

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
May 16, 2013

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

Petitioner,

Date Issued: May 16, 2013

Hearing Officer: Melanie Byrd Chisholm

v.

Case No:

District of Columbia Public Schools,

Respondent.

Hearing Dates: May 3 & 9, 2013

Room: 2004

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND PROCEDURAL HISTORY**

The student is an eleven year old male, who is a grade student attending School A. The student's current individualized education program (IEP) lists Autism Spectrum Disorder as his primary disability and provides for him to receive twenty-seven and one half (27.5) hours per week of specialized instruction outside of the general education setting, one (1) hour per week of occupational therapy (OT) outside of the general education environment and one and one half (1.5) hours per week of speech-language therapy outside of the general education environment.

On February 25, 2013, Petitioner filed a Due Process Complaint (Complaint) against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by failing to develop an appropriate IEP for the student. As relief for this alleged denial of FAPE, Petitioner requested that DCPS convene an IEP Team meeting within 10 business days to review and revise the student's IEP to include parental travel; fund monthly parental travel and/or reimburse the parents for all reasonably incurred travel expenses; and provide compensatory education.

On March 5, 2013, Respondent filed a timely Response to the Complaint. In its Response, Respondent asserted that DCPS has not denied the student a FAPE; DCPS agrees to fund the parent's travel; the parent may submit a claim for reimbursement; and that the parent's visits were not impeded by the service not being included on the student's IEP.

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

On March 11, 2013, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement however the parties agreed to continue to attempt to resolve the matter during the 30-day resolution period. Accordingly, the parties agreed that the 45-day timeline started to run on March 28, 2013, following the conclusion of the 30-day resolution period, and originally ended on May 11, 2013.

Although sign language interpreters were timely requested by the Petitioner and a request for sign language interpreters was timely sent to the Student Hearing Office, at the scheduled time to begin the due process hearing on May 3, 2013, sign language interpreters were not present. The Student Hearing Office was able to acquire sign language interpreters from an alternate company on an emergency basis however the interpreters were not able to arrive until approximately 12:15 p.m. The hearing was able to begin after the sign language interpreters arrived however only the Petitioner was able to presents its case during the time scheduled for the hearing. The parties jointly agreed to continue the hearing until May 9, 2013 in order for Respondent to present its case. On May 7, 2013, Petitioner filed an unopposed Motion for Continuance for nine (9) calendar days. On May 10, 2013, the Hearing Officer issued an Interim Order on Continuance Motion extending the 45-day timeline by nine (9) calendar days. Therefore, the Hearing Officer Determination (HOD) is due on May 20, 2013.

On March 29, 2013, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer issued the Prehearing Order on April 2, 2013. The Prehearing Order clearly outlined the issues to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the Hearing Officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order.

On April 26, 2013, Petitioner filed Disclosures including twenty (20) exhibits and five (5) witnesses.<sup>2</sup> On April 26, 2013, Respondent filed Disclosures including three (3) exhibits and two (2) witnesses.

The due process hearing commenced at approximately 9:30 a.m.<sup>3</sup> on May 3, 2013 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2004. The Petitioner elected for the hearing to be closed. Petitioner's Exhibits 1-20 were admitted without objection. Respondent's Exhibits 1-3 were admitted without objection.

The hearing concluded at approximately 5:21 p.m. on May 9, 2013, following closing statements by both parties.

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<sup>2</sup> A list of exhibits is attached as Appendix B. A list of witnesses who testified is included in Appendix A.

<sup>3</sup> At the scheduled time to begin the hearing, the Hearing Officer, Petitioners and counsel for Petitioners and Respondent were present however sign language interpreters were not present. The Hearing Officer went on the record at the scheduled start time however the substance of the due process hearing did not begin until approximately 12:15 p.m. upon the arrival of sign language interpreters.

## Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

## ISSUE

The issue to be determined is as follows:

1. Whether DCPS failed to develop an appropriate IEP for the student on January 7, 2013, specifically by failing to include parental visits to the student one time per month at public expense, and if so, whether this failure constitutes a denial of a FAPE?

## FINDINGS OF FACT

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

1. The student is a student with disabilities as defined by 34 CFR §300.8. (Stipulated Fact)
2. The student's primary disability category is Autism Spectrum Disorder. (Stipulated Fact)
3. The student is currently placed in a residential treatment facility (RTC). (Stipulated Fact)
4. The student's parents are deaf and use American Sign Language (ASL) as their primary language. (Mother's Testimony)
5. The student is hearing. (Stipulated Fact)
6. The student has significantly delayed cognitive and motor skills. (Petitioner's Exhibits 2, 3, 4, 9, 10, 13, 14, 15, 16, 17, 18 and 19; Mother's Testimony)
7. The student has limited communication skills. (Petitioner's Exhibits 2, 8, 10, 14, 15, 16, 17, 18 and 19; Mother's Testimony)
8. The student's speech is usually one to two words with a verbal prompt. (Petitioner's Exhibit 15)
9. The student communicates primarily through total language including facial expressions, signs, gestures, pictures and verbal approximations. (Petitioner's Exhibits 2, 8, 10, 14, 15, 16, 17, 18 and 19; Mother's Testimony)
10. The student does not have the expressive or receptive language skills necessary to participate in the general education curriculum. (Petitioner's Exhibits 2, 8, 14, 15, 16 and 17; Mother's Testimony)
11. The student is able to make eye contact with people, but most often his eye contact is directed toward preferred objects such as a ball, food or toys. (Petitioner's Exhibit 15)

12. Being hugged, kissed, touched, by preferred people, and playing with his brother are positive reinforcers for the student. (Petitioner's Exhibits 4, 10 and 17; Mother's Testimony)
13. The student exhibits aggressive, noncompliant and self-injurious behaviors. (Petitioner's Exhibits 2, 3, 7, 8, 9, 13, 14, 17, 18 and 19; Advocate's Testimony; Mother's Testimony; Program Manager's Testimony)
14. The student's behaviors are addressed through a positive behavior support plan including medication management, positive attention, choices, planned ignoring, verbal redirection, removal from the group, helmet use, response block and physical restraint, if needed. (Petitioner's Exhibits 3, 10 and 18)
15. The student was assigned to School A in August, 2012. (Petitioner's Exhibits 3, 9 and 13; Mother's Testimony; Program Manager's Testimony)
16. The student is expected to be placed at School A for 12 months however the student's exit date is determined by the student's response to treatment. (Petitioner's Exhibits 9 and 13; Mother's Testimony)
17. On August 2, 2012, an IEP Team meeting was convened to discuss the student's transition from School B to School A. (Petitioner's Exhibit 9)
18. On August 2, 2012, DCPS informed the parents that they would fly to Location A with the student, have an IEP Team meeting for the student and fly back to the District of Columbia on the same day. (Petitioner's Exhibit 9; Program Manager's Testimony)
19. On August 2, 2012 the parents requested a longer visit in order to visit the mother's family and to tour School A. (Petitioner's Exhibit 9)
20. During the first week of August 2012, the parents drove the student to School A in Location A. (Petitioner's Exhibits 6, 9 and 13; Respondent's Exhibit 3; Mother's Testimony)
21. On August 14, 2012, the parents submitted a travel request form and a travel reimbursement form to DCPS. (Respondent's Exhibit 3; Program Manager's Testimony)
22. The Office of the State Superintendent for Education (OSSE) reimbursed the parents for the August 2012 travel to School A. (Respondent's Exhibit 3; Program Manager's Testimony)
23. DCPS' policy is to provide four visits per year for parents who have a child in a residential facility. (Petitioner's Exhibits 5, 6, 9 and 13; Respondent's Exhibit 1; Mother's Testimony; Program Manager's Testimony)
24. DCPS' policy is to provide travel for one day only. (Petitioner's Exhibits 9 and 13; Program Manager's Testimony)
25. DCPS' policy allows for the cost of physical travel and does not provide for lodging or meals. (Respondent's Exhibit 1; Program Manager's Testimony)
26. DCPS' policy allows for travel only after all other forms of communication have been exhausted. (Petitioner's Exhibit 5; Respondent's Exhibit 1; Program Manager's Testimony)
27. DCPS requires parents to complete a travel request form, a travel reimbursement form and a W-9 tax form in order to be reimbursed for travel. (Petitioner's Exhibit 5; Respondent's Exhibit 1; Program Manager's Testimony)

28. School A provides parents four visits per year to the facility. (Petitioner's Exhibits 5, 9 and 13; Mother's Testimony; Program Manager's Testimony)
29. On September 6, 2012, DCPS met with the student to explain DCPS' "Travel Guidelines" with the parents. (Petitioner's Exhibit 5; Mother's Testimony; Program Manager's Testimony)
30. On September 6, 2012, DCPS' Travel Guidelines were not finalized. (Petitioner's Exhibit 5)
31. A written copy of DCPS' travel guidelines was not given to the parents at the September 6, 2012 meeting. (Petitioner's Exhibit 5; Mother's Testimony)
32. At the September 6, 2012 meeting, the mother requested visits every six weeks because during her schooling, her parents were given visits every six weeks and because she missed her son. (Petitioner's Exhibit 5; Mother's Testimony; Program Manager's Testimony)
33. On October 3, 2012, the parents filed a State Complaint with OSSE alleging that, in August 2012, DCPS failed to address transportation and other costs associated for the parent to visit the student at the RTC, failed to take steps to ensure that the parents were afforded the opportunity to participate in each IEP Team meeting for the student and failed to include a statement in the child's IEP that addressed all necessary related services. (Petitioner's Exhibit 6; Program Manager's Testimony)
34. OSSE found that DCPS was out of compliance with 34 CFR §§300.320(a)(4) and 300.322(a). (Petitioner's Exhibit 6; Program Manager's Testimony)
35. On November 7, 2012, DCPS met with School A to discuss whether parental travel was needed to implement the student's IEP. (Program Manager's Testimony)
36. The parents were not present at the November 7, 2012 meeting. (Program Manager's Testimony)
37. DCPS attempted to include the parents in the conversation however the parents were nonresponsive to DCPS' request. (Program Manager's Testimony)
38. On January 7, 2013, the student's IEP Team met to review the student's IEP, discuss the student's progress and address parent travel and communication with the student. (Petitioner's Exhibit 3; Mother's Testimony; Program Manager's Testimony)
39. The student's January 7, 2013 IEP Team discussed the goal of the student returning home without needing to wear a helmet. (Petitioner's Exhibit 3)
40. On January 7, 2013, the mother requested parental visits twice per month and additional communication to be added to the student's IEP. (Petitioner's Exhibit 3)
41. School A is able to arrange Skype communication between the parent and the student one time per week. (Petitioner's Exhibit 3; Mother's Testimony)
42. During Skype visits, the student smiles into the camera but does not speak or sign to the parents. (Mother's Testimony)
43. The student's January 7, 2013 IEP Team agreed that the student requires parental visits once per month. (Stipulated Fact<sup>4</sup>; Mother's Testimony)

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<sup>4</sup> During the Prehearing Conference on March 29, 2013, Respondent agreed with this proposed stipulated fact. The stipulated fact was included in the Prehearing Order and the parties were given three business days to notify the Hearing Officer of any omission or misstatement in the Prehearing Order. DCPS did not notify the Hearing Officer of any omission or misstatement in the Prehearing Order. During the due process hearing on May 3, 2013, Respondent's counsel stated that DCPS "made a mistake" and does not agree with this fact. The fact was supported by the Mother's Testimony.

44. The student's January 7, 2013 IEP Team did not know how to include travel and communication on the student's IEP. (Petitioner's Exhibits 2, 3 and 12; Mother's Testimony)
45. The student's IEP Team did not discuss whether lodging and meals would be funding as a part of the parental visits. (Petitioner's Exhibit 3; Mother's Testimony)
46. On March 27, 2013, the student's IEP Team agreed that parental travel was necessary in order for the student to progress toward his IEP goals. (Program Manager's Testimony)
47. On March 27, 2013 parental travel was added to the student's IEP. (Stipulated Fact)
48. On March 27, 2013 DCPS agreed to fund parental travel every six weeks. (Stipulated Fact)
49. The parents traveled to Location A to visit the student September 20-23, 2012, October 21-24, 2012, November 20-24, 2012, December 22-28, 2012, January 4-7, 2013 and March 30-April 4, 2013. (Petitioner's Exhibit 20; Mother's Testimony)
50. The September 2012 visit was for the student's birthday and that the December 2012 visit was longer because it was Christmas. (Petitioner's Exhibit 20; Mother's Testimony)

### **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:

#### **Burden of Proof**

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seq., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Id.*; *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs, establishes annual goals related to those needs, and provides appropriate specialized instruction and related services. *See* 34 CFR 300.320(a). For

an IEP to be “reasonably calculated to enable the child to receive educational benefits,” it must be “likely to produce progress, not regression.” *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted). Under *Rowley*, the factual showing required to establish that a student received some educational benefit is not demanding. A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student’s failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. *Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist.*, No. 196 (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450.

In the present matter, the student is a student with autism who is currently placed in the RTC, School A, in Location A. The parents of the student are deaf and use ASL as their primary language. The student is a hearing student however communicates primarily through total language including facial expressions, signs, gestures, pictures and verbal approximations. The student does not have the expressive or receptive language skills necessary to participate in the general education curriculum. While the student is a student with autism, the student likes to hug, touch, kiss and play with his brother. The student also exhibits aggressive, noncompliant and self-injurious behaviors which are addressed through a positive behavior support plan including medication management, positive attention, choices, planned ignoring, verbal redirection, removal from the group, helmet use, response block and physical restraint, if needed.

The student was assigned to School A in August, 2012. On August 2, 2012, an IEP Team meeting was convened to discuss the student’s transition from School B to School A. On August 2, 2012, DCPS explained to the parents that they would fly to Location A with the student, have an IEP Team meeting for the student and fly back to the District of Columbia on the same day. DCPS stated that the cost of the flight would be reimbursed by OSSE and the transportation to and from the airport and any lodging would be provided by School A. The parents requested a longer visit in order to visit the mother’s family and to tour School A. The DCPS representative informed the parents that she would discuss the possibility of a longer visit with her supervisor but typically only one day was allotted for travel. DCPS indicated that it would provide four visits per year and that School A would provide four visits per year. In the meeting the Mother argued that four trips per year “is not enough.” The IEP Team noted that the expected length of the student’s stay at School A was 12 months however would be determined by the student’s response to treatment.

During the first week of August 2012, the parents drove the student to School A in Location A. DCPS informed the parents that a travel request form, a travel reimbursement form and a W-9 tax form were needed to reimburse the parents for the trip to School A. On August 14, 2012, the parents submitted a travel request form and a travel reimbursement form to DCPS. The parents did not submit a W-9 tax form with the other travel forms. OSSE reimbursed the parents for the August 2012 travel to School A.

On September 6, 2012, DCPS met with the student to explain DCPS' "Travel Guidelines" with the parents. At that time, the Travel Guidelines were not finalized and therefore a copy of the guidelines was not given to the parents. DCPS explained that the guidelines allowed only four visits per year for the parents, including the trip to take the child to the RTC, the trip to bring the child home from the RTC and two visits associated with IEP Team meetings. DCPS also explained that the policy only allowed for the cost of physical travel and did not provide lodging or meals. Additionally, DCPS stated that parental travel for IEP Team meetings would be provided only after all other forms of communication were exhausted.

The August 2, 2012 and September 6, 2012 IEP Team meetings to "discuss" parental travel were meetings where DCPS told parents what would and would not be offered. The notes from both meetings do not indicate that actual discussion was welcome or allowed. The "Travel Guidelines" explained during the meetings did not consider the student's needs or the student's IEP goals. While DCPS did not base their decisions regarding travel on the student's needs, the parents' requests for additional visits were likewise not connected to the student's needs. The Mother testified that she requested visits every six weeks because during her schooling, her parents were given visits every six weeks. The record contains evidence of the parents requesting once per month, twice per month and every six weeks without linking the requested visits to the student's IEP goals or educational benefit. In fact, during meetings the mother indicated that she wanted additional visits because she missed her son.

On October 3, 2012, the parents filed a State Complaint with OSSE alleging that DCPS failed to address transportation and other costs associated for the parent to visit the student at the RTC, failed to take steps to ensure that the parents were afforded the opportunity to participate in each IEP Team meeting for the student and failed to include a statement in the child's IEP that addressed all necessary related services. OSSE found that DCPS was out of compliance with 34 CFR §§300.320(a)(4) and 300.322(a). The State Complaint focused on the student's August 2, 2012 IEP. While DCPS argued that OSSE has since amended its December 14, 2012 Letter of Decision, DCPS did not provide the amended decision and did not represent that OSSE's findings of noncompliance had been overturned.

On November 7, 2012, DCPS met with School A to discuss whether parental travel was needed to implement the student's IEP. The Program Manager testified that School A indicated that parental travel was not necessary to implement the student's IEP however no testimony from School A was offered to substantiate this claim and the November 7, 2012 meeting did not constitute an IEP Team meeting because the parents were not present. The Program Manager offered that DCPS attempted to include the parents in the conversation however the parents were nonresponsive to DCPS' request.

On January 7, 2013, the student's IEP Team met to review the student's IEP, discuss the student's progress and address parent travel and communication with the student. Regarding communication and travel, the parents requested that travel be increased to twice per month and requested more communication with the student. School A indicated to the parents that only one staff member was trained on Skype and the staff member was only available one time per week. The DCPS representative did not know where to include communication on the student's IEP. While the notes from the January 7, 2013 IEP Team meeting do not indicate that the IEP Team

agreed that parental visits would occur one time per month, the Mother testified that the January 7, 2013 IEP Team agreed that parental visits would occur one time per month and, although later denied, DCPS stipulated that the student's January 7, 2013 IEP Team determined that the student required monthly visits from the parents.

Pursuant to the corrective actions required by OSSE in the State Complaint Letter of Decision, the student's IEP Team met on March 27, 2013 and revised the student's IEP to include parental travel to School A. The IEP Team agreed that the student required parental visits every six weeks in order to sustain progress toward his IEP goals. The record is distinctly void of any evidence of IEP Teams' discussions of travel related to the student's needs prior to the student's March 27, 2013 IEP Team meeting. The Hearing Officer is persuaded that from August 2, 2012 through March 27, 2013, DCPS held firm to its "policy" of four visits per year while the parents held firm to their desire to visit the student at least monthly- both parties neglecting to discuss *the child's need for parental visits in relation to making progress toward his IEP goals and receiving educational benefit*. School A indicated that the parents are welcome and encouraged to visit the student as often as possible however parental travel *at public expense* must be in relation to the student's educational needs.

When a child is placed in a residential placement outside of commuting distance from the parents' home, parents may be entitled to reimbursement for expenses related to travel and visitation, telephone calls, and, in rare cases, lodging and living expenses. As a rule, however, these expenses must relate to genuine educational concerns in order to justify funding. *See, e.g., Aaron M. v. Yomtoob*, 40 IDELR 65 (N.D. Ill. 2003); *Agawam Pub. Schs.*, 42 IDELR 284 (SEA MA 2004); *Los Angeles Unified Sch. Dist.*, 52 IDELR 144 (SEA CA 2009); and *New Prairie United Sch. Corp.*, 30 IDELR 346 (SEA IN 1999). When overnight accommodations are required because of the distance between a student's home and the residential facility he or she attends, the district may be required to pay for the reasonable expenses of the parents travel, food, and lodging. The reimbursement of those expenditures must be determined on a case-by-case basis. *See Board of Educ. of the Wappingers Cent. Sch. Dist.*, 35 IDELR 112 (SEA NY 2001).

In this case, parental visits are uniquely needed due to the inability of the student to communicate in typical ways with his parents. The student's expressive language skills are limited, therefore prohibiting his ability to speak with his parents via telephone; his cognitive and motor skills are delayed, therefore prohibiting his ability to use sign language to communicate with his parents via Skype or writing; and his receptive language skills are delayed, greatly hindering the parent's ability to speak to the student without the assistance of an interpreter and other support staff to ensure that the student is able to attend to the "speaker" rather than another desired object. Since the IEP Team's goal was for the student to exit School A in one year, the student needed to have opportunities to practice and generalize skills included on his IEP, particularly daily living skills, communication skills and behavioral skills, in less restrictive environments and with his parents. Likewise, the student's January 7, 2013 IEP Team discussed the goal of the student returning home without needing to wear a helmet. In order to achieve this goal, the student would need consistency in expectations regarding his self-injurious behaviors in the RTC and with his parents. Additionally, the most recent positive behavior support plan for the student provided in the record indicates that potential social reinforcers for the student are

being hugged, kissed, touched and playing with his brother. Family visits are necessary to implement the use of these positive reinforcers.

The Hearing Officer concludes that DCPS denied the student a FAPE by failing to include parental visits on the student's January 7, 2013 IEP. Although DCPS argued that the Petitioner failed to present evidence of harm suffered by the student due to parental visits not being included in the January 7, 2013 IEP, the parents took monthly visits despite parental visitation not being included in the student's IEP. Therefore, it is unreasonable to require the Petitioner to prove actual harm in this specific case. Additionally, at no point did DCPS argue that parental visits were not needed for the student to be provided a FAPE and DCPS stipulated that the student's IEP Team agreed that parental visits were necessary for the student.

### Requested Relief

IDEA remedies are equitable remedies requiring flexibility based on the facts in the specific case rather than a formulaic approach. Under *Reid* “. . .the inquiry must be fact-specific and . . . the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid v. District of Columbia*, 401 F. 3d 516 at 524, 365 U.S. App. D.C. 234 (D.C. Cir 2005) citing *G.ex. RG v Fort Bragg Dependent Schools*, 343 F.3d 295, 309 (4th Cir. 2003).

In *School Comm. of Burlington v. Dept. of Education*, 471 U.S. 359, 370-371 (1985), the Court found that Congress intended retroactive reimbursement to parents by a local educational agency (LEA) as an available remedy in a proper case. “Reimbursement merely requires [an LEA] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. *Id.* In order to warrant reimbursement for expenditures, the services offered by the board of education must have been inadequate or inappropriate, the services selected by the parent were appropriate, and equitable considerations support the parents' claim. *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

The Hearing Officer concludes that parental travel should have been included on the student's IEP at the August 2, 2012 IEP Team meeting. Although it was not added at that time, DCPS has reimbursed the parents for their August 2012 travel to School A. Another IEP Team meeting was not convened until January 7, 2013. DCPS did not offer an appropriate IEP for the student and the parents' travel to School A, despite the insufficient IEP, was appropriate, to an extent.

Following the August 2012 trip to take the student to School A, the parents traveled to Location A to visit the student September 20-23, 2012, October 21-24, 2012, November 20-24, 2012, December 22-28, 2012, January 4-7, 2013 and March 30-April 4, 2013. The Mother testified that the September visit was for the student's birthday and that the December visit was longer because it was Christmas. While it is unreasonable for DCPS to expect the parents to travel to see the student and return home in one day, it is also unreasonable for the parents to expect DCPS to fund rental car expenses, meals and lodging for the parents for an open-ended length of stay to visit the student.

Equitable considerations must also support the parents' claim. Both the Mother and the Program Manager testified that the parents ceased all communication with DCPS after the September 6, 2012 meeting. The parents did not participate in the November 7, 2012 meeting with School A, although DCPS attempted to involve the parents. Additionally, the parents did not provide DCPS with a travel request form or a travel reimbursement form for any of the visits after August 2012. Despite the inappropriate limitations of DCPS' Travel Guidelines as explained to the parents on August 2, 2012 and September 6, 2012, the parents never submitted a travel reimbursement form and receipts to DCPS to give DCPS the opportunity to reimburse them for the visits after the August 2012 visit. It is possible that DCPS would have reimbursed the parents for travel had the necessary forms and receipts been submitted.

Therefore, the Hearing Officer concludes that the most appropriate remedy is to Order that DCPS reimburse the parents for the monthly visits to the student for three nights/four days per visit and require the parents to submit the relevant documentation prior to reimbursement.

### **ORDER**

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

1. Within 60 days of the date that DCPS receives travel reimbursement forms, the W-9 tax form<sup>5</sup>, and relevant receipts<sup>6</sup>, DCPS shall reimburse the parent:
  - a. For the September 20-23, 2013 visit, \$87.57\*\* for the rental car, \$90.00\*\* for gasoline, and meals according to the General Services Administration (GSA) rate for 2012;
  - b. For the October 21-24, 2012 visit, \$60.00\*\* for the rental car, \$20.00\*\* for gasoline, meals according to the GSA rate for 2012, and \$79.00\*\* for air travel;
  - c. For the November 20-24 visit, mileage according to the GSA rate for 2012, and meals for four days according to the GSA rate for 2012;
  - d. For the December 22-28, 2012 visit, mileage according to the GSA rate for 2012, meals for four days according to the GSA rate for 2012, and \$79.00\*\* for one night lodging;
  - e. For the January 4-7, 2013 visit, \$75.00\*\* for the rental car, \$73.00\*\* for gasoline, and meals according to the GSA rate for 2013;
  - f. For the March 30-April 4, 2013 visit, \$111.33\*\* (4/6 of \$167.00) for the rental car, \$250.00\*\* for gasoline, and meals for four days according to the GSA rate for 2013.
2. All other relief sought by Petitioner herein is **denied**.

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<sup>5</sup> If the parents have already completed a W-9 tax form which is effective for the listed visits, another form need not be completed.

<sup>6</sup> Should any of the receipts indicate an amount different than listed in this Order, DCPS will reimburse the amount according to the receipt.

\*\*A receipt is required.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: May 16, 2013

Melanie Byrd Chisholm  
Hearing Officer