

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Office of Dispute Resolution
810 First Street, NE – Second Floor
Washington, DC 20002
Tel: 202-698-3819
Fax: 202-478-2956

OSSE
Office of Dispute Resolution
October 15, 2014

Confidential

<p>Parent on Behalf of Student¹,</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”)</p> <p>Respondent.</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: September 29, 2014 October 6, 2014</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
---	---

¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to

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 September 29, 2014, and concluded on October 6, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2004 and 2003 respectively.

BACKGROUND AND PROCEDURAL HISTORY:

The student attends a private residential school (“School A”) located outside the District of Columbia. The student has attended School A since approximately January 23, 2014, when the student’s parent placed her there unilaterally after she experienced a series of mental health crises that required hospitalization.

In September 2013 the parent had obtained an independent psychological evaluation that diagnosed the student with Post-Traumatic Stress Disorder (PTSD), mathematic impairments in accuracy and fluency, a moderate language disorder and Reactive Attachment Disorder.

On or about March 20, 2014, the Petitioner filed a due process complaint that alleged DCPS had failed to evaluate the student and identify her as eligible for special education and related services. The complaint resulted in a Hearing Officer’s Determination (“HOD”) that directed DCPS to, inter alia, determine the student’s eligibility.

The student’s initial eligibility for special education services was determined by DCPS on June 27, 2014, with a disability classification of emotional disturbance (“ED”).

DCPS thereafter developed an individualized educational program (“IEP”) that prescribes the student be provided 26.5 hours of specialized instruction outside of a general education setting and 240 minutes of counseling services per month. DCPS proposed the student’s IEP be implemented in a program for students with emotional and behavioral difficulties (“School B”) located at a local DCPS middle school.

On July 8, 2014, and July 28, 2014, the Petitioner, through counsel, submitted letters to DCPS in which he expressed his view that the student’s IEP and placement were inappropriate.

Petitioner filed the current due process complaint on August 13, 2014, challenging the appropriateness of the DCPS’ proposed placement at School B and asserted that School B is neither a separate therapeutic day school as was initially recommended for the student, nor a residential facility which Petitioner now deems appropriate. During the PHC Petitioner’s counsel asserted the student’s least restrictive environment (LRE) is a residential placement. Petitioner seeks as relief an order directing DCPS develop an IEP that will place the student in a residential program as her LRE as well as provide ESY services and that DCPS continue to fund

the student's placement at School A and reimburse the parent for all out-of-pocket expenses related to the student's private placement from May 2, 2014, to the present.²

DCPS filed a timely response to the complaint on August 22, 2014. DCPS denied any alleged violation(s) or denial of a FAPE.

The parties mutually agreed to waive a resolution meeting in this matter. The 45-day period began on August 20, 2014, and ended [and the Hearing Officer's Determination ("HOD") was due] October 4, 2014. During the pre-hearing conference ("PHC") the parties mutually agreed to a ten calendar day extension of the HOD due date in order to obtain their requested September 29, 2014, hearing date, as the date was too close to the HOD due date. The motion was granted. Therefore, the HOD due date is now October 14, 2014.

The Hearing Officer convened a PHC on August 29, 2014, and issued a pre-conference order on September 4, 2014, outlining, inter alia, the issues to be adjudicated.

ISSUES:³

The issues to be adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate IEP⁴ or placement at the June 27, 2014, meeting.
2. Whether the Petitioner should be awarded compensation for delays in providing the student with an appropriate placement.⁵

² The HOD issued June 7, 2014, ordered DCPS to convene a meeting and determine the student's initial eligibility and develop an IEP if the student was found eligible. That Hearing Officer denied other relief Petitioner sought including, Respondent argues, reimbursement for the student attending School A from the time prior to her being determined eligible. (Respondent's Exhibits 6-2, 11-10, 11-11) Petitioner asserts that reimbursement should be measured from the date the previous Hearing Officer determined DCPS should have determined the student's eligibility and provided a placement (May 2, 2014), rather than the date her eligibility was actually determined. The Hearing Officer in this current case ruled on Respondent's pre-hearing motion for partial dismissal seeking to disallow reimbursement prior to the date the student was determined eligible and concluded that Petitioner was free to present evidence of the appropriateness of reimbursement for any time following issuance of the June 7, 2014, HOD.

³ 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.

⁴ Petitioner is challenging the IEP in two respects: (1) the prescribed LRE and asserts it should be a residential placement and is challenging the lack of extended school year ("ESY") services. There were no other challenges to the IEP.

⁵ Although Petitioner asserted that this issue applies to any delay after May 2, 2014, this Hearing Officer has determined, based on my ruling on Respondent's motion for partial dismissal, that time frame from which this issue applies is the date following the issuance of June 7, 2014, HOD.

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 26 and Respondent's Exhibits 1 through 23) that were all admitted into the record and are listed in Appendix A.⁶ Witnesses a listed in Appendix B.

FINDINGS OF FACT:⁷

1. The student _____ currently attends School A, residential school located outside the District of Columbia. The student has attended School A since approximately January 23, 2014, when the student's parent placed her there unilaterally after she experienced a series of mental health crises that required hospitalization. (Petitioner's Exhibits 12, 18-1, 18-2)
2. Since November 2012 the student has had at least five psychiatric hospitalizations related to parental abuse that was revealed during her first hospitalization. The student's father immediately put together a team of professionals to support the entire family particularly the student with goal of keeping the student in the least restrictive environment. Starting in November 2012 the student was provided individual therapy and medication. The student was still attending her private general education school. However, her emotional triggers affected her school performance. She would sleep in class and avoid class work. The student's father then hired in-home therapeutic support and the student latter went to a therapeutic wilderness camp during Summer 2013.
3. In September 2013 the parent had obtained an independent psychological evaluation. The evaluation assessed the student's cognitive functioning, academic achievement and social-emotional functioning. The student's cognitive functioning is on the upper end of the average range and her academic achievement is within the overall average range. The student was diagnosed with PTSD, mathematic impairments in accuracy and fluency, a moderate language disorder and Reactive Attachment Disorder. The evaluator recommended the student have an ED disability classification of be provided an IEP and be placed in a separate therapy integrated day school setting in which she would receive full time special education support. (Petitioner's Exhibit 13-18, 13-19, 13-20, 13-21)
4. Despite the additional supports the student's parent was able to provide the student was unable to access her education. After another hospitalization the parent engaged the

⁶Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

⁷ 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.

services of an educational consultant who helped him identify an out of state psychiatric facility at which the parent placed the student in November 2013. The facility provided intense therapy and some academics. The student remained there until January 2014. With the recommendation by the facility that the student needed continued residential treatment the parent with the help of an educational consultant looked at schools and facilities on OSSE approved list and found none they felt were age and gender appropriate for the student to attend. The student's parent and the consultant believed School A could meet the student's needs and placed her there and sought DCPS funding. (Parent's testimony, Witness 4's testimony)

5. On or about March 20, 2014, the Petitioner filed a due process complaint that alleged DCPS had failed to evaluate the student and identify her as eligible for special education and related services. The complaint resulted in a HOD that directed DCPS to, inter alia, determine the student's eligibility. (Respondent's Exhibit 11-1, 11-10)
6. DCPS convened an eligibility meeting for the student on June 16, 2014. The student's parent and his counsel attended. DCPS requested that the staff from School A also participate in the meeting and the meeting was rescheduled to allow for the school's participation despite Petitioner's counsel's reluctance. The eligibility meeting was reconvened on June 27, 2014, and the included members of the School A staff by telephone and School A provided some written data for the student that day provided documents regarding the student of the services she was receiving and commentary from teachers. (Witness 6's testimony, Respondent's Exhibits 14-1, 14-2, 14-3, 16-3)
7. The student's initial eligibility for special education services was determined by DCPS on June 27, 2014, with a disability classification of ED based upon, among other consideration and review of the student's psychological evaluation. (Respondent's Exhibits 16-2, 18-1, Petitioner's Exhibit 13-21)
8. DCPS thereafter developed an IEP that prescribes the student be provided 26.5 hours of specialized instruction outside of a general education setting and 240 minutes of counseling services per month. The LRE in the IEP prescribes that all the student's services be provided outside general education. DCPS proposed the student's IEP be implemented at School B, a program for students with emotional and behavioral difficulties located at a local DCPS middle school. (Respondent's Exhibits 18-6, 18-7, 19-1)
9. The student's IEP includes academic goals and goals in the area of emotional, social and behavioral development and does not prescribe extended school year ("ESY") services. (Respondent's Exhibit 18-3, 18-4, 18-5, 18-9)
10. At the June 27, 2014, meeting the School A director shared with the team the therapeutic supports and classroom modifications that were being provided to the student at School A. The School A staff also shared that the student had difficulty with relationships when she first arrived but was doing better by the time of this meeting but recommended the student remain at School A. Based upon what was shared by School A the DCPS team

members including a special education teacher determined that there was insufficient evidence that the student needed a modified type of instruction. The DCPS staff requested more time for School A to assist the team in developing the IEP and met with resistance from Petitioner's counsel. The DCPS team was able to get input from School A in developing the student's IEP goals. Once the IEP was completed the DCPS members of team determined the student's IEP could be implemented in a DCPS school and the services that School A was providing the student could be provided by DCPS. There was nothing the DCPS members of the team heard from School A that in their opinion required a residential setting. The student's parent and his attorney disagreed. (Witness 6's testimony, Respondent's Exhibits 16-1, 16-2, 16-3, 17-3)

11. On July 8, 2014, and July 28, 2014, the Petitioner, through counsel, submitted letters to DCPS in which he expressed his view that the student's IEP and placement were inappropriate. The July 28, 2014, letter included a letter from the student's attending psychiatrist recommending the student's continued placement in a residential setting.⁸ (Petitioner's Exhibits 1-1, 2-1, 2-2, 1-1)
12. On July 31, 2014, DCPS acknowledged the parent's July 7, 2014, letter and sent Petitioner a letter stating that it did not intend to bear the cost of the student's private placement at School A. (Respondent's Exhibit 20, Petitioner's Exhibit 2)
13. School A is a therapeutic boarding school for girls who are ages ten to fourteen. It has 32 students. Not all of the students are eligible for special education. The school offers its students individual therapy, group therapy and family therapy and special education support as needed. Each student receives up to 3 hour of individual and/or family therapy per week and 6 to 20 hours of group therapy per week. There is a treatment team for each student including the academic teacher and therapist and the school provides medication management through nurses and a part time staff psychiatrist. The student to teacher ratio is one to eight and when special education staff is included it is closer to 1 to 4. The clinical staff is licensed therapists and clinical director who supervises the therapists and collaborates with the staff psychiatrist. (Witness 1's testimony, Petitioner's Exhibit 17-1)
14. Prior to the student attending School A the school's staff reviewed the student's diagnosis and needs and concluded the student met the school's student profile. The School A staff believed the student's emotional trauma and verbal and behavioral difficulties while hospitalized indicated that she would need wrap around services for at least 18 months to demonstrate emotional and social success. When the student arrived at School A she initially had difficulty getting to class and staying in class and remaining engaged. She was also prone to verbal threats to peers and staff. However, she has never followed up on the threats. She has, on occasion, made attempts to elope and put her self in unsafe positions. The student is now more attentive and socially successful.
15. At School A the student is in a classroom led by a general education teacher. The school

⁸ In an email Petitioner's counsel gave DCPS a deadline by which to let her know whether DCPS intended to make changes to the student's IEP based on this recommendation.

has the staff needed to provide the student extended special education instruction. However the student is not getting that now. She is receiving more behavioral support and counseling services to assist her in being successful academically. (Witness 1's testimony)

16. School A's has goals for the student focused on providing her redirection, development of coping and safety skills, maintaining focus and completing assignments. The student has demonstrated improvement in being compliant in the classroom and avoiding negative behavior with peers but continues to require support and redirection regarding conflict with peers. The student benefits from and has shown success from the school's reward economy that incents her to complete class assignments. The student has earned above average grades in all subjects she has taken at School A except math in which she performed average. (Petitioner's Exhibits 4-2, 4-3, 5-2, 6-2, 7-2, 16-1)
17. School A staff participated in the student's eligibility and IEP meeting and emphasized during the meeting the need for the student to remain in residential placement. However, the School A psychiatrist did not participate in the meeting. Rather than any specific discussion of the student's academic needs, the School A staff focused their discussion during the meeting on the need for behavioral supports to get the student to attend and engage in school. The School A staff believe the student is in need of year round schooling and has the need for residential program rather than a therapeutic day school in order to fully integrate her home and school skill sets to effectively address behaviors resulting from her emotional trauma. (Witness 1's testimony)
18. The student's School A therapist has observed that the student struggles with power and control dynamics in the classroom when she feels academic pressure and struggles with motivation and staying in the classroom when she feels overwhelmed from the academic challenges. The student has had a home visit and off campus family visits since she began attending School A. After her first home visit the student had increased nightmares and School A provided her additional restrictions for her safety. (Witness 2's testimony)
19. The School A psychiatrist is at the school one day per week and has a relationship with students primarily for medication management. The psychiatrist interacts with the student in a formal appointment once per month and hears how she is progressing from other staff during her weekly visit to the school. The student's medication is prescribed to address aggressive behaviors and psychotic experiences. The student also takes medication for depression and anxiety. The psychiatrist gathers information from the treatment teams and monitors the student's symptoms, behaviors, emotions, sleep, weight, appetite and blood work. (Witness 3's testimony)
20. On July 22, 2014, the student's School A psychiatrist provided a letter that was later forwarded to DCPS recommending the student remain in a residential setting. However, the psychiatrist did not participate in the student's June 27, 2014, IEP meeting.⁹

⁹ It should be noted that although there was a letter in the record dated January 8, 2014, that was perhaps available to the IEP team that recommended the student attend a therapeutic boarding school the student's comprehensive

Although the student's condition has improved since she began attending School A, the psychiatrist of the opinion the student requires ongoing residential treatment because of her behavioral concerns and issues with medication compliance. The psychiatrist believes the student would be unable to maintain normal functioning in an outpatient environment and a full time day program would not provide sufficient structure beyond the school day resulting in increased and significant safety risks to the student. (Witness 3's testimony, Petitioner's Exhibit 1-3)

21. School A has not been approved by the District of Columbia as a residential treatment facility. The school is not approved by its state for any local education agency to place special education students at the school. School A is licensed and accredited as a traditional private school. The daily rate is for that the student's parent now pays is \$240 per day. Each family will be invoiced monthly in advance. For school districts the daily rate is \$350. Cost itemization with a cash payment discount is as follows: \$170 per day for clinical support, \$75 per day for education and \$95 per day for room and board. (Witness 1's testimony, Petitioner's Exhibit 17-2, 19, 20, Respondent's Exhibit 21)
22. The program DCPS has proposed for the student (School B) is one of DCPS' behavior and education support ("BES") programs. There are 42 BES classrooms in 22 different school buildings throughout DCPS designed to support students with disabilities and behaviors that impact their learning. The programs are full time out of general education, self-contained and designed to assist students to transition back to a less restrictive environment. The student's current IEP can be implemented at School B. There are three adults (a teacher, instructional aide and behavior technician) with a maximum of ten students in the classroom that has been identified for the student. DCPS licensed professionals provide related services at School B. Two campuses that have BES programs have been offered to implement the student's IEP. (Witness 5's testimony)
23. The BES staff is expert in implementing behavior intervention plans. The staff is trained in verbal de-escalation and physical restraint. The BES teachers provide students with on-line learning coupled with direct instruction. Students in the programs interact with non-disabled peers during school arrival and dismissal. Crisis intervention by social workers and paraprofessional staff is available when needed and there are de-escalation spaces within the buildings for students when in crisis. There are no psychiatric services available at the BES schools. (Witness 5' testimony)

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

psychological evaluation that the team reviewed and considered did not recommend such a restrictive setting.

decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

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

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

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate IEP or placement at the June 27, 2014, meeting.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student's IEP developed at the June 27, 2014, meeting was not reasonably calculated to provide the student educational benefit that the time the IEP team developed it.

However, based upon the evidence presented at hearing that was not available to the IEP team on that date, Petitioner met the burden of demonstrating as of the date of this decision that the student is in need of a residential placement at least for the immediate future. The evidence demonstrates based upon the expert testimony of the student's psychiatrist who credibly testified that although the student's condition has improved since she began attending School A, she requires ongoing residential treatment because of her behavioral concerns and issues with medication compliance and she would be unable to maintain normal functioning in an outpatient environment and a full time day program without significant safety risks.¹¹

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

¹¹ FOF #20

DCPS has not offered the student a residential placement that this Hearing Officer now concludes is warranted and to avoid any denial of FAPE to the student going forward the Hearing Officer directs in the order below that DCPS as of the date of this order provide the student a residential placement.

“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).

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 DCPS team members when they met on June 16, 2014, requested the opportunity for the School A staff to participate in the meeting and the meeting rescheduled for them do so despite Petitioner’s counsel’s reluctance. On June 27, 2014, the DCPS staff made a request for Petitioner to allow more time for School A to assist the team in developing the IEP and met with resistance.¹²

The evidence demonstrates the student has at least average academic achievement skills and was making is academic and social/social emotional progress.¹³ The evidence demonstrates that during the June 27, 2014, IEP meeting the School A staff was focused in their presentation on the behavioral supports that they believed were needed for the student to attend school and remain engaged rather than any need for academic special education services.¹⁴ Although there was participation by School A’s director there was no participation by the student’s treating psychiatrist to substantiate the student’s need for what is the highest level of restriction in an educational placement.¹⁵

The DCPS team members when they met on June 16, 2014, requested the opportunity for the School A staff to participate in the meeting and rescheduled the meeting for them do so despite Petitioner’s counsel’s reluctance. On June 27, 2014, the DCPS staff made a request for

¹² FOF #s 6, 10

¹³ FOF #s 3, 16

¹⁴ FOF # 17

¹⁵ FOF #17

Petitioner to allow more time for School A to assist the team in developing the IEP and met with resistance.¹⁶

Based upon this evidence the Hearing Officer concludes it was reasonable for the DCPS members of the team to conclude, based upon the services described that School A was providing, that those services could be provided in a non-residential setting and/or DCPS school. The evidence also did not sufficiently demonstrate that the student required ESY services at the time the IEP was developed. Nor was there sufficient evidence presented by Petitioner that School B could not implement the IEP.¹⁷ As a result, the Hearing Officer concludes that at the time the IEP and placement were developed and proposed they were reasonably calculated to provide the student educational benefit.

The student's attending psychiatrist did not participate in that meeting and it is her expert recommendation that the Hearing Officer primarily relies upon to determine that the student is actually need of a residential placement. That information, opinion and recommendation was not available to the IEP team on June 27, 2014, although it was later expressed in a letter from the psychiatrist that was provided to DCPS on July 28, 2014.¹⁸ Petitioner made no specific request at that time to reconvene the IEP team to consider this recommendation and the opinion of this mental health expert. But Petitioner's counsel did give DCPS a deadline by which to let her know whether DCPS intended to make changes to the student's IEP based on the letter. DCPS could have on its own accord reconvened the student's IEP meeting to consider this additional information but it did not do so. Thereafter, Petitioner filed his due process complaint seeking the opportunity to prove, which he has now done, that the student needs a residential placement.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

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

¹⁶ FOF #s 6, 10

¹⁷ To the contrary, there was evidence that School B could provide the student the services prescribed in the IEP. (FOF # 22, 23)

¹⁸ FOF #s 11, 20

is based on the child's IEP; and (5) is as close as possible to the child's home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

As stated above based upon the evidence adduced at hearing the Hearing Officer concludes that the is in need of residential placement from this point forward until it is determined that she is no longer in need of such a restricted placement. Petitioner has requested that the Hearing Officer prospectively place the student at School A. Although Petitioner along with his educational consultant reviewed the list of OSSE approved residential schools and psychiatric treatment facilities and determined that none are appropriate for the student DCPS and OSSE has not had the opportunity to review the student's needs in a residential setting and recommend a residential placement for the student.

Although School A is a boarding school that provides intense therapeutic and behavioral support and psychiatric services, School A is not a school for special education students approved by OSSE. Neither is School A licensed by the state in which it is located as a special education school or a residential treatment facility where an local education agency can place a student. Consequently, the Hearing Officer will not direct that the student be placed and funded directly by DCPS prospectively.

Rather, the Hearing Officer in the order below directs DCPS to amend the student IEP to require a residential placement and that DCPS within a reasonable time identify an appropriate residential placement for the student and coordinates her smooth transition to the facility and/or facilitates along with OSSE School A's approval as a residential treatment facility where the student can remain until an IEP team determines the student no longer in need of residential placement. Until that appropriate residential placement is identified the Hearing Officer directs in the order below that DCPS reimburse the student's parent the cost of the student attendance at School A from the date of this order. The Hearing Officer concludes that School A at least meets the requirements that are necessary for parental reimbursement until the directives of this order are satisfied.

ISSUE 2: Whether the Petitioner should be awarded compensation for delays in providing the student with an appropriate placement.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that Petitioner should be awarded compensation for delays in providing the student an appropriate placement from the date after the prior HOD was issued until the time DCPS determined the student's eligibility and developed an IEP and offered a proposed placement.

Although Petitioner asserted that based upon the the June 7, 2014, HOD that concluded the student should have been found eligible and been provided an appropriate placement by May 2, 2014, that HOD left open the question of whether the student would be found eligible and directed that DCPS convene a meeting and develop an IEP and proposed a placment if the student was found eligible. The HOD did not prescribe any remedy for the delay in that eligibility or ineligibility determination that the Hearing Officer determined had been proved.

In a pre-hearing ruling this Hearing Officer concluded that Petitioner would be allowed to

present evidence as to a remedy back to June 8, 2014, the day following the issuance of the HOD. The student was found eligible on June 27, 2014, and an IEP was developed for the student that was reasonably calculated to provide her education benefit at the time the IEP was developed. Consistent with this prior ruling that the Petitioner could present evidence on a remedy after June 8, 2014, the Hearing Officer concludes that at most the student was without an IEP and proposed placement for fifteen school days.¹⁹ The only evidence presented from which the Hearing Officer can fashion a remedy of compensation for this delay in services, had the student's reasonably calculated IEP and proposed placement been available on June 8, 2014, is the cost that the parent incurred for the educational and clinical support portions²⁰ of the student's attendance at School A during those 15 days. Accordingly, in the order below the Hearing Officer directs DCPS to compensate the student's parent an amount equal to the parent's full daily rate for those days.²¹

ORDER:²²

1. DCPS shall, within ten school days of the issuance of this order amend the student's IEP to prescribe a residential placement.
2. DCPS shall within thirty (30) calendar day of the issuance of this order identify an appropriate residential placement for the student and coordinate her smooth transition to that facility and/or facilitate, in coordination with OSSE, School A's approval as a residential school/treatment facility where the student can remain until an IEP team determines the student is no longer in need of residential placement.
3. Until such time that the residential placement the Hearing Officer has ordered above is identified and a reasonably comprehensive transition is plan is developed for the student to move to that placement, DCPS shall reimburse²³ the student's parent for his costs of the student's attendance at School A (consistent with the daily rate that was identified for the parent in this in HOD) going forward from the date of this order.

¹⁹ The Hearing Officer takes administrative notice that DCPS schools concluded SY 2013-2014 prior to the date of the student's IEP meeting but will nonetheless grant Petitioner compensation for the full delay determined because there was no clear evidence presented as to when the school year ended.

²⁰ FOF # 21

²¹ The Hearing Officer concludes the full daily rate is appropriate because the itemized costs of those individual services at School A's school district rate would surpass the parent's total daily rate and there is no other evidence as to how the costs for the individual services should otherwise be determined.

²² 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.

²³ This reimbursement shall be made within thirty (30) calendar days of DCPS' receipt from Petitioner of proof of payment of those costs.

4. DCPS shall, within thirty (30) calendar days after Petitioner provides proof of payment for the student's tuition and related services costs at School A for the month June 2014, pay to Petitioner \$3,600 (a total equal to daily rate identified for the parent in this in HOD for the student's attendance at School A for 15 school days).
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: October 14, 2014