

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

OSSE  
Office of Dispute Resolution  
October 31, 2014

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

Date Issued: October 30, 2014

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 a prior Hearing Officer Determination and by DCPS' failure to provide Student transportation for Extended School Year classes.

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<sup>1</sup> Personal identification information is provided in Appendix A.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on August 27, 2014, named DCPS as Respondent. The parties met for a resolution session on September 5, 2014 and did not reach an agreement. On September 25, 2014, 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 September 27, 2014.

The due process hearing was held before this Impartial Hearing Officer on October 21, 2014 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 EDUCATIONAL ADVOCATE, SERVICES PROVIDER, PRIVATE TUTOR, and NONPUBLIC SCHOOL PRINCIPAL as witnesses. DCPS called COMPLIANCE CASE MANAGER as its only witness. Petitioner's Exhibits P-1 through P-13, P-15, P-17, P-20 through P-23, and P-25 through P-38 were admitted into evidence, including Exhibits P-1 through P-7, P-13, and P-26 through P-32 which were admitted without objection. DCPS' objection to Exhibits P-24 was sustained. Respondent's Exhibits R-3 through R-6, R-8, R-11 through R-13, R-15 through R-20, R-22, R-24, and R-25, were admitted into evidence, including Exhibits R-3 and R-4 which were admitted over Petitioner's objections. Petitioner's objections to Exhibits R-7 and R-21 were sustained. Exhibits R-1, R-2, R-9, R-10, R-14, R-23 and R-26 through R-32 were not offered. 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 September 25, 2014

Prehearing Order:

- Whether DCPS failed to identify and/or failed to timely identify or provide a suitable location of services to implement Student’s July 7, 2014 Individualized Educational Program (IEP), as ordered by a June 18, 2014 Hearing Officer Determination; and
- Whether DCPS denied Student a FAPE by failing to make Extended School Year (ESY) services available to the student in summer 2014 by failing to ensure that transportation services were provided.

For relief, Petitioner seeks an order for DCPS to fund Student’s private placement, with transportation, at Nonpublic School for the remainder of the 2014-2015 school year and that DCPS be ordered to provide compensatory education for the alleged denials of FAPE that occurred as a result of delays in the provision of a placement for Student and failure to provide transportation for ESY.

By an order entered on October 13, 2014, I sustained DCPS’ objection to additional issues raised at the prehearing conference – whether CITY HIGH SCHOOL had not been implementing Student’s IEP after the first week of the 2014-2015 school year – being heard at the due process hearing.

## **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 Multiple Disabilities (MD), based upon concomitant disorders Specific Learning Disability (SLD) and Other Health Impairment - Sickle Cell Anemia (OHI).

Exhibits P-2, R-3.

2. Student is currently enrolled in GRADE at CITY SCHOOL 1. For the 2013-2014 school year, Student was enrolled in PUBLIC CHARTER SCHOOL. Testimony of Mother. Public Charter School is a District of Columbia Public Charter School and DCPS serves as its local education agency (LEA). See 5E DCMR § 923.3. Hearing Officer Notice.

3. On April 4, 2014, Petitioner filed a prior due process complaint on behalf of Student (Case No. 2014-0167). In that complaint, Petitioner alleged that DCPS denied Student a FAPE by failing to provide her with an appropriate IEP and placement during the 2013-2014 school year, because, *inter alia*, Student's IEP did not provide full-time special education services. In a June 18, 2014 Hearing Officer Determination (the June 18, 2014 HOD), Hearing Officer Coles B. Ruff found that the hearing evidence demonstrated that Student needed more specialized instruction than her IEP prescribed. Hearing Officer Ruff found that Student had been denied a FAPE and ordered as follows:

1. *DCPS shall, within ten (10) school days of the issuance of this Order, convene an IEP meeting to review the student's evaluations, review the student's academic performance during SY 2013-2014 and increase the amount of specialized instruction in the student's IEP to at least 20 hours per week outside general education and review and revise the student's IEP goals to more effectively address the level of her academic deficits and then determine an appropriate school location to implement the student's IEP.*
2. *As compensatory education DCPS shall within 30 calendar days of the issuance of this Order provide the student 30 hours of independent tutoring and 15 hours of independent counseling at the prescribed*

*OSSE/DCPS rates. Petitioner shall use and complete this award by December 31, 2014.*

3. *All other requested relief is denied.*

Exhibit P-1.

4. On May 20, 2014, a Multidisciplinary Team meeting (MDT) was convened for Student at Public Charter School. Mother and Educational Advocate attended the meeting. The purpose of the meeting was to develop a revised IEP for Student. At the meeting, Educational Advocate requested Extended School Year (ESY) services for Student. The DCPS representative requested appropriate student information to include Student in ESY programming, explaining that ESY services are provided over the summer in DCPS buildings. Educational Advocate understood that DCPS agreed at the meeting to ESY and ESY transportation. Exhibit P-25, R-5, Testimony of Educational Advocate. The DCPS and school members of the IEP team signed the draft May 20, 2014 IEP. Mother did not sign it. Exhibit R-5. The May 20, 2014 IEP was not offered into evidence by either party.

5. On June 19, 2014, Petitioner's Counsel wrote PROGRAM MANAGER, by email, to request information on the status of ESY. Petitioner's Counsel stated in the email that DCPS had agreed to provide ESY with transportation to Student at the May 20, 2014 IEP team meeting. On June 20, 2014, Program Manager informed Petitioner's Counsel, by email, that CITY SCHOOL 2 would be the school location for ESY for Student. Petitioner's Counsel responded with a query whether Student's IEP would need to be amended and a statement that Student would need transportation to get to the ESY location safely. Exhibit R-7. On June 23, 2014, Petitioner's Counsel wrote Program Manager by email that Student's IEP needed to be amended "to add ESY as

agreed at the last meeting.” Exhibit R-8.

6. A special education staff member at Public Charter School scheduled an IEP meeting for Student for July 7, 2014, to comply with the June 18, 2014 HOD. At the July 7, 2014 meeting, the Public Charter School representatives stated that Public Charter School was unable to implement the specialized instruction hours required by the HOD. Program Manager stated that he would take care of Student’s 2014-2015 school year placement. Exhibit R-11. The MDT team also discussed ESY services for Student. The ESY location at City School 2 was confirmed. Mother told the team that without DCPS-provided transportation, Student would not be able to attend ESY. LEA Representative and another DCPS representative stated that they would follow up with transportation to make sure it was put in place for Student. Exhibit P-12, Testimony of Mother.

7. The July 7, 2014 IEP provided that Student would receive 20 hours per week of Specialized Instruction outside general education, 60 minutes per week of behavioral support services and Books on CD as Assistive Technology. The IEP stated that ESY services were required for the provision of FAPE and that Student was not eligible for ESY related special education transportation services. Exhibit P-2. Mother signed the IEP form. Exhibit R-14.

8. In a July 7, 2014 email to DCPS and Public Charter School staff, Petitioner’s Counsel chronicled what had happened at the IEP meeting that day. Petitioner’s Counsel wrote that Mother had not yet received any information about ESY and transportation had not contacted her. Petitioner’s Counsel wrote that the location of City School 2 was confirmed and that the school representatives would follow up with transportation to make sure that ESY transportation was put in place for Student. She

stated that “[m]eanwhile, parent will provide transportation if needed so that student can attend [City School 2] tomorrow.” Exhibit P-12.

9. In an August 27, 2014 IEP amendment without an IEP team meeting, Student’s new location for regular school year special education services was identified as City School 1. The form states that Student’s special education transportation services was being changed to add transportation services. Exhibit P-3.

10. Subsequent to the July 7, 2014 MDT meeting, Mother went to City School 2 to enroll Student in ESY. DCPS never contacted Mother regarding ESY transportation. On the first day of ESY, Mother and Student waited at home for ESY transportation to arrive. Transportation did not arrive. Student did not attend any of the summer ESY program because transportation was not provided. Testimony of Mother.

11. The ESY program operated from July 7, 2014 to August 1, 2014. Exhibit R-8. During that period Petitioner’s Counsel or Mother was in regular communication with Public Charter School and DCPS. After the IEP meeting on July 7, 2014, Petitioner’s Counsel communicated with DCPS or Public Charter School concerning Student, by telephone or email, on July 7, July 16, July 25, and July 30, 2014. Exhibits P-12, P-14, P-15 and P-16. There is no indication that in any of these communications or otherwise, Mother or Petitioner’s Counsel ever alerted DCPS that Student was not attending ESY because transportation had not been provided.

12. At the July 7, 2014 MDT meeting, the DCPS representative told Mother that they would identify a 2014-2015 school location for Student within a couple of days. They did not get back to Mother. Testimony of Mother. On July 16, 2014 and July 25, 2014, Petitioner’s Counsel sent emails to the Public Charter School special education

representative and to DCPS requesting information on the status of Student's school location for the 2014-2015 school year. Exhibits P-14, P-15. On July 30, 2014, Compliance Case Manager informed Petitioner's Counsel by email that she was endeavoring to obtain information on Student's school location. Exhibit P-16. By email of August 15, 2014, Compliance Case Manager provided a Location of Services (LOS) letter to Petitioner's Counsel indicating that City School 1 would be the new location of special education services for Student. In the LOS letter to Mother, DCPS wrote that, "[y]ou may enroll by going directly to [City School 1]." Exhibit P-19.

13. During the week of August 18, 2014, Mother went to City School 1 to complete the enrollment process for Student. The first day of school was August 25, 2014. That day, when Student went to City School 1, she was not in the class schedule system. When Petitioner's Counsel contacted the school on August 25, 2014, she was informed that although the enrollment paper work had been completed, Student could not be pulled into the school's system because she had not been released from Public Charter School. On August 26, 2014, TRANSITION COORDINATOR informed Petitioner's Counsel that Student could only be picked up by City School 1 after she completed the withdrawal paperwork at Public Charter School. Exhibit P-21. On August 26, 2014, Student's stepfather completed a Transfer/Withdrawal Sheet at Public Charter School and took the paperwork to City School 1. Exhibits R-18, P-21, Testimony of Mother. As of September 2, 2014, Student had still not been formally enrolled in City School 1. Exhibit P-23. While Student waited to be formally enrolled, She was kept in the school's administrative offices. Testimony of Mother. The evidence does not establish the first date that Student was allowed to attend classes at City School 1, except that it was before September 12, 2014. Exhibit R-22. Based upon Services Provider's

uncontested testimony, I find that Student was not provided special education or regular education services for one week of school. Testimony of Services Provider, Exhibit P-29.

14. On August 15, 2014, Petitioner's Counsel informed Compliance Case Manager that Student would require school transportation to access the new school location at City School 1. On August 29, 2014, at Compliance Case Manager's request, Petitioner's Counsel agreed that Student's IEP could be amended, without an IEP team meeting, to provide for school transportation for Student. The same day, Compliance Case Manager provided Petitioner's Counsel an authorization for Student to be provided DCPS-funded private transportation for school, pending approval by the DC Office of the State Superintendent of Education (OSSE) of school transportation for Student. Exhibit R-19.

15. To implement the compensatory education services awarded in the June 18, 2014 HOD, in July 2014 Private Tutor provided Student some two to three hours per day of academic tutoring, for some 35 hours total. Testimony of Private Tutor. Student did not experience academic regression during this period, but she did not receive the full benefit of the compensatory education tutoring she was awarded in the HOD, because since Student did not attend ESY, the tutor had to spend time reinforcing skills Student had learned over the preceding school year. Testimony of Service Provider, Testimony of Private Tutor.

### **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 timely provide a suitable location of services to implement Student’s July 7, 2014 IEP, as ordered by a June 18, 2014 HOD?

The June 18, 2014 HOD required DCPS to convene Student’s IEP team and ensure that the team increased Student’s outside general education Specialized Instruction to at least 20 hours per week. When Student’s IEP team met at Public Charter School on July 7, 2014, the charter school representatives advised that their school was not able to implement 20 hours per week of Specialized Instruction. The DCPS representatives at the meeting undertook to identify a suitable school location within a couple of days. However, it took DCPS until August 15, 2014 to inform Mother that the new school location would be City School 1. The first day of school for the 2014-2015 school year was August 25, 2014.

The IDEA mandates that a local education agency have an IEP in place for students with disabilities at the beginning of a new school year. *See* 20 U.S.C. § 1414(d)(2)(A); *K.E. v. District of Columbia*, 2014 WL 242986, 7 (D.D.C. Jan. 23, 2014) (Plain mandate of the IDEA that a district should have an IEP in place “[a]t the beginning of each school year.”) However, the Act does not specify a time period, before the start of the year, for identifying a suitable school to implement the IEP. Petitioner’s Counsel argues that in the June 18, 2014 HOD, Hearing Officer Ruff required DCPS to

determine a school location for Student at the July 7, 2014 IEP revision meeting, that was convened pursuant to the HOD. I find this to be a misreading of Hearing Officer Ruff's order. Under the IDEA, DCPS is obligated to devise IEPs for each eligible child, "mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs." *Jenkins v. Squillacote*, 935 F.2d 303, 304-305 (D.C. Cir.1991) (citations omitted.) At the July 7, 2014 MDT/IEP team meeting, after Public Charter School advised Student's IEP team that it could not implement an IEP with 20 hours of Specialized Instruction, it then became incumbent upon DCPS to match Student with a school capable of implementing the revised IEP. It appears that Hearing Officer Ruff anticipated this process, because in the June 18, 2014 HOD, the Hearing Officer ordered that DCPS convene Student's IEP team to revise the IEP "*and then* determine an appropriate school location to implement the [IEP]." (Emphasis supplied.) DCPS informed Mother of the new school location for Student on August 15, 2014, ten days before the start of the new school year. I find that DCPS neither violated the June 18, 2014 HOD order nor denied Student a FAPE by not identifying the school sooner.

Due to a bureaucratic impediment, Student was not able to attend classes for the first few days at City School 1 because DCPS required that Student be formally disenrolled from Public Charter School before a class schedule could be generated for City School 1. However, when Mother enrolled Student at City School 1 before the start of school, she was not informed that this step was necessary. According to Services Provider, Student missed 20 hours of Specialized Instruction and 60 minutes of behavioral support services during the first week of school due to DCPS' initial failure to provide her programming at City School 1 to implement her July 7, 2014 IEP. Petitioner

contends that Student was denied a FAPE by this delay and I agree.

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.* (internal quotation and citation omitted.) Here, I must determine whether DCPS’ failure to provide Student special education and related services during the first week of school was “substantial or significant” or, in other words, “material.” *See Turner v. District of Columbia*, 952 F.Supp.2d 31, 40 (D.D.C.2013).

Although in other circumstances, DCPS’ failure to provide specialized instruction for one week out of the school year might well be deemed a *de minimis* omission, here Student was denied both special education and general education services for the first week of school. Numerous judicial decisions emphasize the importance under the IDEA, of the LEA’s having an IEP in place for students with disabilities at the beginning of a new school year. *See, e.g., K.E., supra.* Having an IEP in place for Student – but no school ready to implement it – does not meet the requirements of the Act. I conclude that under the facts in this case, DCPS’ failure to provide Student special education

services during the first week of the 2014-2015 school was a significant failure to implement Student's IEP and that she was denied a FAPE as a result. I do not find that DCPS' failure to provide one hour of IEP behavioral support services was more than a *de minimis* omission.

2. Did DCPS deny Student a FAPE by failing to make Extended School Year (ESY) services available to the student during the 2014 summer by not ensuring that transportation services were provided?

At the due process hearing, Mother testified that she successfully enrolled Student in the City School 2 ESY program and that Student waited for school transportation to attend the first day of ESY classes. However, no DCPS transportation for Student arrived, and Student did not attend the ESY program at all. Petitioner contends that DCPS thereby denied Student a FAPE – on the theory that by not providing ESY school transportation services in Student's July 7, 2014 IEP, DCPS failed to make the ESY services available.<sup>2</sup>

Student's July 7, 2014 IEP stated that she was not eligible for ESY related transportation services. An IEP must include such "Related services" including transportation services as are required to assist a child with a disability to benefit from special education. 34 CFR § 300.34(a). A student's IEP team is responsible for determining whether transportation between school and home is necessary for the

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<sup>2</sup> DCPS' counsel argued that the failure to provide ESY transportation was a simple oversight that DCPS would have corrected had the parent or Petitioner's Counsel notified DCPS that transportation had not been provided. The ESY program operated from July 7, 2014 to August 1, 2014. Exhibit R-8. During that period Petitioner's Counsel or Mother was in regular communication with Public Charter School and DCPS. After the IEP meeting on July 7, 2014, Petitioner's Counsel communicated with DCPS or Public Charter School concerning Student, by telephone or email, on July 7, July 16, July 25, and July 30, 2014. Exhibits P-12, P-14, P-15 and P-16. There is no indication that in any of these communications or otherwise, Mother or Petitioner's Counsel ever alerted DCPS that Student was not attending ESY because transportation had not been provided.

student to receive FAPE, *see* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46576 (August 14, 2006). In *Donald B. By and Through Christine B. v. Board of School Com'rs of Mobile County, Ala.*, 117 F.3d 1371 (11<sup>th</sup> Cir. 1997), the Eleventh Circuit held “that, based on the implementing regulations for the IDEA, transportation may be ‘necessary’, . . . if in its absence a disabled child in private school would be denied “a genuine opportunity for equitable participation in [a special education program].” *Id.* at 1375. By analogy, for a student in public school, school transportation must be provided in the student’s IEP if, in the absence of LEA-provided school transportation, the student would be denied a genuine opportunity to participate in a special education program. *Cf. District of Columbia v. Ramirez*, 377 F.Supp.2d 63, 70 (D.D.C.2005) (Parents requested transportation aide not for convenience or preference, but because the absence of an aide left the student unable to receive the education and related services guaranteed by the IDEA and prescribed in his IEP.)

In a decision with facts similar to the present case, *Wilson v. District of Columbia*, 770 F.Supp.2d 270 (D.D.C.2011), the due process hearing officer had found that DCPS failed to provide the student transportation to the first three weeks of ESY and the child did not attend the program at all. The Court held that DCPS’ failure to provide transportation was not a minor discrepancy, but rather denied the student the education that the law required. *Id.* at 276. What differentiates the *Wilson* decision from this case is that in *Wilson*, the student’s IEP apparently provided for transportation services. An LEA must implement an IEP as written. *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. at 46685. An LEA may not change a student’s IEP, formally or informally, without prior notice to the parent and an

opportunity for the parent to discuss any proposed changes with the public agency. *Id.*

ESY transportation was discussed at the July 7, 2014 IEP meeting and the parent was informed that someone would follow up to make sure transportation would be put in place for Student. Whatever the basis for that offer, Student's July 7, 2014 IEP stated she was not eligible for ESY transportation. (Student's IEP was later amended to provide for transportation services after she was assigned to City School 1.) The parent's burden in the due process hearing was to establish that, due to the absence of provision for DCPS-provided transportation in her IEP, Student was denied a genuine opportunity to participate in the ESY program. Petitioner did not meet that burden, and in fact, failed to offer any probative evidence of why Student could not attend ESY at City School 2 unless DCPS provided her transportation. I conclude, therefore, that Petitioner did not establish that Student was denied a FAPE due to DCPS' not ensuring that transportation services were provided for Student to attend the ESY program.

#### Remedy

In this decision, I have found that DCPS denied Student a FAPE by failing to implement her IEP services for the first week of the 2014-2015 school year. For relief, Petitioner seeks a compensatory education award. The IDEA gives Hearing Officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir. 2005). A compensatory education award must "rely on individualized assessments" after a "fact specific" inquiry. *Id.* "In formulating a new compensatory education award, the hearing officer must determine 'what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures.'" *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010) (quoting

*Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527.) *See, also, e.g., Turner v. District of Columbia*, 952 F.Supp.2d 31 (D.D.C.2013).

Petitioner has proposed a compensatory education plan for Student (Exhibit P-29), devised by Services Provider. This written plan is not persuasive because it assumes a finding that Student was denied a FAPE by DCPS' failure to provide transportation for ESY services as well as by DCPS' failure to provide IEP services for the first week of the regular school year. The only proven denial of FAPE in this case was the failure of DCPS to provide services to Student for the first week of the 2014-2015 school year. For that period, the evidence established that DCPS failed to provide Student 20 hours of Specialized Instruction, outside general education, and 60 minutes of Behavioral Support Services required by his IEP. Moreover, because Student was not allowed to attend any classes during the first week, the educational harm was presumably much greater than just not providing special education services. Although, the D.C. Circuit, has rejected a one-for-one compensation standard in favor of a flexible approach depending on the child's needs, *see Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C.Cir.2005), I find in this case that requiring DCPS to make up the missed Specialized Instruction services is the appropriate equitable remedy. That is because, this early in the 2014-2015 school year, it is not possible to assess what services Student would need to elevate her to where she would have been had she been provided her IEP services for the first week of school. Accordingly, I will order DCPS to provide Student, as compensatory education, 20 hours of academic tutoring.

Petitioner has also requested that DCPS be ordered to fund Student's placement at Nonpublic School. "If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school, *see School Comm. of the*

*Town of Burlington, Mass. v. Department of Educ. of Mass.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 2002, 85 L.Ed.2d 385 (1985) (“ *Town of Burlington* ”); however, if there is an “appropriate” public school program available, *i.e.*, one “reasonably calculated to enable the child to receive educational benefits,” the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child,” *see Kerkam v. Superintendent, D.C. Public Schools*, 931 F.2d 84, 86 (D.C.Cir.1991) (quoting *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)).” *Jenkins, supra*, 935 F.2d at 304-305. Here, there was no credible evidence that the program for Student at City School 1 is not reasonably calculated to enable Student to receive educational benefits. Petitioner’s request that DCPS be ordered to pay for Student to attend Nonpublic School must be denied.

#### ORDER

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

#### ORDERED:

1. As compensatory education, DCPS shall provide Student 20 hours of one on one academic tutoring by a qualified DCPS instructor or an independent provider. These services shall be in addition to Student’s current IEP Specialized Instruction Services and shall be provided on a schedule as may be reasonably agreed between Petitioner and DCPS. The compensatory services shall be used before the end of the 2014-2015 school year; and
2. All other relief requested by the Petitioner herein is denied.

Date: October 30, 2014

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).