

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

OSSE
Student Hearing Office
September 03, 2013

PARENT on behalf of
STUDENT,

Petitioner,
v.

SHO Case No:
Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS, and

OFFICE OF THE STATE SUPERINTENDENT
OF EDUCATION

Respondents

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On _____ parent, Petitioner herein, on behalf of the student (“Student”) filed an Administrative Due Process Complaint Notice (“Complaint”), HO 1,¹ requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education (“FAPE”) to Student by District of Columbia Public Schools (“DCPS”) under the Individuals with Disabilities Education Act, as amended (“IDEA”). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed both a Response and a Supplemental Response to Petitioner’s Administrative Due Process Complaint Notice (HO 4) on June 24, 2013. Respondent Office of the State Superintendent of Education (“OSSE”) filed a response on June 27, 2013. HO 6. These

¹ Hearing Officer Exhibits will be referred to as “HO” followed by the exhibit number; Petitioner’s Exhibits will be referred to as “P” followed by the exhibit number; and Respondent’s Exhibits will be referred to as “R” followed by the exhibit number.

responses were within the 10 day timeline for filing a response established in 34 C.F.R. § 300.508(e)(1). Petitioner filed a Motion to Enforce her Stay-Put Protection on June 25, 2013. DCSP filed its Opposition to this Motion to Enforce Stay-Put Protections on June 27, 2013, and OSSE filed its Response and Opposition to this Motion on July 1, 2013. Petitioner filed a Reply to both DCPS' and OSSE's Oppositions to her Motion to Enforce Stay-Put Protections on July 3, 2013, and I entered an Order on July 6, 2013 granting Petitioner's Motion for Stay Put Protections. On June 25, 2013, DCPS filed a Motion to Dismiss Parent's Administrative Due Process Complaint, and Petitioner filed an Opposition to this Motion on June 28, 2013 followed by Petitioner's Opposition to OSSE's Partial Motion to Dismiss on July 2, 2013. By way of Order of July 7, 2013 I denied DCPS' Motion to Dismiss and granted OSSE's Motion for Partial Dismissal.

A resolution meeting was held On July 10, 2013. This is seven days beyond the 15 calendar days following the filing of the Complaint allowed under 34 C.F.R. §300.510(a) for such a meeting. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on the same date so indicating. HO 15. The 45 day timeline began to run on July 19, 2013, the day after the 30 day resolution period ended. Following the Prehearing Conference held on July 18, 2013, I issued a Prehearing Conference Order (Corrected) on July 26, 2013.² HO 16. My Hearing Officer Determination is due on September 1, 2013.

At all times relevant to these proceedings Petitioner was represented by Nicholas Ostrem, Esq., Steven Rubenstein, Assistant Attorney General, represented DCPS, and Carmela Edmunds, AAG represented OSSE.. DCPS party representative on the first day of hearing was Program Manger, Nonpublic School Unit, and OSSE's party representative on the first day of hearing was

² The original Prehearing Conference Order was issued July 19, 2013. The corrected Prehearing Conference Order corrected some typographical errors identified by Petitioner. It did not change the substance of the Order. The Corrected Order was filed with an Order correcting the record. HO 16.

Change in Placement Coordinator. By agreement of the parties, the hearing was scheduled for August 20 and 23, 2013. The hearing was held as scheduled in Room 2003 of the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C. §§ 1400, *et seq.*; District of Columbia Code, §§ 38-2561.01, *et seq.*; federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

ISSUES

The issues are:

- 1) Whether DCPS denied Student a free, appropriate public education (“FAPE”) by failing to determine or provide Student an appropriate placement from December 13, 2011 through May 10, 2012. DCPS provided Student no placement at all from March 31, 2012 through May 10, 2012;
- 2) Whether DCPS denied Student a FAPE by failing to provide Student an appropriate placement from December 6, 2012 through February 22, 2013. This issue also alleges that the failure to provide student an appropriate placement from December 6, 2012 through February 22, 2013 was due, at least in part, to OSSE’s delay both in identifying the location for Student’s residential placement and in processing the Interstate Compact for the Placement of Children paperwork required to effect the placement between these dates;
- 3) Whether DCPS denied Student a FAPE by failing to identify an appropriate placement for Student at the June 13, 2013 multidisciplinary team meeting; and
- 4) Whether DCPS denied Student a FAPE by impeding the parent’s participation in the decision making process resulting in Student being placed at the

RELIEF REQUESTED

Petitioner requested:

- 1) Maintenance of the student’s placement at _____ ;
- 2) An IEP meeting to discuss the student’s progress at _____ and to review and revise the IEP as appropriate; and
- 3) Compensatory education.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

P-1	03/02/2011	Independent Comprehensive Psychological Evaluation
P-2	12/17/2012	Independent Neuropsychological Evaluation
P-3	02/01/2011	BIP
P-4	05/06/2011	IEP
P-5	01/31/2012	Suspension
P-6	02/02/2012	DCPS' Manifestation Meeting Notes
P-7	02/02/2012	Counsel's Manifestation Meeting Notes
P-8	02/09/2012	Correspondence from Advocate
P-9	02/23/2012	Prior Written Notice
P-10	02/23/2012	Placement Meeting Notes
P-11	02/29/2012	Suspension Letter
P-12	03/16/2012	Re-Entry Meeting Notes
P-13	03/29/2012	Placement Meeting Notes
P-14	04/05/2012	Follow-Up Correspondence from Advocate
P-15	04/23/2012	PWN
P-16	04/24/2012	Second Follow-Up Correspondence from Advocate
P-17	04/27/2012	Response from DCPS
P-18	07/03/2012	PIW Documents
P-19	Various	Letters from Psychologist, NPS 1
P-20	09/19/2012	Justification for Increase in Psychosocial Services
P-21	10/05/2012	IEP
P-22	10/05/2012	Meeting Notes
P-23	10/17/2012	Amended IEP
P-24	12/06/2012	PWN
P-25	12/06/2012	Meeting Notes
P-26	Various	NPS 1 Incident Reports
P-27	Various	Emails & Correspondence
P-28	Various	Program Information
P-29	Various	Treatment Plan
P-30	Various	Art Therapy Notes
P-31	Various	Report Card & Schedule
P-32	Various	Visual, Hearing & Educational Evaluation
P-33	06/13/2013	Meeting Notes
P-34	Undated	Advocate's Resume
P-35	Undated	Clinical Psychologist's Resume

Exhibits admitted on behalf of Respondent DCPS are:

DCPS-01	Letter of Invitation	02/17/2012
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DCPS-02	Prior Written Notice	02/23/2012
DCPS-03	Letter	03/29/2012
DCPS-04	Email with NPS 2 Attendance Record	08/02/2013
DCPS-05	Prior Written Notice	04/23/2012
DCPS-06	Email	04/27/2012
DCPS-07	Student Transportation Form	04/30/2012
DCPS-08	IEP	10/05/2012
DCPS-09	Prior Written Notice	10/05/2012
DCPS-10	Meeting Notes	10/05/2012
DCPS-11	Amended IEP	10/17/2012
DCPS-12	Prior Written Notice	12/06/2012
DCPS-13	MDT Notes	12/06/2012
DCPS-14	Behavioral Support Service	01/03-
DCPS-15	Letter	03/25/2013
DCPS-16	Certificate of Approval Scoring	03/22/2013
DCPS-17	Contact Log Entry	05/16/2013
DCPS-18	Letter	05/24/2013
DCPS-19	Email	05/24/2013
DCPS-20	Contact Log Entry	06/03/2013
DCPS-21	Email	06/07/2013
DCPS-22	Contact Log Entry	06/07/2013
DCPS-23	Contact Log Entry	06/10/2013
DCPS-24	Contact Log Entries	06/13/2013
DCPS-25	Contact Log Entry	06/17/2013
DCPS-26	Email	06/18/2013
DCPS-27	Meeting Notes	06/18/2013
DCPS-28	Prior Written Notice	06/20/2013
DCPS-29	Location Assignment Letter	06/20/2013
DCPS-30	Residential Placement 2 Campus	Undated
DCPS-31	Residential Placement 2	Undated
DCPS-32	Residential Placement 2 – Intensive	Undated
	Residential Services	
DCPS-33	Residential Placement 2 – Residential Treatment Center	Undated
DCPS-34	Residential Placement 2	Undated
DCPS-35	RSM Notes	07/10/2013

Exhibits admitted on behalf of Respondent OSSE are:³

OSSE 1	12-20-12 Emails re Request for Change in Location Assignment
OSSE 2	1-4-13 Emails re ICPC Student
OSSE 3	1-4-13 Emails re ICPC Student
OSSE 4	1-4-13 Emails re ICPC Student 1

³ OSSE 16 was the ICPC Website and two regulations. While it was not admitted, as it included regulations relevant to the matter before me I agreed to take judicial notice of the regulations, noting I would seek such regulations in reaching my determination. There was no objection to my doing so.

OSSE 5	1-8-13 Emails re ICPC Student
OSSE 6	1-9-13 Emails re ICPC Article VI
OSSE 7	1-9-13 Emails re ICPC Article VI
OSSE 8	1-15-13 Emails re Student (ICPC)
OSSE 9	1-18-13 Emails re ICPC E James
OSSE 10	1-18-13 Emails re Student (ICPC)
OSSE 11	1-18-13 Emails re Student (ICPC)
OSSE 12	1-24-13 Emails re Student
OSSE 13	1-29-13 Emails re Student
OSSE 14	1-31-13 Emails re Student
OSSE 15	2-8-13 South Carolina ICPC Approval
OSSE 17	7-12-11 Letter re Attending School COA
OSSE 18	2-5-13 Letter re Attending School COA
OSSE 19	3-25-13 Emails re Updated Approval Nonpublic Lists
OSSE 20	3-25-13 Letter re Attending School COA
OSSE 21	4-29-13 Emails re Attending School Facility
OSSE 22	5-28-13 Emails re Expiration of COA – Attending School

Exhibits admitted by the Hearing Officer are:⁴

- HO1 Administrative Due Process Complaint Notice filed June 18, 2013
- HO2 Notice of Hearing Officer Appointment of June 19, 2013
- HO3 Prehearing Conference Scheduling Letter and Order re Timelines of June 22, 2013
- HO4 District of Columbia Public Schools' Response and Supplemental Response of June 24, 2013
- HO5 District of Columbia Public Schools' Motion to Dismiss Parent's Administrative Due Process Complaint Notice and District of Columbia Public Schools' Amended Motion to Dismiss Parent's Administrative Due Process Complaint Notice of June 25, 2013
- HO6 Respondent Office of the State Superintendent of Education's Motion for Partial Dismissal of and Response to the Complaint of June 27, 2013
- HO7 Petitioner's Motion to Enforce her Stay Put Protection with multiple related emails of June 27, 2013
- HO8 District of Columbia Public Schools' Motion in opposition to Petitioner's Motion to Enforce Stay-Put Protections of June 27, 2013
- HO9 Petitioner's Opposition to DCPS' Motion to Dismiss of June 28, 2013
- HO10 Respondent Office of the State Superintendent of Education's Response and Opposition to Petitioner's Motion to Enforce Stay Put of July 1, 2013
- HO11 Petitioner's Opposition to OSSE's Partial Motion to Dismiss of July 2, 2013
- HO12 Petitioner's Replies to DCPS and OSSE's Opposition to Petitioner's Motion to Enforce Stay-Put Protections of July 3, 2013
- HO13 Memorandum and Order re Petitioner's Motion for Stay-Put Protection of July 6, 2013
- HO14 Memorandum Opinion and Order of July 7, 2013
- HO15 Resolution Period Disposition Form of July 10, 2013
- HO16 Prehearing Conference Order (Corrected) and Order Correcting Record of July 26, 2013⁵
- HO17 Compensatory Education Proposal of August 8, 2013

⁴ Emails forwarding the documents of record to opposing counsel and the hearing officer are filed with the documents of record unless otherwise noted.

⁵ The Order Correcting Record is dated June 26, 2013. This is incorrect. It was filed July 26, 2013.

- HO18 Miscellaneous emails
- 6/24/13 re change in assigned AAG
 - 6/24/17 from P. counsel re assigned AAG
 - Chain of 6/22 – 6/24/13 re scheduling PHC
 - Chain of 6/25 – 6/26/13 re stay put issue
 - Chain of 6/27 – 6/28/13 re Opposition to Motion and responsive filing
 - 6/30/13 from HO to Crisman re filings in case
 - Chain of 7/1 -7/2/13 chain re OSSE filing
 - 7/11/13 from DCPS counsel re email address
 - Chain of 7/18/13 re conference call
 - 7/24/13 chain re Prehearing Order
 - 8/114/13 from HO requesting Word document list of disclosures
 - Two chains of 8/14/13 re Student's probation status
 - 8/16/13 from Petitioner providing corrected copy of disclosures
 - Chain of 8/18 – 8/19/13 re HO's inadvertent deletion of some disclosures
- HO19 List of Proposed Hearing Officer Exhibits filed August 10, 2013

B. Testimony

Petitioner testified and presented the following witnesses:

- Psychologist, NPS 1
- Advocate
- Special Education Teacher, Attending School
- Art Therapist, Attending School
- Therapist, Attending School
- Director of Education, Attending School
- Team Supervisor, Attending School
- Recreation Therapist, Attending School

DCPS presented the following witnesses:

- Program Manager, Nonpublic School Unit
- Progress Monitor, Nonpublic Schools
- Clinical Manager, Residential Placement 2
- Education Coordinator, Residential Placement 2

OSSE presented one witness:

- Change in Placement Coordinator

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:⁶

1. Student is 16 years old. receives special education and related services as a student with an emotional disability. has received IDEA services since the second grade. Currently, program is provided at Attending School, a residential treatment center in . P 1; P 28; P 29; P 30; P 31; P 32; P 33; OSSE 15; Testimony of Petitioner; Testimony of Advocate; Testimony of Special Education Teacher, Attending School; Testimony of Art Therapist, Attending School; Testimony of Therapist, Attending School; Testimony of Director of Education, Attending School; Testimony of Team Supervisor, Attending School; Testimony of Recreation Therapist, Attending School; Testimony of Program Manager, Nonpublic School Unit; Testimony of Progress Monitor, Nonpublic Schools.
2. Clinical Psychologist performed a Comprehensive Psychological evaluation of Student on February 13, 2011 (Report dated March 2, 2011) and a Neuropsychological Evaluation on November 15, 2012 (Report dated December 17, 2012). P 1; P 2.
3. Student's cognitive ability consistently tests in the extremely low range. earned a Full Scale IQ of 64 on the Wechsler Intelligence Scale for Children – 4th Edition in January 2009 and a General Intellectual Ability (“GIA”) score of 67 on the Woodcock Johnson III Tests of Cognitive Abilities in February 2011. In November 2012 Student's GIA score on the Woodcock Johnson III Tests of Cognitive Abilities fell to 51. The difference in the GIA score between these

⁶ In the findings that follow I cite exhibit numbers and/or testimony as bases for the findings. Some exhibits were introduced by both Petitioner and one of the Respondent. The citations to exhibits reference only one party's exhibits in those instances where two parties have introduced the same exhibit.

two administrations is considered clinically significant. The fall in scores may be attributable to Student's seizure disorder⁷ and a related head injury. P 1; P 2

4. Student's scores on the Woodcock Johnson III Tests of Achievement showed declines between January 2011 and November 2012. For example standard score in Broad Reading fell from 70 to 62, and standard score in Broad Written Language fell from 68 to 57. Moreover, refused all items on the Broad Math cluster in 2012. had earned a scaled score of 48 on this cluster in 2011. P 1; P 2.

5. Student has many behavioral issues. has been arrested in both the District of Columbia and Maryland in the last two years. becomes angry, aggressive and violent in school resulting in many suspensions. is aware of academic difficulties and becomes frustrated. has been diagnosed with a mood disorder/bi-polar disorder, a cognitive disorder, attention deficit/hyperactivity disorder, polysubstance dependence, borderline cognitive functioning, seizures/head trauma and learning disorders in reading, mathematics and written language. P 1; P 2.

6. Student has displayed extremely unusual behaviors in school. has been observed, for example, eating from the garbage can, spitting candy on the floor and then eating it, licking a door frame, and wrapping a belt around neck in front of class. has appeared in class with a ski mask on and threatened to shoot everyone. also has repeatedly discussed concerns for daughter on some occasions and twins on other occasions, but has no children. Student has difficulties suggesting may be delusional. Student has identity issues. It takes a long time for him to establish trust and buy into the programs provided to him. Student requires lengthy treatment. Changes in programs have led to Student's regressing after progress has

⁷ Student developed a seizure disorder, according to Petitioner, secondary to drug use. P 2.

started. P 2; P 18; 20; Testimony of Psychologist NPS 1; Testimony of Therapist, Attending School.

7. Student's May 6, 2011 IEP required receive a full time special education program outside the general education environment. At the time it was written Student attended a DCPS middle school. Student's October 5, 2012 IEP required receive a full time special education program outside the general education environment. At the time it was written, Student attended NPS 1. P 4.

8. Student changed school four times during the 2011 – 2012 and 2012 -2013 school years. also was hospitalized for both medical and psychiatric reasons, incarcerated and without a school placement in this time frame.

- a. Student began attending NPS 1 on September 6, 2011. was placed there by mother. On December 13, 2011 an HOD determined DCPS was not responsible for funding Student at NPS 1. Student was sent to DCPS Placement. P 19; Testimony of Petitioner; Testimony of Psychologist NPS 1; Testimony of Advocate.
- b. Student began attending DCPS Placement the second day of school in January 2012. DCPS Placement is located in a DCPS general education high school. Following a 10 day suspension on January 31, 2012 a manifestation meeting was held on February 6, 2012. The team determined the behavior was not a manifestation of Student's disability. Petitioner and her attorney disagreed. Student was to return to DCPS Placement on February 16, 2012. On February 23, 2012 Student's school was changed from DCPS Placement to NPS 2 despite Petitioner's requesting, through Advocate, return to NPS 1. P 5; P 6; P 7; P 8; P 9; P 10; DCPS 1; Testimony of Petitioner; Testimony of Psychologist NPS 1; Testimony of Advocate

- c. Student was enrolled in NPS 2 from February 27 through April 30, 2012. Student was suspended on February 29, 2012 and March 14, 2012. At a meeting on March 16, 2012, Petitioner again requested Student be returned to NPS 1. On March 29, 2012, the MDT determined NPS 2 was not an appropriate placement. DCPS indicated it would make a school selection in 15 days. A PWN for NPS 1 was issued on April 23, 2012, twenty five days later. P 9; P 11; P12; P 13; P 14; P 15; P 16; P 17; DCPS 3; DCPS 4; DCPS 6; Testimony of Petitioner; Testimony of Advocate
- d. Student returned to NPS 1 on May 10, 2012. There was a delay in return due to transportation. Student's behavior was different on second enrollment at NPS 1. no longer attended school regularly. was more disruptive and verbally abusive. appeared despondent, irritable and disheveled. spent more time in the behavior center, and exhibited bizarre behaviors. P 19; P 20; P 27; Testimony of Petitioner; Testimony of Psychologist NPS 1; Testimony of Advocate.
- e. Student was incarcerated two times for less than 1 day each time in the summer of 2012. Testimony of Program Manager, Nonpublic School Unit, DCPS
- f. On July 3, 2012 Student was admitted to the Psychiatric Institute of Washington. P 18.
- g. Student was hospitalized from December 11, 2012 through January 15, 2013. Testimony of Psychologist NPS 1; Testimony of Program Manager, Nonpublic School Unit, DCPS.
- h. Student was arrested in was released from detention on probation with courtesy supervision to to allow placement at Attending School in February 2013. OSSE 5; OSSE 13; P 27.

9. Student's placement at NPS 1 was continued at an October 5, 2012 IEP meeting despite Petitioner's request for residential placement. P 21; P 22; P 23; Testimony of Psychologist NPS 1

10. Student eloped from the school bus, for a second time,⁸ on December 4, 2012. could not be located for approximately one week. An MDT meeting was held on December 6, 2012. The team determined Student required residential placement. The team considered him to be an imminent danger to A PWN was issued, and a referral was made, as required by DCPS policy, to the LRE Team in DCPS central office. The LRE Team determined Student required a more restrictive placement. P 23; P 24; P 25; Testimony of Petitioner; Testimony of Psychologist NPS 1; Testimony of Program Manager, Nonpublic School Unit, DCPS; Testimony of Progress Monitor, Nonpublic Schools

11. On or about December 20, 2012, OSSE was informed that the DCSP had determined Student required residential placement. OSSE determined the location for services and submitted an Interstate Compact for the Protection of Children ("ICPC") placement request to the Children and Family Services Agency ("CFSA"), the ICPC designated agency in Washington D.C., on January 4, 2013. On the same date CFSA notified OSSE that an Article VI form, regarding adjudicated youth, needed to be included with the ICPC documents. Several efforts to obtain this form were made. However, Student had been adjudicated in Maryland, and a Maryland judge would not sign off on the requested Washington, D.C. form. Eventually, on January 31, 2013, South Carolina verbally agreed to the transfer without the form. There was an authorization for probationary supervision in South Carolina. Written confirmation dated January 31, 2013 was received on February 7, 2013. Then, on February 1, 2013 Attending School stated it had no bed available. OSSE Change in Placement Coordinator contacted Attending School when informed there was no bed available to facilitate Student's placement. A bed was secured, and DCPS

⁸ Student was wearing an ankle monitor due to legal involvement.

arranged transportation. P 27; OSSE 1; OSSE 2; OSSE 4; OSSE 5; OSSE 6; OSSE 7; OSSE 8; OSSE11; OSSE13; OSSE 14; OSSE 15; P 27; Testimony of OSSE Change in Placement Coordinator

12. Student entered Attending school on February 20, 2013. After some initial difficulties began making academic and behavioral progress. Attending School is accredited through Advanced Education, an agency that accredits both public and private schools. P 20; Testimony of Petitioner; Testimony of Director of Education Attending School; Testimony of Program Manager, Nonpublic School Unit, DCPS.

13. Student resides in a unit at Attending School with 13 other students. The capacity of the unit is 18. In addition to school the boys on the unit participate in recreation therapy, community group meetings, current events and off-campus trips. They also have down time for watching television Testimony of Team Supervisor, Attending School.

14. Attending School classes have 10 or 11 students. The teacher-student ratio is 1 -3. In addition to the classroom teacher, each class has a behavior technician and a tutor. The teacher in Student's class is special education certified⁹ and teaches all subjects. Student's class is considered middle school (grades 7 to 9). Student is the only student in 9th grade. is the oldest student in the class and likes being a role model for the other boys. Student is making academic progress. is putting more effort into assignments. was retained in 9th grade because did not attend any school for a sufficient number of days on the 2012-2013 school year to matriculate to the next grade. has not yet mastered any of the goals on 10/5/12 IEP. P 23; Testimony of Special Education Teacher, Attending School; Testimony of Director of Education Attending School.

⁹ Student was assigned initially to a class with older students. The teacher was not special education certified.

15. Student participates in talk therapy, art therapy and recreation therapy at Attending School. Student is making progress in art therapy. is working on grief related issues. Student also has made progress in recreation therapy. participates more, and is less impulsive and disruptive. Student has an assigned clinical therapist. receives individual therapy, group therapy and family therapy. Attending School uses a point system for behavior management. Student has become more forthcoming in therapy over time. aggressive behaviors have diminished, and is exhibiting less bizarre behavior. Contact with family is important to Student. family visits Student at Attending School approximately once or twice per month. Moving him to a new facility would result in regression. Testimony of Psychologist NPS 1; Testimony of advocate; Testimony of Art Therapist Attending School; Testimony of Therapist; Testimony of Recreation Therapist, Attending School.

16. When Student learned of the instant hearing showed some regression. Testimony of Thearpist.

17. Social/emotional treatment is based on relationship. A change in treatment provider means starting over. Student has had to start over many times. This has set him back both socially/emotionally and academically. Testimony of Psychologist NPS 1; Testimony of Advocate

18. Student requires placement in a residential treatment center. also requires a small class with a low student to teacher ratio, structured work including chunking of materials and assignments, the use of multiple instructional/learning modalities, counseling, psychiatric consultation for medication management, and drug and alcohol counseling, P 1; P 2;

19. OSSE provides Certificates of Approval for nonpublic schools. On March 25, 2013 Attending School was notified its Certificate of Approval was on probationary status. Attending

School lost its CoA when its probationary status ended on April 26, 2013. OSSE 17; OSSE 18; OSSE 19; OSSE 20; OSSE 21; Testimony of Program Manager, Nonpublic School Unit, DCPS

20. DCPS contacted Petitioner, through counsel, regarding changing Student's school on May 16, 2013. After multiple efforts, a meeting was held to discuss the proposed change of school on June 18, 2013. A PWN and a location assignment letter moving Student to Residential Placement 2 were issued on June 20, 2013. Student has been accepted by Residential Placement 2. DCPS 19; DCPS 20; DCPS 21; DCPS 22; DCPS 23; DCPS 24; DCPS 25; DCPS 26; DCPS 27; DCPS 28; Testimony of Program Manager, Nonpublic School Unit, DCPS

21. Petitioner's proposed Compensatory Education Plan ("Plan") is based on the educational harm Advocate has stated results from Student's multiple school changes in the 2011 -2012 and 2012- 2013 school years. Petitioner's Plan presumes that Student not only did not make the progress would have otherwise made had been allowed to stay at NPS 1, but that actually regressed due to the multiple moves. As a result the Plan is intended to address the following harms: loss of 1 to 1.5 years of academic growth and significant loss is behavioral growth. The plan assumes Student lost 130 school days in the relevant time period. The Plan proposes Student receive 4 hours of mentoring and 2 hours of tutoring per week for at least 10 to 15 weeks when Student returns to the community after residential placement. The services are intended to help Student move forward when returns to the community as compensatory services cannot be provided at an out of state, residential facility. HO 17; Testimony of Advocate

22. Residential Placement 2 provides educational and residential psychiatric services to 134 students. Each new student is assessed for the first 14 days of attendance and then assigned to a program. All teachers are special education certified by the state of Florida. Classrooms have 10

to 12 students. Each classroom has an assigned teacher and behavior support staff. In addition there may be classroom aides depending on student need. The school is able to provide the services on Student's IEP. Credits earned at the school will transfer to DCPS. In addition to school and after school activities, the program includes behavior support, individual and family therapy and medication management. Services are provided to students through age 18. Student's family would be unable to visit him at Residential Placement 2 P 23; DCPS 31; DCPS 32; DCPS 33; DCPS 34; Testimony of Petitioner; Testimony of Clinical Manager, Residential Placement 2; Testimony of Education Coordinator, Residential Placement 2.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. In some instances witnesses testified to policies, procedures and processes that were not their direct responsibility. In such instances I relied on the testimony of the witnesses who were responsible for the implementation of these policies, procedures and process

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur “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.” 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction in regular classes, special classes,

special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. The placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Each Child resident in the District of Columbia who is eligible for special education and related services under IDEA must have an IEP in effect at the beginning of each school year and throughout the year. 34 C.F.R. § 300.323. The IEP includes the placement in which the services are to be provided.

1) Whether DCPS denied Student a FAPE by failing to determine or provide Student an appropriate placement from December 13, 2011 through May 10, 2012. DCPS provided Student no placement at all from March 31, 2012 through May 10, 2012

Student was removed from NPS 1 pursuant to an HOD in December 2011. began attending DCPS Placement the second day of school in January 2012. time at DCPS Placement was short lived. Following a 10 day suspension beginning on January 31, 2012 Student was to return to DCPS Placement on February 16, 2012. On February 23, 2012, following a meeting, Student's school was changed from DCPS Placement to NPS 2. Petitioner had requested Student be returned to NPS 1 where had been making progress, but DCPS placed Student at NPS 2. DCPS provided no evidence regarding the change to NPS 2. DCPS has offered no explanation for why it chose to move Student to a third school in three months despite having shown progress at NPS 1 during first semester.

This decision shows, in my opinion, a lack of focus on the needs of Student. While it is true that location of service is a decision that is left to the discretion of the LEA, here DCPS, the IDEA is intended to be child focused. Yet DCPS chose to place a student who struggles with learning, behavioral and social/emotional issues in a second new school with new staff and new rules within a short couple of months rather than returning him to a school with which was

familiar and in which there were staff with whom [redacted] had begun to develop relationships. DCPS argues that there is no basis to question the selection of school as NPS 1, NPS 2 and DCPS Placement are equivalent. Clearly this is not the case. While the move from NPS 1 to DCPS Placement was responsive to an HOD, the move from DCPS Placement to NPS 2 can be inferred to have resulted from DCPS Placement's being unable to meet Student's needs thus requiring a change in schools. It would appear reasonable under these circumstances to return Student to the school in which [redacted] had been beginning to show success, NPS 1. This did not occur and the fact that it did not occur raises questions regarding DCPS' judgment in selecting a different nonpublic school. In my view, it is not surprising that this school assignment to NPS 2 was not successful. Student was returned to NPS 1 a little more than 2 months later.

I note, that even in this third transfer, returning Student to NPS 1, there was a delay. The meeting at which the team agreed NPS 2 was not the right school for Student occurred on March 29, 2013. At this meeting Petitioner again asked that Student be returned to NPS 1. DCPS indicated it would make the school selection in 15 days. The PWN effecting the transfer, however, was not issued until April 23, 2012. Moreover, Student was not able to actually return to NPS 1 until May 10, 2013 due to transportation problems. Again, while recognizing DCPS had policies and procedures to follow before Student could be transferred, the delay in actually completing the paperwork and assuring Student returned to NPS 1 appears to disregard the ongoing intensive needs of Student who was not attending school.¹⁰

Petitioner argues DCPS did not provide Student an appropriate placement from December 13, 2011 through May 10, 2012, and, moreover, DCPS did not provide Student any placement at all from March 31, 2012 through May 10, 2012. In contrast, DCPS, focusing on the

¹⁰ I recognize Student was enrolled in NPS 2 for much of the time [redacted] was awaiting [redacted] return to NPS 1, but [redacted] was not attending. While there is a possibility that [redacted] attended one day in this time period, one day of attendance [redacted] could not provide Student the program and services [redacted] required.

lack of change to the IEP throughout this time period, argues that there actually was no change in placement in this entire time frame and that Student had an appropriate placement throughout. In the circumstances of the instant matter, I cannot agree with either. As I stated in my July 6, 2013 order regarding stay-put protection in the instant matter, the Office of Special Education Programs (“OSEP”) in *Letter to Fisher*, 21 IDELR 992, has defined placement under the IDEA. to have three components: 1) the education program set out in the student’s IEP; 2) the option on the continuum in which the IEP is to be implemented; and 3) the school or facility selected to implement the IEP. While it is true the education program set out in IEP did not change, the option on the continuum changed with the first move to DCPS Placement and with the second move to NPS 2. Further the change of school in each instance involved intangibles that affected Student resulting in regression academically and socially/emotionally as moved from one school placement to another.¹¹

In December 2011 Student was in a separate, full time special education school. In January 2012 was moved to a separate program (Spectrum) within a DCPS general education high school. These two programs are two different placements on the continuum of services under IDEA, 34 C.F.R. § 300.115(b). Student’s placement at NPS 1 during the fall of 2011 had been made by Petitioner. It was this placement that the December 2011 HOD did not support. When Student’s placement was then made by DCPS, DCPS placed Student in a separate special education program in general education school, a program similar in LRE option on the continuum to that which Student had attended when the May 2011 IEP was drafted. The decision

¹¹ I recognize that the definition of location is broadened under the Federal Register Commentary to the current IDEA regulations found at 71 Federal Register No 156, page 46687 to include a specific school. However, the analysis requires reviewing four factors: 1) whether the IEP program in the IEP has been revised; 2) whether the child will be educated with non-disabled children to the same extent; 3) whether the child will have the same opportunities to participate in non-academic and extra-curricular activities; and 4) whether the new placement option is the same option on the continuum of alternative placements. However, for the reasons that follow, I determine these changes were changes in placement that had a negative impact on Student.

to assign Student to DCPS Placement was based on then existent IEP and cannot be deemed to have been inappropriate. Subsequent experience, however, quickly demonstrated this was not an appropriate placement, and Student was moved to NPS 2 despite Petitioner's request be returned to NPS 1.

Under most circumstances the decision to move Student to NPS 2 would be seen as a location choice, within the discretion of DCPS, when compared to the option of placement at NPS 1. Both schools are full time separate non-public special education schools. Yet in the instant matter, that position is difficult if not impossible to support. When DCPS decided to place Student at NPS 2, DCPS was aware that Student had attended NPS 1 during the fall of 2011. DCPS had information suggesting that Student was beginning to progress at NPS 1 and, perhaps more importantly, DCPS had knowledge of the extent and complexity of Student's disabilities. Yet DCPS chose to move Student to a third location, NPS 2, in three months. As the Court opined in *Petties v. District of Columbia*, 881 F. Supp. 63 (Dist.Ct, D.C 1995) special education students "are less able than most to cope with mental and emotional stress. Many clearly are unable to cope with the stress and anxiety from the threatened termination or interruption of their education and placements." *Id.* at 68. Here, the student has an emotional disability and borderline cognitive functioning. Clearly a student with this combination of disabilities and need is likely to be less able to cope with mental and emotional stress stemming from the interruption of educational placement than students with less significant disabilities. Under these circumstances DCPS determination to move Student to an entirely new school rather than returning him to the school with which was familiar must be seen as a decision resulting in a failure to provide Student an appropriate placement. This view, moreover, is supported by

DCPS' own decision that NPS 2 was not an appropriate placement and returning Student to NPS 1 within approximately two months' time.¹²

As I have reached a factual determination that Student was enrolled in NPS 2 through April 20, 2013, it is clear Petitioner did not meet her burden of proof as to the allegation that Student was without a placement from March 31, 2012 through May 10, 2012. was, however, without a placement from May 1, 2012 through May 9, 2012, for a total of 8 school days as required transportation was not provided.

I therefore find by a preponderance of the evidence DCPS denied Student a FAPE by failing to determine or provide Student an appropriate placement from February 27, 2012 through April 30, 2012, and further DCPS provided Student no placement at all from May 1, 2012 through May 9, 2012

2) *Whether DCPS denied Student a FAPE by failing to provide Student an appropriate placement from December 6, 2012 through February 22, 2013. This issue also alleges that the failure to provide student an appropriate placement from December 6, 2012 through February 22, 2013 was due, at least in part, to OSSE's delay both in identifying the location for Student's residential placement and in processing the Interstate Compact for the Placement of Children paperwork required to effect the placement between these dates*

By the time Student returned to NPS 1 behavior had deteriorated. Petitioner initiated a request for residential placement in the fall of 2012, but the rest of the multidisciplinary team ("MDT") did not agree that Student required such a restrictive placement. Over time, Student continued to regress. exhibited both more intensive and more frequent needs for behavioral intervention. stopped attending school on a regular basis. also required more intervention in the community, with both hospitalizations (medical and psychiatric) and incarcerations,

¹² I understand that it was Student's response to placement at NPS 2 that lead to this determination, and I do not intend to suggest this subsequent knowledge should be applied retroactively. However, I do suggest DCPS had sufficient knowledge at the time the placement to NPS 2 was made to have reached the conclusion that this was not an appropriate school for Student.

culminating in disappearance for approximately one week in December 2012 after eloping from the school bus for a second time. Following this second elopement Student was missing for approximately one week. At a meeting on December 6, 2012 the MDT and Petitioner came to agreement that Student required residential placement. The MDT referred the residential placement determination to the LRE Team in DCPS central office, and DCPS then made the required referral to OSSE for identification of a residential facility. OSSE received the referral on or about December 20, 2012 and identified Attending School, which is located in South Carolina, by January 4, 2013. Because Attending School is located in another state, placement had to be made pursuant to the requirements of the Interstate Compact for the Placement of Children (“ICPC”).

The ICPC is an agreement among the states including the District of Columbia. It “governs the placement of abused, neglected or dependent children into another state. ICPC provides these children the same protection and services that would be provided to them if they remained in their home state. ICPC also governs . . . all children (including delinquents) placed into residential treatment facilities.” *Memorandum of Understanding (“MOU”) Interstate Commission for Juveniles And Association of Administrators of the Interstate Compact on the Placement of Children. Par. 1.B.* Regulation No. 5, requires that each party to the ICPC establish a central state compact office through which all ICPC referrals from and to the state, here the District of Columbia, are to be made. In the District of Columbia, this office is the Children and Family Services Agency (“CFSA”). Regulation No. 4 applies to the residential placement of children in other states. *Regulation No. 2, ¶2.* Under Regulation No. 4 approval of the receiving state is required before placement can be made. *Regulation No. 4, ¶ 1(a).* This approval is to be made after a review of the sending State Case Documentation for Residential Facility Request. *Id. at ¶ 5.* This request packet includes ICPC Form

100A, court or other authority to place the child,¹³ letter of acceptance from the residential facility, a current case history, a service plan in some instances, and a financial and medical plan. *Id.* Some other documents may be required in specified circumstances. *Id.* The receiving state ICPC office is to review the packet and make an acceptance decision within 3 business days. *Id.* at ¶ 7.

In the instant matter, required documents were forwarded to CFSA on January 4, 2013. However, the court authority to place the child was not included initially because OSSE was not aware of Student's having been adjudicated in Maryland. Once OSSE became aware of Student's status, efforts were made to obtain authorization from the Maryland court but these efforts were unsuccessful. Eventually Maryland agreed to release Student with courtesy supervision to South Carolina, and South Carolina accepted Student's placement on January 31, 2013. A second delay then followed because Attending School did not have an available bed. OSSE Change in Placement Coordinator interceded when she became aware of the difficulty, and a bed was identified. Student entered Attending School on February 20, 2013.

Petitioner argues that the 74 days between December 6, 2013 when the MDT determined Student required residential placement and actual placement at Attending School on February 20, 2013 constitute a failure to provide student an appropriate placement. Petitioner in making this argument attributes the alleged failure to make the placement to both OSSE and DCPS. Petitioner also argues that the 48 days between OSSE's identification of Attending School as the residential facility for Student on January 4, 2013 and actual arrival on February 20, 2013 was itself a failure to provide Student an appropriate placement. Looking at the number of days between the team's determination of the need for residential placement and the actual placement would, under normal circumstances suggest Petitioner's allegations are well founded. However, under the circumstances here I do not agree.

¹³ In the instant matter court authority was required due to Student's delinquency proceedings in Maryland. *See Regulation No. 4, Id.* ¶ 2A.

When the MDT determined Student required residential placement no one was aware of Student's location. [redacted] was found some time later.¹⁴ [redacted] was then hospitalized from December 11, 2012 through January 15, 2013. Petitioner's counsel argued this hospitalization was attributable to Student's not having been placed residentially, but there is no evidence supporting this contention. Further, it seems unlikely given the process required for residential placement that Student could have been placed in the 5 days between the MDT determination and Student's hospitalization. Following Student's hospitalization the complication of Student's legal status in Maryland had to be resolved before [redacted] could be placed under the requirements of the ICPC. Petitioner argues that this is not reasonable, that this conflicts with IDEA requirements and that ultimately Student was placed in South Carolina without the form required by CFSA regarding court authorization.

Petitioner's arguments are not persuasive. While IDEA has requirements requiring the placement of students pursuant to their IEPs, IDEA does not address the interstate movement of children to residential facilities, and it does not address ICPC requirements. Petitioner has provided no basis for finding that ICPS did not apply in this matter, only that it caused a delay. As an Independent Hearing Officer under IDEA and the applicable laws of the District of Columbia I have no authority to rule on ICPC matters, and I do not do so here. I only recognize the existence of the ICPC, its requirements and the District of Columbia's participation in the ICPC. I further recognize that OSSE's actions in the placement of Student in South Carolina were taken in an effort to comply with ICPC requirements and further, that OSSE made every effort to assure the placement was effected as quickly as possible within these requirements. OSSE received notification of the need for a residential placement on December 20, 2012. Approximately two weeks later, January 4, 2013, OSSE had identified a residential facility,

¹⁴ The date [redacted] was located is not in evidence.

obtained Student's acceptance, completed the ICPC paperwork, and forwarded the paperwork to the ICPC agency.¹⁵ On the same date, January 4, 2013, when CFSA informed OSSE that an additional form was required due to Student's delinquent status, OSSE worked diligently to assure this additional form was completed. OSSE is not responsible for the requirements of the ICPC, only for taking the necessary actions to comply with the ICPC, and OSSE did so. The fact that Student was approved to transfer to South Carolina without completion of the ICPC form required by CFSA does not show as Petitioner argues that it was not necessary and delayed Student's placement unnecessarily. Rather, it shows the effort extended by OSSE to assure Student was placed in a residential facility able to meet needs and provide him a FAPE.

I therefore find by a preponderance of the evidence that Student was not denied a FAPE by OSSE. OSSE did not delay in identifying the location for Student's residential placement or in processing the ICPC paperwork required to effect the Student's placement in South Carolina.

Petitioner also argued that the DCPS' requirement that the MDT's determination that Student required a residential placement be reviewed by the LRE team in DCPS' central office before it could be implemented violated IDEA. As noted above, the placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Here that decision was made on December 6, 2012 and forwarded to the LRE Team at central office. The referral then was made to OSSE for site selection two weeks later. There is no evidence as to why the referral was made, other than that it was required, or as to what occurred at central office once the referral was received. There is no evidence as to when central office received this referral. Because I do not know what occurred or why, I am not able to conclude the process unnecessarily delayed Student's placement at

¹⁵ I note that during hearing Petitioner raised questions about the amount of time OSSE policy allow for OSSE to identify a residential placement. The requirements of this policy are not necessary to my decision here. Moreover, I agree with OSSE that the policy itself is not subject to my review. *See*, 34 C.F.R. § 300.507(a).

Attending School, particularly considering [redacted] was unlocatable and also hospitalized for some number of days during this time period.

I therefore find by a preponderance of the evidence that DCPS did not deny Student a FAPE by failing to provide Student an appropriate placement from December 6, 2012 through February 22, 2013.

3) *Whether DCPS denied Student a FAPE by failing to identify an appropriate placement for Student at the June 13, 2013¹⁶ multidisciplinary team meeting*

4) *Whether DCPS denied Student a FAPE by impeding the parent's participation in the decision making process resulting in Student being placed at the Devereux Florida school¹⁷*

OSSE provides Certificates of Approval for nonpublic schools. DCPS may place and maintain students only in those nonpublic special education schools that have received and maintained a Certificated of Approval (“CoA”). *See*, 5A DCMR §2839.1 On March 25, 2013 Attending School was notified its Certificate of Approval was on probationary status. Attending School lost its CoA when its probationary status ended on April 26, 2013. Due to the loss of the CoA, DCPS contacted Petitioner, through counsel, on May 16, 2013 regarding changing Student’s school. After multiple efforts, a meeting was held to discuss the proposed change of school on June 18, 2013. A PWN and a location assignment letter moving Student to Residential Placement 2 were issued on June 20, 2013. This Complaint followed.

Petitioner argues that moving Student to Residential Placement 2 results in an inappropriate placement because DCPS has not considered the impact of this move on Student’s educational and social/emotional progress, and I agree. DCPS counters that it cannot maintain

¹⁶ Petitioner provided exhibit P 33 regarding a meeting held on 6/13/13 and Respondent provided exhibit R 27 regarding a meeting held on 6/18/13. These appear to be notes from the same or related meetings. The difference of 5 days does not change my determination. For clarity of discussion I refer to the meeting as having occurred on June 18, 2013. The PWN initiating the proposed change is dated June 20, 2013.

¹⁷ Issues 3 and 4 are discussed together, below, as the facts and law relevant to these issues are closely connected.

Student at Attending School because it no longer has a CoA. DCPS may not fund Student in a school that does not have a CoA. In making this argument DCPS addresses the limitation on funding noted above but not the exception to the limitation. DCPS may not fund such a placement at a nonpublic school without a CoA unless such placement has been ordered by a District of Columbia Court, a federal court or a hearing officer pursuant to the IDEA. 5A DCMR § 2844.1.

In reviewing the situation before me I conclude that more than any other factors Student requires consistency and stability to receive a FAPE. has changed schools four times in two years. At least three of these changes followed upon suspensions or other behavioral difficulties likely to have created stress and disruption for Student. DCPS is proposing to move him for a fifth time in two years. noting they are compelled to do so by law. However, if I order Student remain where is, the law recognizes an exception, and I find it is necessary for Student to remain in current school in order to receive a FAPE. Student is attending a school where has slowly begun to show improvement. is establishing relationships with the staff which will support further growth both academically and socially/emotionally. is adjusting to the process inherent in the school and residential components of the program. Student's family is able to visit him at Attending School but would be unable to do so at Residential Placement 2 because it is much further away in Florida. I note that the knowledge of the instant litigation was a sufficient threat of change to cause Student to show some regression. While I recognize DCPS complied with DC law in proposing a move to Residential Placement 2, it is clear under the circumstances that such a change would be detrimental to Student and thereby deny him a FAPE. The same law that required DCPS to propose the change in schools provides an exemption to the requirement to move Student if Student is placed in a school that lacks a current OSSE COA, by a hearing

officer. At hearing OSSE, without taking a position regarding moving Student to Residential Placement 2, recognized the potential harm to Student in moving him to another school and noted the exception related to an order by a hearing officer. The evidence is, I find, clear that moving Student to a new location will likely result in regression due to inability to adjust to a fifth change in two years. This regression will affect him both academically and socially/emotionally and preclude Student's receiving a FAPE in the new location. Further the evidence as to the additional harm that will result from not being able to see family on a regular basis should be moved to Residential Placement 2 also supports remaining in current school.

For these reason, I find, by a preponderance of the evidence, that Residential Placement 2 is not an appropriate placement for Student. I further find by a preponderance of the evidence that Attending School is an appropriate placement and that Attending School is able to provide Student the programs and services requires to receive a FAPE.

Compensatory Education

A hearing officer may award compensatory education services that compensate for a past deficient program. *Reid v. District of Columbia*, 401 F.3d 516, 365 U.S, App. D.C. 234 (D.C. Cir. 2005) *citing G. ex. RG v. Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir 2003). IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* “. . . inquiry must be fact specific and. . .the ultimate 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* at 524.

The Compensatory Education Plan proposed by Petitioner is intended to address the loss of 130 school days during the 2011-2012 and 2012-2013 school years. To address the resulting alleged harm Petitioner proposes Student be provided. 4 hours of mentoring and 2 hours of tutoring per week for at least 10 to 15 weeks when Student returns to the community after residential placement. The services are intended to help Student move forward when returns to the community as compensatory services cannot be provided at an out of state, residential facility.

The Plan, as proposed by Petitioner, does not, in my opinion, meet the *Reid* requirements. First, I have found that DCPS denied Student an appropriate placement from February 27, 2012 through May 9, 2012. Rather than the 130 days posited by Petitioner this is a denial of appropriate placement for approximately 45 days (accounting for school closure days). Therefore, the number of hours of proposed compensatory service are over inflated. Secondly, and more importantly, rather than providing a process to compensate Student for educational loss and place him in the position would have been had not had this loss, this Plan proposes to help Student adjust to the community and prevent a return to previous behavior after leaves residential placement. This intent does not appear to me to be compensatory. It appears to look forward rather than compensate for the loss has had. Thirdly, the Plan suggests that these services be provided Student at some unspecified date in the future. This is not, in my view, a reasonable request, nor one that I believe I have the authority to grant. Not only would I be entering an order that would bind DCPS to an action at an unspecified future date, I also have no idea how Student will have progressed in that unspecified time period and whether the proposed efforts would be meaningful.

I accept Petitioner's witness' view that compensatory education cannot be provided while Student is in residential placement in another state. It appears to me that this is, at least in part, because Student is in a program that provides him needed education and other services both during school hours and outside of school hours. I therefore conclude Student will receive all the services from which can benefit through the programs and services provided by Attending School and I decline, for the reasons discussed, to provide Student additional services in the form of compensatory education.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. DCPS denied Student a FAPE by failing to determine or provide Student an appropriate placement from February 27, 2012 through April 30, 2012, and further DCPS by failing to provide Student any placement at all from May 1, 2012 through May 9, 2012.
2. DCPS did not deny Student a FAPE by failing to provide Student an appropriate placement from December 6, 2012 through February 22, 2013.
3. Student was not denied a FAPE by OSSE. OSSE did not delay in identifying the location for Student's residential placement or in processing the ICPC paperwork required to effect the Student's placement in South Carolina.
4. Residential Placement 2 is not an appropriate placement for Student.
5. Attending School is an appropriate placement. Attending School is able to provide Student the programs and services requires to receive a FAPE.

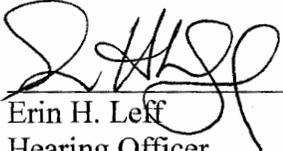
ORDER

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that DCPS fund Student's placement at Attending School for the duration of the 2013 – 2014 school year.

IT IS SO ORDERED:

August 31, 2013
Date



Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).