

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 June 16, 2014, June 20, 2014, and concluded on July 1, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

BACKGROUND AND PROCEDURAL HISTORY:

The student is age seventeen and resides in the District of Columbia with his parent. The student is a child with a disability pursuant to IDEA with a disability classification of multiple disabilities including other health impairment (“OHI”) for Attention Deficit Hyperactivity Disorder (“ADHD”) and emotional disturbance (“ED”). During school year (“SY”) 2013-2014 the student was in tenth grade in a self-contained full-time special education program (“School A”) housed in a DCPS high school.

During school year (“SY”) 2011-2012 DCPS placed the student at a private full time special education school (“School B”) pursuant to a November 8, 2011, settlement agreement. The student remained at School B until the end of SY 2011-2012.

On April 14, 2014, Petitioner filed a due process complaint asserting, inter alia, DCPS failed to provide the student an appropriate IEP and placement from the start of SY 2012-2013 to present. Petitioner asserted that when the student began attending the high school where his current program is located he was initially provided general education classes and his IEP hours were inappropriately reduced from the full time out of general education program he had at School B. In addition, Petitioner asserts the change was done without an evaluation to substantiate the student’s new placement.

Petitioner asserts the student is in need of a full time non-public therapeutic day program and related services that will provide therapeutic transport to school, counseling, therapeutic recreation, and tutoring that will address his emotional issues. Petitioner seeks the student’s placement a full time private therapeutic day placement (“School C”), “wrap around” related services that will include therapeutic transport, individual tutoring, family counseling, and medication management.

DCPS filed a timely response to the complaint on April 24, 2014. DCPS denied any alleged violation(s). In its response DCPS asserted the student had significant unexcused absences while at School B due partly to his multiple arrests and commitments. The student was detained in a group home at the start of SY 2012-2013 and later enrolled in School A and that School A has provided him an appropriate IEP and placement. While the student was living in a group home his school attendance good and he made adequate academic performance. DCPS also asserted the student’s evaluations were current.

The parties convened a resolution meeting on May 5, 2014. Nothing was resolved. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on May 14, 2014, and originally ended (and the Hearing Officer's Determination ("HOD") was due) on June 28, 2014. At the conclusion of the second day of hearing DCPS counsel moved for a continuance for a third day of hearing and that the HOD due date be extended 10 calendar days. The motion was granted over Petitioner's opposition. The HOD is now due July 8, 2014.

This Hearing Officer convened pre-hearing conferences on May 16, 2014, May 29, 2014, and June 2, 2014, and issued a pre-hearing conference order on June 2, 2014, delineating, inter alia, the issues to be adjudicated.

ISSUES:²

1. Whether DCPS denied the student a free appropriate public education ("FAPE") by failing to provide timely and accurate evaluations or reevaluations for all areas of suspected disabilities.
2. Whether DCPS denied the student a FAPE by failing to provide an appropriate IEP because the IEP does not prescribe (1) a full time IEP for emotional disturbance, other health impaired and learning disability, (2) related services that will provide therapeutic transport to school, counseling in his environment, and therapeutic recreation that will address his emotional issues and (3) wrap-around services.
3. Whether DCPS denied the student a FAPE by failing to provide an appropriate placement and location of services.
4. Whether DCPS denied the student a FAPE by failing to provide the parent the student's educational records including his cumulative and special education file with suspensions and incident reports requested by the parent on April 2, 2014.

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 66 and Respondent's Exhibits 1 through 38) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

² 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.

FINDINGS OF FACT:³

1. The student _____ resides in the District of Columbia with his parent. The student is a child with a disability pursuant to IDEA with a disability classification of multiple disabilities including OHI for ADHD and ED. He is currently in tenth grade in School A, a self-contained full-time special education program housed in a DCPS high school. The student began attending the high school in which his program is housed at the start of SY 2012-2013 and was transferred to his current special education program in March 2013. (Petitioner's Exhibit 31-1, 33-8, Respondent's Exhibits 12-1, 19-1)
2. During school year SY 2011-2012 DCPS placed the student at School B, a private full time special education school pursuant to a November 8, 2011, settlement agreement. The student remained at School B until the end of SY 2011-2012. While at School B the student had a full-time out of general education IEP. (Witness 2's testimony, Petitioner's Exhibits 14, 21)
3. The student's time at School B was not successful because of his absences and incidents at the school that occurred throughout the school year. School B's director believed the student was non-compliant with his prescribed medication and may have been refusing to take it. School B made efforts to improve the student's attendance and the student initially had bus transportation but then he began to walk to school. When the student was asked about his absences he often he did not have answers as to why he was not at school. His parent would tell School B staff when they inquired of the student's whereabouts that he was supposed to be in school and she did not know why he did not show up to school. While at School B the student had some behavioral incidents where he was required to be redirected or calmed down in the quiet room School B specifically has for that purpose. The student also had school suspensions during his time at School B. During some of the time the student was attending School B he was incarcerated. (Witness 2's testimony, Petitioner's Exhibits 25, 26)
4. The student began attending school at the DCPS high school in which School A is located near the start of SY 2012-2013 through the group home where he was residing. From September 2012 to March 2013 he was in a general education program. The student's IEP prescribed that he be provided 13 hours of specialized instruction inside general education. (Witness 8's testimony, Respondent's Exhibit 10-8)
5. By February 2013 the student's math teacher noted that because he had recently entered the school he had not yet made any progress on his math goals and his

³ 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.

- reading goals had not yet been introduced. The student was, however, progressing relative to his behavior support and OT goals. (Respondent's Exhibit 18-1, 18-2, 18-4)
6. March 19, 2013, the student's IEP was amended to prescribe that student be provided 25 hours of services per week of outside general education and the student be placed in his current self-contained program. The student's parent agreed to the IEP amendment without an IEP team meeting being convened. The prior written notice states that the student's service hours had been changed in error upon his transfer into to the high school. Thereafter the student was assigned to the School A self-contained special education program. (Respondent's Exhibit 12-1, 12-2)
 7. School A is a behavioral support special education program for students with behavioral concerns. At School C there are two classrooms and the program's social worker provides services for both. The two classrooms are near each other. The student to teacher ratio is 10 to 1 - with a teacher, teacher assistant and the social worker who is shared between the two classrooms. The students are provided academic instruction and behavior supports with the help of behavior technicians. The student's social worker has spoken to the student's teacher and she is not sure of the student's present academic functioning. The student spends much of the time doing computerized instruction. The student also has projects he needs to complete that are not done on computer. (Witness 8's testimony)
 8. At School A the student is provided counseling support for any emotional outbursts. The School A social worker is available as needed for all students in the program when in crisis and at other times she has scheduled counseling with students. School C does not have a de-escalation room. When the student arrived at School A he was assigned a social worker and was provided services usually working on the student's coping strategies, including speaking to an adult when things upset him. The student continues at times to escalate in his reactions despite the ongoing counseling and often wants to settle conflicts himself even though he has told an adult. The School A staff is responsible for implementing the student's BIP. (Witness 8's testimony)
 9. The student's school attendance was far better during SY 2012-2013 when he was placed in the group home because the group home staff brought him to school. However, during SY 2013-2014 the student has had significant attendance problems. The School A social worker has tried to contact the student's parent by phone about the absences but has generally been unsuccessful. However, once when she reached the parent the parent did not have reasons why the was not in school. The student is provided transportation services but he refuses bus transportation. (Witness 8's testimony)
 10. During SY 2012-2013 the student was present 47 out of 120 membership days and had a significant number class absences and tardies. (Respondent's Exhibit 19)

11. On March 18, 2013, the student received a three-day school suspension for repeated violations of walking the hallways, skipping class and becoming belligerent with staff once he was redirected. A manifestation determination review (“MDR”) was held at that time and the team determined the student’s conduct was caused by or had a direct and substantial relationship to his disability. (Respondent’s Exhibits 14-1, 15-1)
12. As of April 12, 2013, the student began to be provided bus transportation to School A. (Respondent’s Exhibit 16)
13. The student regularly engaged in weekly behavior support counseling sessions from December 2012 through March 18, 2013. The student was absent thereafter. (Respondent’s Exhibit 17-7)
14. In June 2013 the student’s special education teacher noted in the student’s IEP progress report that he had made progress in his math, reading and written expression goals. (Respondent’s Exhibit 18-3)
15. The student has earned a total of 6 credits toward the 24 credits needed for high school graduation. The student has “Ds” and one “C” in the courses that he has passed since attending School A. (Respondent’s Exhibit 38)
16. The student’s November 6, 2013, individualized educational program (“IEP”) prescribed that the student is on regular high school diploma track and included academic goals in the areas of math, reading, written expression. The IEP also included goals in the areas of emotional, social and behavior development and in motor skills physical development. The IEP prescribed the student be provided 20.5 hours per week of specialized instruction outside general education and 120 minutes per month of occupational therapy (“OT”) and 240 minutes per month of behavioral support services. The IEP included a behavior intervention plan (“BIP”), classroom and statewide testing accommodations and provides transportation services. The student’s IEP noted that he received educational and behavioral assessments in 2013 to assist in preparing his IEP. (Petitioner’s Exhibit 28, 29)
17. The student’s IEP emotional social and behavior support goal stated: “by the end of the IEP when emotionally upset the student will utilize socially appropriate coping skills developed in weekly counseling sessions in an effort to de-escalate himself in 4 out of 5 given opportunities. The baseline stated “the student uses conversations with trusted adults as a means of coping with feelings of anger and/or frustration in two out of five opportunities.” (Respondent’s Exhibit 20-7)
18. In January 2014 D.C. Superior Court ordered a psycho-educational evaluation and a psychiatric evaluation be conducted of the student while he was detained at the D.C. Youth Services Center for a juvenile offense that allegedly occurred in December 2013. The psycho-educational evaluation found the student’s cognitive abilities fell in the extremely low range and his academic functioning was at approximately second grade in all areas. The evaluation also confirmed the student’s diagnosis of

Severe Oppositional Defiant Disorder, ADHD and Unspecified Depressive Disorder. He was diagnosed by the psychiatric evaluation with Bipolar Disorder NOS, Marijuana Abuse, Anti-Social Behaviors of Adolescent. The psycho-educational evaluation noted the student's history of school truancy and disruptive school behaviors including bullying, throwing tantrums, challenging staff members and leaving the classroom without permission. Both the psychological and psychiatric evaluations recommended the student be placed in a residential treatment facility. (Witness 3's testimony, Petitioner's Exhibit 33-1, 33-8, 33-14, 33-16, 33-18, 33-20, 34-9 34-10)

19. On March 19, 2014, DCPS completed a review of the court ordered evaluations. The DCPS review recommended the student's IEP team develop and implement an attendance plan to improve the student's school attendance and for the student's IEP team to discuss the recommendations of the independent evaluations for the student's placement in a residential program. (Petitioner's Exhibit 35-1, 35-4)
20. During SY 2013-2014 the student had numerous incidents of leaving school or being in the hallway and received verbal reprimands and redirections or in-school disciplinary action on some of these occasions. (Petitioner's Exhibit 50)
21. On April 9, 2014, School A issued a prior written notice that it would conduct a functional behavioral assessment ("FBA") to determine the functions of the student's behavior and the need for a behavior intervention plan ("BIP"). (Respondent's Exhibit 26-1)
22. On April 10, 2014, DCPS conducted the FBA. The FBA noted that since the student's enrollment in School A he has a history of excessive absences and suspensions as a result of physical altercations. When the student is present he is easily distracted by peers and rarely remains for the duration of the school day. He is easily angered and engages in negative verbal exchanges with peers and has been involved in physical altercations. Most recently he was involved in a physical altercations that resulted in an emergency 45- day suspension. The student was unavailable for input in the FBA. (Respondent's Exhibit 27-2)
23. On March 19, 2014, School A convened an IEP meeting to review the student's court ordered psycho-educational and psychiatric evaluations. The student's parent participated in the meeting along with the School A staff. At the meeting the student's parent explained the student's poor school attendance despite the student being provided bus transportation. Both the student's social worker and OT provider stated the student had made little if any progress on IEP goals in those areas due to his poor school attendance and having received suspensions for verbal and physical altercations with peers and destruction of property. At the meeting it was noted the student had been truant with 69 excused absences and 170 unexcused absences from his scheduled classes and 32 late arrivals. The School A staff recommended the parent seek support of community based organizations to assist the student with "wrap-around" support. The team agreed to meet again on May 8, 2014, and to

discuss the recommendations in the independent evaluation for the student's placement in a residential program. (Petitioner's Exhibit 30-1, 30-2)

24. On May 8, 2014, the student's IEP team met and reviewed the student's recent evaluations and determined the student remained eligible for special education. The student's IEP was updated and included an additional hour per week of specialized instruction outside of general education and DCPS issued a prior written notice that documented the student's parent's disagreement with the student's disability classification of ED and concluded the student would continue to have the MD classification. (Petitioner's Exhibits 31-1, Respondent's Exhibit 30, 32, 33-12)
25. School A developed an updated FBA and BIP on May 7, 2014. (Petitioner's Exhibit 32-1)
26. On May 12, 2014, School A convened a meeting with the student and developed an attendance plan for the student. (Respondent's Exhibit 29)
27. The student's most recent IEP is dated May 13, 2014, and signed by the student, the parent and the student's educational attorney. The student's emotional social and behavioral development goal was continued from his previous IEP. The IEP prescribes the following services outside general education: 21.5 hours of specialized instruction per week, 240 minutes per month of behavioral support services, 120 minutes per month of occupational therapy. (Respondent's Exhibit 33-8, 33-12)
28. The student's BIP is designed to target the student's behaviors of yelling and resorting to physical violence when he has feelings of anger and frustration and replacing those behaviors with the coping skills developed through his counseling sessions. (Petitioner's Exhibit 29-1)
29. During SY 2013-2014 on occasion the student's in-school behaviors were uncontrollable and unsafe for him and other students and staff and on those occasions School A staff have decided to suspend the student. (Witness 8's testimony)
30. The student's educational consultant participated in the student's May 13, 2014, IEP meeting and has observed and expressed an expert opinion that the student's current placement at School A is inappropriate because the student has failed academically there, and among other things, School A lacks sufficient behavioral supports and interventions to help address the student's severe emotional and behavioral needs. In addition, in her opinion School A uses suspensions as a primary means of addressing the student's behavior. The consultant made several recommendations for changes to the student's IEP to address his academic and behavioral difficulties. (Witness 1's testimony, Petitioner's Exhibit 37)
31. Since the student has been attending School A he has had a number of psychiatric hospitalization with suicidal ideations. (Witness 1's testimony, Petitioner's Exhibit 55)

32. The student currently has a juvenile probation officer with DC Superior Court who has known the student since 2011. The student's current court status is pending sentencing. The sentencing options include probation or commitment to DYRS. The recommendation currently being made to the Court is that the student be placed in a psychiatric residential treatment facility. If the student is committed to DYRS, DYRS will determine his placement. It could be a group home or a residential treatment facility. The D.C. Superior Court judge is giving the student an opportunity to see if he complies with his release requirements as he was placed at home with his parent. The judge wants to see how he would do to determine if the student will be given probation. In the time the student has worked with his probation officer the student was basically compliant with the program he was required to attend. However, the student's non-compliant time may have outweighed his compliant time. His probation officer believes that if the student had structure and support in the community he might be successful. However, the probation officer was not convinced even with such supports the student would be compliant. (Witness 5's testimony)
33. The student has been interviewed and accepted to School C, a special education therapeutic day school that serves students with special needs including students with ED classification. The School C an OSSE Certificate of Approval ("COA") and its tuition and service rates are approved by OSSE. School C has two behavior staff assigned to each classroom and four social workers including a social work director. The school has 68 students. The staff is trained in special education and behavioral programming. Each level of the school has a quiet room and the school uses suspension as a last resort for discipline. If the student attends School C he will first be provided an academic assessment and provided a specialized reading program that is being used. The teachers are certified in special education and the related service providers are licensed. School C believes in can meet the student needs for special education and intensive behavioral support. (Witness 4's testimony, Petitioner's Exhibit 63-3)
34. Petitioner proposed a compensatory education program to compensate the student for the alleged denials of FAPE during SY 2013-2014 including being in an inappropriate school placement. Petitioner's has inquired about the services that can be provided to the student to assist him in getting to school timely and attending regularly. The Capital Region Children's Center contracts with DCPS to provide compensatory education services including counseling, tutoring social skills counseling, and therapeutic transport to and from school. It can also provide home based mental health services and can provides students who struggle with school attendance assistance in the home in the morning to get the student up and out to school on time. This is intended to be short-term service to get the student to a point he or she is attending school on his or her own. Petitioner has proposed the student be provided home-based treatment services, individual and family counseling and intensive mentoring and therapeutic transport, collectively called "wrap around" services. (Witness 1's testimony, Witness 6's testimony, Petitioner's Exhibit 65)

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. ⁴ *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.⁵

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).

⁴ 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.

⁵ At the conclusion of the hearing the Hearing Officer pointed out the provision in Title 5B, Chapter 25, section 2510.16, which states in whole “In reviewing a decision with respect to the manifestation determination, the hearing officer must determine whether DCPS has demonstrated that the child’s behavior was not a manifestation of such child’s disability.” The parties had not been aware of this provision.

ISSUE 1: Whether DCPS denied the student a FAPE by failing to provide timely and accurate evaluations or reevaluations for all areas of suspected disabilities.

Conclusion: Petitioner did not sustain the burden proof by a preponderance of the evidence that DCPS failed to re-evaluate the student.

34 C.F.R. § 300.303(a)(2) make clear that, “A local education agency (“LEA”) *shall ensure* that a re-evaluation of each child with a disability is conducted...if the child’s parents or teacher requests a re-evaluation.” (emphasis added). 34 C.F.R. § 300.305(d)(2) also clarifies that the parent must be advised by the LEA of the right to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child’s educational needs. *See also Letter to Copenhaver*, 108 LRP 16368 (OSEP 2007).

Petitioner asserts DCPS failed to provide timely and accurate evaluations or reevaluations for student. However, the evidence reveals that the student’s November 2013 IEP contained references to recent evaluations that had been conducted.⁶ There was insufficient evidence presented that DCPS failed to conduct the student’s triennial evaluations or failed to conduct any requested evaluations. When DCPS was provided the court order evaluations it promptly had them reviewed by a DCPS psychologist and then by an IEP team and made adjustments to the student’s IEP as a result.⁷ Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to provide an appropriate IEP because the IEP does not prescribe (1) a full time IEP for emotional disturbance, other health impaired and learning disability, (2) related services that will provide therapeutic transport to school, counseling in his environment, and therapeutic recreation that will address his emotional issues and (3) wrap-around services.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that from September 2012 to March 2013 the student had an inappropriate IEP at School A. However, Petitioner did not adequately prove that the student’s current IEP is inappropriate because it lacks the related services requested.

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

⁶ FOF # 16

⁷ FOF #19

To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must "focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits." *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009).

The evidence demonstrates that when the student began attending School A he was erroneously placed in a general education program with an IEP that prescribed specialized instruction in general education only. There was no apparent justification for a reduction in the student's level and intensity of special education services and DCPS' own documents state that the student's IEP instructional hours had been changed in error.⁸ Although during his first year at School A the student managed to earn some credits his grades were lackluster. Thereafter, the student's IEP was amended and the student was moved to a full-time out of general education program.

Although Petitioner provided testimony that the student would benefit if his IEP also provided for what Petitioner has termed "wrap-around" services, the Hearing Officer was not convinced that such services would actually be effective for the student rather than him being in a stable home with adequate supervision and restrictions as he had when he was in a group home. The Hearing Officer gave great weight to the student's probation officer's testimony that even with such supports he was not convinced the student would be compliant.⁹ The probation officer's years of experience with the student in a community based program and in monitoring his compliance was a significant factor. Consequently, the Hearing Officer does not conclude that Petitioner sustained the burden of proof that the student's IEP was inappropriate because it lacked therapeutic transport to school outside counseling, therapeutic recreation or "wrap-around" services.

ISSUE 3: Whether DCPS denied the student a FAPE by failing to provide an appropriate placement and location of services for a student.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that School A is an inappropriate location of services for the student.

The evidence demonstrates that although School A is a full-time special education program designed to serve students with emotional and behavior difficulties the student's time at School A has been unproductive, full of truancy, repeated disciplinary actions and that the School A staff

⁸ FOF # 6

⁹ The Hearing Officer considered but was unconvinced by Petitioner's expert witness that "wrap-around" services were the appropriate prescription for the student to address his truancy and other behavioral problems.

acknowledges that the student's behaviors are at times uncontrollable.¹⁰ Based upon this evidence the Hearing Officer concludes that School A has not and cannot effectively provide this student an appropriate placement.

The evidence also indicates that since the student has in been in attendance at School A he has had psychiatric hospitalizations. The student's most recent psycho-educational and psychiatric evaluations recommend that the student be placed in a residential program. Although this appears to be only a recommendation, the Court will make the ultimate determination of whether the student is provided probation or committed DYRS.

Nonetheless, the Hearing Officer takes administrative notice that if the student is returned to the community even to a group home he will be in need of an appropriate school placement for SY 2014-2015. The evidence¹¹ presented is sufficient that School C is an appropriate educational placement for the student and that it meets the factors the Hearing Officer is to consider in selecting a private school placement.¹²

ISSUE 4: Whether DCPS denied the student a FAPE by failing provide the parent the student's educational records including his cumulative and special education file with suspensions and incident reports requested by the parent on April 2, 2014.

Conclusion: Petitioner did not sustain the burden of proof that the parent was not provided education records she requested.

The evidence, including the mass documents that Petitioner disclosed and used in this hearing, demonstrate to the Hearing Officer's satisfaction that Petitioner was provided the student's educational records. There was no specific testimony offered that the parent or anyone on her behalf had requested and not been provided any specific educational records. Accordingly, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

Compensatory Education

Under the theory of compensatory education, "courts and hearing officers may award educational services ... to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid, 401*

¹⁰ FOF #s 29, 30

¹¹ FOF #33

¹² A hearing officer or court may award a prospective private placement as relief to ensure that a child receives the education required by the IDEA in the future where a balance of the relevant factors justifies such a placement. In addition to the conduct of the parties, which is always relevant in fashioning equitable relief, the following factors must be balanced before awarding such relief: the nature and severity of a student's disability; the student's specialized individual educational needs; the link between those needs and the services offered by the private school; the private school placement's costs; and the extent to which the placement represents the least restrictive environment. *Branham ex rel. Branham v. District of Columbia*, 427 F. 3d 7; 44 IDELR 149 (D.C. Cir. 10/25/05).

F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

The evidence demonstrates that the student was provided an inappropriate IEP and program for from September 2012 to March 2013 when he was moved to the School A full-time special education program. Remarkably however, this was the only time since the student arrived at that high school that he earned any credits. Although the Hearing Officer has determined that the student was harmed by having an inappropriate IEP during this period, there was insufficient evidence presented as to extent of the harm what remedy would effective to rectify it. The Hearing Officer concludes based on the evidence that tutoring and mentoring would serve to place the student in the stead he would have been had received appropriate services consistent with his IEP during SY 2013-2014 at School A. However, the evidence did not support a specific amount of services. Despite Petitioner's failure to propose appropriate compensatory services the Hearing Officer concludes that to award the student no compensation for the missed services would be inequitable and therefore concludes that the student should be awarded at least nominal services as compensation. Consequently, the Hearing Officer directs that the student be provided the academic tutoring and mentoring services in the order below.

ORDER:¹³

1. DCPS shall place and fund the student at School C (Phillips School) for SY 2014-2015 and provide transportation services.
2. Within sixty (60) days of the student beginning at School C DCPS shall convene an IEP meeting to assess the student's attendance, academic and behavioral performance and assess whether School C remains an appropriate school location for the student and/or any adjustments to his program and services that are required for his academic success.
3. If the student is committed and not able to attend School C at the start of SY 2014-2015 it shall be his school placement if he is released to the community at any point prior to the end of SY 2014-2015 if available space remains for him at School C. If not, then DCPS will be responsible for promptly determining an appropriate placement upon such notification from School C.
4. As compensatory education for the days the student was without an appropriate IEP DCPS shall within 30 calendar days of the issuance of this Order provide the student 30 hours of independent tutoring and 15 hours of independent counseling or mentoring at the prescribed OSSE/DCPS rates. Petitioner shall use and complete this award by December 31, 2014. This award is in addition to the award provided in other HOD issued on this date.

¹³ 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.

5. All other requested relief is denied.

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: July 8, 2014