

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
810 First Street, NE, 2<sup>nd</sup> Floor, Washington, DC 20002  
(202) 698-3819 www.osse.dc.gov

OSSE  
Office of Dispute Resolution  
February 11, 2015

---

<b>Student,<sup>1</sup></b>	)	
	)	
<b>Petitioner,</b>	)	<b>Date Issued: February 10, 2015</b>
	)	
<b>v.</b>	)	
	)	
<b>District of Columbia Public Schools,</b>	)	
<b>Office of the State Superintendent of</b>	)	
<b>Education, and Department of Youth</b>	)	
<b>Rehabilitation Services,</b>	)	
	)	
	)	
<b>Respondents.</b>	)	<b>Hearing Officer: Michael Lazan</b>

---

**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving a \_\_\_\_\_ student who is eligible for services as a student with emotional disturbance. \_\_\_\_\_ .

A Due Process Complaint (“Complaint”) was filed on November 13, 2014 naming three Respondents, Respondent District of Columbia Public Schools (“DCPS”), Respondent Office of the State Superintendent of Education (“OSSE”), and Respondent Department of Youth Rehabilitation Services (“DYRS”). The claims were brought pursuant to the Individuals with Disabilities Education Act. On November 24, 2014, Respondent DCPS filed District of Columbia Public School’s Response to the Due Process Complaint. On November 24, 2014, Respondent OSSE and Respondent DYRS

---

<sup>1</sup> Personally identifiable information is attached as Appendix A.

filed Office of the State Superintendent of Education’s Response to the Petitioner’s Complaint and Department of Youth Rehabilitation Services Response to the Petitioner’s Complaint. A resolution meeting was held on December 4, 2014. The resolution period expired on December 13, 2014.

## **II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30. There is no objection to the hearing officer’s jurisdiction in this case. DYRS is a “public agency” that may be subject to an IDA Due Process Complaint. 34 C.F.R. Sects. 507, 508.

## **III. Procedural History**

On November 17, 2014, Respondent OSSE filed Office of the State Superintendent of Education Motion for a Continuance. This motion sought to align OSSE’s timelines with the timelines of Respondent DCPS. There was no opposition from Petitioner, Respondent DCPS, or Respondent DYRS. An Interim Order on Continuance Motion was signed by Chief Hearing Officer Virginia Dietrich on December 4, 2014.

On November 21, 2014, Respondent DYRS filed Department of Youth Rehabilitation Services Motion for a Continuance. This was to align its timelines with the timelines of Respondent DCPS. During the prehearing conference on December 16, 2014, all of the parties agreed that Respondent DYRS would be treated as an LEA for

timelines purposes. This motion was therefore withdrawn, as memorialized in the Prehearing Order.

On December 16, 2014, and again on January 7, 2015, this Hearing Officer held a prehearing conference.

Petitioner withdrew claims against Respondent DCPS on January 7, 2015 with the document Notice of Withdrawal of Due Process Complaint as to District of Columbia Public Schools Only. There was no opposition from the remaining parties. An Order on Withdrawal With Prejudice was issued on January 12, 2015.

On January 8, 2015, a Prehearing Order was issued. On January 14, 2015, Petitioner's Exceptions and Objections to the January 8, 2015 Prehearing Order were filed. A Revised Prehearing Order was filed on January 15, 2015.

On January 7, 2015, Petitioner filed a Motion to Request the Issuance of Notices to Appear for four witnesses who are employed by OSSE. On January 8, 2015, OSSE's Motion to Oppose Petitioner's Request for Notices to Appear was filed. Chief Hearing Officer Virginia Dietrich issued Order on Petitioner's Motion to Request the Issuance of Notices to Appear on January 15, 2015 granting the Notice to Appear for two witnesses, denying it for a third witness, and holding the decision in abeyance on the fourth witness.

Respondent OSSE filed Office of the State Superintendent of Education's Motion to Dismiss Petitioner's Complaint on January 8, 2015. On January 14, 2014, Petitioner filed Petitioner's Opposition to OSSE's Motion to Dismiss Petitioner's Complaint. On

January 22, 2015, Petitioner then filed Petitioner's Notice of Withdrawal of Due Process Complaint as to Respondent Office of the State Superintendent of Education Only.

There was no objection to this withdrawal from the remaining parties. This Hearing Officer was advised of the pending withdrawal by email just prior to the first hearing date on January 16, 2015. An Order on Withdrawal was filed on January 26, 2015 with respect to Respondent OSSE.

Hearing dates followed on January 16, 2015, and January 20, 2015. This was a closed proceeding.

Respondent OSSE did not appear since a withdrawal was forthcoming with respect to OSSE. Petitioner moved to enter into evidence exhibits 1-56. Respondent DYRS objected to any exhibits that relate to the State Complaint filed by Petitioner. These objections were overruled. Exhibits 1-56 were admitted. Respondent DYRS offered Exhibits 1-6. There were no objections to Respondent's exhibits. Exhibits 1-6 were admitted.

On January 22, 2015, Petitioner filed Petitioner's Motion for Continuance of Due Process Timeline. There was no opposition. This motion was granted by Chief Hearing Officer Dietrich's Interim Order on Continuance Motion on January 26, 2015.

After the hearings, the parties submitted briefs. Petitioner filed Petitioner's Closing Statement on February 2, 2015. Respondent filed Respondent's Closing Statement also on February 2, 2015.

Petitioner presented as witnesses: Petitioner; Witness A, Director of the X Program at School D (Expert: Special Education, Curriculum and Development for

Special Education students, and special education instruction and programming); and Witness B, President of Organization A (expert: transition planning for students with special needs). Respondent presented: Witness C, Principal of School A; and Witness D, a Special Education Coordinator.

#### **IV. Credibility**

I found all the witnesses at least partly credible in this proceeding. The Student was credible in some respects, but I found it hard to believe the Student's statement that he had no input into the transition plan in the November, 2012 IEP. The transition plan referred to schools that Petitioner had a direct connection to. The other members of the team were not likely to have come up with such schools on their own. Moreover, I did not believe Petitioner when he said that he did not receive any transition services. In fact, a document in the record makes clear that Petitioner did attend a Transitions class at School A. I found no material inconsistencies regarding any other witness.

#### **V. Issues**

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the remaining issues to be determined are as follows:

1. While at School A from August, 2012 through June, 2013, while the Student was committed, did DYRS failed to develop an inappropriate IEP, with inappropriate goals and an inadequate transition plan?
2. While at School A from August, 2012 through June, 2013, while the Student was committed, did DYRS fail to implement the Student's IEP by failing to provide sufficient special education hours?

As relief, Petitioner seeks tuition at School D's X Program for 2015-2016; Tuition for an Internship Program in Music and Related Associated Fees; Placement in a Post-Secondary Education Program (including but not limited to vocational training or

apprenticeship programs); Transportation and Child Care Costs Incurred During Receipt of Compensatory Education Services; and an Independent Educational Evaluation in Transition/Vocation.

## **VI. Findings of Fact**

1. The Student is determined to be eligible for services as a student with an emotional disturbance. (R-1-1)
2. The Student has a difficult family history,
3. The Student has been in correctional facilities himself. (Testimony of Petitioner)
4. The Student has been held back from school several times. (Testimony of Witness B)
5. He is diagnosed with Mood Disorder NOS. (P-16-8)
6. He has inadequate basic skills in math. (R-1-4)
7. His writing tends to be vague, disorganized, and irrelevant to the subject at hand. (R-1-7)
8. He needs to improve his passage comprehension, though his reading fluency is strong. (R-1-6)
9. The Student has issues with frustration tolerance, is easily distracted, is impulsive, and can be confrontational. (R-1-1-14)

10. He needs frequent re-teaching of material and one-on-one “check-ins.” (R-1-1-14)

11. He should not be in a class with non-disabled peers. (Testimony of Witness A)

12. He needs a lot of breaks, does better with a small class size, and requires a flexible schedule. (Testimony of Petitioner)

13. An IEP was written for the Student on November 14, 2011 (“the November, 2011 IEP”). This IEP recommended three goals in math, three goals in writing, and three goals in emotional, social and behavioral development. The IEP called for 26.5 hours of specialized instruction outside general education and one hour per week of behavioral support services. (P-25-1-6)

14. The Post-Secondary Transition Plan for this IEP indicates that the Student is interested in computer classes and contains goals related thereto. There are limited transition services on this IEP, including two hours per year of guidance counseling, one hour per year of completing a career assessment, and three hours per year of life skills training. (P-25-10-13)

15. For the 2011-2012 school year, the Student attended School B and School C, which is located in a detention center. (R-3-1; Testimony of Petitioner)

16. There was “significant” improvement in the Student during the 2012 school year. Previously, he had refused to participate, was extremely rude to staff, and would sleep in class. He worked diligently on these issues and developed a goal-oriented approach during the year. (R-1-9; Testimony of Petitioner)

17. The Student did better in School B than he had done elsewhere. In a public high school in 2009-2010 he received straight F grades, and straight D grades at a non-public school in 2010-2011. (R-3-1)

18. At School B, he received a B grade in U.S. History, and no D or F grades. (R-3-1)

19. For the 2012-2013 school year, the Student was committed. He attended school at School A, which is located in a detention center.

20. Respondent DYRS is responsible for ensuring that a FAPE is available at School A. (Testimony of Witness C)

21. There are about sixty students in the school. There is a class size of ten, with at least four adults in the classroom.

22. At School A, the Student received instruction in classes such as Artisanry, English, Physical Education, Writing, United States History, Geometry, and Environmental Science, and Transitions. (R-2, R-3)

23. Many teachers are dually certified in special education and general education. (Testimony of Witness C)

24. There are varying grade and academic levels in the classroom, and much of the work is differentiated. (Testimony of Witness C)

25. Psychological testing in October, 2012, on the Woodcock-Johnson III Normative Update Tests of Achievement, found the Student read at the 8.0 grade equivalent in broad reading, and at the 5.4 grade level equivalent in broad math. (R-6-2)

26. An IEP meeting was held on November 8, 2012. The IEP team for the meeting on November 8, 2012 included the Student's English and Social Studies teachers. (R-1-2)

27. For the IEP meeting, teacher reports were reviewed and testing was reviewed. The Post-Secondary Transition Plan was based on student input. (Testimony of Witness D)

28. The IEP ("the November 2012 IEP") included five goals in math, two goals in reading, three goals in written expression, five goals in emotional, social and behavioral development. It called for 26.50 hours of specialized instruction outside of general education with 1 hour per week of behavioral support services. The IEP provided for a location with minimal distractions, preferential seating, small group testing, flexible scheduling, breaks between subtests, and breaks during a subtest. (R-1-1-14)

29. Most of the goals in the IEP are very similar to the goals in the November, 2011 IEP. Some of the goals are exactly the same. (R-1, P-25)

30. This IEP's Post-Secondary Transition Plan is based on Career Cluster Interest Survey and an Assessment called "I am Determined: Understanding My IEP." It states that the Student is interested in pursuing music as a career and would like to look into college at Virginia Union and Virginia State University. He was recommended for guidance counseling one hour per month, and a Transitions class for 70 hours per year. Goals include researching colleges, studying for and preparing for the SATs, researching careers in music, and creating a portfolio including his resume and a cover letter. Other goals relate to budgeting and researching the relative costs of living in the DC area. (R-1-15-18)

31. The Career Cluster Interest Survey is geared to Students who are early in the transition process. The “I am Determined: Understanding My IEP” assessment is not a true vocational assessment. (Testimony of Witness B)

32. The School was not able to implement the Student’s specialized instruction hours because it provides instruction in the general education setting. (Testimony of Witness C)

33. The Student’s grades at School A were mostly D, with a C- in U.S. History and an F in Geometry. (R-3-1)

34. While at the school, he experienced attentional issues. There was always “something going on” in the classroom, and the teachers did not provide enough assistance to him. (Testimony of Petitioner)

35. He went to class with his entire “housing unit” which consisted of other individuals who were older and younger than him. (Testimony of Petitioner)

36. About 40 to 50 percent of the students in the classroom required IEPs. (Testimony of Petitioner; Testimony of Witness D)

37. The Student did not get preferential seating, a location with minimal distractions, small group testing, or a flexible schedule at School A. (Testimony of Petitioner)

38. The Student did progress in English instruction at School A prior to the writing of the November, 2012 IEP. He completed his work and put forth a sincere effort. (R-1-6-7)

## **VII. 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:

The burden of proof in a special education due process hearing lies with the party seeking relief. 5 DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or "FAPE"). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Schaffer v. Weast, 546 U.S. 49, 51 (2005).

Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005).

In this connection, the question is whether the IEP was appropriately designed at the time of creation so as to convey a meaningful benefit. S.S. ex rel. Shank v. Howard Road Academy, 585 F.Supp.2d 56, 66 (D.D.C. 2008)(warning against "Monday Morning Quarterbacking," i.e. reviewing IEPs based on prospective evidence).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the

decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. 34 CFR Sect. 300.513(a).

Petitioner claimed that the November, 2012 IEP did not provide appropriate goals, and did not provide an appropriate transition plan and transition services.

Petitioner also contended that this IEP was not properly implemented.

A. Goals.

Petitioner's argument is that the goals are inappropriate and outdated. Petitioner contended the goals did not change from year to year, and were accordingly not developed with any reference to the Student's current levels.

Pursuant to the IDEA, each IEP developed for a child with a disability must include a statement of measurable annual goals, including academic and functional goals designed to "(m)eeet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and "(m)eeet each of the child's other educational needs that result from the child's disability." 34 CFR Sect. 300.320 (a)(2).

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. Letter to Butler, 213 IDLR 118 (OSERS 1988). The description of annual goals should be specific enough to allow the district to determine whether the student made progress and also make clear which specific skills will be required in order to achieve those goals. 64 Fed. Reg. 12,471 (1999); D.S. and A.S. v. Bayonne Bd. of Educ., 54 IDELR 141 (3d Cir. 2010).

An IEP that lacks meaningful educational goals is likely to be fatally defective. See, e.g., Susquenita Sch. Dist. v. Raelle S., 25 IDELR 120 (M.D. Pa. 1996) (parents were entitled to two years' reimbursement at a private school because the student's IEP lacked meaningful educational goals and, as a result, also lacked adequate short-term objectives, criteria for measuring progress, and adequate programming or services to address the student's identified problem areas).

Petitioner is correct that the Student's annual goals did not change very much from November, 2011 to November, 2012. Three of the math goals are slightly rewritten, but are in substance the same as the goals in the November, 2011 IEP. For instance, the November, 2011 IEP has a goal that says: "(g)iven 5 math assignments each week, [the Student] will check his work for errors and revise his answers accordingly on at least 3 of his assignments on a weekly basis." For the November, 2012 IEP, this was changed to "(o)n basic skills and independent practice in Math, [the Student] will check his work for errors and revise his answers accordingly on at least 5 of his assignments on a weekly basis." Math Goal 2 is exactly the same in both IEPs. Math Goal 3 is almost exactly the same, albeit with a different requirement for accuracy, 80 percent instead of 70 percent.

Reading goals are similarly copied. There are three goals in the November, 2011 IEP, and two goals in the November, 2012 IEP. One goal, relating to reading and interpreting a text on grade level, is identical in both IEPs. A second goal, relating to identifying and defining new words and terms on grade level text, is substantively the same on both IEPs.

Written Expression goals are similarly taken from the prior IEP. For instance, the November, 2012 IEP has writing goals that relate to organizing information, writing a response to a prompt, and completing adequate research. These same subjects, with very similar language, are covered in the 2011 IEP.

Finally, the 2012 IEP has Emotional, Social and Behavioral goals relating to accepting direction, learning strategies to use when faced with situations that include frustration, anger and perceived disrespect, identifying ways to improve communication and trust, arriving at class with all materials, and managing conflicts. Except for the goal relating to arriving at class with all materials, these are all goals directly from the 2011 IEP.

Respondent's position is that the goals were appropriately similar because the IEP team concluded that he still had not mastered relevant skills. I cannot agree with this position. The 2012 IEP indicates that the Student made progress during the previous school year, suggesting that the goals should have changed more than they did. While the Student may not have progressed much in math, there was significant improvement in the Student during the 2012 school year. Previously, he had refused to participate, was extremely rude to staff, and would sleep in class. He worked diligently on these issues and developed a goal-oriented approach during the year. It is reasonable to deduce, and I so find, that the goals in the 2012 IEP should have been more detailed and more connected to the Student's present level of performance, particularly in Emotional, Social and Behavioral Development, in Reading, and in Writing.

B. Transition Plan/Services.

Petitioner also contends that the Student's transition plan, and transition services, are defective, pointing to the testimony of Witness B. Petitioner contended that the transition plan is not based on a comprehensive assessment, did not contain outcome-based goals, did not contain appropriate short-term and long-term goals, did not include an appropriate course of study, and did not include services in all areas such as mock interviews.

Beginning when the Student is 16, or younger if determined to be appropriate by the IEP team, the IEP must include appropriate measurable post-secondary goals based upon appropriate transition assessments relating to training, education, employment, and where appropriate independent living skills. 34 CFR Sect. 300.320(b); see 20 U.S.C. Sect. 1414(d)(1)(A)(i)(VII).

Transition Services are defined as “a coordinated set of activities for a child with a disability” that is a “results oriented process” that is “based on the individual child’s needs.” 34 CFR Sect. 300.43. The focus of transition services is to “improve the academic and functional achievement of a child with a disability, to facilitate the child’s movement from school to post-school activities.” Id. Services must be “based on an individual child’s needs, taking into account the child’s strengths, preferences and interests” and includes instruction, related services, community experiences, employment and other post-school adult living objectives, and “if appropriate” acquisition of daily living skills and provision of a functional vocational evaluation. Id.; see also 71 Fed. Reg. 46579 (2006)(definition of transition services is written broadly).

As stated by a federal court:

Congress in the IDEA placed "added emphasis on transition services so that special education students leave the system ready to be full

productive citizens, whether they choose to go on to college or a job." 150 Cong. Rec. S11653-01, S11656 (Nov. 19, 2004) (Conf. Rep. accompanying H.R. 1350) (Statement of Sen. Dodd). Among its many changes, the IDEIA is supposed to "enhance[ ] planning and transition services for children with disabilities," *id.* at S11655 (statement of Sen. Reed), and "significantly improve[ ] transition services to ensure that students with disabilities are prepared for postsecondary education or employment." *Id.* at S11659 (statement of Sen. Bingaman).

Carrie I. v. Department of Educ., 869 F. Supp.2d 1225 (D. Haw. 2012)(while noting that a violation of transition services rules is a procedural violation, where a transition services plan was “essentially nonexistent,” FAPE denial resulted).

Witness B credibly testified that the Post-Secondary Transition Plan (“Transition Plan”) is not based on a sufficient assessment. Witness B testified that the assessment used, the Career Clusters Interest Survey, is for students who are earlier in the process of transitioning to life outside of school. She also testified that “I am Determined: Understanding My IEP” is not a true vocational assessment. There was no testimony or evidence offered to rebut these contentions, which I credit.

Petitioner also argues that the Transition Plan lacked a Course of Study. The IEP itself defines Course of Study as “(a) long range educational plan or multi-year description of the educational program that directly relates to the student’s anticipated post-school goals, preferences and interests.” The plan then goes on to explain the Student’s course of study would be “to continue his classes in high school in order to receive a diploma.” This statement could apply to virtually any student and has little meaning in this context. I agree with Petitioner that the Transition Plan lacked a Course of Study.

Petitioner also contends that the Transition Plan did not include services in all areas. The Transition Plan does provide a Transitions class, which runs for 70 hours a

year. However, this class is listed in connection to “Transition Services for Independent Living” and is in a different section entirely than the section calling for a “Coordinated Set of Activities for Employment.” There are no services that could be characterized as employment “activities” in the November 2012 IEP. I agree that the transition plan does not provide anything to actually develop the Student’s vocational skills in the way of internships or specific programs except for one hour per month of guidance counseling on vocational education programs.

Petitioner’s other contentions relating to the Transition Plan are less meritorious. Petitioner points out that the goals are not outcome-based and are vague and meaningless. Petitioner points to the Long Range Goal of “researching careers involving music” in this regard. Petitioner is correct that the corresponding short range goal of “researching careers involving music” (in addition to identifying internships or other learning opportunities), is redundant and poorly drafted. Most other goals, however, do in fact have reasonably defined outcomes that are meaningful, such as the goal relating to being able to prepare a budget, or the goal relating to creating a portfolio that includes a resume and cover letter. On the whole, Petitioner is correct that the goals could be better drafted. However, I find that most of the Transition Plan goals in the IEP are in fact outcome-based.

Petitioner also argues that the Transition Plan goals do not contain baseline data. However, there is no requirement that goals contain baseline data. Goals must be measurable, but baseline data is not necessarily required for a goal to be measurable. Petitioner provides no authority to support his position on this point.

Petitioner also argues that there should be a goal on how to live in a residential setting. While I agree this would be an appropriate goal for this Student, I do not agree that every single possible goal must necessarily be included in a transition plan. Moreover, there is no testimony or evidence in the record to establish this as a need for the Student.

On balance, I agree with Petitioner that the Transition Plan in the IEP is defective, and I so find.

C. Failure To Implement.

Districts may be held liable on a "failure to implement" theory. "Failure to implement" claims are actionable if the school district cannot materially implement an IEP. A party alleging such a claim must show more than a de minimis failure, and must indicate that substantial or significant portions of the IEP could not be implemented. Savoy v. District of Columbia, 2012 WL 548173 (D.D.C. 2012)(holding no failure to implement where District's school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn ex rel Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9<sup>th</sup> Cir. 2007).

This is a clear case of a failure to implement. The IEP calls for 26.5 hours of specialized instruction outside the general education setting. The Student, however, received zero hours of specialized instruction outside the general education setting. The Student was instead placed in a general education, inclusion style classroom with other students who were above his level. He accordingly did poorly, with mostly D grades, and an F in Geometry. While the IEP does suggest that the Student was attentive in reading and writing at the time, there is nothing in the record to establish that the Student made

any progress in math. While I do not believe the Student's assertion that he learned nothing at the school, especially in view of some of the inconsistencies in his presentation, I do conclude that the Student required – at the very least -- the special education hours that the IEP called for.

Petitioner also contends that the transition plan in the IEP was not implemented. However, in his brief, Petitioner does not explain how the transition plan in the IEP was not implemented. Petitioner's contention is also undercut by his assertion that he did not receive any transition services even though he did receive a D grade in Transitions class. Petitioner has not shown that the Post-Secondary Transition Plan was not implemented at School A.

In sum, I find that the significant defects in the goals, the defects in the Transition Plan, and the failure to implement the special education hours outside of general education must lead to the conclusion that the November, 2012 IEP was not reasonably calculated and that Respondent DYRS denied the Student a FAPE while the Student was at School A.

### **VIII. Relief**

As a remedy, Petitioner asserts that appropriate relief in this matter is to order placement at School D for 2015-2016, compensatory education including an Internship Program in Music and Related Associated Fees, Placement in a Post-secondary Education Program, an Independent Vocational Assessment in transition/vocation, and transportation and child care costs.

When school districts deny Students a FAPE, courts have wide discretion to insure that students receive a FAPE going forward. As the Supreme Court stated:

The statute directs the court to “grant such relief as [it] determines is appropriate.” The ordinary meaning of these words confer broad discretion on the court. The type of relief is not further specified, except that it must be “appropriate.” Absent other reference, the only possible interpretation is that the relief is to be “appropriate” in light of the purpose of the Act. As already noted, this is principally to provide handicapped children with “a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.

School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985).

In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the Circuit laid forth rules for determining when it is appropriate for IHOs to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The Circuit then explained that such relief “must be tailored” to meet a student’s “unique needs.” Id. At 11-12 (citing to Florence County School Dist. v. Carter, 510 U.S. 7, 16 (1993)). To inform this individualized assessment, courts must consider “all relevant factors” including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

Branham, however, contemplates the situation where a Student is being placed into a school in order for the Student to get a FAPE in the immediate future. The Student is already at School D. Petitioner presents no authority, and I am aware of no authority, for a hearing officer to order relief pursuant to Branham where the request is to

fund a school in the future. To this IHO, this sort of relief must be provided through a compensatory education theory.

Compensatory education is one of the equitable remedies available to a hearing officer. Under the theory of compensatory education, courts and hearing officers may award “educational services to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, 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. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a "'qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student'").

A Petitioner need not "have a perfect case" to be entitled to a compensatory education award." Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011) Under the IDEA, if a Student is denied a FAPE, a hearing officer may not “simply refuse” to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010) Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

As compensatory education, Petitioner seeks, again, tuition at School D’s X Program for 2015-2016. Petitioner also seeks Tuition for an Internship Program in Music and Related Associated Fees, Placement in a Post-Secondary Education Program (including but not limited to vocational training or apprenticeship programs), and

Transportation and Child Care Costs Incurred During Receipt of Compensatory Education Services.

There are very few cases supporting the notion that compensatory education can consist of placement at a non-public school in the future. Almost all compensatory education cases decided by federal courts involves awards for services. An important exception is Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1287-88 (11th Cir. 2008), where the 11<sup>th</sup> Circuit awarded multiple years of tuition at a private school on a compensatory education theory. In Draper, the Court was clearly reacting to an unusually poor performance by the Atlanta school district. The Student had been misdiagnosed by the school district for five years through an evaluation that was “spectacularly deficient.” The Court found that “(t)he persistent refusal of the School System to acknowledge the substantial evidence of its misdiagnosis borders on incredible.”

Those facts do not exist here. While the IEP was deficient, and while School A did not implement portions of the IEP that were appropriate, the record indicates that this school – which is located in a correctional facility – did provide the Student with some services. The Student did have a special education teacher in the classroom, and the IEP indicates that the Student was doing his work in reading and writing. Moreover, in Petitioner’s sixteen page brief, there is no genuine application of the applicable standards for compensatory education in the District of Columbia. Petitioner states that Respondent DYRS’s conduct was “deplorable,” but fails to attempt to explain how a full year of school is appropriate to make up the FAPE deprivation here. Petitioner also does not provide any caselaw to support such a large award under these facts. Under the

circumstances, to this IHO, an award of full tuition at School D is excessive and contrary to Reid.

However, an academic award is appropriate under the circumstances. Since Petitioner has not fashioned an alternate academic award, it is incumbent upon me to fashion such an award as a hearing officer. I will therefore award Petitioner with 100 hours of specialized instruction, individually, with a certified special education teacher.

In connection to Petitioner's other compensatory education requests, I find them to be reasonable and appropriate. The request for an internship in the music field, and the request for placement in a "Post-Secondary Education Program (including but not limited to vocational training or apprenticeship)," are appropriate ways to compensate for a defective Post-Secondary Transition Plan. Since it is unclear what is meant by a "Post-Secondary Education Program," I will limit the relief to a vocational training program or apprenticeship. As requested by Petitioner, a new assessment to determine the Student's vocational goals is appropriate in view of Witness B's testimony that the Career Clusters Interest Survey is only appropriate for students who are early in the process.

Finally, I agree that transportation costs should be provided to and from all compensatory education services, though there is nothing in the record that might suggest the need for reimbursement for child care costs.

#### **X. Order**

As a result of the foregoing, I hereby order the following:

1. The Student is hereby awarded one hundred hours of individualized tutoring in math, reading and/or writing, to be provided by a certified special education teacher;

2. The Student's IEP shall be revised to include appropriately detailed and measurable goals and an appropriate detailed Post-Secondary Transition Plan;
3. The Student's Post-Secondary Transition Plan shall be based on an independent comprehensive transition/vocational assessment, to be funded by Respondent DYRS. The provider rates for this plan shall be usual and customary rates in the community;
4. Respondent DYRS will arrange for the Student's internship in the music field. This internship shall provide the Student with at least 30 hours of experience in a organization that provides music or musical services to the community;
5. Respondent DYRS will arrange for the Student to attend a program of vocational training or an apprenticeship. This program shall include at least 30 hours of training or apprenticeship. Such vocational training or apprenticeship shall be in a field where Petitioner has expressed interest;
6. Respondent DYRS shall pay for transportation to and from all tutoring services, internships, and training programs;
7. Petitioner's other requests for relief are hereby denied.

Dated: February 10, 2015

*Michael Lazan*  
Impartial Hearing Officer

## **X. Notice of Appeal Rights**

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 final Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: February 10, 2015

*Michael Lazan*  
Impartial Hearing Officer