program at and to hold the Respondent accountable for reviewing and revising the following that error serves no purpose in ensuring the Student was provided a FAPE. Thus, that issue is not reviewed and will be dismissed as moot based on the substantive denial of FAPE and the illegal change of placement found herein.
9. An evaluation of a student with a disability must be “sufficiently comprehensive to identify all of the child’s special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. § 300.304(c)(6). In this case the Petitioner alleges the Student was not sufficiently evaluated to identify all of her special education and related service needs when it failed to conduct an FBA. The evidence shows the Student was not exhibiting any new or different behavior during the 2012-2013 school year, even though she was acting out more. Thus, any failure to conduct a FBA prior to April 2013 is not material. The Student’s IEP was not implemented and her placement was not based on the IEP. These are the violations that resulted in the Student’s denial of FAPE.
10. This hearing officer has broad discretion to grant relief appropriate to ensure the Student is provided a FAPE. *See* 34 C.F.R. § 300.516(c)(3), Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359, 369 (1985). Compensatory education is an equitable remedy that may be provided as relief in disputes under the IDEA. Reid ex rel, Reid v. District of Columbia, 401 F.3<sup>rd</sup> 516, 523, (D.C. Cir. 2005), *citing* G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 308 (4th Cir. 2003), and Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16 (1993). If, in the hearing officer’s broad discretion, compensatory education is warranted,

the “goal in awarding compensatory education should be ‘to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.’” Wilson, at p 9, *citing Reid*, 401 F.3d at 518, and Carter at 15-16. “Once a student has established a denial of the education guaranteed by the IDEA, the Court or the hearing officer must undertake ‘a fact-specific exercise of discretion’ designed to identify those services that will compensate the student for that denial.” Id., *citing Reid*, 401 F.3d at 524; *see Stanton ex rel. K.T. v. District of Columbia*, 680 F. Supp. 2d 201, 207 (D.D.C. 2010); Phillips ex rel. T.P. v. District of Columbia, 736 F. Supp. 2d 240, 247 (D.D.C. 2010).

11. The Petitioner will be permitted to enroll the Student in the \_\_\_\_\_ Center to be assessed in order to determine the exact number of hours of course work will be provided to enable her to make a year’s worth of academic progress as reflected in finding of fact number 12. The total number of course work hours to be provided at public expense will not exceed 150 hours. The Student must enroll and notify the Respondent by July 12, 2013, and complete the awarded hours by June 30, 2014.
12. When considering \_\_\_\_\_ nonpublic placement as a remedy to ensure the provision of FAPE the following factors must be considered: a) the nature and severity of the Student’s disability; b) the Student’s specialized educational needs; c) the link between those needs and the services offered by the private school; d) the reasonableness of the placement’s cost; and e) the extent to which the placement represents the least restrictive environment. Branham v. District of Columbia, 427 F. 3d 7, 12, (D.C. Cir. 2005). “Because placement decisions implicate equitable considerations, moreover, courts may also consider the parties’ conduct.” Id., *citing Reid v. District of Columbia*, 401 F.3d 516, 524, (D.C. Cir. 2005).

13. The Student is not currently placed in the least restrictive environment and in accordance with her IEP or prior placement in a separate day school. The Student displays significant behavioral problems which lie at the root of her current educational difficulties, both academic and functional. Her needs include specialized instruction of both a remedial nature and in current grade level standards. The education and services provided by Academy are exactly what is needed to address the Student's functional performance and academic achievement. The cost of the program, approved by the District of Columbia, has not been shown to be unreasonable for a school of this type. The school, a separate special education day school, is of the same placement on the continuum of alternate placements as the school the Student was improperly removed from. Thus, placement at Academy for the 2013-2014 school year is an appropriate remedy to address both the Student's and the Respondent's needs.

## **VII. DECISION**

1. The Respondent denied the Student a FAPE when it failed to provide the Student with special education in conformity with her IEP during the 2012-2013 school year by not providing the specialized instruction required.
2. The Respondent changed the Student's educational placement to a less restrictive environment and denied the Student a FAPE because the change was made outside of the IEP team process and without prior written notice or justification when it placed her in a self-contained program at School following her 8<sup>th</sup> grade year in a separate special education day school.

3. The Respondent's alleged failure to review and revise the Student's IEP at \_\_\_\_\_ is moot because her placement at \_\_\_\_\_ was not legitimate.
4. The Respondent did not fail to sufficiently evaluate the Student when it did not perform a FBA because the Student's behaviors throughout the school year were exactly the behaviors already identified and addressed in her IEP.

### **VIII. ORDER**

1. The Student is hereby permitted to enroll at the \_\_\_\_\_ Center at the Respondent's expense, no later than July 12, 2013, in order to be assessed and then provided up to 150 hours of instruction in the areas of math, reading, and writing, to bring her to a fourth to fifth grade level in math, a third grade level in reading, and a third to fourth grade level in writing. (These levels are not guaranteed. Rather, they represent the level of achievement the award is designed to provide.) The Student must use the compensatory education hours by June 30, 2014, or lose them. The Petitioner must notify the Respondent of the Student's enrollment by July 12, 2013.
2. The Student is hereby permitted to enroll at \_\_\_\_\_ Academy, in \_\_\_\_\_ Virginia, for the 2013-2014 school year. All necessary special education and related services will be provided, and the Respondent will bear the cost. The Respondent will also provide or pay for, as it chooses (unless so determined by the IEP team), transportation for the Student between her home and \_\_\_\_\_. The Respondent will work directly with \_\_\_\_\_ Academy concerning the cost. The Petitioner will notify the Respondent of the Student's enrollment at \_\_\_\_\_ within five business days of the Student's enrollment and, once enrolled, within

five business days of the Student's departure from \_\_\_\_\_ during the 2013-2014 school year, if the Student leaves the school prior to the end of the school year.

**IT IS SO ORDERED.**

Date: June 20, 2013



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Independent Hearing Officer

**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).