

**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  
May 14, 2013

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

Date Issued: May 14, 2013

Petitioner,

Hearing Officer: Jim Mortenson

Case No:

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 March 1, 2013. The Petitioner is represented by Donovan Anderson, Esq., and the Respondent is represented by Tanya Chor, Esq., and Justin Douds, Esq. Independent Hearing Officer (IHO) Dietrich was assigned on March 4, 2013, and issued an Order on Resolution Meeting, Mediation Meeting, and Mutual Waiver on that date. A response to the complaint was filed on March 11, 2013. A revised prehearing notice was issued on March 19, 2013. On March 26, 2013, the matter was reassigned to the Undersigned. A Prehearing Notice and Order was issued on March 27, 2013. A resolution meeting was held on March 29, 2013, and resulted in no agreements. A prehearing conference was convened on April 2, 2013 and a prehearing order was issued on that date.

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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 Petitioner disclosed documents to be submitted as evidence on April 26, 2013. The Respondent disclosed documents to be submitted as evidence on April 29, 2013. The Respondent filed a prehearing brief on April 29, 2013, and a motion to permit two witnesses to testify via telephone. The motion was denied on April 30, 2013.

The due process hearing was convened and timely held on May 6, 2013, in room 2003 at 810 First Street NE, Washington, D.C. The hearing was closed to the public. The due date for this HOD is May 15, 2013. This HOD is issued on May 14, 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. ISSUE, RELIEF SOUGHT, and DETERMINATION**

The issue to be determined by the IHO is:

Whether the Respondent denied the Student a free appropriate public education (FAPE) and appropriate educational placement when the Student's individualized education program (IEP), revised October 10, 2012, lacks full-time specialized instruction outside of the general education setting in a small, structured placement with intensive academic and behavioral supports?

The Petitioner is seeking placement at \_\_\_\_\_ School as compensatory education or, as an alternative, prospective placement at \_\_\_\_\_ School.

The Respondent denied the Student a FAPE and an appropriate educational placement when it failed to provide appropriate behavioral supports and placement in a small group setting.

#### **IV. EVIDENCE**

Five witnesses testified at the hearing, three for the Petitioner and two for the Respondent.

The Petitioner's witnesses were:

1. The Petitioner, Student's Mother (P)
2. Anne Roy, Admissions Director for (A.R.)
3. Dr. David Cranford (D.C.) (Providing an expert opinion on the Student's needs and recommendations for programming.)

The Respondent's witnesses were:

1. Jennifer McIntosh, Clinical Social Worker (J.M.)
2. James Robinson, Special Education Coordinator (J.R.)

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

To the extent that the findings of fact reflect statements made by witnesses or the documentary evidence in the record, those statements and documents are credited. The witnesses testified credibly. The findings of fact are the Undersigned's determinations of what is true, based on the evidence in the record. Findings of fact are generally cited to the best evidence, not necessarily the only evidence. Any finding of fact more properly considered a conclusion of law is adopted as such and any conclusion of law more properly considered a finding of fact is adopted as such.

## V. FINDINGS OF FACT

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

1. Student is a     year old learner with a disability, currently enrolled at           Senior High School.<sup>2</sup>
2. She was previously attending a public charter school prior to the current school year.<sup>3</sup>
3. The Student was referred by her charter school for, and underwent, a clinical psychological evaluation in August 2011, which comprehensively examined her academic and functional problems.<sup>4</sup>
4. The Student is eligible for special education and related services under the definition of Multiple Disabilities (MD).<sup>5</sup> The Student suffers from Attention Deficit Hyperactivity Disorder, Combined Type (ADHD), Oppositional Defiant Disorder (ODD), Generalized Anxiety Disorder, and Learning Disorder, NOS.<sup>6</sup>
5. The Student's disabilities are manifest in the following symptoms: oppositional behavior (including almost always defying teacher requests and arguing with adults); conduct problems; aggression; a pervasive mood of irritability (resulting in being easily annoyed by others); a pessimistic outlook on situations and life circumstances; generalized worry; somatic anxiety; a lack of impulse control (resulting, when angry, in inappropriate behavior and struggle to self-soothe); and refusal to accept responsibility for inappropriate behavior or to

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<sup>2</sup> Testimony (T) of P, P 1.

<sup>3</sup> P 1, P 2.

<sup>4</sup> P 3.

<sup>5</sup> P 1.

<sup>6</sup> P 3.

capitulate when confronted about misbehavior.<sup>7</sup> The Student often refuses services and cuts classes.<sup>8</sup>

6. The Student requires specialized instruction and behavioral support services within a small group setting.<sup>9</sup> Behavior interventions to help her include: time-outs; proximity control; point based reward systems; planned breaks in which movement is permissible; preferential seating; and multi-sensory instruction.<sup>10</sup>
7. The Student thrives on emotional reactions from adults, feeling a sense of power and influence when she is able to make an adult or teacher angry.<sup>11</sup> Interventions to deal with this must be focused on reducing the feeling of power the Student gains from arguing and providing alternative, positive, opportunities for her to achieve a sense of power.<sup>12</sup> Such interventions include: Responding consistently to the inappropriate behavior and establishing procedures for her to express complaints and concerns appropriately, as well as a consequence when the Student argues after a reminder; Providing the Student with appropriate and positive experiences of power to reduce the need to argue, such as having the Student lead an instructional activity or soliciting her assistance for a school related task; Using appropriate reinforcements to encourage appropriate behavior and giving the Student increased praise and attention when she is being cooperative; and Permitting the Student to have a session with a school-based counselor to determine whether there are any concerns regarding anxiety within certain classes.<sup>13</sup>

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<sup>7</sup> P 3, R 12.

<sup>8</sup> T of J.M.

<sup>9</sup> P 3, T of P, T of J.M..

<sup>10</sup> P 3.

<sup>11</sup> P 3.

<sup>12</sup> P 3.

<sup>13</sup> P 3.

8. The Student requires individual weekly psychological counseling to focus on developing self-monitoring strategies for improving attention and decreasing negative attention seeking behaviors.<sup>14</sup> Cognitive behavior strategies should be used to develop pro-social responses to frustration and disagreements with staff and to explore underlying beliefs and cognitions that lead to feelings of anxiety.<sup>15</sup> Peer mediation sessions will provide opportunities for the Student to demonstrate her leadership skills and enhance social skills.<sup>16</sup>
9. The Student's academic achievement, assessed in October 2012, is in the elementary school range, which is lower than it was assessed at in August 2011.<sup>17</sup>
10. The Student's IEP from the charter school which she arrived at with in the fall of 2012, includes goals in the areas of: math (four goals); reading (four goals); written expression (five goals); emotional, social, and behavioral development (six goals); and motor skills/physical development (seven goals).<sup>18</sup>
11. The Student's 2011-2012 emotional, social, and behavioral development goals were: 1) Exploring and practicing problem-solving skills related to peer-to-peer and peer-to-adult interactions; 2) Exploring and practicing accepting responsibility for her actions; 3) Exploring and practicing coping skills to maintain attention and focus in her classes; 4) Learning about her ADHD and Specific Learning Disability and being able to explain how these disabilities can affect her in the classroom; 5) Exploring and practicing strategies for maintaining positive relationships with peers; and 6) Identifying and discussing two strategies for calming and de-escalating herself when frustrated.<sup>19</sup> While these goals were

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<sup>14</sup> P 3.

<sup>15</sup> P 3.

<sup>16</sup> P 3.

<sup>17</sup> P 1, P 3, P 4, T of D.C.

<sup>18</sup> P 2.

<sup>19</sup> P 2.

changed in the revision of the IEP in October 2012, no evidence they were met was provided.<sup>20</sup>

12. The services provided to help the Student reach her goals in the 2011-2012 IEP were:

specialized instruction in the general education setting for 12 hours per week; specialized reading instruction on an individual or small group basis for four hours per week; behavioral support services outside of the general education setting, consisting of counseling to address her behavioral concerns, for two hours per month; occupational therapy outside of the general education setting for 30 minutes per week to address deficits in fine motor precision, visual perception, visual motor integration, and sensory processing; permission to write in test books; the use of a calculator; a classroom with minimal distractions; individual testing; breaks during subtests; extended time on subtests; and breaks between subtests.<sup>21</sup>

13. The IEP was revised on October 10, 2012, and included goals in the same areas as the prior IEP, but with two goals in each of the following areas: reading, math, written expression, and emotional, social, and behavioral development; and one motor skills/physical development goal.<sup>22</sup> The two emotional, social, and behavioral development goals are: 1) To show an improved ability to communicate her needs and challenges independently without becoming angry or frustrated; and 2) To demonstrate the ability to use effective coping strategies when she becomes angry or frustrated.<sup>23</sup>

14. The services in the 2012-2013 IEP revision, which the Petitioner agreed with at the time, include: specialized instruction outside of the general education setting for eight hours per week; specialized instruction in the general education setting, to help her perform at grade

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<sup>20</sup> P 1

<sup>21</sup> P 2.

<sup>22</sup> P 1.

<sup>23</sup> P 1.

level, for eight hours per week; behavioral support services outside of the general education setting in a therapeutic environment to learn, practice, and reinforce coping and communication skills to be able to transfer to the general education setting, for two hours per month; repetition of directions; simplification of oral directions; translation of words and phrases in math, science, and composition; extended time on classwork, quizzes, and tests; permission to write in test books; the use of a calculator; a classroom with minimal distractions; breaks during subtests; extended time on subtests; and breaks between subtests.<sup>24</sup>

15. The Student has not been in a small group setting at Senior High School, even though the IEP requires a location with minimal distractions.<sup>25</sup> Her education environment is chaotic.<sup>26</sup> The Student engages with peers who provide a negative influence and distract her from her academics and support services.<sup>27</sup>

16. During the 2012-2013 school year, it has been documented that the Student was suspended from school 17 days, and she was sent home from school an unknown number of additional days without any documentation.<sup>28</sup> She has been placed on a “do not admit” list that has barred her from returning to school without her parent, which has resulted in an unknown number of absences.<sup>29</sup> She also frequently cuts class.<sup>30</sup> The Student’s behaviors at school throughout the 2012-2013 school year included being disrespectful and swearing,

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<sup>24</sup> P 1, T of P, T of J.M.

<sup>25</sup> P 1, T of P.

<sup>26</sup> T of P.

<sup>27</sup> T of P, T of J.M.

<sup>28</sup> P 5, T of P.

<sup>29</sup> T of P.

<sup>30</sup> P 5, P 6, P 7, P 8, P 9.

oppositional (refusing to comply with directions), fighting, and a willingness to escalate things when confronted on behavior.<sup>31</sup>

17. The Student earned passing grades in all but one of her classes, Algebra, in the first term of the 2012-2013 school year.<sup>32</sup> The Student failed four of seven classes in the second term of the 2012-2013 school year (Algebra, Basic Skills, Spanish, and World History).<sup>33</sup> The Student's third term progress report shows she is failing all of her classes, but for one (English).<sup>34</sup> Poor attitude, absences and behavior (including disrespect and being oppositional) are cited as contributors to her grades.<sup>35</sup>
18. When the Student shows up for services, which she often does not do as a result of cutting classes and roaming the halls, she can make progress toward her annual goals.<sup>36</sup> Overall, however, her progress cannot even be measured because she so frequently misses services.<sup>37</sup>
19. An IEP team meeting was held December 4, 2012, and the team discussed the Student's behavior and grades.<sup>38</sup> The meeting notes indicate an FBA and BIP were discussed, but there documents were not disclosed or offered into the record.<sup>39</sup>
20. Another IEP team meeting was held in March to discuss putting in place a BIP in order to get the Student focused on academics.<sup>40</sup> Her Spanish class was removed from her schedule in

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<sup>31</sup> R 12, P 6, P 9.

<sup>32</sup> P 7.

<sup>33</sup> P 7.

<sup>34</sup> P 8.

<sup>35</sup> P 6, P 7, P 8, P 9.

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

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

<sup>38</sup> R 9.

<sup>39</sup> R 9.

<sup>40</sup> T of P.

order to give her more time with the School Social Worker (J.M.).<sup>41</sup> The BIP was not proposed to the Petitioner in writing until April 12, 2013.<sup>42</sup>

21. The BIP, dated April 12, 2013, lists four behaviors expected in place of the unwanted behaviors: 1) refrain from being defiant towards authority figures in school and following directions when given; 2) refrain from disruptive behaviors in the classroom, such as using profanity, distracting others by talking, and getting out of her seat; 3) completing all class assignments given and staying on task in the classroom; and 4) remaining in the classroom and not leaving and roaming the halls.<sup>43</sup> The behavior interventions to be employed include: 1) Teachers will establish a specific set of rules and protocol in the classroom, making the Student aware of the rules and protocol, and the expectations and consequences, including loss of privileges if she does not comply; 2) Inappropriate behavior such as verbal aggression, profanity, physical aggression, leaving her seat, and distracting others, will result in redirection using verbal prompts, proximity control, and modeling appropriate behaviors by speaking in a calm tone, and encouraging positive and respectful behaviors, interactions, and communication with others; 4) Allow a short break from the classroom assignment when she is getting distracted, off task, restless, and feels overwhelmed, and she will use relaxation techniques, regroup, and return to the task after regaining her focus; 5) Providing verbal praise and feedback when appropriate behaviors are being demonstrated, with a log to be kept by teachers to remind the Student of improvement and positive behaviors demonstrated in class; 6) Periodic check-ins with the Student, individually, in class to ensure she is on task, understanding the lesson, and completing the assignment without calling her out in front of

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<sup>41</sup> T of P.

<sup>42</sup> R 13. (R 14 includes a note that an email with the BIP was sent on April 9, 2013. However, the BIP is dated April 12 and the email itself was not provided as evidence. Therefore, it is determined the BIP was not sent until at least the date on the BIP itself.)

<sup>43</sup> R 13.

her peers; 7) Student will attend and participate in counseling sessions to focus on improving her ability to express her feelings without becoming angry or frustrated and non-compliant, utilizing effective coping strategies; and 8) Encourage the Student to attend after school power hour to receive additional help with challenging subjects and assignments and to use a signature log to verify her voluntary attendance.<sup>44</sup> Rewards and reinforcements listed in the BIP are: 1) verbal praise and reinforcements for displaying appropriate behaviors, completing assignments, and remaining in class the entire period; 2) positive reports home to Parent via phone, notes, pay day reports, or progress reports; 3) implement classroom rewards, recognition, and privileges to ensure the Student's improvements are highlighted, recognized, and appreciated; and 4) permitting short breaks between tests and subtests when the Student demonstrates consistent on task and productive behaviors in the classroom.<sup>45</sup> Consequences listed in the BIP are: 1) A seat or location change and/or loss of prescribed privileges if the Student fails to respond to two verbal prompts; 2) Referral to social worker or grade level counselor for 1:1 intervention work on deescalating, problem solving, and using coping strategies if the Student's behavior escalates or she has difficulty with accepting previous consequences; 3) Notification of Parent, if the Student's behavior persists after warnings/redirection, location change, and loss of privileges; and 4) Referral to Dean's office for appropriate tiered consequences (detention, ISS, OSS) if the Student is unable to follow directions, refocus her attention, deescalate, or maintain control of her behavior despite previous interventions.<sup>46</sup>

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<sup>44</sup> R 13.

<sup>45</sup> R 13.

<sup>46</sup> R 13.

22. The Respondent offered no proposals to resolve the complaint at the March 29, 2013, resolution meeting.<sup>47</sup>
23. The Student now requires a full-time therapeutic special education day school, with classes of no more than ten to 12 students, to address both her functional and academic needs.<sup>48</sup>
24. On April 5, 2013, the Student was tentatively accepted at The \_\_\_\_\_ School.<sup>49</sup> The \_\_\_\_\_ School is a non-public therapeutic special education day school in Largo, Maryland.<sup>50</sup> The School primarily serves students with emotional disturbances.<sup>51</sup> The school is a very small setting, consisting of a single hallway, and it is difficult for students to “hide out” and not get to class.<sup>52</sup> Staff, such as social workers and an available psychiatrist, are available to work with students on an as-needed basis to ensure they are available for learning.<sup>53</sup> Therapy and other techniques are used to help students who are disrespectful find other ways to express their feelings, and suspension is used only for significantly aggressive behaviors.<sup>54</sup> Specialized instruction and supports would be provided to the Student if she attends The \_\_\_\_\_ School and she could receive a District of Columbia diploma.<sup>55</sup> The school is approved by the Office of the State Superintendent of Education (OSSE) and costs about \$40,000 annually.<sup>56</sup>

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<sup>47</sup> R 11.

<sup>48</sup> T of D.C.

<sup>49</sup> P 11.

<sup>50</sup> P 11, T of A.R.

<sup>51</sup> T of A.R.

<sup>52</sup> T of A.R.

<sup>53</sup> T of A.R.

<sup>54</sup> T of A.R.

<sup>55</sup> T of A.R.

<sup>56</sup> T of A.R.

## 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); Holdzclaw v. District of Columbia, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 34 C.F.R. § 300.516(c)(3).

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). In the District of Columbia all available information must be considered when making a determination about whether an IEP is reasonably calculated to provide education benefits. Suggs v. District of Columbia, 679 F. Supp. 2d 43, 51 (D.D.C.2010). "An IEP may not be reasonably calculated to provide benefits if, for example, a child's social behavior or academic performance has deteriorated under his current educational program, *see Reid v. District of Columbia*, 401 F.3d [516,] 519-20

[(D.C.Cir. 2005)]; the nature and effects of the child's disability have not been adequately monitored, *see Harris v. District of Columbia*, 561 F. Supp. 2d [63,] 68 [(D.D.C. 2008)]; or a particular service or environment not currently being offered to a child appears likely to resolve or at least ameliorate his educational difficulties. *See Gellert v. District of Columbia Public Schools*, 435 F. Supp. 2d 18, 25-27 (D.D.C. 2006).” *Suggs*, 679 F. Supp. 2d at 51-52. This line of reasoning is supported by the statute and regulations themselves. The IEP is a living document that, once initially created and consented to, it reviewed “periodically, but not less than annually, to determine whether the annual goals for the child are being achieved[.]” 34 C.F.R. § 300.324(b). The IEP must then be revised to address:

- (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
- (B) The results of any reevaluation conducted under § 300.303;
- (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
- (D) The child’s anticipated needs; or
- (E) Other matters.

34 C.F.R. § 300.324(b)(2)(ii). The IEP team must, for a “child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior[.]” 34 C.F.R. § 300.324(a)(2)(i).

3. The Student’s IEP lacked specific positive behavior interventions, or a BIP, until April 2013. Her behaviors became increasingly worse over the course of the 2012-2013 school year. While the Respondent argued that a BIP existed prior to April 2013, no BIP was offered into evidence and the IEP provided from October 2012 did not include a specific or separate BIP. Meetings were held in December and March and the BIP was not created until April 2013. It contained many components the evidence shows the Student required and also some non-positive behavior interventions that had already demonstrated to be non-effective. Specifically, it included the intervention of the school Dean and the application of the tiered

consequences (detention, in-school suspension, and out-of school suspension) for the behaviors the IEP were to address. Effectively, the BIP would employ individualized strategies up to a point and, if none of those worked, it would fall back on the systemic strategies that were already known to not work. Furthermore, preferred seating and multi-sensory instruction were not part of the IEP or the April BIP, even though the evidence the team had shows these things would have been likely to resolve or at least ameliorate her educational difficulties. Thus, even when the BIP was created and some positive behavior interventions and supports were proposed, it was not reasonably calculated to enable the Student to be involved in and make progress in the general education curriculum and address her behavioral needs stemming from her disabilities, denying the Student a FAPE.

4. The Student's placement was not in a small group setting, as the evidence the IEP team had showed, and the School Social Worker suspected, would be likely to resolve or at least ameliorate her educational difficulties. The result, combined with the lack of positive behavior interventions, was the loss of the Student's attention to her education in an environment where she was constantly distracted and engaged with peers who were a negative influence that helped prevent her from taking advantage of the services that were offered. Thus, her placement was not appropriate and she was denied a FAPE.
5. 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 v. District of Columbia, 770 F.Supp. 2d 270, 276 (D.C.C. 2011), *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).

6. The only reasonable expectation, based on the evidence in this case, of where the Student would have been but for the violations of IDEA in this case is that she would have passed all of her classes and earned credits toward graduation. The record is simply not clear on where her functional performance would have advanced. In order to compensate the Student appropriately, despite the lack of clear evidence, is to provide her with remediation over the summer to catch up on any missed credits from the current school year.
7. When considering prospective 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).

8. The Student will be placed at The \_\_\_\_\_ School because the Student requires a small group setting to help address her academic deficits and significant behavioral concerns, including preventing her from associating with peers at her current school who are effectively preventing her from making educational progress. She needs the small setting, structure, and therapeutic environment that The \_\_\_\_\_ School can provide, in addition to removing her from the chaotic environment of her current school. The reasonableness of the cost of The \_\_\_\_\_ School was not disputed and the school has been approved by the OSSE. Thus, it is an appropriate prospective placement that will enable the Student to receive a FAPE, including an opportunity for a diploma, going forward for the next year.

## **VII. DECISION**

The Respondent denied the Student a FAPE and an appropriate educational placement when it failed to provide appropriate behavioral supports and placement in a small group setting.

## **VIII. ORDER**

1. The Student will be placed at The \_\_\_\_\_ School effective no later than May 28, 2013.
2. The Student will remain at \_\_\_\_\_ School for the remainder of the current school year and for the 2013-2014 school year, unless the Respondent and Petitioner agree to another location or placement prior to the end of the 2013-2014 school year or the \_\_\_\_\_ School expels the Student (in which case a new location to provide the services will be determined by the Respondent, which is equivalent to the placement as \_\_\_\_\_ School).

3. If The \_\_\_\_\_ School has a summer program, the Student is required to attend, at public expense, to remediate to the extent possible any missing academic credits she failed to receive during the 2012-2013 school year. If The \_\_\_\_\_ School does not have a summer program that can provide such service, the Respondent will provide this service at another, comparable special education day school, public or private, and in no case at Senior High School, regardless of how small or structured the summer program or classes may be.

**IT IS SO ORDERED.**

Date: May 14, 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).