DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street NE, STE 2
Washington, DC 20002

[Student],[1]

Petitioner,

v

District of Columbia Public Schools (DCPS),

Respondent.

Date Issued: December 11, 2012

Hearing Officer: Jim Mortenson

Case No: 2012-0676

OSSE
STUDENT HEARING OFFICE
2012 DEC 11 PM 2:27

HEARING OFFICER DETERMINATION

I. BACKGROUND

The complaint in this matter was filed with the Respondent and Student Hearing Office (SHO) by the Petitioner on September 27, 2012. An untimely response to the complaint was filed on October 10, 2012. A prehearing conference was convened by the undersigned on October 10, 2012, and a prehearing order was issued on October 11, 2012. A resolution meeting was convened on October 18, 2012, and resulted in no agreements. The 30 day resolution period was not adjusted and the 45 day hearing timeline began on October 28, 2012.

On November 26, 2012, the Petitioner filed three motions. A motion to permit telephone testimony for four witnesses was denied by written order on November 29, 2012, because the Petitioner failed to show good cause. A motion to strike the response to the complaint as untimely and insufficient was denied by written order on November 30, 2012, because the

[1] Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

Petitioner failed to show how the untimely and insufficient response to the complaint prejudiced his case. The Petitioner's motion to permit an issue to proceed to hearing which had been removed at the prehearing conference – 1) Whether DCPS denied [Student] FAPE by failing to properly identify and classify him as a student with a learning disability from September 23, 2003 until June 16, 2010, pursuant to 34 C.F.R. § 300.306? – was denied on the record at hearing because there was no applicable exception to the two year statute of limitations under 34 C.F.R. §§ 300.507(a)(2) and 300.511(e). Had the Student been misidentified, the Petitioner neither proffered nor demonstrated that his guardian had a concern about the Student's identification or provision of free appropriate public education for which she was prevented from filing a complaint on due to a misrepresentation by the Respondent that the complained of issue had been resolved or that the Respondent failed to provide the Petitioner with information required pursuant to IDEA. In short, had the Student not been performing well due to inappropriate programming that was the result of the Student being found eligible for special education and related services under a category that the Student should not have been eligible under, there was nothing preventing the Student's guardian from filing a complaint within two years of the complained of action – the alleged misidentification of the Student.[2]

Both the Petitioner and Respondent filed disclosures for the hearing on November 26, 2012. Only the Petitioner filed the required trial brief outlining his legal arguments and describing the evidence he intended to present and how that evidence would support his case including what documents would show or prove and what witnesses would testify about.[3] The hearing was

[2] Furthermore, the Petitioner made no showing or proffer that the Student's statement of present levels of academic achievement and functional performance were ever incorrect. The goals and services in the IEP are based on these statements. The IEP is not required to state the disability category under which the Student was found eligible and goals and services are not based on the category. *See* 34 C.F.R. § 300.320. Thus, without a showing that the Petitioner had a concern and was effectively prevented from filing a complaint within two years of the cause of action, such claims are time-barred by IDEA.

[3] This was required in the prehearing order of October 11, 2012.

convened approximately 9:00 a.m. on December 3, 2012, in room 2009 at 810 First Street NE, Washington, D.C. The hearing recessed at 5:00 p.m. and reconvened at 9:00 a.m. on December 4, 2012, in room 2009. The hearing ended at 1:30 p.m. The hearing was closed to the public. The Petitioner was represented by student attorneys Stacey Massaro and Yvesner Zamar, of the University of the District of Columbia Juvenile and Special Education Law Clinic, and supervising attorney Ramesh Kasarabada, Esq. The Respondent was represented by William Jaffe, Esq. The due date for this HOD is December 11, 2012. This HOD is issued on December 11, 2012.

II. JURISDICTION

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5E, Chap. 30.

III. ISSUES, RELIEF SOUGHT, and DETERMINATION

The issues to be determined by the Independent Hearing Officer (IHO) are:

(1) Whether the Respondent failed to ensure that the Student's placement from March 2012 forward was the least restrictive environment (LRE) for the Student when the individualized education program (IEP) team determined placement at Woodrow Wilson Senior High School was not appropriate and the Student remained there through the present time?

(2) Whether the Respondent denied the Student a free appropriate public education (FAPE) when it proposed and provided an IEP on March 17, 2011, that was not reasonably calculated to enable the Student to be involved in and progress in the general education curriculum because the IEP did not include the related services of behavioral support, tutoring, and speech and language; and had the Student on a certificate track as opposed to a diploma track?

(3) Whether the Respondent denied the Student a free appropriate public education (FAPE) when it proposed and provided an IEP on February 22, 2012, that was not reasonably calculated to enable the Student to be involved in and progress in the general education curriculum because the IEP did not include the related services of behavioral support, tutoring, and speech and language; and had the Student on a certificate track as opposed to a diploma track?

(4) Whether the Respondent denied the Student a FAPE when it failed to provide prior written notice of its refusal to change the Student's placement in March 2012 following the IEP team's determination that Woodrow Wilson Senior High School was not the LRE for the Student?

(5) Whether the Respondent denied the Student a FAPE because it did not provide the Student with special education and related services, including transition services, in conformity with the Student's IEP since the 2010-2011 school year?

The Petitioner was seeking, at the time of hearing: prospective placement at a segregated non-public special education day school, such as High Road Academy or Kingsbury School; a vocational assessment; compensatory education to address below grade-level functioning and having a "tough time" at school, consisting of 100 hours of tutoring (one hour per week for two to three times per week), 100 hours of speech and language services, and 100 hours of behavioral support services; and changes to his IEP, including "full-time" special education, transition services, and related services including behavioral support, speech and language, and tutoring services.

The Petitioner's current placement at Wilson Senior High School is not based on his IEP and the Respondent failed to follow the IEP team's instruction to change the Student's placement and did not reconvene the IEP team to determine a new school once it was learned the chosen school for placement was no longer available. The Petitioner did not show the IEP revision of March 2011 was not reasonably calculated to enable the Student to be involved in and progress in the general education curriculum, despite that the IEP inaccurately reflected he was to receive a Certificate of Completion rather than a diploma. The IEP revision of February 2012 was not

reasonably calculated to enable the Student to be involved in and progress in the general education curriculum because it was not revised to reflect the IEP team's determination that the Student required behavioral support services. The Respondent did not fail to provide written notice of a refusal to change the Student's placement in the spring of 2012 because the IEP team, who had the responsibility to make the placement determination, did not refuse to change the Student's placement. The Respondent denied the Student a FAPE when it failed to provide special education services in conformity with his IEP since the 2010-2011 school year because specialized instruction was not provided outside of the general education setting for 27 hours per week as required.

IV. EVIDENCE

Seven witnesses testified at the hearing, six for the Petitioner and one for the Respondent. The Petitioner's witnesses were:

1) The Petitioner/Student (P)
2) The Student's Aunt, (S.S.)
3) [redacted], Psychologist. (D.M.) (Providing an expert psychological opinion.)
4) [redacted], High Roads of D.C. (T.S.)
5) [redacted], Associate Head of School, Kingsbury Center (M.G.)
6) [redacted], Seeds of Tomorrow, (C.P.)

The Respondent's witness was [redacted] Special Education Coordinator for Woodrow Wilson Senior High School. (P.P.)

P was a credible witness, displaying good candor during his testimony and few contradictory statements.

S.S.'s testimony was largely credible. She had difficulty remembering certain important facts which erodes her credibility somewhat. Evidence supporting her statements is relied on in making findings of fact based on her testimony.

It was agreed by the parties that D.M. was an "expert." However, it was not agreed upon precisely what he was an expert in. His opinions based purely on his expertise as a psychologist are given appropriate weight as expert testimony. His opinions on matters concerning special education programming are given less deference based on his testimony that his opinions about programming would be no different had he discussed the Student with the Student's teachers (as would be the case if he had participated on the IEP team) and lacked any first-hand knowledge of the Student's actual programming at school (having not conversed with the teachers or observed the Student or his current classrooms), or what the Student's academic performance at school is.

T.S. and M.G., as representatives of their respective non-public schools, testified credibly with candor and non-evasiveness.

C.P. testified credibly and with candor in her responses.

P.P. largely testified credibly. Some of her testimony is given limited weight based on contradictory evidence in the record, such as her opinion that Wilson can and has implemented the Student's IEP despite the fact, testified to by the witnesses and supported by the educational records of the Student in the administrative record, that this was not the case (e.g. the IEP required 27 hours of specialized instruction outside of the general education setting per week – the entire school week - and the Student is currently placed in the general education setting, without special education supports, for two of his seven classes), and she had only limited knowledge of the Student, not having reviewed his complete educational record (and thus not

knowing basic information such as why he was no longer receiving speech and language services).

27 exhibits were admitted into evidence of 38 disclosures from the Petitioner. The Petitioner's exhibits are:

Ex. No.	Date	Document
P 5	6/13/10	Psychological Evaluation Report
P 6	6/6/10	Speech and Language Reevaluation Report
P 8	2/21/12	Psychological/Psychoeducational Evaluation
P 9	11/1/12	Addendum to Psychoeducational Evaluation
P 14	3/22/2010	[Individualized Education Program] and Multidisciplinary Team (MDT) Continuation Meeting Notes
P 16	3/17/04	Individualized Education Program (IEP) and [Meeting Notes]
P 17	6/21/11	IEP Progress Report – Annual Goals (See R 3)
P 18	2/22/12	Individualized Education Program (IEP) and IEP Meeting Notes
P 19	3/16/12	IEP Meeting Notes
P 20	4/17/12	IEP Progress Report – Annual Goals (See R 2)
P 21	3/20/12	Email chain ending from [redacted] to [redacted]
P 22	3/28/12	Email from [redacted] to [redacted]
P 23	3/28/12	Email from [redacted] to [redacted]
P 24	10/16/12	Email chain ending from [redacted] to [redacted]
P 26	6/20/11	Report to Parents on Student Progress
P 27	6/14/12	Report to Parents on Student Progress
P 28	8/28/12	Transcript
P 29	Undated	Student Schedule
P 30	9/27/12, 11/2/12	Report to Parents on Student Progress
P 31	9/23/12	Email chain ending from [redacted] to [redacted], et al.
P 32	6/20/12	Email chain ending from [redacted]
P 33	3/16/12	DCPS/AdvancePath Academy Referral Form
P 34	4/6/10	Consent for Initial Evaluation/Reevaluation
P 35	7/12	Curriculum Vitae [[redacted]]
P 36	8/23/12	Letter from [redacted] to [redacted]
P 37	10/31/12	Letter from [redacted] to [S.S.]
P 38	Undated	CASAS Skill Level Descriptors for ABE

Four exhibits were admitted into evidence of the Respondent's four disclosures. The Respondent's exhibits are:

Ex. No.	Date	Document
R 1	6/13/12	IEP Progress Report – Annual Goals
R 2	4/17/12	IEP Progress Report – Annual Goals (See P 20)

Ex. No.	Date	Document
R 3	6/21/11	IEP Progress Report – Annual Goals (See P 17)
R 4	3/16/12	Standard IEP Amendment Form (LEA Initiated)

To the extent that the findings of fact reflect statements made by witnesses or the documentary evidence in the record, those statements and documents are credited. The findings of fact are the Undersigned's determinations of what is true, based on the evidence in the record. Findings of fact are generally cited to the best evidence, not necessarily the only evidence. Any finding of fact more properly considered a conclusion of law is adopted as such and any conclusion of law more properly considered a finding of fact is adopted as such.

V. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Petitioner is an [redacted][4] He was determined eligible for special education and related services under the definition of mental retardation in 2003 during the 2nd grade.[5] His Full Scale IQ score was 55.[6] He had been diagnosed with Learning Disorder, NOS, and Adjustment Disorder by a private psychologist.[7]
2. The Student was reevaluated by the Respondent during 5th grade in 2004.[8] At that time his Full Scale IQ was measured at 61.[9] The IEP team determined the Student continued to be eligible for special education and related services but under the definition of speech or

[4] T of P.
[5] P 5, T of S.S.
[6] P 5.
[7] P 5, T of S.S.
[8] P 5.
[9] P 5.

language impairment due to low scores on a speech and language assessment, not mental retardation.[10]

3. The Student was reevaluated during the 7th grade in 2007.[11] This time his Full Scale IQ was measured at 59.[12] Due, in part, to this score and lower than expected adaptive behavior, the Student continued to be eligible for special education and related services, but under the definition of mental retardation.[13]
4. At the age of 16, the Student was reevaluated at Wilson Senior High School while in the 10th grade.[14] His intellectual functioning was much improved – he scored in the low-average range – as well as his academic functioning.[15] The team determined he was still eligible for special education and related services, but under the definition of Specific Learning Disability.[16] The Student was functioning well below the average range for receptive and expressive language and receptive and expressive vocabulary, but he had not been receiving speech and language services since middle school and did not receive these services following the speech and language assessment in June 2010.[17] No one knows why the Student stopped receiving speech and language services.[18]
5. The Student began the 9th grade in high school in 2008 and would have graduated in the spring of 2012 had he earned the credits necessary in a typical manner.[19] The IEP team had,

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[10] P 5.
[11] P 5.
[12] P 5.
[13] P 5.
[14] P 5.
[15] P 5.
[16] P 5, P 16,
[17] P 6, T of P, T of P.P.
[18] T of P.P., T of S.S., T of P (Petitioner testified he did not think he needed speech services as he could talk well enough, but he would accept such services to talk better.), P 6, P 14.
[19] T of S.S., P 28

at some point, determined he could not earn a diploma and he was taking functional skills classes for which he did not earn credit for graduation (Carnegie Units).[20]

6. At the March 2010 IEP team meeting, the Petitioner's Guardian, his Aunt (S.S.), advised the rest of the team the Student must be working toward a diploma, not a certificate.[21] At that time, it was determined to do a reevaluation, but it is not clear when the team determined the Student would be working toward a diploma.[22] This determination has never been properly documented, as all of the revisions of the IEP note a projected "exit category" as "H.S. Certificate prior to age 21," but the IEP team meeting notes from March 2011 state the Student will graduate from high school.[23] The Student raised a concern about wanting to be done with school in the Spring of 2012, or as soon as possible, so a GED was discussed.[24] The Student's twin brother graduated at the end of the 2011-2012 school year and this caused Student considerable stress because he is close to his brother.[25] In March 2011 the Student was still in the 9th grade.[26]
7. The IEP in place at the start of the 2010-2011 school year required specialized instruction outside of the general education setting for 27 hours per week (full-time).[27] The Student had at least one, possibly two, elective courses that were not outside of the general education setting (Art & Design Foundations and Key Computer Apps).[28] The Student failed the

[20] P 14, P 28, T of S.S., T of P.P., T of P.
[21] T of S.S., P 14.
[22] T of S.S., T of P.P., P 14, P 16, P 18.
[23] T of S.S., T of P.P., P 14, P 16, P 18.
[24] P 8, P 18, T of P, T of P.P. T of S.S., T of D.M.
[25] T of P, T of S.S., T of D.M., P 8. **(This sentence should be redacted prior to public dissemination of this HOD.)**
[26] P 16, P 28, T of S.S.
[27] P 14.
[28] P 28, T of P.P.

general education Art class (and was required to repeat it two more times, failing it a total of three times).[29]

8. The Student's IEP was revised on March 17, 2011.[30] The IEP reflects areas of concern in academic subjects of reading, writing, and math.[31] Functional skill areas are embedded in the statements about academics, such as a lack of focus and study skills.[32] The two annual goals concerning math are based on 7th and 6th grade standards, respectively: 1) "[Student]" will be able to define terms like variable, equation, term coefficient, inequality, [in] 4 out of 5 opportunities with 80% accuracy" and 2) "[Student] will be able to estimate results of computations with whole numbers and with positive fractions, mixed numbers, decimals, and percentages and determine the reasonableness of estimates in 4 out of 5 opportunities with 80% accuracy."[33] Of the two annual goals concerning reading, one is a functional goal: "Given reading homework and classwork assignments at the 4th grade reading level, [Student] will [ ] continue to complete and submit 4 out of 5 assignments with 80% accuracy. . . ."[34] The other goal, which is also a writing goal, is loosely based on secondary reading and elementary writing standards, particularly 10th grade reading standards and 4th grade writing standards: "Given paragraphs of expository reading material which [Student] can decode fluently and accurately, he will state and write the main idea and two supporting details for each paragraph in 4 out of 5 opportunities with 80% accuracy."[35] Of the other writing goals (they are two goals stated as one), one is based on 4th grade writing standards (4.W-E) and

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[29] P 28.
[30] P 16.
[31] P 16.
[32] P 16.
[33] P 16. (See D.C. learning standards 7.PRA.10 and 6.NSO-E.18.)
[34] P 16.
[35] P 16. (See D.C. learning standards 10.IT-E.4 and 4.W-E.)

the other is a functional goal.[36] The goals are, respectively: "[Student] will be able to write story summaries weekly with 80% accuracy[,]" and "[Student] will be able to fill out personal information, job application forms, college application forms weekly in 4 out of 5 trials."[37] The IEP requires 27 hours of specialized instruction in reading, writing and math, outside of the general education setting per week and no related services.[38] The Student's academic achievement is to be assessed on the DC-CAS without accommodations.[39] The Student's postsecondary goals are: 1) Attend a two-year community college and take course in the performing arts, and 2) A full-time job in a theater.[40] The transition services (not including the courses he is to take, which are also listed) is a community based job development fair for 2.5 hours per week.[41] The IEP also states the Student will have two hours per year of instruction at Wilson Senior High School as a transition service.[42] The IEP states the Student will meet with the School Counselor four hours per year, be in the "community" at Wilson Senior High School for two hours per year, and receive classroom instruction at Wilson for four hours per year.[43]

9. During the 2011-2012 school year the Student was in the 10th grade.[44] Six of his seven periods were special education classes, and one in each half of the year (Art and Design Foundations in terms one and two, and Health Education in terms three and four) were not.[45]

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[36] P 16.
[37] P 16.
[38] P 16.
[39] P 16.
[40] P 16.
[41] P 16. (This appears to be a typographical error in the IEP, since it is not logical to spend time every week at a job fair in order to obtain work in a theater after graduation.)
[42] P 16. (Since the Student is to receive 27 hours per week of specialized instruction outside of the general education setting, it is presumed that the "instruction" reflected here is specific to transition and not the courses the Student will have to successfully complete in order to have the opportunity to meet his postsecondary goals.)
[43] P 16. (Again, there may be typographical errors here, but the overall transition plan, in terms of services, makes little discernible sense even accounting for likely typos.)
[44] P 28, T of P, T of S.S.
[45] T of P.P., P 27.

Both IEP revisions in place during the 2011-2012 school year required 27 hours of specialized instruction outside of the general education setting.[46] The total number of possible instruction hours per day are 5.25, for a total of 26.25 hours per week.[47]

10. The Student failed most of his classes for the 2011-2012 school year but for "Learning Lab 3," English II, and Biology I (self-contained special education classes).[48]

11. The Student was independently reevaluated, in February 2012, by D.M.[49] The Student reported that he does not like some of the teachers at school because they do not seem to like him or treat him well.[50] The Student continued to feel this way during the 2012-2013 school year, and he also liked several teachers during both school years.[51]The Student's Full Scale IQ was measured at 74, in the borderline range of functioning.[52] His academic performance, as measured by the Woodcock Johnson III, showed grade equivalences as follows: Broad Math, 4.2 grade; Broad Reading, 5.1 grade; and Broad Written Language, 5.6 grade.[53] The Student's low scores in math were a reflection that his knowledge in that area was limited to some basic principles and very basic addition, subtraction, and multiplication, and he could not perform division or work with fractions.[54] His spelling was a basic strength and stronger than more complex and integrated writing skills.[55] He also demonstrated signs of depression and anxiety, poor self-esteem, significant feelings of insecurity and inadequacy in dealing with problems, and limitations in psychological resources for coping, using primitive defense

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[46] P 14, P 16.
[47] T of P.P.
[48] P 2
[49] P 8, T of D.M.
[50] P 8, T of D.M.
[51] T of P.
[52] P 8, T of D.M.
[53] P 8.
[54] P 8, T of D.M.
[55] P 8.

mechanisms for dealing with unwanted feelings.[56] D.M. diagnosed the Student with Dysthymia, Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Mathematics Disorder, and Borderline Intellectual Functioning.[57] The Student's cognitive limitations impact how much he can learn at a given time.[58] His attention to details and complexities is limited as is his speed of processing.[59] The Student does work his way out of his bad days relatively quickly.[60]

12. The Student's IEP was revised on February 22, 2012.[61] All of the goals in the IEP were essentially identical to the prior year's goals (indicating they were not met within a year), but for the math goals.[62] The math goals were revised to address secondary school math standards G.G.14 and G.G.22: 1) ". . . [Student] will solve simple triangle problems using the triangle angle sum property and/or the [Pythagorean] theorem. Study and understand more than one proof of this theorem in 4 out of 5 opportunities with 80% accuracy[,]" and 2) ". . .[Student] will find and use measures of perimeter, [circumferences], and area of common geometric figures such as parallelograms, trapezoids, circles, and triangles in 4 out of 5 opportunities with 80% accuracy."[63] There were no changes to the services documented on the IEP but for the replacement of classroom instruction (under transition services) with "[Student] will go online to download an application from a computer school or UDC and complete the application" at Wilson Senior High School for two minutes per day.[64] The Student's postsecondary goals were changed to just one goal concerning postsecondary

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[56] P 8.
[57] P 8.
[58] T of D.M.
[59] T of D.M.
[60] T of D.M.
[61] P 18.
[62] P 18.
[63] P 18.
[64] P 18.

education: "Upon graduation from high school, [Student] will attend a two year college of the University of the District of Columbia where he will complete a course in maintaining computers."[65]

13. The Student's IEP team met again just a month later, on March 16, 2012, to discuss the independent evaluation, the IEP, and school placement.[66] Behavioral support services were discussed to address the Student's emotional needs and the Student requested 60 minutes of counseling services per week and the Respondent advised that "it was protocol to limit the services to 45 minutes per week."[67] This service was never added to the IEP and was not provided.[68] The team also discussed the Student's educational placement and determined that a new placement, at Advanced PATH, would be implemented by the fourth advisory.[69] This placement never occurred because shortly after the team's determination, they were notified that Advanced PATH would not be accepting additional students.[70] The Respondent did not locate an alternative to Advanced PATH and the Student remains at Wilson Senior High School as of the time of hearing.[71] No IEP team meeting was convened by the Respondent to discuss this problem and possible alternatives to Advanced PATH, prior to the filing of the complaint.[72] The Student is increasingly frustrated an unable to appropriately progress at Wilson, failing classes.[73]

14. Advanced PATH was a program for students with IEPs who were older than the typical secondary school population and it enabled them to complete their coursework online at their

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[65] P 18.
[66] P 19.
[67] P 19, R 4. (P.P. testified at hearing that 45 minutes of behavioral support services would be provided to the Student, per week, from the time of the hearing forward.)
[68] P 18, T of P.P. (P.P. testified that she failed to ensure the IEP was updated following the meeting.)
[69] P 19, P 33, T of P.P, T of S.S., T of P.
[70] T of P.P., T of S.S., T of P, P 21.
[71] T of P.P., T of S.S., T of P, P 22, P 23. (P.P. testified there were no other options.)
[72] P 32, T of S.S., T of P, T of P.P.
[73] T of D.M., T of P.

own pace and take tests at a school building.[74] Specialized instruction and related services were provided through the program.[75]

15. The Student is currently attending Wilson Senior High School and five of his seven classes are special education classes outside of the general education setting, and two are regular education classes.[76] Specialized instruction is not provided in elective classes at Wilson.[77] The Student failed four of his seven classes first advisory of the 2012-2013 school year, including both regular education classes (Art and Spanish).[78]

16. The Student has been accepted at two different non-public special education day schools which can provide him with the special education services he requires, including remediation necessary to graduate: Kingsbury Center and High Road Academy.[79] Kingsbury is a school located in Washington, D.C.[80] There are three groups within Kingsbury Center: 1) tutoring; 2) psychological services, including behavioral support services and testing; and 3) a pre-K through 12 school for students with learning disabilities and related concerns such as autism and other health impairments.[81] All of the classrooms use a co-teaching model with a content-certified teacher and a special education teacher.[82] Classes are comprised of eight to ten students each.[83] Many related services are provided in-house and those that are not are contracted for.[84] Transition services, including assessments, are provided for students starting

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[74] T of P.P.
[75] T of P.P.
[76] T of P.P., P 28, P 29, P 30, P 31.
[77] T of P.P.
[78] T of P.
[79] P 36, P 37, T of T.S., T of M.G.
[80] P 37.
[81] T of M.G.
[82] T of M.G.
[83] T of M.G.
[84] T of M.G.

at age 14.[85] The cost of the program is governed by the District of Columbia and is set at $38,140 per year.[86] A Certificate of Approval has been provided to Kingsbury by the Office of the State Superintendent of Education (OSSE).[87]

17. High Road Academy serves approximately 67 students with disabilities, primarily with learning disabilities, in Washington, D.C.[88] High Road provides transition services focused on both college and vocational outcomes.[89] Students earn Carnegie Units toward graduation at the school.[90] Specialized instruction and related services, are provided at the school to all students.[91] Classes are taught by a content certified teacher, a special education teacher, and a teacher's aide.[92] There are up to eight students per class.[93] There is a school-wide positive behavioral support system in use at the school.[94] The cost of the school is $39,733 per year.[95]

18. If the Student had been provided with appropriate special education and related services since 2010, he would be functioning at least at the 8th grade level in all areas.[96] The IEP's current full-time special education placement is appropriate for the Student.[97] The Student requires remediation to get caught up in reading, writing, and mathematics.[98] The Petitioner believes he requires 100 hours of tutoring in reading, writing, and math, to bring him up to an eighth grade level.[99] However, this is based on looking back (30 minutes of service per week in all areas over 50 weeks per year for two years) as opposed to looking forward at what

[85] T of M.G.
[86] T of M.G.
[87] T of M.G.
[88] P 36, T of T.S.
[89] T of T.S.
[90] T of T.S.
[91] T of T.S.
[92] T of T.S.
[93] T of T.S.
[94] T of T.S.
[95] T of T.S.
[96] T of D.M.
[97] T of D.M.
[98] T of D.M., P 18.
[99] T of D.M.

would be necessary to put the Student in the place he would have been but for the denial of FAPE, and so is arbitrary or inaccurate.[100]

VI. CONCLUSIONS OF LAW

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

1. The burden of persuasion in a special education due process hearing is on the party seeking relief. Schaffer v. Weast, 546 U.S. 49 (2005), *See also* D.C. Mun. Regs. 5-E3030.14. "Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof." D.C. Mun. Regs. 5-E3030.14. The recognized standard is preponderance of the evidence. *See, e.g.,* N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008); Holdzclaw v. District of Columbia, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 34 C.F.R. § 300.516(c)(3).
2. Placement "refers to the provision of special education and related services rather than a specific classroom of specific school." 71 Fed. Reg. 46687 (August 14, 2006). Students must be educated with non-disabled peers to the maximum extent appropriate and special classes separate schooling, or other removals of children with disabilities may occur only if the mature or severity of the Student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2). Placement decisions must be:

> made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

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> (2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

Furthermore, the placement decision must be:

> determined at least annually;
> (2) Is based on the child's IEP; and
> (3) Is as close as possible to the child's home;
> (c) 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;
> (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
> (e) 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.

34 C.F.R. § 300.116. In the District of Columbia the IEP team makes the placement determination. D.C. Mun. Regs at § 5-E3001.1. (*See also,* 34 C.F.R. §§ 300.327 & 300.501(c)).

3. The IEP team determined the Student's placement would be outside of the general education setting for 27 hours per week (the entire instructional week) and, in March 2012, determined that the program at Advanced PATH would be appropriate to implement his IEP. Advanced PATH was not able to take the Student and the Respondent never found an appropriate placement that could implement the IEP.[101] The Student has not been provided specialized instruction outside of the general education setting for the entire school day at Wilson during the 2010-2011, 2011-2012 and 2012-13 school years. Thus, the Student's placement at Wilson has not been based on his IEP. Additionally, the IEP team specifically determined to remove the Student from Wilson starting the final advisory of the 2011-2012 school year. The Respondent failed to ensure this placement was made, thus failing to ensure not only that the placement was based on the IEP, but also failing to protect the Student from the harmful effect of remaining at Wilson the IEP team had determined must be avoided. The Student must be placed in accordance with his IEP and compensated for the failure to ensure he was

[101] The Respondent initially argued that the Student refused to attend Advanced PATH. However, the Respondent never presented any evidence to support this argument and did not advance it in summation.

properly placed which has resulted in being further behind in credits toward graduation than necessary.

4. A free appropriate public education (FAPE) for a child with a disability under the IDEA is defined as:

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

34 C.F.R. § 300.17. A "determination of whether a child received FAPE must be based on substantive grounds." 34 C.F.R. § 300.513(a)(1). "An IEP may not be reasonably calculated to provide benefits if, for example, a child's social behavior or academic performance has deteriorated under his current educational program, *see* Reid v. District of Columbia, 401 F.3d at 519-20; the nature and effects of the child's disability have not been adequately monitored, *see* Harris v. District of Columbia, 561 F. Supp. 2d at 68; or a particular service or environment not currently being offered to a child appears likely to resolve or at least ameliorate his educational difficulties. *See* Gellert v. District of Columbia Public Schools, 435 F. Supp. 2d 18, 25-27 (D.D.C. 2006)." Suggs v. District of Columbia, 679 F. Supp. 2d 43, 53 IDELR 321 ((D.D.C.2010). Involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children) is core to the IDEA's purpose. *See:* 34 C.F.R. §§ 300.39, 300.304, 300.305, 300.311, 300.320, 300.321, 300.324, 300.530, 300.704. "[A]n IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State's content standards." 71 Fed. Reg. 46662 (2006). "[T]he system itself monitors the educational progress of the child. Regular examinations are administered, grades are awarded, and yearly advancement to

higher grade levels is permitted for those children who attain an adequate knowledge of the course material. The grading and advancement system thus constitutes an important factor in determining educational benefit." *Board of Educ. v. Rowley*, 458 U.S. 176, 203 (1982).

5. Federal regulations at 34 C.F.R. § 300.320 lists the required contents of an IEP:

> (a)(1) A statement of the child's present levels of academic achievement and functional performance, including—
> (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
> (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
> (2)(i) A statement of measurable annual goals, including academic and functional goals designed to —
> (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
> (B) Meet each of the child's other educational needs that result from the child's disability;
> (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
> (3) A description of— (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
> (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
> (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child —
> (i) To advance appropriately toward attaining the annual goals;
> (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
> (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
> (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and
> (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—
> (A) The child cannot participate in the regular assessment; and
> (B) The particular alternate assessment selected is appropriate for the child; and
> (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
> (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include —
>
> (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
> (2) The transition services (including courses of study) needed to assist the child in reaching those goals.

Data must be collected on the child's strengths, preferences, and interests. 34 C.F.R. § 300.43(a)(2). A functional vocational evaluation must be considered, if appropriate. Id.

6. D.C. Mun. Regs at § 5-E2203.6 provides:

> A student with special needs who does not achieve a diploma, as set forth in § 2203.4 shall be eligible to receive a Certificate of Individual Educational Program (IEP) completion. The decision to pursue a program leading to an IEP Certificate of Completion shall be made by the IEP team including the parent(s) and where possible, the student. The decision shall be made no earlier than the 9th grade and shall be attached in writing to the student's Individualized Education Program (IEP). DCPS shall comply with the Individuals with Disabilities Act, 2004 (IDEA) as addressed in DCMR, Title V, Chapter 30, with regards to appropriate transition assessments.

7. The Petitioner did not show that the IEP revision of March 2011 required and lacked behavioral support services, tutoring, or speech and language services. There simply is no evidence in the record to show behavioral supports were necessary in March 2011 to enable the Student to be involved and make progress in the general education curriculum, or that they were necessary to progress toward the annual goals. Likewise, the Student was behind academically, and this requires intensive specialized instruction, which the IEP purported to provide (27 hours per week outside of the general education setting). This was not provided and was the reason for the failure to make sufficient progress to reach the reading and writing goals within a year. Tutoring could have been a viable option, but the Petitioner has not shown it was the necessary one. Finally, while the evidence shows the Student had speech and language needs in 2010, there is no evidence the Student still required speech and language services in March 2011. There also is no evidence why the Student stopped receiving the services. Given this, the best approach is to require a speech and language assessment to determine the Student's current needs, if any, in the area of speech and language.

8. The Petitioner has also not shown the IEP revision in February 2012 required speech and language services or tutoring services as related services, for the same reasons as the prior

IEP revision. However, the Petitioner has shown that the IEP team determined behavioral support services were necessary following review of the independent evaluation report, and never updated the IEP or provided the support services. Furthermore, the Respondent unilaterally limited the behavioral support service based on "protocol" and not based on the Student's needs. The Student's attitude toward school has not improved and he continues to fail classes. Thus, the Petitioner has shown a denial of FAPE as a result of the Respondent's failure to provide behavioral support services determined based on the Student's needs. This will be remedied in a supported environment and by an IEP team determination about what and how much specific behavioral support services, such as counseling, the Student will require to meet emotional/behavioral goals that will be formulated by the IEP team.

9. The IEP revisions for March 2011 and February 2012 reflected that the Student was to pursue a program leading to a certificate of completion, despite no such determination by the IEP team. At some point between these revisions this was corrected, even though the IEP never reflected it. The Petitioner has not shown any harm resulting from this procedural error. Harm suffered by the Student is attributed to other causes.

10. 34 C.F.R. § 300.503, Prior Written Notice, provides:

> (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency —
> (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
> (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
>
> (b) Content of notice. The notice required under paragraph (a) of this section must include —
> (1) A description of the action proposed or refused by the agency;
> (2) An explanation of why the agency proposes or refuses to take the action;
> (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
> (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
> (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
> (6) A description of other options that the IEP Team considered and the reasons why those options were

rejected; and
(7) A description of other factors that are relevant to the agency's proposal or refusal.

See also, D.C. Mun. Regs at §§ 5-E3024.1 & 5-E3025.1.

11. The IEP team had the authority to determine the Student's placement and did so in March 2012. The specific placement option was subsequently found to be unavailable and the team was not reconvened to determine a new placement based on the IEP and the needs of the Student. This was not a refusal for which prior written notice was required, but rather a failure to convene the team to make a new placement determination since a specific school had been discussed and identified by the team and was subsequently found to not be a viable option.

12. The IDEA "is violated when a school district deviates *materially* from a student's IEP." Wilson v. D.C., 770 F.Supp. 2d 270, 275 (D.D.C. 2011), *citing:* Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007) ("[A] *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP."); *accord* S.S. ex rel. Shank v. Howard Road Acad., 585 F. Supp. 2d 56, 68 (D.D.C. 2008); Catalan ex rel. E.C. v. District of Columbia, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), *aff'd sub nom.* E.C. v. District of Columbia, No. 07-7070 (D.C. Cir. Sept. 11, 2007). "[T]he materiality standard *does not require that the child suffer demonstrable educational harm* in order to prevail" on a failure-to-implement claim. Wilson, at 275 (emphasis in original), *citing*: Van Duyn, 502 F.3d at 822 (emphasis added); cf. MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 537 n.17 (4th Cir. 2002) (rejecting the argument that parents must show actual developmental regression before their child is entitled to ESY services under the IDEA). "Rather, courts applying the materiality

standard have focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the specific service that was withheld." Id., *See, e.g.*, Van Duyn, 502 F.3d at 822; S.S., 585 F. Supp. 2d at 65–68; Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115–16 (D.D.C. 2008); Catalan, 478 F. Supp. 2d at 76.

13. The Petitioner has alleged several components of the IEP were not implemented since the 2010-2011 school year: special education; related services, specifically behavioral support and speech and language services; and transition services. Despite discussing the nature of this issue at prehearing and at the start of the hearing, the Petitioner argued in closing that what she really was complaining about was that an *appropriate* IEP with speech and language services and behavioral support services, and appropriate transition services had not been implemented in the time frame specified. The complaint about the appropriateness of the IEP is addressed in Issues 2 and 3 herein. The Petitioner has shown that special education services were not provided in conformity with the IEP since the Student did not receive 27 hours of specialized instruction outside of the general education setting per week since the 2010-2011 school year. In fact, in at least one case the Student was required to repeat a regular education class three times, failing it every time. This failure to provide special education in conformity with the IEP is a material failure to implement the IEP and has resulted in harm to the Student because his is still at least a year or more away from graduation when he should have had the opportunity to graduate in the spring of 2012. It is also important to note that because the Student wishes to graduate with a diploma, he is not to be deprived of the specialized instruction and placement to which his IEP team determined he requires. The purpose of the special education services and placement is to enable the

Student to be involved in and progress in the general education curriculum and have the opportunity to graduate with a diploma, demonstrating he has learned the educational content required for such a distinction. The failure to provide special education in conformity with his IEP denied the Student a FAPE.

14. This hearing officer has broad discretion to grant relief appropriate to ensure the Student is provided a FAPE. *See* 34 C.F.R. § 300.516(c)(3), Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369 (1985). Compensatory education is an equitable remedy that may be provided as relief in disputes under the IDEA. Reid ex rel. Reid v. District of Columbia, 401 F.3rd 516, 523, (D.C. Cir. 2005), *citing* G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 308 (4th Cir. 2003), and Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 15-16 (1993). If, in the hearing officer's broad discretion, compensatory education is warranted, the "goal in awarding compensatory education should be 'to place disabled children in the same position they would have occupied but for the school district's violations of IDEA.'" Wilson, at p 9, *citing* Reid, 401 F.3d at 518, and Carter at 15-16. "Once a student has established a denial of the education guaranteed by the IDEA, the Court or the hearing officer must undertake 'a fact-specific exercise of discretion' designed to identify those services that will compensate the student for that denial." Id., *citing* Reid, 401 F.3d at 524; *see* Stanton ex rel. K.T. v. District of Columbia, 680 F. Supp. 2d 201, 207 (D.D.C. 2010); Phillips ex rel. T.P. v. District of Columbia, 736 F. Supp. 2d 240, 247 (D.D.C. 2010).

15. The Petitioner not only seeks compensatory education, but also prospective placement because the Respondent has not placed the Student in accordance with his IEP. When considering prospective nonpublic placement as a remedy, the following factors must be considered: a) the nature and severity of the Student's disability; b) the Student's specialized

educational needs; c) the link between those needs and the services offered by the private school; d) the reasonableness of the placement's cost; and e) the extent to which the placement represents the least restrictive environment. Branham v. District of Columbia, 427 F. 3d 7, 12, (D.C. Cir. 2005). "Because placement decisions implicate equitable considerations, moreover, courts may also consider the parties' conduct." Id., *citing* Reid v. District of Columbia, 401 F.3d 516, 524, (D.C. Cir. 2005).

16. While the presumption is that a child with a disability will be educated with his or her non-disabled peers, this presumption is qualified by the severity of a student's disability and the significance of his or her educational needs. *See* 34 C.F.R. § 300.114(a)(2). "Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.*

17. The Student is significantly behind on his path to graduate from high school with a diploma as a result of the denial of FAPE. Thus, an award compensatory in nature is appropriate. The Petitioner's request for 100 hours of tutoring in reading, writing, and math, is not supported by more than an arbitrary calculation. No evidence of how the requested services would put the Student in the place he would have been but for the violations was convincingly presented. The Student is also seeking prospective placement to in order to be consistent with the IEP. Given that the specific school the IEP team determined would be appropriate is no longer available, and the Respondent merely asserts Wilson is appropriate, despite not having been implementing the IEP as written and apparently not able to do so, the Petitioner has presented two alternative options for placement. If not for the necessity for compensatory

services, the Respondent could be required to implement the IEP as written at Wilson, which would require it to make some staffing and program changes there in order for the Student to both be receiving specialized instruction outside of the general education setting and earning credits toward graduation because elective courses would have to be offered with specialized instruction. The alternative schools presented by the Petitioner, however, already offer specialized instruction outside of the general education setting for the full day and week, credits toward graduation, and the ability and willingness to remediate the Student's deficit in demonstrating mastery of educational standards required for a diploma. Thus, both of these schools can provide a remedy both prospective and remedial in nature, and is appropriate in this case. The IEP team has already determined the Student's placement, so the least restrictive environment for the Student need not be reexamined here and the specific school need not be identified here. It is noted that the Student suffers from multiple conditions, including: a specific learning disability; borderline cognitive functioning; and emotional issues. Thus, he displays a significant level of disability which raises little doubt about the IEP team's placement determination, not to mention his need for academic remediation. The Respondent will be permitted to choose the location of service, from the two schools presented by the Petitioner, because it has not proposed a viable alternative. Programming for the Student will be revised following his enrollment in the new school, to address his transition to postsecondary outcomes, including the courses of study required to get to those outcomes, and such courses will be provided to the Student at public expense. The cost of both programs is comparable. No evidence challenging the cost of the programs was presented. Finally, because of the lack of evidence about the Student's speech and language needs and since neither side knows or could show why the Student was no longer receiving

speech and language services, it is appropriate to reassess the Student's speech and language needs to determine whether he continues to require any services in this area. (Such determination will be made by the IEP team and it is noted that because the Student is already eligible for special education and related services he need not meet the definition of speech or language impairment, under 34 C.F.R. § 300.8, in order to receive speech and language services. The team need only consider whether such services would address any speech and language deficits the Student currently has, if any.)

VII. DECISION

1. The Petitioner's current placement at Wilson Senior High School is not based on his IEP and the Respondent failed to follow the IEP team's instruction to change the Student's placement.
2. The Petitioner's IEP revision of March 2011 was reasonably calculated to enable the Student to be involved in and progress in the general education curriculum, despite that the IEP inaccurately reflected he was to receive a Certificate of Completion rather than a diploma.
3. The IEP revision of February 2012 was not reasonably calculated to enable the Student to be involved in and progress in the general education curriculum because it was not revised to reflect the team's determination that the Student required behavioral support services.
4. The Respondent did not fail to provide written notice of a refusal to change the Student's placement in the spring of 2012 because the IEP team, who had the responsibility to make the placement determination, did not refuse to change the Student's placement.
5. The Respondent denied the Student a FAPE when it failed to provide special education services in conformity with his IEP since the 2010-2011 school year because specialized

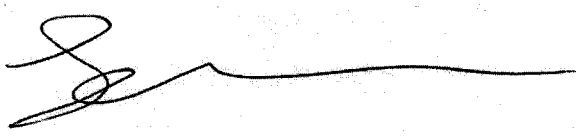
instruction was not provided outside of the general education setting for 27 hours per week as required.

VIII. ORDER

1. The Student's IEP must be implemented as written and a placement based on the IEP must be provided. Additionally, the Student is entitled to compensatory education for the failure to implement the IEP as written since the 2010-2011 school year which has resulted in a lack of credits to graduate and successive repetition of secondary grades. To appropriately address both of these violations and the harm to the Student, the Student will be placed at one of two possible special education day schools presented at hearing, both of which are similar and appropriate for the Student. The Respondent must choose the location of service from these two placement options, Kingsbury School and High Roads Academy.
2. The Student's placement must take effect no later than the first day of school at the new school following the winter break for the current school year.
3. In addition to the appropriate placement, the Respondent must ensure the school complies with the mandates of this HOD. The school must provide special education classes or tutoring, at public expense, to the Student based on the goal of providing the Student the opportunity to earn credits toward graduation with a diploma.
4. Because of the compensatory nature of the placement, the Respondent may not propose a change in placement until reviewing the IEP and placement near the end of the 2013-2014 school year, or immediately prior to the Student's possible graduation, whichever occurs earlier. This does not prevent the Respondent from selecting a new location of services if the originally selected school does not comply with the HOD or other requirements of the Respondent.

5. The Respondent will provide an assessment of the Student's speech and language needs to be completed no later than January 31, 2013, including the IEP team meeting to review the assessment report and determine whether the IEP must be revised to address speech and language.
6. At the IEP team meeting, the team must also discuss and determine the Student's then-current present levels of functional performance. This will be documented in the IEP and, if necessary, annual goal(s) will be developed to address the Student's social/emotional needs. Then the IEP team will determine and document what specific behavioral support services the Student will require, including the determinations and documentation required by 34 C.F.R. § 300.320(a). All services must be based on the Student's needs and not on the needs, protocols, policies, or practices of the school or the Respondent. The team will also revise the Student's transition plan to be understandable to anyone responsible for implementing it, as well as to the Student.

IT IS SO ORDERED.



Date: December 11, 2012

Jim Mortenson, Independent Hearing Officer

NOTICE OF RIGHT TO APPEAL

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