

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	<b>Rooms: 2003 (10/5), 2004 (remainder)</b>
<b>Petitioner,</b>	)	<b>Hearings: 10/5, 10/15, 10/28, 10/19</b>
	)	<b>HOD Due: November 10, 2015</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No.: 2015-0285</b>
<b>District of Columbia Public Schools,</b>	)	
	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving a [REDACTED] year old student who is eligible for services as a Student with an Emotional Disturbance. (the “Student”)

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on August 25, 2015 in regard to the Student. On September 4, 2015, Respondent filed a response. A resolution meeting was held on September 2, 2015. At this meeting, the parties agreed that no resolution was possible and the resolution therefore expired on September 2, 2015.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of

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<sup>1</sup>Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### **III. Procedural History**

On September 22, 2015, this Hearing Officer held a prehearing conference. Rochelle-Leigh Rosenberg, Esq., Nicole Cerquitella, Esq., and Daniel Wolff, Esq., counsel for Petitioner, appeared. Daniel McCall, Esq., counsel for Respondent, appeared.

A prehearing conference order issued on September 25, 2015, summarizing the rules to be applied in this hearing and identifying the issues in the case. A revised order was issued on October 13, 2015, reflecting an agreement between the parties on the October 5, 2015 hearing date.

An Interim Order on Continuance Motion was signed by Chief Hearing Officer Virginia Dietrich on October 14, 2015 extending the decision date from October 17, 2015 to November 10, 2015.

There were four hearing dates in this case, October 5, 2015, October 15, 2015, October 28, 2015 and October 29, 2015. This was a closed proceeding. Petitioner was represented by Rochelle-Leigh Rosenberg, Esq., Nicole Cerquitella, Esq., and Daniel Wolff, Esq. Respondent was represented by Daniel McCall, Esq. Petitioner moved into evidence Exhibits 1-102. Respondent objected to Exhibits 73-76 and 102 on relevance grounds. These objections were overruled. Exhibits 1-102 were admitted. Respondent moved into evidence Exhibits 1-11. Petitioner generally objected to the documents because some had not been provided to her in an earlier document request. These objections were overruled. Exhibits 1-11 were admitted.

At the request of the Petitioner, the parties presented written closing statements. The agreement was to present closing statements by November 5, 2015. Petitioner submitted a brief on that date. Respondent asked for leave to present a written statement on November 6, 2015. This application was granted, and Respondent presented a written statement on November 6, 2015.

Petitioner presented as witnesses: Petitioner; Witness A, a teacher; Witness B, an Educational Consultant (expert: Special Education for students with emotional disturbance); Witness C, a Recovery Specialist; Witness D, a Mental and Behavioral Therapist; Witness E, an Associate Head of School at School D; Witness F, a Psychologist (expert: Psychologist with expertise in conducting psychological evaluations as well as special education services and placement); and Witness G, an educational consultant (expert: special education programming and placement including IEP development).

Respondent presented as witnesses: Witness H, a Psychologist.

#### **IV. Credibility.**

A main question for this hearing is the credibility of Witness A, the Student's teacher at School B for a portion of the 2014-2015 school year. Witness A delivered detailed testimony about, among other things, the Student's bullying during the school year. DCPS brought out that Witness A had job trouble at School B at the time, which was a factor in his resignation in April, 2015. However, DCPS did not present any witnesses to rebut Witness A's testimony, and did not argue that Witness A was not credible in its brief. Moreover, Witness A's testimony was so detailed, and so

impassioned, that it was quite credible. All other witnesses, including Petitioner's three expert witnesses, were credible as well.

## V. Issues

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the issues to be determined are as follows:

1. Did DCPS fail to implement the Student's Individualized Education Program ("IEP") and Behavior Intervention Plan ("BIP") dated November, 2014 after the Student began attending Dunbar High School? If so, did DCPS materially deviate from the terms of the IEP and BIP and thereby act in contravention of such precedent as Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to inform Petitioner that the Student's IEP from the meeting in March, 2015 was in fact a draft until July, 2015? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation of 34 C.F.R. Sect. 300.513(a) and 34 C.F.R. Sect. 300.501(b)? If so, did DCPS deny the Student a FAPE?

3. Did DCPS fail to provide Petitioner with appropriate documents in advance of, and after, the February, March, 2015 and July IEP meetings, in violation of D.C. Code Sects. 38-2571.03(3) and 38-2571.03(4)(a)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?

4. Did DCPS fail to provide Petitioner with access to the Student's educational records within forty-five days of the request for such records? If so, did

DCPS violate 20 U.S.C. Sect. 1232g(a)(1)(a)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?

5. Did DCPS fail to provide the Student with Prior Written Notice before changing the Student's educational program or refusing to change the Student's educational program in violation of 20 U.S.C. Sect. 1415(b)(3)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?

6. Did DCPS fail to provide the Student with an educational environment that was free of bullying while she was at School B? If so, did DCPS act in contravention of precedent such as T.K. v. New York City Dep't of Educ., 779 F. Supp.2d 289 (S.D.N.Y. 2011)? If so, did DCPS deny the Student a FAPE?

7. Did DCPS fail to provide the Student with an appropriate educational placement at School B? If so, did DCPS act in contravention of precedent such as in Gellert v. District of Columbia, 435 F. Supp.2d 18 (D.D.C. 2006)? If so, did DCPS deny the Student a FAPE?

8. Did DCPS fail to provide the Student with an appropriate IEP and BIP for the February, March and July 2015 IEP meetings? If so, did DCPS violate the principles of such cases as Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?

Petitioner contends that DCPS failed to 1) incorporate many of the recommendations contained in Witness F's psychological evaluation and Witness B's FBA into the Student's IEP and BIP; 2) provide sufficient behavioral support staff; 3)

provide a sufficient student-teacher ratio; 4) include IEP goals referencing increased structure, smaller class sizes, absenteeism, therapy sessions and therapeutic supports; 5) sufficiently address bullying and the Student's safety.

As relief, Petitioner seeks placement at School D for the 2015-2016 school year, and compensatory tutoring and counseling.

## **VI. Findings of Fact**

1. The Student is a [REDACTED] year old who is eligible for services as a student with emotional disturbance. She has been diagnosed with Disruptive Mood Dysregulation, Bipolar Disorder, and Attention Deficit Hyperactivity Disorder. She has a significant issue with impulse control. She has been hospitalized three times for mental health issues. (P-16-1; P-64A-9; Testimony of Witness F)

2. She has a long history of academic underachievement as a result of poor initiative in class, failure to complete work, inappropriate behavior, and non-compliance. She has also had considerable difficulty with peers in school, and has weakness in accessing grade level texts. (P-16-1-3)

3. An educational evaluation of the Student on February 25, 2014 found that her academic fluency was at the low average level. Her grade level equivalent for broad reading was 6.9, her grade level equivalent for math was 5.9, and her grade level equivalent for writing was 6.4. Cognitive testing was conducted of the Student on March 27, 2014. The Student was found to have a Composite Intelligence Index of 87. Behavioral testing through teacher rating scales suggested that her behavior was "average," but the evaluation recommended that the Student be determined to be eligible for services as a student with an emotional disturbance. (P-15-3; P-16)

4. An IEP was written for the Student in April, 2014. Goals were written for the Student in mathematics, reading and written expression. The Student was recommended for specialized instruction inside general education for five hours per week, and specialized instruction outside general education for two hours per week. Behavioral support services were recommended for three hours per month. A location with minimal distractions was recommended for the Student. The Student attended School E at the time. (P-17; P-22; P-24)

5. These interventions did not result in good grades for the Student. For the 2013-2014 school year, the Student's final grades were three Fs, one D, and one C-. (P-28)

6. The Student moved to School A for the 2014-2015 school year. However, her behavioral issues increased. The Student had an "extreme" lack of motivation, "extreme" emotional highs and lows, withdrawal, and passive aggressive tendencies. Teachers were unable to find effective ways to intervene though they tried: a) 1:1 check-in before she enters class; b) positive reinforcement; and c) breaks. She was more likely to remain on task if there was consistent one on one attention. She was also bullied at the school. (P-29; Testimony of Witness C)

7. An IEP meeting was held on November 7, 2014, where it was discussed that the Student had been disciplined multiple times for such infractions as class disruption, profanity, excessive tardies, and disrespect for administrators. Work refusal was considered a major problem at this time. Emotional, Social and Behavioral Development goals were added. Twenty hours per week of instruction outside general education was recommended, with 240 minutes per month of behavioral support services.

The IEP stated that the Student needs small group and 1:1 support in order to access the general education curriculum and help her coping skills. (P-35; P-36)

8. A Behavior Intervention Plan (“BIP”) was created at this time. The BIP provided for one on one assistance “discreetly” as needed. Positive verbal and non-verbal affirmations, private encouragement, opportunities to express her feelings including 1:1 check-in were recommended. It was stated that there should be limited time for the Student to engage in verbal exchanges with peers. The BIP called for “meaningful activities” to increase the Student’s self-esteem and self-confidence, but does not list what those meaningful activities should be. Finally, there is a requirement for a follow-up meeting “TBD.” (P-40)

9. On January 13, 2015, the Student transferred from School A to School B because the November, 2014 IEP could not be implemented at School A. (P-47-1; P-50-2)

10. Since going to School B, the Student has received most of her instruction in self-contained classes. (P-50-2)

11. An MDT meeting was held for the Student on February 24, 2015. At the meeting, the parent learned that School B staff did not have a copy of the Student’s prior IEP or BIP from School A. Also at this meeting, Witness A told the team that the Student had been subject to bullying at the school. (P-50A-2; P-72-2; Testimony of Witness A; Testimony of Witness H)

12. A Behavior Intervention Plan (“BIP”) written by School B on February 26, 2015 repeated the interventions from the previous BIP by School A. DCPS reasoned that, if the behaviors are the same, the BIP should be the same. A Functional Behavior

Assessment (“FBA”) was written for the Student by School B on February 26, 2015, but this FBA basically repeated the conclusions in the previous FBA by School A. DCPS reasoned that, if the behaviors are the same, the FBA should be the same. (P-51, P-52; Testimony of Witness H)

13. A March, 2015 meeting resulted in a draft IEP and BIP, but this IEP was never finalized. The fact that this was a “draft” was not apparent to the Petitioner, who believed the IEP was finalized and in effect. Also, in March, 2015, Petitioner sought the Student’s educational records. (P-55; P-59; P-84-1; Testimony of Petitioner)

14. The Student did poorly at School B. Her classroom was so unruly that the teacher could not control the students. From eleven to eighteen students showed up every day, and there was no aide or behavior technician in the class as there should have been since the classroom was a “BES” classroom. If as many as fourteen students showed up, there would “inevitably be a fight” in class. The teacher ended up spending about seventy percent of his time controlling behavior, not teaching. The students would go so far as to pull objects off the wall and use them as projectiles. Witness A was injured three times during the school year until he resigned in April. Moreover, the physical classroom that was used was too large and had too many distractions. Laptops were not issued to the classroom though the instruction was dependent on the laptops. (Testimony of Witness A)

15. The Student was subjected to severe bullying in this class. She was bullied daily. Her peers would threaten to fight her, making her resistant to going to school. Male students inappropriately touched her and made her feel uncomfortable with very sexual comments. They would touch her breasts and backside and say “very nasty”

words to her, going so far as to talk about their penises. She would try to sit way in the back of the room so she could be left alone. Then the boys would gravitate towards her and she would be surrounded. The teacher would put her right near her desk because the boys were so “predatory” when it came to her. She had a “very tough go at it, to maintain her dignity.” In response, the Student would cry, lash out, or leave in the middle of class. Sometimes she would not even go to class. Sometimes, Witness A would allow her to go elsewhere where the class was too unruly. The Student was not able to benefit from much instruction during the year. (Testimony of Witness; Testimony of Witness B)

16. The Student’s grades did not relate to whether she learned anything in class or made any academic progress during this time. Instead, the Student’s grades only represented compliance with instructions and willingness to try. (Testimony of Witness A)

17. Witness A reported the bullying to an administrator, but “not a lot” happened. There was no investigation of the incidents of bullying. (Testimony of Witness A)

18. An observation of the Student’s classroom by Witness B on April 29, 2015 revealed a classroom where there was a considerable amount of disruption. A boy went up to the Student and started playing with her hair. The Student left the room and did not come back. Most of the students in the class leave the room before the end of the period. (P-62-1)

19. DCPS provided Petitioner with the Student's records on April 24, 2015, May 1, 2015, and May 13, 2015. A complete copy of all of the records that were requested was submitted to Petitioner by the May 13, 2015 date. (P-89-2; P-89-1; P-90-1)

20. The Student received five A grades and one D grade for the fourth term of the 2014-2015 school year. Progress reports from the Student for the fourth reporting period reflect progress in all academic areas. However, no details are provided to explain the progress. On the Reading goals, and Transition-Daily Living Skills goals, the report is that the Student is "just beginning to apply herself to work on this goal." On Emotional, Social and Behavioral goals, the report is that "her progress has continued to be in the slow range, but she has made some progress nonetheless." (P-63; R-4)

21. An IEP meeting was conducted on July, 30, 2015. The parent did not receive a draft IEP or BIP prior to this meeting, during which she expressed concerns about bullying and attendance. The school, however, would not provide the Student with any attendance-related goals because it is their policy and practice not to place attendance-related goals on an IEP. There was no DCPS representative at the meeting to discuss bullying policies. There was more focus on the Student's BIP than IEP at this meeting, during which the IEP team did consider the evaluations presented by the Petitioner. (P-71-12-15; Testimony of Witness B; Testimony of Witness H)

22. In the resulting IEP, a goal was added to address bullying, requiring that the Student will identify the problem and generate two solutions and potential outcomes of each solution. Specialized instruction remained the same as previously, at twenty hours per week outside general education. A location with minimal distractions was again recommended. (P-71-12-15; Testimony of Witness H)

23. The BIP was revised to allow the Student to speak with a trusted adult when she is determined to be out of location. A behavior contract is required by the BIP. There is a requirement that the plan be reviewed with the Student daily, that she will receive points for arriving to class, that there be a posted schedule, that teachers deliver a pre-determined discrete signal if she gets off task, that she receives “check-in” twice a day, that she receives a five minute break when she is overwhelmed, and that she is given movement breaks every thirty minutes. The BIP also addressed bullying. It indicated that teachers and staff will “adhere” to the DCPS bullying policy, and that the DCPS bullying prevention policy will be reviewed with the Student at the onset of the school year to ensure that she is aware of her rights. It requires her to see a support person to whom she can deescalate. A behavior contract and a stress ball are recommended, and a points system was added. (P-66-1-2)

24. The Student continues to be bullied during the instant school year. This was communicated to the school, which characterized the bullying as teasing. She had already missed twelve days of school by September 28, 2015. (R-7-1; Testimony of Witness D)

## **VII. Conclusions of Law**

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in a special education due process hearing lies with the party seeking relief. 5-EDCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005). However, 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. 5 DCMR Sect. 2510.16

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or “FAPE”). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005).

Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, “provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies: (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit. 34 C.F.R. Sect. 300.513(a).

**Issue 1: Did DCPS fail to implement the Student’s Individualized Education Program (“IEP”) and Behavior Intervention Plan (“BIP”) dated November, 2014 after the Student began attending Dunbar High School? If so, did DCPS materially deviate from the terms of the IEP and BIP and thereby act in contravention of such precedent as Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did DCPS deny the Student a FAPE?**

“Failure to implement” claims are actionable if the school district cannot materially implement an IEP. A party alleging such a claim must show more than a de minimis failure, and must show substantial or significant portions of the IEP could not be

implemented. Savoy v. District of Columbia, 844 F. Supp.2d 23 (D.D.C. 2012)(holding no failure to implement where District's school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn ex rel Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9<sup>th</sup> Cir. 2007).

First, Petitioner contends that the IEP and BIP from School A were not implemented until the February, 2015 MDT meeting. Petitioner's position here is that, at the February, 2015 MDT meeting, School B staff did not have a copy of the Student's IEP or BIP from School A. There is testimony to support this conclusion, and no evidence or testimony to the contrary.

Even so, the meeting minutes state that the Student had received the bulk of his instruction at School B in self-contained classes, which satisfies the main IEP mandate. While the minutes do not reference a BIP, and while the team members apparently did not have a BIP, this does not necessarily mean that the teachers at the school did not know about it. Petitioner also relies on counsel's notes and emails, but attorney notes are not probative enough to sustain a finding under the IDEA. Petitioner points to the Student's poor grades and absences during this period, but there is no showing that the failure to implement the IEP or BIP caused those grades and absences.

After the February meeting, Petitioner contends that Witness A did not provide the Student with the 1:1 support that was recommended on the BIP and the small group instruction that was recommended on the IEP. Petitioner also contends that the Student did not receive her 240 minutes per month of behavioral support services.

However, the Student's BIP only provides for 1:1 assistance "as needed." While Witness A did testify that there was not enough support for the students in the classroom,

he did suggest that he would sometimes provide the Student with individual assistance. Moreover, the IEP in fact does *not* provide for small group instruction. Rather, it provides for small group *testing*. Additionally, there is inadequate support for the contention that the Student did not receive behavioral support services. Though the parent was unaware of such service, and DCPS did not present any evidence of it providing such service, Petitioner bears the burden of persuasion in these matters.

This claim is dismissed.

**Issue 2. Did DCPS fail to inform Petitioner that the Student's IEP from the meeting in March, 2015 was in fact a draft until July, 2015? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation of 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?**

**Issue 3. Did DCPS fail to provide Petitioner with appropriate documents in advance of, and after, the February, March, 2015 and July IEP meetings, in violation of D.C. Code Sects. 38-2571.03(3) and 38-2571.03(4)(a)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?**

**Issue 4. Did DCPS fail to provide Petitioner with access to the Student's educational records within forty-five days of the request for such records? If so, did DCPS violate 20 U.S.C. Sect. 1232g(a)(1)(a)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?**

**Issue 5. Did DCPS fail to provide the Student with Prior Written Notice before changing the Student's educational program or refusing to change the Student's educational program in violation of 20 U.S.C. Sect. 1415(b)(3)? If so, did DCPS fail to allow the parent meaningful participation in the IEP process in violation 34 C.F.R. Sect. 300.513(a) and 300.501(b)? If so, did DCPS deny the Student a FAPE?**

Since all these issues involve the parent's right to meaningfully participate in the IEP process, I will address all four of these claims in this section.

Congress sought to protect individual children by providing for parental involvement in the formulation of a child's individual educational program. Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 208 (1982). Accordingly, the regulations require that parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the educational placement of the child. 34 C.F.R. Sect. 300.501(b)(1); 34 C.F.R. Sect. 513(a); 20 U.S.C. Sect. 1414(e). To this end, Districts have a duty to insure that parents meaningfully participate in an IEP review. Paolella ex rel. Paolella v. Dist. of Columbia, 210 F. App'x 1, 3 (D.C. Cir. 2006); A.M. v. Dist. of Columbia, 2013 WL 1248999 (D.D.C. Mar. 28, 2013); T.T. v. Dist. of Columbia, 2007 WL 2111032 (D.D.C. July 23, 2007).

a. Failure to Inform That the March IEP Was a Draft.

First, Petitioner contended that the failure to let Petitioner know that the March, 2015 IEP was a draft denied the parent meaningful participation in the process. Petitioner argued, generally, that all of the meetings with the school were difficult to follow and she always left with unanswered questions.

The record shows that Petitioner was or should have been aware of the process. She was represented by a large law firm at least by February 4, 2015, when representatives of that firm, Crowell Moring, sent a letter on her behalf to DCPS. (P-81) This law firm was in contact with DCPS frequently over this period, sending them many emails and letters (P-81-P-92) that were responded to promptly by School B staff. Moreover, Petitioner appears to admit that she had a copy of an IEP that said “draft” on it, at least before providing it to Witness G for his review. (Brief, at 24-25) This should have indicated to Petitioner that the IEP was a draft. Moreover, Petitioner provides no

caselaw to support her position on this claim. While it is regrettable that Petitioner did not understand that the March IEP was a draft, I find this claim without merit.

b. New D.C. Code Provisions Relating to Records.

A newly passed provision of the D.C. Code provides that “(n)o fewer than five business days before a scheduled meeting where an IEP . . . will be discussed, the public agency scheduling the meeting shall provide the parents with an accessible copy of any evaluation, assessment, report, data chart, or other document that will be discussed.”

D.C. Code Sect. 38-2571.03(3).

Petitioner contends that DCPS violated this provision three times: first, before the meeting in February, 2015 (copy of operative IEP and BIP); second, before the March, 2015 meeting (copy of the School A BIP or School B’s draft BIP); and third, before the July, 2015 meeting (copy of the operative IEP, draft IEP, and documentation relating to the Student’s credits).

The parent did testify in support of these claims, but did not really explain how the lack of these documents affected her. Certainly the D.C. Council, and then-Mayor Gray, intended these provisions to be complied with. The record shows that Petitioner was ably represented throughout this process and there is nothing in the record to show that Petitioner was denied the right to express her viewpoint at any of these meetings. A procedural violation, without a significant showing of substantive harm, does not rise to the level of FAPE denial. Lesesne ex rel. B.F. v. D.C., 447 F.3d 828, 834 (D.C. Cir. 2006); see also Kruvant v. District of Columbia, 99 Fed.App’x. 232, 233 (D.C. Cir. 2004). I therefore decline to find that Respondent denied the Student a FAPE on this basis.

Petitioner also contends that Respondent violated another newly enacted section of the D.C. Code, Sect. 38-2571.03(4)(A), which states that “(n)o later than 5 business days after a meeting at which a new or amended IEP has been agreed upon, the public agency shall provide the parents with a copy.” Petitioner argued that the BIP from the July 30, 2015 meeting was not provided to her until August 20, 2015. Even assuming that a BIP falls within the purview of the statute, Petitioner presents no evidence of any harm caused to her or the Student as a result of this delay. It is noted that August 20, 2015 is prior to the first day of the 2015-2016 school year. This claim is without merit.

c. Access to Records.

Petitioner contends that she did not receive timely access to records. 20 U.S.C. Sect. 1232g(a)(1)(A) requires each educational agency or institution to grant parents access to the educational records of their children no more than forty five days of the request. The IDEA regulations provide in pertinent part: "(t)he parent of a child with a disability must be afforded, in accordance with the procedures of Sects. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to -- the identification, evaluation, and educational placement of the child and the provision of FAPE to the child." 34 C.F.R. Sect. 300.501(a). The term "education records" means the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sect. 1232g (FERPA))." 34 C.F.R. Sects. 300.611-300.625. Education records as defined under FERPA are "directly related to a student" and "maintained by an educational agency or institution or by a party acting for the agency or institution." The term does not include: "records that are kept in the sole possession of the maker, are used

only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the "record". "Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm and microfiche. 34 C.F.R. Sect 99.3.

Petitioner requested her records on March 19, 2015, and then was provided sets of records on April 24, 2015 and then again on May 1, 2015 and on May 13, 2015. While Respondent's response was not timely, procedural violations of the IDEA should not be the basis of a finding of FAPE denial unless there is a substantive showing as well. Lesesne, 447 F.3d at 834. Petitioner contends that, because of the delay, Witness G was not able to complete his FBA, and Witness B could not complete his psychological evaluation. However, Petitioner presents no support for the proposition that a minor delay in the provision of records can amount to FAPE denial. Petitioner does not connect these records to any IEP meeting, and does not connect them to the hearing, which did not take place until October. Moreover, there is no showing that the failure to receive records on a timely basis had anything to do with the parent's right to meaningfully participate in the IEP or placement process. This claim has no merit.

d. Failure to Provide Prior Written Notice After July Meeting.

School districts are required to provide parents with "prior written notice" of any proposal to initiate or change, or refusal to initiate or change, "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child." 20 U.S.C. Sect. 1415(b)(3).

Petitioner contends that she was not provided with any such notice at the March meeting or the July meetings, but does not rely on her own testimony. Petitioner argued that “the only WPN found in the records DCPS provided was from February 25, 2015.” Petitioner bears the burden of persuasion in this matter and must affirmatively represent that no Prior Written Notice was provided to establish a violation of this provision.

Moreover, there was no obligation to provide a Prior Written Notice after the March meeting because only a draft IEP was written at that point. Moreover, assuming arguendo that the parent did not receive any Prior Written Notice after the July IEP and BIP, there is no showing that she, or her legal representatives, did not know of the contents of the IEP and BIP. This claim is without merit.

**6. Did DCPS fail to provide the Student with an educational environment that was free of bullying while she was at School B? If so, did DCPS act in contravention of precedent such as T.K. v. New York City Dep’t of Educ., 779 F. Supp.2d 289 (S.D.N.Y. 2011)? If so, did DCPS deny the Student a FAPE?**

**7. Did DCPS fail to provide the Student with an appropriate educational placement at School B? If so, did DCPS act in contravention of precedent such as in Gellert v. District of Columbia, 435 F. Supp.2d 18 (D.D.C. 2006)? If so, did DCPS deny the Student a FAPE?**

Since both these claims relate to the appropriateness of the Student’s location of services at School B, I will address these claims together.

34 C.F.R. Sect. 300.116 states that, in determining the educational placement of a child with a disability, an LEA must ensure that “the placement decision 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.” Even so, courts generally rule that school districts have discretion in selecting a location of services for a Student as long as the school may appropriately implement a Student’s IEP. T.Y. v.

New York City Department of Educ., 584 F.3d 412 (2d Cir. 2009). Although the LEA has the discretion with respect to the location of services, courts will occasionally find that such discretion cannot be exercised in such a manner to deprive a Student of a FAPE. Gellert v. District of Columbia, 435 F. Supp.2d 18 (D.D.C. 2006); Holmes v. District of Columbia, 680 F. Supp. 40 (D.D.C. 1988).

Bullying is characterized by aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated. Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013). It is also physical, verbal, or psychological actions inflicting or attempting to inflict discomfort upon another through a real or perceived imbalance of power. T.K. and S.K. v. New York City Dep't of Educ., 32 F. Supp. 3d 405 (S.D.N.Y. 2014 (E.D.N.Y. 2011), *remanded*, 112 LRP 8001 (E.D.N.Y. May 2, 2011)). It can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation), and can range from blatant aggression to far more subtle and covert behaviors. Id., 61 IDELR 263.

Bullying of a student with a disability can cause a location of services to be inappropriate. Where there is bullying of a student with a disability — regardless if connected with the student's disability— a FAPE denial may result if the Student not receiving meaningful educational benefit. Dear Colleague Letter, 61 IDELR 263 (OSERS 2013); see also Dear Colleague Letter: Responding to Bullying of Students with Disabilities, 64 IDELR 115 (OCR 2014)(the obligation to respond to bullying and ensure the student continues to receive FAPE exists regardless of whether the bullying was

based on a disability); Shore Regional High School Board of Education v. P.S., 381 F.3d 194 (3d Cir. 2004)(denial of FAPE based on the likelihood that a proposed placement would subject a student with an emotional disability to continued bullying because of his perceived effeminacy); M.L. v. Federal Way School District, 394 F.3d 634 (9th Cir. 2005)(if a teacher is deliberately indifferent to the teasing of child with a disability and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied FAPE); cf. T.K. v. New York City Dep't of Educ., 32 F. Supp. 3d 405 (S.D.N.Y. 2014)(the IEP team must consider bullying in developing the IEP when there is a legitimate concern that it will severely restrict the child's educational opportunities); but see S.S. v. Dist. of Columbia, 68 F. Supp. 3d 1 (D.D.C. 2014) (upholding IHO's determination that bullying was not sufficiently severe to deny the child FAPE).

Certainly by the middle of March, 2015, the record reflects that the Student was the victim of bullying at School B. The Student was sexually harassed, threatened, and frightened so much she was encouraged by her teacher to leave the classroom on occasion. She was bullied "daily." Her peers would threaten to fight her, making her resistant to going to school. She felt she would be beaten up. Male students inappropriately touched her and made her feel uncomfortable with very sexual comments. They would touch her breasts and her backside and say "very nasty" words to her. They would go so far as to talk about their penises. She would try to sit way in the back of the room so she could be left alone. Then the boys would gravitate towards her and she would be surrounded. The teacher would put her right near his desk because they were so "predatory" when it came to her. He testified that she had a "very tough go at it, to

maintain her dignity.” In response, the Student would cry, lash out, or leave in the middle of class. Sometimes she would not even go to class. The Student was not able to benefit from much instruction during the year, as stated by Witness A.

Witness A complained to school administration, but there was not an investigation of the conduct. Even given the realities of a special education class for emotionally disturbed children in an inner city high school, this conduct was beyond the pale. There is no question that School B administration should have reacted quickly to the Student’s problems. Indeed, there are continued reports of bullying this school year at School B, where the Student still attends.

Respondent points to the student’s report cards and progress reports as evidence that the Student made progress during the school year. However, Witness A testified that the report cards did not reflect any academic progress. Instead, the report cards simply reflected compliance with instructions and a willingness to try. Reports of progress in the progress reports are also not credible in view of: 1) the testimony of Witness A that the Student was not making meaningful progress; 2) the fact that the progress reports did not detail any academic advancement; and 3) the fact that none of the Student’s other teachers were called to rebut the statements of Witness A.

I find that Respondent deprived the Student of educational benefit and therefore denied the Student a FAPE by placing the Student at School B for the 2014-2015 school year (from March, 2015 onward) and then the 2015-2016 school year.

**8. Did DCPS fail to provide the Student with an appropriate IEP and BIP for the February, March and July 2015 IEP meetings? If so, did DCPS violate the principles of such cases as Hendrick Hudson Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)? If so, did DCPS deny the Student a FAPE?**

Since no finalized IEP was written for the February and March meetings, I cannot find that there was an IEP violation for such meetings. However, a BIP was written in February, 2015, which is analyzed below.

a. February 26, 2015 BIP.

The District is required to “consider the use of positive behavioral supports and other strategies” if the student’s behavior impedes the student’s learning. 20 U.S.C. Sect. 1414(d)(3)(B)(i); 34 C.F.R. Sect. 300.324(a)(2)(i). District of Columbia courts have held it is "essential" for the LEA to address behavioral issues. Long v. Dist. of Columbia, 780 F. Supp.2d 49 (D.D.C. 2008)(in ruling the District failed to provide an FBA/BIP for a Student, court stated that “the quality of a student’s education is inextricably linked to the student’s behavior”); Shelton v. Maya Angelou Charter School, 578 F.Supp.2d 83 (D.D.C. 2008)(FBA/BIP required where learning disabled student was suspended) . However, that behavior must be linked to a Student’s disability. S.S. v. District of Columbia, 68 F.Supp.3d 1 (D.D.C. 2014)(student’s absences not due to reluctance to go to school).

This BIP, dated February 26, 2015, is word for word identical to the BIP written for the Student at School A, dated November 13, 2015. The reasoning given by DCPS was that if the behaviors are the same, the BIP should be the same. Both BIPs provided for one on one assistance “discreetly” as needed, positive verbal and non verbal affirmations, private encouragement, and opportunities to express her feelings including 1:1 check-in. The BIP also stated that there should be limited time for the Student to engage in verbal exchanges with peers.

However, there were reports of the Student's bullying at School B by this time, as testified to by Witness A. This bullying occurred notwithstanding the BIP written at School A. The BIP's vague mandate was that she be "limited" in her interactions with peers was not specific enough to be effective. Moreover, the mandate for one on one assistance was "as needed," was similarly vague and ineffective. The BIP called for "meaningful activities" to increase the Student's self-esteem and self-confidence, but does not list what those meaningful activities should be. Finally, as with the BIP for School A, there is a requirement for a follow-up meeting "TBD." This is too vague a mandate, and the record does not reflect that any such meeting was conducted until the school year was over. The Student needed a more specific and carefully written BIP at this time to address the increased behavioral problems occasioned by the bullying at school.

As a result of the foregoing, DCPS deprived the Student of educational benefit and denied the Student a FAPE when it failed to revise the Student's BIP as appropriate on February 26, 2015.

b. July IEP/BIP.

An IEP was written for the Student on July 30, 2015. Additionally, a third BIP was written for the Student on July 14, 2015. Petitioner contends that DCPS failed to 1) incorporate many of the recommendations contained in Witness F's psychological evaluation and Witness B's FBA into the Student's IEP and BIP; 2) provide sufficient behavioral support staff; 3) provide a sufficient student-teacher ratio; 4) include IEP goals referencing increased structure, smaller class sizes, absenteeism, therapy sessions and therapeutic supports; and 5) sufficiently address bullying and the Student's safety.

There is no requirement for DCPS to incorporate all of the recommendations of the expert evaluations into the IEP. The requirement is that the team “review” the evaluations, and the record indicated that the team did so. 34 C.F.R. Sect. 300.305(a)(1)(i). Moreover, while the BIP is not annexed to the IEP, as it should be (5-E DCMR Sect. 5-3007.3), this BIP is markedly different from the February, 2015 BIP. The BIP indicated that a trusted staff member should serve as the support person for the Student. A behavior contract is required by the BIP, though it would be preferable if the terms of the behavior contract were outlined in the document. There is a requirement that the plan be reviewed with the Student daily, that she will receive points for arriving to class, that there be a posted schedule, that teachers deliver a pre-determined discrete signal if she gets off task, that she receives “check-in” twice a day, that she receives a five minute break when she is overwhelmed, and that she is given movement breaks every thirty minutes. The BIP also addressed bullying. It indicated that teachers and staff will “adhere” to the DCPS bullying policy, and that the DCPS bullying prevention policy will be reviewed with the Student at the onset of the school year to ensure that she is aware of her rights. I find that this BIP was reasonably calculated and does address the Student’s bullying issues.

The same cannot be said in connection to the other issues raised here.<sup>2</sup>

The Student’s IEP again provides for twenty hours of specialized instruction outside of general education. As pointed out by Witness B, this model has been shown to be inappropriate for the Student, who requires a smaller setting with more structure and

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<sup>2</sup> Though Petitioner characterized these claims as relating to goals, I find that it is fair to interpret this claim as requiring services in the IEP to correspond to those goals. By raising “goals” claims relating to increased structure and smaller class sizes, Petitioner is clearly alleging that the Student requires that increased structure and smaller class sizes to be mandated by the IEP.

adult supervision. The record shows that the Student's classroom, again at School B, could be as large as eighteen students in the room with one teacher and no behavioral technician. The Student is not given enough attention in this kind of classroom, where she inevitably gets involved into unfortunate and dangerous exchanges with other students, especially boys. The record also shows that the Student tends to elope from the classroom. This Student needs a school environment where she will not be allowed to leave the classroom, certainly not unattended. Moreover, given the Student's tendency to have emotional issues during the day, a more "therapeutic" setting where there are on-call "at-risk" counselors is necessary. There is nothing in the IEP to provide such service. Also, the Student also learns better individually or in small groups, as was indicated in the IEPs that were written at School A. There is nothing in the IEP about the Student requiring small group instruction.

With respect to goals, the regulations require that the goals "meet the child's educational needs." 34 C.F.R. Sect. 300.320(a)(2)(i)(B) I do not find that it is necessary to include "goals" referencing increased structure or smaller class sizes. Structure and small class size are necessary to further the Student's education, but it is not clear to me how a corresponding "goal" would be appropriate. Moreover, the IEP does provide three goals for the Student's Emotional, Social and Behavioral Development. Those goals relate to self-esteem, improving her ability to manage emotions, and problem solving skills. However, I agree with Petitioner that the IEP goals should address absenteeism. The IEP does not address absenteeism, although the Student has a pattern of non-attendance especially given her difficulties with peers. Witness H stated that attendance goals should not be on an IEP, but I cannot agree. Since the Student has a

need in regard to attendance, a goal is appropriately written in the IEP. As recently stated in a well-reasoned decision:

Under the IDEA, “the door of public education must be opened for a disabled child in a ‘meaningful’ way.” *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir.1998) (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 192, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)). The government must find ways to open the school house doors, by helping children who suffer from emotional problems to attend school. The record shows that during her time in the public school system, L.F. struggled to attend LaGuardia High School. She was absent from school for weeks at a time, and in her last months in the public school system (between September 2007 and January 2008) was unable to attend at all.

M.M. v. New York City Dept. of Educ., 26 F.Supp.3d 249, 256 (S.D.N.Y.,2014); see also Springfield School Committee v. Doe, 623 F.Supp.2d 150 (D. Mass 2009)(“behavior management services” fall within the scope of IDEA); cf. R.B. v. Mastery Charter School, 762 F. Supp.2d 745 (E.D. Pa 2010)(District had duty to respond to absences through educational intervention).

As a result of the foregoing, DCPS deprived the Student of educational benefit and denied the Student a FAPE with the IEP dated July 30, 2015.

### **VIII. Relief**

As a remedy, Petitioner asserts that appropriate relief in this matter is to order compensatory education in the form of individual and group therapy for three hours a week for twelve months, remedial tutoring for 1.5 hours a week for twelve months, and placement at School D.

When school districts deny Students a FAPE, courts have wide discretion to insure that students receive a FAPE going forward. As the Supreme Court stated:

The statute directs the court to “grant such relief as [it]

determines is appropriate.” The ordinary meaning of these words confer broad discretion on the court. The type of relief is not further specified, except that it must be “appropriate.” Absent other reference, the only possible interpretation is that the relief is to be “appropriate” in light of the purpose of the Act. As already noted, this is principally to provide handicapped children with “a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.

School Committee of the Town of Burlington v. Dep't of Education, Massachusetts, 471 U.S. 359, 371 (1985).

In Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005), the Circuit laid forth rules for determining when it is appropriate for IHOs to order funding of non-public placements. First, the court indicated that “(i)f no suitable public school is available, the [school system] must pay the costs of sending the child to an appropriate private school.” Id. At 9 (citing Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C.Cir.1991)). The Circuit then explained that such relief “must be tailored” to meet a student’s “unique needs.” Id. At 11-12 (citing to Florence County School Dist. v. Carter, 510 U.S. 7, 16 (1993)). To inform this individualized assessment, courts must consider “all relevant factors” including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. Id. at 12.

The testimony of Witness E indicated that School D is approved to serve children with learning disabilities, other health impairments, multiple disabilities, speech and language impairment, autism, and emotional disabilities. Related services include

behavioral support (individual and group), speech and language therapy, occupational therapy, physical therapy.

The student-teacher ratio at the school is roughly four students to one teacher, and about 165 students attend, with eighty-five in the upper school where the Student would attend. The school has psychologists on call when and if a crisis occurs. Class size is 8:2 in core academics, with a certified special education teacher and assistant teachers who “float.” The school has a “safe and civil schools program” whereby key behaviors are identified, goals are identified, and students are awarded points and tickets. There is “peer mediation” where appropriate, there are classroom lessons that are designed to promote problem solving, and the school employs an “ABC” approach to behavior, identifying antecedents. Teachers are expected to wait at their doors and make sure students get to class on time, and the hallways are monitored to insure that students do not spend too much time there. Moreover, students sign an anti-bullying contract, and if there is a report of bullying, the school conducts an investigation and they work on finding solutions for the Student. The school will develop an attendance plan if the students have trouble with attendance.

School D appears to be a good fit for this Student. It provides for a number of interventions the Student has needed, including small class size, small school size, low teacher-to-student ratio, attendance plans, “at-risk” counseling, and a strong anti-bullying policy. The main objection from Respondent is that the school does not provide an education with typically developing peers, but there is nothing in the record to establish that there is any alternative for this Student. While the mandate for a Least Restrictive Environment (“LRE”) is an important one, it does not trump a student’s right to a FAPE.

Maintaining a less restrictive placement at the expense of educational benefit or safety is not appropriate or required. Hartmann by Hartmann v. Loudoun County Bd. of Educ., 118 F.3d 996 (4th Cir. 1997); see also Clyde K. v. Puyallup Sch. Dist., 35 F.3d 1396 (9th Cir. 1994); MR v. Lincolnwood Bd. of Educ., 843 F. Supp. 1236 (N.D. Ill 1994). Moreover, a parental placement need not be the least restrictive environment for a Student, as a school district's placement must. N.T. v. District of Columbia, 839 F. Supp.2d 29 n.3 (D.D.C. 2012).

DCPS also contends that it should conduct evaluations of the Student at this point, which of course it may seek to do. However, there is sufficient information in the record for me to order that the Student attend School D. Any evaluations that may be conducted cannot forestall the Student's right to a FAPE for the current school year. I will therefore order that the Student attend School D for the remainder of the 2015-2016 school year.

Petitioner also seeks compensatory education. One of the equitable remedies available to a hearing officer, exercising his authority to grant "appropriate" relief under IDEA, is 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." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In every case, however, 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. Id., 401 F. 3d at 524; see also Friendship Edison Public Charter School v. Nesbitt, 532 F. Supp. 2d 121, 125

(D.D.C. 2008) (compensatory award must be based on a "qualitative, fact-intensive' inquiry used to craft an award 'tailored to the unique needs of the disabled student").

A Petitioner need not "have a perfect case" to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011) Under the IDEA, if a Student is denied a FAPE, a hearing officer may not "simply refuse" to grant one. Henry v. District of Columbia, 55 IDELR 187 (D.D.C. 2010) Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

Petitioner has submitted a compensatory education plan and supporting testimony from all three of her experts: Witness B, Witness F and Witness G. The plan seeks individual and group therapy for the Student in the amount of three hours a week for twelve months, and remedial tutoring for the Student for 1.5 hours a week for twelve months. While the plan does not exactly correspond to the standards required by the Circuit in Reid, it is a fair plan at least in regard to the tutoring. The 1.5 hours of tutoring per week for twelve months is far less time that the amount of time that the Student attended school without getting an appropriate education. However, I find the request for three hours a week of individual or group therapy for twelve months is unrealistic for this Student. This is more than the IEP recommended mandate of sixty minutes per week, and there is no testimony in the record to suggest that such a mandate is appropriate or even feasible given the Student's adjustment to a new school and tutoring hours. Accordingly, I will reduce the amount of therapy to one hour per week for a twelve month period.

## **IX. Order**

As a result of the foregoing:

1. Respondent is hereby ordered to pay for the Student to attend School D for the remainder of the 2015-2016 school year;
2. Respondent is hereby ordered to pay for 1.5 hours per week of individualized tutoring of the Student for a twelve month period;
3. All tutoring shall be directly provided by a certified special education teacher who shall be paid at a reasonable and customary rate;
4. Respondent is hereby ordered to pay for one hour of group or individual therapy per week for a twelve month period;
5. All therapy shall be provided a licensed social worker or psychologist;
6. Petitioner's other requests for relief are hereby denied.

Dated: November 10, 2015

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Rochelle-Leigh Rosenberg, Esq.  
Nicole Cerquitella, Esq.  
Daniel Wolff, Esq.  
Daniel McCall, Esq.  
OSSE Division of Specialized Education  
[Contact.resolution@dc.gov](mailto:Contact.resolution@dc.gov)  
Chief Hearing Officer

### **X. Notice of Appeal Rights**

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

Date: November 10, 2015

Michael Lazan  
Impartial Hearing Officer