



On October 28, 2011, DCPS filed its Response, which denies the allegations of the Complaint. DCPS responds (*inter alia*) that the Student's IEP is designed to provide her educational benefit in the least restrictive environment, which is a combination setting; that DCPS has been the Student's LEA since she transferred in July 2011; and that DCPS "adopted the existing IEP with the parent's permission." *Response, pp. 1-2.*

On November 2, 2011, DCPS held a resolution meeting that did not resolve the Complaint, and the parties did not agree to end the 30-day resolution period early. The resolution period therefore ended November 10, 2011, and the 45-day timeline for issuance of the Hearing Officer Determination ("HOD") originally was to expire on December 25, 2011.

On November 15, 2011, a Prehearing Conference ("PHC") was held to discuss and clarify the issues, and a Prehearing Order was issued on November 21, 2011. By December 2, 2011, the parties filed their five-day disclosures for a due process hearing on December 9, 2011. However, Petitioner was unable to appear on time for the scheduled hearing on 12/9/2011 due to transportation issues, and Petitioner's expert witness could not be available at a later time that day. The parties then discussed and agreed to reschedule the hearing for the next mutually available date of January 4, 2012.

On December 15, 2011, the Chief Hearing Officer issued an Interim Order on Continuance Motion granting Petitioner's unopposed motion for continuance. The hearing was reset for January 4, 2012, and the 45-day HOD timeline was extended to January 11, 2012.

The Due Process Hearing was held in hearing room 2004 on January 4, 2012, at 9:30 A.M. Petitioner elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

**Petitioner's Exhibits: P-1 through P-29.**

**Respondent's Exhibits: R-1 through R-6.**

In addition, the following Witnesses testified on behalf of each party:

**Petitioner's Witnesses:** (1) Parent-Petitioner; (2) Psychologist, who testified as an expert in clinical and school psychology (over DCPS' objection); (3) Educational Advocate ("EA"); (4) Special Education Coordinator ("SEC"), LEA Charter; (5) Teacher, LEA Charter; and (6) Director, Private School.

**Respondent's Witnesses:** (1) SEC, Middle School; and (2) Special Education Teacher, Middle School.

Oral closing arguments were then submitted on the record.

## **II. JURISDICTION**

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* 5-E DCMR §§ 3029, 3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("SOP"). The statutory HOD deadline is January 11, 2012.

## **III. ISSUES AND REQUESTED RELIEF**

The following issues were presented for determination at hearing:

- (1) **Failure to Evaluate.** – Did DCPS deny the Student a FAPE by failing to conduct or refer the Student for an occupational therapy ("OT") assessment in September 2011?
- (2) **Failure to Provide an Appropriate IEP/Placement.** – Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP or ensure an appropriate placement/school for the 2011-12 school year?

Specifically, Petitioner alleges that the IEP and placement are both inappropriate because the Student "requires an out of general education IEP and setting for all academic instruction or something close to that." *P-1* (10/11/2011 Complaint), p. 5, ¶ 24.

Petitioner requests that the Hearing Officer: (a) order DCPS to convene an IEP Team meeting to revise the IEP and determine placement; (b) award an appropriate public or non-public placement with transportation; (c) award appropriate compensatory education in the form of independent tutoring from August 2011 to the present (2011-12 school year); and/or (d) order other relief deemed appropriate, including an independent OT evaluation.

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above. 5-E DCMR §3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Petitioner also had the burden of proposing a well-articulated plan for compensatory education, in accordance with the standards of *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

#### IV. FINDINGS OF FACT

1. The Student is an -year old student who has been determined to be eligible for special education and related services under the IDEA as a child with multiple disabilities. *P-2; R-6; Parent Test.*
2. The Student is a resident of the District of Columbia, and Petitioner is the Student's mother. *P-1; Parent Test.*
3. The Student attends Middle School, her neighborhood DCPS public middle school. She has attended since the beginning of the 2011-12 school year. *P-1; Parent Test.*
4. During the prior three years including the 2010-11 school year, the Student attended a D.C. Public Charter School ("LEA Charter"), which acts as its own local educational agency under the IDEA. *P-1; P-8; Parent Test.; LEA Charter SEC Test.*
5. In January 2011, LEA Charter developed an IEP for the Student dated 01/21/2011, which provided 7.5 hours per week of specialized instruction in a General Education setting, 10 hours per week of specialized instruction in an Outside General Education setting, and 30 minutes per week of behavioral support services in a setting Outside General Education. *See P-3-5.*
6. In May 2011, Petitioner filed a due process complaint against LEA Charter alleging that it failed to develop an appropriate IEP and failed to complete required triennial re-evaluations (Case No. 2011-0543). *See P-8.* On June 3, 2011, a settlement agreement ("SA") was reached resolving that complaint, whereby LEA Charter agreed (a) to conduct a comprehensive evaluation consisting of psycho-educational and clinical assessments, and (b) to convene an IEP Team meeting to review the evaluation report, revise the IEP as appropriate, and discuss placement as necessary. *P-9.*
7. On or about July 10, 2011, LEA Charter completed a Comprehensive Psychological Evaluation. *P-10.* The evaluation was conducted by an examining psychologist who contracted with LEA Charter pursuant to the terms of the 06/03/2011 SA. *See P-9; P-10; Psych. Test.*<sup>3</sup>

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<sup>3</sup> The evaluating psychologist ("Psychologist") who testified at hearing, however, had never met the Student. *See Psych. Test.* (cross examination). He also testified that he did not have knowledge of the Student's performance and functioning at Middle School this school year. *Id.*

8. As a result of the July 10, 2011 Comprehensive Psychological Evaluation, the Student was given a diagnosis of Borderline Intellectual Functioning. *P-10-8*. Her verbal reasoning abilities, as measured by the Verbal Intelligence Index (VIX) of the Reynolds Intellectual Assessment Scales (RIAS) was 63, which was in the Significantly Below Average range and above those of approximately 1 % of her age-group peers. *P-10-3*. The Student's non-verbal reasoning skills were found to be significantly more developed. *See P-10-3; P-10-8*. Her measured overall academic achievement was found to be congruent with her intellectual abilities. *P-10-9*.
9. The July 10, 2011 Comprehensive Psychological Evaluation also assigns the Student a diagnosis of Attention-Deficit Hyperactivity Disorder ("ADHD"), Combined Type, based primarily on a prior evaluation in 2008. Although the Psychologist did not observe symptoms of ADHD during the July 2011 testing process, he noted that symptoms of both inattention and hyperactivity/impulsivity were indicated on the parent and teacher behavior rating scales. *P-10-9; P-10-11*. In addition, the Psychologist gave a diagnosis of Disruptive Behavior Disorder Not Otherwise Specified due to the Student's disobedient behavioral patterns and Anxiety Disorder Not Otherwise Specified due to moderate symptoms of anxiety. *Id.*
10. The report of the July 10, 2011 Comprehensive Psychological Evaluation made various educational recommendations, including (a) that the Student may benefit from continued specialized instruction with a small staff-student ratio, (b) that specialized instruction in all academic areas could assist the Student in improving her functional academic skills, and (c) that the Student receive an OT evaluation to further assess her visual-motor difficulties, based on low scores received on the Visual-Motor Integration ("VMI") screening test. *See P-10-10 – P-10-11*.
11. During Summer 2011, the Student graduated<sup>4</sup> or withdrew from LEA Charter, and Petitioner began the process of enrolling her with DCPS at Middle School. *Parent Test.; LEA Charter Test*. The Student then enrolled and began the 2011-12 school year at Middle School. *P-1; R-1; Parent Test*.

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<sup>4</sup> Because the Student was advancing to the 6<sup>th</sup> grade, she could no longer attend LEA Charter. *See LEA Charter SEC Test*.

12. On or about September 9, 2011, LEA Charter convened a meeting with Petitioner, LEA Charter staff, and Psychologist to review the July 10, 2011 Comprehensive Psychological Evaluation and complete its implementation of the 06/03/2011 SA. *P-14*. At this time, the Student was no longer enrolled at LEA Charter, and LEA Charter was no longer his LEA. *See LEA Charter SEC Test*. DCPS was invited to attend this meeting, but no DCPS representative attended. The Middle School SEC told Petitioner that it “would be in the best interest of the parent and the student to have the evaluations reviewed where they originated,” *P-11-1*, and LEA Charter staff had conversations with Middle School staff prior to conducting the meeting. *See, e.g., LEA Charter SEC Test; Middle School SEC Test*. Copies of the 07/10/2011 Comprehensive Psychological Evaluation report and notes from the 09/09/2011 LEA Charter meeting were also sent to DCPS. *See P-12; Middle School SEC Test*.<sup>5</sup>
13. Also on September 9, 2011, Petitioner requested in writing that DCPS conduct an occupational therapy (“OT”) assessment as soon as possible. *P-12*. As of the date of the Complaint, DCPS had not referred the Student for this assessment. Additionally, at the 12/02/2011 resolution meeting, DCPS indicated that an OT assessment was not needed and confirmed that it would not agree to conduct such assessment. *P-22-2*. To date, DCPS has not initiated any OT assessment of the Student.
14. On or about September 26, 2011, DCPS convened an IEP Team meeting at Middle School (without Petitioner in attendance) to review the 07/10/2011 Comprehensive Psychological Evaluation and update the Student’s IEP from LEA Charter. *See P-2; R-2*. The IEP Team indicated that it did not agree with recommendations from the 07/10/2011 Comprehensive Psychological Evaluation and developed an IEP dated 09/26/2011. *Id.* The 09/26/2011 IEP provided 10 hours per week of specialized instruction in an Outside General Education setting, and 120 minutes per week of behavioral support services in a setting Outside General Education. *P-2-7*. The provision for 7.5 hours per week of specialized instruction in a General Education setting contained in the 01/21/2011 IEP from LEA Charter was not included in the new DCPS IEP.

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<sup>5</sup> Where a child transfers to an LEA Charter or District Charter, OSSE regulations provide that the responsibility for implementation of an HOD or SA “shall remain at all times with the LEA that was a party to the HOD or SA.” 5-E DCMR §3019.10 (a). It appears from the evidence that, in cooperation with DCPS, LEA Charter was applying these same principles to this situation involving a transfer to a DCPS school. *LEA Charter SEC Test*.

15. On or about October 21, 2011, after the filing of the Complaint in this matter, DCPS convened another IEP Team meeting at Middle School, this time with Petitioner in attendance. *See R-3* (10/21/2011 MDT meeting notes). The purpose of the meeting was to review the IEP developed by DCPS on 09/26/2011 and to determine if any changes were needed. *Id.*, p. 1. Petitioner was present at the meeting, and the Student's Educational Advocate participated by phone. *Id.* DCPS determined that no changes were necessary to the IEP created on 09/26/2011, and Petitioner and EA were not in agreement with the level of services provided on the IEP. *Id.*, p. 4. DCPS then issued another IEP which provides the same special education and related services as the IEP originally developed at the 09/26/2011 meeting. *See R-6; P-2.*<sup>6</sup>
16. Also on October 21, 2011, DCPS issued a Prior Written Notice notifying Petitioner that the IEP Team had "determined that [ ] Middle School is appropriate placement at this time." *R-4, p. DCPS000017.*

## V. DISCUSSION AND CONCLUSIONS OF LAW

### A. Issues/Alleged Denials of FAPE

Under the IDEA, FAPE means:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..." 20 U.S.C. § 1401(9); *see* 34 C.F.R. § 300.17; DCMR 5-E3001.1.

For the reasons discussed below, the Hearing Officer concludes that Petitioner proved by a preponderance of the evidence that DCPS has failed to conduct or refer the Student for an occupational therapy assessment (Issue 1); but that Petitioner has not proved a denial of FAPE in the form of an inappropriate IEP and placement as of September 26 and/or October 21, 2011 (Issue 2).

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<sup>6</sup> The IEP adopted at the 10/21/2011 meeting was signed by Petitioner on 10/21/2011 (stating that "I do not agree to this IEP"), but it is still dated 09/26/2011, with the IEP services listed as beginning 09/26/2011 and ending 09/25/2012. *R-6*, pp. 1, 6. Thus, the Hearing Officer will continue to refer to this IEP as the 09/26/2011 IEP. The main effect of the 10/21/2011 meeting has been to moot Petitioner's procedural claim regarding parent participation, as agreed by the parties at the PHC. *See* note 2, *supra*; *Prehearing Order* (Nov. 21, 2011).

## 1. Failure to Evaluate

As part of either an initial evaluation or re-evaluation, DCPS must ensure that the child “is assessed in all areas related to the suspected disability,” and that the evaluation is “sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.” 34 C.F.R. §300.304 (c) (4), (6); *see also Harris v. DC*, 561 F. Supp. 2d 63, 67-68 (D.D.C. 2008). Thus, evaluations are to be conducted to determine both a child’s disabilities and the content of the child’s IEP. 34 C.F.R. §300.304 (b) (1). Moreover, where an IEP team determines that additional data is not needed, parents have a right to request particular assessments to determine whether their child has a disability and the child’s educational needs. *See, e.g.*, 34 C.F.R. 300.305 (d); *see also Herbin v. District of Columbia*, 362 F. Supp. 254, 43 IDELR 110 (D.D.C. 2005).

In this case, Petitioner claims that DCPS should have conducted an OT assessment as requested by the parent on or about September 9, 2011. *See P-12*. An OT assessment was recommended in the July 2011 comprehensive psychological evaluation report, to assess the Student’s visual-motor difficulties and their impact on her learning. *See P-10-10 – P-10-11; Psych. Test*. While DCPS is not required to follow all evaluator recommendations in constructing a child’s IEP, here Petitioner also expressly exercised her statutory right to request the OT assessment to determine the Student’s educational needs and the content of her programming. DCPS thus erred in declining to conduct an OT assessment.

Based on the testimony and other evidence adduced at hearing, the Hearing Officer concludes that DCPS’ failure to evaluate the Student in these circumstances constituted a substantive denial of FAPE. *Cf. Harris v. DC*, 561 F. Supp. 2d at 68-69. Alternatively, assuming *arguendo* that DCPS’ failure to evaluate is deemed to be a procedural violation only, the violation has affected the student’s substantive rights. *See Lesesne v. District of Columbia*, 447 F. 3d 828 (D.C. Cir. 2006). Such procedural inadequacy has impeded the Student’s right to a FAPE and has significantly impeded Petitioner’s opportunity to participate in the decision-making process regarding the provision of a FAPE to her child. 34 C.F.R. 300.513 (a) (2) (i), (ii). Accordingly, Petitioner has met her burden of proof on Issue 2.

## 2. Inappropriate IEP/Placement Claim

The “primary vehicle” for implementing the goals of the IDEA is the IEP, which the statute “mandates for each child.” *Harris v. District of Columbia*, 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (citing *Honig v. Doe*, 484 U.S. 305, 311-12 (1988)). An IEP is a comprehensive written plan that must include, among other things: (1) “a statement of the child’s present levels of academic achievement and functional performance, including ... how the child’s disability affects the child’s improvement and progress in the general education curriculum”; (2) “a statement of measurable annual goals, including academic and functional goals, designed to ... meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum...and meet each of the child’s other education needs that result from the child’s disability”; (3) “a description of how the child’s progress toward meeting the annual goals...will be measured”; (4) “a statement of the special education and related services and supplementary aids and services ...and a statement of the program modifications or supports for school personnel that will be provided for the child”; and (5) an explanation of the extent, if any, to which the child will not participate with non-disabled children in any regular classes. 20 U.S.C. 1414(d)(1)(A)(i) (emphasis added). *See also* 34 C.F.R. 300.320; DCMR 5-E3009.1.

To be sufficient to provide FAPE under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.” *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176,200,207 (1982); *see also* *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988). Judicial and hearing officer review of IEPs is “meant to be largely prospective and to focus on a child’s needs looking forward; courts thus ask whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’” *Schaffer v. Weast*, 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207). An LEA also must periodically update and revise an IEP “in response to new information regarding the child’s performance, behavior, and disabilities.” *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010), slip op. at p. 6; *see* 34 C.F.R. 300.324. And the issue of whether an IEP is appropriate is a question of fact for hearing. *See, e.g., S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003).

The next critical IDEA requirement is educational placement, which must be “based on the child’s IEP.” 34 C.F.R. 300.116 (b) (2). Under the IDEA, “[d]esigning an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes *offering placement in a school that can fulfill the requirements set forth in the IEP.*” *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (emphasis added). Moreover, D.C. law mandates that DCPS place a student with a disability in “an *appropriate special education school or program*” in accordance with the IDEA. D.C. Code 38-2561.02 (emphasis added). *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005), *citing McKenzie v. Smith*, 771 F.2d 1527, 1534-35 (affirming “placement based on match between a student’s needs and the services offered at a particular school”) (emphasis added); *Jenkins v. Squillacote*, 935 F. 2d 303, 305 (D.C. Cir. 1991) (“If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school.”). In addition, DCPS must ensure that its placement decision is in conformity with the Least Restrictive Environment (“LRE”) provisions of the IDEA. *See* 34 C.F.R. §§ 300.114-300.116.

The above issues arise here in the context of a child just recently transferring between an LEA Charter and a DCPS neighborhood school over the summer. Pursuant to IDEA and OSSE regulations, if a child with an IEP in effect transfers from an LEA Charter to DCPS, “the receiving LEA [*i.e.*, DCPS] shall be *responsible upon enrollment* for ensuring that the child receives special education and related services according to the IEP, *either by adopting the existing IEP or by developing a new IEP* for the child in accordance with the requirements of IDEA.” 5-E DCMR §3019.8 (d) (emphasis added). The two LEAs are also required to “cooperate fully in the transfer of all child records.” *Id.* §3019.8 (b). In this case, DCPS obtained the records from the previous LEA (including the July 2011 evaluation) and opted to develop a new IEP for the Student as of September 26, 2011 (and as confirmed at the 10/21/2011 IEP Team meeting).<sup>7</sup>

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<sup>7</sup> While DCPS’ Response to the Complaint stated that DCPS “adopted the existing IEP with the parent’s permission,” *Response*, pp. 1-2, the undisputed facts show that DCPS actually developed a new IEP with revised baselines and goals as of 09/26/2011. The Hearing Officer notes that Petitioner’s Complaint does *not* include any claim that DCPS failed to provide “comparable” services prior to developing the new IEP pursuant to 34 C.F.R. §300.323(e). Thus, only the appropriateness of the new 09/26/2011 IEP and placement are at issue.

Petitioner claims that the 09/26/2011 IEP and placement developed by DCPS are inappropriate because the Student “requires an out of general education IEP and setting for all academic instruction or something close to that.” *P-1*, p. 5, ¶ 24; *see also Prehearing Order*, ¶ 5. Petitioner has not challenged any of the goals contained in the new IEP, or any accommodations, supplementary aids, or supports therein. Rather, Petitioner contends that 10 hours of specialized instruction outside the general education setting is not sufficient to address the Student’s needs and that she needs essentially full-time services. Petitioner also claims that Middle School is not an appropriate placement.

Petitioner has failed to prove these claims by a preponderance of the evidence. The Student never had a full-time IEP at LEA Charter,<sup>8</sup> and Petitioner has not shown that the Student required a full-time, out of general education IEP as of September 26 and/or October 21, 2011. She also has not shown that Middle School cannot implement the IEP that DCPS has developed. Nor was DCPS required to adopt the existing IEP from LEA Charter, which included an additional 7.5 hours of inclusion services that even Petitioner does not allege is appropriate for the Student and that the evidence indicates had not been successful. *E.g.*, *P-14-2* (reporting that Student “struggled with inclusion” due to her inattentiveness).

Pursuant to 34 C.F.R. §300.323(e), DCPS was permitted to develop a new IEP, as long as it “meets the applicable requirements in §§300.320 through 300.324.” Under §300.324(a), that meant DCPS had to consider (*inter alia*) the results of the most recent evaluation of the Student, as well as her academic, developmental and functional needs based on the information it had available at that time. The Student had only been at Middle School for several weeks, and DCPS was still monitoring her progress closely and reviewing her needs at that time. *See, e.g.*, *R-2*, p. *DCPS000008*. DCPS based its initial programmatic decisions not only on LEA Charter’s July 2011 evaluation, but on its own “in class assignments, short cycle assessments, and classroom observations,” *R-4* (10/21/2011 Prior Written Notice), p. *DCPS000017*, which indicated that the Student was doing fairly well at the beginning of the school year, *see Middle School SEC Test*.

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<sup>8</sup> The Student’s 5<sup>th</sup> grade general education teacher, who had Student in her class every day for the entire 2010-11 school year, conceded on cross examination that she did not even recommend full-time, outside general education services for Student until *after* she had left LEA Charter, at the 09/09/2011 meeting. *See LEA Charter Teacher Test*. The Student’s educational advocate similarly testified that he had never requested full-time, out of general education instruction or a self-contained classroom prior to the 10/21/2011 IEP meeting. *EA Test*. (cross examination).

Viewing the 09/26/2011 IEP “as a snapshot, not a retrospective,” *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 29 (1<sup>st</sup> Cir. 2008), Petitioner must prove that the IEP was not “reasonably calculated” to confer educational benefits on the Student at the time it was created. While Petitioner points to a few comments made in teacher reports to the effect that the Student requires “constant” support and redirection (*R-2, p. DCPS000008; R-3, p. DCPS000012*), the Hearing Officer does not agree that these comments alone conclusively established the need for full-time specialized instruction. Nor can Petitioner meet her burden by pointing to evidence of declining grades (especially in pull-out classes) *subsequent* to the IEP and Complaint. *See P-21* (10/28/2011 progress report); *see also DCPS Teacher Test.* (stating that declining grades in special education pull-out classes was due to poor attitude and effort).

Accordingly, based on the testimony and other evidence adduced at hearing, the Hearing Officer concludes that Petitioner has not met her burden of proving a denial of FAPE under Issue 2 – *i.e.*, on her claim that the initial IEP and placement provided by DCPS was not reasonably calculated to confer educational benefits on the Student *as of September 26 and/or October 21, 2011*. However, given (a) DCPS’ witness testimony and DCPS’ closing statement that, *as of the present date*, the Student may require additional specialized instruction beyond 10 hours per week,<sup>9</sup> and (b) DCPS’ obligation to update and revise the IEP “in response to new information regarding the child’s performance, behavior, and disabilities,” *Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010); 34 C.F.R. §300.324 (b), DCPS shall be ordered to review the service hours at the upcoming IEP Team meeting held to review the independent OT assessment, rather than defer such review to the next annual IEP meeting. If Petitioner is not satisfied with such further IEP review, she will have the right to file a separate request for a due process hearing on that issue. *See* 34 C.F.R. §300.513 (c).

#### **B. Appropriate Relief**

The IDEA authorizes the Hearing Officer to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993). The

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<sup>9</sup> Notably, the Student’s current 6<sup>th</sup> grade special education teacher at Middle School testified on cross examination that the Student may now benefit from as much as four (4) hours per day of specialized instruction. *DCPS Teacher Test.* She explained that Student needs additional work on her reading skills and is “getting lost” in the general education classroom. *Id.* The SEC also testified that these services are available at Middle School. *SEC Test.*

Hearing Officer's determination of appropriate equitable relief is set forth in the Order, consistent with the above discussion. Beyond that, the Hearing Officer concludes that an award of private placement is not warranted because Petitioner has not shown that Middle School cannot implement an appropriate IEP. And an award of compensatory education is not warranted because Petitioner has not proved any educational harm to the Student from the brief delay in conducting an OT assessment for the purpose of further exploring possible visual-motor difficulties and has not proved any other denial of FAPE at this time. *See Reid, supra.*

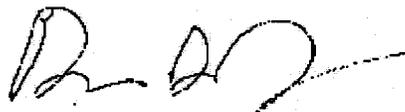
## VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Petitioner shall be immediately authorized to obtain an independent **occupational therapy ("OT) assessment**, at the expense of DCPS and consistent with DCPS' publicly announced criteria for independent educational evaluations ("IEEs"). Upon completion of the independent OT assessment, Petitioner shall promptly cause a copy of the evaluation report to be sent to DCPS.
2. Within **10 school days** of receiving the OT evaluation report under Paragraph 1, DCPS shall convene a **meeting of the Student's MDT/IEP Team** (with all necessary members, including Petitioner participating) to: (a) review the results of the independent OT assessment; and (b) review and revise, as appropriate, the Student's IEP dated September 26, 2011, based on the OT assessment and all other updated information concerning the Student's performance and educational needs, consistent with the Findings and Conclusions of this HOD. **Such review shall specifically include whether and to what extent the Student may now need to be provided additional hours of specialized instruction in the areas of Reading, Math, and/or Written Expression in an Outside General Education setting (over and above the 10 hours provided in her current IEP).**
3. Any delay in meeting any deadline in this Order caused by Petitioner or Petitioner's representatives (*e.g.*, absence or failure to attend a meeting, or failure to respond to scheduling requests) shall extend the deadline by the number of days attributable to such delay.
4. Petitioner's other requests for relief in her Due Process Complaint filed October 11, 2011, are hereby **DENIED**.
5. This case shall be, and hereby is, **CLOSED**.

***IT IS SO ORDERED.***

Dated: January 11, 2012



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Impartial Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).