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Office of the State Superintendent of Education
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Confidential

<p>Parent on Behalf of Student,</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”)</p> <p>Respondent.</p> <p>Case # 2017-0237</p> <p>Date Issued: February 6, 2018</p>	<p>CORRECTED HEARING OFFICER’S DETERMINATION ¹</p> <p>Hearing Dates: December 11, 2017 December 14, 2017 January 19, 2018 January 26, 2018</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ This “Corrected” HOD is issued to only make typographical and/or grammatical changes and/or to remove personally identifiable information; no substantive changes have been made. The HOD issuance date, February 6, 2018, remains unchanged, as does the applicable appeal date. Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on December 11, 2017, and December 14, 2017, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution (“ODR”) 810 First Street, N.E., Washington, D.C. 20003, in Hearing Room 2006 and Hearing Room 2004, and on January 19, 2018, and January 26, 2018, at OSSE ODR at 1050 First Street, N.E., Washington, D.C. 20003.

BACKGROUND AND PROCEDURAL HISTORY:

The student or (“Student”) is age _____ and in grade _____.² Student resides with Student’s parent in the District of Columbia and is a child with a disability pursuant to IDEA with a disability classification of multiple disabilities (“MD”) including specific learning disability (“SLD”) and other health impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”). Student attends a non-public special education separate school (“School A”). District of Columbia Public Schools (“DCPS”) is Student’s local educational agency (“LEA”).

Student’s mother (“Petitioner”) filed the current due process complaint on August 30, 2017, and filed an amended complaint on September 25, 2017, alleging DCPS denied Student a free appropriate public education (“FAPE”) by failing to, inter alia, provide Student an appropriate individualized educational program (“IEP”) consistent with the directives of a Hearing Officer’s Determination (“HOD”) issued on May 16, 2017, by another Hearing Officer based on a due process complaint Petitioner filed against DCPS on February 24, 2017.

Relief Sought:

Petitioner seeks as relief that the undersigned Hearing Officer find that DCPS denied Student a FAPE, and order DCPS to reimburse Petitioner for all costs associated with Student’s placement, including tuition, transportation, related services and any additional costs due to unilateral placement from August 28, 2017, that Petitioner has paid or owes; that Student’s placement at School A be maintained through the end of the current school year; that DCPS revise Student’s IEP within 15-days of the issuance of the HOD in this matter, to wit: revision of special education hours for classes and all electives outside of the general education setting, a description of the student’s least restrictive environment (“LRE”), an increase in speech and language services to 360 minutes per month, and a reference to an iPad and related software as assistive technology (“AT”) needed by Student. Petitioner also seeks an award of compensatory education.

² The student’s current age and grade are indicated in Appendix B.

LEA Response to the Complaint:

DCPS filed a timely response to the complaint on September 27, 2017. DCPS denies that there has been any failure to provide Student with a FAPE. DCPS asserts that on or about June 23, 2017, DCPS finalized an IEP for Student with appropriate goals and accommodations. DCPS asserts that Petitioner’s counsel interfered when DCPS attempted to describe the proposed program and refused to cooperate during the IEP meeting. DCPS also asserts it had to wait for the start of the school year to perform an AT assessment and there was no denial of a FAPE as a result. Finally, DCPS asserts that a FAPE was made available to Student and Student does not require placement in a self-contained private school.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on October 25, 2017, and ended [and the Hearing Officer’s Determination (“HOD”) was originally due] on December 9, 2017. The parties were not available for the original hearing dates proposed and Petitioner filed an unopposed motion to extend the HOD due date to allow for the requested hearing dates. The motion was granted and the HOD was due on December 25, 2017.

The undersigned Impartial Hearing Officer (“Hearing Officer”) convened a pre-hearing conference (“PHC”) on the complaint on October 17, 2017, and issued a pre-hearing order (“PHO”) on October 20, 2017, outlining, inter alia, the issues to be adjudicated.

The hearing was convened on December 11, 2017, and December 14, 2017. The hearing did not conclude on December 14, 2017, and was continued until January 4, 2018. Respondent filed an unopposed motion to extend the HOD due date to accommodate the additional day of hearing. Because of inclement weather and DCPS schools closing, the hearing did not proceed on January 4, 2018, and was continued until January 19, 2018.

Respondent filed a motion to extend the HOD due date to allow for the new hearing date. The hearing was held on January 19, 2018. Petitioner requested that the additional day of hearing be scheduled to allow for closing arguments. Petitioner filed an unopposed motion to extend the HOD due date to allow for closing arguments. The parties made oral closing arguments telephonically on January 26, 2018. Petitioner’s counsel filed an unopposed motion to extend the HOD due date to allow for closing arguments and the HOD is now due February 6, 2018.

ISSUES:³

The issues adjudicated are:

³ The Hearing Officer restated the issues at the outset of the hearing and the parties agreed that these were the issues to be adjudicated except as noted.

1. Whether the LEA denied the student a FAPE by failing to develop an appropriate IEP and provide an appropriate placement on June 14, 2017, because the IEP:
 - (a) Reduced the hours of specialized instruction and does not provide sufficient hours of specialized instruction outside the general education setting for electives especially those that are “reading intensive” or “academically challenging” or “content laden”;⁴
 - (b) Does not provide information specifically indicating that the student requires special education support outside the general education setting for at least all classes that are “reading intensive” or “academically challenging”;
 - (c) Does not provide appropriate assistive technology and related accommodations;⁵
 - (d) Does not provide an appropriate amount of speech and language services to meet the speech language goals in the IEP;
2. Whether the LEA denied the student a FAPE by failing to provide an appropriate placement for SY 2017-2018.⁶
3. Whether the LEA denied the student a FAPE by failing to complete an assistive technology evaluation since June 14, 2017.⁷

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties’ disclosures (Petitioner’s Exhibits 1 through 36 and Respondent’s Exhibits 1 through 19) that were admitted into the record and are listed in Appendix A.⁸ Witnesses’ identifying information is listed in Appendix B.⁹

⁴ DCPS reduced Student’s specialized instruction from the previous IEP from 22 hours per week outside general education to 20 hours per week outside general education. Petitioner alleges the IEP should provide for either 25.5 or 26.5 hours of specialized instruction per week outside general education if the IEP is to be implemented at a DCPS school.

⁵ Petitioner alleges Student’s IEP should specifically include a laptop and/or an iPad.

⁶ Petitioner alleges there was no proper offer prior to the school year - the IEP and program at School B.

⁷ Petitioner alleges that DCPS claimed at the June 14, 2017, IEP meeting that an assistive technology evaluation had to be completed and reviewed by DCPS before DCPS could include assistive technology in Student’s IEP and an evaluation has yet to be completed.

⁸ Any items disclosed and not admitted or admitted for limited purposes were noted on the record and summarized in Appendix A.

⁹ Petitioner presented four witnesses: Petitioner, an administrator from School A, a speech language pathologist from School A, and Petitioner’s educational advocate employed by the law firm representing Petitioner. Respondent presented five witnesses: A DCPS compliance specialist, a DCPS counselor, A DCPS inclusive programs manager, a DCPS special education coordinator, and DCPS speech language pathologist.

SUMMARY OF DECISION:

Respondent held the burden of persuasion on issue #1 and #2 after a Petitioner established a prima facie case on those issues. Petitioner established a prima facie case with regard to issue #1 and #2. Respondent did not sustain the burden of persuasion by a preponderance of the evidence on issue #1 and #2. Petitioner held the burden of persuasion on issue #3. Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on issue #3.

The Hearing Officer grants, in the order below, Petitioner's request that Student's IEP be amended to specifically state that Student should be provided specialized instruction outside general education for all classes that are reading intensive and academically challenging. The Hearing Officer did not grant Petitioner's request to increase Student's speech language services and did not grant Petitioner the requested compensatory education.

The Hearing Officer directs DCPS to conduct an AT evaluation once Petitioner has granted consent and directs DCPS to reimburse Petitioner's documented payments to School A for Student's tuition up to \$5,000 and for private transportation services up to \$900. The Hearing Officer did not grant Petitioner reimbursement for any speech language services.

FINDINGS OF FACT:¹⁰

1. Student resides with Petitioner in the District of Columbia and is a child with a disability pursuant to IDEA with a disability classification of MD including SLD and OHI due to ADHD. Student attends School A, a non-public special education separate school, where Student began attending at the start of school year ("SY") 2016-2017. Prior to attending School A, the student attended another non-public special education separate school. (Petitioner's testimony, Petitioner's Exhibit 2-3, Respondent's Exhibit 15-1)
2. On March 1, 2016, Student received an initial IEP. Pursuant to the March 1, 2016, IEP Student was required to receive 22 hours per week of specialized instruction outside of the general education setting, due to significant deficits in reading, math, and written expression. Student also received 120 minutes per month of behavior support services outside the general education setting. The IEP included other classroom aids and services, which included but was not limited to, graphic organizers, calculators, manipulatives, repetition of directions, rephrasing, breaks, small group testing, separate setting for testing and spellcheck software. (Petitioner's Exhibit 16-1, 16-13)
3. Student's March 1, 2016, IEP did not provide extended school year ("ESY") services. Student was provided transportation services because Student's neighborhood school could not implement the IEP. (Petitioner's Exhibit 16-16)

¹⁰ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within a parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit (or the page number of the entire disclosure document) from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

4. DCPS issued a Prior Written Notice (“PWN”) on March 4, 2016, in which it detailed the fact that it had considered Petitioner’s request for the non-public school where Petitioner had unilaterally placed Student as a possible placement for Student, but had determined the school was too restrictive because Student’s data did not suggest the need for such a placement. (Respondent’s Exhibit 8-1)
5. On March 10, 2016, DCPS issued a Location of Service (“LOS”) letter advising that Student would be attending a DCPS middle school. (Petitioner’s Exhibit 22-1)
6. Petitioner obtained a scholarship offer from School A and unilaterally placed Student at School A at the beginning of school year (“SY”) 2016- 2017 and sought reimbursement from DCPS by filing a due process complaint. (Petitioner’s Exhibit 2-1, 2-10)
7. On February 24, 2017, Petitioner filed her due process complaint alleging, among other things, that DCPS failed to provide Student with an appropriate IEP on March 1, 2016, because, the IEP lacked sufficient hours and type of special education services, DCPS unilaterally determined the hours and delegated the placement decision to a team that did not involve the parent or those knowledgeable about the student, and the IEP failed to include information about the student’s placement and least restrictive environment (“LRE”). (Petitioner’s Exhibit 2-3)
8. On May 16, 2017, an Impartial Hearing Officer (“IHO”) issued an HOD in which the IHO found that DCPS had afforded Petitioner and Petitioner’s advocate the opportunity to participate in Student’s IEP meeting. The IHO determined the entire IEP team determined the hours of service contained in Student’s IEP. Although Petitioner was not able to secure a full-time IEP in a separate day school, Petitioner was able to persuade DCPS to change Student’s setting for services from one that was primarily general education, to one with 22-hours per week outside general education. (Petitioner’s Exhibit 2-17)
9. Petitioner claimed that due to the severity of Student’s learning disorder, all Student’s instruction should be a special education setting and the Student required special education support during lunch. The IHO discussed the testimony of the expert witnesses offered by Petitioner and DCPS. The IHO found the testimony of Petitioner’s experts to be credible in that Student required specialized instruction in elective classes as well as in “core” academic courses. The IHO incorporated the testimony of the DCPS psychologist who “opined that general education classes would be appropriate for Student for electives that are not academically demanding”, however, “Student would need specialized instruction for classes that are content-laden and reading intensive”. The IHO found that Student does not require an outside of general education setting for lunch. (Petitioner’s Exhibit 2-20, 2-21)
10. The IHO further found that Student’s March 1, 2016, IEP did not “indicate which classes Student would be able to attend in the regular education setting or specify that those classes would be academically demanding.” The IHO went on to declare, “[i]f the IEP

team's intent was for Student to receive Specialized Instruction for all classes which were academically demanding, that should have been stated in the IEP." The IHO found in favor of Petitioner and concluded that Student required specialized instruction support outside general education for at least all classes that are "reading intensive or academically challenging." The IHO concluded, therefore, that DCPS had not met its burden of demonstrating that Student's IEP, which did not specify that Student would receive specialized instruction for all such classes, was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. (Petitioner's Exhibit 2-19, 2-20, 2-21, 2-22)

11. The HOD ordered DCPS to reimburse Petitioner for her actual costs for Student's tuition and related covered expenses at the non-public school Student attended prior to School A and for Petitioner's actual costs for School A for SY 2016-2017. The HOD also ordered DCPS to ensure Student's IEP was promptly reviewed and revised as appropriate, in accordance with the HOD and 34 C.F.R. § 300.320 et seq. DCPS was to ensure that input on Student's present levels of performance and Student's educational needs was obtained from School A and that a representative from School A attended the IEP meeting. DCPS had to also ensure the Student's revised IEP was completed before the end of School A's 2016-2017 regular school year and that Petitioner's designee(s) have timely access for observing any special educational program proposed for Student by DCPS. (Petitioner's Exhibit 2-24, 2-25)
12. In January 2017, Student received a comprehensive speech and language assessment performed by School A. Student was assessed using the Comprehensive Receptive and Expressive Vocabulary Test-Second Edition ("CREVT-2") which assesses Receptive, Expressive and General vocabulary, the Clinical Evaluation of Language Fundamentals-Fifth Edition ("CELF-5") which assesses receptive and expressive oral language skills related to a variety of tasks that require spoken or pointing responses, the Memory and Cohesion portions of the Test of Auditory-Processing Skills-Third Edition ("TAPS-3") which assesses auditory rote memory for words, sentences and digits, auditory working memory, and the ability to comprehend sentences and to reason without words, the Social Language Development Test-Adolescent ("SLDT-A") which assesses aspects of social language development such as the ability to interpret and respond to sarcasm, engage in peer-to-peer perspective-taking, and understand socially complex emotions, the Comprehensive Test of Phonological Processing-Second Edition ("CTOPP-2") which assesses reading-related phonological skills, and phonological processing strengths and weaknesses, the Gray Oral Reading Tests-Fifth Edition ("GORT-5") which assesses contextual reading skills, and the Word Identification and Spelling Test ("WIST") which assesses, among other things, sight recognition, word attack skills, ability to spell regular and irregular words accurately from diction, and ability to produce phonemes (sounds) associated with specific graphemes (letters). (Petitioner's Exhibit 23-1, 23-28 through 23-32)
13. The evaluator noted Student's performance on the CREVT-2 as follows: Student's Standard Score ("SS") in Receptive Vocabulary was 88, 21st percentile, in the Below Average range. Student's SS in Expressive Vocabulary was 77, 6th percentile, in the Poor

range. Student's General Vocabulary SS was 79, 8th percentile, in the Poor range. The evaluator stated that Student's performance "indicated below average skills in receptive vocabulary and poorer skills in expressive single-word vocabulary, though this difference may not be functionally significant." Student's ability to explain Student's knowledge of words was slightly weaker relative to Student's receptive skills. The evaluator stated that Student's overall weak vocabulary skills could impact Student's "ability to comprehend and use words effectively". (Petitioner's Exhibit 23-4, 23-5)

14. On the CELF-5, Student received a scaled score of 9 on the Formulated Sentences subtest; a score in the Average range. Student received Below Average scaled scores on Recalling Sentences (4), Understanding Spoken Paragraphs (6), and Semantic Relationships (6). Student's Core Language Score was noted to be a SS of 76, in the 5th percentile, in the Below Average range. The evaluator indicated that Student's "difficulty understanding the relationships between words suggests limitations in vocabulary and the broader understanding of word meanings". This may cause Student "difficulty understanding directions as they increase in length and complexity". (Petitioner's Exhibit 23-7, 23-8)
15. Student's TAPS-3 assessment scores were within the Below Average range for Number Memory Forward (Scaled Score: 6), Auditory Comprehension (Scaled Score: 4), and Auditory Reading (Scaled Score: 4). Student received scores in the Poor range on Word Memory (Scaled Score: 3) and Sentence Memory (Scaled Score: 2). Student's Memory (SS: 74) and Cohesion (SS: 73) scores were both in the Below Average range. The evaluator concluded that reduction in auditory skills could influence how much information Student reliably interprets. Student "may also have difficulty with skills that rely on one's ability to hold information in short-term memory and 'do something' with it, such as note-taking, reading/decoding, and spelling." Student's Problem-solving score was also in the Below Average range (SS: 79). The evaluator noted that Student's "performance showed somewhat disparate skills in stating solutions versus [Student's] explaining justifications". (Petitioner's Exhibit 23-8, 23-9, 23-10, 23-11)
16. Student's performance on the CTOPP-2 yielded Average performance in Phonological Awareness (Composite Index: 96), Very Poor performance in Rapid Symbolic Naming (Composite Index: 55), and Below Average ratings in Phonological Memory and Alt. Phonological Awareness with a Composite Index of 82 in each category. The evaluator opined that these deficits often mean that a student's "understanding of sounds and the relationships between sounds is incomplete or dependent upon other information about the word (e.g., its written representation)." (Petitioner's Exhibit 23-13, 23-14)
17. Student's scores on the GORT-5 were all in the Poor performance range. Student's Rate, Accuracy, and Fluency scores each were a Scaled Score of 2, and Student's Comprehension score was 5, also in the Poor performance range. Student's Oral Reading Index received a Scaled Score of 70, a performance within the Poor range. The evaluator noted that a student with "a reduced reading rate can take a longer time to complete homework assignments with heavy reading demands" and "can fatigue quickly because the reading process becomes so effortful, when reading at a slower rate." Students with

reduced reading accuracy “may misread words, stumble over words, and/or have difficulty recognizing different sound patterns or vowel patterns”. (Petitioner’s Exhibit 23-16)

18. Student’s performance on the WIST, yielded Poor ratings in all subtest categories. Student’s Word Identification (SS: 72), Spelling (SS: 76) and Fundamental Literacy Index (SS: 74) were in the Poor category. (Petitioner’s Exhibit 23-17)
19. The evaluator concluded that Student has a Mixed Receptive/Expressive Language Disorder, a Specific Learning Disorder, with impairment in Reading, word reading, reading rate or fluency, reading comprehension, and a Specific Learning Disorder, with impairment in Written Expression, spelling accuracy, grammar and punctuation accuracy, clarity or organization of written expression. (Petitioner’s Exhibit 23-23, 23-24)
20. The evaluator made several recommendations related to the Student which include, but are not limited to: twice weekly, 45-minute (360-minutes per month) speech language therapy sessions which address needs identified in the evaluator’s report; small student to teacher ratio, with teachers who have training with students with learning disabilities; visual supports and/or text in addition to verbal directions; intervention in reading fluency; extended time to read longer material, and use of graphic organizers; listening to work read aloud by adult or computer text-to-speech program. (Petitioner’s Exhibit 23-24, 23-25, 23-26)
21. On June 5, 2017, a DCPS speech language pathologist reviewed the School A speech and language assessment and recommended the student received speech language therapy. The DCPS speech language pathologist noted that Student “demonstrates a disabling oral communication deficit that would prevent [Student] from “making reasonable progress despite classroom modifications and accommodations.” The DCPS speech language pathologist noted, however, that the Student’s “Reading, spelling, and written expression deficits should be addressed in academic specialized instruction.” (Petitioner’s Exhibit 24-6)
22. On June 14, 2017, Student’s IEP team met to complete Student’s annual IEP review. Petitioner attended along with her attorney and educational advocate. DCPS participants included several DCPS personnel including a DCPS compliance specialist who was to ensure that Student’s IEP would be developed in accordance with the May 16, 2017, HOD. (Witness 4’s testimony, Respondent’s Exhibit 15-24, 15-25)
23. The IEP team discussed Student’s disability, present levels of performance (“PLOP”) in Math, Written Expression, and English. The team reviewed the data contained within the School A speech and language assessment and discussed goals intended to improve Student’s emotional functioning, self-confidence and coping skills. The team also noted “despite interventions such as adult assistance, use of word processor/iPad, audio books, graphic organizers, line trackers, and guide notes Student’s “ability to progress in the general education curriculum is affected and requires on-going support”. (Respondent’s Exhibit 15-1, 15-7, 15-8, 15-9, 15-10)

24. The team developed an IEP which provided Student with 20 hours per week of specialized instruction in reading, math and written expression outside of the general education setting; 120 minutes per month of behavioral support services outside of the general education setting, and 240 minutes per month of speech-language pathology outside of the general education setting. Student's classroom accommodations include, but are not limited to, read aloud for both non-ELA/Literacy Assessments and ELA/Literacy Assessment, calculation device on non-calculator sections, preferential seating, small group, and extended time. The team agreed Student required transportation because Student's IEP could not be implemented at Student's neighborhood school. The team did not provide Student with extended school year ("ESY"). (Respondent's Exhibit 15-15)
25. The IEP meeting notes detail a discussion the team had related to Student's use of assistive technology at School A. Petitioner's attorney argued that the technology and software Student uses at School A should be made a part of Student's IEP. However, DCPS inquired whether Student was able to function absent the technology. School A staff responded that Student needs the technology "to be more successful" and that the technology is integrated into the program at School A. Specifically a request was made for an iPad and audiobooks. DCPS advised Petitioner's attorney that an assistive technology assessment needed to be completed before DCPS could provide technology to Student. DCPS agreed to conduct the evaluation. (Respondent's 15-24, 15-25)
26. When the team began discussing Student's speech and language evaluation, Petitioner, through counsel, advised that she wanted Student to receive speech and language services twice per week, for a total of 360 hours per month, in line with the recommendation made by the School A speech language pathologist. (Respondent's Exhibit 15-30)
27. The IEP team determined Student required 240 hours per month of speech and language services outside of the general education. The PLOPs for Student's Academic-Reading and Written Expression IEP goals refer to testing scores and components of Student's School A speech and language assessment. (Respondent's Exhibit 15-7, 15-8, 15-9, 15-16)
28. The School A speech language pathologist provided DCPS goals to be included in Student's IEP. Some of the goals were incorporated into the IEP and some were not; however, there was no challenge by Petitioner to the speech and language goals that were ultimately incorporated into Student's DCPS IEP. (Witness 2's testimony)
29. At School A Student is provided two 45 minutes sessions of speech language therapy per week. Each 45-minute speech and language therapy session includes work on goals in note taking and definition skills. School A recommended these two goals to DCPS but they were not included in Student's DCPS IEP. Currently, 15 minutes of Student's 45-minute speech language therapy sessions at School A is spent on note taking and definition skills and the rest of the time is spent on the other goals that are in Student's IEP. (Witness 2's testimony)

30. Student's IEP also contains five annual goals for implementation of Student's speech and language related services: Goal 1: [Student] will identify and use learned strategies (e.g. sound letter cueing, what the word sounds like, the word's semantic features, what one associates with the word, visual imagery, categorization, associations, identify antonyms/synonyms, identify prefix/suffix/root), in 80% of opportunities in order to enhance vocabulary," Goal 2: [Student] will decrease the use of vague language (e.g. stuff, thing,/filler words (e.g. um, uh)/overused vocabulary within an oral narrative by 40% over baseline by decreasing the number/level of cues required," Goal 3: [Student] will identify and use compensatory auditory memory strategies (i.e., rehearsal, visual imagery, requesting repetitions and clarification...., in a structured therapeutic setting, with fading cues in 80% opportunities, across three out of four trials," Goal 4: [Student] will combine personal knowledge and/or given information to make an inference in by answering both factual and inferential questions based on single and/or multiple paragraph-level material 80% of opportunities, across three out of four trials," Goal 5:[Student] will identify and/or express semantic-class relationships/tell how words are related by identifying function category, locations, description and associations for a given word, as appropriate, in 80% opportunities, across three out of four trials." (Respondent's Exhibit 15-11, 15-12)
31. The IEP team discussed the fact that School A has a 35-hours per week individualized learning program ("ILP") in place for Student. The ILP does not provide Student with behavior supports, and School A did not want Student's IEP to include the supports. DCPS advised that the IEP must include the behavior supports, even though School A does not provide them. (Respondent's Exhibit 15-31)
32. Petitioner's attorney and advocate voiced their concerns about Student's hours of specialized instruction being reduced from 22 to 20 hours per week. When asked what the specialized instruction included, DCPS responded that it included Math, English, Social Studies and Science. DCPS proposed that the team discuss increasing specialized instruction for electives. Student was to receive support in the electives by a special education teacher, which would add specialized instructional time. However, Petitioner's attorney advised the team the elective specialized instruction would not be out of general education and she wanted to "move on". (Respondent's Exhibit 15-32)
33. DCPS proposed five hours of specialized instruction for electives inside the general education setting. Once again, Petitioner's attorney advised the team to move past the issue. The team discussed Student's LRE with Petitioner's attorney and advocate expressing their disagreement with Student having any classes, including electives, with non-disabled peers. DCPS representatives expressed the opposite view, stating that Student could take electives in a co-taught class with non-disabled peers, to assist in language development. (Witness 4's testimony, Respondent's Exhibit 15-32)
34. During the meeting, Petitioner's attorney advised the team that she had another meeting, as the team continued to discuss Student. The team discussed whether Student could have lunch with non-disabled peers and Petitioner's attorney responded that Student should not be exposed to nondisabled peers. (Respondent's Exhibit 15-33)

35. The team again looked at accommodations and AT for Student, with Petitioner insisting that a recorder be added to Student's IEP. DCPS believed this item was AT and not an accommodation. The team reviewed ESY, and DCPS stated there was no data available from which to base a decision to provide ESY. School A stated they would provide any information they had related to Student's regression. (Respondent's Exhibit 15-34, 15-35)
36. DCPS offered a Specific Learning Support ("SLS") classroom and a DCPS high school ("School B") with special education support for electives classes. Petitioner and her attorney voiced disagreement and stated DCPS was not complying with the HOD and then exited the meeting. (Respondent's Exhibit 15-35, 15-36)
37. Although the team discussed the classes in which Student would receive specialized instruction, those courses, Math, English, Social Studies and Science are not named in Student's IEP. (Respondent's 15)
38. Despite attempts by DCPS to discuss the electives and provide hours for specialized instruction in electives, the IEP does not contain any references to Student receiving specialized instruction for "academically challenging," "reading intensive" or "content laden" electives, or what those electives are. (Respondent's Exhibit 15-24)
39. On June 21, 2017, DCPS issued a LOS for Student to attend School B. (Respondent's Exhibit 17)
40. On June 23, 2017, DCPS issued a Standard IEP Amendment form to add 5 hours of specialized instruction inside the general education setting to Student's IEP. (Respondent's Exhibit 16-1)
41. DCPS issued an Amended IEP which requires Student receive 20 hours per week of specialized instruction outside of the general education, 5 hours per week of specialized instruction in the general education setting, 120 minutes per month of behavior support services outside of the general education setting, and 240 minutes per month of speech language pathology outside of the general education setting. DCPS issued a PWN dated June 23, 2017, noting these IEP services DCPS proposed and that the IEP be implemented at School B. (Respondent's Exhibits 16-14, 16-23)
42. Following the June 23, 2017, meeting, Petitioner went to School B and met with School B staff. Petitioner asked about electives Student would be provided at School B and in what setting. School B provided Petitioner and her educational advocate a list of elective classes that could be provided outside general education. School B did not generate a course schedule for Student to attend School B. Had Student attended School B at the start of SY 2017-2018 a schedule would have been developed to comply with Student's IEP and School B could have been provided at least one course as an elective in physical education that was not "academically challenging," "reading intensive" or "content laden." (Petitioner's testimony, Witness 5's testimony, Petitioner's Exhibit 13-2)

43. The educational advocate has researched the OSSE website for the standards for elective courses offered to be offered by DCPS. Based on this information the advocate opined that most, if not all electives are academically challenging, reading intensive and content laden. (Witness 3's testimony, Petitioner's Exhibits 33, 34, 35, 36)
44. School A is a separate day program for students with learning disabilities, speech and executive functioning challenges. Students in School A's high school program are on diploma track and earn credits toward high school completion. School A follows DCPS curriculum requirements for DCPS students attending, including electives of art, music, health and physical education. School A has 123 students in its high school program with approximately 30 students per grade 9 through 12. Generally there are 5 to 10 students per class in core curriculum courses. The elective classes have 10 to 15 students per class. School A uses integrated related services in the classroom. School A has an OSSE certificate of approval ("C of A") and a cost of _____ per day and related services are billed separately and speech language services are approximately \$130 per session. (Witness 1's testimony)
45. School A offers specialized instruction and seeks to make instruction more multisensory thus all students are provided iPads, so they do not carry books around. School A uses collaborative activities to make the curriculum more accessible to students with disabilities. Student currently uses text to speech, voice to text and grammar predication software that has been recommended by Student's teachers and related service providers. Since attending School A Student has always had use of this software and an iPad. (Witness 1's testimony)
46. Since Student has been attending School A Student has maintained a "B" average and has continued to make steady progress. Student's math and reading skills have improved but Student has not yet mastered any academic goals. Student needs support and scaffolding in the classroom and struggles with decoding. Student will soon be moved to the School A one-to-one reading class. Student struggles with listening comprehension, but is earnest and hardworking. Student is currently taking the following electives: Studio Art and Spanish 1. At School A student receives 35 hours per week of specialized instruction and related services outside general education. School A has no non-disabled students. (Witness 1's testimony)
47. School A has provided Petitioner a scholarship for the Student to attend. As result, Petitioner is to pay School A \$5,000 for SY 2017-2018. Petitioner has made partial payment of that amount and has approximately \$2,000 more to pay. (Petitioner's testimony, Petitioner's Exhibit 27)
48. For a few weeks at the start of SY 2017-2018, Petitioner had to provide Student transportation to School A because OSSE transportation services had not yet started. As a result, Petitioner incurred a cost of approximately \$900 to provide Student private transportation until the OSSE transportation services began near the end of October 2017. (Petitioner's testimony)

49. Student began receiving speech and language services at School A in SY 2017-2018 around November 2017. School A recommended that Student received two 45 minutes sessions of speech and language therapy per week and Petitioner asked that the services be increased from one session per week to two per week consistent with the recommendation. School A has informed Petitioner that the additional session of speech language therapy needed to be paid by Petitioner out of pocket. Thus far, Petitioner has paid for one session and has been billed by School A for a total of five sessions. She has not yet paid School A for the additional four sessions. (Petitioner's testimony)

50. Petitioner presented a compensatory education plan developed by Petitioner's educational advocate. Petitioner has requested at least 40 hours of speech language services that the advocate believed Student missed. However, Student did not miss any speech language services. (Witness 3's testimony, Witness 2's testimony, Petitioner's Exhibit 1)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means 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 Sec. 300.320 through 300.324

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. West*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, as noted in the PHO

and at the hearing Petitioner held the burden of production and the burden of persuasion on issue #3. Respondent held the burden of persuasion on issues #1 and #2. Petitioner had to establish a prima facie case on issues #1 and #2 before the burden of persuasion fell to Respondent.¹¹ Petitioner established a prima facie case on issues #1 and #2. The normal standard is preponderance of the evidence. See, *N.G. v. District of Columbia* 556 F. Supp. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether the LEA denied the student a FAPE by failing to develop an appropriate IEP and provide an appropriate placement pursuant on June 14, 2017, because the IEP:

- (a) Reduced the hours of specialized instruction and does not provide sufficient hours of specialized instruction outside the general education setting for electives especially those that are “reading intensive” or “academically challenging” or “content laden”;
- (b) Does not provide information specifically indicating that the student requires special education support outside the general education setting for at least all classes that are “reading intensive” or “academically challenging”;
- (c) Does not provide appropriate assistive technology and related accommodations;
- (d) Does not provide an appropriate amount of speech and language services to meet the speech language goals in the IEP.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence that Student’s June 14, 2017, DCPS IEP was reasonably calculated to enable Student to make progress appropriate in light of Student’s circumstances.

As stated, In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have “complied with the procedures set forth in the Act.” *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

¹¹ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child’s individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

Under the recent Supreme Court decision, *Endrew F. v. Douglas County School District Re-1*, a district must provide “an IEP reasonably calculated to enable a child to make progress appropriate, in light of the child's circumstances.” 137 S. Ct. 988, 999 (2017).

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988)), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.” *Schaefer v. Weast*, 554 F.3d 47. The “reasonably calculated” qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of a child's parents or guardians; any re-view of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is 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; (2) is made in conformity with the Least Restrictive Environment (“LRE”) provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that 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; (3) is determined annually; (4) is based on the child’s IEP; and (5) is as close as possible to the child’s home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

As IDEA demands, removing a child with disabilities “from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily.” 34C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the “maximum extent appropriate”); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) (“The IDEA requires school districts to place disabled children in the least restrictive environment possible.”)

Although it appears that during the June 14, 2017, IEP meeting Petitioner’s attorney asserted that the student should have no contact with non-disabled peers, during the hearing Petitioner did not seek to establish that Student’s LRE requires that Student be totally removed from non-disabled peers. In fact, in the May 16, 2017, HOD that directed that the student’s IEP be reviewed and revised resulting in the June 14, 2017, IEP meeting, the IHO specifically concluded that Student did not require a placement totally removed from non-disabled peers.

The May 16, 2017, HOD also concluded that Student's March 1, 2016, IEP was inappropriate because despite it prescribing 22 hours of specialized instruction per week outside general education it failed to also prescribe sufficient instruction and detail to ensure that Student had specialized instruction outside general education in all classes that were reading intensive and academically challenging. The HOD ordered that Student's IEP be reviewed and revised consistent with the HOD. I conclude here, that in that order the IHO was directing that the Student's IEP be revised to ensure and specifically provide that Student be provided specialized instruction outside general education in all classes that were reading intensive and academically challenging.

The evidence demonstrates that despite DCPS' stated intention to develop an IEP that complied with the HOD, the June 14, 2017, not only reduced the number of hours of specialized instruction outside general education Student would receive, DCPS did not ensure Student received specialized instruction outside general education in all classes that were reading intensive and academically challenging. DCPS belatedly increased the hours of specialized instruction but prescribed the additional five hours per week be in general education so that Student would have special education support in general education electives.

There was no evidence presented that supports a finding that Student's academic needs for specialized instruction outside general education have reduced since the May 16, 2017, HOD was issued. Therefore, I conclude that the preponderance of the evidence supports a finding that DCPS, by reducing Student's specialized instruction outside general education from 22 hours per week to 20 hours per week and by not specifically including in Student's IEP a directive that Student is to receive specialized instruction outside general education for all classes that are reading intensive and academically challenging, did not provide Student an IEP on June 14, 2017, or June 23, 2017, that was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. Thus, DCPS denied Student a FAPE.

Consequently, in the order below I direct that DCPS amend Student's IEP to prescribe a specific number of hours of specialized instruction outside general education and that the LRE section of Student's IEP state that Student is to be provided specialized instruction outside general education in all classes that are reading intensive and academically challenging and that the Student's IEP team shall make a determination as to what courses fit that description.

Although DCPS witnesses testified that at School B there are a number of elective courses that are provided outside general education and there is at least one elective course that could have been offered Student in general education that is not reading intensive and academically challenging, because there was no specific language in Student's IEP to that effect, there was no guarantee Student would provided services at School B consistent with the level of restriction that already been adjudicated in the May 16 2017, HOD.

Petitioner also asserted that Student's June 14, 2017, IEP was inappropriate because it did not prescribe AT services and did not prescribe sufficient speech language services. I conclude that the preponderance of the evidence did not support a finding that Student required these services such that they needed to be in Student's DCPS IEP or that Student incurred any detriment as a

result. The evidence demonstrates that each student at School A is provided an iPad and Student has use of the iPad and use of software that School A staff have recommended. Student's IEP specifically states in the accommodations section that Student will be provided specific software that seems comparable to the software Student is using at School A. In addition, there was credible testimony from a DCPS witness that at DCPS, Student would have the use of a dedicated computer to use the software that is listed in the IEP. There is no indication that Student has been without the use of the software while attending School A, or that Student would not have use of that software if and when Student attends a DCPS school pursuant to the DCPS IEP, as a device will be provided to use the software at DCPS just as it is provided at School A. Consequently, I conclude that there was insufficient evidence that the lack of AT in Student's DCPS IEP results in an inappropriate IEP.

The evidence demonstrates that with regard to the additional speech language therapy services Petitioner asserts Student requires (360 minutes per month rather than 240 minutes per month), at School A the extra 120 minutes per month of services is devoted to two goals in note taking and definition skills that are not included in Student's DCPS IEP. The remainder of the time in therapy sessions is devoted to the goals that are actually in Student's DCPS IEP. The School A speech pathologist testified to this. Petitioner did not challenge the IEP goals and, therefore, I must infer and conclude that speech language goals in Student's DCPS IEP are appropriate. There was insufficient evidence presented for me to conclude otherwise. Accordingly, with regard to the speech language services prescribed, Student's DCPS IEP is appropriate.

ISSUE 2: Whether the LEA denied the student a FAPE by failing to provide an appropriate placement for SY 2017-2018.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is determined at least annually and is based on the child's IEP. 34 CFR § 300.116(b) (1) (2). *At the beginning of each school year*, each public agency must have *in effect*, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320. 34 C.F.R. § 300.323(a) (emphasis added).

A student's IEP determines whether an educational placement is appropriate; the placement does not dictate the IEP. *See Roark v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006); *Spielberg v. Henrico Cty. Public Sch.*, 853 F.2d 256, 258 (4th Cir. 1988) ("Educational placement is based on the IEP, which is revised annually."); 34 C.F.R. § 300.116(b)(2).

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

As stated in discussion of Issue #1 above, I concluded that DCPS denied Student a FAPE by prescribing an IEP that did not provide sufficient hours of specialized instruction outside general education. As noted in that discussion, it had previously been determined by the May 16, 2017, HOD that Student's LRE was not a placement that was totally removed from non-disabled peers. There was no additional evidence presented in the current case to contradict that previous conclusion.

I have, in the discussion in Issue # 1 above, already concluded that the LRE or placement prescribed in Student's June 14, 2017, IEP was inappropriate. Therefore, I find it unnecessary in deciding this issue to duplicate that discussion. Thus, I conclude that the placement DCPS offered to student in the June 14, 2017, IEP was inappropriate and denied Student a FAPE.

Following the June 14, 2017, IEP meeting and the June 23, 2017, IEP amendment, DCPS proposed that Student's IEP be implemented at School B in a SLS classroom. School B was not specifically being challenged as a placement or location of services for the student. The evidence was inclusive of whether School B could have implemented an IEP that met the requirements that were apparently contemplated by the May 16, 2017, HOD. The student's placement in the SLS classroom coupled with the other restrictions in specialized instruction outside general education in the HOD might have been available at School B. Therefore, I make no conclusion regarding the appropriateness of the school location DCPS proposed.

ISSUE 3: Whether the LEA denied the student a FAPE by failing to complete an assistive technology evaluation since June 14, 2017.

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

34 C.F.R. §300.105 provides:

Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§300.5 and 300.6, respectively, are made available to a child with a disability ***if required*** as a part of the child's— (1) Special education under §300.36; (2) Related services under §300.34; or (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii). (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

(emphasis added)

A refusal to merely copy assistive technology from Student's ILP at School C, to Student's IEP, does not constitute a refusal to provide assistive technology, or a failure to provide appropriate assistive technology. IDEA mandates that the technology be made available ***if required***. There was no proof that Student requires any particular assistive technology or device. The fact that Student uses assistive technology, programs and devices at School A, where every student uses the same devices and technology lends no credibility to the notion that the devices, technology and/or programs are "required" for this Student within the meaning of IDEA.

Assuming arguendo, the assistive technology, devices and/or programs are “required”, because Student has not changed placement and still attends School A, where the devices are available, the fact that the devices are not made a part of Student’s June 14, 2017, IEP has failed to cause Student any harm. Thus, I conclude that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue. Nonetheless, I direct in the order below that DCPS conduct an AT evaluation of Student provided Petitioner grants written consent for the evaluation.

Remedy:

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

Petitioner has requested that she be reimbursed for the expenses she incurred for Student to attend School A, for the speech language services at School A and for the private transportation services to School A until OSSE bus transportation started.

I have concluded that Student was not denied a FAPE as result of the extra 45 minutes of speech language therapy per week not being provided, as there was insufficient proof that these additional services should have been in Student’s DCPS IEP. Thus, I do not award Petitioner reimbursement for the additional speech language services. With regard Petitioner’s request for reimbursement of transportation costs, I conclude there is sufficient evidence to support the reimbursement.

With regard to the request for reimbursement for Petitioner’s expenses for Student attending School A during SY 2017-2018, I conclude based on the evidence that Petitioner has established entitlement to reimbursement for her unilateral placement as School A is a “proper” placement under IDEA. There was credible testimony that School A holds an OSSE C of A and that Student has made academic progress since attending. *See Leggett v. District of Columbia* 793 F.3d 59 (D.C. Cir. 2015). Thus, in the Order below, I direct DCPS to reimburse Petitioner her actual costs of Student attending School A during SY 2017-2018.

Petitioner has also requested that Student continue to attend School A with DCPS funding through the remainder of SY 2017-2018, and asserted that to move Student in the middle of the school year would be detrimental to Student. Having concluded that Student’s LRE is not a school such as School A, where Student is totally removed from non-disabled peers, the evidence nonetheless demonstrates that Student has made and is making academic progress there. Although there was no evidence specifically presented with regard to possible harm to Student in changing schools mid-year, I am convinced that given the directives that remain to be implemented in the Order below, the Student should remain at School A at least until the provisions of the Order are fulfilled. By that time Student would have more than likely have completed three quarters of the school year at School A and it would then be unreasonable to

change Student's school prior to the end of the school year. *cf Block v. District of Columbia* 748 F. Supp. 891 (D.D.C. 1990)

Consequently, I conclude that it is reasonable to grant Petitioner's request that Student remain at School A for the remainder of SY 2017-2018 and that DCPS take action to promptly convene a meeting before the end of SY 2017-2018 to determine an appropriate placement/location of services for Student for SY 2018-2019.

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

Petitioner requested as compensatory education independent hours of speech language therapy to compensate for speech language therapy Student was allegedly not provided during SY 2017-2018 at School A. However, there was insufficient evidence presented that Student missed any speech language services, rather it appears that Student has been provided the amount of services prescribed by Student's DCPS IEP since the start of SY 2017-2018. Consequently, I award no compensatory education.

ORDER: ¹²

1. DCPS shall, within ten school days of the issuance of this Order, amend Student's IEP to prescribe 22 hours per week of specialized instruction outside general education and include the following statement on the LRE page of Student's IEP: "Student is to be provided specialized instruction outside general education for all classes that are reading intensive or academically challenging. Student's IEP team must determine what classes meet this requirement and which do not."
2. DCPS shall, within thirty (30) calendar days of Petitioner providing DCPS documentation of her payment to School A of tuition and related expenses for student's enrollment at School A for SY 2017-2018, reimburse Petitioner for the tuition and related expenses up to a total not to exceed \$5,000.00. DCPS shall not be required to reimburse any tuition or other costs for which student received financial aid or a scholarship from School A for SY 2017-2018.

¹² Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

3. DCPS shall within thirty (30) calendar days of Petitioner providing DCPS documentation of her payment for private transportation for student to and/or from School A during SY 2017-2018, reimburse Petitioner for those costs up to a total not to exceed \$900.00.
4. DCPS shall, within 45 calendar days of the issuance of this order, or of Petitioner granting DCPS written consent, whichever is later, conduct an AT evaluation of Student and convene a IEP team meeting to review the evaluation and review Student's IEP and revise it as appropriate as result of the team's review of the evaluation.
5. Student remain at School A for the remainder of SY 2017-2018 and DCPS shall convene a meeting before the end of SY 2017-2018 to determine an appropriate placement and location of services for Student for SY 2018-2019.
6. All other relief requested by Petitioner is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: February 7, 2018

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