

HEADING

Parent, on behalf of STUDENT, ¹)	
)	Case Number: 2012-0196
)	
Petitioner,)	
)	Due Process Hearing:
v.)	May 30, 31, and June 5, 2012
)	
PUBLIC SCHOOL DISTRICT,)	
)	Hearing Officer:
Respondent.)	

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act (“IDEA”), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the [state] Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the [state] regulations at Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND

Petitioner is the parent of a fifteen-year-old student (“Student”) with a disability. On March 7, 2012, Petitioner filed a due process complaint (“Complaint”) against Respondent alleging violations of the IDEA.

On March 12, 2012, this Hearing Officer was assigned to preside over this case. On March 19, 2012, Respondent filed a response to the Complaint.² Respondent filed its Response two days after the deadline established by IDEA.³

¹ Personal identification information is provided in Attachment A.

² Respondent did not challenge the sufficiency of the Complaint.

³ If Respondent has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent regarding the subject matter contained in the parent’s due process complaint, Respondent must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency’s proposed or refused action. 34 C.F.R. § 300.508(e).

On March 20, 2012, this Hearing Officer held a prehearing conference to inquire about Petitioner's assertion that the Student was out of school because he had been asked to leave his neighborhood school and had no direction as to where he was to attend school. Counsel for Petitioner and Counsel for Respondent participated in the prehearing conference. During the prehearing conference, counsel informed this Hearing Officer that the Public School District had transferred the Student to another public senior high school for safety reasons.

On March 29, 2012, counsel for Petitioner filed a Consent Motion to Amend the Due Process Complaint filed on March 17, 2012 ("Motion"). Petitioner concurrently filed a First Amended Due Process Complaint Notice ("Amended Complaint"). On April 2, 2012, this Hearing Officer granted the Motion, *nunc pro tunc* to March 29, 2012.

Respondent did not file a response to the Amended Complaint.

On April 23, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties agreed to continue to work to resolve the Complaint through the end of the resolution session. Thus, the resolution period ended on April 28, 2012. The parties agreed that the forty-five day, due process hearing timeline began on April 29, 2012.

On May 4, 2012, this Hearing Officer held a prehearing conference in which Counsel for Petitioner and Counsel for Respondent, participated. On May 10, 2012, this Hearing Officer issued a prehearing conference summary and order ("Prehearing Order").

The due process hearing commenced on May 30, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits,⁴ as well as Respondent's proposed exhibits.⁵

Petitioner testified and presented five witnesses on her behalf: the Student, educational advocate ("Advocate"), Nonpublic School 1 Director of Academics ("Academics Director"), the Student's community-based intervention therapist ("CBI Therapist"), and the Assistant Educational Director of Nonpublic School 2 ("Educational Director"). Respondent presented three witnesses: the special education coordinator of Public School 2 ("SEC 1"), the special education coordinator of Public School 3 ("SEC 2"), and a Public school psychologist ("Psychologist"). After the parties presented oral closing arguments, the due process hearing concluded on June 5, 2012.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

⁴ This Hearing Officer admitted into evidence Petitioner's exhibits 1-24, inclusive. Neither party objected to the admission of the other party's exhibits.

⁵ This Hearing Officer admitted into evidence Respondent's exhibits 1-8, inclusive.

A. Whether Respondent denied the Student a free, appropriate, public education (“FAPE”) from August 2011 through March 2012 by failing to provide the Student an appropriate placement because the school he was attending during that time, Public School 2, could not implement his individualized educational program (“IEP”) or provide the therapeutic environment he required to access the curriculum; and

B. Whether Respondent denied the Student a FAPE from April 2012 through the present by failing to provide the Student an appropriate placement/location of services because the school he currently attends, Public School 3, cannot implement his IEP or provide the therapeutic environment he requires to access the curriculum.

Petitioner requests relief in the form of an order that requires Respondent to place the Student at Nonpublic School 2 at public expense for the remainder of the 2011-2012 school year and for the 2012-2013 school year, and to provide him compensatory education.

IV. FINDINGS OF FACT

1. The Student is fifteen years old and in the ninth grade.⁶ He was found eligible for special education services as a student with an emotional disturbance when he was four years old.⁷ By age six, he was diagnosed with attention deficit disorder and oppositional defiant disorder.⁸ When the Student was ten years old, he was admitted to a psychiatric hospital where he exhibited signs of emotional volatility, disturbed thinking, and suicidal thoughts.⁹

2. In 2011, the Student was diagnosed with psychosis and mood disorder.¹⁰ In 2012, he was diagnosed with bipolar disorder.¹¹ He also has a disorder called pica, and eats various nonfood substances, including batteries, aluminum foil, dirt, and plastic bottle tops.¹²

3. Due to his bipolar disorder, the Student has difficulty regulating his mood.¹³ His mood changes from week to week and sometimes within the space of an hour when he can shift from being happy and silly to crying.¹⁴

⁶ Testimony of Petitioner, Student.

⁷ Petitioner Exhibit 6 at 3 (June 27, 2011 Psycho-educational Evaluation).

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ Testimony of Petitioner.

¹¹ *Id.*

¹² *Id.*

¹³ Testimony of CBI Therapist.

¹⁴ *Id.*

4. The Student also has difficulty regulating his emotions.¹⁵ He has strong reactions to what he experiences and his emotions swing from one extreme to the other.¹⁶ Because he has difficulty regulating his emotions, he has difficulty following rules.¹⁷

5. At home and in the community, the Student displays an unusually high number of disruptive, impulsive, and uncontrolled behaviors.¹⁸ He can be argumentative, defiant, and threatening to others.¹⁹ He has clinically significant depression and is withdrawn, pessimistic, and sad.²⁰ He has limited social skills and significant needs in performing simple daily tasks in a safe and efficient manner.²¹

6. The Student has difficulty inhibiting impulsive responses, adjusting to changes in his routine, modulating his emotions, initiating problem-solving approaches, sustaining working memory, organizing his environment and materials, and monitoring his own behavior.²² He appears to have problem solving rigidity and emotional dysregulation.²³ Adolescents with this profile tend to lose emotional control when their routines or perspectives are challenged and/or behavior flexibility is required.²⁴

7. The Student reports social stress, anxiety, depression, and unusual thoughts or perceptions.²⁵ He feels overwhelmed in some situations and has a sense that he lacks control over the events in his life.²⁶ He exhibits clinically significant concerns for depression, anger, bullying, conduct problems, attention deficit hyperactivity disorder (“ADHD”), and learning problems.²⁷ He also exhibits problems with internalizing and externalizing behaviors.²⁸

8. The Student is an emotionally needy student who is quick to react when he feels his needs aren’t being met.²⁹ His chief defenses include denial, projection of blame

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Petitioner Exhibit 6 at 12.

¹⁹ *Id.* at 12-13.

²⁰ *Id.* at 13.

²¹ *Id.*

²² *Id.* at 14.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

onto others, and avoidance.³⁰ His predominant emotion is anger, and he lashes out explosively at others.³¹ He is socially immature.³²

9. The Student has borderline intellectual skills.³³ His full-scale IQ is 73, which is in the fourth percentile of his same age peers and in the borderline range.³⁴ His verbal comprehension is in the eighth percentile of his same age peers and in the borderline range.³⁵ His perceptual reasoning is in the thirty-fourth percentile, which is in the average range.³⁶ His working memory is in the fourth percentile, and in the borderline range.³⁷ His processing speed is in the first percentile, which is in the extremely low range.³⁸ He struggles with processing complex auditory and visual directions.³⁹

10. The Student's performance in broad reading, including letter-word identification, reading fluency, and passage comprehension, ranges from the low-average range to borderline range.⁴⁰ His performance in broad math, including in calculation, math fluency, and applied problems, is generally in the low average range, although he is far below age expectancy in math fluency.⁴¹ His performance in broad written language, including in spelling, writing fluency, and producing writing samples, ranges from below average to borderline.⁴² He has learning disorders in the areas of reading, written expression, and mathematics.⁴³

11. The Student responds to relationships and will perform if he has constant supervision and support.⁴⁴ His ability to perform independent tasks is not age-appropriate and he stops his work when prompts are not available.⁴⁵ He is acutely aware of his academic limitations and gives up easily on tasks.⁴⁶ Because his academic skills are far below grade expectations, he can become embarrassed and emotionally reactive.⁴⁷

³⁰ *Id.*

³¹ *Id.* at 14-15.

³² *Id.*

³³ Petitioner Exhibit 6 at 16.

³⁴ *Id.* at 10, 16, 23.

³⁵ *Id.* at 9, 23.

³⁶ *Id.*

³⁷ *Id.* But see Petitioner Exhibit 6 at 10 (indicating that the Student's working memory is in the low average range).

³⁸ *Id.* at 10, 23.

³⁹ *Id.* at 13.

⁴⁰ Petitioner Exhibit 6 at 11.

⁴¹ *Id.* at 11-12.

⁴² *Id.* at 12.

⁴³ *Id.* at 16.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 16.

12. The Student requires an educational setting that includes integrated therapy, counseling support, and medication management to address his emotional, behavioral, attention, executive functioning, and academic needs.⁴⁸ Due to his low performance in math, reading, and written language, he would benefit from specialized, small-group supports to improve his skills in these areas.⁴⁹ He should use manipulatives and engage in hands-on projects because he benefits from touching, manipulating, and creating with materials, which would facilitate memory and learning.⁵⁰ He would benefit from organizational strategies and from learning strategies for anger management and frustration tolerance.⁵¹

13. During the 2010-2011 school year, the Student was in eighth grade at Public School 1.⁵² He was often talkative in class, disrupted the learning environment for others, walked out of the classroom, was defiant toward staff, and was aggressive toward adults and students.⁵³ He frequently responded to conflicts with his peers with angry outbursts.⁵⁴ During these outbursts, he threw objects, knocked over furniture, and engaged in emotional tirades.⁵⁵ His behavior often led to his being removed from the classroom and impacted his ability to access the curriculum.⁵⁶ He would remain outside the classroom until he calmed down, which took anywhere from an hour to a full school day.⁵⁷

14. The Student also had difficulty separating fantasy from reality.⁵⁸ He often would tell outrageous lies to get attention or curry favor, including that his sister was shot and killed in Baltimore.⁵⁹

15. On May 6, 2011, when the Student was fourteen years old, he was admitted to the Psychiatric Institute ("PI") after he indicated he would commit suicide.⁶⁰

16. By the end of the 2010-2011 school year, the Student had learned strategies for self-regulating his behavior.⁶¹ He had stopped responding to peer teasing and taunting with anger, disappointment, and frustration.⁶² He learned to think before he acted and

⁴⁸ *Id.* at 19.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Testimony of Petitioner.

⁵³ Petitioner Exhibit 8 at 3, 7 (June 15, 2011, IEP).

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ Testimony of Petitioner.

⁵⁸ Testimony of Petitioner, Petitioner Exhibit 8 at 7.

⁵⁹ Testimony of Petitioner.

⁶⁰ Petitioner Exhibit 4 at 8 (PI Psychosocial Assessment for Youth).

⁶¹ *Id.* at 7.

⁶² *Id.*

choose the appropriate behavioral response.⁶³ Although he periodically reverted back to inappropriate responses and behaviors in response to teasing, he responded well to verbal prompts and redirection to deescalate the crises.⁶⁴

17. On June 15, 2011, Petitioner attended a meeting of the Student's IEP team at Public School 1.⁶⁵ The IEP team developed an IEP for the Student that provided that he would receive 25.5 hours per week of specialized instruction outside the general education setting as well as two hours per week of behavioral support services.⁶⁶ The June 15, 2011, IEP also provided that his therapist and teachers would consult for one hour per week regarding his behavioral needs and supports.⁶⁷

18. The IEP team included in the Student's June 15, 2011, IEP classroom and statewide testing accommodations, including interpretation of oral directions, reading of test questions, translation of words and phrases, repetition of directions, preferential seating, and breaks during testing.⁶⁸ The IEP team decided that the Student would receive extended school year during the 2011 summer in the form of four hours per week of specialized instruction and on hour per week of behavioral support services.⁶⁹

19. During the June 15, 2011, IEP meeting, the Student's IEP team discussed his location of services for his ninth grade year, and the high school he would attend in the fall.⁷⁰ The team suggested that he attend Public School 2, as it was his neighborhood school.⁷¹ The team agreed that the Student would be on a diploma track during high school.⁷²

20. A representative from Public School 2 attended the June 15, 2011, meeting by telephone and informed the IEP team that Public School 2 could provide the Student only 19.5 hours of specialized instruction outside the general education setting.⁷³ The representative did not answer Petitioner's questions about the therapeutic supports that would be available to the Student at Public School 2, including whether a therapeutic crisis room would be available so the Student could deescalate after being removed from the classroom for inappropriate conduct.⁷⁴

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Petitioner Exhibit 7 at 1 (June 15, 2011, MDT Meeting Notes).

⁶⁶ Petitioner Exhibit 8 at 8.

⁶⁷ *Id.*

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 11.

⁷⁰ Testimony of Petitioner.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

21. Petitioner then informed the IEP team that Public School 2 would not be appropriate for the Student because it could not meet his behavioral needs because he needed a therapeutic environment where behavioral supports were an integral part of his school day.⁷⁵ The members of the IEP team agreed that Public School 2 would not be appropriate for the Student but informed Petitioner that they could not discuss placement because the meeting was an IEP meeting and not a placement meeting.⁷⁶ Thus, the team made no decision about where the Student's June 15, 2011, IEP would be implemented for the 2011-2012 school year.⁷⁷

22. The Student did not start school immediately at the beginning of the 2011-2012 school year.⁷⁸ Petitioner was concerned about the appropriateness of Public School 2, so she looked for other schools for the Student.⁷⁹ After Petitioner was unable to find another school for the Student to attend, the Student began attending Public School 2 in the first week of September 2011.⁸⁰

23. At the end of the Student's first day of at Public School 2, Petitioner drove to the school to pick him up.⁸¹ The Student stopped to give a hug to another student when a third student started a fight with the Student.⁸² After a couple of young men broke up the fight, the Student got in Petitioner's car and left.⁸³

24. In early September 2011, Public School 2 held a meeting of the Student's IEP team to review the Student's independent psychological evaluation and review and revise the Student's IEP.⁸⁴ The school psychologist reviewed the psychological evaluation and then the IEP team reviewed his IEP.⁸⁵ The school social worker opined that the Student did not require 27.5 hours of specialized instruction and related services and that his IEP should be revised to provide 19.5 hours of specialized instruction and related services.⁸⁶ Petitioner objected, stating that the Student requires all of the services on his June 15, 2011, IEP.⁸⁷ After Petitioner objected, Public School 2 adjourned the meeting without making changes to the Student's IEP.⁸⁸

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Testimony of Petitioner.

⁷⁹ *Id.*

⁸⁰ *Id.*; Respondent Exhibit 7 at 1 (Attendance Summary).

⁸¹ Testimony of Petitioner.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Testimony of Petitioner.

⁸⁵ *Id.*

⁸⁶ *Id.*; Respondent Exhibit 3 at 4 (February 29, 2012, MDT meeting notes).

⁸⁷ *Id.*

⁸⁸ *Id.*

25. On September 13, 2011, the Student entered into a contract with the school social worker after threatening to hurt himself.⁸⁹ The contract specified that, if the Student ever had thoughts of suicide, felt like he wanted to kill himself, and/or had the urge to harm himself, he could take certain steps including reminding himself that his mother cared deeply for him and would not want him to hurt himself, call 9-1-1, his mother, or the social worker, or call the suicide prevention hotline.⁹⁰ The social worker also created a behavioral plan for the Student.⁹¹

26. On September 19, 2011, the young man who had hit the Student on his first day of school bragged about beating him up in front of his mother.⁹² Then, the young man sat on the Student's lap and started pummeling him.⁹³ The Student became upset and threatened to kill someone and blow up the school.⁹⁴ He was then suspended for ten days.⁹⁵ Petitioner did not return the Student to Public School 2 after his suspension because she was worried about his safety.⁹⁶

27. While at Public School 2, the Student sporadically attended the four classes on his schedule.⁹⁷ Of the eleven days the Student attended Public School 2, he had eight unexcused absences in his ROTC class, eight unexcused absences in his algebra class, seven unexcused absences in his US government class, and three unexcused absences in his English class.⁹⁸

28. At the end of September 2011, the Student interviewed at Nonpublic School 1.⁹⁹ He began attending Nonpublic School 1 on October 7, 2012.¹⁰⁰ At Nonpublic School 1, the Student was in small classes with just five or six other students and a general education and a special education teacher.¹⁰¹ The school implemented a behavior plan for the Student, increased his interventions from those provided on his IEP, and provided regular therapeutic intervention.¹⁰²

⁸⁹ Petitioner Exhibit 9 at 1 (September 13, 2011, Contract); testimony of Petitioner.

⁹⁰ Petitioner Exhibit 9 at 1.

⁹¹ Testimony of Petitioner; Petitioner Exhibit 10 at 2-3 (Behavior Plan).

⁹² Testimony of Petitioner.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*; Petitioner Exhibit 10 at 1 (manifestation determination review); Respondent Exhibit 7 at 1.

⁹⁶ Testimony of Petitioner. Public School 2 convened a manifestation determination review and determined that the behavior that led to the Student's suspension was a manifestation of his disability. Petitioner Exhibit 10 at 1.

⁹⁷ Respondent Exhibit 7 at 1.

⁹⁸ *Id.*

⁹⁹ Testimony of Petitioner.

¹⁰⁰ *Id.*

¹⁰¹ Testimony of Nonpublic School 1 Academics Director.

¹⁰² *Id.*

29. By November 2011, the Student had stopped attending his classes and was not completing his work.¹⁰³ However, the work he produced indicated that he was capable of accessing the curriculum if his behavior did not impede his learning.¹⁰⁴

30. While at Nonpublic School 1, the Student had several, significant behavioral outbursts and antagonized other students.¹⁰⁵ He threatened to hurt himself and blow up the school.¹⁰⁶ He had physical tantrums, threw things, ran through the school building, and was disruptive in class.¹⁰⁷ There were days when he refused to work, would shut down, and refuse to leave the front office.¹⁰⁸ On several occasions, he left the school building without permission.¹⁰⁹

31. By the end of the semester, the Student had failed all of his classes.¹¹⁰ In late December 2011 or early January 2012, after an incident in which he hit the executive director of the school, the Student was expelled from Nonpublic School 1.¹¹¹

32. In January 2012, after the Student was expelled from the Nonpublic School, Petitioner attempted to reenroll him in Public School 2.¹¹² The principal of Public School 2 informed Petitioner and the Student that he did not want the Student in his school.¹¹³ Petitioner asked the principal to find another school for the Student to attend, but the principal refused, stating that this was not his job.¹¹⁴ The Student then made a remark to Petitioner that no one wanted him and that he would be better off in heaven.¹¹⁵

33. Later that day, Petitioner went to the Student's bedroom and found him attempting to hang himself.¹¹⁶ Petitioner took the Student to a hospital, where he was admitted to the psychiatric unit.¹¹⁷ The Student remained in the psychiatric unit for at least a week.¹¹⁸

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Testimony of Nonpublic School 1 Academics Director.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*; testimony of Petitioner; Petitioner Exhibit 16 at 1 (January 18, 2012, letter from counsel for Petitioner to Dr. Nathaniel Beers).

¹¹² Testimony of Petitioner.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Testimony of Petitioner, CBI Therapist.

¹¹⁸ Testimony of Petitioner.

34. Other than the time he spent at PI, the Student remained at home through February 2012.¹¹⁹ The Student has not been hospitalized since January 2012.¹²⁰

35. On January 20, 2012, a Public School District compliance case manager (“CCM”) advised counsel for Petitioner that Petitioner should enroll the Student at a non-attending student at Public School 2.¹²¹ Soon thereafter, Petitioner enrolled the Student as a non-attending student at Public School 2.¹²²

36. Petitioner then met with SEC 1 and requested that Public School 2 provide some schoolwork for the Student to complete while he was out of school.¹²³ The SEC responded that she couldn’t give the Student any schoolwork to complete because he was registered as a non-attending student.¹²⁴

37. On February 29, 2012, Public School 2 convened a meeting of the Student’s IEP team.¹²⁵ The CCM, who chaired the meeting, informed the participants that the purpose of the meeting was to review and revise the Student’s IEP.¹²⁶ Petitioner’s educational advocate objected, stating that Petitioner requested the meeting to discuss the Student’s placement for the remainder of the 2011-2012 school year.¹²⁷

38. After an initial discussion about the purpose of the meeting, Petitioner privately informed SEC 1 that another student at Nonpublic School 1 attacked the Student while both students were hospitalized at PI.¹²⁸ SEC 1 agreed to transfer the Student to another school.¹²⁹ SEC 1 did not identify the school to which the Student would be transferred or how this school could implement the Student’s IEP.

39. The Student began attending Public School 3 on March 13, 2012.¹³⁰ From the time he enrolled in Public School 3 through April 12, 2012, the Student was enrolled in general education classes as well as special education classes.¹³¹ He had four classes on his schedule - Junior ROTC, world history/geography, general music, and art - in addition to a

¹¹⁹ *Id.*; testimony of Petitioner.

¹²⁰ Testimony of CBI Therapist.

¹²¹ Petitioner Exhibit 5 at 1 (January 20, 2012, email from compliance case manager to counsel for Petitioner).

¹²² Testimony of Petitioner.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Petitioner Exhibit 17 at 1 (February 29, 2012, Advocate’s IEP Meeting Notes); Respondent Exhibit 3 at 1.

¹²⁶ Respondent Exhibit 3 at 2.

¹²⁷ Testimony of Petitioner, Advocate; Petitioner Exhibit 17 at 2.

¹²⁸ Testimony of Petitioner, Advocate, SEC 1.

¹²⁹ *Id.*

¹³⁰ Testimony of Petitioner.

¹³¹ Testimony of SEC 2; Petitioner Exhibit 3 at 1 (March 30, 2012, Report to Parents on Student Progress).

special education learning lab.¹³² Junior ROTC, music, and art were general education classes.¹³³ The Student was not taking either a math or an English class, even though his June 15, 2011, IEP included reading, writing, and mathematics goals.¹³⁴

40. Between March 13, 2012, and March 30, 2012, the Student regularly attended his classes at Public School 2 and enjoyed being at his new school.¹³⁵ By the end of March 2012, the Student went to school but stopped attending his classes and walked around the hallways most of the day.¹³⁶ When he attended class, he slept through most of his classes.¹³⁷ His behavior deteriorated and he got into fights with other students.¹³⁸

41. At Public School 3, the Student mingled with his nondisabled peers.¹³⁹ He often left the school building to smoke cigarettes and cigars on the playground.¹⁴⁰ He has been involved in fights with other students and has been defiant and disrespectful to school staff.¹⁴¹ He began arriving late to his classes and skipping class altogether.¹⁴²

42. On April 12, 2012, Public School 3 convened a meeting of the Student's IEP team for a thirty-day review.¹⁴³ During the meeting, the IEP team reviewed the Student's June 27, 2011, psychological evaluation.¹⁴⁴ The IEP team discussed the portion of the psychological evaluation that diagnoses the Student with ADHD, oppositional defiant disorder, depressive disorder, reading disorder, disorder of written expression, and mathematics disorder.¹⁴⁵ The team also discussed the fact that, during his most recent hospitalization, the Student was diagnosed with psychotic disorder.¹⁴⁶ The Student also was diagnosed with bipolar disorder.¹⁴⁷ The IEP team reviewed the portion of the June 27, 2011, psychological evaluation that concluded that the Student requires an educational setting that includes integrated therapy, counseling support, and medication management

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Testimony of SEC 2; Petitioner Exhibit 8 at 3-6.

¹³⁵ Testimony of Petitioner; testimony of SEC 2.

¹³⁶ Testimony of Petitioner.

¹³⁷ *Id.*

¹³⁸ *Id.*; testimony of Public School District Psychologist.

¹³⁹ Testimony of Petitioner.

¹⁴⁰ *Id.*

¹⁴¹ Testimony of SEC 2.

¹⁴² Testimony of Petitioner.

¹⁴³ Testimony of Petitioner; testimony of SEC 2; Respondent Exhibit 5 at 1 (April 12, 2012, meeting notes).

¹⁴⁴ Respondent Exhibit 5 at 1.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Testimony of CBI Therapist.

to address his emotional, behavioral, attention, executive functioning, and academic needs.¹⁴⁸

43. During the April 12, 2012, meeting, the Student informed the team that he cuts himself on his arms, fingers, and hands when he is depressed.¹⁴⁹ The Student also reported that he claws his way through walls by using a pencil and his teeth.¹⁵⁰ Petitioner informed the team that the Student has pica and that he chews and eats nonfood items regularly.¹⁵¹ She reported his concomitant behaviors are anger, disrespect, oppositional defiance, attention issues, and low frustration tolerance.¹⁵²

44. At the meeting, Petitioner informed the IEP team about the Student's regressing behaviors, including skipping class, leaving the school building, and smoking on the playground.¹⁵³ Petitioner expressed concern that Public School 3 did not have sufficient behavioral supports to assist the Student when his behavior escalated.¹⁵⁴

45. The team discussed the fact that the Student receives therapy outside of school once a week and has a mentor, therapist, and counselor.¹⁵⁵ They discussed the fact that the Student receives counseling and wrap-around services outside of school from an independent provider.¹⁵⁶

46. At the April 12, 2012, meeting, Petitioner informed the IEP team that she wanted the Student to remain in the ROTC and art classes she selected for him when she enrolled him in Public School 3.¹⁵⁷ The IEP team agreed that the Student would continue to receive 25.5 hours of specialized instruction outside the general education environment and 240 minutes per month of behavioral support.¹⁵⁸ Petitioner agreed with the content of the Student's April 12, 2012, IEP.¹⁵⁹

47. On April 12, 2012, the IEP team agreed that the Student would take English instead of art.¹⁶⁰ Petitioner stated that the Student would not attend ESY because she wanted him to attend summer school.¹⁶¹

¹⁴⁸ Testimony of Public School District Psychologist. See also Petitioner Exhibit 6 at 19.

¹⁴⁹ Testimony of CBI Therapist.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Testimony of Petitioner.

¹⁵⁴ *Id.*

¹⁵⁵ Respondent Exhibit 5 at 1.

¹⁵⁶ Testimony of Petitioner, CBI Therapist; Public School District Psychologist.

¹⁵⁷ Respondent Exhibit 5 at 2.

¹⁵⁸ *Id.*; Respondent Exhibit 6 at 8 (April 12, 2012, IEP).

¹⁵⁹ Testimony of Petitioner.

¹⁶⁰ Respondent Exhibit 5 at 2.

¹⁶¹ *Id.*

48. On April 12, 2012, Public School 3 changed the Student's class schedule to provide him with a ROTC class that, while not taught by a special education teacher, contained only special education students, a special education English class, and a special education world history/geography class.¹⁶² Even though the Student's June 15, 2011, and April 12, 2012, IEPs included mathematics goals, the Student was not assigned to a math class.¹⁶³ During the time he attended Public School 3, the Student received regular behavioral support services from the school social worker.¹⁶⁴

49. At the end of the 2011-2012 school year, the Student had failed all of his classes at Public School 3.¹⁶⁵ Thus, in his ninth grade year of high school, the Student earned no credits toward graduation or a certificate of completion as he failed all of his classes.¹⁶⁶

50. The Student has been accepted for admission at Nonpublic School 2, a full-time, therapeutic school.¹⁶⁷ The school employs has nine clinical psychologists who provide individual and group therapy as well as crisis management.¹⁶⁸ Each student at Nonpublic School 2 receives weekly individual and group therapy.¹⁶⁹ The school has behavioral counseling centers where students can go if they need time to deescalate.¹⁷⁰ Students who are having difficulties or are dangerous to themselves or others also are sent to the behavioral counseling center.¹⁷¹

51. Nonpublic School 2 has a policy of keeping students in school, so when students are disciplined, they spend their suspension in school in an in-school suspension room under constant adult supervision.¹⁷² All students are on a behavioral contract and earn points for good behavior.¹⁷³ As they earn more points, the students earn more responsibilities and are given more privileges.¹⁷⁴ Adult staffers monitor the hallways and students are not allowed to be in the hallway unescorted until they reach the highest level of behavioral compliance according to their behavioral contracts.¹⁷⁵

¹⁶² Petitioner Exhibit 3 at 4 (May 10, 2012, Report to Parents on Student Progress); testimony of SEC 2.

¹⁶³ *Id.*

¹⁶⁴ Testimony of SEC 2.

¹⁶⁵ Testimony of Petitioner.

¹⁶⁶ Testimony of Petitioner; testimony of Advocate.

¹⁶⁷ *Id.*

¹⁶⁸ Testimony of Educational Director.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

52. Students at Nonpublic School 2 have no exposure to their nondisabled peers during the school day.¹⁷⁶ They receive thirty hours per week of specialized instruction and related services.¹⁷⁷

53. Each student is placed in classes of no more than ten students and as few as two students.¹⁷⁸ Each classroom has at least one teacher and at least one other adult.¹⁷⁹ The teachers at Nonpublic School 2 are certified in either special education or general education or are dually certified.¹⁸⁰ Most of the teachers have a special education certification.¹⁸¹

54. Nonpublic School 2 offers credit-bearing, “ramp-up” classes that focus on math and English skills for students with deficits in these areas.¹⁸² The Student could take these classes in place of elective courses such as music or barbering.¹⁸³

55. Nonpublic School 2 has a certificate of authority from the [state education agency].¹⁸⁴ For students who reside in the [state], the school follows the state academic curriculum.¹⁸⁵ The [state] students at Nonpublic School 2 graduate with either a state diploma or a certificate of completion.¹⁸⁶

56. The base tuition for an 183-day school year is \$48,000.¹⁸⁷ Students pay extra for related services other than once weekly individual and group counseling.¹⁸⁸ ESY costs an extra \$7760.¹⁸⁹ For the 2012 summer, ESY begins on July 2, 2012, and ends on August 10, 2012.¹⁹⁰

57. Each of the witnesses that Petitioner presented gave credible testimony with the exception of the Student and the Educational Advocate. As explained herein, the Student has difficulty separating fiction from reality, and this was reflected in his testimony. For example, he testified that he was receiving passing grades in his classes when the documentary evidence, as well as the testimony of other witnesses, showed otherwise. The Educational Advocate’s testimony about whether the classes on the

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

Student's schedule were general education or special education classes was shown to be unreliable when SEC 2 explained the coding of each class on his schedule. In all other respects, the Educational Advocate testified reliably.

58. Each of the witnesses that Respondent presented gave credible testimony. In general, the documentary evidence and the testimony of the witnesses Petitioner presented corroborated the testimony of SEC 1, SEC 2, and the Public School District Psychologist.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."¹⁹¹ Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.¹⁹² FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)."¹⁹³

In deciding whether Respondent provided a student a FAPE, the inquiry is limited to (a) whether Respondent complied with the procedures set forth in IDEA; and (b) whether the student's IEP is reasonably calculated to enable the student to receive educational benefit.¹⁹⁴ Under this second "substantive" prong, a school district need not maximize the potential of children with disabilities, but the door of public education must be opened in a meaningful way, and the IEP must provide the opportunity for more than only "trivial advancement."¹⁹⁵

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational

¹⁹¹ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

¹⁹² *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

¹⁹³ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

¹⁹⁴ *Rowley*, 458 U.S. at 206-207.

¹⁹⁵ *P. v. Newington Bd. of Educ.*, 546 F.3d. 111 (2nd Cir. 2008) (citations omitted).

benefits.¹⁹⁶ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.¹⁹⁷

The burden of proof is properly placed upon the party seeking relief.¹⁹⁸ Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.¹⁹⁹ The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.²⁰⁰ In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.²⁰¹

Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,²⁰² except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.²⁰³

VI. DISCUSSION

A. Petitioner Proved that Respondent Denied the Student a FAPE from January 2012 through March 2012 by Failing to Implement His IEP but Failed to Prove that Respondent Denied the Student a FAPE by Failing to Provide a Therapeutic Placement between September 2011 and March 2012.

The IEP is “the centerpiece of the statute’s education delivery system for disabled children.”²⁰⁴ An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,²⁰⁵ establishes annual goals related to those needs,²⁰⁶ and provides appropriate specialized instruction and

¹⁹⁶ 34 C.F.R. § 300.513 (a)(2).

¹⁹⁷ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

¹⁹⁸ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

¹⁹⁹ 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

²⁰⁰ *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).

²⁰¹ *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 246 (1994).

²⁰² *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).

²⁰³ *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

²⁰⁴ *Honig v. Doe*, 484 U.S. 305, 311 (1988).

²⁰⁵ 34 C.F.R. § 300.320 (a) (1).

²⁰⁶ 34 C.F.R. § 300.320 (a) (2).

related services.²⁰⁷ For an IEP to be “reasonably calculated to enable the child to receive educational benefits,” it must be “likely to produce progress, not regression.”²⁰⁸

A local education agency (“LEA”), such as Public School District, must ensure that the IEP team reviews a student’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.²⁰⁹ The LEA must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals; and the results of any reevaluation or information about the child provided to, or by, the parents.²¹⁰ Additionally, if the parent obtains an independent educational evaluation (“IEE”) at public expense, or shares with the public agency an evaluation obtained at private expense, the LEA must consider the results of the evaluation, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.²¹¹ The IDEA mandates that an IEP be based on the results of the most recent evaluation of a student.²¹²

Additionally, each public agency must ensure that, as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with the child’s IEP.²¹³ In order to implement the IEP, a team that includes the child’s parents determines where the child should be placed based on the child’s IEP.²¹⁴ Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.²¹⁵

In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child’s home.²¹⁶ The IDEA requires that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.²¹⁷ In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.²¹⁸ A child with a

²⁰⁷ 34 C.F.R. § 300.320 (a) (4).

²⁰⁸ *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

²⁰⁹ 34 C.F.R. § 300.324 (b)(1).

²¹⁰ *Id.*

²¹¹ 34 C.F.R. § 300.502 (c)(1).

²¹² *M.M. v. District of Columbia*, 607 F. Supp. 2d 168, 174 (D.D.C. 2009).

²¹³ 34 C.F.R. § 300.323 (c)(2). Public agency includes the state education agency, local education agencies (“LEAs”), educational service agencies (“ESAs”), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of a State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33.

²¹⁴ 34 C.F.R. § 300.116.

²¹⁵ *See Rourke v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006).

²¹⁶ *Id.*

²¹⁷ 34 C.F.R. § 300.116 (c).

²¹⁸ 34 C.F.R. § 300.116 (d).

disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.²¹⁹

Further, mainstreaming of children eligible for special education services under the IDEA is not only a laudable goal but is also a requirement of the Act.²²⁰ If no public school can accommodate the student's needs, the government is required to place the student in an appropriate private school and pay the tuition.²²¹

On June 15, 2011, the Student's IEP team developed his IEP for the 2011-2012 school year. The June 15, 2011, IEP provided that the Student would receive 25.5 hours per week of specialized instruction outside the general education setting as well as two hours per week of behavioral support services. The IEP also provided that the Student's therapist and teachers would consult for one hour per week regarding his behavioral needs and supports. The IEP team included in the Student's June 15, 2011, IEP classroom and statewide testing accommodations.

During the June 15, 2011, IEP meeting, the Student's IEP team discussed his location of services for his ninth grade year, i.e., the high school he would attend in the fall. The team suggested that he attend Public School 2, as it was his neighborhood school. Although a representative from Public School 2 attended the June 15, 2011, meeting by telephone and informed the IEP team that Public School 2 could provide the Student only 19.5 hours of specialized instruction outside the general education setting, the IEP team provided no other locations of service to implement the Student's IEP.

Petitioner objected to placing the Student in this school, arguing that he required a therapeutic setting and that Public School 2 could not implement his June 15, 2011, IEP. Nonetheless, the IEP team identified no other locations of service for the Student for the 2011-2012 school year.

September through December 2011 at Public School 2

In August 2011, Petitioner searched for other schools for the Student but was unsuccessful in finding an alternative to Public School 2. Having run out of options, she enrolled the Student in Public School 2 during the first week of September 2011. On his first day of school, the Student was attacked by another student.

The Student's social and behavioral difficulties escalated during his first week at Public School 2. By September 13, 2011, the Student had threatened to hurt himself.

In response to the Student's suicidal intentions, Public School 2 social worker

²¹⁹ . *Id.* at (e)

²²⁰ *Roark*, 460 F. Supp.2d at 43 (quoting *DeVries v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4th Cir. 1989)); *Rowley*, 458 U.S. at 201 (The Act requires participating States to educate handicapped children with nondisabled children whenever possible.).

²²¹ 20 U.S.C. § 1412(a)(10)(B)(I); *see also Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369 (1985).

entered into a contract that with the Student that specified that if the Student ever had thoughts of suicide, felt like he wanted to kill himself, and/or had the urge to harm himself, he could take certain steps including reminding himself that his mother cared deeply for him and would not want him to hurt himself, calling 9-1-1, his mother, or the social worker, or calling the suicide prevention hotline. The social worker also created a behavioral management plan for the Student.

On September 19, 2011, the young man who had hit the Student on his first day of school bragged about beating him up in front of his mother. Then, the young man sat on the Student's lap and started pummeling him. The Student became upset and threatened to kill someone and blow up the school. He was then suspended for ten days.

Petitioner did not return the Student to Public School 2 after his suspension because she was worried about his safety. Thus, the Student attended Public School 2 for only eleven school days during the fall of 2011.

During those eleven days, the Student sporadically attended the four classes on his schedule. He had eight unexcused absences in his ROTC class, eight unexcused absences in his algebra class, seven unexcused absences in his US government class, and three unexcused absences in his English class.

After his suspension on September 19, 2011, until October 7, 2011, Petitioner kept the Student at home. Petitioner presented no evidence to show that she requested that Public provide the Student a FAPE during this time. Rather, she was in the process of placing the Student in a nonpublic school. On October 7, 2011, the Student began attending Nonpublic School 1. He remained in Nonpublic School 1 until he was expelled for assaulting a staff member in late December or early January 2011.

Petitioner presented no evidence to show that, during the eleven school days that the Student was enrolled in and attending Public School 2 during the fall of 2011, Respondent failed to implement his IEP. Petitioner also failed to show that the Student was available to receive a FAPE from Public School 2, or any public school, between October 7, 2011, and January 2012.

Petitioner also failed to show that the Student skipped most of his classes during the two weeks he attended Public School 2 because the school did not implement his IEP or because it did not provide a therapeutic environment. Nor did Petitioner prove that the Student's behavioral difficulties during this time stemmed from Respondent's failure to implement his IEP or provide him a therapeutic placement.

Thus, Petitioner failed to prove that Respondent denied the Student a FAPE from September 2011 through December 2011.

January through March 2012 at Public School 2

In January 2012, after the Student was expelled from Nonpublic School 1, Petitioner sought to reenroll the Student in Public School 2. The principal of Public School 2 refused

to enroll the Student and stated that he did not want the Student in his school.

Due to his feelings of rejection, the Student attempted suicide and then spent the next week hospitalized at PI.

On January 20, 2012, the CCM advised counsel for Petitioner that Petitioner should enroll the Student at a non-attending student at Public School 2. Soon thereafter, Petitioner enrolled the Student as a non-attending student at Public School 2.

Petitioner then met with SEC 1 and requested that Public School 2 provide some schoolwork for the Student to complete while he was out of school. The SEC responded that she couldn't give the Student any schoolwork to complete because he was registered as a non-attending student.

Another month passed before Public School 2 held a meeting to discuss the Student's reentry into Public School 2. The Student's IEP team met on February 29, 2012, to review and revise his IEP. Petitioner and the Educational Advocate also requested that the IEP team discuss the Student's placement for the rest of the 2011-2012 school year.

The February 29, 2012, meeting was interrupted when Petitioner and the SEC privately discussed the reasons why the Student should attend a school other than Public School 2. The SEC agreed to transfer the Student to Public School 3.

Thus, because the principal of Public School 2 refused to readmit the Student, even though the MDR team had determined that his previous behavior was a manifestation of his disability, the Student missed two months of school and was denied the services his IEP required. Because the CCM instructed Petitioner to enroll the Student as a non-attending student, SEC 1 was unable to provide him schoolwork to complete while he was sitting at home. Public School 2 took no steps to ensure the Student's IEP was being implemented until February 29, 2012, when it agreed to transfer him to Public School 3.

For these reasons, Petitioner proved that Respondent denied the Student a FAPE between January 2012, when Petitioner asked that the Student be reenrolled in Public School 2, and February 29, 2012, when Respondent agreed to transfer him to Public School 3. However, Petitioner presented no evidence to show that the Student was denied a FAPE during this time because Public School 2 failed to offer him a therapeutic environment.

B. Petitioner Proved that Respondent denied the Student a FAPE from March 13, 2012 through June 5, 2012, by Failing to Implement his IEP and Provide Him a Therapeutic Environment.

The Student began attending Public School 3 on March 13, 2012. From the time he enrolled in Public School 3 through April 12, 2012, the Student was enrolled in general education classes as well as special education classes. He had four classes on his schedule: Junior ROTC, world history/geography, general music, and art, as well as a special education learning lab. Junior ROTC, music, and art are all general education classes..

Between March 13, 2012, and March 30, 2012, the Student regularly attended his classes at Public School 2 and enjoyed being at his new school. By the end of March 2012, the Student continued to go to school but stopped attending his classes and walked around the hallways most of the day. When he attended class, he slept through most of the class.

Public School 3 held a meeting of the Student's IEP team on April 12, 2012. During the meeting, the IEP team reviewed the Student's June 27, 2011, psychological evaluation. The IEP team discussed the fact that, during his most recent stay at Children's National Medical Center, the Student was diagnosed with psychotic disorder.

The IEP team reviewed the portion of the June 27, 2011, psychological evaluation that concluded that the Student requires an educational setting that includes integrated therapy, counseling support, and medication management to address his emotional, behavioral, attention, executive functioning, and academic needs. The June 27, 2011, psychological evaluation concluded that the Student required a therapeutic environment.

During the April 12, 2012, meeting, the Student informed the team that he cuts himself on his arms, fingers, and hands when he is depressed. Petitioner informed the IEP team about the Student's regressing behaviors, including skipping class, leaving the school building, and smoking on the playground. Petitioner expressed concern that Public School 3 did not have sufficient behavioral supports to assist the Student when his behavior escalated.

The IEP team agreed that the Student would continue to receive 25.5 hours of specialized instruction outside the general education environment and 240 minutes per month of behavioral support. Petitioner agreed with the content of this IEP. However, Petitioner and the Educational Advocate continued to assert that the Student required a placement in a therapeutic environment, which Nonpublic School 3 could not provide.

On April 12, 2012, Public School 3 changed the Student's class schedule to provide him with a ROTC class that, while not taught by a special education teacher, contained only special education students; a special education English class; and a special education world history/geography class. Even though the Student's June 15, 2011, and April 12, 2012, IEPs included mathematics goals, the Student was not assigned to a math class.

Thus, Petitioner proved that, from the day he started attending Public School 3 through the last day of the due process hearing, Respondent failed to implement the Student's IEP by failing to implement the academic goals on the IEP and by failing to place the Student in his least restrictive environment. First, Public School 3 failed to place the Student in an English class through March 30, 2012, even though his June 11, 2012, IEP includes numerous reading and writing goals. Second, Public School 3 failed to place the Student in a math class from March 13, 2012, through June 5, 2012, despite that his IEP includes math goals. Third, Public School 3 placed the Student in all general education classes from March 13, 2012, through April 12, 2012, even though his IEP required that he receive all his instruction outside the general education setting.

Finally, Public School 3 failed to heed the findings of the June 27, 2011, psychological evaluation and place the Student in a therapeutic environment. As a result, the Student failed all of his classes at the end of the school year. Thus, Petitioner proved that Respondent denied the Student a FAPE by failing to place him in a therapeutic environment.

Because Respondent denied the Student a FAPE, and because the Student requires a therapeutic environment, this Hearing Officer will place the Student at Nonpublic School 2 for the 2012-2013 school year at public expense.

C. The Student is Entitled to Compensatory Education in the Form of Extended School Year Services at Nonpublic School 2.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place."²²² An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."²²³

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award."²²⁴

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA."²²⁵ A 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."²²⁶

This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity."²²⁷ Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.²²⁸ Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time

²²² *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

²²³ *Reid*, 401 F.3d at 518.

²²⁴ *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

²²⁵ *Reid*, 401 F.3d at 518, 523.

²²⁶ *Reid*, 401 F.3d at 524.

²²⁷ *Id.*

²²⁸ *Id.*

spent without FAPE.²²⁹

Here, Petitioner proved that Public denied the Student a FAPE between January 2012 and June 5, 2012, by failing to implement his IEP. Petitioner further proved that Public denied the Student a FAPE by failing to provide him a therapeutic environment between April 12, 2012, and June 5, 2012. As a result, the Student earned no credits during the 2011-2012 school year, his ninth grade year, and failed all of his classes. Thus, Petitioner proved that the Student is entitled to compensatory education.

Petitioner has proposed a compensatory education plan that would provide the Student three hours per week of tutoring in math, reading and writing.²³⁰ However, the Student already receives wrap-around services, mentoring, counseling, and therapy after school. Considering that Nonpublic School 2 offers “ramp up” classes to address a student’s academic deficits, it is this Hearing Officer’s understanding that this class may serve the same purpose as the three hours per week of tutoring Petitioner proposes.

Additionally, because the Student will have to travel back and forth to Northern Virginia to attend Nonpublic School 2, this Hearing Officer is concerned that the Student may not have the mental stamina or desire to perform additional academic work after school or on the weekends. Instead, this Hearing Officer will place the Student in the Nonpublic School for the 2012 summer, in addition to the tuition award for the 2012-2013 school year, in the hopes that this will help remediate the denial of FAPE during the second half of the 2011-2012 school year.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this 12th day of June 2012 hereby:

ORDERED that, by June 29, 2012, Respondent shall place the Student at Nonpublic School 2 at public expense for the 2012 extended school year, which begins on July 2, 2012;

IT IS FURTHER ORDERED that, by June 29, 2012, Respondent shall arrange and fund transportation for the Student to attend Nonpublic School 2 for the 2012 extended school year, which begins on July 2, 2012;

²²⁹ *Id.* See also *Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

²³⁰ Petitioner Exhibit 1 at 2 (May 23, 2012, Compensatory Education Plan). In her compensatory education plan, Petitioner proposed that the Student attend a summer automotive camp. However, the Educational Advocate testified that she was unable to locate such a camp.

IT IS FURTHER ORDERED that, by August 1, 2012, Respondent shall place the Student at Nonpublic School 2 at public expense for the 2012-2013 school year; and

IT IS FURTHER ORDERED that, by August 1, 2012, Respondent shall arrange and fund transportation for the Student to attend Nonpublic School 2 for the 2012-2013 school year.

By: /s/ Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by this Hearing Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a [state] court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).