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]	)	**Case Number: 2012-0634**
Petitioner,	)	
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	**Hearing Officer: Frances Raskin**

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STUDENT HEARING OFFICE
2012 DEC 15 PM 4: 22

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 [redacted] ("Student") with a disability. On September 11, 2012, Petitioner filed a due process complaint ("Complaint") against Respondent District of Columbia Public Schools ("DCPS") alleging violations of the Individuals with Disabilities Education Act ("IDEA").

On September 12, 2012, this Hearing Officer was assigned to preside over this case. On September 28, 2012, Respondent filed a response to the Complaint.[2] Respondent filed its Response seven days after the deadline established by IDEA.[3]

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[1] Personal identification information is provided in Attachment A.
[2] Respondent did not challenge the sufficiency of the Complaint.

On September 19, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties did not agree to start the forty-five day, due process hearing period on that date. Thus, the resolution period ended on October 11, 2012.

On October 17, 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 October 11, 2012.

During the prehearing conference, the parties agreed to schedule the due process hearing for November 21, 2012, and November 26, 2012. This Hearing Officer informed counsel that the end of the forty-five-day timeline, i.e., the deadline for this Hearing Officer Determination ("HOD"), was November 25, 2012. The parties agreed to continue the forty-five-day due process hearing timeline, and the deadline for the issuance of this HOD, to allow the due process hearing to proceed on these dates. This Hearing Officer issued a prehearing conference summary and order on October 17, 2012.

On November 5, 2012, Petitioner filed a motion that requested a ten-day continuance the forty-five-day due process hearing timeline, and the deadline for the issuance of this HOD. This Hearing Officer granted the motion on November 21, 2012.

The due process hearing commenced on November 21, 2012, at 9:30 a.m. in room 2006. At the outset of the hearing,[4] the parties reached an agreement that resolved Petitioner's request for comprehensive psychological, speech and language, adaptive

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[3] If the Local Education Agency ("LEA") has not sent a prior written notice under 34 C.F.R. § 300.503 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] In reliance upon the case number reflected in the parties' respective five-day disclosures, this Hearing Officer mistakenly referred to the case number as 2012-0591 at times during the due process hearing. The correct case number is reflected herein. Case no. 2012-0591 also was before this Hearing Officer but Petitioner withdrew the complaint in that case before filing the instant Complaint.

functioning, vocational, and occupational therapy assessments.[5] The parties agreed that this Hearing Officer would incorporate this agreement into an order as part of this HOD.

This Hearing Officer then entered into evidence Petitioner's proposed exhibits[6] and Respondent's proposed exhibits.[7] After the parties presented opening statements, Petitioner testified and presented three witnesses on her behalf, the Student, the director of outreach services for the Nonpublic School ("Director"), and the educational advocate ("Advocate 2"). Respondent presented one witness, the Student's former teacher ("Teacher") at the school he currently attends ("DCPS School"). This Hearing Officer then recessed the due process hearing until November 26, 2012.

The due process hearing reconvened at 9:30 a.m. on November 26, 2012, in room 2009. After the parties presented oral closing arguments, the due process hearing concluded.

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") by failing to evaluate him in all areas of suspected disability, i.e., conduct comprehensive psychological, neurological, speech-language, adaptive

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[5] The parties agreed that Petitioner would obtain independent comprehensive psychological (including a clinical assessment), speech-language, adaptive functioning, vocational, and occupational therapy assessments at public expense. The parties agreed that these assessments would be completed within forty-five days of the date this HOD is issued. The parties agreed that Petitioner would provide copies of the independent evaluations to the DCPS Office of Special Education compliance case manager. The parties agreed that Respondent would hold a meeting to review the evaluations within twenty school days of its receipt of the last assessment. The parties also agreed Respondent would receive an additional day to hold the meeting for every day of delay caused by Petitioner, her counsel, her educational advocate, the Student, or the evaluator(s).

[6] This Hearing Officer admitted into evidence Petitioner's Exhibits 1-5, 7, 9-15 , 17-22, 24-25 and 28-36. This Hearing Officer excluded Petitioner's Exhibits 6, 8, and 16 on the grounds that they were not relevant to or probative of the issues in this case. Petitioner withdrew Exhibits 23, 26, and 27. This Hearing Officer did not rely on Petitioner's Exhibits 2 and 3 as they were generated as part of case no. 2012-0591 and thus also are not relevant to this case. This Hearing Officer also did not rely on Petitioner's Exhibits 1 and 4. Although these two exhibits, the due process complaint and the resolution period disposition form, are part of the administrative record, as they are not probative of the issues in this case.

[7] This Hearing Officer admitted into evidence Respondent's Exhibits 2-4, inclusive. Respondent withdrew Exhibit 1.

functioning, vision, vocational, and occupational therapy assessments by the beginning of the 2011-2012 school year;[8]

B. Whether Respondent denied the Student a FAPE by developing an individualized educational program ("IEP") on May 2, 2011, that lacked specific academic goals and failed to specify the dates and frequency on which Respondent would assess the Student's progress toward the goals;[9]

C. Whether Respondent denied the Student a FAPE by failing to conduct comprehensive psychological and assistive technology assessments, as requested by Petitioner on March 6, 2012;

D. Whether Respondent denied the Student a FAPE during the 2011-2012 and 2012-2013 school years by failing to consistently provide him assistive technology, a magnifying device to assist him in reading on his computer and in books, as required by his May 2, 2011, and March 6, 2012, IEPs[10];

E. Whether Respondent denied the Student a FAPE by failing to provide him a dedicated aide for the 2011-2012 and 2012-2013 school years; and

F. Whether Respondent denied the Student a FAPE during the 2011-2012 and 2012-2013 school years by failing to provide him an appropriate placement, i.e., by failing to place him in a program for students with visual impairment such as a school that provides a low vision specialist and instruction in Braille.

Petitioner requests relief in the form of an order that would require Respondent to place the Student in the Nonpublic School, or a similar public or nonpublic school, at public expense for the remainder of the 2012-2013 school year; authorize Petitioner to obtain independent comprehensive psychological, neurological, speech-language, adaptive functioning, vision, vocational, and occupational therapy assessments at public expense; and provide the Student compensatory education in the form of tutoring, occupational therapy, and instruction in Braille. Petitioner also seeks relief in the form of an order that would require Respondent to provide the Student a dedicated aide, instruction in Braille, and mobility training,

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[8] As explained herein, the parties resolved most of this claim.
[9] Petitioner did not disclose the Student's May 2, 2011, IEP. Petitioner presented no documentary evidence or testimony on the special education services that the Student was to receive during the 2011-2012 school year pursuant to the May 2, 2011, IEP. Thus, the Hearing Officer will not address this claim herein.
[10] Petitioner presented no evidence on this claim and thus this Hearing Officer will not address it herein.

IV. FINDINGS OF FACT

After consideration of the testimony presented and the documents admitted into evidence at the due process hearing,[11] this Hearing Officer makes the following findings of fact:

1. The Student is a [redacted] young man who is eligible for special education services as a student with multiple disabilities.[12] The Student has a history of intellectual disability.[13] The Student also has a severe vision impairment.[14]

2. The Student's cognitive functioning, as reflected in his full-scale IQ score of 44, is in the extremely low range.[15] Both his verbal reasoning and his nonverbal reasoning abilities are in the extremely low range.[16] His working memory, i.e., ability to sustain attention, concentrate, and exert mental control is in the extremely low range.[17] His processing speed, i.e., ability to process simple or routine visual material without making errors, is in the extremely low range.[18]

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[11] In determining the facts of this case, this Hearing Officer relied on the testimony of the witnesses. This Hearing Officer also relied on the documents the parties entered into evidence that were relevant to and probative of the issues certified for adjudication at the due process hearing. Of the documents entered into evidence, this Hearing Officer did not consider Petitioner's Exhibits 7 and 8 because they concerned events that occurred in 2010 and/or were in effect before the start of the 2011-2012 school year, and thus are not relevant to or probative of the issues in this case. Petitioner presented no testimony to explain the relevance of Petitioner Exhibit 10, which pertains to the Student's post-secondary career interests. Thus, this Hearing Officer did not rely on Petitioner Exhibit 10 as it is not relevant to the issues in this case. This Hearing Officer did not consider Petitioner Exhibit 22, a worksheet dated September 23, 2010, as it predates the claims in this case and thus is not relevant or probative evidence. This Hearing Officer did not consider Petitioner's Exhibit 30, a September 8, 2011, request for records, as it is not relevant to or probative of the issues in this case. For the same reasons, this Hearing Officer did not consider Petitioner's Exhibit 32, which concerns a request for a classroom observation in September 2010. This Hearing Officer did not consider Petitioner's Exhibit 36, which is a curriculum vitae for a witness who did not testify at the due process hearing.
[12] Petitioner Exhibit 5 at 1 (March 6, 2012, IEP).
[13] Petitioner Exhibit 11 at 1 (April 8, 2010, Psychological Report).
[14] Testimony of Petitioner; Petitioner Exhibit 15 (April 1, 2004, Functional Vision Assessment); Petitioner Exhibit 18 (June 19, 2012, Pediatric Ophthalmology/Eye Exam Results).
[15] Petitioner Exhibit 11 at 4; Petitioner Exhibit 14 at 2, 4 (February 2, 2007, Psychological and Educational Re-evaluation).
[16] Petitioner Exhibit 14 at 4.
[17] *Id.* at 5.
[18] *Id.*

3. In 2010, when the Student was eleven years and five months old, he performed at the equivalent of a first-grade student in word reading.[19] In reading comprehension, he performed at the equivalent of a six-year-old child just entering the first grade.[20] In decoding, he performed at the equivalent of a child aged four years and eight months who was in kindergarten.[21] In numerical operations, his performance was the equivalent of a six-year-old child just entering the first grade.[22] In all of these areas, the Student performed below the first percentile of his same-age peers.[23] Spelling was a relative strength as he performed at the equivalent of a child aged seven years and four months who was in the ninth month of first grade, which was above only two percent of his same-age peers.[24]

4. The Student has below average receptive and expressive vocabulary skills.[25] He has severe impairments in semantic, syntactic, and supralinguistic aspects of language.[26] His limitations in vocabulary, semantics, oral comprehension, and grammar/syntax impact his success in the general education curriculum.[27]

5. The Student was born with a vision impairment.[28] His most recent functional vision assessment was conducted in April 2004.[29] In 2004, the Student's distance vision acuity was 20/100.[30] In other words, without his eyeglasses, he could see at twenty feet what a person who is not visually impaired could see at 100 feet.[31] His near point acuity was fifteen inches.[32] As a result, he needed reading materials to be presented at about eighteen-point print and preferential seating when distance viewing was necessary.[33]

6. Since 2004, the Student's visual acuity has sharply decreased.[34] In his right eye, his vision is 20/200 while wearing his glasses.[35] In his left eye, he cannot see a person's fingers from three feet away while wearing his glasses.[36] Thus, he currently qualifies as

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[19] *Id.* at 3.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Petitioner Exhibit 12 at 5 (May 22, 2008, Speech and Language Re-evaluation).
[26] *Id.*
[27] *Id.*
[28] Testimony of Petitioner.
[29] Petitioner Exhibit 15 at 1 (April 1, 2004, Functional Vision Assessment).
[30] *Id.* at 2.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Petitioner Exhibit 18 at 1, 3 (June 19, 2012, Pediatric Ophthalmology/Eye Exam Results).
[35] *Id.* at 3.
[36] *Id.*

legally blind.[37] Because he must wear extremely strong eyeglasses, his view of objects is greatly minimized.[38] This may inhibit his functioning.[39] Additionally, due to his poor acuity, he lacks depth perception.[40]

7. Based upon his visual status, the Student has limited functionality and requires several tools and supports to function and for his personal safety.[41] He requires related services and accommodations to address his low vision.[42] He should receive low vision services and computer-based tools with visual prompting.[43] He cannot ascend or descend stairs safely.[44]

8. The Student must wear glasses full-time.[45] He also required reading material to be in large print.[46] He needs bright lighting conditions at school and while completing assignments.[47]

9. The Student has attended the DCPS School for the past four school years.[48] The DCPS School serves students with intellectual disabilities.[49] It also offers vision services.[50]

10. In October 2011, the Student was in a classroom with four other students, one teacher, and three paraprofessionals.[51] The Student participated in the classroom activities, although he did not wear his glasses.[52] Nonetheless, he was able to move around the classroom and interact with his peers without bumping into anything.[53]

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[37] Petitioner Exhibit 19 at 1 (undated letter from [redacted] Department of Ophthalmology Department Vice-Chairman, Children's National Medical Center, to Counsel for Petitioner).
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] Petitioner Exhibit 18 at 4.
[46] *Id.* at 1.
[47] *Id.*
[48] Testimony of Petitioner.
[49] Testimony of Advocate.
[50] *Id.*
[51] Petitioner Exhibit 31 at 1 (October 14, 2011, observation notes by [redacted]).
[52] *Id.*
[53] *Id.*

11. On December 9, 2011, the Student did not receive assistive technology, such as materials in Braille or on a computer, in his classroom.[54] His lesson materials were in large type that appears larger than eighteen point.[55] His classroom assignments were placed on a wood block that was close to his face.[56] When shown a photograph, he was able to identify its contents while holding it close to his eyes.[57] His classroom had three teachers and ten students.[58] However, the Student did not receive assistance from an aide or teacher for the visually impaired.[59]

12. On March 6, 2012, Respondent convened a meeting of the Student's IEP team to develop an IEP.[60] Petitioner attended the meeting in person.[61] Her educational advocate ("Advocate 1") participated by telephone.[62] A speech and language pathologist, assistive technology specialist, vision specialist, and special education teacher also participated in the meeting.[63]

13. At the March 6, 2012, meeting, the IEP team discussed the Student's access to assistive technology, including a laptop computer and an adaptive software program.[64] At the time of the meeting, the Student worked with adaptive software called "Talking Typer," which was consistent with his IEP.[65] He was learning to use a computer keyboard although he had not learned the location of the keys on the keyboard.[66]

14. From the beginning of the 2011-2012 school year through the March 6, 2012, meeting, Respondent had failed to provide the Student a laptop computer as required by his May 2, 2011, IEP.[67] The Student had not demonstrated the ability to carry the laptop from class to class safely, and school personnel were concerned he may destroy it.[68] Even so, the Student had access to assistive technology in all of his classrooms, including a "Smart View" device.[69] However, not all of the Student's work was enlarged to enable him to read it.[70]

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[54] Petitioner Exhibit 9 at 1, 3-4 (December 9, 2011, observation notes).
[55] *Id.* at 1-2.
[56] *Id.* at 2.
[57] *Id.* at 3.
[58] *Id.* at 4.
[59] *Id.*
[60] Petitioner Exhibit 5 at 20 (March 6, 2012, IEP Meeting Notes).
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.* at 24 (Advocate's notes of March 6, 2012, IEP meeting).
[65] *Id.*
[66] *Id.*
[67] Petitioner Exhibit 5 at 21 (MDT Notes); Petitioner Exhibit 5 at 25 (Advocate's notes).
[68] Petitioner Exhibit 5 at 25.
[69] *Id.*
[70] Testimony of Petitioner.

15. The Student's failure to wear his glasses consistently hampered his ability to access his assistive technology.[71] His ability to use the technology also may have been impeded by his low cognitive functioning.[72] Additionally, when using technology, the Student often became over stimulated.[73]

16. At the March 6, 2012, meeting, Advocate 1 requested that Respondent conduct assistive technology and psychological assessments of the Student.[74] Respondent denied the request.[75]

17. At the March 6, 2012, meeting, the IEP team found that the Student was eligible for special education services as a student with the disability classification of multiply disabled.[76] The IEP team agreed that the Student would continue to receive specialized instruction, speech and language therapy, and vision services.[77]

18. At the March 6, 2012, meeting, the IEP team developed an IEP for the Student.[78] The IEP team developed three annual goals for the Student in the area of mathematics.[79] The first annual goal anticipates that the Student would complete five math problems that require him to multiply a one-digit number by a two-digit number using manipulatives, a times table, and/or calculator in four of five trials with 80 percent mastery.[80] The March 6, 2012, IEP anticipates that the Student's progress toward this goal would be measured by a monthly review of his work samples.[81]

19. The second annual mathematics goal on the Student's March 6, 2012, IEP anticipates that the Student would tell time by the quarter hour using an analog clock with 80 percent mastery in four of five trials using verbal prompts.[82] The IEP indicates that the Student's progress toward annual goal two would be measured through work samples and by observation as the opportunity arose.[83]

20. The third annual goal in mathematics on the Student's March 6, 2012, IEP anticipates that the Student would compute change due from a purchase up to $1.00 with 80 percent accuracy in four of five trials using real coins as manipulatives with minimal verbal

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[71] Petitioner Exhibit 5 at 24-25.
[72] *Id.* at 25.
[73] *Id.* at 24.
[74] Petitioner Exhibit 5 at 21, 25, 26.
[75] *Id.* at 21, 26.
[76] *Id.* at 21.
[77] *Id.*
[78] Petitioner Exhibit 5 at 1-19 (March 6, 2012, IEP).
[79] *Id.* at 3-4.
[80] *Id.* at 3.
[81] *Id.*
[82] *Id.*
[83] *Id.* at 4.

prompts.[84] The March 6, 2012, IEP anticipates that the Student's progress toward annual goal three would be measured through his work samples and by observation as the opportunity arose.[85]

21. At the March 6, 2012, IEP meeting, the IEP team developed three annual goals in the area of reading.[86] The first annual goal anticipates that the Student would increase his vocabulary, using a minimum of twenty vocabulary words or phrases on the second-grade level, by answering questions, reading the words or phrases orally, or writing the answers, in four of five trials with 80 percent accuracy as measured by a teacher-made assessment.[87] The March 6, 2012, IEP anticipates that the Student's progress toward this annual goal would be measured once a month through observation or use of a checklist.[88]

22. On the March 6, 2012, IEP, the second annual goal in reading anticipates that, given a functional or informational text, the Student would identify a minimum of five details orally or in writing, after finding these details with independent reading, with eighty percent accuracy in four of five trials as measured by observation and checklist.[89] The IEP anticipates that the Student's progress toward this annual goal would be measured through his work samples as the opportunity arose.[90]

23. The third reading annual goal on the March 6, 2012, IEP anticipates that, when presented with reading materials on the third grade level, the Student would answer "wh" questions immediately after reading the selection, with eighty percent accuracy in four of five trials as measured by observation and worksheet.[91] The IEP anticipates that the Student's progress toward this goal would be measured through his work samples as the opportunity arose.[92]

24. At the March 6, 2012, meeting, the IEP team developed two annual goals in the area of written expression.[93] The first annual goal anticipates that, given materials or models, the Student would complete an employment application with verbal cues or independently in four of five trials with eighty percent accuracy.[94] The IEP anticipates that the Student's progress toward this goal would be measured each nine weeks using a checklist and once a month by reviewing his worksheets.[95] The second annual goal in

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[84] *Id.*
[85] *Id.* at 4.
[86] *Id.* at 4-5.
[87] *Id.* at 5.
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.* at 5-6.
[94] *Id.* at 6.
[95] *Id.*

reading anticipates that, given materials or models, the Student would create a resume with verbal cues or independently in four of five trials with eighty percent accuracy.[96] The IEP anticipates that the Student's progress toward this goal would be measured once a month using a checklist.[97]

25. At the March 6, 2012, meeting, the IEP team developed six annual goals in the area of adaptive and daily living skills.[98] These annual goals anticipated that the Student would learn to answer job interview questions, participate in career/vocational development and job awareness/training activities in the school and in the community, and participate in activities that would promote skill development in the areas of socialization, music, art, gross motor, and independent living skills at least once a week.[99] These annual goals also anticipated that the Student would participate in safety awareness in the school and community and learn to use maps and plan his travel route from home to school and back.[100]

26. At the March 6, 2012, meeting, the IEP team agreed that the Student should receive thirty-one hours per week of specialized instruction outside the general education environment, including thirty hours per week of academic instruction in reading, math, and written expression, as well as one hour per week of instruction in address his visual disability.[101]

27. At the March 6, 2012, IEP meeting, the IEP team agreed that the Student should receive four hours per month of speech-language pathology outside the general education setting.[102] The IEP team also agreed that the Student should receive assistive technology in the form of a seventeen-inch laptop with screen magnification, such a "Zoom Text," and a carrying case.[103] The team decided that the Student did not require the assistance of a dedicated aide.[104]

28. At the March 6, 2012, IEP meeting, the IEP team developed a post-secondary transition plan as part of the Student's IEP.[105] The IEP team determined that the Student required vocational training in the form of ninety minutes per week of community based and classroom instruction in functional reading, math, vocational training, life skills, independent living, and community exploration.[106] In the area of employment, the IEP team

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[96] *Id.*
[97] *Id.*
[98] *Id.* at 6-8.
[99] *Id.* at 7.
[100] *Id.* at 8.
[101] *Id.* at 11, 12.
[102] *Id.* at 11.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 16-19.
[106] *Id.* at 17.

determined that the Student requires three hours per week of career awareness instruction in the school setting.[107] In the area of independent living, the IEP team determined that the Student requires three hours per week of community-based and classroom instruction.[108] Finally, the IEP team determined that Student would exit high school with a high school certificate at age twenty-one.[109]

29. By the end of the 2011-2012 school year, the Student had made progress on all three of the mathematics annual goals on his March 6, 2012, IEP.[110] He had made progress on two of the three reading annual goals on his March 6, 2012, IEP.[111] The Student mastered the third reading annual goal in the three months since his March 6, 2012, IEP was developed.[112] The Student also had made progress on one of his written expression annual goals while his teacher had just introduced the second goal.[113]

30. By the end of the 2011-2012 school year, the Student had made progress on all three of the speech and language annual goals on his March 6, 2012, IEP.[114] He had made progress on all four of his vision annual goals.[115] He also had made progress on three of his seven annual goals in adaptive/daily living.[116] He mastered three of adaptive/daily living goals and his teacher had just introduced the seventh annual goal.[117]

31. Even though the Student has made progress on his IEP goals, he has not progressed beyond the first or second grade level in academics in the four years he has been enrolled in the DCPS School.[118] During the 2011-2012 school year, the Student did not make as much progress as Petitioner expected him to make because he had behavioral difficulties, did not consistently wear his glasses, and did not bring his homework home.[119] Nonetheless, Petitioner recognizes that the Student has made some progress during the 2011-2012 school year and during the 2012-2013 school year.[120]

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[107] *Id.* at 18.
[108] *Id.* at 17-18.
[109] *Id.* at 19.
[110] Petitioner Exhibit 20 at 4 (June 13, 2012, IEP Progress Report-Annual Goals).
[111] *Id.*
[112] *Id.* This annual goal anticipated that, when presented with reading materials on the third grade level, the Student would answer "wh" questions immediately after reading the selection, with eighty percent accuracy in four of five trials. Petitioner Exhibit 5 at 5.
[113] Petitioner Exhibit 20 at 5-6.
[114] *Id.* at 6.
[115] *Id.* at 2.
[116] *Id.* at 2-4.
[117] *Id.*
[118] Testimony of Petitioner.
[119] *Id.*
[120] *Id.*

32. To date, the Student has not received a laptop to use in his classroom.[121] He knows how to magnify the page view on a laptop, and this would assist him in reading and viewing his class assignments.[122] The Student does use a desktop computer in many of his classes to magnify his assignments.[123] The Student prefers using the desktop computer to using the laptop computer.[124]

33. To date, the Student has not received instruction in Braille at DCPS School.[125] He also has not been assigned a dedicated aide, although he receives assistance from the paraprofessionals in his classroom.[126] None of the Student's teachers believe that he requires a dedicated aide.[127]

34. The Nonpublic School is located in Baltimore, Maryland.[128] It serves students with visual impairments, including students who are legally blind.[129] All of the students at the Nonpublic School are eligible for special education services.[130] They all have IEPs that provide they are to receive full-time specialized instruction and related services.[131] The teachers at the Nonpublic School are certified either in a content area or in special education through the state of Maryland.[132]

35. The Nonpublic School has a low-vision specialist who works with instructional staff to inform them of the accommodations each child needs.[133] The Nonpublic School provides its students instruction in digital technology such as laptops and iPads with word processing programs that read text aloud.[134] This technology assists students with vision impairments to access information auditorily.[135] The Nonpublic School also provides laptop cameras that magnify written classroom materials, feed information from smart boards, and allow the students to communicate in writing with their teachers.[136]

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[121] *Id.*; testimony of Student.
[122] Testimony of Petitioner.
[123] Testimony of Student.
[124] *Id.*
[125] Testimony of Petitioner.
[126] *Id.*; Petitioner Exhibit 31.
[127] Testimony of Petitioner.
[128] Testimony of Director.
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*

Although the Nonpublic School also offers instruction in Braille, most students prefer to use electronic devices.[137]

36. The Nonpublic School offers a functional/career track program that provides functional, practical instruction in academic content areas.[138] Tor the students in this program, part of the week focuses on the acquisition of work skills, work experiences, and job coaching.[139] The Nonpublic School also offers orientation and mobility training to students who need assistance navigating the community, including shopping, and traveling within the community.[140]

37. The instructional week at the Nonpublic School is 32.5 hours.[141] The Students at the Nonpublic School do not interact with their nondisabled peers except on community outings.[142] The tuition rate for the Nonpublic School's day program is about $101,000 per academic year, not including extended school year.[143] The tuition rate for the Nonpublic School's residential facility is around $148,000 per year.[144] The cost of a dedicated aide is not included in the tuition rate.[145] The Nonpublic School does not provide students dedicated aides unless they are both deaf and blind or have behavioral problems.[146]

38. The Student has not yet been accepted in the Nonpublic School.[147] However, due to his severe vision impairment and low academic performance, the Student fits the profile of the students who currently attend the Nonpublic School.[148]

39. This Hearing Officer finds that Petitioner provided credible testimony, although her expectations for the Student may be overly optimistic. While she expects that the Student should be performing on a third- or fourth-grade level, her expectations are belied by the documentary evidence in the record, including the Student's assessments, which show that he has a very low IQ and significant cognitive deficits. Petitioner also testified credibly that the reason the Student did not make as much progress as she expected were that he had behavioral difficulties during the 2011-2012 school year and did not wear his glasses regularly.

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[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.*

40. The Student testified credibly about his lack of access to a laptop computer and his visual difficulties. The Student was especially forthright in admitting that he has access to a desktop computer in most of his classes and that he prefers using a desktop computer to a laptop computer.

41. The Director testified credibly about the programs that the Nonpublic School offers and the students it serves. The Director admitted that the Student had not yet been accepted for admission into the Nonpublic School, and was forthright about the cost of the tuition at the Nonpublic School. The Director exhibited knowledge of the documents in the record, especially those that discussed the Student's cognitive, academic, and visual functioning.

42. Advocate 2 was not a credible witness. The Student contradicted her testimony that he had been denied access to a computer in the classroom. The documentary evidence, especially the letter from the Student's ophthalmologist, undermined the Advocate's assertion that the Student's eyesight deteriorated as a result of his experience at DCPS School 1. This letter also undermined the Advocate's assertion that the bright light in the Student's classrooms was harmful to him. To the contrary, the ophthalmologist recommended that the Student be educated in a brightly lit environment due to his severely impaired vision.

43. The Teacher was a credible witness, although she was often hostile in answering this Hearing Officer's clarifying questions. In general, the Teacher's testimony was corroborated by the documentary evidence, including the Student's March 6, 2012, IEP, his IEP progress reports, and the classroom observations of Advocate 1.

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."[149] 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.[150]

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

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[149] *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)).
[150] *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

involved; and are provided in conformity with the individualized education program.[151]

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."[152]

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 benefits.[153] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[154]

The burden of proof is properly placed upon the party seeking relief.[155] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[156] 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.[157] In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[158] Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,[159] except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[160]

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[151] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[152] *P. v. Newington Bd. of Educ.*, 546 F.3d. 111 (2nd Cir. 2008) (citations omitted).
[153] 34 C.F.R. § 300.513 (a)(2).
[154] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[155] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[156] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[157] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[158] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 246 (1994).
[159] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).
[160] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

VI. DISCUSSION

A. Petitioner Failed to Prove that Respondent Denied the Student a FAPE by Failing to Conduct Neurological, Vision, and Assistive Technology Assessments.

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.[161] A reevaluation is defined as an evaluation conducted after the initial evaluation.[162]

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.[163] Reevaluations should be conducted in a "reasonable period of time," and "without undue delay," as determined in each individual case.[164]

As part of any reevaluation, the IEP team, and other qualified individuals, [165] must review existing evaluation data, and identify what additional data are needed, if any, to determine if the child continues to have a disability and to determine the educational needs of the child.[166] 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

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[161] 34 C.F.R. § 300.15.
[162] D.C. Mun. Reg. tit. 5-E § 3001.1.
[163] 34 C.F.R. § 300.303 (a)(2).
[164] *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).
[165] 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 data are needed to make an eligibility determination and determine the child's educational needs.
[166] 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).

the general education curriculum.[167] The IEP team need not convene a meeting to conduct this review.[168]

Here, Petitioner failed to introduce any documentary evidence or testimony to support her claim that Respondent denied the Student a FAPE by failing to conduct neurological, vision, or assistive technology assessments. Petitioner failed to present any testimony to explain why a neurological evaluation of the Student would be necessary or how the failure to conduct this evaluation influenced the development of his IEP.

As for the vision re-evaluation, Petitioner herself proved that the Student's vision has been evaluated, although not in a thorough evaluation. Petitioner also proved that the IEP team considered the Student's visual impairment in drafting his March 6, 2012, IEP,[169] which is the only relevant IEP that Petitioner disclosed.[170]

Finally, Petitioner presented no testimony or documentary evidence to show that the Student has been denied the assistive technology he requires to access the curriculum. Petitioner thus presented no testimony or documentary evidence to show that an assistive technology evaluation would be necessary, much less what information such an evaluation would provide the IEP team.[171] As required by his March 6, 2012, IEP, [172]the Student already receives assistive technology in the form of classroom access to a computer.

Petitioner failed to show that, in the absence of these evaluations, the Student's IEP team cannot determine the nature and extent of the special education and related services that he needs.[173] Moreover, 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

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[167] 34 C.F.R. § 300.305 (a)(2)(iii)-(iv).
[168] 34 C.F.R. § 300.305 (b).
[169] See Petitioner Exhibit 5 at 8 (noting the Student's visual impairment and that he requires screen magnification in the present level of educational performance for his vision goals).
[170] Petitioner failed to disclose the Student's previous IEP, which was created on May 2, 2011. See Petitioner Exhibit 5 at 2 (noting the prior IEP annual review meeting date).
[171] While Petitioner and Advocate 2 testified that they believed the Student required instruction in Braille, which presumably would be discussed in an assistive technology assessment, the Director contradicted this testimony, stating that most students prefer to use electronic technology.
[172] See Petitioner Exhibit 5 at 11 (stating that the Student requires assistive technology in the form of a seventeen-inch laptop with screen magnification).
[173] See 34 C.F.R. § 300.15.

related services that the child needs.[174] Petitioner failed to show that Respondent did not conduct just such a review in developing the Student's March 6, 2012, IEP.

Thus, Petitioner failed to prove that Respondent denied the Student a FAPE by failing to conduct neurological, vision, and assistive technology evaluations.

B. Petitioner Failed to Prove that Respondent Denied the Student a FAPE during the 2011-2012 and 2012-2013 School Years by Failing to Consistently Provide Him a Magnifying Device to Assist Him in Reading.

The IEP is "the centerpiece of the statute's education delivery system for disabled children."[175] School districts must ensure that a team that includes 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 IEP for each child with a disability, who resides in the district and is in need of special education and related services.[176] The IEP must, at a minimum, provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.[177]

In other words, an appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[178] establishes annual goals related to those needs,[179] and provides appropriate specialized instruction and related services.[180] 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."[181]

For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[182] IDEA does not require that the services provided maximize each child's potential.[183]

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[174] D.C. Mun. Reg. tit. 5-E § 3001.1.
[175] *Honig v. Doe*, 484 U.S. 305, 311 (1988).
[176] *Branham v. District of Columbia*, 427 F.3d 7, 8 (D.C. Cir. 2005) (citing *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)).
[177] *Id.* (citing *Rowley*, 458 U.S. at 203).
[178] 34 C.F.R. § 300.320 (a)(1).
[179] *Id.* at (a)(2).
[180] 34 C.F.R. § 300.320 (a)(4).
[181] *Rowley*, 458 U.S. at 201.
[182] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[183] *Id.* at 198.

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.[184]

Here, the Student was born with a vision impairment. His most recent functional vision assessment, conducted in 2004, revealed that his distance vision acuity was 20/100. In other words, without his eyeglasses, he could see at twenty feet what a person who is not visually impaired could see at 100 feet. His near point acuity was fifteen inches. As a result, he needed reading materials to be presented at about eighteen-point print and preferential seating when distance viewing was necessary.

Since 2004, the Student's visual acuity has sharply decreased. In his right eye, his vision is 20/200 while wearing his glasses. In his left eye, he cannot see a person's fingers from three feet away while wearing his glasses. Thus, he currently qualifies as legally blind.

Because he must wear extremely strong eyeglasses, the Student's view of objects is greatly minimized. This inhibits his functioning in the classroom. Based upon his visual status, the Student has limited functionality and requires several tools and supports to function and for his personal safety. He requires related services and accommodations to address his low vision. The Student requires low vision services and computer-based tools with visual prompting.

The 2011-2012 School Year

Petitioner presented no testimony regarding whether, during the 2011-2012 school year, the Student received a magnifying device, or even a computer, to increase the size of the text in his schoolwork to accommodate his visual impairment. Nor did Petitioner introduce the Student's May 2, 2011, IEP or other evidence to show that this IEP required Respondent to provide him a magnifying device during the 2011-2012 school year

The only documentary evidence Petitioner introduced relating to the provision of a magnifying device during the 2011-2012 school year were (1) the notes Advocate 1 created during her October 14, 2011, observation of the Student;[185] and (2) the notes, presumably created by Advocate 1, that discuss a December 2011 observation of the Student.[186]

The first set of notes, which document the observations of Advocate 1 on October 14, 2011, state only that Advocate 1 presumed that the Student "had vision problems" because he held the cards close to his eyes in order to see them. In these notes, the only other mention of the Student's vision impairment is that he was not wearing eyeglasses. Advocate 1 did not discuss whether the Student had access to a computer or a magnifying device in the classroom. Advocate 1 did note that the Student participated in the classroom activities despite being without his eyeglasses.

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[184] 34 C.F.R. § 300.323 (c)(2); *Letter to Anonymous*, 17 IDELR 391 (OSERS Dec. 26, 1990).
[185] Petitioner Exhibit 31.
[186] Petitioner Exhibit 9.

On the other hand, the December 2011 notes show that the Student did not receive assistive technology, such as materials in Braille or on a computer, in his classroom. The writer of the notes did observe that the Student's lesson materials were in large type. The writer also mentioned that the Student's classroom assignments were placed on a wood block that was positioned close to his face. The writer even noted that, when shown a photograph, the Student was able to identify its contents while holding it close to his eyes.

The December 2011 notes establish that, for the length of the observation on December 9, 2011, the Student did not have access to a magnifying device. These notes do not establish that Respondent did not provide the Student a magnifying device on other days or in other classes during the 2011-2012 school year.

Petitioner did establish that, from the beginning of the 2011-2012 school year through March 6, 2012, Respondent had failed to provide the Student the laptop computer required by his May 2, 2011, IEP.[187] Petitioner also established that the Student had access to assistive technology in all of his classrooms, including a "Smart View" device. However, not all of the Student's work was enlarged to enable him to read it.

At the time of the March 6, 2012, IEP meeting, the Student had been working with adaptive software called "Talking Typer," which was consistent with his IEP. He was learning to use a computer keyboard although he had not learned the location of the keys on the keyboard.

The Student's failure to wear his glasses consistently hampered his ability to access his assistive technology. His ability to use the technology also may have been impeded by his low cognitive functioning. Additionally, when using technology, the Student often became over stimulated.

Nonetheless, by the end of the 2011-2012 school year, the Student had made progress on two of the three reading annual goals on his March 6, 2012, IEP. The Student mastered the third reading annual goal in the three months since his March 6, 2012, IEP was developed. The Student also had made progress on one of his written expression annual goals while his teacher had just introduced the second goal.

Thus, Petitioner failed to prove that Respondent's failure to consistently provide the Student a laptop computer, a Smart View device, or other assistive technology by which he could magnify his reading material, prevented him from making progress on his IEP goals. For this reason, Petitioner failed to prove that, during the 2011-2012 school year, Respondent denied the Student a FAPE by failing to consistently provide him a magnifying device to assist him in reading.

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[187] Petitioner Exhibit 5 at 21.

The 2012-2013 School Year

The Student's March 6, 2012, IEP provides that he is to receive thirty-one hours per week of specialized instruction outside the general education environment, including thirty hours per week of academic instruction in reading, math, and written expression, as well as one hour per week of instruction in address his visual disability. The IEP also provides that the Student is to receive assistive technology in the form of a seventeen-inch laptop with screen magnification, such a "Zoom Text," and a carrying case.

Petitioner proved that, to date, the Student has not received a laptop to use in his classroom. Petitioner proved that, from the beginning of the 2012-2013 school year through the date of the due process hearing, Respondent has failed to provide the Student the laptop required by his March 6, 2012, IEP. Petitioner proved that Respondent has failed to provide the Student the laptop even though he knows how to magnify the page view on a laptop.

Petitioner also proved that using the laptop would assist the Student in reading and viewing his class assignments. However, Petitioner also proved, through the testimony of the Student, that he uses a desktop computer in many of his classes to magnify his assignments. Petitioner also proved that the Student prefers using the desktop computer to using a laptop computer.

Petitioner proved only that, throughout the 2012-2013 school year, Respondent has provided the Student a device that magnifies his assignments. That this device is a desktop computer rather than a laptop computer is a distinction without a difference.

Thus, Petitioner failed to prove that, during the 2012-2013 school year, Respondent denied the Student a FAPE by failing to consistently provide him a magnifying device to assist him in reading.

C. Petitioner Failed to Prove that Respondent Denied the Student a FAPE by Failing to Place Him in the Nonpublic School at Public Expense for the 2011-2012 and 2012-2013 School Years.

Each LEA 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.[188] In order to implement the IEP, a team that includes the child's parents

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[188] 34 C.F.R. § 300.323 (c)(2). Public agency includes the state education agency, local education agencies ("LEAs"), educational service agencies ("ESAs"), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of a State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33.

determines where the child should be placed based on the child's IEP.[189]

Placement decisions must be made in conformity with the child's IEP.[190] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[191] 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.[192]

The term "educational placement" refers to the type of educational program prescribed by the IEP.[193] 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.[194]

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.[195]

In determining the appropriate placement for a child, preference given to the least restrictive environment and the appropriate schools nearest the child's home.[196] 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.[197] 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.[198] Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school

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[189] 34 C.F.R. § 300.116.
[190] 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).
[191] *See Rourke v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006).
[192] *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).
[193] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[194] *Id.*
[195] *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).

[196] *Id.*
[197] 34 C.F.R. § 300.116 (d).
[198] 34 C.F.R. § 300.116 (e)

that he or she would attend if nondisabled.[199]

Here, Petitioner has failed to prove that the DCPS School cannot implement the Student's IEP or otherwise provide the services he requires to receive a FAPE. Instead, Petitioner has proved that the Student has made progress on the annual goals in his March 6, 2012, IEP despite his many challenges. This is all that the IDEA requires.

While the Nonpublic School would provide the Student an excellent education and the low-vision services he requires, even instruction in Braille, IDEA does not require an LEA to provide disabled students the best education available. Rather, Respondent is required only to make available a "basic floor of opportunity" that is "reasonably calculated to enable the child to receive educational benefits."[200] In other words, the IDEA does not require Respondent to "maximize the potential" of this Student.[201]

Thus, Petitioner has failed to prove that Respondent denied the Student a FAPE by failing to place him in the Nonpublic School at public expense for the 2011-2012 and 2012-2013 school years.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this, the fifth day of December 2012, hereby

ORDERED that all claims are **DISMISSED WITH PREJUDICE**; and

Insofar as the parties have reached an agreement and requested that it be memorialized in an order,[202] it is hereby

ORDERED that, within forty-five days of this Order, Petitioner shall obtain independent comprehensive psychological (including a clinical assessment), speech and language, adaptive functioning, vocational, and occupational therapy assessments of the Student at public expense not to exceed DCPS cost guidelines;

IT IS FURTHER ORDERED that, within forty-five calendar days of this Order, Petitioner shall provide copies of these assessments to the Compliance Case Manager in the DCPS Office of Special Education;

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[199] 34 C.F.R. § 300.116 (c).
[200] *Kerkam v. McKenzie*, 882 F.2d 884, 886 (D.C. Cir. 1988)(citing *Rowley*, 458 U.S. at 195).
[201] *Id.* Additionally, Petitioner failed to establish that the $101,000 annual tuition at the Nonpublic School is reasonable.
[202] See pp. 2-3, herein (referring to the agreement the parties reached at the outset of the due process hearing that resolved Petitioner's request for comprehensive psychological, speech and language, adaptive functioning, vocational, and occupational therapy assessments.)

IT IS FURTHER ORDERED that, within twenty school days of its receipt of the last of the independent assessments, Respondent shall convene a meeting of the Student's IEP team to review the evaluations, and review and revise the Student's IEP as appropriate in light of the findings of the assessments; and

IT IS FURTHER ORDERED that Respondent shall receive an additional day to hold the IEP team meeting required by this Order for every day of delay caused by Petitioner, her counsel, her educational advocate, the Student, or the evaluator(s).

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).

Distributed to:

Counsel for Petitioner
Counsel for Respondent
Student Hearing Office