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 Office of Review and Compliance
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Confidential

<p>Parents on Behalf of Student,</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools (“LEA”)</p> <p>Respondent.</p> <p>Case # 2018-0027</p> <p>Date Issued: June 25, 2018</p>	<p>CORRECTED HEARING OFFICER’S DETERMINATION ¹</p> <p>Hearing Dates: May 2, 2018 May 3, 2018 June 7, 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, June 25, 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 May 2, 2018, and May 3, 2018, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 1050 First Street, N.E., Washington, D.C. 20003, in Hearing Room 112 and Hearing Room 111 on June 7, 2018. The parties submitted written closing arguments on June 18, 2018.

BACKGROUND AND PROCEDURAL HISTORY:

The student or (“Student”) is age _____ and in grade _____.² The student resides with Student’s parents (“Petitioners”) in the District of Columbia. Student has been determined eligible for special education and related services pursuant to IDEA with a disability classification of specific learning disability (“SLD”). District of Columbia Public Schools (“DCPS”) is Student’s local educational agency (“LEA”).

Student attends a non-public special education separate day school (“School A”) where Student has attended since the start of school year (“SY”) 2014-2015, when Petitioners withdrew Student from DCPS and unilaterally placed Student at School A. Petitioner sought no funding from DCPS for Student’s attendance at School A for SY 2014-2015 and SY 2015-2016.

Near the end of SY 2015-2016, Petitioners initiated a special education referral for DCPS to again provide Student an individual education program (“IEP”) and educational placement. DCPS conducted evaluations of Student and determined Student continued to be eligible for special education and related services in November 2016. DCPS developed an IEP for Student on December 12, 2016, for SY 2016-2017 and proposed that the IEP be implemented at Student’s neighborhood DCPS middle school. Petitioners disagreed with the proposed IEP and placement and maintained Student at School A for the remainder of SY 2016-2017 and for SY 2017-2018.

On February 5, 2018, Petitioners filed this due process complaint asserting DCPS had denied Student a free appropriate public education (“FAPE”) alleging that the IEP and placement DCPS proposed for Student for SY 2016-2017 was inappropriate, that DCPS failed to propose an IEP and placement for SY 2017-2018 and failed to complete an annual review of Student’s December 12, 2016, IEP.

Relief Sought:

Petitioners seeks as relief that DCPS be ordered to reimburse them for the cost of tuition and any related services for Student’s enrollment at School A since September 14, 2016, and that School A be declared Student’s current educational placement.

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

LEA Response to the Complaint:

DCPS filed a timely response to the complaint on February 15, 2017. DCPS denies that there has been any failure to provide the student with a FAPE. DCPS asserts, inter alia, that the IEP developed at the December 12, 2016, meeting was reasonably calculated to provide Student with meaningful educational benefit and that it represents Student's least restrictive environment (LRE). DCPS informed Petitioners that Student's neighborhood school was able to implement the IEP and provided them an opportunity to get information about school. Petitioner(s) attended the IEP meeting and was allowed to participate fully in the development of the IEP and placement. DCPS made a FAPE available. Petitioners rejected the offer and expressed intent to unilaterally place Student at School A. DCPS asserts School A is not Student's LRE and Petitioners failed to provide appropriate notice of the unilateral placement pursuant to the IDEA, thus, the relief requested should not be granted.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on February 5, 2018, and did not resolve the complaint. The parties did not mutually agree to proceed directly to hearing. The 45-day period began on March 7, 2017, and ended [and the Hearing Officer's Determination ("HOD") was originally due] on April 21, 2017.

The undersigned Hearing Officer ("Hearing Officer") convened a pre-hearing conference ("PHC") on March 29, 2018, and issued a pre-hearing order ("PHO") on April 3, 2018, outlining, inter alia, the issues to be adjudicated.

Petitioner's counsel filed an unopposed motion to continue from the previous hearing dates offered: April 2, 2018, and April 3, 2018, to the requested dates of May 2, 2018, and May 3, 2018. The motion requested a thirty (30) day continuance and extension of the HOD due date, moving the HOD due date from April 21, 2018, to May 21, 2018. The motion was granted.

The hearing was held on May 2, 2018, and May 3, 2018. DCPS did not complete its case on May 3, 2018, and the parties agreed to continue the hearing and extend the HOD due date. DCPS counsel filed an unopposed motion to extend the HOD due date to allow DCPS to complete its case on the agreed upon hearing date of June 7, 2018. The Hearing Officer granted that motion extending the HOD due date to June 25, 2018. The parties submitted written closing arguments on June 18, 2018.

ISSUES:³

The issues adjudicated are:

1. Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP and

³ The Hearing Officer restated the issues at the hearing and the parties agreed that these were the issues to be adjudicated.

placement with the sufficient type and amount of special education hours⁴ for SY 2016-2017.⁵

2. Whether the DCPS denied Student a FAPE by failing to propose any IEP and placement for SY 2017-2018
3. Whether DCPS denied Student a FAPE by failing to update Student's December 12, 2016, IEP before it expired.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 44 and Respondent's Exhibits 1 through 16) that were admitted into the record and are listed in Appendix 2.⁶ The witnesses testifying on behalf of each party are listed in Appendix B.⁷

SUMMARY OF DECISION:

Petitioners established a prima facie case as to issue #1 and the Hearing Officer concluded based on the evidence adduced that Respondent did not sustain the burden of persuasion by a preponderance of the evidence that it offered Petitioners an appropriate and timely IEP with regard to the amount and type of specialized instruction prescribed for SY 2016-2017. Consequently, the Hearing Officer ordered DCPS to reimburse Petitioners for Student's attendance at School A for SY 2016-2017. Petitioners had the burden of persuasion on issues #2 and #3. Petitioners did not sustain the burden or persuasion by a preponderance of the evidence as to issues #2 and #3.

⁴ Petitioners allege that Student's December 12, 2016, IEP should have prescribed additional hours of specialized instruction per week, to wit: 25 hours per week with all specialized instruction outside the general education setting, and are challenging the LRE that the IEP prescribed. Petitioners do not dispute the related services hours that the IEP prescribed.

⁵ Although the issue to be adjudicated is not styled to specifically include an alleged violation of the timeline in which DCPS was to provide Student an IEP and FAPE, Petitioners' request for reimbursement is from the date by which the 120-day eligibility time line allegedly expired, and the parties clearly addressed the timeliness of the IEP during the PHC and during the hearing. In addition, DCPS was given the opportunity to call any additional witness(es), whether previously disclosed or not, to address the alleged untimeliness of the IEP.

⁶ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

⁷ Petitioner presented five witnesses: (1) Student's mother ("Parent") and the following individuals who were designated as expert witnesses: (2) a School A administrator, (3) a School A psychologist, (4) a School A occupational therapist, and (5) Petitioners' educational consultant. Respondent presented eight witnesses some of whom were designated as expert witnesses: (1) an educator from DCPS Central Office, (2) the Special Education Coordinator from Student's former DCPS school, (3) a special education teacher from the school DCPS proposed to implement Student's IEP for SY 2017-2018, (4) the special education coordinator from the DCPS school DCPS proposed to implement Student's IEP for SY 2016-2017, (5) a DCPS social worker, (6) a DCPS LEA representative from central office, (7) a DCPS psychologist, and (8) the DCPS monitor for School A.

The Hearing Officer concluded based on the evidence adduced that Student's December 12, 2016, IEP had not yet expired at the start of SY 2017-2018. Therefore, DCPS had proposed an IEP and placement for SY 2017-2018. However, the IEP was not reasonably calculated to provide Student educational benefit when it was developed. Consequently, the Hearing Officer also ordered DCPS to reimburse Petitioners for Student's attendance at School A for SY 2017-2018.

Because DCPS, operating under the assumption that it had made what it thought to be an offer of a FAPE available to Student at the start of SY 2017-2018, and Petitioners had parentally placed Student at School A, there was no obligation, absent a request from Petitioners for DCPS to have conducted an annual review of Student's IEP prior to the filing of the due process complaint. Thus, the Hearing Officer concluded DCPS was not obligated to conduct an annual review and update Student's December 12, 2016, IEP.

The Hearing Officer concluded based on the evidence adduced, that Student's LRE is not a placement in which Student is totally removed from non-disabled peers. As result, the Hearing Officer did not grant Petitioner's requested relief that School A be determined Student's prospective placement. However, based upon Petitioners' expressed desire for DCPS to continue to provide Student a FAPE, and as a result of the denial of FAPE determined herein, the Hearing Officer directed in the order below that DCPS conduct evaluation(s) of Student, develop an IEP for Student for SY 2018-2019 and determine an appropriate educational placement for SY 2018-2019.

FINDINGS OF FACT: ⁸

1. Student resides with Petitioners in the District of Columbia and has been determined eligible for special education and related services, pursuant to IDEA, with a disability classification of SLD. DCPS is Student's LEA. (Petitioners' Exhibit 23-1)
2. Student was first determined eligible for special education during SY 2011-2012 while attending a DCPS elementary school ("School B"). (Respondent's Exhibits 3-1, 3-16, 9-1)
3. During SY 2011-2012 DCPS conducted a psychological evaluation based a referral by Student's mother and teacher, while Student attended School B. The evaluation report is dated November 18, 2011, and provides the reasons for the referral as Student's demonstration of strong verbal responses when questioned; however, Student's "pencil and paper tasks" did not match Student's verbal abilities. There were also concerns about Student's reversal of letters and self-esteem as it relates to challenges at school. (Respondent's Exhibit 3-1)

⁸ 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 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. The DCPS psychologist administered the Wechsler Intelligence Scale for Children, Fourth Edition (“WISC-IV”); the Behavior Rating Inventory of Executive Assessment System for Children, Second Edition (“BASC-2”); the Brown ADD scales – Teacher and Parent Interviews; Woodcock Johnson Tests of Achievement, Third Edition (“WJ-III”), Student Support Plan Documentation, classroom observations, teacher, school, staff, and parent interviews and review of Student’s cumulative file and work samples. (Respondent’s Exhibit 3-1)
5. Student’s scores on the WISC-IV were as follows:

WISC Composite Score	Score	Qualitative Description
Verbal Comprehension Index (VCI)	126	Superior
Perceptual Reasoning Index (PRI)	121	Superior
Working Memory Index (WMI)	110	High Average
Processing Speed Index (PSI)	91	Average
Full Scale IQ (FSIQ)	119	High Average

(Respondent’s Exhibit 3-5)

6. The results from WISC-IV, WJ-IV, and BASC-2 Self report indicated that Student had average to superior cognitive abilities; however, Student struggled to express effectively in written form showing weakness in spelling, handwriting and math fluency. The evaluator opined that these issues were evidently due to weakness in processing speed and working memory. The evaluator noted that with intensive support from tutoring Student had academic achievement at or near grade level. However, the evaluator also noted Student demonstrated need for support in using executive functioning skills and to address the tendency to internalize negative feelings that lead to low self-esteem and negative feelings about school. The evaluator concluded Student met the criteria for SLD disability classification. (Respondent’s Exhibit 3-11, 3-12)
7. The evaluator recommended, among other things, that Student should be taught cursive writing, keyboarding, and be allowed to give oral responses when the objective is to test knowledge rather than writing; provide counseling in school or within the community and offer visual aides to assist Student with executive functioning. (Respondent’s Exhibit 3-12, 3-13)
8. DCPS provided Student an initial IEP while Student was attending School B. The IEP was updated on October 23, 2012, and on October 10, 2013. Student’s October 10, 2013, IEP included academic goals in the areas of math, written expression, motor skills/physical development and prescribed 2 hours per week of specialized instruction inside general education and 120 minutes per month of occupational therapy (OT”) inside general education. The IEP also stated that Student would benefit from classroom aids and services including the use of computers or an iPad to complete writing, extended time for written assignments, use of partial dictation, being tested orally as appropriate in math, and access to keyboarding instruction programs. (Respondent’s Exhibit 9-1, 9-10)

9. At School B Student was a typical kid, but complained about writing, was self-conscious, and resisted pullout special education services. As result, School B provided Student special education services in the general education setting in the least conspicuous way possible. Student did not find handwriting enjoyable and was quickly moved into keyboarding. At School B Student had friends and was a lively contributor in the classroom and school environment. At School B Student was accessing the general education curriculum with the special education services provided. Student made progress and moved from grade to grade. (Witness 6's testimony)
10. During SY 2013-2014, Student made progress on most IEP academic goals except two of Student's six math goals in which Student made no progress in the last two advisories. Student progressed on all written expression goals and mastered two of the six goals by the last advisory. Student mastered two of three motor skill/physical development goals. (Respondent's Exhibit 10)
11. Student's last year attending School B, or any DCPS school, was SY 2013-2014. Petitioners thereafter placed student in School A, a private special education separate school for SY 2014-2015. During Student's last year at School B, Student's parent did not believe Student was not doing well academically. Petitioners applied to a number of schools and Student eventually began attending School A with parental funding. Initially Student missed friends, wanted to attend the neighborhood school and was angry about attending School A, but eventually seemed happy to be there. Student has attended School A for the past four school years. (Parent's testimony)
12. On May 17, 2016, Petitioners provided DCPS a Standard Initial Referral Form requesting special education services for Student. The form was signed by Student's mother, dated May 9, 2016, and notes that Student was attending School A. (Respondent's Exhibits 7-1, 7-2, Petitioners' Exhibit 11-3)
13. On July 7, 2016, DCPS convened an IEP meeting to discuss Student. The parties present for the meeting included Petitioners, Petitioners' counsel, an occupational therapist, a psychologist, a special education teacher and a general education teacher and social worker. A speech language pathologist and physical therapist participated in the meeting by telephone. During the meeting it was shared that Student's greatest area of struggle in school is math, Student can read well, at or above grade level, but struggles with sharing what Student's has read and struggles to express thoughts and ideas in writing. (Petitioners' Exhibit 15-1, Respondent's Exhibit 3-19)
14. During the meeting, the parties discussed Student's difficulties, with emphasis on Student's OT and psychological issues. The team agreed that Student's OT issues were related to posture control, core strength, and hand strength. The team also discussed Student's psychological concerns with respect to Student's anxiety, medication, and the fact that Petitioners sought counseling for Student outside of school and did not want any other therapy. However, Student verbalized the need to "speak to someone" and started seeing the School A counselor. The team noted that even with the additional support,

student would sometimes speak and at other times shut down. DCPS agreed to conduct a comprehensive psychological assessment and an occupational therapy assessment. (Petitioners' Exhibit 15-3)

15. DCPS issued a prior written notice ("PWN") dated July 7, 2016, indicating the team proposed to proceed with the evaluation process in the areas of cognitive, academics, social emotional, and occupational therapy. (Petitioners' Exhibit 14)
16. On July 17, 2016, and July 21, 2016, DCPS conducted a comprehensive psychological reevaluation. The evaluation report is dated August 10, 2016. The evaluator conducted Wechsler Intelligence Scale for Children, Fifth Edition ("WISC-V") and the Wechsler Individual Achievement Test- Third Edition ("WIAT-III"). The evaluator examined several documents including, but are not limited to, the Student's DCPS IEP and IEP progress reports from SY 2012-2013 and 2013-2014; Occupational Therapy Test Score Summary dated, April 21, 2016; The School A Psychotherapy Progress Report dated, April 2016; School A individual learning plans (ILPs) dated, May 3, 2016, May 11, 2015, and October 9, 2014; WJ-III ACH Score Reports dated, October 10, 2011, and June 12, 2013; DCPS Analysis of Existing Data dated June 30, 2012, as well as the Confidential Psychological Evaluation dated, November 18, 2011. (Respondent's Exhibit 3-16)
17. At the time of the assessment, the evaluator stated Student was taking medication to manage symptoms of anxiety and had previously been found eligible for specialized instruction and related services as a student with a SLD disability classification. The evaluator noted that Student's scores on a previous Behavior Rating Inventory of Executive Function ("BRIEF") yielded average scores across all areas per parent report and that the teacher ratings were in the Clinically Significant range for the areas of: emotional control, and plan/organization of materials. Past BASC-2 scales yielded teacher ratings that were Clinically Significant on the scales of depression and withdrawal. (Respondent's Exhibit 3-17, 3-18)
18. The evaluator noted the existence of two (2) additional score reports from Student's WJ-III ACH which were completed on June 12, 2013, and September 23, 2014. The evaluator restated the testing results as follows:

WJ-III ACH Composite	June 12, 2013 Standard Score	September 23, 2014 Standard Score
Broad Written Language	88	90
Broad Math	93	77
Brief Math	96	80
Broad Reading	NA	112
Written Expression	90	94
Brief Achievement	NA	100

(Respondent's Exhibit 3-18)

19. The evaluator reviewed Student's May 3, 2016, School A ILP and indicated that Student was receiving 33.5 hours of specialized instruction per week, integrated speech and language services and integrated occupational therapy. Pursuant to Student's May 3, 2016, School B ILP, Student received 45 minutes of individual occupational therapy and

45 minutes of weekly psychotherapy. The evaluator reported Student’s ILP had needs in the following areas: reading, written language, math, and academic/behavior/executive functioning. Student’s ILP also included, but was not limited to, the inclusion of the following accommodations: 100% extended time for tests; preferential seating near teacher; small group setting; use of assistive technology and computer for all written work, and calculators for math tests. (Respondent’s Exhibit 3-18)

20. The evaluator noted that although Student was receiving psychotherapy at school as well as attending School A therapy groups, a letter of progress from April 2016 stated Student still struggled with the “pressures of school, exhibits limited coping strategies, low frustration tolerance, as well as weak self-advocacy skills.” (Respondent’s Exhibit 3-18)
21. The evaluator commented that Student received OT at School B and according to the annual progress report Student “excels at visual-perceptual puzzles, and is a highly motivated student.” However, Student was noted to “struggle with sensory progressing, self-regulation, self-consciousness, hand/finger strengths and dexterity, postural control and proximal stability as well as task initiation.” It was further noted that Student had not adopted the use of technology to compensate for poor handwriting skills as well as difficulties organizing academic tasks. (Respondent’s Exhibit 3-18, 3-19)
22. The evaluator interviewed Student’s parents who advised that Student becomes upset when Student is pulled out of the classroom for additional support. Student’s mother described some of Student’s earlier behaviors as “curling into a ball and ‘falling apart’.” Student’s parent shared that once Student transitioned to School A, homework was on Student’s level and Student stopped shutting down at home. Student’s parent was reported to have said that Student struggles to express thoughts and ideas in writing, so parents dictate to relieve Student of the burden of writing. (Respondent’s Exhibit 3-19)
23. Student shared with the evaluator that Student had a successful school year overall, enjoyed English class including participating in a play. Student shared feelings of anxiety and difficulties putting thoughts on paper and that the small class size and teachers at School A have helped Student perform better than at Student’s previous school, School B. The evaluator noted that a classroom observation and interviews with Student’s teachers were not conducted because the MDT met and signed consent for the evaluation after the school year had ended. (Respondent’s Exhibit 3-19)
24. The evaluator administered the WISC-V and detailed Student’s scores as follows:

WISC-V COMPOSITE	Standard Score	Percentile Rank	Qualitative Description
Verbal Comprehension	116	86 th	High Average
Visual Spatial	108	70 th	Average
Fluid Reasoning	109	73 rd	Average
Working Memory	112	79 th	High Average
Processing Speed	75	5 th	Very Low
General Ability Index	115	84th	High Average

(Respondent’s Exhibit 3-20)

25. According to the evaluator, Student “demonstrated typically developed skills in the areas of verbal comprehension, visual-spatial reasoning, fluid reasoning, and working memory.” Processing speed was Student’s poorest performance. The Student’s General Ability Index was considered to be the best estimate of Student’s overall intellectual functioning, and the score places Student in the High Average range and means that Student performed higher than 84% of same age peers. (Respondent’s Exhibit 3-20)
26. Student’s Processing Speed composite measures both the speed and accuracy of visual identification, decision-making, and implementation of decisions. The evaluator reported that Student’s responses were accurate; however, Student’s slow response time had a negative impact on Student’s score. Student’s composite score in Processing Speed was 75, which means Student’s score was higher than only 5% of same age peers. (Respondent’s Exhibits 3-20, 3-21)
27. The evaluator administered the Wechsler Individual Achievement Test, 3rd Edition (“WIAT-III”) to gain a “snapshot” of Student’s basic academic skills and determine if there are any deficits that may impact Student’s ability to achieve on grade level.

28. Student’s Composite WIAT-III scores are as follows:

WIAT-III Composite	Standard Score	Percentile Rank	Qualitative Description
Total Reading	106	66 th	Average
Basic Reading	101	53 rd	Average
Reading Comprehension & Fluency	112	79 th	Average
Written Expression	83	13 th	Below Average
Mathematics	82	12 th	Below Average
Math Fluency	72	3 rd	Below Average

(Respondent’s Exhibit 3-21)

29. Student’s Total Reading, Basic Reading and Reading Comprehension & Fluency fall within the Average performance range. Student’s Total Reading Percentile Rank means that Student’s range is higher than 66% of same age peers. Student’s Below Average score in Math Fluency means that Student’s performance was only higher than 3% of Student’s peers. Math appears to be an area of concern for Student and challenges Student’s ability to independently solve increasingly complex math problems. (Respondent’s Exhibit 3-22)

30. At the time of Student’s July 2016 Confidential Comprehensive Psychological Re-Evaluation, Student’s Present Levels of Academic Functioning were captured using Student’s then current grades.

Subject	Grade 1 st Quarter	Grade 2 nd Quarter	Grade 3 rd Quarter
SY 2015-2016			
Reading	B	C	B-
English	B-	B	B-

Exploring Jr. High Math	B+	B	C
Science	B-	B+	A-
Global Citizenship	A-	B-	B+
Theater Arts	A	A-	A
Physical Education	A	A	B+

The evaluator noted that Student’s parents claimed that Student’s grades were based on Student’s instructional level and not Student’s grade level. (Respondent’s Exhibit 3-23)

31. Although Student has areas where Student performed within the Average or High Average ranges, the evaluator noted the fact that Student has areas such as constructing sentences, solving math problems, and fluently computing basic math facts where Student performed in the Below Average range. (Respondent’s Exhibit 3-24)
32. The evaluator suggested that Student’s multidisciplinary team (“MDT”) should determine, what if any, data supports Student being found eligible for specialized instruction and related services under the Discrepancy model or Scientific Research-Based Intervention model for SLD. (Respondent’s Exhibits 3-24, 3-25)
33. The evaluator made recommendations for Student that could be implemented at home, including online games and software to assist with spelling as well as board games such as Scrabble, Hangman and Spill & Spell to provide motivational spelling practice. (Respondent’s Exhibits 3-25)
34. The evaluator’s recommendations included a scientific, research-based intervention to increase Student’s skills in writing and math and track data on Student’s response to intervention. The evaluator recommended practicing basic math drills several times a week “to improve speed and “automaticity” of addition, subtraction multiplication and division facts, and to encode these facts into [Student’s] long term memory.” The evaluator further recommended direct instruction in note-taking strategies, exploration of organizational strategies and the use of technology such as a word processor, tablet or smartphone as well as e-mail and internet connectivity. (Respondent’s Exhibit 3-25)
35. On August 8, 2016, Petitioners’ attorney sent a letter to DCPS notifying that Student would be attending School A for SY 2016-2017, in order to provide Student a free appropriate public education and requesting that DCPS fund Student at School A. (Petitioners’ Exhibit 16)
36. On August 17, 2016, DCPS sent Petitioners a letter acknowledging receipt of the August 8, 2016, letter and declining Petitioner’s request that DCPS fund Student at School A. The letter noted that DCPS held an eligibility meeting on July 7, 2016, and was in the process of completing an IEP for Student. The letter went on to state that given how close it was to the start of the school year, DCPS could offer Student a FAPE based on Student’s last IEP at School B or provide Student comparable services based on a current IEP from another LEA. The letter stated that DCPS would convene an IEP meeting on or before September 22, 2016, to develop a new IEP or adopt Student’s IEP from another LEA. The letter requested that Petitioners enroll Student in the neighborhood DCPS

middle school ("School C"). The school year began at School A on August 29, 2016. (Petitioners' Exhibit 16-3, Witness 5's testimony)

37. On September 2, 2016, and September 12, 2016, a DCPS occupational therapist conducted an OT assessment of Student. The Confidential Occupational Therapy Assessment Report is dated September 12, 2016. The evaluator stated that the purpose of the evaluation was to (a) determine Student's current fine motor, visual motor, visual perceptual and sensory processing skills and the impact on Student's academic activities; (b) to help the MDT establish eligibility for special education services and OT and formulate an appropriate educational plan, and (c) present a series of recommendations for classroom staff to promote growth and development. (Respondent's Exhibit 4-2)
38. The evaluator administered the following assessment tools: The Beery-Buktenica Development Test of Visual-Motor Integration, Sixth Edition; The Beery Developmental Test of Motor Coordination; The Motor Free Visual Perception Test, 4th Edition ("MVPT-4"); The Bruininks-Oseretsky Test of Motor Proficiency, 2nd Edition; Interviews; Clinical Observations and Clinical Assessment, and Analysis of Work Samples. (Respondent's Exhibit 4-2)
39. The evaluator noted that Student's Visual Motor Integration was Average as was Student's Motor Coordination and Motor-Free Visual Perception. Student's Fine Motor Integration was Above Average, and the only issue Student had was with Upper Limb Coordination, which was rated at Below Average. The evaluator recommended a "move and sit" cushion, a slant board, extended time for lengthy written assignments, an editing checklist, and keyboarding as an option for classroom written work. Student was not available for any further testing from July 25, 2016, to August 8, 2016. (Respondent's Exhibit 4-6, 4-7, Witness 5's testimony)
40. On September 15, 2016, Petitioner's attorney sent DCPS a letter inquiring about Student's eligibility process and noting that Petitioners made an initial referral to DCPS on May 17, 2016, and at the July 7, 2016, meeting DCPS agreed to conduct a psychological evaluation and OT evaluation. The letter noted that the 120-day timeline to complete the eligibility process had expired the day prior, on September 14, 2016, and requested that DCPS provide an update and schedule a meeting to review the evaluations. (Petitioners' Exhibit 19)
41. A DCPS social worker conducted a classroom observation of Student at School A on October 6, 2016, during Student's pre-algebra class. The observation report is dated October 11, 2016. The DCPS social worker noted it was a small classroom with just a few students. The lesson was well organized and the teacher had command of the class. The students appeared to have good relationships with one another and with their teacher. Student and several others successfully answered a few more questions. Student also advised another student to stop playing so Student could concentrate. Student appeared to work quietly to solve math problems. During the observation in math class the social worker saw no frustration and no crying from Student. Student was engaged in the class instruction the entire time. (Witness 9's testimony, Respondent's Exhibit 6-2)

42. On November 4, 2016, DCPS convened an eligibility meeting for Student at which the DCPS evaluations were reviewed. Petitioners and their attorney participated in the meeting along with DCPS and School A personnel. The team determined Student eligible under the SLD classification and agreed that addendums would be completed for the psychological and OT evaluations to incorporate rating scales that School A had not provided and to incorporate a classroom observation behavior rating scales that had not been conducted by the DCPS psychologist because Student was on summer break when the DCPS psychological evaluation was completed. DCPS issued a PWN indicating Student was eligible for special education and related services of OT, social emotional and behavioral support services. (Petitioners' Exhibit 21-1, 21-3, 21-15)
43. A DCPS psychologist completed an addendum to DCPS' psychological evaluation to assess Student's emotional functioning. The assessment was conducted on November 7, 2018, and November 18, 2016, and the addendum report is dated November 21, 2016. The DCPS psychologist conducted a classroom observation and administered the Behavior Assessment System for Children- Third Edition ("BASC-3") Parent, Teacher and Student Self-Report Forms. (Respondent's Exhibits 3-30)
44. Student's BASC-3 responses yielded no clinical elevations on any of the composite scales such as Internalizing Problems = 50 and Emotional Symptoms Index = 49. However, Student did report an At-Risk elevation for Attention Problems and Somatization subscale. (Respondent's Exhibits 3-30)
45. The teacher BASC-3 responses each yielded high clinical elevations for Internalizing Problems = 91, Behavioral Symptoms Index = 71, Depression = 101, Somatization = 86 and Withdrawal = 77. She rated Student with At-Risk for Anxiety = 63 and Learning Problems = 62. Student's parent responses yielded At-Risk elevations on Internalizing Problems = 62 and Adaptive Skills = 39, Anxiety = 66, Attention Problems = 60 and Somatization = 62. As to the Somatization subscale, the parent indicated that Student is often afraid of getting sick and sometimes complains of being sick when nothing is wrong, by complaining of stomach pains and fear of getting sick. (Respondent's Exhibit 3-29, 3-30).
46. The DCPS psychologist observed Student at School A during a math class. As a result of the observation and assessment, the DCPS psychologist recommended behavioral support services be included in Student's IEP. During the observation Student was cooperative. The psychologist concluded Student has high average cognitive with weakness in processing and visual motor integration and anxiety and low frustration tolerance and academic weaknesses in math and writing. The psychologist concluded Student has significant strengths and academic strengths and should have interaction with non-disabled peers to learn how to socialize and make friends. As result of the classroom observation and the assessment conducted, the psychologist recommended that Student receive counseling services to address coping skills and managing anxiety. She also recommended preferential seating, redirection, frequent follow-up, breaks, extended time, being paired with a peer on assignments and structured opportunities to build social

relationships. She did not see anything to suggest that Student needs that degree of restriction provided Student at School A. (Witness 11's testimony, Respondent's Exhibit 3-31)

47. On December 12, 2016, DCPS convened an IEP meeting for Student. Those in attendance included Student's mother, Petitioners' attorney, a special education teacher, a general education teacher, a social worker, two occupational therapists, the DCPS psychologist and the LEA representative. (Petitioners' Exhibit 23-1)
48. The IEP team noted that Student had been reevaluated in fall 2016 and was again found eligible as a student a SLD. The team discussed Student's historical issues with math and with anxiety when faced with math concepts or the thought of going to math class. The team reviewed School A's ILP dated May 3, 2016, noted Student's strengths and weaknesses as determined by School A, and reviewed Student's performance on the WISC-V and academic assessments administered by School A. (Petitioners' Exhibit 23-5)
49. The team determined that math was an area of weakness and automaticity of math facts and the ability to independently solve increasingly complex math problems were areas of concern. The team noted that if Student too often underestimated Student's abilities in math, and if Student did not understand a concept or procedure quickly Student became frustrated and stopped working altogether. Student had skill deficits in math facts and computation. The team noted in the baseline that Student could solve multi-step word problems when presented in chunks and Student was able to perform accurately 4 out of 6 trials of identifying angles, area and circumference of circles. The team noted in the baseline information provided by School A as of December 16, 2016, need to be augmented with additional data because Student was inconsistent with work, particularly with homework completion. However, Student's efforts in class were more successful. (Petitioners' Exhibit 23-5, 23-6, 23-7, 23-8)
50. Student's December 12, 2016, IEP has academic goals in math and written expression. There are three annual goals for math: (1) correctly solve a word problem involving 2 or more operations and steps in 3/4 trials per opportunity, (2) correctly solve 25/30 problems as measured by a running log when given written computation problems involving decimals, and/or fractions, using manipulatives, a multiplication chart, and/or visuals, and (3) accurately interpret, solve and justify solutions to word problems involving, multiple steps, real life data and/or geometry concepts in 5/6 trials per opportunity as measured by median score per teacher made rubric. Each of Student's goals was coordinated with Common Core Standards. (Petitioner's Exhibit 23-6, 23-7)
51. Student's IEP team then discussed Student's scores related to Sentence Composition, Written Expression, and Spelling. The team determined that generally, Student "demonstrates well developed writing skills, but struggled most with the Sentence Composition subtest. The team noted that Student would benefit from additional spelling supports and noted the additional issues Student had with writing, which included inconsistent effort, proper sequencing of ideas, and getting stuck on small unimportant

details which interrupted the flow of writing. The team determined that in writing Student continued to benefit from a small group environment that enables Student to feel encouraged and perform at Student's best. (Petitioners' Exhibit 23-9)

52. The team developed five writing (5) goals targeted to address Student's need for support with spelling, content, development of writing to increase performance, deficits with sentence composition and limitations that impact the range, complexity, and production of grade level assignments. The Baseline data performance was drawn from School A teacher comments or ILP information. (Petitioners' Exhibits 23-10, 23-11, 23-12)
53. The Student's written expression goals include, but are not limited to, creating a five (5) sentence narrative piece that includes at least two (2) characters with one (1) character description sentence per character, three (3) transition phrases, three (3) concrete phrases describing sequence and sensory details, and one (1) conclusion sentence earning at least the median score in all areas of the rubric; complete all steps of the writing process, to produce a multi-paragraph response to a writing prompt on topic in 2/3 trials per quarter as measured by a median score from all sections of a rubric; independently use an organizing strategy (i.e., cluster map, graphic organizer) prior to writing present thoughts in a logical order 80% of the time; proofread a writing draft that includes identified errors and correct eight (8) out of ten (10) errors in 4 out of 5 trials, and after reading or listening to grade level text, respond to comprehension based questions, using descriptive vocabulary and subordinates in a minimum of three (3) sentences and one (1) example from text in 2/3 opportunities per week as measured peer teacher made rubric; write a five (5) sentence expository and narrative paragraph. Each of Student's goals was coordinated with Common Core Standards. (Petitioners' Exhibits 23-10, 23-11, 23-12)
54. The team determined that Student's Emotional, Social, and Behavioral Development was an Area of Concern based upon Student's history of anxiety and withdrawal when feeling stressed and/or anxious. The team noted that when Student feels anxious Student may respond harshly to peers and leave the classroom. (Petitioners' Exhibit 23-12)
55. In describing how Student's disability affected access to the general education curriculum, the team noted that when Student is unable to grasp a math concept Student becomes anxious and may leave the classroom for support. Student takes a while to calm down but seeks out staff who can assist in regulating emotions. Student's anxiety affects Student's ability to have social interaction with others. (Petitioners' Exhibit 23-13)
56. The team developed three (3) goals for Student. Student's goals were to: use positive self-talk and coping strategies to handle stressful situations by engaging in the 30 minute activity or situation in a calm and positive manner with one (1) prompt on two (2) out of three (3) opportunities; address a frustrating situation by utilizing coping skills with one (1) prompt and return to class or transition to next class with a calm body across all classroom environments in one (1) out of three (3) opportunities; and use an agreed upon signal with teachers across all classroom environments when Student is overwhelmed and needs to leave class in one (1) out of three (3) opportunities. (Petitioners' Exhibit 23-13)

57. There was agreement by all team members as the academic goals and emotional/behavior goals. Student's anxiety was addressed in the behavior support services in the IEP. (Witness 10's testimony)
58. The December 12, 2016, IEP team reviewed Student's Occupational Therapy Assessment and determined that Student's postural control was "problematic" for classroom purposes and Student's sensory processing made it difficult for Student to successfully access the general education curriculum. Student's Baselines also included difficulty: forming letters correctly; aligning letters to the lines; maintaining an upright sitting posture and, consistently achieving and maintaining an optimal arousal level. The IEP team developed goals designed to address these deficits. (Petitioners' Exhibits 23-14, 23-15)
59. The IEP team determined that Student required five (5) hours per week of specialized instruction in math outside of general education; five (5) hours of specialized instruction per week inside general education "(i.e. Written Expression)"; 180 minutes per month of Occupational Therapy outside general education, and 240 minutes per month of Behavioral Support Services outside general education. The team noted that Student would benefit from using computers or an iPad to complete writing exercises, extended time to complete written assignments, oral testing as appropriate, keyboarding instructional programs, computer technology, modified assignments, advanced notice of tests with scaffolded instruction to help limit Student's anxiety when being introduced to new concepts. The team agreed that Student did not require extended school year ("ESY") services. The IEP was valid through December 11, 2017. The end dates by which the goals delineated in the IEP were to be accomplished was December 11, 2017. The DCPS team members determined that Student's IEP services could be implemented at Student's in-boundary school ("School C"). (Petitioners' Exhibits 23-16, 23-19, 23-23, 23-25)
60. The IEP team agreed that Student did not present with significant need for ESY. The team agreed to revisit ESY in the spring after data was gathered. (Petitioners' Exhibit 23-24)
61. The DCPS psychologist who completed the addendum participated in the December 12, 2016, IEP meeting and reviewed and presented the evaluation findings. The psychologist was of the opinion that the IEP developed and the services prescribed were consistent with the findings and recommendations contained within the psychological evaluation and the addendum. (Witness 11's testimony)
62. The DCPS social worker who conducted the observation of Student at School A participated in the IEP meeting. The social worker was of the opinion that there was nothing presented during the meeting to indicate Student needed specialized instruction during lunch and there were no concerns raised during the meeting about a DCPS school being able to provide Student with additional supports during lunch to address Student's anxiety. (Witness 9's testimony)

63. The team discussed Student's executive functioning issues and addressed them in the classroom supplemental aides and services section of the IEP. The IEP team spent a great deal of time discussing Student's strengths and Student's anxiety. There was a disagreement about Student's placement. Petitioners wanted a separate special education day school. The DCPS members of the team believed that with proper supports Student could function well in a combination special education and general education setting and did not need that level of restriction that was provided at School A. (Witness 10's testimony)
64. The DCPS participants of in the meeting saw nothing presented during the IEP meeting by School A staff or Petitioners that supported a finding that Student needed specialized instruction in all academic areas and all classes, or that Student needed to be excluded from non-disabled peers during lunch. (Witness 5's testimony)
65. During the IEP meeting, Petitioners' attorney disagreed with the number of specialized instructional hours being provided to Student and mentioned the gap in Student's verbal comprehension and processing speed. Petitioners' attorney remarked that Student could potentially fall behind in a general education setting and benefits from the small class size and structure provided at School A. (Petitioners' Exhibit 23-23)
66. Petitioner's attorney also asked about the need for a behavior intervention plan ("BIP") and was advised by the DCPS member of the team that Student had only had three (3) incidents where Student "shut down" and that a BIP was not necessary due to the continued support of the counselor with respect to the goals developed in the IEP. (Petitioners' Exhibit 23-24)
67. School A agreed to email updated baseline information for agreed upon goals, DCPS agreed to finalize Student's IEP and issue a Prior Written Notice ("PWN") within five (5) business days from the meeting. Petitioners were encouraged to visit Student's in-boundary school, School C. (Petitioners' Exhibit 23-24)
68. DCPS issued a PWN-Development of IEP on December 19, 2016, that identified School C as the school capable of implementing Student's IEP. The PWN notes that Petitioners' attorney disagreed with the determination. (Petitioners' Exhibit 23-25)
69. School C was able to implement the IEP after it was developed in December 2016. During SY 2016-2017, School C used a co-teaching model for students who required special education in the general education setting and a resource setting taught by a special education teacher. In the co-taught setting students were taught by a content master and a special education teacher who provides modification and accommodations to special education students as needed. School C provides students, who have the need per the IEP, the use computers and iPads to complete written work. School C has students who experience challenges with anxiety and executive functioning deficits, and teachers support students to plan assignments and complete projects over-time. There is also a monthly school wide period for all students to clean out and organize their lockers and binders. (Witness 8's testimony)

70. On January 6, 2017, Petitioners' attorney forwarded a letter to DCPS requesting corrections to Student's IEP. Specifically, the correspondence requested that DCPS change a reference to Student seeking out staff when Student is anxious, state the specific location for Student to go if Student left class due to anxiety, add simplification/repetition of oral directions as accommodations to the IEP, and clarify whether Student's five (5) hours per week of specialized instruction in written language would be outside of the general education setting. (Petitioners' Exhibit 24-1, 24-2)
71. On January 9, 2017, DCPS responded to Petitioners' attorney's correspondence by attaching an IEP Amendment form that corrected the reference that student was seeking out support staff when anxious and adding the requested accommodation. DCPS clarified that Student would receive integrated specialized instruction to address Written Expression inside the general education setting. DCPS completed an amended IEP dated February 21, 2017. (Petitioners' Exhibit 24-3, Respondent's Exhibit 15-1)
72. On January 23, 2017, Petitioners' attorney forwarded a response to DCPS that stated Petitioners agreed with the IEP Amendment Form without convening a meeting. However, Petitioners' attorney restated Petitioners' belief that the team agreed to provide the specialized instructional time for written expression outside of general education, and that the IEP provided insufficient specialized instruction and was inappropriate for Student's needs. (Petitioners' Exhibit 25-1)
73. Petitioners' educational consultant wrote a report, dated March 11, 2017, summarizing his visit to School A and a visit to School C. The report details the class size, number of teachers and how specialized instruction and related services would be provided to Student at School C. The report states that the School C psychologist advised the consultant that the maximum number of specialized instruction hours School C could provide is twenty (20) and that a student requiring twenty (20) hours of service would not have electives. The consultant reported that the School A psychologist stated that Student would be pulled out and miss one class per week for OT services and one class per week for behavioral services. The evaluator reported that there was one general education teacher and one special education teacher in a classroom with sixteen (16) students, but a teacher advised that a "typical class size would be twenty-two (22) or twenty-three (23) students." Based upon the visits to School A and School C, the consultant opined that School C could not provide Student with a FAPE to Student "even by maximizing the resources that are available there." (Witness 4's testimony, Petitioners' Exhibit 26-5, 26-7)
74. Student has received a Psychotherapy Progress Report and Occupational Therapy Progress Report developed by School A in April 2017. The reports detail some progress Student has made, but also referenced, among other things, Student's anxiety, problems with becoming overwhelmed, difficulties with self-regulation, sensory processing, hand and finger strength and dexterity. (Petitioners' Exhibits 27-1, 28-1, 28-2)

75. On May 5, 2017, School A convened an ILP meeting that Petitioners attended. There was also an occupational therapist, a School A administrator, a psychologist, and a science teacher in attendance. The ILP team determined that Student required 33.5 hours of specialized instruction per week, a change from the 31.25 hours Student had previously. The ILP required speech/language therapy and occupational therapy as an integrated service but provided no amount of time for those services. The ILP required individual occupational therapy for 45 minutes per week, and 180 minutes of individual psychological services provided in intervals of 45 minutes per week. The ILP listed the total amount of related services as 1.5, a change from the 3.75 Student had previously. The total hours of specialized instruction and related services required by Student's May 5, 2017, ILP was thirty-five (35). (Petitioners' Exhibit 29-1)
76. On August 7, 2017, Petitioners' attorney forwarded correspondence to DCPS to advise Respondent that Student would be attending School A for SY 2017-2018 to provide Student with a FAPE. A request was made for DCPS to place and fund Student at School A. The correspondence also references Petitioners' belief that DCPS did not identify an appropriate special education program. (Petitioners' Exhibit 32-1)
77. DCPS acknowledged receipt of Petitioners' letter on August 10, 2017, and advised Petitioners that DCPS did not agree to bear the cost of a private placement. DCPS advised Petitioners to enroll Student in Student's DCPS neighborhood school ("School D"). DCPS further advised that if Petitioners placed Student at School A, DCPS would consider the Student a "parentally-placed private school student." (Petitioners' Exhibit 32-3)
78. School D can implement the IEP DCPS developed for Student on December 16, 2016, providing both specialized instruction and related services. School D provides special education and related services to students with a variety of disability classifications. School D provides specialized instruction in the general education setting with both a special education teacher and a general education in the classroom. School D also has self-contained special education classes with only special education students. These classes contain fewer students and an instructional assistant. The self-contained classrooms follow the common core standards and students are on a diploma track. (Witness 7's testimony)
79. On November 2, 2017, Petitioners' educational consultant observed Student at School A and on December 12, 2017, took a tour of School D and prepared a written report dated December 14, 2017, relating his findings from the observation and tour of School D. The consultant observed Student in math, history and English classes and spoke with Student's teachers and the School A psychologist who provides Student in-school therapy services. Student was capable and when Student feels confident performs as well as other students. The math teacher related that Student often becomes anxious and overwhelmed if Student has not done the work or is confronted with work Student has not seen before. Student had performed well and had less difficulties with anxiety in English and History class. The psychologist related that on occasion Student can become racked with anxiety, tense and non-verbal and often isolates during lunch period and is

prone to catastrophic thinking. But the psychologist noted Student was recovering more quickly from bouts with anxiety. (Witness 4's testimony, Petitioner's Exhibit 34-1, 34-2, 34-3)

80. During the consultant's December 12, 2017, tour of School D, he observed a self-contained special education math class and a co-taught inclusion English class. Based upon his observation and information provided by the School D special education coordinator, the consultant developed an opinion that School D was inappropriate for Student because in general education classes he believed that with a lack of sufficient special education support Student would become overwhelmed due to anxiety, executive functioning and academic challenges. He believed the self-contained special education classes were inappropriate because the classes would have students with a variety of disabilities who needed approaches that are different from Student's needs. The consultant believes that the behaviors of other students would be too distracting. Other than the observations, the consultant had never met, talked with, or had any face-to-face time with Student. (Witness 4's testimony, Petitioner's Exhibit 34-4, 34-5, 34-6)
81. On April 4, 2018, School A developed a new ILP for Student that requires 29 hours of specialized instruction, integrated speech/language and occupational therapy, 180 minutes of occupational therapy and 180 minutes of psychological services per month. The ILP lists 6 total hours of related services per week and 35 total specialized instruction and related services hours per week. (Petitioner's Exhibit 42)
82. School A is a private special education day school servicing primarily students with ADHD and/or SLD disability classification from grades 1 through 12. School A has a total of 380 students with 120 students in its high school division. School A has an OSSE certification of approval ("C of A"). At School A Student's class size is anywhere from 5 to 10 students. Certified special education teachers provide instruction in some of Student's classes. In others, teachers who are only content certified in their subject area provide instruction. Student is also provided individual pullout related services and integrated related services in the classroom that are available to all students. Many students at School A suffer with anxiety. (Witness 1's testimony)
83. Student has anxiety triggers but not in every class. Student is primarily triggered in math and science classes and Student may react to the difficulty of the work by crying and shutting down. However, in English classes Student has little problems because of Student's academic strengths in that area. School A staff believe Student needs a protective environment to remediate Student's academic problems and executive functioning difficulties. The small sizes of class are important, and the additional accommodations provide Student support. School A staff believe that in a general education school with no special education supports for the majority of the school day, Student might likely stop showing up to school as Student's level of anxiety might be so high Student might be totally overwhelmed. (Witness 1's testimony)
84. At School A Student has received weekly individual therapy for the past two school years to assist Student in dealing with anxiety and feelings of being academically

overwhelmed, shutting down, and as a result disrupting the learning environment. Student's anxiety effects Student's availability for learning. Student is hyper vigilant about weakness, internalizes deficits, and minimizes successes. The focus of the therapy is to help Student understand the nature of the social emotional issues, helping Student to understand the triggers, exploring Student's thinking, and developing coping strategies to address the anxiety. Student's School A therapist participated by telephone in Student's November 4, 2016, eligibility meeting and helped develop the social emotional and behavioral goals in Student's DCPS IEP. Student has made progress with regard to the anxiety and demonstrated some progress in how Student manages the level of Student's anxiety as evidence by a reduction in Student's shutdowns and the intensity and frequency of Student's anxiety episodes. (Witness 2's testimony)

85. The School A psychologist indicated during the eligibility and IEP meetings that Student had low frustration tolerance and occasionally shuts down but had made improvements. The School A psychologist did not share information from his individual therapy sessions with Student. The DCPS psychologist who assessed Student and participated in the IEP meeting indicated that the School A psychologist did not indicate whether Student had generalized anxiety or otherwise indicate during the meeting that Student had significant social emotional issues. Had that level of concern been mentioned by School A during the IEP meeting or during DCPS' observations of Student, the DCPS psychologist would have suggested that Student be evaluated to determine if Student qualified for an emotional disability. (Witness 11's testimony)
86. At School A Student is provided one pull out OT per week, 45 minutes per session. In high school, the pull out may be in classroom, but it is an individual session. In addition, Student has integrated services and has access to and takes part in the OT advisory period where the OT can assist any child in the high school. The School A OT's main goal is help Student handle anxiety through a sensory channel to help calm Student down. In OT Student has also worked on accepting alternative forms of communication including keyboarding. (Witness 3's testimony, Petitioner's Exhibit 28)
87. When DCPS proposed to implement Student's IEP at School C, Petitioners went to observe the self-contained math and co-taught English class. Petitioners did not think that either class was appropriate for Student and Student's parent was not satisfied and comfortable with the explanation she was provided of how the Student needs would be addressed at School C. (Parent's testimony)
88. Although Student has struggled, Student has done well at School A. Student likes the program academically, and has made some social emotional progress, made friends, and participates in the social programs. Student also attends group therapy for teenagers with an outside psychologist group. Petitioners do not see Student's anxiety at home as much as they once did. (Parent's testimony)

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”).

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)

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, as noted in the PHO and during the hearing, Respondent had the burden of persuasion on issue #1 after Petitioners established a prima facie case.⁹ Petitioner had the burden of persuasion on issues #2 and #3. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied Student a FAPE by failing to propose an appropriate IEP and placement with the sufficient type and amount of special education hours for SY 2016-2017.

⁹ 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.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence that it offered Petitioners an appropriate and timely IEP with regard to the amount of and type of specialized instruction prescribed for SY 2016-2017.

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.

"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."

The second, substantive, prong of the *Rowley* inquiry is whether the IEP DCPS developed was reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances.

In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*. To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Andrew F.*, supra, 137 S. Ct. at 999-1000 (citations omitted).

The key inquiry regarding an IEP's substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student's needs at the time, the IEP offered was reasonably calculated to enable the specific student's progress...."Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra,

137 S. Ct. 988.

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.")

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 202)

The evidence demonstrates that Student was initially found eligible when Student attended School B, a DCPS elementary school, during SY 2011-2012. Based on the credible testimony of the School B special education coordinator, while at School B Student was accessing the curriculum but complained about writing and resisted pull out special education services. School B provided Student push-in special education services in the least conspicuous way possible because of Student's desire to not be seen as different from Student's general education peers. The evidence also demonstrates that at School B Student had friends and was a lively classroom contributor.

Student's last DCPS IEP at School B developed in October 2013 prescribed 2 hours per week of specialized instruction inside general education and 120 minutes per month of OT inside general education. Student's last year attending School B, or any DCPS school, was SY 2013-2014. Petitioners thereafter placed student in School A, a private special education separate school for SY 2014-2015. Student attended School A for two school years during which Petitioners did not request DCPS provide Student with a FAPE and, therefore, DCPS did not and was not required to develop an IEP for Student for SY 2014-2015 or SY 2015-2016.

The evidence demonstrates that on May 17, 2016, Petitioners made an initial referral to DCPS requesting a FAPE for Student. DCPS convened an eligibility meeting on July 7, 2016, but did not find Student eligible as of that date. DCPS determined it would conduct evaluations and Petitioners granted consent for the evaluations. DCPS initiated evaluations in July 2016, but was unable to complete the evaluation process before the start of SY 2016-2017. Petitioners notified DCPS that they intended to continue Student's placement at School A for SY 2016-2017 and requested DCPS funding. DCPS declined to fund Student at School A but informed Petitioners that it would implement Student's previous DCPS IEP or any other IEP provided on an interim basis at Student's neighborhood DCPS school until the evaluations were completed and an IEP could be developed by DCPS.

The evidence shows that on September 15, 2018, the timeline by which DCPS was to determine Student's eligibility had expired. DCPS was to have provided Student an IEP and placement within 30 days following the eligibility determination.¹⁰ The evidence proves that DCPS did not complete the evaluations of Student and convene an eligibility meeting until November 4, 2016. DCPS did not develop an IEP for Student until December 16, 2016.

Petitioners assert that the IEP DCPS developed on December 16, 2016, was not reasonably calculated to enable Student to make progress appropriate in light of Student's individual circumstances. Specifically, Petitioners allege the IEP should have prescribed additional hours of specialized instruction per week, to wit: 25 hours per week with all specialized instruction outside the general education setting, challenging the LRE that the IEP prescribed. Petitioners do not dispute the related services hours that the IEP prescribed.

The evidence shows that although Student was having academic difficulties, particularly in math when Student last attended a DCPS general education school, Student was an active contributor, had friends and was accessing the general education curriculum. Since that time Student has been in an environment where Student has been totally removed from non-disabled peers. At the time of DCPS' evaluation, Student was generally making above average grades in all courses at School A.

The evidence shows that based on the psychological evaluation DCPS conducted in July 2016 Student demonstrated High Average intellectual abilities, performing higher than 84% of same age peers. However, Student's processing speed composite score was higher than only 5% of same age peers. Student's academic achievement reflected that Student's reading and reading comprehension were Average, but Student was Below Average in the areas of math, math fluency, and written expression. Student also has executive functioning deficits and Student's social emotional functioning demonstrates anxiety and low frustration tolerance.

It was clear from the testimony, that with regard to Student's performance in the areas of math and written expression where Student experiences deficits, Student had the tendency to become

¹⁰ D.C. Code § 2561.02 (a)(1) provides an LEA shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

D.C. Code § 2561.02 (a)(2)(A) provides that beginning July 1, 2017, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within 60 days from the date that the student's parent or guardian provides consent for the evaluation or assessment. The LEA shall make reasonable efforts to obtain parental consent within 30 days from the date the student is referred for an assessment or evaluation.

At the time of Petitioner's May 17, 2016, initial referral for special education services D.C. Code § 2561.02 (a)(2)(A) had not yet taken effect. Thus, the 120-day time line applied.

34 CFR 330.323 (c) requires that each public agency ensure that— (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

anxious and shut down. However, in the two instances where DCPS personnel observed Student at School A Student was fully engaged in the classroom instruction and there was no indication that Student displayed anxiety and/or shut down behaviors.

The DCPS IEP only prescribed specialized instruction in a setting outside general education in the area of math, and instruction in areas affecting written expression were to be provided inside general education with special education support. There was clear evidence presented at the December 12, 2016, IEP meeting by the School A staff that Student demonstrated severe anxiety and shut down behaviors whenever Student was engaged in instruction that Student found unfamiliar and/or difficult. The evidence demonstrates that Student has proficiency in reading and reading comprehension but when it comes to written output Student has significant deficits.

The team noted during Student's December 12, 2016, IEP meeting that Student would benefit from additional spelling supports and noted the additional issues Student had with writing, which included inconsistent effort, improper sequencing of ideas, and getting stuck on small unimportant details which interrupted the flow of writing. The team determined that with regard to writing Student continued to benefit from a small group environment that enables Student to feel encouraged and perform at Student's best.

The DCPS witnesses' testimony with regard to Student's deficits and need for special education inside general education in the area of written expression was not persuasive. The student was only observed in a math class and was not observed in a class that demanded that Student engage in writing assignments. The Hearing Officer therefore, concludes that there is credible testimony regarding Student's difficulties in writing that was available to the IEP team when it developed Student's IEP. Because of the existence of this information, it would have been reasonable for DCPS to have also prescribed that Student's instruction in written expression be provided outside a general education setting. In fact, Petitioners' counsel requested that such a change be made to the IEP following the IEP meeting.

The preponderance of the evidence supports that Student needed instruction in the area of written expression to also be provided outside general education. Because such instruction was not required by the Student's IEP, the Hearing Officer concludes that Student's December 12, 2016, IEP was not reasonably calculated to provide Student educational benefit in light of Student's unique circumstances, and as a result Student was denied a FAPE.

As previously stated, on the psychological evaluation DCPS conducted in July 2016 Student demonstrated High Average intellectual abilities and Student's academic achievement reflected that Student's reading and reading comprehension were Average. However, Student was Below Average in the areas math, math fluency, and written expression. Student also has executive functioning deficits and Student's social emotional functioning demonstrates anxiety and low frustration tolerance. Petitioners assert that based on these deficits and characteristics Student needs specialized instruction outside general education in all academic areas (25 hours per week) and Student should be in a school environment where Student is totally removed from non-disabled peers. However, the evidence does not support such a finding.

With the exception of Student's parents, Petitioners' witnesses never worked with or observed Student in an environment other than one totally removed from non-disabled peers. Although the parent asserted Student did not do well in Student's last year at School B, the School B special education coordinator credibly testified otherwise. Student's IEP progress reports also indicated that Student made progress relative to the IEP goals and Student mastered some of the goals. Although the WJ-III scores from 2013 and 2014 indicate Student scoring in math declined Student's scores in broad written language, and written expression increased during this period. Student made progress and was promoted to the next grade.

There was no evidence from School A staff that Student displays anxiety and shut down behaviors in classes that do not involve math or written expression, that Student is need of special education support in non-academic settings, or that Student cannot function in a setting with non-disabled peers. There was testimony from School A witnesses, however, that not all subjects and classes Student has at School A are provided by certified special education teachers.

Although Petitioner's educational consultant testified that Student needed specialized instruction throughout the school day and Student would be overwhelmed in general education schools such as School C and School D proposed by DCPS, other than the observations the consultant conducted, the consultant had no face- to- face time with Student and had never met or sat down and talked to Student.

There was insufficient evidence that Student required specialized instruction in all academic areas and throughout the school day and insufficient evidence that Student requires an educational placement where Student is totally removed from non-disabled peers. Therefore, the Hearing Officer does not conclude that School A is Student's LRE or that School A should be designated Student's current educational placement.

However, during the hearing, there was evidence that the level of anxiety that Petitioners' witnesses expressed that Student has displayed at School A was not fully conveyed by School A during the December 12, 2016, IEP meeting. It was the position of the DCPS psychologist that had School A described as severe level of emotional dysregulation during the meeting that was described in the hearing, she would have requested that Student be evaluated for an emotional disability. Therefore, the Hearing Officer directs that DCPS conduct evaluation(s) of the Student that will help determine whether Student's social/emotional and behavioral functioning are a primary condition that should be considered for Student's educational programming that might warrant Student's placement in setting where Student is totally removed from non-disabled peers.

The Hearing Officer directs in the order below that DCPS reimburse Petitioners for tuition and costs of Student attending School A for SY 2016-2017 and 2017-2018, evaluate Student, review current educational data for Student, update Student's IEP as appropriate, determine Student's placement for SY 2018-2019, and determine a location of services where Student's IEP can be implemented for SY 2018-2019.

ISSUE 2: Whether the DCPS denied Student a FAPE by failing to propose any IEP and placement for SY 2017-2018

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

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).

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).

The evidence demonstrates that DCPS developed an IEP for Student that was valid through December 11, 2017. The end dates by which the goals delineated in the IEP were to be accomplished was December 11, 2017. At the start of SY 2017-2018, Petitioners notified DCPS that they intended to maintain Student's enrollment at School A and requested that DCPS fund Student's placement at School A. At that time, Petitioners did not specifically request that DCPS review and reconsider Student's DCPS IEP that had been developed in December 2016, and did not file a due process complaint to challenge that IEP.

DCPS promptly responded to Petitioner's request. DCPS' response informed Petitioners that DCPS had made FAPE available to Student with an appropriate IEP and placement. The Hearing Officer concludes that this letter clearly indicated that the IEP that DCPS had already developed remained valid and could be implemented at Student's neighborhood DCPS high school. DCPS also informed Petitioners that if they did not enroll Student in a DCPS school and maintained Student at School A, DCPS would consider Student a privately placed Student. Consequently, based on these facts, the Hearing Officer concludes that DCPS had a current IEP in effect and offered Student a placement at the start of SY 2017-2018. Notwithstanding, the conclusions in the issue above regarding the appropriateness of that IEP, the Hearing Officer concludes that Petitioners did not sustain the burden or persuasion by a preponderance of the evidence on this issue.

ISSUE 3: Whether DCPS denied Student a FAPE by failing to update Student's IEP before it expired.

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

Pursuant to 34 C.F.R. §300.324(b)(1), DCPS must ensure that...the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals...and in the general education curriculum, if appropriate; the results of any reevaluation conducted ...; information about the child provided to, or by, the parents...; the child's anticipated needs; or other matters.

34 CFR § 300.137 (a) provides that no parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the

child would receive if enrolled in a public school.

The evidence demonstrates that DCPS informed Petitioners in August 2017, that Student's December 12, 2016, IEP could be implemented at Student's neighborhood DCPS high school and that if Petitioner's maintained Student at School A Student would be considered a privately placed Student. In the letter from Petitioners requesting DCPS funding of School A, Petitioners did not specifically request that DCPS review and update Student's December 12, 2016, IEP.

Subsequent, to that letter, and prior to Petitioners filing the current due process complaint, there was no indication to DCPS that Petitioners were seeking a FAPE from DCPS that would have warranted DCPS conducting an annual review of Student's IEP. Student did not attend a DCPS school and was not receiving special education services at a DCPS School or at School A with DCPS authorization and funding, such that DCPS would have been obligated to provide Student an updated IEP. It was not until Respondent was put on notice by the filing of the due process complaint, that DCPS became aware that Petitioners were seeking a FAPE which would have warranted that the December 12, 2016, IEP be reviewed and updated. Consequently, the Hearing Officer concludes that Petitioners did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

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.) The Hearing Officer has concluded that Student was denied a FAPE by DCPS and has directed that DCPS in the order below remedy that denial.

Under the IDEA, parents who unilaterally decide to place their disabled child in a private school, without obtaining the consent of local school officials, “do so at their own financial risk.” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (quoting *Sch. Comm. of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)). “As interpreted by the Supreme Court, IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a free appropriate public education in a public or private school; (2) the private-school placement chosen by the parents was otherwise “proper under the Act”; and (3) the equities weigh in favor of reimbursement—that is, the parents did not otherwise act “unreasonabl[y].” *Leggett v. District of Columbia*, 793 F.3d 59, 66–67 (D.C. Cir. 2015) (citing *Carter*, supra, 510 U.S. at 15–16, 114 S.Ct. 361; 20 U.S.C. § 1412(10)(C)(iii)(III)).

In the Hearing Officer's opinion, it was reasonable for Petitioners to have rejected the IEP and offers of FAPE that DCPS made and to unilaterally place Student in School A. The Hearing Officer has concluded that the evidence supports a finding that School A is a private placement that is “proper under the Act” and that Petitioners are entitled to reimbursement for Student's attendance at School A for SY 2016-2017 from September 14, 2016, through the end of SY 2016-2017 and for SY 2017-2018.

Although Respondent's counsel asserted in DCPS' closing argument that Petitioners did not comply with the notification of parental placement and asserted that any reimbursement should be reduced as a result, there was no clear indication of what specific action or inaction by Petitioners warranted such a reduction. Consequently, the Hearing Officer will not reduce Petitioner's reimbursement.

ORDER: ¹¹

1. DCPS shall, within thirty (30) calendar days of Petitioners presenting DCPS satisfactory proof of their payment to School A, reimburse Petitioners the costs of Student's attendance at School A consistent with OSSE rates, for Student attending School A for SY 2016-2017 from September 14, 2016, to the end of SY 2016-2017 and for SY 2017-2018.¹²
2. Petitioners and School A shall make Student available for formal observation and evaluation(s) by DCPS to determine Student's current academic functioning to update Student's IEP in accordance with the requirements of 34 C.F.R. §300.324(b) and to specially consider whether Student's disability classification should include emotional disability due to Student's level of anxiety.
3. DCPS shall, within thirty (30) business days of the issuance of this order, observe, and evaluate Student consistent with paragraph #2 above, and convene a multi-disciplinary team ("MDT") meeting with DCPS personnel and Petitioner(s) and School A personnel to review evaluation(s) and current data and conduct an annual review of Student's IEP, and update Student's IEP as appropriate.
4. At the MDT meeting directed to be convened pursuant to the provision above, following an update of Student's IEP, the MDT shall determine an educational placement for Student for SY 2018-2019 and DCPS shall within fifteen (15) business days of the MDT meeting determine a location of service for Student where Student's IEP will be implemented for SY 2018-2019.
5. DCPS shall issue a PWN and/or a location of service letter within five (5) business days of the MDT meeting described in paragraph # 4 above indicating Student's educational placement and location of service where Student's IEP will be implemented.
6. All other relief requested by Petitioners is denied.

¹¹ Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioners shall extend the timelines on a day for day basis.

¹² The Hearing Officer notes that as to related services, reimbursement is limited to the amount of services DCPS prescribed in the IEP that was adjudicated in this HOD.

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: June 25, 2018

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