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OSSE
Office of Dispute Resolution
January 22, 2015

Confidential

Parent on Behalf of Student ¹ , Petitioner, v. District of Columbia Public Schools (“DCPS”) [LEA} & Office of the State Superintendent of Education (“OSSE”) [SEA] Respondent. Hearing Officer: Coles B. Ruff, Esq. Date Issued: January 22, 2015	REVISED HEARING OFFICER’S DETERMINATION TO CLARIFY ORDER ²
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

² This Revised HOD is issued to facilitate implementation of the HOD by stating a time requirement for Petitioner to take action that the order directs. There are no other changes made to the HOD.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on January 6, 2015, and concluded on January 7, 2015, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006 and Hearing Room 2003 respectively. The record closed with the submissions of written closing arguments by each party on January 9, 2015.³

BACKGROUND AND PROCEDURAL HISTORY:

The student is a child with a disability pursuant to IDEA with a disability classification of emotional disability (“ED”). During school year (“SY”) 2013-2014 the student attended and continues to attend a non-public special education school (“School A”). During SY 2013-2014 the student’s location educational agency (“LEA”) was a D.C. public charter school (“School B”) that the student attended prior to attending School A.

It was determined that he needed a more restrictive placement than School B. The student was then placed at School A with funding through OSSE, the state educational agency (“SEA”). School B is a middle school and does not service students beyond eighth grade. At the end of SY 2013-2014 the student was promoted to ninth grade and thus aged-out of School B. In April 2014 School B mailed a notice to the student’s guardian (“Petitioner”) informing her that with the student’s anticipated promotion to ninth grade School B would no longer be the student’s LEA after SY 2013-2014.

Petitioner later received a call from School B informing her of the same information and she then telephoned her attorney who corresponded with School B’s attorney. School B’s attorney stated that Petitioner should register the student with DCPS as a “non-attending” student and seek continued funding for the student to remain at School A.

Petitioner attempted to register the student at his local DCPS high school (“School C”). However, DCPS personnel at School C informed Petitioner that DCPS did not register and enroll students as “non-attending” and the student would have to be enrolled and attend School C for at least thirty days and a meeting would be convened to review the student’s individualized educational program (“IEP”) and review his placement.

Following communications by Petitioner’s attorney with DCPS and OSSE on August 13, 2014, Petitioner’s attorney forwarded an email to OSSE and DCPS advising DCPS and OSSE the student required a full-time separate special education program and requesting a meeting with

³ The Hearing Officer accepted all written closing arguments including OSSE’s although Petitioner’s objected because of the time of day OSSE’s document was filed. The Hearing Officer concluded that the written closing was timely because it was submitted on January 9, 2015.

DCPS and/or OSSE to discuss and determine the student's placement.

OSSE agreed that the student could return to School A while his placement could be determined. The student returned to School A soon after the start of SY 2014-2015. Petitioner later received an email from OSSE that advised her she would have 30 days from receipt of the notice to enroll the student in an LEA or the student's funding for School A would cease.

Petitioner filed this due process complaint on October 17, 2014, alleging OSSE and/or DCPS denied the student a free appropriate public education ("FAPE") by requiring that the student enroll and attend DCPS before he could be provided an offer of a FAPE by DCPS. Petitioner also alleged the student did not begin attending School A timely and missed days after he began attending during SY 2014-2015 because of lapses in transportation. Petitioner also alleged that while the student's placement has been in dispute the student's IEP expired on September 17, 2014, and was not updated because DCPS' and OSSE's alleged failure to convene a meeting and make an offer of a FAPE. Since the filing to the due process complaint the student has remained at School A pending the outcome of the proceeding.⁴

DCPS filed a timely response to the complaint on October 22, 2014. DCPS denied any alleged violation(s) or denial of a FAPE to the student. DCPS asserted the student exited DCPS in September 2014 and enrollment is necessary to make DCPS or any other LEA the student's LEA for special education purposes. Although the Petitioner wanted "non-attending" enrollment, this type of enrollment no longer exists. There is no mechanism for an emergency or pre-enrollment meeting under IDEA. The student's LEA remains School B unless and until the Petitioner enrolls in a DCPS school. The LEA responsible for the student's IEP when it expired was School B and DCPS is willing to convene an IEP team once the student enrolls.

OSSE filed a timely response to the complaint on October 27, 2014. OSSE denied any alleged violation(s) or denial of a FAPE to the student. OSSE asserted that it sought to ensure the student's FAPE but Petitioner, through her attorney, refused to enroll the student in a LEA. The IDEA does not preempt local regulations that govern enrollment and residency. Although OSSE is ultimately responsible for ensuring FAPE for students with disabilities, OSSE discharges that responsibility through LEAs that are directly responsible for monitoring and providing services to students with disabilities. As soon as OSSE became aware that the student was not enrolled in an LEA, OSSE notified Petitioner of LEA options.

A resolution meeting between Petitioner and DCPS was held on October 29, 2014.⁵ The case was not resolved. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on November 17, 2014, and originally ended [and the Hearing Officer's

⁴ Petitioner filed a motion for Stay-Put on November 14, 2014. On November 19, 2014, DCPS filed an opposition to Petitioner's Stay-Put Motion. OSSE addressed the request for Stay-Put in its response to the complaint and in its own Motion to Dismiss. Both OSSE and DCPS asserted the student is not entitled to Stay-Put protections. The Hearing Officer ordered in the PHO that School A is the student's stay-put educational placement and ordered OSSE to continue to fund his placement and provide transportation there until the due process complaint is adjudicated and a HOD issued.

⁵ There was no resolution meeting held by OSSE or required pursuant to IDEA.

Determination (“HOD”) was due] on December 31, 2014.

Petitioner submitted an unopposed motion to continue the hearing and to extend the HOD due date for 17 days. In addition, OSSE submitted an unopposed motion to extend the decision due as to OSSE by 47 days so that the decisions as to both Respondents would be due on the same day. Both motions were granted. The HOD is now due January 17, 2015.

The Hearing Officer convened a pre-hearing conference on November 10, 2014, and on December 4, 2014, issued a pre-hearing order addressing pending motions⁶ and outlining, *inter alia*, the issues to be adjudicated.

On December 19, 2014, OSSE filed a second motion to dismiss. On December 19, 2014, Petitioner filed an opposition to OSSE’s motion. The Hearing Officer concluded the motion would be argued at the outset of the hearing. After oral argument the Hearing Officer did not grant OSSE’s motion as a pre-hearing matter and indicated that OSSE assertions as to jurisdiction would be and are addressed in this HOD.

ISSUES: ⁷

The issues adjudicated are:

As to DCPS:

1. Whether DCPS denied the student a FAPE by requiring that the student enroll and attend his neighborhood school as a prerequisite to an offer of FAPE and thus failing to provide the student an appropriate educational placement.
2. Whether DCPS denied the student a FAPE by failing to ensure the student’s IEP was updated prior to the date of its expiration.

As to OSSE:

Whether OSSE failed to abide by its obligation as the SEA to ensure that the student received a FAPE by:

1. Requiring the student to enroll in and attend his neighborhood school as a prerequisite to

⁶ On November 20, 2014, OSSE filed a Motion to Dismiss. On November 26, 2014, Petitioner filed an opposition to OSSE’s motion to dismiss. On November 21, 2014, DCPS filed a Motion to Dismiss and for Summary Adjudication. On November 26, 2014, Petitioner filed an opposition to DCPS’ motion. On November 26, 2014, DCPS filed a reply to Petitioner’s Opposition. In the PHO this Hearing Officer denied both OSSE’s and DCPS’ motions to dismiss and directed that all claims and issues raised against OSSE and DCPS would be adjudicated at hearing on the scheduled hearing dates.

⁷ The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

an offer of FAPE and thus failing to ensure the student has an appropriate placement.

2. Failing to ensure the student's IEP was updated in a timely manner.
3. Failing to provide the student transportation services to and from School A for the approximate two weeks of school he missed during SY 2014-2015.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 19 and Respondent OSSE's Exhibits 1 through 4) that were admitted into the record and are listed in Appendix A.⁸ Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁹

1. The student is a child with a disability pursuant to IDEA with a disability classification of ED. (Petitioner's Exhibit 2-1).
2. During school year SY 2013-2014 the student attended and has continues to attend School A. (Petitioner's testimony, Petitioner's Exhibit 2)
3. Prior to attending School A the student attended School B, where began attending at the start of SY 2007-2008. (Petitioner's testimony, Petitioner's Exhibits 6-1)
4. At some point the student was in need of a more restrictive placement than School B. The student was then placed at School A with funding through OSSE. During SY 2013-2014 School B was the student's LEA. (Petitioner's Exhibits 2, 14)
5. The student's most recent September 17, 2013, IEP developed by School B to be implemented by School A requires that he have 29.25 hours per week of specialized instruction outside of the general education setting; 2 hours per week of behavioral supports outside of the general education setting, and 45 minutes per week of occupational therapy outside of the general education setting. The student also has a dedicated aide who works with him 32 hours per week. (Petitioner's Exhibit 2-9)
6. School B is a middle school and does not services students beyond eighth grade. At the end of SY 2013-2014 the student was promoted to ninth grade and thus aged-out of

⁸ Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

⁹ The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

School B. In April 2014 School B mailed a notice to Petitioner informing her that with the student's anticipated promotion to ninth grade School B would no longer be the student's LEA after SY 2013-2014. However, Petitioner does not recall receiving this letter. (OSSE Exhibit 2, Petitioner's testimony)

7. Petitioner later received a call from School B informing her of the same information and stating she should go to the student's neighborhood school and register him as a "non-attending" student. Petitioner telephoned her attorney who then corresponded with School B's attorney. School B's attorney stated that Petitioner should register the student with DCPS as a "non-attending" student and seek continued funding for the student to remain at School A. (Petitioner's testimony, Petitioner's Exhibit 1-7, 1-8)
8. In July 2014 Petitioner attempted to register the student at his local DCPS high school, School C. However, DCPS personnel at School C informed Petitioner that DCPS did not register and enroll students as "non-attending" and the student would have to be enrolled and attend School C for at least thirty days and then a meeting would be convened to review the student's IEP. Petitioner had with her proof of residency to present but she was not asked for the documentation because she expressed that she did not intend for the student to attend School C. Petitioner left School A without registering the student. (Petitioner's testimony)
9. Following communications by Petitioner's attorney with DCPS and OSSE on August 13, 2014, Petitioner attorney forwarded an email to OSSE and DCPS advising that the student required a full-time separate special education program in a separate day school and requesting a meeting so the student's placement could be discussed and determined without him being required to attend School C. (Witness 3's testimony, Petitioner's Exhibit 1-16)
10. Petitioner, OSSE and DCPS remained in contact and soon after SY 2014-2015 began Petitioner received a call from School A advising her that OSSE agreed that the student could return to School A while they were dealing with his placement. The student was not immediately provided transportation services and School A provided the student transportation until his bus transportation services started. (Petitioner's testimony, Witness 2's testimony, Petitioner's Exhibits, 1-27, 1-54, 13)
11. The student's IEP expired on September 17, 2014, and was not updated because although the student continued to attend School A he did not yet have an official LEA. School A has continued to provide the student services pursuant to his existing IEP. (Witness 2's testimony)
12. In October 2014, the student was arrested and was temporarily held at the Youth Services Center ("YSC"). While the student was at YSC Petitioner received a letter of invitation to attend at IEP meeting for the student at YSC. However, the student was soon released to a group home. No IEP meeting was held and the student returned to School A. Because of the student's change of residence to the group home there was a few days delay in bus transportation for the student to School A. (Petitioner's testimony,

Petitioner's Exhibit 13)

13. On October 23, 2014, OSSE provided Petitioner notice that advised her that she would have 30 days from receipt of the notice to enroll the student in an LEA or the student's funding for School A would cease. (OSSE Exhibit 1)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a 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 benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. ¹⁰ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

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. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

¹⁰ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

RULING ON OSSE's SECOND MOTION TO DISMISS

OSSE's first Motion to Dismiss asserted Petitioner's had failed to state a claim upon which relief could be granted. The Hearing Officer denied OSSE's motion in the pre-hearing order. OSSE's second Motion to Dismiss asserted the Hearing Officer lacked subject matter jurisdiction¹¹ and asserted an independent hearing officer under the IDEA lacks authority to make determinations regarding issues of local law.¹² However, the arguments and authority asserted in the second motion were identical to those ruled on by the Hearing Officer as to OSSE's first motion. OSSE in its motion asserted no additional and substantive basis for its request for dismissal of the complaint against OSSE. The Hearing Officer hereby denies OSSE's second Motion to Dismiss and concludes that he has jurisdiction as to OSSE to determine findings of fact and conclusions of law as to the allegations raised in the due process complaint against both Respondents.

Issues alleged as to DCPS:

ISSUE 1: Whether DCPS denied the student a FAPE by requiring that the student enroll and attend his neighborhood school as a prerequisite to an offer of FAPE and thus failing to provide the student an appropriate educational placement.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that DCPS by requiring that the student enroll and attend School C denied the student a FAPE.

Pursuant to 34 C.F.R. § 300.115: (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must— (1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class

The "educational placement" consists of: (1) the education program set out in the student's IEP, (2) the option on the continuum in which the student's IEP is to be implemented, and (3) the school or facility selected to implement the student's IEP. *Letter to Fisher*, 21 IDELR 992 (1994).

In this jurisdiction, the educational placement is based upon the child's IEP, and the school designated by the public agency to implement the child's IEP is the location of services. *Johnson v. District of Columbia*, 2012 L 883125 (D.C.C., March 16, 2012). The school district is not required to maximize or provide the best program; rather, it need only be an education that

¹¹ Although OSSE submitted with its second motion a copy of an order by another Hearing Officer with respect to another case and student questioning whether a due process complaint could not be filed against OSSE as the SEA, OSSE did not make that argument in its motion. Thus, this Hearing Officer saw not need to address or to distinguish his ruling from that of the other Hearing Officer.

¹² Petitioner asserted the Hearing Officer has no authority to adjudicate an issue regarding the requirement of school enrollment under D.C. Code §38-202. However, OSSE cited this same provision in its first Motion to Dismiss and whether the issue(s) raised in the complaint involve or is controlled by this provision of D.C. Code is questionable.

is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is made in conformity with the Least Restrictive Environment ("LRE") provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; (3) is determined annually; (4) is based on the child's IEP; and (5) is as close as possible to the child's home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

The IDEA only mandates a "basic floor of opportunity." *Id.*; *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995). To accomplish this, an IEP must only "be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *Chambers v. Sch. Dist. of Philadelphia Bd. of Educ.*, 587 F.3d 176, 182 (3d Cir. 2009) (quoting *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004)).

The evidence in this case demonstrates that Petitioner went to School C with the express intention of enrolling the student and having DCPS serve as the student's LEA. Although Petitioner had brought with her the required proof of residency documents she could not provide the documents as the School C staff member would not allow her to enroll the student at School C and thus into DCPS unless the student was going to attend. There was no evidence presented to contrary. Rather than DCPS allowing her to provide the proof of residency and schedule a meeting to review the student's IEP and discuss and determine a DCPS placement or location of services for the student, Petitioner was in essence turned away unless the student first began to attend School C. There was no basis in law for a student to first attend a DCPS school once a parent has presented proof that he or she is resident of the District of Columbia to refuse to offer the student a FAPE prior to attending.¹³

DCPS should have particularly after being contacted by Petitioner's counsel after Petitioner was turned away from School C, convened a meeting at which a FAPE could have been offered to Petitioner for her to accept or reject. That was not done. Consequently, the Hearing Officer

- ¹³ 34 CFR § 300.323(e) governs the obligations of LEAs for students who transfer between LEAs in the same state within the regular school year. In this case Petitioner requested a FAPE from DCPS over prior to the school year starting and the Hearing Officer concludes that this provision did not any way mandate enrollment in a DCPS school prior to an offer of FAPE being made. In addition, the case law in this jurisdiction strongly indicates that enrollment and attendance is not required before an offer of FAPE must be made once residency is proven. *District of Columbia v. Wolfire*, Civil Action No. 12-1527, 62 IDELR 198 (D.D.C Jan. 16, 2014); *D.S. v. District of Columbia*, 54 IDELR 116 (D.D.C 2010), *District of Columbia v. Oliver*, 62 IDELR 114 (D.D.C. Nov. 13, 2013); *District of Columbia v. Vinyard*, 901 F. Supp. 2d 77, 86 (D.D.C. 2012)

concludes that DCPS' failure to convene such a meeting and make an offer of a FAPE to the student before requiring that the student attend a DCPS school was denial of a FAPE. Therefore, the Hearing Officer in the order below directs that Petitioner provide DCPS the proof of residency that she would have otherwise provided to School C and that thereupon DCPS will considered the student's LEA. DCPS shall thereafter pursuant to the order below convene a meeting at which the student's IEP is reviewed and updated and a placement and location of services determined.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to ensure the student's IEP was updated prior to the date of its expiration.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student's IEP not being updated caused the student harm such that he was denied a FAPE.

34 C.F.R. §300.324(b)¹⁴ requires that a student's IEP be updated at least annually. The facts of this case demonstrate that the student's IEP was due to be updated on September 17, 2014. Although the student continued to attend School A, his IEP was not timely updated due the ongoing dispute about the student's LEA. Nonetheless, the evidence demonstrates that School A continued to provide the services prescribed in his IEP. There was no evidence presented that because the student's IEP was not timely reviewed and updated that he was caused any harm or that the failure to update the IEP resulted in any more, in this instance, than a procedural violation.¹⁵ Thus, the Hearing Officer concludes that there was insufficient evidence of a denial a FAPE to the student by DCPS as to this second issue.

Issue alleged as to OSSE:

Whether OSSE failed to abide by its obligation as the SEA to ensure that the student received a FAPE by:

1. Requiring the student to enroll in and attend his neighborhood school as a prerequisite to an offer of FAPE and thus failing to ensure the student has an appropriate placement.
2. Failing to ensure the student's IEP was updated in a timely manner.
3. Failing to provide the student transportation services to and from School A for the

¹⁴ 34 C.F.R. §300.324(b): Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-- (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address-- (A) Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under Sec. 300.303; (C) Information about the child provided to, or by, the parents, as described under Sec. 300.305(a)(2); (D) The child's anticipated needs; or (E) Other matters.

¹⁵ An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

approximate two weeks of school he missed during SY 2014-2015.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that OSSE failed to abide by its obligation as the SEA to ensure that the student received a FAPE.

The evidence demonstrates that OSSE in its supervisory role as the SEA responded to Petitioner's inquiry regarding her disagreement with DCPS and OSSE promptly contacted DCPS and eventually took the steps to continue the student's funding for School A while the disagreement was sorted out. There was no evidence that OSSE itself required that the student first attend DCPS prior to DCPS becoming the student's LEA. In addition, although OSSE had indicated to Petitioner prior to the due process complaint being filed that if the student was not enrolled in an LEA the continued funding would cease, the funding was not ended, albeit the funding was ultimately continued under stay-put. The student has continued to be provided special education and related services at School A. Thus, the Hearing Officer concludes that OSSE took action to ensure that the student was provided a FAPE.

There was no evidence presented that demonstrated because the student's IEP was not timely reviewed and updated that he was caused any harm or that the failure to update the IEP resulted in any more than a procedural violation. Similarly, there was no evidence presented that any lapse of transportation services for the student to and from School A were the result of actions or inactions by OSSE or anything other than a normal delay in effectuating changes in the student's transportation route due to the student's multiple changes of residence. Nor was there any evidence presented that any lapse in transportation resulted in harm to the student. In addition, Petitioner neither presented nor sought any additional relief for any lapse in transportation services to the student or any resulting missed days of school.

Thus, the Hearing Officer concludes that there was insufficient evidence of a denial a FAPE to the student by OSSE or that OSSE failed to abide by its obligation as the SEA to ensure that the student received a FAPE.

ORDER: ¹⁶

1. Petitioner is hereby directed to provide DCPS the required proof of residency pursuant to D.C. Code §38-308 by no later than January 31, 2015, and upon doing so DCPS shall be considered the student's LEA.
2. DCPS shall, within ten (10) school days of being presented by Petitioner the required proof of residency, convene an IEP meeting for the student with the required participants including the student's teachers and providers at School A, and review and update the student's IEP as appropriate and determine an appropriate placement and location of services for the student for the remainder of SY 2014-2015.¹⁷

¹⁶ Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

¹⁷ Pursuant to the previous order by this Hearing Officer regarding the student's stay-put placement, that stay-put

3. The issues and claims as to OSSE asserted in the due process complaint are hereby dismissed with prejudice.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that 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 District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: January 22, 2015

placement remains in effect until DCPS' actions required pursuant to this order are fulfilled.