

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

PETITIONER, on behalf of STUDENT, ¹)	Date Issued: December 31, 2015
)	
Petitioners,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2015-0324
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	Hearing Dates: December 1 and 14, 2015
)	
Respondent.)	Office of Dispute Resolution Rooms 2006 and 2003 Washington, D.C.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.). In her due process complaint, Petitioner alleged that respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by not offering him appropriate Individualized Education Plans (IEP) beginning in October 2014 and by failing to conduct a comprehensive special education reevaluation prior to the parent’s request in October 2014.

¹ Personal identification information is provided in Appendix A.

Student, an AGE youth, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on October 1, 2015, named DCPS as respondent. The undersigned Hearing Officer was appointed on October 2, 2015. The parties met for a resolution session on October 15, 2015, but did not reach an agreement. The 45-day period for issuance of this Hearing Officer Determination began on November 2, 2015. On October 26, 2015, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing began before this Impartial Hearing Officer on December 1, 2015 at the Office of Dispute Resolution in Washington, D.C. Due to the unexpected unavailability of a witness for Petitioner, the hearing was reconvened on December 14, 2015. To accommodate the continued hearing date, the Chief Hearing Officer granted Petitioner's motion, opposed by DCPS, to extend the due date for this Hearing Officer Determination to December 31, 2015. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Petitioner testified and called EDUCATIONAL ADVOCATE 1, EDUCATION SERVICES PROVIDER, EDUCATIONAL ADVOCATE 2, and MARYLAND SCHOOL PSYCHOLOGIST as witnesses. DCPS called as witnesses SCHOOL SOCIAL WORKER and SPECIAL EDUCATION TEACHER. Petitioner's Exhibits P-3 through P-7, P-9 through P-36 and P-38 through P-40 were admitted into evidence, including Exhibit P-34 which was admitted over DCPS' objection. DCPS' objection to Exhibit P-8 was sustained. Exhibits P-1, P-2 and P-37 were withdrawn. DCPS' Exhibits R-1 through R-24 were admitted into evidence without objection. Exhibit R-25 was withdrawn.

Counsel for Petitioner made an opening statement. In lieu of making closing arguments, counsel were granted leave until December 22, 2015 to file post-hearing written argument. Counsel for both parties filed written closings.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the October 26, 2015 Prehearing Order:

1. Whether DCPS denied Student a FAPE by failing to conduct a comprehensive reevaluation prior to a request from the parent in October 2014 and
2. Whether DCPS denied Student a FAPE by failing to offer him appropriate IEPs on October 21, 2014, January 30, 2015 and July 29, 2015 that provided sufficient hours of Specialized Instruction and Behavioral Support Services and a suitable educational placement.

For relief, Petitioner requests that the Hearing Officer order DCPS to ensure that Student's IEP team is convened to revise his IEP to provide for at least 20 hours per week of Specialized Instruction outside general education and one hour per week of Behavioral Support Services in a suitable placement/location of services and to reimburse Mother for tutoring costs for Student. In addition, Petitioner seeks an award of compensatory education for the denials of FAPE alleged in the due process complaint.

FINDINGS OF FACT

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

1. Student, an AGE youth, resides with Mother in the District of Columbia. Testimony of Mother. Student is eligible for special education and related services under the primary disability classification Specific Learning Disability (SLD). Exhibit P-23.
2. Student has attended CITY PUBLIC SCHOOL since entering 1st Grade. For the 2015-2016 school year, he is in GRADE. Testimony of Mother.
3. Student was first evaluated for special education eligibility as a first grader at City Public School. The DCPS examiner reported then that Student's general cognitive ability was in the Average range and that he exhibited deficits in the areas of short-term auditory memory, psycho-motor speed, written language, reading and math. The examiner recommended that Student met eligibility criteria for special education services as a student with an SLD. Exhibit P-33. On [REDACTED], Student was determined eligible for special education and related services. Exhibit R-19.
4. On the Conner's Teacher's Rating Scales obtained in October 2011, teachers' responses indicated Student was in the Very High to High Range for the Oppositional category, in the Moderate to High Range for the Cognitive Problems/Inattention category, and in the High Range for the Hyperactivity category. Student was identified as "At-Risk" for Attention Deficit-Hyperactivity Disorder (ADHD). Exhibit P-19.
5. On an educational evaluation administered in December 2011, using the Woodcock Johnson III Tests of Achievement (WJ-III ACH), Student scored High Average on Math Calculation Skills, Average on Broad Math, Low to Low Average on Oral Language, Very Low to Low on Written Expression, Very Low to Low on Broad Written Language, and Very Low on Broad Reading. His fluency with reading tasks was

negligible. The examiner summarized that Student's English oral language skills were Low Average when compared to others at his age level. His fluency with academic tasks was very low. His academic skills and his ability to apply those skills were both within the Low Average range. Student's performance was High Average in math calculation skills, Average in mathematics, Low in written expression and Very Low in broad reading and written language. Exhibit P-32.

6. Student's was reevaluated for special education eligibility on January 31, 2012. His continued eligibility under the SLD disability classification was confirmed. Exhibit R-19.

7. Student's City Public School IEP, as revised on May 1, 2013, identified Mathematics, Reading, Written Expression and Emotional, Social and Behavioral Development as areas of concern. The May 1, 2013 IEP provided Student 5 hours per week of Specialized Instruction in the general education setting and 30 minutes per week of Behavioral Support Services outside general education. Exhibit P-28.

8. Student's IEP was revised on December 4, 2013. The December 4, 2013 IEP increased Student's Specialized Instruction to 7.5 hours per week in the general education setting and changed his Behavioral Support Services to 2 hours per month. Exhibit P-27.

9. At the end of the 2013-2014 school year, Student was reported to be Progressing on all of his IEP annual goals. Exhibit P-14.

10. Student's IEP team reconvened on October 21, 2014. The purpose of the meeting was to review and revise Student's IEP and to review data and make assessment decisions to begin Student's triennial reevaluation. Special Education Teacher reviewed Student's academic present levels of performance for the IEP team. She reported that

math was a relative strength for Student, that in reading, Student's score on the DC Comprehensive Assessment System (DC CAS) had improved and that he had met his Scholastic Reading Inventory (SRI) goal for the preceding school year, and that in writing, Student was able to spell 5 words correctly, complete a simple expository paragraph, showed the beginnings of writing organization and utilized proper punctuation and capitalization. For Emotional/Social Development, School Social Worker reported that Student's ADHD required prompting and reinforcement to keep him on task. She noted that her main concern for the school year was Student's being influenced by peers. Upon the recommendation of Special Education Teacher, the IEP team decided to increase Student's Specialized Instruction to 10.5 hours per week, including 7.5 hours outside general education. His Behavioral Support Services were left at 2 hours per month. Mother stated that she did not have any concerns about the revised IEP, but would confer with her attorney before agreeing to the IEP. Exhibits R-5, P-25.

11. The October 21, 2014 IEP team decided that Student should have an updated comprehensive psychological evaluation, to include an educational evaluation, to determine whether Student continued to be a student with an SLD or whether another disability classification was more appropriate. Exhibit R-5.

12. A DCPS school psychologist conducted a comprehensive psychological reevaluation of Student on November 12, 2014. In cognitive testing, Student scored in the Average Range. Compared to others at his grade level, Student's academic skills and his ability to apply those skills tested in the low range. His fluency with academic tasks tested in the Very Low range. His standard scores were Low Average for Mathematics, Low for Broad Written Language, Written Expression and Brief Writing and Very Low

for Broad Reading and Brief Reading. Student's results on the Conner's Rating Scales suggested High Average to Very Elevated concerns in Inattention, Hyperactivity/ Impulsivity, Learning Problems and Executive Function. The evaluator stated that Student met IDEA eligibility criteria for classification as a Student with an Other Health Impairment (OHI) disability. Exhibit-P-30.

13. At the end of the second term, halfway through the 2014-2015 school year, Student's grades in core subjects were D in English, C in Mathematics, and B- in Science. He received a B in Reading Support. Exhibit P-12. Student was reported to be Progressing toward annual goals for mathematics (one goal mastered), reading and written expression. For Emotional, Social and Behavioral Development, Student was reported to be Progressing toward improving his coping skills goal, and to have made no progress in the goal to improve on-task behaviors. The goal to improve his self-esteem had just been introduced. Exhibit R-10.

14. On January 26, 2015, Student's City Public School MDT team changed his primary disability classification from SLD to OHI (Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder). Exhibit P-24.

15. On January 30, 2015, Student's IEP team reconvened to review and revise Student's IEP using data obtained in the November 2014 comprehensive psychological evaluation. Special Education Teacher reported to the team that based upon the iReady math data, Student was on a 5th Grade level for math. He was at a 2.4 Grade equivalence for Broad Reading. For Written Expression, there was a huge gain in his writing ability where spelling was a major concern. School Social Worker stated that in her counseling sessions, Student was engaged and was able to stay focused. Special Education Teacher recommended increasing Student's Specialized Instruction from 10.5 hours per week to

12 hours per week, including 10 hours outside general education. Educational Advocate 2 stated that Student needed at least 20 hours per week of Specialized Instruction outside general education. Special Education Teacher countered that pulling Student out of the general education classroom for so many hours would be emotionally draining for him. The team decided to increase Student's Specialized Instruction to 15 hours per week including 12 hours outside general education. Behavioral Support Services were left at 2 hours per month. Educational Advocate stated that Mother would sign the IEP with those services. Exhibits R-4, P-24.

16. Student's grades for the final term of the 2014-2015 school year in core subjects were C in English, D in Mathematics and C in World History. He received a C in Reading Support. Exhibit R-9. Student was reported to be Progressing toward his updated annual goals for Mathematics, Reading and Written Expression. For Emotional, Social and Behavioral Development, Student was reported to be Progressing toward all of his annual goals. Exhibit R-10.

17. In May and June 2015, PSYCHOLOGY ASSOCIATE conducted an Independent Educational Evaluation (IEE) comprehensive psychological evaluation of Student. He administered tests of Student's cognitive functioning, academic achievement and social-emotional behavioral status. In the summary of his findings, Psychology Associate reported that Student's cognitive abilities all fell within the Average range. Academic achievement testing revealed significant weaknesses in the areas of Basic Reading Skills, Reading Fluency and Spelling. Results of behavioral and executive functioning ratings indicated that Student had many inattentive, hyperactive, and impulsive behaviors across settings, as well as executive functioning deficits. Psychology Associate diagnosed Student with ADHD - Combined presentation,

Moderate; SLD with impairment in reading, Moderate and SLD with impairment in written expression, Mild. Exhibit P-29.

18. On July 29, 2015, a DCPS summer IEP team met to review Psychology Associate's IEE psychological evaluation of Student. On the recommendation of the DCPS school psychologist, the IEP team changed Student's primary disability back to SLD. The team did not change the Specialized Instruction or Behavioral Support hours provided in Student's January 30, 2015 IEP. Exhibits R-3, P-16, P-23.

19. Student was promoted to Grade at the end of the 2014-2015 school year. Exhibit P-12.

20. On October 1, 2015, Petitioner filed her request for a due process hearing in this case. A resolution session meeting was convened on October 15, 2015. At that meeting, Mother's primary concern was Student's reading ability and she wanted more support for his reading. DCPS proposed to amend Student's July 29, 2015 IEP to specify that his 12 hours per week of Specialized Instruction outside general education would be reading services. DCPS did not agree to increase Student's Specialized Instruction or Behavioral Support Services. No resolution agreement was reached. Testimony of Special Education Teacher, Exhibits R-1, R-2. Mother did not disagree with DCPS' proposal to focus more on Student's reading and not so much on mathematics. Testimony of Mother.

21. At the beginning of the 2013-2014 school year, Student was reading basically at the kindergarten level. By the 2014-2015 school year, he was reading roughly at the 2nd Grade level. As of November 2015, he is reading at the 3rd grade level. In the current school year, Student is pulled out of the general education class for one period, 45 minutes, per day to work on reading. He is also provided 90 minutes per day

of System 44 Reading Intervention program instruction in the regular education classroom. Testimony of Special Education Teacher.

22. Mathematics is a strength for Student. Student is making progress on his IEP mathematics goals. He is instructed in mathematics in the general education classroom. Testimony of Special Education Teacher.

23. In January 2015, a “Behavior Point Sheet” was implemented, based upon a functional behavioral assessment (FBA) conducted on Student. There was some progress in his behaviors and he had no more behavior incidents for the school year. Testimony of School Social Worker. In the current, 2015-2016, school year, Student’s behavior is much better than in the past. He has only been suspended once -- for skipping a last period class. Testimony of Special Education Teacher. Mother has also seen some improvement in Student’s behavior in school. Testimony of Mother.

24. Student benefits socially and academically, in mathematics and social studies, by being placed with his nondisabled peers. Testimony of Special Education Teacher.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and argument and legal memoranda of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

ANALYSIS

A.

Did DCPS deny Student a FAPE by failing to conduct a comprehensive reevaluation prior to a request from the parent in October 2014?

Student was reevaluated for continued special education eligibility on January 31, 2012. At that time, Student's MDT team relied upon a March 3, 2009 psycho-educational evaluation and a December 14, 2011 academic achievement test, along with other education records and data, to determine that Student continued to be eligible for special education and related services. At an MDT meeting on October 21, 2014, the team decided to obtain a comprehensive psychological reevaluation of Student because he had not had a formal psychological assessment since 2009. Mother contends that DCPS denied Student a FAPE by not conducted a comprehensive psychological reevaluation before the October 2014 meeting. DCPS responds that it fully complied with the IDEA reevaluation requirements.

The IDEA requires that a reevaluation of each student with a disability be conducted at least once every three years and sooner, if the student's parent or teacher requests a reevaluation or if the LEA determines that the needs of the student warrant a reevaluation. *See* 34 CFR § 300.303. Based on the eligibility team's review of the existing data, and input from the student's parent, the eligibility group must decide, on a case-by-case basis, depending on the needs of the student and the information available regarding the student, what additional data, if any, are needed to determine whether the student continues to be a student with a disability, and the educational needs of the student. *See Department of Education, Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46641, 46658 (August 14, 2006). Student's

regular triennial reevaluation was due by January 2015. (The reevaluation was completed on January 26, 2015.) Education Services Provider opined that the 2009 psychological evaluation should have been updated sooner than November 2014 in order to see if Student's disability continued or if any other disabilities were having an impact on Student's performance. However, there was no evidence that prior to October 2014, Student's IEP team needed an updated psychological evaluation to determine Student's educational needs. Nor was there any evidence that before the October 21, 2014 IEP meeting, Mother or a teacher requested that Student be reevaluated. I find, therefore, that Petitioner did not meet her burden of proof that DCPS denied Student a FAPE by not conducting a comprehensive reevaluation prior to the October 2014 IEP meeting.

B.

Did DCPS deny Student a FAPE by failing to offer him appropriate IEPs on October 21, 2014, January 30, 2015 and July 29, 2015 that provided sufficient hours of Specialized Instruction and Behavioral Support Services and a suitable educational placement?

Petitioner contends that Student's IEPs since October 2014 provided him inadequate Specialized Instruction and Behavioral Support Services and an unsuitable educational placement. DCPS responds that the IEPs were appropriate and provided Student the "basic floor of opportunity" required by the IDEA.

To determine whether an IEP is adequate to provide a FAPE, a hearing officer must determine "[f]irst, has the [District] complied with the procedures set forth in the [IDEA]? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the [District] has complied with the obligations

imposed by Congress and the courts can require no more.” *A.M. v. District of Columbia*, 933 F. Supp. 2d 193, 203-04 (D.D.C. 2013), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (*Rowley*). Petitioner has not raised an IDEA procedural issue with respect to the development of Student’s IEPs. Therefore, I turn to the second prong of the *Rowley* inquiry: Were DCPS’ October 21, 2014 and subsequent IEPs reasonably calculated to enable Student to receive educational benefits?

In *K.S. v. District of Columbia*, 962 F.Supp.2d 216 (D.D.C.2013), U.S. District Judge Boasberg reviewed case law precedents on the requirements for an appropriate IEP:

The IEP must be formulated in accordance with the terms of IDEA and “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Rowley*, 458 U.S. at 204, 102 S.Ct. 3034. IDEA also requires that children with disabilities be placed in the “least restrictive environment” so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate. See [20 U.S.C.] § 1412(a)(5)(A). . . . IDEA provides a “basic floor of opportunity” for students, *Rowley*, 458 U.S. at 201, 102 S.Ct. 3034, rather than “a potential-maximizing education.” *Id.* at 197 n. 21, 102 S.Ct. 3034; see also *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C.Cir.1991) (inquiry is not whether another placement may be “ more appropriate or better able to serve the child”) (emphasis in original); *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir.2009) (IDEA does not guarantee “the best possible education, nor one that will maximize the student’s educational potential”; instead, it requires only that the benefit “cannot be a mere modicum or de minimis; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement.”) (quoting *Cypress–Fairbanks Indep. Sch. Dist. v. Michael F. ex rel. Barry F.*, 118 F.3d 245, 248 (5th Cir.1997)). Consistent with this framework, “[t]he question is not whether there was more that could be done, but only whether there was more that had to be done under the governing statute.” *Houston Indep. Sch. Dist.*, 582 F.3d at 590.

K.S., 962 F.Supp.2d at 200-221. “[B]ecause the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student.” *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 66-67

(D.D.C. 2008) (quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir. 2008) (internal quotation marks and citation omitted). As explained below, I agree with DCPS that each of the IEPs at issue in this case was reasonably calculated to enable Student to receive educational benefits.

October 21, 2014 IEP

Before the October 21, 2014 IEP meeting, Student's IEP had last been revised on December 4, 2013. The December 4, 2013 IEP provided Student 7.5 hours per week of Specialized Instruction, all in the general education setting, and 2 hours per month Behavioral Support Services. At the end of the 2013-2014 school year, Student was reported to be Progressing on all of his IEP annual goals. At the IEP meeting, Special Education Teacher reported that math was a relative strength for Student, that in reading, Student's score on the DC CAS had improved, that he had met his SRI reading goal for the preceding school year, and that he showed improvement in writing. School Social Worker reported that Student's ADHD required prompting and reinforcement to keep him on task. She noted that her main concern for the school year was Student's being influenced by peers. Upon the recommendation of Special Education Teacher, the IEP team decided to increase Student's Specialized Instruction to 10.5 hours per week, including 7.5 hours outside general education. His Behavioral Support Services were left at 2 hours per month. Mother told the IEP team that she did not have any concerns about the revised IEP.

At the due process hearing, Education Services Provider testified that she would have recommended 20 hours of specialized instruction for Student rather than the 10.5 hours decided by the IEP team. However Education Services Provider offered no justification for why Student required 20 hours of Specialized Instruction in the October

21, 2014 IEP. Special Education Teacher testified that she recommended 7.5 hours of Specialized Instruction outside general education in order to enable Student to be able to access the general education curriculum, but that she was concerned that more pull-out hours could harm Student's self-confidence. Special Education Teacher has taught Student for the last three school years and Mother testified that Student really worked well with this teacher. I found Special Education Teacher's testimony more credible than that of Education Services Provider who never taught Student or attended any of his IEP meetings. I conclude that Petitioner has not established that at the time the October 21, 2014 IEP was developed, it was not reasonably calculated provide Student educational benefits. *See S.S., supra.*

January 30, 2015 IEP

At the end of the second term of the 2014-2015 school year, Student's grades in core subjects were D in English, C in Mathematics, and B- in Science. He received a B in Reading Support. Student was reported to be Progressing toward most of the academic and behavioral annual goals adopted at the October 21, 2014 IEP meeting. On January 30, 2015, Student's IEP team reconvened to review and revise his IEP using data obtained in the November 2014 DCPS comprehensive psychological evaluation. The team decided to increase Student's Specialized Instruction to 15 hours per week including 12 hours outside general education. Behavioral Support Services were left at 2 hours per month. Special Education Teacher had recommended increasing Student's Specialized Instruction from 10.5 hours per week to 12 hours per week, including 10 hours outside general education. Although the parent's educational advocate stated at the meeting that Student needed at least 20 hours per week of Specialized Instruction outside general education, Special Education Teacher told the team that pulling Student

out of the general education classroom for so many hours would be emotionally draining for him. At the due process hearing, Special Education Teacher explained that she opposed pulling Student out of general education for more hours because, with accommodations, he was able to access most of the curriculum in the regular education classroom and because Student benefitted socially and academically being in the classroom with his nondisabled peers. As discussed above, I found Special Education Teacher to be a very credible witness. Moreover, Student was already making academic progress with the lower level of services provided in the October 21, 2014 IEP. *See, e.g., Smith v. District of Columbia*, 846 F.Supp.2d 197, 201 (D.D.C. 2012). (Academic progress is one of the “yardsticks” used by courts to assess the validity and sufficiency of an IEP.) Further, as Judge Boasberg noted in *K.S., supra*, the IDEA requires that students with disabilities be educated in an integrated setting with students who do not have disabilities to the maximum extent appropriate. I find that Petitioner has not established that the January 30, 2015 IEP, which increased Student’s Specialized Instruction to 15 hours per week, was not reasonably calculated to provide Student educational benefits.

July 29, 2015 IEP

Student’s grades for the final term of the 2014-2015 school year in core subjects were C in English, D in Mathematics and C in World History. He received C in Reading Support. Student was reported to be progressing toward his January 30, 2015 IEP annual goals for mathematics, reading and written expression. His behavior had improved since a behavior point sheet had been implemented in January 2015. On July 29, 2015, a DCPS summer IEP team met to review Psychology Associate’s IEE psychological evaluation of Student. On the recommendation of the DCPS school

psychologist, the IEP team changed Student's primary disability back to SLD. The team did not change the Specialized Instruction or Behavioral Support Services hours provided in Student's January 30, 2015 IEP. Since Student had made adequate progress under the January 30, 2015 IEP's Specialized Instruction and Behavioral Support Services, I find that the IEP team's decision to continue the same level of services in the July 29, 2015 IEP was reasonably calculated for Student to receive educational benefits.

Summary

As Judge Boasberg explained in the *K.S.* decision, *supra*, the IDEA provides a "basic floor of opportunity" for students, rather than "a potential-maximizing education." *Id.* Under the IEPs at issue in this case, although Student's achievement remains substantially below grade level, especially in Reading, he has made steady academic progress over the 2014-2015 and current school years. His in-school behavior has likewise markedly improved. I conclude that Mother has not met her burden of proof to establish that the IEPs and educational placement offered by DCPS for the 2014-2015 and current school years were inappropriate or not reasonably calculated for Student to receive educational benefits or that Student has been denied a FAPE.

ORDER

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

- All relief requested by the Petitioner herein is denied.

Date: December 31, 2015

s/ Peter B. Vaden
Peter B. Vaden, 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 U.S.C. § 1415(I).

cc: Counsel of Record
Office of Dispute Resolution
Chief Hearing Officer
OSSE - SPED
DCPS Resolution Team