

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

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PETITIONER,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: May 8, 2015

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Office of Dispute Resolution,  
Washington, D.C.

Respondent.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (DCMR). In her Due Process Complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by the failure of Respondent District of Columbia Public Schools (DCPS) to fully implement his Individualized Education Program (IEP) and by DCPS' failure to revise Student's IEP based upon his lack of academic progress.

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Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on February 24, 2015, named DCPS as Respondent. The parties met for a resolution session on March 18, 2015 and did not reach an agreement. On April 2, 2015, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters. The 45-day period for issuance of this decision began on March 26, 2015.

The due process hearing was held before this Impartial Hearing Officer on April 30, 2015 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Counsel for Petitioner made an opening statement. Petitioner testified and called Student, EDUCATIONAL ADVOCATE, SCHOOL PSYCHOLOGIST, and PRIVATE TUTOR as witnesses. DCPS called ASSISTANT PRINCIPAL as its only witness. Petitioner's Exhibits P-1 through P-33 were admitted into evidence, with the exception of Exhibit P-29 which was withdrawn. Exhibits P-25 and P-27 were admitted over DCPS' objections. DCPS' Exhibits R-1 through R-41 were admitted into evidence without objection. Counsel for both parties made closing arguments. Neither party requested leave to file a post-hearing memorandum.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

## **ISSUES AND RELIEF SOUGHT**

The following issues for determination were certified in the April 2, 2015

Prehearing Order:

– Whether DCPS has denied the student a FAPE by failing to implement his May 6, 2014 IEP during the 2014-2015 school year, in that his instruction has been provided mostly in a general education setting and because CITY HIGH SCHOOL has not provided the hours of specialized instruction, inside or outside of general education, taught by appropriately certified teachers, as specified in his IEP; and

– Whether DCPS denied the student a free appropriate public education (FAPE) when it failed to review and revise the student's May 6, 2014 IEP by January 23, 2015 to address the student's lack of expected progress in the general education curriculum and to provide him with enough specialized instruction outside of the general education setting and by failing to provide him with an appropriate placement that can implement his IEP.

For relief, Petitioner requests that the Hearing Officer order DCPS to review and revise Student's IEP and increase his specialized instruction services to full time or close to full time, and to identify an appropriate placement to implement the IEP. The Petitioner also requests an award of compensatory education to compensate Student for the denials of FAPE alleged in the complaint.

## **FINDINGS OF FACT**

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

1. Student, an AGE youth, resides with Mother in the District of Columbia. Testimony of Mother. Student is a "child with a disability" as defined by the IDEA and is eligible for special education and related services under the primary disability classification Specific Learning Disability (SLD). Exhibit R-27.

2. Student is currently enrolled in GRADE at City High School. For the 2012-2013 and 2013-2014 school years, Student was enrolled in PUBLIC CHARTER

SCHOOL. Testimony of Mother, Exhibit R-9.

3. Prior to enrolling at City High School, Student's IEP was last revised on May 6, 2014 at Public Charter School. The May 6, 2014 IEP included Present Levels of Performance and Annual Goals for Mathematics, Reading, Written Expression, Communication/Speech and Language, and Emotional, Social and Behavioral Development. For Special Education and Related Services, the IEP provided 12 hours per week of specialized instruction in the general education setting and 8 hours per week outside general education, divided equally between Reading and Mathematics. The IEP also provided 240 minutes per month of Speech-Language Pathology and 240 minutes per month of Behavioral Support Services. Exhibit R-5. The parent moved Student from Public Charter School to City High School for the 2014-2015 school year because Public Charter School was not able to implement the specialized instruction hours in Student's May 6, 2014 IEP. Testimony of Mother.

4. On February 26, 2014, Petitioner filed a prior due process complaint concerning Student. In that complaint, she alleged, *inter alia*, that Student's prior, May 21, 2013, IEP was inappropriate because it did not provide full time, out of general education services and it provided reduced speech-language services and because Public Charter School failed to fully implement the May 21, 2013 IEP. Following a due process hearing on April 30, 2014, Hearing Officer Coles B. Ruff determined that Petitioner did not prove that the May 21, 2013 IEP was inappropriate, but that Petitioner had proven that Public Charter School did not fully implement the IEP because Student was not provided out of general education specialized Instruction. In his May 12, 2014 Hearing Officer Determination (the May 12, 2014 HOD), Hearing Officer Ruff ordered, *inter alia*, that DCPS provide Student, as compensatory education, 30 hours of independent

tutoring and 15 hours of independent counseling or mentoring. Exhibit R-35.

5. Private Tutor provided Student the compensatory education tutoring services awarded in the May 12, 2014 HOD. The parent decided that Student did not need compensatory education counseling or mentoring. She reached an agreement with DCPS that in lieu of providing independent counseling or tutoring, DCPS would provide Student a laptop computer or up to \$700 in goods or services, including assistive technologies or transition services. Testimony of Mother, Exhibit R-40. On September 15, 2014, Mother received the offered laptop computer from DCPS. Testimony of Mother, Exhibit R-40.

6. In the 2014-2015 school year, Student has been provided the cumulative 20 hours per week of specialized instruction specified in the May 6, 2014 IEP in inclusion classes. Testimony of Assistant Principal, Exhibit R-1.

7. From the beginning of the 2014-2015 school year, Student did not receive regular outside of general education specialized instruction at City High School. Testimony of Mother, Testimony of Student, Exhibits R-24, R-1, R-16, Assistant Principal testified that SPECIAL EDUCATION TEACHER 2 probably pulled Student out of the general education English class for 40-50 percent of the class periods. Based upon the testimony of Student and Mother, and the above-listed DCPS exhibits, I did not find this testimony of Assistant Principal to be credible.

8. On November 14, 2014, an IEP 30-day review meeting for Student was convened at City High School. At that meeting, Mother and Educational Advocate expressed concern about Student's grades and that he was receiving all of his specialized instruction in the general education setting. Educational Advocate requested that City High School begin implementing outside general education specialized instruction as

required by his IEP. Testimony of Educational Advocate, Exhibit R-16.

9. At the time of the November 14, 2014 IEP meeting, Student's grades were poor – including F's in Physics and U.S. Government. Exhibit P-8.

10. Student's schedule at City High School was changed on March 18, 2015. He was removed from his general education physics and advisory classes and placed in special education pull-out classes for math and reading. Exhibit R-24.

11. In the pull-out classes, Student cannot receive Carnegie Unit credits toward his high school diploma because the pull-out classes are not taught by teachers certified in the core subject content areas. *See* 5E DCMR § 2203.2. This is because City High School does not have the manpower to staff the pull-out classes with content area certified teachers. At the March 18, 2015 meeting, Assistant Principal told Mother that moving Student to pull-out classes may delay his high school graduation because the credits he would earn in the pull-out classes would not apply to DCPS regular high school diploma requirements. Testimony of Assistant Principal, Exhibit R-1.

12. Student's grades for the second term at City High School, which ended January 23, 2015, were LL General Exploration F, English D+, U.S. History D, Developmental Reading F, Algebra/Trigonometry F, Journalism C, Principles of U.S. Government F, and Spanish C. Exhibit P-22.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and the argument of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

### Burden of Proof

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

### Analysis

1. Did DCPS deny Student a FAPE by failing to implement his May 6, 2014 IEP during the 2014-2015 school year, in that his instruction has been provided mostly in a general education setting and because City High School has not provided the hours of specialized instruction, inside or outside of general education, taught by appropriately certified teachers, as specified in his IEP?

The May 6, 2014 IEP provided that Student would receive a total of 20 hours per week of specialized instruction, including 8 hours per week outside general education. Petitioner contends that DCPS failed to implement the IEP because, until City High School changed Student's class schedule in March 2015, all of the Student's specialized instruction was provided in the inclusion, general education, setting. Although DCPS' witness testified that a portion of Student's specialized instruction was provided outside general education, I have found that the preponderance of the evidence establishes that until March 2015, Student regularly received his specialized instruction only in the regular education classroom.

Counsel for DCPS argued that one-on-one and small group instruction provided by the special education teacher in the regular classroom should be counted as services provided "outside general education." This argument is unpersuasive. Instruction using supplemental aids and services in regular classes is considered instruction in the general education setting. *Cf.* 5E DCMR § 2011.1(b) ("Special classes, separate schooling, or

other removal of children with disabilities from the regular educational environment occurs only when 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.” *Id.*)

The standard for failure-to-implement claims, used by the courts in this jurisdiction, was formulated by the Fifth Circuit Court of Appeals in *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir.2000). This standard requires that a petitioner “must show more than a *de minimis* failure to implement all elements of [the student’s] IEP, and instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP” in order to prevail on a failure-to-implement claim. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 (Aug. 27, 2013) (quoting *Bobby R.*, 200 F.3d at 349). Courts applying this standard have focused on the proportion of services mandated to those actually provided, and the goal and import, as articulated in the IEP, of the specific service that was withheld. *Id.*

Under the IDEA, placement decisions for children with disabilities must be made on an individual basis, based on the unique needs of each child, by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. *See* 34 CFR § 300.116(a)(1). To the maximum extent appropriate, children with disabilities must be educated with children who are nondisabled; and special classes or other removal of children with disabilities from the regular educational environment occurs 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. *See e.g., Letter to Anonymous*, 53 IDELR

127, (OSEP Mar. 30, 2009). In this case, pursuant to 34 CFR § 300.116(a)(1), the IEP team at Public Charter School determined that the nature and severity of Student's disability required that he be placed in special classes, outside the general education setting, for 8 hours per week.

After Student enrolled in City High School at the beginning of the 2014-2015 school year, school staff decided, unilaterally, to provide all of his specialized instruction in regular education classes, co-taught by content-certified teachers and special education teachers. This was to enable Student to earn the credits he needed for his high school diploma. The D.C. Office of the State Superintendent of Education (OSSE) has established the requisite course work, measured in Carnegie Units, which students must successfully complete to earn a regular high school diploma (the "Diploma Track"). *See* 5E DCMR § 2203.2. These classes must be taught by content-certified teachers. According to Assistant Principal, City High School lacks the manpower to staff special classes with content-certified teachers to teach the courses required for a regular high school diploma. Hence, if part of Student's specialized instruction were provided outside general education, it would delay his graduation from high school because the special classes are not taught by content-certified teachers.

City High School's decision to provide all of Student's specialized instruction in the regular education classroom violated the IDEA on two fronts. First, the school failed to convene an IEP team meeting to amend the placement requirements of the May 6, 2014 IEP. *See* 34 CFR § 300.116(a)(1) (Placement decision to be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options – *i.e.*, the IEP team.) Second, the IDEA requires the local education agency (LEA) to ensure that its children with

disabilities have available to them the variety of educational programs and services available to nondisabled children. *See* 34 CFR § 300.110. By not providing content-certified teachers for special classes, City High School is effectively denying Diploma Track special education students the same opportunity as nondisabled students to make progress in the general education curriculum and to stay on pace for graduation.

Student's May 6, 2014 IEP required that, of his 20 hours per week specialized instruction, 8 hours (40 percent) be provided outside general education. For some 25 weeks, from the beginning of the 2014-2015 school year until March 2015, City High School provided all of Student's specialized instruction in the regular classroom, resulting in Student's not receiving some 200 outside of general education hours required by his IEP. I find that this was a material failure to implement the services described in the May 6, 2014 IEP and that Student was denied a FAPE as a result. *See Bobby R., supra*, 200 F.3d at 349. *Compare K.K. v. Alta Loma School Dist.*, 2013 WL 393034, 11-12 (C.D.Cal. Jan. 29, 2013) (No material failure to implement because, at most, student's time in the resource room only fell below the minimum amount of time specified in her IEP on three or four days.)

Petitioner also contends that Student was denied a FAPE because his special education teachers at City High School were not appropriately certified. The IDEA requires that all public elementary and secondary special education teachers be "highly qualified" as special education teachers. The definition of "highly qualified special education teachers" in the IDEA, 20 U.S.C. 1401(10), is aligned with No Child Left Behind Act of 2001's highly qualified requirements. *See* 20 U.S.C. 7801(23). For special education teachers teaching core academic subjects, the IDEA's "highly qualified" criteria include full state certification as a special education teacher (or having passed

state special education teacher licensing examination and holding a license to teach in the state); holding at least a bachelor's degree; and demonstrating subject matter competence in the academic subjects taught to special education students. See 34 CFR § 300.18.

Petitioner's claim that Student's special education teachers are not certified is apparently based upon DCPS' responses to "NCLB Parent's Right to Know Requests" which furnished information on Student's classroom teachers. Exhibits P-25, P-26. According to Assistant Principal, Student had two inclusion special education teachers at City High School, SPECIAL EDUCATION TEACHER 1 and Special Education Teacher 2. Based upon Exhibits P-25 and P-26, it appears that both special education teachers hold current OSSE certifications in special education. Moreover, a parent cannot obtain relief in a due process hearing for failure of teachers to meet highly qualified criteria. See, Office of Special Education and Rehabilitative Services (OSERS), *Questions and Answers On Highly Qualified Teachers Serving Children With Disabilities* (Jan. 2007), citing 34 CFR §§ 300.18(f) and 300.156(e).<sup>2</sup> Therefore, I conclude that Petitioner has not established that DCPS failed to implement Student's IEP by not ensuring that Student's special education teachers met teacher certification requirements.

2. Did DCPS deny Student a FAPE when it failed to review and revise the May 6, 2014 IEP by January 23, 2015 to address the Student's lack of

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<sup>2</sup> Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§ 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.

34 CFR § 300.18(f).

expected progress in the general education curriculum and to provide him with enough specialized instruction outside of the general education setting and by failing to provide him with an appropriate placement that can implement his IEP?

Petitioner also contends that Student was denied a FAPE by the failure of City High School to review and revise his May 6, 2014 IEP when Student allegedly failed to make education progress in the first two terms of the 2014-2015 school year. DCPS responds that it was not required to revise Student's IEP during this period.

The IDEA requires that a Student's IEP team review his IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved. *See* 34 CFR § 300.324(b); *Dixon v. District of Columbia*, 2015 WL 1244452, 7 (D.D.C. Mar. 18, 2015) (Child's IEP Team must review his IEP periodically to determine progress against his annual goals, but it is not obligated to conduct this review more than once a year.) In addition, although the LEA is responsible for determining when it is necessary to conduct an IEP meeting, the parents of a child with a disability have the right to request an IEP meeting at any time. *See* 34 CFR Part 300, Appendix A, Q&A No. 20 (July 1, 2005).<sup>3</sup>

When Student enrolled in City High School in the fall of 2014, his current IEP was the May 6, 2014 program, which had been developed by the IEP team at Public Charter School. Student's IEP annual review would have been due by May 2015. City High School convened an IEP 30-day review meeting for Student on November 14, 2014. At that point in the school year, Student's grades were poor – including F's in

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<sup>3</sup> Appendix A, was appended to the 1999 U.S. Department of Education Regulations issued pursuant to the Individuals with Disabilities Education Act of 1997 (IDEA 97). Appendix A was not reissued with the 2006 IDEA regulations, issued pursuant to the Individuals with Disabilities Education Improvement Act of 2004. However the appendix does provide guidance and many of the questions and answers posed remain valid under the current IDEA regulations.

Physics and U.S. Governments. At the meeting, the parent's representative, Educational Advocate, requested the school to start implementing Student's IEP requirement for 8 hours per week of specialized instruction outside of general education. However, the evidence does not establish that either the parent or the school team considered that the May 6, 2014 IEP was inadequate or needed to be revised. *Compare Marc M. ex rel. Aidan M. v. Department of Educ., Hawaii*, 762 F.Supp.2d 1235, 1245 (D.Hawai'i 2011) (Once a state is on notice of a potential flaw in the IEP's development, it is responsible for correcting it irrespective of parental conduct.)

In closing argument, Petitioner's Counsel cited the 11<sup>th</sup> Circuit's decision in *Draper v. Atlanta Independent School System*, 518 F.3d 1275 (11<sup>th</sup> Cir. 2008), for the proposition that a school system must convene an IEP review meeting earlier than the IEP anniversary, whenever a student is not making expected academic progress. In *Draper*, the court found that the school system had denied the child a FAPE because it failed to modify the student's IEP for several months after a reevaluation established that his placement was not appropriate, the district knowingly placed the student in classes in which he could not succeed, and the district failed to address his reading deficiency for half of the school year. *See id.* at 1289. The misconduct by the LEA described by the court in *Draper* was particularly egregious and the court's ruling was fact-specific. I do not read the decision to hold more broadly that a school district must ensure that a student's IEP is revised, before the IEP anniversary date, whenever the student is not making expected academic progress. I conclude that Petitioner has not established that DCPS denied Student a FAPE by failing to ensure that his May 6, 2014

IEP was revised by January 2015.<sup>4</sup>

A subpart of Issue 2 is whether DCPS has failed to provide Student with an appropriate placement that can implement his IEP. Since March 2015, City High School has been providing Student 8 hours per week of specialized instruction outside general education as required by his IEP. However, as I concluded in the foregoing section of this decision, the IDEA requires that DCPS ensure that a student with a disability is not held back from earning credits toward graduation at the same rate as his nondisabled peers due to a manpower shortage. If, as Assistant Principal testified, City High School does not have the manpower to staff Student's outside general education classes with content-certified teachers and as a result, Student's high school graduation will be deferred, then DCPS must offer Student an alternative location of services that is capable of providing his IEP services without limiting his opportunity to earn credits toward his high school diploma. *See Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir. 1991) (Under the IDEA, DCPS is obligated to match each child with a disability with a school capable of fulfilling the child's IEP needs.)

#### Compensatory Education

In this decision, I have found that DCPS denied Student a FAPE by failing to implement the requirement of his May 6, 2014 IEP that 8 of his 20 hours per week of specialized instruction be provided outside general education. For relief, Petitioner seeks a compensatory education award.

Compensatory education is educational service that is intended to compensate a disabled student, who has been denied the individualized education guaranteed by the

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<sup>4</sup> Student's IEP team convened to revise his IEP on March 18, 2015, after the due process complaint was filed in this case. *See Exhibits P-9, R-27*. The appropriateness of the March 18, 2015 IEP is not at issue in this case.

IDEA. *Wilson v. District of Columbia*, 770 F.Supp.2d 270, 276 (D.D.C.2011) (citing *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir. 2005)). The proper amount of compensatory education, if any, depends upon how much more progress a student might have shown if he had received the required special education services, and upon the type and amount of services that would place the student in the same position he would have occupied but for the LEA's violations of the IDEA. *See Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011), citing *Reid, supra*. The burden of proof is on the Petitioner to produce sufficient evidence demonstrating the type and quantum of compensatory education that is appropriate. *See Cousins v. District of Columbia*, 880 F.Supp.2d 142, 143 (D.D.C.2012).

Petitioner has proposed a compensatory education plan for Student (Exhibit P-31) devised by Private Tutor. Private Tutor was not a credible compensatory education witness. In responding to questions posed by this Hearing Officer to determine whether the witness qualified as an expert in compensatory education, Private Tutor was unable to summarize the standards for compensatory education developed by the courts in this jurisdiction. For example, the witness stated that the purpose of compensatory education services is to enable a child who had been denied a FAPE to recover one or two grade levels. This understanding is incorrect. *See, e.g., Copeland v. District of Columbia*, 2014 WL 4520213, 6 (D.D.C. Sept. 15, 2014) (To accomplish IDEA's purposes, compensatory education 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.) Private Tutor's proposed compensatory education plan would, *inter alia*, provide Student almost 400 hours of independent 1:1 services, including 320 hours of tutoring, 36 hours of behavioral

support services and 36 hours of mentoring. This proposal does not correlate to the denial of FAPE in this case – City High School’s failure to provide 40 percent of Student’s specialized instruction outside general education. In fact, Private Tutor testified that he understood, erroneously, that City High School did not provide Student *any* specialized instruction before March 2015. I find that Private Tutor’s compensatory education proposal is not entitled to any weight.

A compensatory education award must be based upon a fact-specific, individualized assessment of the student’s needs. *Reid, supra*, 401 F.3d at 524. Here, the extent of harm, if any, suffered by Student, as a result of not receiving part of his specialized instruction services outside general education, cannot be determined from the testimony and exhibits offered at the due process hearing. I must conclude, therefore, that Petitioner has failed to support her claim for compensatory education for the denial of FAPE in this case. *See Gill v. District of Columbia*, 770 F.Supp.2d 112, 118 (D.D.C.2011), *aff’d.*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011) (Due to the lack of evidentiary support, the Court is compelled to find that Plaintiffs have failed to support their claim for compensatory education.) While a court has discretion to take additional evidence concerning the appropriate compensatory education due a student, *see Gill, supra*, 751 F.Supp.2d at 114, I am required to issue my final administrative decision in this case no later than May 10, 2015. *See* DCMR tit. 5-E, § 3030.11. Therefore, based on the record before me, I will deny, without prejudice, Petitioner’s request for a compensatory education award.

## ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

### ORDERED:

1. DCPS shall ensure that Student is provided the specialized instruction and related services specified in his current IEP in the placement settings determined appropriate by his IEP team. DCPS shall further ensure that the time needed for Student to earn credits or Carnegie units required to receive a regular DCPS high school diploma is not affected by his placement in the outside of general education setting required by his IEP.
2. Petitioner's request for a compensatory education award is denied without prejudice. I encourage, but do not order, the parties to endeavor to reach a voluntary agreement on appropriate compensatory education to compensate Student for the failure of City High School to provide him specialized instruction outside of general education before March 2015; and
3. All other relief requested by the Petitioner herein is denied.

Date: May 8, 2015

s/ Peter B. Vaden  
Peter B. Vaden, 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 U.S.C. § 1415(i).