

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

Parent, on behalf of)
STUDENT, ¹)
)
Petitioner,)
)
v.)
)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)
)
Respondent.)

RECEIVED
OCT 10 2012
BY: _____

Hearing Officer: Frances Raskin

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND

Petitioner is the parent of a _____ year-old student ("Student") with a disability. On August 3, 2012, Petitioner filed a due process complaint ("Complaint") against Respondent District of Columbia Public Schools ("DCPS") alleging violations of IDEA.

On August 15, 2012, this Hearing Officer was assigned to preside over this case. On August 20, Respondent filed a Response to the Complaint and Partial Motion to Dismiss ("Respondent's Motion").² Respondent filed its Response seven days after the deadline established by IDEA.³

¹ Personal identification information is provided in Attachment A.

² Although Respondent did not challenge the sufficiency of the Complaint, it requested that Petitioner's claims regarding the Student's May 25, 2010, IEP be dismissed. During the

On August 16, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. At the resolution meeting, the parties agreed to immediately start the forty-five day, due process hearing period and proceed to a hearing. Thus, the resolution period ended on August 16, 2012.

On August 23, 2012, Petitioner filed a Motion to Shift Burden of Proof or Production and Motion to Deem Allegations in Complaint as Admitted ("Petitioner's Motion"). In her Motion, Petitioner requested that this Hearing Officer shift the burden of proof to Respondent, or deem Respondent to have admitted the allegations in the Complaint, due to its failure to file a response to the Complaint that complied with the requirements of the IDEA.⁴ In the alternative, Petitioner requested that this Hearing Officer shift the burden of production to Respondent.⁵

On August 24, 2012, this Hearing Officer held a prehearing conference in which Counsel for Petitioner and Counsel for Respondent participated. During the prehearing conference, both counsel agreed that the forty-five day, due process hearing timeline began on August 16, 2012. This Hearing Officer informed counsel that the end of the forty-five-

prehearing conference, this Hearing Officer informed the parties that the claims regarding the Student's May 25, 2010, IEP were barred by the two-year statute of limitations. *See* 34 C.F.R. § 300.507 (a)(2) (due process complaint must allege a violation not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint). This Hearing Officer subsequently denied Respondent's Motion as moot.

³ If the Local Education Agency ("LEA") has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. § 300.508(e).

⁴ Petitioner asserted that, in addition to filing its Response one week after the statutory deadline, Respondent failed to provide the information required by the IDEA, including (1) an explanation of why the agency proposed or refused to take the action raised in the complaint; (2) a description of other options that the IEP team considered and the reasons why those options were rejected; (3) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (4) a description of the factors that are relevant to the agency's proposal or refusal. *See* 34 C.F.R. § 300.508(e), *supra*.

⁵ This Hearing Officer issued an order denying Petitioner's Motion on September 10, 2012. In the order, this Hearing Officer informed the parties that she would hold Respondent to the defenses raised in its Response.

day timeline, i.e., the deadline for the hearing officer determination (“HOD”), was September 30, 2012.

During the prehearing conference, counsel agreed to schedule the due process hearing for September 10, 19, and 27, 2012. Although counsel believed they would complete the testimony of their witnesses on September 19, 2012, this Hearing Officer requested that they reserve September 27, 2012, for a third day of hearing in the event they did not complete the testimony of their witnesses in the first two days. Both counsel agreed that, if a third day of hearing was necessary, they would file a motion to continue the forty-five-day timeline to allow this Hearing Officer time to issue the HOD.

This Hearing Officer issued a prehearing conference summary and order (“Prehearing Order”) on August 27, 2012. At the request of counsel for Petitioner, this Hearing Officer issued a revised Prehearing Order on August 31, 2012.⁶

The due process hearing commenced at 10:00 a.m. on September 10, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner’s proposed exhibits⁷ and Respondent’s proposed exhibits.⁸ Petitioner testified and presented four witnesses on her behalf, an expert in clinical psychology and neuropsychology (“Psychology Expert”), an expert in speech-language pathology (“Speech-Language Expert”); an expert in special education programming and placement (“Special Education Expert”), and a program supervisor (“Program Supervisor”) at a nonpublic school (“Nonpublic School”).

When the parties did not finish the presentation of testimony at the close of the second day of hearing on September 17, 2012, Petitioner filed a motion to continue the forty-five-day timeline by nine days. On September 19, 2012, this Hearing Officer granted the continuance motion.

The due process hearing reconvened on September 27, 2012. Petitioner concluded the testimony of her witnesses. Respondent rested on the record and presented no witnesses. Respondent then presented an oral closing argument. Petitioner filed a written closing argument on November 3, 2012.

⁶ This Hearing Officer issued a revised Prehearing Order to incorporate the clerical corrections noted by counsel for Petitioner on August 29, 2012.

⁷ This Hearing Officer admitted into evidence Petitioner’s exhibits 1-68, inclusive.

⁸ This Hearing Officer admitted into evidence Respondent’s exhibits 1-8, inclusive.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether Respondent denied the Student a free, appropriate, public education ("FAPE") on May 5, 2011, by developing an individualized educational program ("IEP") that contained annual goals in mathematics, reading, and writing that were not reasonably calculated to enable him to receive academic benefit, and failed to specify how his teachers would implement the supplemental aids and supports he requires to make academic progress;

B. Whether Respondent denied the Student a FAPE on May 5, 2011, by developing an IEP that provided only four hours per month of speech and language therapy services rather than the two hours per week he required to make meaningful progress;

C. Whether Respondent denied the Student a FAPE on May 5, 2011, by developing an IEP and placement that provided that all of his classes and related services would be outside the general education environment but failed to specify that he would be in a small, self-contained, special education environment, with a 4:1 student teacher ratio, for the entire school day;

D. Whether Respondent denied Petitioner her right to participate in the decisionmaking process regarding the provision of FAPE to the Student after May 5, 2011, when it unilaterally changed the Student's location of services from McFarland Middle School to Roosevelt Senior High School, thereby changing his placement by removing him from the self-contained setting in which he was placed for the 2010-2011 school year to a setting in which he would interact with his nondisabled peers during transitions, without including Petitioner in the placement determination or issuing a prior written notice ("PWN");

E. Whether Respondent denied the Student a FAPE by failing to implement his May 5, 2011, IEP when it did not provide the 120 minutes per month of occupational therapy services required by his IEP in August, September, October, and the first half of November 2011;

F. Whether Respondent denied the Student a FAPE on January 25, 2012, when it developed an IEP that contained annual goals in mathematics, reading, and writing that were not reasonably calculated to enable to him to receive academic benefit, and failed to specify how his teachers would implement the supplemental aids and supports he requires to make academic progress;

G. Whether Respondent denied the Student a FAPE on January 25, 2012, when it developed an IEP that provided only four hours per month of speech and language therapy services rather than the two hours per week he required to make meaningful progress;

H. Whether Respondent denied the Student a FAPE on January 25, 2012, when it developed a transition plan that was not reasonably calculated to enable to him to receive academic benefit because it lacked appropriate goals in the areas of post-graduation employment and independent living skills;

I. Whether Respondent denied the Student a FAPE on January 25, 2012, when it developed an IEP and placement that provided that all of his classes and related services would be outside the general education environment but failed to specify that he would be in a small, self-contained, special education environment, with a 4:1 student teacher ratio, for the entire school day;

J. Whether Respondent denied the Student a FAPE on January 25, 2012, when it developed an IEP that failed to provide him an additional two hours per week of academic tutoring to address his failure to make meaningful academic progress since 2008, as recommended by his recent independent comprehensive psychological evaluation;

K. Whether Respondent denied Petitioner her right to participate in the decisionmaking process regarding the provision of FAPE to the Student when it failed to provide her a copy of the draft IEP for the Student before the January 25, 2012, IEP meeting so that she could meaningfully participate in the meeting;

L. Whether Respondent denied the Student a FAPE between January 25, 2012, and May 17, 2012, when it failed to implement the occupational therapy services required by his January 25, 2012, IEP;

M. Whether Respondent denied the Student a FAPE on June 6, 2012, when it developed an IEP that contained annual goals in mathematics, reading, and writing that were not reasonably calculated to enable to him to receive academic benefit, and failed to specify how his teachers would implement the supplemental aids and supports he requires to make academic progress;

N. Whether Respondent denied the Student a FAPE on June 6, 2012, when it developed an IEP that provided only four hours per month of speech and language therapy services rather than the two hours per week he required to make meaningful progress;

O. Whether Respondent denied the Student a FAPE on June 6, 2012, when it developed an IEP that reduced his occupational therapy services to thirty minutes per month without first evaluating the Student to determine his level of need for occupational therapy;

P. Whether Respondent denied the Student a FAPE on June 6, 2012, by developing an IEP and placement that, while providing that all of his classes and related services would be outside the general education environment, failed to specify that he would be in a small, self-contained, special education environment, with a 4:1 student teacher ratio, for the entire school day;

Q. Whether Respondent denied the Student a FAPE between August 2010 and January 2012 when it failed to conduct a functional behavioral analysis ("FBA") and develop a behavior implementation plan ("BIP") to address the Student's social difficulties that led to short-term suspensions and other disciplinary measures;⁹ and

R. Whether Respondent denied the Student a FAPE, and denied Petitioner the right to participate in the decisionmaking process regarding the provision of FAPE to the Student, from March 1, 2012, to the present when it failed to hold a meeting to determine whether the BIP it developed in January 2012 was effective.

Petitioner requests relief in the form of an order requiring Respondent to place the Student at the Nonpublic school at public expense for the 2012-2013 school year and to provide him compensatory education in the form of tutoring, speech-language therapy, occupational therapy, and behavioral support services.

IV. FINDINGS OF FACT

1. Petitioner is the mother of the Student.¹⁰ The Student is a -year-old young man who is in his second year at a public senior high school.¹¹ He currently is eligible for specialized instruction and related services as a student with an intellectual disability.¹²

2. The Student has demonstrated academic difficulties since he was four years old.¹³ He has a moderate intellectual disability, which is a significant cognitive impairment.¹⁴ His full-scale IQ is 52, which is in the extremely low range and below the first percentile of typically developing students.¹⁵

3. Overall, the Student's academic achievement is in the severely delayed range and below the first percentile.¹⁶ Academically, he generally performs on the second-grade level and below 99.99 percent of his same-age peers.¹⁷

4. In reading, the Student performs at a second-grade level.¹⁸ In mathematics, he performs between a first and third grade level, and has significant deficits in calculation

⁹ Petitioner presented no testimony on this claim. Thus, this Hearing Officer will not address it in this HOD.

¹⁰ Testimony of Petitioner.

¹¹ *Id.*

¹² *Id.*; Petitioner Exhibit 11 at 1 (June 6, 2012, IEP).

¹³ Testimony of Petitioner.

¹⁴ Testimony of Psychology Expert.

¹⁵ Petitioner Exhibit 19 at 5 (December 2, 2011, Comprehensive Psychoeducational Evaluation).

¹⁶ *Id.* at 6.

¹⁷ Testimony of Psychology Expert; Petitioner Exhibit 19 at 7.

skills, and in performing addition and subtraction.¹⁹ In written language, his skills range from a kindergarten to a third grade level.²⁰

5. Oral language is one of the Student's relative strengths.²¹ His oral language skills range from the second- to sixth-grade level.²² His ability to understand directions equivalent to a child in the second grade.²³

6. The Student also has a developmental coordination disorder.²⁴ He has significant difficulties with visual-motor integration,²⁵ visual perception, and fine-motor coordination.²⁶ His overall manual coordination is below average.²⁷ He has difficulties manipulating buttons on his clothes, using writing utensils, and manipulating other small objects.²⁸ He has difficulty orienting pegs to peg holes in a pegboard, twisting his wrist and arm instead of manipulating the pegs with his fingers.²⁹

7. The Student has significantly below average perceptual abilities,³⁰ and has some difficulty with processing visual information appropriately.³¹ In particular, he has difficulty completing age-appropriate puzzles, coordinating his eyes for following a moving object, keeping place when reading, and copying from the board or desk.³² Weaknesses in visual perceptual abilities can impact functional tasks within the learning environment such as handwriting development, copying from the board, lining up math calculations,

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Testimony of Psychology Expert. Oral language refers to a person's ability to understand oral directions, oral comprehension, recall information, and use vocabulary. *Id.*; Petitioner Exhibit 19 at 7.

²² Testimony of Psychology Expert; Petitioner Exhibit 19 at 6-7.

²³ Petitioner Exhibit 19 at 6.

²⁴ *Id.* at 15.

²⁵ The Student's visual-motor integration and visual perception are below the 0.02 percentile and in the very low range. *Id.* at 8. His motor coordination also is in the very low range at the 0.09 percentile. *Id.*

²⁶ *Id.* at 16.

²⁷ Petitioner Exhibit 17 at 3 (August 20, 2010, Comprehensive Occupational Therapy Evaluation).

²⁸ Petitioner Exhibit 19 at 16.

²⁹ *Id.* at 8.

³⁰ Petitioner Exhibit 17 at 6 (August 20, 2010, Comprehensive Occupational Therapy Evaluation).

³¹ Petitioner Exhibit 17 at 2.

³² *Id.*

understanding abstract math concepts such as fractions, decimals, and shapes, keeping a place when reading, sound and symbol recognition, and spelling.³³

8. The Student performs below average in fine motor precision, which involves precise finger, wrist, and hand movements to guide a writing tool to fill in shapes, draw lines through crooked and curved paths, connect dots, fold and crease paper, and cut out a circle.³⁴ In the area of fine motor integration, he struggles a great deal with adequately reproducing geometric shapes without the use of visual aids and reproducing the correct orientation of the shapes.³⁵ He has difficulty writing and drawing, as well as accurately identifying visual information.³⁶ He also has difficulty integrating visually perceived information with fine motor skills.³⁷

9. The Student has difficulty sustaining his attention for thirty minutes or more, which impedes his ability to listen to the stories of others and classroom informational lectures.³⁸ He also has difficulty following multi-step directions.³⁹ When he is unable to focus on the classroom instruction, his ability to access the curriculum is limited.⁴⁰

10. The Student's adaptive functioning also is far below his age.⁴¹ He has significant deficits in communication, daily living skills, as well as overall in his socialization and peer interaction skills.⁴²

11. The Student has difficulty discussing his experiences in detail, staying on topic during a conversation, describing short- and long-term goals, and giving complex directions to others.⁴³ He is able to communicate his feelings with peers and adults and shows concerns for others.⁴⁴

12. Nonetheless, he has difficulties connecting with peers, understanding his peers, and navigating social interactions.⁴⁵ While he is able to demonstrate polite behavior in public, apologize when he has hurt someone,⁴⁶ he has difficulty perceiving and

³³ *Id.* at 6.

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ Petitioner Exhibit 19 at 8.

³⁷ *Id.*

³⁸ Petitioner Exhibit 16 at 4 (September 3, 2009, Confidential Adaptive Functioning Evaluation).

³⁹ *Id.*

⁴⁰ Testimony of Psychology Expert.

⁴¹ Petitioner Exhibit 9 at 16.

⁴² Testimony of Psychology Expert.

⁴³ Petitioner Exhibit 16 at 4.

⁴⁴ *Id.* at 5.

⁴⁵ Petitioner Exhibit 19 at 16.

⁴⁶ Petitioner Exhibit 16 at 5.

understanding social situations.⁴⁷ He often misperceives social cues,⁴⁸ does not understand social norms and misses social nuances.⁴⁹

13. The Student has little ability to recognize and identify emotions, identify problems, and resolve problems and conflicts.⁵⁰ He has difficulty managing anger and aggression when he is hurt and managing his internal conflicts regarding his level of independence.⁵¹ He has difficulty thinking about his actions before he engages in them.⁵²

14. He has difficulty with several basic skills of adaptive daily living, including counting and managing money and interpersonal problem solving.⁵³ While he is able to dress and wash himself independently,⁵⁴ he is unable to follow special health care procedures such as taking his medicine or taking his temperature.⁵⁵ He has difficulty cleaning up after himself, doing laundry, and preparing meals that require measuring, mixing, and cooking independently.⁵⁶ He can make toast, boil noodles, and boil hot dogs.⁵⁷ His mother had to spend a lot of time training him just to remember to turn the stove on and off.⁵⁸

15. The Student has the most difficulty with skills that are required to function independently in the community.⁵⁹ While he is able to look both ways before crossing the street, and understands the right to privacy for himself and others, he is not able to play with friends unsupervised in the community, struggles to use money correctly, and has difficulty telling time.⁶⁰ He can use the phone and computer for simple tasks.⁶¹

16. The Student has significantly delayed speech and language skills.⁶² This is consistent with his cognitive profile.⁶³

⁴⁷ Petitioner Exhibit 19 at 16.

⁴⁸ Social cues include body language and tone of voice. Petitioner Exhibit 16 at 5.

⁴⁹ *Id.*; Petitioner Exhibit 19 at 16.

⁵⁰ Petitioner Exhibit 19 at 16.

⁵¹ *Id.*

⁵² Petitioner Exhibit 16 at 5.

⁵³ Petitioner Exhibit 19 at 16.

⁵⁴ Petitioner Exhibit 16 at 4.

⁵⁵ *Id.* at 5.

⁵⁶ *Id.*

⁵⁷ Testimony of Petitioner.

⁵⁸ *Id.*

⁵⁹ Petitioner Exhibit 16 at 5.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Testimony of Speech-Language Expert.

⁶³ *Id.*

17. Overall, in the area of receptive language, i.e., the ability to listen to and understand language, his skills are severely delayed and in the second percentile.⁶⁴ His ability to listen to, remember words, and make associations between the words, i.e., understand what words go together, is in the first percentile of his same-age peers.⁶⁵

18. The Student has difficulty understanding language, understanding vocabulary, and making connections in that vocabulary.⁶⁶ When he is engaged in learning, he would have trouble understanding what is presented to him.⁶⁷ This also affects his relationships with peers, especially if the language is complex, as he may misinterpret what is being said or miss the conversation altogether.⁶⁸

19. The Student's area of strength is in his ability to understand spoken paragraphs, i.e., listen to a paragraph read to him, understand what was read to him, and answer questions.⁶⁹ In this area, his skills fall in the average range and the sixty-third percentile.⁷⁰ However, his ability to make semantic relationships, i.e., remember information and use the information, is in the severely delayed range and the first percentile.⁷¹

20. The Student's expressive language skills, i.e., overall speaking and verbal expression, are overall severely delayed and below the first percentile.⁷² His ability to repeat sentences verbatim is in the severely delayed range.⁷³ The ability to perform this task is directly related to the ability to follow directions and write to dictation, which are necessary skills within the classroom.⁷⁴

21. The Student's ability to formulate a sentence using a target word or phrase and given a visual stimulus is severely delayed.⁷⁵ He is unable to use connector words such as "before," "because," and "instead."⁷⁶ He doesn't understand that these words are used to

⁶⁴ Petitioner Exhibit 18 at 2 (October 22, 2011, Speech and Language Evaluation).

⁶⁵ Testimony of Speech-Language Expert.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*; Petitioner Exhibit 18 at 2-3.

⁷¹ Petitioner Exhibit 18 at 4.

⁷² Petitioner Exhibit 18 at 3.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

connect ideas.⁷⁷ He is not able to use his language and create sentence structures as would be expected for his age.⁷⁸

22. His ability to express the relationship between two words, such as “smile” and “laugh,” are in the moderately delayed range and the fifth percentile.⁷⁹ In other words, his ability to use his language to accurately and clearly state how words are related is impaired.⁸⁰

23. The Student’s deficits in expressive language would impact his ability to answer questions in the classroom, express himself clearly, and discuss the material he is learning.⁸¹ This also would affect his relationship with peers because he would not necessarily be able to express what he is trying to say.⁸²

24. Overall, the Student’s expressive and receptive language skills are not progressing as he ages.⁸³ His receptive language is at the same level as in 2007.⁸⁴ This impacts his ability to access the curriculum in that he would be unable to express the knowledge he has gained in the classroom or express it in a way that others understand.⁸⁵ This also would impact his interactions with peers in that he would know what he wants to say but wouldn’t have the vocabulary, sentence structure, or ability to organize it.⁸⁶

25. The Student possesses a number of strengths.⁸⁷ He is friendly, respectful, and a kind, helpful, and engaging young man.⁸⁸ He responds well to encouragement, guidance, and praise.⁸⁹

26. The Student responds well to simple, structured routines.⁹⁰ He requires a classroom setting in which there are strict rules and significant amounts of structure that are balanced with warm and genuine praise and encouragement when he completes academic tasks.⁹¹

⁷⁷ *Id.*

⁷⁸ Testimony of Speech-Language Expert.

⁷⁹ Petitioner Exhibit 18 at 3.

⁸⁰ Testimony of Speech-Language Expert.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Testimony of Speech-Language Expert.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Petitioner Exhibit 19 at 17.

⁸⁸ *I* Petitioner Exhibit 19 at 17; Petitioner Exhibit 16 at 7.

⁸⁹ Petitioner Exhibit 19 at 17.

⁹⁰ *Id.*

⁹¹ Petitioner Exhibit 16 at 7.

27. Due to his extremely low overall cognitive abilities, delayed academic performance, commensurate with his level of intellectual functioning, and difficulties with visual-motor coordination, visual perception, and fine-motor coordination, the Student should be educated in a small classroom with other students with similar disabilities.⁹² He requires a low student-teacher ratio, preferably of four students to each teacher or assistant teacher.⁹³ He requires assistive technology, such as a calculator or math fact sheet for most math assignments and tests.⁹⁴ His teachers should use a multisensory approach to instruction to facilitate his learning and maintain his attention and focus.⁹⁵

28. Considering his significant deficits in expressive and receptive language, as well as his very low IQ, the Student requires special education instruction outside the general education environment for the entirety of the school day.⁹⁶ He requires an educational program that includes an emphasis on his acquisition of functional life skills, vocational training, and community-based instruction.⁹⁷ He requires at least four hours per week of direct and integrated speech-language services.⁹⁸

29. The Student requires community-based instruction because he has difficulties understanding abstract concepts.⁹⁹ He needs to practice the concepts he learns in school in a real-world setting so that he can apply the skills he has learned.¹⁰⁰ This would enable him to become a more functional adult, promote increased autonomy, and increase his acquisition of skills.¹⁰¹ It will help him to transition from school to independent living.¹⁰²

30. The Student also requires access to vocational training and support.¹⁰³ People with cognitive impairments perform well when they have opportunities to sample prospective jobs.¹⁰⁴ This would help the Student explore different job paths and develop his interests.¹⁰⁵

⁹² Testimony of Psychology Expert.

⁹³ *Id.*

⁹⁴ Petitioner Exhibit 19 at 17.

⁹⁵ *Id.*

⁹⁶ Testimony of Special Education Expert, Speech-Language Expert.

⁹⁷ Testimony of Psychology Expert.

⁹⁸ Testimony of Speech-Language Expert.

⁹⁹ Testimony of Psychology Expert.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

31. Because he has the tendency to misperceive social situations and interactions, the Student has had difficulties with peer interactions.¹⁰⁶ He requires access to behavioral support in the school setting, and adults must provide immediate feedback on his behavior.¹⁰⁷ This feedback must be provided in a manner that the Student can comprehend.¹⁰⁸ The Student's program also should emphasize social skill development.¹⁰⁹

32. He also should be educated in a self-contained environment.¹¹⁰ He has particular difficulty with transitions between classes.¹¹¹ During the 2011-2012 school year, he had conflicts with other students while transitioning between classes, and often was distracted.¹¹² He also should be educated in a self-contained environment to ensure his safety during the school day.¹¹³

33. It is imperative that the Student receives regular and consistent speech-language therapy.¹¹⁴ This will enable him to continue learning skills and building on the skills he has already developed.¹¹⁵ He should receive speech and language services within the classroom so that he can receive support for what he is learning academically and use the same vocabulary as is being used in the classroom.¹¹⁶ This will help the Student understand the information he is being taught, use it, and be able to express it.¹¹⁷

34. The Student requires direct occupational therapy services to assist him in the development of classroom skills and to support his overall learning and performance.¹¹⁸ The intervention should focus on improving his overall sensory processing, handwriting skills, keyboarding, visual motor integration, visual perceptual skills, organizational skills, and self-esteem building.¹¹⁹ The Student should receive at least forty-five minutes per week of direct occupational therapy services.¹²⁰ He also requires occupational therapy integrated into classroom programming to promote carryover and skill development.¹²¹

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Testimony of Speech-Language Expert.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Petitioner Exhibit 17 at 7.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

35. The Student's May 25, 2010, IEP provided that he would receive 24.25 hours per week of specialized instruction, 1.25 hours per week of behavioral support services, one hour per week of occupational therapy, and one hour per week of speech and language services.¹²² It provided that he would receive all of his specialized instruction and related services outside the general education environment.¹²³

36. During the 2010-2011 school year, the Student spent his eighth grade year at DCPS School 1.¹²⁴ He was in a self-contained program where he remained throughout the school day for all of his instruction.¹²⁵ The classroom had a total of eight to ten students, one classroom teacher, and one classroom assistant.¹²⁶ During the 2010-2011 school year, the Student made progress on many of the goals on his May 25, 2010, IEP.¹²⁷

The May 5, 2011, IEP.

37. On May 5, 2011, Respondent convened a meeting to revise the Student's IEP team.¹²⁸ Petitioner participated in the meeting, as did a special education coordinator ("SEC"), a speech-language pathologist, an occupational therapist, and a special education teacher.¹²⁹

38. The participants in the May 5, 2011, meeting developed annual goals in mathematics, reading, and written expression for inclusion in the Student's IEP.¹³⁰ The meeting participants also developed goals in adaptive/daily living skills, communication and speech and language, motor skills and physical development, and emotional, social, and behavioral development.¹³¹

39. The academic goals on the May 5, 2011, IEP were too advanced for the Student.¹³² The goals did not provide community-based instruction, were not tied to functional life skills, or include the use of supplementary aids.¹³³ The math goals should have provided that the Student would work with software to tie his instruction to

¹²² Petitioner Exhibit 1 at 10 (May 25, 2010, IEP).

¹²³ *Id.*

¹²⁴ Testimony of Petitioner.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Petitioner Exhibit 5 (June 20, 2011, IEP Progress Report).

¹²⁸ Petitioner Exhibit 4 at 15 (May 5, 2011, multidisciplinary team ("MDT") meeting notes); Petitioner Exhibit 4 at 1 (May 5, 2011, IEP).

¹²⁹ Petitioner Exhibit 4 at 15.

¹³⁰ Petitioner Exhibit 4 at 2-4.

¹³¹ *Id.* at 4-7.

¹³² Testimony of Speech-Language Expert, Special Education Expert.

¹³³ Testimony of Special Education Expert.

functional skills such as using money, purchasing items, and other real-life applications of math concepts.¹³⁴

40. The reading and written expression goals on the May 5, 2011, IEP also were too advanced for the Student.¹³⁵ He required functional goals that related to his life experiences, including reading menus, recipes, and signs so that he could become independent and navigate the community.¹³⁶ Similarly, the written expression goals on the May 5, 2011, IEP were too advanced for the Student and not geared toward functional life skills.¹³⁷

41. The meeting participants decided that the Student would receive 24.25 hours per week of specialized instruction, one hour per week of behavioral support services, 120 minutes per month of occupational therapy, and 240 minutes per month of speech and language services.¹³⁸ They provided that the Student would receive all of his specialized instruction and related services outside the general education environment.¹³⁹ They also determined that the Student would receive extended school year services in July 2011.¹⁴⁰

42. The meeting participants discussed the school the Student would attend high school during the 2011-2012 school year.¹⁴¹ The SEC and the special education teacher agreed that DCPS School 2 would not be appropriate for the Student because of the large number of students who attend that school.¹⁴² They agreed to reconvene at a later date to discuss this issue.¹⁴³

43. Respondent never convened a meeting to discuss with Petitioner and the participants in the May 5, 2011, meeting the Student's proposed school for the 2011-2012 school year.¹⁴⁴ By August, when Respondent still had not informed Petitioner where the Student would attend school for his ninth-grade year, Petitioner contacted the SEC.¹⁴⁵ The SEC then informed Petitioner that the Student would attend DCPS School 2.¹⁴⁶

The 2011-2012 School Year

¹³⁴ *Id.*

¹³⁵ Testimony of Speech-Language Expert, Special Education Expert.

¹³⁶ Testimony of Special Education Expert.

¹³⁷ Testimony of Speech-Language Expert, Special Education Expert.

¹³⁸ *Id.* at 9.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 13-14.

¹⁴¹ Testimony of Petitioner.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Testimony of Petitioner.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

44. The Student attended DCPS School 2 for the 2011-2012 school year.¹⁴⁷ The Student had a standard, high school schedule and attended classes in different locations of the building throughout the school day.¹⁴⁸ He was not in a self-contained program for students with similar abilities.¹⁴⁹

45. During the 2011-2012 school year, the Student's classes had ten students to each teacher.¹⁵⁰ He had difficulty adjusting and focusing in class.¹⁵¹ Much of the material taught in these classes was beyond the Student's comprehension.¹⁵² The Student often did not copy the lesson from the board, did not meaningfully participate in class discussions, asked questions that were unrelated to the topic of study, and spent much of the class period talking with other students or otherwise not attending to the class assignment.¹⁵³

46. During the 2011-2012 school year, much of his instruction was not geared toward functional academics or tied to his cognitive level and academic abilities.¹⁵⁴ Rather, in his classes, the topics included world history,¹⁵⁵ European history,¹⁵⁶ environmental issues,¹⁵⁷ population trends,¹⁵⁸ and astronomy.¹⁵⁹ In at least one class, the Student received instruction designed to assist him with independent living skills.¹⁶⁰

47. At DCPS School 2, the Student was not supervised during his transitions between classes and often wandered the halls.¹⁶¹ He spent his lunch period with his typically developing peers without supervision.¹⁶² The Student was bullied and teased, got into fights, and was disciplined several times during the 2011-2012 school year.¹⁶³

48. In one class, the Student failed to attend five days in row.¹⁶⁴ No one from DCPS School 2 contacted Petitioner to inform her that the Student had not been to class.¹⁶⁵

¹⁴⁷ Testimony of Petitioner.

¹⁴⁸ Testimony of Special Education Expert.

¹⁴⁹ Testimony of Speech-Language Expert; testimony of Special Education Expert.

¹⁵⁰ Testimony of Speech-Language Expert, Petitioner.

¹⁵¹ Testimony of Speech-Language Expert, Special Education Expert.

¹⁵² Testimony of Special Education Expert.

¹⁵³ *Id.*, testimony of Petitioner.

¹⁵⁴ Testimony of Special Education Expert.

¹⁵⁵ See Petitioner Exhibit 25 at 26-37 (world history final exam).

¹⁵⁶ See Petitioner Exhibit 25 at 21 (Essay on Charlemagne and his views on education).

¹⁵⁷ See Petitioner Exhibit 23 at 1 (December 9, 2011, reading worksheet on forest biomes and habitat destruction); Petitioner Exhibit 25 at 41 (Freshwater Ecosystems).

¹⁵⁸ See Petitioner Exhibit 23 at 13-16.

¹⁵⁹ See Petitioner Exhibit 25 at 38 (What Are the Planets Like?).

¹⁶⁰ Petitioner Exhibit 25 at 44-54 (March 20, 2012, Strategizing Class Daily Agenda Sheet).

¹⁶¹ Testimony of Speech-Language Expert; testimony of Special Education Expert.

¹⁶² Testimony of Speech-Language Expert; testimony of Special Education Expert.

¹⁶³ Testimony of Petitioner, Special Education Expert.

¹⁶⁴ Testimony of Petitioner.

The parent learned that the Student had not attended class during a parent-teacher conference.¹⁶⁶ The teacher informed her that the Student had been in the hallways instead of attending class.¹⁶⁷

49. The Student's first behavioral incident occurred within a week of the start of the 2011-2012 school year.¹⁶⁸ After hearing another student talk about him, the Student snatched the student's cell phone.¹⁶⁹ In another incident, the Student threw a class at students in his classroom because he thought they were talking about him.¹⁷⁰ He also got into a conflict with one of his teachers.¹⁷¹ As a result of this behavior, the Student received several suspensions as well as detention during his lunch period.¹⁷²

50. In November 2011, the Student became involved in a verbal argument with another student during a transition between classes.¹⁷³ The Student then spit sunflower seeds on the other student.¹⁷⁴

51. On December 7, 2011, the Student was suspended for five days after engaging in reckless behavior that may have caused harm to him or other students.¹⁷⁵ The Student had thrown a chair at other students and broke the teacher's flowerpot.¹⁷⁶

52. On December 20, 2011, another student accused the Student of bullying him.¹⁷⁷ The other student had bullied the Student, and the two students ended up in a verbal altercation.¹⁷⁸ Respondent proposed that the Student be suspended for five days.¹⁷⁹ After a manifestation determination review ("MDR") meeting, the manifestation determination review team found that the incident was a manifestation of his disability.¹⁸⁰

53. Despite the Student's behavioral difficulties and numerous disciplinary incidents between August and December 2011, Respondent did not conduct functional

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Petitioner Exhibit 46 at 1 (November 11, 2011, email from Counsel for Petitioner to the DCPS School 2 Dean of Students).

¹⁷⁴ *Id.*

¹⁷⁵ Petitioner Exhibit 48 at 1 (December 7, 2011, Notice of Final Disciplinary Action).

¹⁷⁶ Testimony of Petitioner.

¹⁷⁷ Petitioner Exhibit 56 at 1 (December 20, 2011, Notice of Proposed Disciplinary Action).

¹⁷⁸ Testimony of Petitioner.

¹⁷⁹ Petitioner Exhibit 56 at 1.

¹⁸⁰ Petitioner Exhibit 7 at 2 (December 20, 2011, Manifestation Determination Review).

behavioral assessment of the Student.¹⁸¹ Although the Student's last behavior implementation plan ("BIP") was developed in 2010, the school staff had not revisited his BIP to determine whether it should be revised.¹⁸²

54. On December 20, 2011, Respondent held an MDR meeting to discuss the Student's recent verbal altercation with another student during a transition between classes.¹⁸³ At this meeting, the school social worker agreed to conduct another FBA of the Student. The MDR also agreed to update his BIP.¹⁸⁴

55. On January 25, 2012, Respondent held an MDR meeting to discuss the incident in which the Student got into a verbal altercation with a nondisabled student, after which the nondisabled student pushed the Student.¹⁸⁵ The Student then entered the nondisabled student's classroom and punched him.¹⁸⁶

56. At the January 25, 2012, MDR, the Student's MDR team discussed whether his behavior that led to the incident in which the Student punched the nondisabled student was a manifestation of the Student's disability.¹⁸⁷ The MDR team also discussed whether the Student's May 5, 2011, IEP was inappropriate and whether the inappropriateness of this IEP could have led to the incident.¹⁸⁸ Although the Special Education Expert explained to the team the reasons the Student's IEP was not meeting his needs, the DCPS members of the team disagreed.¹⁸⁹ The Special Education Expert also raised the issue of whether the Student was receiving the occupational therapy required by this IEP.¹⁹⁰

57. At the January 25, 2012, MDR, the MDR team reviewed the Student's recent FBA and BIP.¹⁹¹ The Special Education Expert discussed with the IEP team the Student's need for more direct supervision, especially while transitioning between classes and during his lunch period.¹⁹² He also suggested that, whenever the Student is involved in a behavioral incident, he be provided immediate feedback so that he could learn from the incident.¹⁹³ The DCPS members of the MDR team responded that this level of support was

¹⁸¹ Petitioner Exhibit 56 at 1.

¹⁸² Testimony of Special Education Expert.

¹⁸³ *Id.*; Petitioner Exhibit 7 (December 20, 2011, MDR).

¹⁸⁴ *Id.*

¹⁸⁵ Testimony of Petitioner.

¹⁸⁶ *Id.*

¹⁸⁷ Testimony of Special Education Expert.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Testimony of Special Education Expert.

¹⁹² *Id.*

¹⁹³ *Id.*

not necessary because the school always had teachers and staff members monitoring the hallways.¹⁹⁴

The January 25, 2012, IEP

58. On January 25, 2012, Respondent convened a meeting of the Student's IEP team to review and revise his IEP.¹⁹⁵ Respondent did not provide a draft copy of this IEP to Petitioner prior to the meeting.¹⁹⁶ Petitioner, Counsel for Petitioner, and the Special Education Advocate attended the IEP meeting.¹⁹⁷ A special education teacher, a general education teacher, speech-language pathologist, a transition specialist, and an individual qualified to interpret assessment results attended the meeting.¹⁹⁸

59. The IEP team discussed the Student's academic and behavioral performance during the first half of the 2011-2012 school year.¹⁹⁹ The Special Education Expert reviewed his observations of the Student.²⁰⁰ The Special Education Expert explained that, from his observations, the Student's class work was beyond his capabilities and that he needed more reading, math, and writing instruction that focused on his acquisition of functional life skills.²⁰¹

60. At the January 25, 2012, IEP meeting, the participants reviewed the Student's his December 2, 2011, psychoeducational assessment.²⁰² This assessment recommended that the Student receive special education instruction outside the general education environment, in a self-contained setting, for the entirety of the school day.²⁰³ It recommended that his IEP focus on his acquisition of functional life skills, vocational training, and community-based instruction.²⁰⁴

61. The December 2, 2011, psychoeducational assessment also recommended that the Student receive 120 minutes of individualized instruction in reading, math, and written expression to address the severity of his academic delays.²⁰⁵ The DCPS members of the IEP team were unwilling to provide this remedial instruction to the Student during the

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*; Petitioner Exhibit 9 (January 25, 2012, IEP).

¹⁹⁶ Testimony of Petitioner, Special Education Expert.

¹⁹⁷ Petitioner Exhibit 9 at 1.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Testimony of Special Education Expert.

²⁰³ Testimony of Psychology Expert.

²⁰⁴ Testimony of Psychology Expert.

²⁰⁵ Petitioner Exhibit 19 at 17; testimony of Special Education Expert.

school day.²⁰⁶ They offered to provide the Student 7.5 hours of tutoring in math and 7.5 hours of tutoring in reading after school.²⁰⁷

62. The IEP team also reviewed the Student's October 22, 2011, speech and language assessment.²⁰⁸ They discussed the evaluator's recommendations that the Student required eight hours per month of speech-language therapy related services rather than the four hours on the proposed IEP.²⁰⁹ The DCPS members of the IEP team stated that they did not agree with the recommendation and would not make this change to the IEP.²¹⁰

63. The IEP team discussed the fact that, to date, during the 2011-2012 school year, the Student had not received the 120 minutes per month of occupational therapy required by his May 5, 2011, IEP.²¹¹ The DCPS occupational therapist pledged to double the Student's services to 240 minutes per month to make up the services he had not received.²¹²

64. Finally, the IEP team discussed the Student's transition plan.²¹³ The Special Education Expert suggested that the Student receive hands-on experience in various vocations and be exposed to a different job each quarter so that he could gain an understanding of the skills involved in each job.²¹⁴ He suggested that the plan focus on jobs that involve physical activities such as landscaping, working as a carpenter's assistant, custodial jobs, and food-service jobs.²¹⁵ He explained that these are the types of jobs that are available for people with his disabilities.²¹⁶ He explained that the current transitional goal for the Student, to become a security guard, was beyond his capabilities.²¹⁷

65. At the end of the meeting, the IEP team finalized the Student's January 25, 2012, IEP. It made no substantial revisions to the IEP.²¹⁸ Thus, the IEP contained academic goals in mathematics, reading, and written expression that were substantially similar to the

²⁰⁶ Testimony of Special Education Expert.

²⁰⁷ *Id.*

²⁰⁸ Testimony of Special Education Expert.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Testimony of Special Education Expert.

goals on the Student's May 5, 2011, IEP.²¹⁹ The DCPS members of the IEP team offered to hold a meeting in thirty days to revisit the Student's IEP.²²⁰

66. Respondent did not reconvene the IEP team within thirty days.²²¹

67. On June 6, 2012, Respondent convened a meeting of the Student's IEP team to review and revise his IEP.²²² Petitioner and the Special Education Advocate attended this meeting, as did a special education teacher, a speech-language pathologist, an occupational therapist, and an individual to interpret the results of the Student's formal assessments.²²³ The Special Education Specialist repeated the suggestions he made at the January 25, 2012, meeting.²²⁴ He also provided draft goals for the IEP team to consider.²²⁵

68. At the June 6, 2012, IEP meeting, the IEP team revised some of the academic goals on the Student's IEP to focus more on functional life skills.²²⁶ However, the IEP did not include community-based instruction in the IEP.²²⁷ The IEP team explained that DCPS School 2 did not have the resources to provide the Student community-based instruction.²²⁸

69. At the June 6, 2012, IEP meeting, the Special Education Expert explained that the Student's transition plan did not provide the opportunities the Student required to be prepared for post high school employment.²²⁹ He explained that the Student needed more exposure to a variety of jobs, opportunities to observe jobs, and to research the requirements of each job.²³⁰ He explained that a person with limited intellectual abilities needs additional time to explore his interests, understand what each job requires, and develop the skills that a particular job may require.²³¹

70. The IEP team also did not revise the Student's transition plan to reflect the recommendations Special Education Expert made at the January 25, 2012, meeting and repeated at the June 6, 2012, meeting.²³² The IEP team members explained that DCPS School 2 did not have the resources to provide the Student the transition services he

²¹⁹ *Id.*; see Petitioner Exhibit 9 (January 25, 2012, IEP).

²²⁰ *Id.*

²²¹ *Id.*

²²² Petitioner Exhibit 11 at 1 (June 6, 2012, IEP).

²²³ *Id.*

²²⁴ Testimony of Special Education Expert.

²²⁵ *Id.*; see Petitioner Exhibit 12 (proposed IEP goals).

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Testimony of Petitioner.

²²⁹ Testimony of Special Education Expert.

²³⁰ *Id.*

²³¹ *Id.*

²³² Testimony of Special Education Expert.

required.²³³ They explained that the Student would not have an opportunity to visit potential job sites until after he turned sixteen.²³⁴

71. At the June 6, 2012, IEP meeting, the DCPS members of the IEP team discussed the fact that the Student received no occupational therapy services between mid-February 2012 and mid-May 2012, and that he did not receive the 240 minutes per month that the occupational therapist had promised.²³⁵ The DCPS members of the IEP team then revised his IEP to provide only thirty minutes per month of occupational therapy.²³⁶ Thirty minutes per month of occupational therapy is insufficient to address the needs of a student with developmental coordination disorder.²³⁷

72. The Student did not make academic progress during the 2011-2012 school year.²³⁸ He often is reluctant to attend school and is in fear of being bullied.²³⁹ When he asks for help from his teachers, he often does not receive the intensive assistance he requires.²⁴⁰ He then becomes frustrated and stops working on his assignments.²⁴¹ Often, when he is unable to perform the work, other kids tease him, he gets upset, and leaves the classroom.²⁴²

73. If the Student remains at DCPS School 2, and doesn't receive an IEP that focuses on functional life skills, community-based education, and sufficient behavioral support, he may stagnate academically, socially, and emotionally. ²⁴³Over time, if he doesn't have an appropriate IEP and behavioral interventions, he will regress.²⁴⁴ Additionally, due to his weakness in reading social cues and weak social skills, he may find himself in social situations he is unable to navigate and become the victim of physical violence.²⁴⁵

74. The Nonpublic School offers the curriculum, small classrooms, and small school environment that the Student requires to make academic and behavioral progress.²⁴⁶ It offers a four-to-one student-teacher ratio, functional academics, intensive

²³³ Testimony of Petitioner.

²³⁴ *Id.*

²³⁵ Testimony of Special Education Expert.

²³⁶ *Id.*

²³⁷ Testimony of Psychology Expert.

²³⁸ Testimony of Petitioner.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Testimony of Psychology Expert.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ Testimony of Program Supervisor.

behavioral supports, and related services.²⁴⁷ It also would offer the Student an opportunity for community-based education, as well as community-based vocational experiences.²⁴⁸

75. The Nonpublic School is able to implement the Student's IEP.²⁴⁹ It will provide the Student the speech-language therapy he requires, both individually and integrated in the classroom.²⁵⁰ At the Nonpublic School, all students are on behavioral contracts that are designed to improve their conduct.²⁵¹ The Nonpublic School also provides counseling to students in times of crisis, as well as in the classroom as needed.²⁵²

76. At the Nonpublic School, the Student would have no contact with his nondisabled peers except when he receives community-based instruction and visits job sites as part of his transition planning.²⁵³ He would be educated with peers with similar cognitive limitations.²⁵⁴ Thus, it is unlikely he would experience the conflict with the students at the Nonpublic School that he experienced at DCPS School 2.²⁵⁵

77. This Hearing Officer finds that Petitioner was a credible witness. She was forthright about the Student's shortcomings and familiar with his academic challenges. She testified in detail about the meetings she attended and the Student's behavioral difficulties. Her testimony was consistent with the documents in the record.

78. This Hearing Officer finds that the Psychology Expert was a credible witness. She has in-depth knowledge of the Student as she conducted his December 2, 2011, psychoeducational assessment. She has reviewed the Student's academic records, his prior assessment reports, his prior IEPs, and his prior behavioral plans. She conducted a clinical interview with Petitioner and the Student, and consulted with the Student's teacher. She testified forthrightly about the Student's cognitive and academic strengths and weaknesses as well as her recommendations for his educational program, as well as his vocational and independent living needs. Her testimony was supported by the documents in the record.

79. This Hearing Officer finds that the Speech-Language Expert was a credible witness. She has in-depth knowledge of the Student as she conducted his October 22, 2011, speech and language assessment. She has personally observed the Student, reviewed his academic records, his prior assessment reports, and his IEPs. Her testimony was consistent with the testimony of the other witnesses and the documents in the record.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

8o. This Hearing Officer finds that the Special Education Expert was a credible witness. He has in-depth knowledge of the Student as he has reviewed the Student's academic records, his prior assessment reports, his IEPs, and his prior behavioral plans. He has observed the Student at DCPS School on four occasions and consulted with the Student's teachers. He forthrightly about the Student's cognitive and academic strengths and weaknesses as well as his recommendations for his educational program, as well as his vocational and independent living needs. Her testimony was supported by the documents in the record.

8i. This Hearing Officer finds that the Program Supervisor was a credible witness. She had knowledge of the programs offered at the Nonpublic School and her testimony was consistent with the documents in the record.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."²⁵⁶ Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.²⁵⁷

FAPE is defined as:

Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State Education Agency . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program.²⁵⁸

A school district need not maximize the potential of children with disabilities, but the door of public education must be opened in a meaningful way, and the IEP must provide the opportunity for more than only "trivial advancement."²⁵⁹

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational

²⁵⁶ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

²⁵⁷ *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

²⁵⁸ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

²⁵⁹ *P. v. Newington Bd. of Educ.*, 546 F.3d. 111 (2nd Cir. 2008) (citations omitted).

benefits.²⁶⁰ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.²⁶¹

The burden of proof is properly placed upon the party seeking relief.²⁶² Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.²⁶³ The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.²⁶⁴ In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.²⁶⁵ Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,²⁶⁶ except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.²⁶⁷

VI. DISCUSSION

A. Petitioner Proved That Respondent Denied the Student FAPE when It Developed IEPs on May 5, 2011, January 25, 2012, and June 6, 2012, that Were Not Reasonably Calculated to Enable Him to Receive Academic Benefit.

School districts must ensure that "all children with disabilities residing in the State . . . who are in need of special education and related services" are identified.²⁶⁸ Once such children are identified, a team, including the child's parents and select teachers, as well as a representative of the local educational agency with knowledge about the school's resources and curriculum, develops an individualized education program for the child.²⁶⁹ The IEP

²⁶⁰ 34 C.F.R. § 300.513 (a)(2).

²⁶¹ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

²⁶² *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

²⁶³ 20 U.S.C. § 1415 (i)(2)(c). *See also Reid*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

²⁶⁴ *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).

²⁶⁵ *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 246 (1994).

²⁶⁶ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).

²⁶⁷ *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

²⁶⁸ *Branham v. District of Columbia*, 368 U.S. App. D.C. 151, 427 F.3d 7, 8 (D.C. Cir. 2005) (citing *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)).

²⁶⁹ *Branham*, 427 F.3d at 8.

must, at a minimum, provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.²⁷⁰

The IEP team must review a student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.²⁷¹ The IEP team must revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals and, if appropriate; the results of any re-evaluation, or information about the child provided to, or by, the parents.²⁷²

Additionally, if the parent obtains an independent educational evaluation at public expense, or shares with the public agency an evaluation obtained at private expense, the IEP team must consider the results of the evaluation, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.²⁷³ In other words, an appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,²⁷⁴ establishes annual goals related to those needs,²⁷⁵ and provides appropriate specialized instruction and related services.²⁷⁶

In developing an IEP, the IEP team must consider the strengths of the child; concerns of the parents for enhancing the education of the child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.²⁷⁷ An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.²⁷⁸

An IEP must include a statement of measurable annual goals.²⁷⁹ For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, the IEP must contain a description of benchmarks or short-term objectives.²⁸⁰ If the IEP Team determines that the child must take an alternate assessment instead of a

²⁷⁰ *Id.* (citing *Rowley*, 458 U.S. at 203).

²⁷¹ 34 C.F.R. § 300.324 (b)(1).

²⁷² *Id.*

²⁷³ 34 C.F.R. § 300.502 (c)(1).

²⁷⁴ 34 C.F.R. § 300.320.(a) (1).

²⁷⁵ *Id.* at (a) (2).

²⁷⁶ *Id.* at (a) (4).

²⁷⁷ 34 C.F.R. § 300.324 (a).

²⁷⁸ 34 C.F.R. § 300.320 (a)(1); D.C. Mun. Reg. tit. 5-E § 3009.1 (a); *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F. Supp. 2d 152, 159 (2005) (finding that an IEP must include measurable goals and benchmarks to measure the child's progress toward the annual goals).

²⁷⁹ 34 C.F.R. § 300.320 (a) (2) (i); D.C. Mun. Reg. tit. 5-E § 3007.2 (b) (annual goals must include short-term instructional objectives).

²⁸⁰ 34 C.F.R. § 300.320 (2)(ii).

particular regular State or district-wide assessment of student achievement, the IEP must include a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.²⁸¹

The adequacy of the student's IEP is determined by whether the student has "access to specialized instruction and related services which are individually designed to provide educational benefit."²⁸² For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."²⁸³ IDEA does not require that the services provided maximize each child's potential.²⁸⁴

Here, the Student has full-scale IQ of 52, which is in the extremely low range and below the first percentile of typically developing students. His academic achievement is in the severely delayed range and he generally performs on the second-grade level.

The Student also has a developmental coordination disorder. He has significant difficulties with visual-motor integration, visual perception, and fine-motor coordination. His overall manual coordination is below average.

He has difficulty sustaining his attention for thirty minutes or more, which impedes his ability to listen to the stories of others and classroom informational lectures. He also has difficulty following multi-step directions. When he is unable to focus on the classroom instruction, his ability to access the curriculum is limited.

The Student's adaptive functioning also is far below his age. He has significant deficits in communication, daily living skills, as well as overall in his socialization and peer interaction skills. He has difficulties connecting with peers, understanding his peers, and navigating social interactions. He often misperceives social cues, does not understand social norms and misses social nuances.

He has difficulty with several basic skills of adaptive daily living, including counting and managing money and interpersonal problem solving. The Student has the most difficulty with skills that are required to function independently in the community.

The Student's deficits in expressive language would impact his ability to answer questions in the classroom, express himself clearly, and discuss the material he is learning. This also would affect his relationship with peers because he would not necessarily be able to express what he is trying to say.

Due to his extremely low overall cognitive abilities, delayed academic performance, commensurate with his level of intellectual functioning, and difficulties with visual-motor

²⁸¹ 34 C.F.R. § 300.320 (a) (6).

²⁸² *Rowley*, 458 U.S. at 201 (1982).

²⁸³ *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

²⁸⁴ *Id.* at 198.

coordination, visual perception, and fine-motor coordination, the Student should be educated in a small classroom with other students with similar disabilities. He requires a low student-teacher ratio of four students to each teacher or assistant teacher. His teachers should use a multisensory approach to instruction to facilitate his learning and maintain his attention and focus.

Considering his significant deficits in expressive and receptive language, as well as his very low IQ, the Student requires special education instruction outside the general education environment for the entirety of the school day. He requires an educational program that includes an emphasis on his acquisition of functional life skills, vocational training, and community-based instruction. This would enable him to become a more functional adult, promote increased autonomy, and increase his acquisition of skills. It will help him to transition from school to independent living.

The Student also requires access to vocational training and support. People with cognitive impairments perform well when they have opportunities to sample prospective jobs. This would help the Student explore different job paths and develop his interests.

Because he has the tendency to misperceive social situations and interactions, the Student has had difficulties with peer interactions. He requires access to behavioral support in the school setting, and adults must provide immediate feedback on his behavior. This feedback must be provided in a manner that the Student can comprehend. The Student's program also should emphasize social skill development. In light of his difficulty with transitions between classes, and his history of fights and arguments with other students, the Student must be educated in a self-contained environment.

Due to his expressive and receptive language disorder, the Student also needs intensive speech and language therapy. He requires at least two hours per week of speech and language services to address his severe deficits in this area. He should receive speech and language services within the classroom so that he can receive support for what he is learning academically and use the same vocabulary as is being used in the classroom. This will help the Student understand the information he is being taught, use it, and be able to express it.

The May 5, 2011, IEP.

The academic goals on the May 5, 2011, IEP were too advanced for the Student. His goals did not provide community-based instruction, were not tied to functional life skills, or include the use of supplementary aids.

His math goals should have provided that he would work with software to tie his instruction to functional skills such as using money, purchasing items, and other real-life applications of math concepts. His reading goals should have related to his life experiences, including reading menus, recipes, and signs so that he could become independent and navigate the community. Similarly, the written expression goals were too advanced and not geared toward functional life skills.

Thus, these goals were not individually tailored to produce educational benefit. As a result, the Student made no academic progress during the first half of the 2011-2012 school year. For this reason, this Hearing Officer finds that Petitioner proved that Respondent denied the Student a FAPE.

The January 25, 2012, IEP

By January 25, 2012, Respondent was aware of the Student's significant academic and behavioral challenges. It had reviewed his recent independent psychological assessment, which spelled out in detail the Student's significant cognitive deficits and need for functional academics and his need for community experiences to support his classroom instruction, i.e., community based education. It had also reviewed his independent speech and language assessment, which provided further support for his need for a low student-teacher ratio, small learning environment, integrated speech-language services, and intensive related services.

These evaluations recommended that, due to his significant deficits in expressive and receptive language, as well as his very low IQ, the Student requires special education instruction outside the general education environment for the entirety of the school day. He requires an educational program that includes an emphasis on his acquisition of functional life skills, vocational training, and community-based instruction. This would enable him to become a more functional adult, promote increased autonomy, and increase his acquisition of skills. It will help him to transition from school to independent living.

Respondent also was aware that, in light of his frequent negative interactions with other students and violent outbursts, the Student needed a very structured environment with intense supervision. After reviewing his psychological assessment, Respondent was aware that the Student must be educated in a self-contained environment.

After reviewing his speech language assessment at the January 25, 2012, IEP meeting, Respondent was aware that, due to his expressive and receptive language disorder, the Student also needs intensive speech and language therapy in the form of at least two hours per week of speech and language services as well as speech and language services within the classroom.

Yet, Respondent failed to heed the findings and recommendations of the Student's independent assessments. Instead, it developed an IEP that was essentially the same as the Student's prior IEP.

By failing to develop an IEP that accurately reflects the results of the Student's assessments, establishes annual goals related to those needs, and provides appropriate specialized instruction and related services, Respondent developed an IEP for the Student

that was not individually tailored to produce educational benefit.²⁸⁵ Respondent also failed to provide the Student an appropriate placement.

As a result, the Student made no academic progress during the last half of the 2011-2012 school year. Thus, Petitioner proved that Respondent denied the Student a FAPE.

The June 6, 2012, IEP

At the June 6, 2012, IEP meeting, the IEP team revised some of the academic goals on the Student's IEP to focus more on functional life skills. However, the IEP did not include community-based instruction in the IEP. The IEP team also did not revise the Student's transition plan to reflect the recommendations Special Education Expert made at the January 25, 2012, meeting and repeated at the June 6, 2012, meeting. The IEP team members explained that DCPS School 2 did not have the resources to provide the Student community-based instruction or the transition services he required.

Respondent developed an IEP that was tailored to the programs offered by DCPS School 2, rather than the Student's individualized needs. Additionally, even though Respondent knew that the Student had received little to no occupational therapy during the 2011-2012 school year, it revised his IEP to provide only thirty minutes per month of occupational therapy, which is insufficient to address the Student's needs.

Thus, Respondent developed an IEP for the Student that was not individually tailored to produce educational benefit. Petitioner proved that Respondent denied the Student a FAPE by failing to develop an appropriate IEP for the Student on June 6, 2012.

B. Petitioner Failed to Prove that Respondent Denied Her Right to Participate in the Placement Process in August 2012 When It Assigned the Student to DCPS School 2 for the 2011-2012 School Year Without Including Petitioner in the Decision.

The term "educational placement" refers to the type of educational program prescribed by the IEP.²⁸⁶ "Educational placement" refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school.²⁸⁷

The considerations relevant to determining whether a particular placement is appropriate for a particular student include the nature and severity of the student's

²⁸⁵ Although Petitioner proved that Respondent failed to provide the an additional two hours per week of academic tutoring as recommended by his recent independent comprehensive psychological evaluation, Petitioner failed to present evidence that this, alone, denied the Student a FAPE.

²⁸⁶ *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).

²⁸⁷ *Id.*

disability; the student's specialized educational needs; the link between those needs and the services offered by the school; the placement's cost; and the extent to which the placement represents the least restrictive environment.²⁸⁸

Educational placement is based on the IEP, which is revised annually.²⁸⁹ The general rule is that placement should be based on the IEP.²⁹⁰ The decision to place a student before developing an IEP on which to base that placement violates the IDEA regulations.²⁹¹ It also violates the spirit and intent of IDEA, which emphasizes parental involvement.²⁹² After the fact involvement is not enough.²⁹³

In determining whether a "change in educational placement" has occurred, the LEA must determine whether the proposed change would substantially or materially alter the child's educational program.²⁹⁴ In determining whether the change in location would substantially or materially alter the child's educational program, the LEA must examine the following factors: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.²⁹⁵ In other words, if the proposed change substantially or materially affects the composition of the educational program and services provided the student, it is a change in placement.²⁹⁶

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.²⁹⁷ One of the policies underlying the need for an accurate written IEP is "to serve a parent's interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child's progress and determine if any change to the program is necessary."²⁹⁸

Thus, DCPS must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.²⁹⁹

²⁸⁸ *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). See also D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).

²⁸⁹ *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).

²⁹⁰ *Id.* at 259 (citing 34 C.F.R. § 300.552).

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

²⁹⁵ *Id.*

²⁹⁶ *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18, 1980); *Letter to Fisher*, 21 IDELR 992.

²⁹⁷ 20 U.S.C. §§ 1414(f), 1415(b).

²⁹⁸ *Alfano et al. v. District of Columbia*, 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citation omitted).

²⁹⁹ 34 C.F.R. § 300.501 (c)(1).

Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a free and appropriate public education ("FAPE").³⁰⁰

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.³⁰¹ A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.³⁰²

Here, On May 5, 2011, Respondent convened a meeting to revise the Student's IEP. Petitioner participated in the meeting. Respondent developed an IEP for the Student.

After developing the May 5, 2011, IEP, the IEP team determined the Student's educational placement. The IEP team, including Petitioner, decided that the Student would receive 24.25 hours per week of specialized instruction, one hour per week of behavioral support services, 120 minutes per month of occupational therapy, and 240 minutes per month of speech and language services. They provided that the Student would receive all of his specialized instruction and related services outside the general education environment.

Thus, Respondent included Petitioner in the determination of the Student's placement for the 2011-2012 school year. Petitioner failed to prove that Respondent denied her the right to participate in the decisionmaking process.

Although Respondent did not convene another meeting or consult Petitioner before deciding to place the Student at DCPS School 2 for the 2011-2012 school year, it was not required to do so.³⁰³ The transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location only.³⁰⁴ Simple changes in the location of a building or facility are not generally viewed to be a change in placement where there are no significant changes in the educational program.³⁰⁵

³⁰⁰ See, e.g., *W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

³⁰¹ 34 C.F.R. § 300.501 (c)(3).

³⁰² 34 C.F.R. § 300.501 (c)(4).

³⁰³ Petitioner may have had a valid claim that Respondent failed to implement the Student's IEP by failing to provide him the placement it mandated after placing him in DCPS School 2. See *Savoy v. District of Columbia*, 112 LRP 8777 (D.D.C. 2012).

³⁰⁴ See, e.g., *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 753-54 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980).

³⁰⁵ *Letter to Flores*, 211 IDELR 233. See also *A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a

Thus, Petitioner failed to prove that Respondent denied her the right to participate in the decisions regarding the Student's placement for the 2011-2012 school year.

C. Petitioner Proved that Respondent Failed to Implement the Student's May 5, 2011, IEP By Failing to Provide Him Occupational Therapy Services During the First Half of the 2011-2012 School Year but Failed to Prove that this Denied Him a FAPE.

Each public agency must ensure that, as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with the child's IEP.³⁰⁶ The Student has a developmental coordination disorder. He has significant difficulties with visual-motor integration, visual perception, and fine-motor coordination. He has difficulties manipulating buttons on his clothes, using writing utensils, and manipulating other small objects. He has difficulty orienting pegs to peg holes in a pegboard, twisting his wrist and arm instead of manipulating the pegs with his fingers.

The Student also has significantly below average perceptual abilities, and has some difficulty with processing visual information appropriately. In particular, he has difficulty, coordinating his eyes for following a moving object, keeping place when reading, and copying from the board or desk. Weaknesses in visual perceptual abilities can impact functional tasks within the learning environment such as handwriting development, copying from the board, lining up math calculations, understanding abstract math concepts such as fractions, decimals, and shapes, keeping a place when reading, sound and symbol recognition, and spelling.

The Student performs below average in fine motor precision, which involves precise finger, wrist, and hand movements to guide a writing tool to fill in shapes, draw lines through crooked and curved paths, connect dots, fold and crease paper, and cut out a circle. In the area of fine motor integration, he struggles a great deal with adequately reproducing geometric shapes without the use of visual aids and reproducing the correct orientation of the shapes. He has difficulty writing and drawing, as well as accurately identifying visual information. He also has difficulty integrating visually perceived information with fine motor skills.

The Student requires direct occupational therapy services to assist him in the development of classroom skills and to support his overall learning and performance. His therapy should focus on improving his overall sensory processing, handwriting skills, keyboarding, visual motor integration, visual perceptual skills, organizational skills, and self-esteem building. In addition to receiving at least forty-five minutes per week of direct

student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.)

³⁰⁶ 34 C.F.R. § 300.323 (c)(2).

occupational therapy services, the Student requires occupational therapy integrated into the classroom to promote carryover and skill development.

Recognizing the Student's need for occupational therapy services, on May 5, 2011, the Student's IEP team determined that he should receive 120 minutes per month of occupational therapy. Yet, from August to December 2011, Respondent failed to provide the Student any occupational therapy services.

However, Petitioner presented no evidence to show how this lack of services affected the Student. Thus, Petitioner failed to show that Respondent's failure to provide the Student the 120 minutes per month of occupational therapy services required by his IEP denied him a FAPE.

D. Petitioner Proved that Respondent Denied the Student a FAPE Between August 2010 and January 2012 when It Failed to Conduct an FBA and Develop a BIP to Address the Student's Social Difficulties that Led to Short-Term Suspensions and Other Disciplinary Measures.

An evaluation consists of procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.³⁰⁷ A reevaluation is defined as an evaluation conducted after the initial evaluation.³⁰⁸

A public agency must ensure that a reevaluation of each child with a disability is conducted if the child's parent or teacher requests a reevaluation, but not more than once a year unless the parent and public agency agree otherwise.³⁰⁹ Reevaluations should be conducted in a "reasonable period of time," and "without undue delay," as determined in each individual case.³¹⁰

As part of any reevaluation, the IEP team, and other qualified individuals,³¹¹ must review existing evaluation data, and identify what additional data are needed, if any, to

³⁰⁷ 34 C.F.R. § 300.15. In the District of Columbia, an evaluation includes a review by an IEP team of information provided by parents; existing data; and results of assessment procedures used to determine the child's present level of performance, educational needs, whether a child has a disability, and the nature and extent of the special education and related services that the child needs. D.C. Mun. Reg. tit. 5-E § 3001.1.

³⁰⁸ D.C. Mun. Reg. tit. 5-E § 3001.1.

³⁰⁹ 34 C.F.R. § 300.303 (a)(2).

³¹⁰ *Herbin v. District of Columbia*, 362 F. Supp. 2d 254, 259 (D.D.C. 2005) (upholding hearing officer's determination that four-month delay in reevaluating a student with a current IEP was not unreasonable) (citations omitted).

³¹¹ 34 C.F.R. § 300.305(a). These "other qualified professionals" include professionals, who may not be a part of the child's IEP team, in the group that determines whether additional

determine if the child continues to have a disability and to determine the educational needs of the child.³¹² The IEP team also shall determine whether the child continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.³¹³ The IEP team need not convene a meeting to conduct this review.³¹⁴

Here, the Student has difficulties connecting with peers, understanding his peers, and navigating social interactions. While he is able to demonstrate polite behavior in public, apologize when he has hurt someone, he has difficulty perceiving and understanding social situations. He often misperceives social cues, does not understand social norms and misses social nuances.

The Student has little ability to recognize and identify emotions, identify problems, and resolve problems and conflicts. He has difficulty managing anger and aggression when he is hurt and managing his internal conflicts regarding his level of independence. He has difficulty thinking about his actions before he engages in them.

As a result, the Student had significant difficulties interacting with his peers at DCPS School 1. His first behavioral incident occurred within a week of the start of the 2011-2012 school year. He threw objects at other students, spit sunflower seeds at a student, was hostile toward his teacher, and threw a chair. He had numerous suspensions.

Despite the Student's behavioral difficulties and numerous disciplinary incidents between August and December 2011, which prompted Respondent to hold numerous MDR meetings, Respondent did update the Student's FBA or BIP until January 2012. In the meantime, the Student was bullied, teased, and engaged in violent altercations with his peers.

data are needed to make an eligibility determination and determine the child's educational needs.

³¹² 34 C.F.R. § 300.305(a)(2)(i)(B). *See also* D.C. Mun. Reg. tit. 5-E § 3005.4 (IEP team, including other qualified professionals, must determine, in the case of a reevaluation of a child, (1) whether the child continues to have a disability; (2) the present levels of performance and educational needs of the child; (3) whether the child continues to need special education and related services; and (4) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum).

³¹³ 34 C.F.R. § 300.305 (a)(2)(iii)-(iv).

³¹⁴ 34 C.F.R. § 300.305 (b).

As a result of these altercations, the Student is reluctant to attend school and is in fear of being bullied. Thus, Petitioner proved that Respondent's failure to conduct an FBA and develop a BIP early in the 2011-2012 school year denied the Student a FAPE.

E. Petitioner Proved that the Nonpublic School is Appropriate and the Student's Least Restrictive Environment.

Placement decisions must be made in conformity with the child's IEP.³¹⁵ Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.³¹⁶ The considerations relevant to determining whether a particular placement is appropriate for a particular student include 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 school; the placement's cost; and the extent to which the placement represents the least restrictive environment.³¹⁷

In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child's home.³¹⁸ In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.³¹⁹ A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.³²⁰ Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.³²¹

Due to his extremely low overall cognitive abilities, delayed academic performance, commensurate with his level of intellectual functioning, and difficulties with visual-motor coordination, visual perception, and fine-motor coordination, the Student should be educated in a small classroom with other students with similar disabilities. He requires a low student-teacher ratio, preferably of four students to each teacher or assistant teacher. He requires assistive technology, such as a calculator or math fact sheet for most math assignments and tests. His teachers should use a multisensory approach to instruction to facilitate his learning and maintain his attention and focus.

Considering his significant deficits in expressive and receptive language, as well as his very low IQ, the Student requires special education instruction outside the general education environment for the entirety of the school day. He requires an educational program that includes an emphasis on his acquisition of functional life skills, vocational training, and community-based instruction.

³¹⁵ 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Reg. tit. 5-E § 3013 (2006); *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).

³¹⁶ See *Rourke v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006).

³¹⁷ *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). See also D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the least restrictive environment, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).

³¹⁸ *Id.*

³¹⁹ *Id.* at § 300.116 (d).

³²⁰ *Id.* at § 300.116 (e)

³²¹ 34 C.F.R. § 300.116 (c).

If the Student remains at DCPS School 2, and doesn't receive an IEP that focuses on functional life skills, community-based education, and sufficient behavioral support, he may stagnate academically, socially, and emotionally. Over time, if he doesn't have an appropriate IEP and behavioral interventions, he will regress. Additionally, due to his weakness in reading social cues and weak social skills, he may find himself in social situations he is unable to navigate and become the victim of physical violence.

The Nonpublic School offers the curriculum, small classrooms, and small school environment that the Student requires to make academic and behavioral progress. It offers a four-to-one student-teacher ratio, functional academics, intensive behavioral supports, and related services. It also would offer the Student an opportunity for community-based education, as well as community-based vocational experiences.

The Nonpublic School is able to implement the Student's IEP. It will provide the Student the speech-language therapy he requires, both individually and integrated in the classroom. At the Nonpublic School, all students are on behavioral contracts that are designed to improve their conduct. The Nonpublic School also provides counseling to students in times of crisis, as well as in the classroom as needed.

At the Nonpublic School, the Student would have no contact with his nondisabled peers except when he receives community-based instruction and visits job sites as part of his transition planning. He would be educated with peers with similar cognitive limitations. Thus, it is unlikely he would experience the conflict with the students at the Nonpublic School that he experienced at DCPS School 2.

Thus, Petitioner proved that the Nonpublic School is an appropriate placement.

F. The Student is Entitled to Compensatory Education in the Form Speech and Language and Behavioral Support Services.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, "i.e., replacement of educational services the child should have received in the first place."³²² An award of compensatory education "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA."³²³

"Because compensatory education is a remedy for past deficiencies in a student's educational program," a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award."³²⁴

³²² *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005).

³²³ *Reid*, 401 F.3d at 518.

³²⁴ *Peak v. District of Columbia*, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

This inquiry is only the first step in determining whether the Student is entitled to compensatory education. A compensatory education award is an equitable remedy that "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA."³²⁵ A compensatory education "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."³²⁶

This standard "carries a qualitative rather than quantitative focus," and must be applied with "[f]lexibility rather than rigidity."³²⁷ Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies.³²⁸ Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE.³²⁹

Here, Respondent denied the Student a FAPE by developing IEPs on May 5, 2011, January 25, 2012, and June 6, 2012, that were not reasonably calculated to provide the Student educational benefit. Respondent failed to provide the Student the behavioral support services he required to navigate the school environment safely and feel safe in school. Respondent also failed to provide the Student the speech-language services he required to access the curriculum and interact with his peers.

As a result, the Student's expressive and receptive language skills are not progressing. His receptive language is at the same level as in 2007. This impacts his ability to access the curriculum in that he would be unable to express the knowledge he has gained in the classroom or express it in a way that others understand. This also would impact his interactions with peers in that he would know what he wants to say but wouldn't have the vocabulary, sentence structure, or ability to organize it.

Due to Respondent's failure to update the Student's IEP and provide him strict supervision and intensive behavioral support, the Student was bullied, made no academic progress, and became reluctant to attend school.

Thus, Petitioner proved that the Student is entitled to compensatory education in the form of four hours per week of speech and language services in addition to the services provided by his IEP. The Student also is entitled to two hours per week of behavioral support services in addition to the services on his IEP. Petitioner may obtain these services at a provider of her choice.

³²⁵ *Reid*, 401 F.3d at 518, 523.

³²⁶ *Reid*, 401 F.3d at 524.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.* See also *Thomas v. District of Columbia*, 407 F.Supp.2d 102, 115 (D.D.C. 2005) (noting that it is conceivable that no compensatory education may be required for a denial of FAPE if, for example, the student would not benefit from the additional services).

ORDER

Based upon the findings of fact and conclusions of law herein, it is, this ninth day of October 2012, hereby ordered that:

Respondent shall place the Student at the Nonpublic School, with transportation, for the remainder of the Nonpublic School's 2012-2013 school year;

IT IS FURTHER ORDERED that Respondent shall fund the compensatory education required by this HOD, at an hourly rate not to exceed the Chancellor's guidelines, through the end of the Nonpublic School's 2012-2013 school year, and

IT IS FURTHER ORDERED that, by November 9, 2012, Respondent shall review the Student's progress at the Nonpublic School and revise the Student's IEP, consistent with this HOD.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is a final determination on the merits. 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).