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Confidential

<p>Parent on Behalf of Student,</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“LEA”)</p> <p>Respondent.</p> <p>Case # 2018-0066</p> <p>Date Issued: June 28, 2018</p>	<p>CORRECTED HEARING OFFICER’S DETERMINATION ¹</p> <p>Hearing Dates: June 5, 2018 June 6, 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 28, 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 June 5, 2018, and June 6, 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. The parties submitted written closing arguments on June 15, 2018.

BACKGROUND AND PROCEDURAL HISTORY:

The student or (“Student”) is age _____ and in grade _____.² The student resides with Student’s parents 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”).

DCPS developed an individualized education program (“IEP”) for Student on June 16, 2016, when Student was attending a DCPS elementary school (“School A”). DCPS proposed to implement Student’s IEP for school year (“SY”) 2016-2017 at another DCPS school (“School B”). Petitioner declined the Student’s placement at School B and insisted that Student remain at School A, despite the fact that School A could not implement Student’s IEP. DCPS later proposed to implement Student’s IEP for SY 2017-2018, first at a DCPS educational campus (“School C”), and then at a DCPS middle school (“School D”). In March 2017 Petitioner withdrew Student from School A and unilaterally placed Student in a non-public special education separate day school (“School E”) where Student has attended ever since. At the start of SY 2017-2018 Petitioner requested that DCPS fund Student at School E. DCPS declined and asserted it had offered Student an appropriate IEP and placement that Petitioner rejected.

On March 12, 2018, Student’s mother (“Petitioner”) filed the current due process complaint asserting DCPS had denied Student a free appropriate public education (“FAPE”) because, inter alia, the June 16, 2016, IEP as well as the school placements that DCPS proposed for Student were allegedly inappropriate and that DCPS allegedly failed to review and update Student’s IEP for SY 2017-2018.

Relief Sought:

Petitioner seeks reimbursement from DCPS for the tuition and related services Petitioner has paid to School E for SY 2016-2017 and SY 2017-2018, and that DCPS be ordered to place and fund Student at School E for SY 2018-2019.

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

LEA Response to the Complaint:

DCPS filed a response to the complaint on April 5, 2018. DCPS denies that there has been any failure to provide Student with a FAPE. DC asserts that it proposed a full time special education placement for Student that Petitioner refused. Petitioner filed a due process complaint that Petitioner withdrew in September 2016 and insisted Student remain in a school placement that DCPS clearly informed Petitioner was inappropriate and could not implement Student's IEP. DCPS continued to propose a full time special education setting for the student's instruction, although Petitioner disagreed with the proposal. Consequently, Student did not progress appropriately. DCPS requests that Petitioner's request for relief be denied.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on April 6, 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 5, 2017, and ended [and the Hearing Officer's Determination ("HOD") was originally due] on May 26, 2017. Petitioner's counsel filed a motion to continue the hearing from the previous hearing date offered, May 4, 2018, to the requested dates of June 5, 2018, and June 6, 2018, for a thirty-three (33) day continuance and extension of the HOD due date from May 26, 2018, to June 28, 2018.

The undersigned Hearing Officer ("Hearing Officer") convened a pre-hearing conference ("PHC") on April 5, 2018, and issued a pre-hearing order ("PHO") on April 10, 2018, outlining, inter alia, the issues to be adjudicated.

ISSUES:³

The issues adjudicated are:

1. Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP for SY 2016-2017 and 2017-2018 because the IEP did not include a sufficient (a) amount of specialized instruction and/or (b) speech language services.⁴
2. Whether DCPS denied Student a FAPE by failing to include Student's parents in the placement determination, preventing them from participating in the IEP process.
3. Whether DCPS denied Student a FAPE by providing inappropriate placements at School B, School C and School D.

³ The Hearing Officer restated the issues at the hearing and the parties agreed that these were the issues to be adjudicated. The parties agreed to an amendment of the issue #1 to include speech language services and to eliminate the original issue #2 that was listed in the PHO: Whether DCPS denied Student a FAPE by failing to provide any speech/language therapy services for SY 2016-2017 and SY 2017-2018.

⁴ The IEP being challenged was developed on June 16, 2016, and amended on October 11, 2016.

4. Whether DCPS denied Student a FAPE by failing to update Student's IEP for SY 2017-2018.
5. Whether DCPS denied Student a FAPE by failing to review and consider the independent speech language evaluation DCPS authorized and Petitioner provided to DCPS and the School E speech language report Petitioner provided to DCPS.

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 78 and Respondent's Exhibits 1 through 95) that were admitted into the record and are listed in Appendix 2.⁵ The witnesses testifying on behalf of each party are listed in Appendix B.⁶

SUMMARY OF DECISION:

Petitioners had both the burden of production and persuasion on the following issues above: # 2, #4 and #5. Respondent held the burden of persuasion on issues #1 and #3. Based on the evidence adduced, the Hearing Officer concluded that Respondent sustained the burden of persuasion by a preponderance of the evidence on issue #1, but not on issue #3. Petitioner did not sustain the burden of persuasion on issues #2 and #5, but sustained the burden of persuasion on issue # 4. As a result of the denials of FAPE, the Hearing Officer in the order below directed DCPS to reimburse Petitioner for Student's attendance at School A for SY 2017-2018.

The Hearing Officer concluded 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 E be determined Student's prospective placement. However, based upon Petitioner's expressed desire for DCPS to continue to provide Student a FAPE, and as a result of the denial of FAPE determined, the Hearing Officer directed in the order below that DCPS conduct and review evaluation(s) of Student, develop an IEP for Student for SY 2018-2019 and determine an appropriate educational placement for SY 2018-2019.

⁵ Any item disclosed and not admitted or admitted for limited purposes was noted on the record and is noted in Appendix A.

⁶ Petitioner presented seven witnesses: (1) Student's parent ("Petitioner") and the following individuals who were designated as expert witnesses: (2), an educational consultant, (3) a School A psychologist, (4) a School A speech language pathologist, and (5) a School A administrator, (6) a School A occupational therapist, (7) an independent speech language pathologist. Respondent presented four witnesses: (1) a DCPS special education teacher/case manager, (2) DCPS LEA representative from the DCPS school Student previously attended, (3) a DCPS speech language pathologist, (4) a DCPS psychologist.

FINDINGS OF FACT:⁷

1. Student resides with Petitioner in the District of Columbia. Student has been determined eligible for special education and related services pursuant to IDEA with an SLD disability classification. DCPS is Student's LEA. (Petitioner's Exhibit 34-1)
2. Student was initially determined eligible for special education on June 8, 2012, while attending School A. The team determined that Student met the criteria for the SLD disability classification based on a significant discrepancy between Student's academic achievement and intellectual abilities as measured by DCPS' evaluation. The team noted that Student did not "achieve adequately and/or ... make sufficient progress to meet age or State-approved grade-level standards..." in the areas of written expression, reading fluency skills and mathematics calculation. (Petitioner's Exhibits 4-1, 4-2)
3. Student's SY 2011-2012 report card stated that Student maintained a 2 (approaches the standard/basic) during all four quarters of English Language Arts and Mathematics. By the fourth quarter Student had raised Student's grade to a 4 (exceeds the standard/advanced) in Science, Social Studies, and Health & Physical Education. Petitioner signed Student's 4th quarter report card on June 14, 2012. (Petitioner's Exhibits 5-1, 5-2, 5-3)
4. Student's IEP progress report from period 1 of SY 2012-2013 (August 27, 2012-November 2, 2012), details the Student was "Progressing" on all goals contained in Student's IEP except those goals that had not yet been introduced or had just been introduced. (Petitioner's Exhibits 7-1, 7-2, 7-3, 7-4)
5. DCPS conducted annual reviews of Student's IEP on May 14, 2013, and again on May 5, 2014. Student's May 5, 2014, IEP had academic goals in the math and reading, and goals in motor skills/physical development. The IEP prescribed 60 minutes per day of specialized instruction outside general education, 60 minutes per day inside general education and occupational therapy ("OT") for 120 minutes per month outside general education. Student was eligible for extended school year ("ESY") services. (Petitioner's Exhibit 8-1, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 8-12)
6. On March 31, 2015, Student's IEP team conducted an annual review of Student's IEP. The team determined that Student continued to be eligible as an SLD student, and agreed, among other things, that Student's behavior did not impede Student's or other children's learning and that Student did not have language needs that related to Student's IEP. (Petitioner's Exhibits 11-1, 11-2, 14-1, 14-2, 14-3)

⁷ 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.

7. The March 31, 2015, IEP team determined that Student's reading and math skills were approximately three grades behind Student's grade level pursuant to the scores Student's achieved on the ST Math and iReady. The team agreed that Student "would be better able to access the curriculum" with assistive technology including a screen reader and a speech-to-text device to support Student's ability to complete assignments both at school and at home. (Petitioner's Exhibit 11-2)
8. The IEP team determined baseline information, present levels of academic achievement and functional performance/development in math, reading and motor skills/physical development. The IEP included academic goals in math and reading that were linked to the Common Core Standards. Student's March 31, 2015, IEP required that Student receive 60 minutes per day of specialized instruction inside the general education setting and 60 minutes per day of specialized instruction outside of the general education setting. The IEP also provided Student with 120 minutes per month of OT outside of the general education setting. (Petitioner's Exhibit 11-3, 11-4, 11-5, 11-6, 11-7, 11-8, 11-9)
9. The IEP provided Student with classroom aids and services that included, among other things, pacing of instruction, assignment modification, and self-management/teach study skills. Student received accommodations such as calculators, preferential seating, flexible scheduling, and having test administered at the best time of the day for Student. Student also received transportation and ESY. (Petitioner's Exhibits 11-9, 11-11, 11-12)
10. Student's end of year report card for SY 2014-2015 stated that Student reached a 3 (meets expectations for grade level) during the last quarter in Reading, Math, Music, Art Health & Physical Education and World Languages. By the fourth quarter Student had reach a 4 (exceeds the standard/advanced) in Writing & Language, Speaking and Listening, Social Studies and Science. The report card notes that Student finished the grade on a strong note. (Petitioner's Exhibit 16-1)
11. Soon after the start of SY 2015-2016, in November 2015, Petitioner expressed concern that Student's reading abilities were not actually on grade level and that the reading instruction Student was being provided at School B was not sufficiently challenging enough or sufficiently tailored by Student's teacher to meet Student's needs. (Petitioner's Exhibit 18-1)
12. Student's IEP progress report for the first quarter of SY 2015-2016 indicated Student was progressing on all IEP goals that had been introduced. (Petitioner's Exhibit 22)
13. Student's second quarter report card for SY 2015-2016 stated that Student reached a 2 (approaches expectations for grade level in Reading, Writing & Language. Student had reached a 4 (exceeds the standard/advanced) in Speaking & Listening, a 3 (meets expectations for grade level) in Music and Health & Physical Education, and a 1 (performing significantly below grade level) in Math and Science. (Petitioner's Exhibit 26-1)

14. On December 18, 2015, Student's father took Student for a 90-minute developmental pediatric assessment administered by Student's health care provider. The evaluator reviewed Student's March 31, 2015, IEP as well as other testing Student had received such as the Brigance Comprehensive Inventory of Basic Skills II and the WISC-IV. (Petitioner's Exhibits 20-1, 20-2)
15. The evaluator performed a Wide Range Achievement Test ("WRAT"). Student's test scores were significantly below Student's age and grade level. Student achieved a 73 (Grade equivalent 1.3) in Word Reading and an 86 (Grade equivalent 2.9) in Math Computation. The evaluator administered the Grade 1 Oral Reading and Comprehension (Durrell) and Student stopped after being unable to decode a single word after 30 seconds. Student's Auditory Memory Tasks were equivalent to age 5 ½. Digit Recall-Forward 5 digits (2 of 3 trials) was equivalent to age 6 ½, Backward-3 digits was equivalent to age 6 ½ (2 of 3 trials). Student's Form Copying was equivalent to age 8, and Student's performance on the Ayers Scale for Handwriting Speed was equivalent to Grade 2. (Petitioner's Exhibit 20-3)
16. The impressions of the evaluator were that Student "has features of a complex learning disability, with poor working memory (auditory and visual), as well as slow processing speed that negatively impact reading and math, as per testing at school, and consistent with the testing done by the evaluator that day. The evaluator listed auditory processing, visual processing, and math manipulatives, among other strategies that could assist Student. (Petitioner's Exhibit 20-4, 20-5)
17. On February 24, 2016, DCPS sent Petitioner an email scheduling an IEP meeting for Student in March 2016. Student's mother selected March 21, 2016, at 11:00 am for the IEP meeting. (Petitioner's Exhibit 23-2, 23-3)
18. On March 12, 2016, DCPS emailed Petitioner a draft IEP, letter of invitation and a procedural safeguards manual and confirmed the March 21, 2016, meeting. On March 13th, Student's mother emailed DCPS with concerns about the draft IEP and concerns that the draft IEP did not include sufficient time of services Petitioner believed Student should be provided. Petitioner claimed school staff was not properly using the assistive technology provided Student. Petitioner asserted that rather than Student being pulled out of the general education class to remediate deficits, Student should be provided aids that make the classroom curriculum and instruction accessible to Student. Petitioner also claimed staffing was not properly addressed in the draft IEP and that she thought that the team had previously agreed to permit Student to start keyboarding, rather than stressing Student's handwriting skills. (Petitioner's Exhibits 23-1, 23-2)
19. On March 21, 2016, DCPS convened an IEP meeting. Petitioner participated along with her attorney. The IEP Team Meeting/Agenda Notes reflect that the DCPS team the LEA representative, special education teacher, general education teacher, occupational therapist, audiologist, school principal attended the meeting. (Respondent's Exhibit 19 pg. 206)

20. The team reviewed the draft IEP goals and specifically, as to the implementation of the math goals, DCPS incorporated Petitioners' request to provide a "different kind of approach" by adding visual supports written within the goal. Petitioners' attorney stated her belief that Student required a self-contained classroom; Petitioner advised that Student required the assistance of the special education teacher. (Respondent's Exhibits 19 pg. 207, 19 pg. 208)
21. The team discussed Student's reading scores that indicated Student was several grades below in reading. DCPS advised Petitioners that Student was no longer using the Stevenson Reading program because Student's mother did not want it utilized. Student's mother disagreed with this and stated she suggested a different program, to which DCPS responded that they had implemented the MyLexia Reading program and Student was making some progress. The team agreed to written language being added to the IEP. (Respondent's Exhibit 19 pg. 208, 20 pg. 215)
22. The IEP team agreed to perform a "full battery of assessments" to include Auditory Processing Disorder ("APD") and FAR-Fiefer Assessment. Petitioner executed a consent form for DCPS to conduct evaluations. (Respondent's Exhibits 2 pg. 2, 19 pg. 209)
23. On April 4, 2016, and April 11, 2016, DCPS conducted a speech language evaluation of Student. The evaluation report is dated April 22, 2016. The evaluator obtained information from Student's teachers via input checklist regarding Student's Receptive Language (Listening-Auditory Processing-Memory), Semantics (Concepts), Social Communication/Pragmatics, Metalinguistic/Phonemic Awareness, Receptive Language (Listening-Auditory Processing-Memory and Expressive Language. The evaluator performed a 45-minute classroom observation of Student in Student's general education English Language Arts ("ELA") class to gain information on Student's communicative functioning in the instructional setting. The evaluator noted that Student raised Student's hand to provide a response to a question or to provide a comment and initiated appropriate responses when questioned as well as an on-topic comment, when called upon. The evaluator remarked that Student "demonstrated the ability to understand questions posed on the text that were read aloud and was observed to share [Student's] thoughts/ideas during whole group discussion. [Student] was observed to initiate comments, respond to questions, and take turns during a conversational exchange with a peer." (Respondent's Exhibits 23 pgs. 241, 242, 243)
24. The evaluator performed informal and formal assessments. The formal assessments consisted of the Goldman-Fristoe Test of Articulation-Third Edition (GFTA-3), the Expressive One Word Picture Vocabulary Test-Fourth Edition (EOWPVT-4), the Receptive One Word Picture Vocabulary Test-Fourth Edition (ROWPVT-4), the Oral and Written Language Scales-Second Edition (OWLS-II), the Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5), and the Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2). (Respondent's Exhibit 23 pg. 244)
25. The evaluator found Student's auditory functioning at the conversational level, and Student's lip, tongue, and jaw functions to be within normal limits. Student's vocal

parameters of quality, pitch, rate, intensity, and fluency were informally assessed and judged to be within normal limits for Student's age and gender. (Respondent's Exhibit 23 pg. 244)

26. The evaluator assessed Student using GFTA-3 that measures speech sound abilities in single word utterances as well as sentences. Student's overall score was within the Average range standard score ("SS") (SS=106). Student's overall speech intelligibility in connected speech was rated to be 100%. The Student's score on the ROWPVT-4 also yielded a SS=106, which placed Student within the Average range. Student was noted to be able to identify stimulus items up to and within the 14 and older age range given the choice of four pictures on the test page. (Respondent's Exhibit 23 pg. 245)
27. The evaluator administered the EOWPVT-4 that assesses Student's ability to name objects, actions, and concepts pictured in illustrations. The evaluator determined that Student was able to name items up to and within the 14-year old and older range. Increased processing time was allowed in order for Student to retrieve a response. The evaluator noted that Student's ROWPVT-4 score was slightly higher than Student's EOWPVT-4 score. However, the difference of .05 level was insignificant and the magnitude of difference occurred in more than 25% of the standardized sample and is not rare or unusual. (Respondent's Exhibit 23 pg. 245)
28. Student's OWLS-II were used to measure overall receptive and expressive language skills. The CELF-5 was also administered to obtain information about Student's ability to follow auditory directions of increased length and complexity. The evaluator implemented Student's accommodations and modifications throughout testing. (Respondent's Exhibit 23 pg. 245)
29. Student received a Listening Comprehension Scale ("LC") to measure Student's receptive language and primarily consists of Lexical/Semantic, Syntactic, and Supralinguistic items. Student received a standard score ("SS") of 107 placing Student within the Average range. Student received a SS of 113 on Oral Expression ("OE") that places Student within the Average performance range. Student's Oral Language Composite yielded a SS of 109, placing Student within the Average performance range. (Respondent's Exhibit 23 pgs. 245, 246, 247)
30. The CELF-5 was used to evaluate Student's ability to interpret spoken commands of increasing length and complexity. The subtest has a mean of 10 and a standard deviation of 3. Student received a scaled score of 10 on the Following Directions subtest, placing Student within the Average performance range. (Respondent's Exhibit 23 pg. 247)
31. The CTOPP-2 is a norm-referenced test used to measure Student's phonological processing abilities related to reading. The CTOPP-2 assesses phonological awareness, phonological memory, and rapid symbolic naming. The test has a composite SS mean of 100 with a standard deviation of 15 and a subset scaled score mean of 10 with a standard deviation of 3. The CTOPP-2 is used "to identify individuals who are significantly below their peers in important phonological abilities, to determine strengths and weaknesses

among developed phonological processes, to document individuals' progress in phonological processes as a consequence of special intervention programs, and to serve as a measurement device in research studies investigating phonological processing." (Respondent's Exhibit 23 pg. 247)

32. Phonological Awareness references a person's awareness of and access to the sound structure of his or her oral language. The subtests consisted of the Elision which measures the extent to which a person can say a word, then say what is left after dropping out designated sounds, Blending Words which measures a person's ability to combine sounds to form words, and Phoneme Isolation which measures the ability to isolate specific sounds in words. Student received an Average score (90) in Phonological Awareness. Student's Elision scaled score was Below Average/Borderline (7), the Blending Words scaled score was Average (9), the Phoneme Isolation scaled score was Average (9). (Respondent's Exhibit 23 pg. 248)
33. Phonological Memory relates to coding information phonologically for temporary storage in short-term or working memory. The subtests are Memory for Digits (repeating a series of numbers ranging from 2 to 8 digits) and Nonword Repetition (repeating non-words ranging from 3 to 15 sounds). Student received a scaled score of 7 on Memory for Digits, placing Student in the Below Average/Borderline performance range. Student received a scaled score of 5 on the Non-word Repetition, placing Student within the Poor performance range. (Respondent's Exhibit 23 pg. 249)
34. Rapid Symbolic Naming refers to naming digits or letters, which requires efficient retrieval of phonological information from permanent or long-term memory. This subtest consists of Rapid Digit Naming, which measures the speed with which a person names numbers on a page, and Rapid Letter Naming, which measures the speed with which a person can name letters on a page. Student performed within the Very Poor range in Rapid Symbolic Naming with a composite standard score of 61. Student received a scaled score of 3 in Rapid Digit Naming, placing Student within the Very Poor range and a 4 in Rapid Letter Naming, placing Student within the Poor range. (Respondent's Exhibit 23 pgs. 248, 249)
35. Based upon the results of Student's testing, the evaluator determined that Student displayed relatively Average phonological awareness skills. However, Student displayed significantly Below Average abilities in phonological memory and rapid symbolic naming. Student demonstrated difficulties in the ability to manipulate sounds, repeat nonsense words, recall series of digits in order and rapidly name letters and numbers. The evaluator concluded based on the assessments and other data that Student demonstrated age appropriate speech and language skills that are necessary for academic success and communicative functioning. Student demonstrated "excellent speech and language skills needed to access grade level content, to effectively communicate during oral classroom activities and discussions, to understand and follow directions and instruction in class, and to comprehend and use curricular vocabulary and language." (Respondent's Exhibit 23 pg. 251)

36. Phonological processing difficulties were Student's most notable area of weakness with respect to Student's phonological memory and rapid naming skills. These difficulties in phonological processing negatively impact Student's ability to read fluently, decode new words, and possibly write. The evaluator stated that the MDT should determine Student's eligibility in the area of communication/speech and language. (Respondent's Exhibit 23 pg. 251)
37. The evaluator's recommendations included, but were not limited to, repetition of information using a multimodality approach (visual, tactile, auditory, motor), the use of visual materials to supplement auditory instruction, repeating and restating or paraphrasing important information or questions, and providing phonemic cues or encouraging Student to describe an item to retrieve a target word. (Respondent's Exhibit 23 pg. 251)
38. DCPS conducted a psychological reevaluation on April 5, 2016, April 11, 2016, and April 12, 2016. The DCPS Confidential Psychological Reevaluation report is dated April 18, 2016. The evaluator administered the Kaufman Assessment Battery for Children-Second Edition (KABC-2) as measure of Student's cognitive functioning, the Woodcock-Johnson Tests of Achievement-Fourth Edition (WJ-IV-ACH) as a measure of Student's academic achievement, and the Behavior Rating Inventory for Executive Functioning (BRIEF) as measure of Student's behavior/executive functioning. The evaluator also reviewed Student's attendance, work samples, standardized assessments, cumulative record, Student observation and interviews. (Respondent's Exhibit 24 pg. 254)
39. The KABC-2 is divided into subtests. The Sequential/Gsm Index (Global Short-Term Memory) measures sequential processing with emphasis on the serial order of stimuli, strictly defined order for chain-like progression and linear and temporal ideas related to the preceding one. The Simultaneous/Gv Index (Global Visual Processing) measures simultaneous processing, spatial integration of stimuli that is needed to solve problems, input has to be synthesized simultaneously such that separate stimuli are conceptualized as a whole. The Learning/Glr Index (Global Learning) measures ability requiring integration of attention, focused, sustained and selective attention, and the ability to store and code new information and integrate auditory and visual stimuli, apply sequential and simultaneous processes to incoming sensory information and generate strategies to efficiently retrieve newly paired association from storage. The Knowledge/Gc Index (Global crystalized Ability) is a supplement to measure acquired knowledge and emphasizes content rather than the process. The Planning/Gf Index (Global Fluid Reasoning) requires hypothesis generation, revising one's plan of action, monitoring and evaluating the best hypothesis for a given problem, flexibility, impulse control. (Respondent's 24 pg. 260)
40. Student received a Below Average score of 85 on Sequential/Gsm, and an Above Average score of 122 in Simultaneous/Gv. Student's performance on the Learning/Glr was a 92, placing Student within the Average range. Student's Knowledge/Gc was a 108, which placed Student's performance within the Average range. (Respondent's Exhibit 24 pgs. 261, 262)

41. Student's subtests in Gsm Number Recall and Word Order yielded scaled scores of 7 and 6 respectively, placing Student within the Below Average range. Student's Gv performance on Rover (13) and Triangles (14) placed Student within the Above Average range. Student's Glr Atlantis and Atlantis Delayed each received scaled scores of 11, placing Student in the Average range. However, Student's Rebus and Rebus Delayed scaled scores were 6, placing Student within the Below Average range. Student's Gf Story Completion scaled score was 9, which was within the Average range, while Student's Pattern Reasoning was Above Average with a scaled score of 13. Student's Gestalt Closure was rated at 4, a scaled score which is Far Below Average. Student's Gc scaled scores for Verbal Knowledge and Riddles were 12 and 11 respectively, which placed Student within the Average range. The cognitive assessments that were administered to Student indicated Student has Average cognitive functioning. (Respondent's Exhibit 24 pgs. 262, 271)

42. Student's academic functioning demonstrates that Student was more than two years behind in basic reading skills, far Below Average in math skills, academic skills, with exception of math facts. Student's WJ-IV scores were as follows:

Basic Reading Skills: Standard Score ("SS")=40 with Letter Identification SS=45 and Work Attack Skills SS=40. These results indicate a deficit in basic reading skills.

Reading Comprehension: Passage Comprehension SS=40. The result is indicative of a deficient performance.

Reading Fluency: Reading Fluency SS=40, Sentence Fluency SS=40. These scores indicate a deficiency for Student as compared with age level peers.

Math Calculation Skills: Calculation SS=62 Math Facts Fluency SS=59. Student's score of 58 on this cluster indicates a deficient performance.

Math Problem Solving: Applied Problems SS=88 Number, Matrices SS=80, Student received a score of 88 for Math Problem Solving which is in the Below Average range, with a comparison score of 52 out of an expected age level percentage of 90.

Written Expression: Writing Samples SS=65m, Sentence Writing Fluency SS=40. Student obtained a SS of 43 in Written Expression, placing Student within the deficient range. (Respondent's Exhibit 24 pgs. 263, 271)

43. The Student received BRIEF scores with respect to Working Memory, the Plan/Organize and Initiate scales significantly elevated compared to age and gender matched peers. Student displayed problems with task-oriented monitoring. Student's profile suggests significant difficulties with general metacognitive problem solving, independent problem solving, ability to hold multiple pieces of information in mind and systematically construct a plan. Student is likely to have difficulty monitoring Student's performance during tasks. Student's scores related to Global Executive Composite were significantly elevated as compared to the scores of Student's peers, suggesting significant difficulty in one or more areas of executive functioning. (Respondent's Exhibit 24 pgs. 267, 268)

44. The DCPS evaluator determined that Student “would qualify for specialized instruction as a student with a Specific Learning Disability in Basic Reading Skills.” (Respondent’s Exhibit 24 pg. 271)
45. On April 26, 2016, Student received an Auditory Processing Disorder Evaluation and the report of the evaluation was issued on April 28, 2016. The evaluator reviewed Student’s psychological evaluation records, speech and language evaluation, and conducted a Student and Parent interview. The evaluator performed an Otoscopy, audiological evaluation, an Auditory Continuous Performance Test (“ACPT”) and a SCAN-3 for Children (SCAN-3C). (Respondent’s Exhibit 28 pgs. 288, 290)
46. The evaluator found that Student suffers from hypermobile tympanic membranes in both ears. Student’s overall results on the ACPT fell within the abnormal range for Student’s age. All of Student’s SCAN-3C testing results were within the Normal limits for Student’s age. Student demonstrated an atypical right ear advantage (“REA”) on the Auditory Figure-Ground+8 test, a mild atypical left ear advantage on the Filtered Words test and a significant atypical REA on the Completing Words-Directed Ear (“CW-DE”) test. The results of the CW-DE suggest a delayed development of the auditory nervous system with possible residual deficits into adolescence and adulthood. The evaluator recommended a reevaluation in one to two years to rule out a disorder of the auditory nervous system. However, the evaluator concluded that no specific deficits were found that indicate a definitive Auditory Processing Disorder based upon the American Speech-Language-Hearing Associations criteria. (Respondent’s Exhibit 28 pgs. 291 – 297)
47. The evaluator, among other things, recommended that Student be referred to a pediatrician, child psychologist, or psychiatrist for further evaluation regarding concerns related to auditory attention. (Respondent’s Exhibit 28 pg. 297)
48. On April 13, 2016, DCPS performed an Occupational Therapy Re-Assessment and the report of the re-assessment is dated May 4, 2016. The evaluator assessed Student’s muscle tone, range of motion and posture. They were all within normal limits. Student performed keyboarding, copied sentences and completed a reversal worksheet. Student was also tested using the Beery Developmental Test of Visual Motor Integration (“VMI”) – 6th Edition and the Bruininks-Oseretsky Test of Motor Performance (“BOT-2”). (Respondent’s Exhibit 29 pgs. 302 – 304)
49. Student’s performance on the Beery was in the Low range, while both visual perception and motor coordination were within the Average range. Student scored within the Average range on all aspects of the BOT-2 except Manual Dexterity and upper limb coordination, where Student earned a Below Average score. The evaluator noted that Student’s grasp on the pencil and the pressure Student exerts when writing might lead to fatigue, or Student’s difficulty with recalling multiple letters or short words per glance may lead to eye fatigue or errors with copying information from a model. (Respondent’s Exhibit 29 pg. 306)

50. On May 19, 2016, DCPS issued a Letter of Invitation for the Petitioners to attend a meeting to review the results of Student's evaluations. The proposed meeting date was June 10, 2016 at 1:15 pm. On June 8, 2016, a second Letter of Invitation was forwarded to Petitioners that stated that the purpose of the meeting was to conduct an annual review of Student's IEP and that other topics would include ESY and assistive technology. The meeting was still scheduled for June 10, 2016 at 1:15 pm. (Respondent's Exhibits 30 pg. 307, 32 pg. 311)
51. On June 10, 2017, Petitioner's attorney sent a letter to DCPS requesting that DCPS fund an independent speech and language evaluation. (Petitioner's Exhibit 52)
52. On June 16, 2016, DCPS convened an IEP meeting which was attended by Student's mother, a special education teacher, an evaluator who could interpret assessment results, the LEA representative, a general education math teacher, the school principal, a speech pathologist, an occupational therapist, an audiologist, the school support liaison, the English/Language Arts teacher and Petitioner's attorney. The team met again on June 16, 2016 to conduct Student's annual review and update Student's IEP based upon assessments. (Respondent's Exhibit 40 pg. 345, 346; Petitioner's Exhibit 34-1; Respondent's Exhibit 39 pg. 344)
53. The team used the results of Student's April 12, 2016 WJ-IV to establish Student's present levels of performance and baselines in math. Student's annual goals were crafted to respond to the Student's known deficits and linked to Common Core Standards. The team referenced Student's achievement on various subtests of the WJ-IV to appropriately address Student's skills development in math. (Petitioner's Exhibits 34-2, 34-3, 34-4, 34-5).
54. The June 16, 2016, IEP team determined that reading was an area of concern for Student and established Student's present levels of performance by using Student's WJ-IV, Dolch, mClass TRC assessment and DIBELS. The team also reviewed the results of Student's speech language evaluation to establish Student's present performance. (Petitioner's Exhibit 34-6)
55. The team established goals that were responsive to Student's deficits in reading as evidenced by Student's speech/language and educational testing in the areas of reading and phonology. Student's goals were paired with corresponding Common Core Standards. (Petitioner's Exhibits 34-7, 34-8, 34-9)
56. The team determined that written expression was an area of concern for Student and the team used Student's performance on the WJ-IV and speech/language assessment to establish Student's present levels of performance and baselines. Student's goals were created in response to Student's deficits in written expression and were linked with Common Core Standards. (Petitioner's Exhibits 34-10, 34-11)
57. Based upon Student's performance on an audiological evaluation performed in April 2016, the team determined that Student "may exhibit a mild weakness under the auditory

processing deficit profile in the area of auditory integration...” The team developed goals for Student in this area that involved a trial of a personal FM device and dichotic listening tasks. These goals were designed to effectively address Student’s auditory issues. The team also stated the fact that Student required a follow up APD evaluation in one to two years to assess whether Student’s “ear performances balance out.” (Petitioner’s Exhibits 34-11, 34-12)

58. The team developed goals and baselines for Student in the area of motor skills/physical development. The team used information from Student’s performance on the BOT-2 and VMI-2 to determine Student’s strengths and weaknesses and to create Student’s goals. Student’s goals were designed to respond to Student’s deficits in visual motor skills, visual perception and fine motor skills. (Petitioner’s Exhibits 34-13, 34-14)
59. The team developed an IEP for Student that required that Student receive 20 hours per week of specialized instruction outside of the general education setting, 4 hours per month of OT outside of the general education setting, 30 minutes per month of audiology services outside of the general education setting, and 30 minutes per month of audiology consultation services. The IEP required that Student receive assistive technology in the form of a trial personal FM system (e.g. remote microphone system) FM system management and support. Student’s IEP provided other classroom aids and services such as visual aids, and graphic organizers. (Petitioner’s Exhibit 34-15)
60. The IEP team determined that Student was eligible for ESY and transportation. The team created ESY goals for student in math, reading, written expression, visual motor skills and keyboarding. The Student’s ESY IEP required that Student receive instruction outside general education in Written Expression, Reading and Math and 30 minutes per week of Occupational Therapy. The ESY IEP contained an error that listed the time for instruction in minutes rather than hours. This error was corrected absent the need for a meeting via Standard IEP Amendment Form (Parent Initiated) on June 17, 2016. (Petitioners’ Exhibits 34-19, 34-20, 34-21, 34-22, 34-23; Respondent’s Exhibit 43 pg. 353)
61. The DCPS Speech/Language Pathologist completed a Speech and Language Therapy Criteria Checklist. It was determined that Student did not require speech and language services as Student did not fit within the required criteria and had adequate speech and language skills that did not limit Student’s access to the curriculum. Student was able to access oral communication and Student’s teachers did not have any concerns about Student’s oral communication. The evaluation data did not support a finding that Student had a speech language disability or needed speech language services at the time Student’s June 16, 2016, IEP was developed. (Witness 10’s testimony, Respondent’s Exhibit 38 pg. 343)
62. Petitioner told the IEP team that the increase in specialized instruction that DCPS proposed was not sufficient. She also believed student required speech language therapy and requested an independent evaluation. School A team members advised Petitioner that Student’s new IEP could not be implemented at School A. School A advised that it

would reach out to DCPS central office for a school and program where Student's new IEP could be implemented. (Petitioner's testimony)

63. On June 17, 2016, DCPS issued a Prior Written Notice-Development of IEP. The notice reflects the fact that the team considered a request made by Petitioners' attorney to provide Student with 32.50 hours per week of specialized instruction outside of the general education setting. The team heard the opinion of Student's educational consultant on the matter. However, the team refused to increase Student's hours to the level requested by Petitioners' attorney because a majority of the team believed Student would benefit from remaining with general education peers for lunch, recess and special subject classes. The IEP was written to address all of Student's current deficits and provide Student with Student's least restrictive environment. (Petitioner's Exhibit 34-26)
64. During the summer of 2016, Student did not attend DCPS ESY. Rather, Student attended School E's summer program, where Student participated in an intensive phonological awareness reading fluency program and occupational therapy ("OT"). According to the Student's performance report, Student improved from a Composite Reading Score of 56.301 to 67.101, and experienced dramatic improvement in Student's ability to work with syllables. Student's OT dealt with the acquisition of fine motor skills by implementing keyboarding. The report on the OT suggests that Student visit a developmental optometrist because of ocular motor concerns. (Petitioner's Exhibits 35-1, 35-2, 35-3, 36-1, 36-2)
65. On July 25, 2016, DCPS issued a letter regarding a new Location of Special Education Services that transitioned Student from School A to School B for SY 2016-2017. The letter directed that Petitioners take the letter and enroll Student in School B. On August 11, 2016, Petitioners' attorney responded to the DCPS correspondence by issuing a letter expressing concerns about the appropriateness of School B and requesting that Student remain at School A for SY 2016-2017. The letter indicated that Petitioner was willing to file a due process complaint and invoke stay-put protection for Student to remain at School A. (Petitioner's Exhibits 37-1, 38-1)
66. The program identified at School B for Student is designed for students with severe learning disabilities and is one of the most restrictive learning-based disability programs DCPS provides. An IEP with 20 hours of specialized instruction requires a substantially separate program with the ability to implement interventions and provide related services. Each class in the School B program has a special education teacher and a paraprofessional. These classrooms include no more than 10 to 12 students. Students in the program take all core academic classes in a special education setting, but have special courses, lunch, and recess with nondisabled peers. If a student in the program requires even more specialized instruction or services, the student would be referred for consideration for an even more restrictive setting. (Witness 9's testimony)
67. On August 19, 2016, Petitioner filed a due process complaint that Petitioner withdrew without prejudice on September 8, 2016. (Respondent's Exhibits 85 p. 535, 86 pg. 550)

68. On August 22, 2016, DCPS issued a Parent/Guardian Letter of Invitation to conduct an annual review of Student's IEP and discuss the Student's placement for SY 2016-2017. DCPS issued a second notice with the date of August 30, 2016, to discuss the same issues. (Respondent's Exhibits 51 pg. 395, 51 pg. 397)
69. On September 13, 2016, DCPS issued a Parent/Guardian Letter of Invitation for a meeting on October 18, 2016. The letter stated that meeting was to conduct an annual review of Student's IEP and review data from Student's summer programming at School E. (Respondent's Exhibit 54 pg. 403)
70. On September 16, 2016, DCPS issued a Prior Written Notice ("PWN") placing the Student at School A and stating that Petitioners' attorney requested that Student remain at School A until an October 18, 2016, IEP meeting to review additional data. DCPS advised that it continued to propose 20 hours of specialized instruction and rejected Petitioners request that Student remain at School A. The PWN stated that DCPS used the LRE referral, records review, input from parent, attorney, advocate and IEP team as a basis for its decision. DCPS noted that if Student remained at School A, where Student's IEP could not be fully implemented, Student would be denied a FAPE and fail to make progress and may experience educational harm. (Respondent's Exhibit 53 pg. 401-402)
71. Petitioner insisted that Student remain at School A because Petitioner did not want to dislodge Student from Student's friends at School A and the theater program at School A that Student was involved in and enjoyed. (Petitioner's testimony)
72. Petitioner's consultant advised Petitioner not to place Student at School B but to keep Student at School A because she believed Student's placement at School B would be harmful. The consultant stated that the students in the program DCPS offered at School B were not Student's intellectual and/or oral linguistic peers based on information she had from SY 2015-2016. She also believed the reading program used at School B was insufficient for Student. Petitioner's consultant, however, did not observe the program at School B until December 2016. (Witness 1's testimony)
73. While Student remained at School A, Student's progress was relatively slow, and Student required intense instruction, repetition of skills and practice. Student was in a group of 2 to 3 students for math and needed to use manipulatives so that math would be hands-on. Student worked on basic math facts, and one-step word problems with arithmetic. Although Student's math skills improved, Student continued to require repetition. Student's special education teacher engaged with Student one-on-one for reading every day. Much of the reading time was devoted to phonics, sight word recognition and guided reading. Student received 10 to 12 hours per week of specialized instruction; however, this was roughly half of the hours required by Student's IEP. Student's reading level moved from kindergarten to the middle of first grade. (Witness 8's testimony)

74. Student lost half of the specialized instruction required by Student's IEP due to the fact that Petitioner demanded that Student remain at School A where Student's IEP could not be fully implemented. This action risked educational harm to the Student. (Witness 8's testimony)
75. In October 2016, DCPS made the remainder of the changes to Student's IEP that Petitioner's consultant recommended. (Witness 1's testimony)
76. On October 11, 2016, DCPS forwarded Petitioner a Standard IEP Amendment Form (LEA Initiated) in which DCPS proposed to amend the Student's IEP to reflect the following changes: a change in assistive technology, a change to present levels of performance and annual goals to edit the present levels of performance, needs, impact on Student, annual goals, baseline, anticipated date of achievement, or evaluation procedures and schedule for an existing area of concern, a change to specialized instruction to edit the LRE justification statement, a change to consultation services to remove existing consultation service (including service, setting, time/frequency), a change to assistive technology and a modification to AT for hearing, a change which would add a new accommodation, a change to add state testing accommodations and a change to ESY services which would remove ESY and remove ESY goals. The amendment was based upon input from the special education teacher, audiologist, occupational therapist and a review of the summer 2016 progress reports. (Respondent's Exhibit 56 pg. 409)
77. Although Student's IEP was amended on October 11, 2016, the IEP's annual review date remained June 16, 2016, on the front page of the IEP document. The anticipated dates of achievement for all the IEP goals remained June 15, 2017. Student's next annual review date for the IEP was June 15, 2017. (Petitioner's Exhibits 42, 45-1)
78. On October 16, 2016, Student's Parent executed a consent form for Evaluation/Reevaluation. (Respondent's Exhibit 57 pg. 411)
79. On October 19, 2016, DCPS issued a Prior Written Notice-Amendment of IEP in which DCPS, in response to Petitioners' request to maintain Student at School A, noted that should Student remain at School A, where Student's IEP could not be fully implemented, Student would be denied a FAPE and fail to make progress. DCPS also noted that Student was participating with non-disabled peers, same-aged peers during morning meeting, specials, such as Art, Music, PE, Spanish, tech, recess and lunch. (Respondent's Exhibit 61 pgs. 419, 420, 427)
80. On October 19, 2016, the IEP team ordered an Adaptive Physical Education Assessment that the team wrote it had agreed to perform on June 16, 2016. (Respondent's Exhibit 62 pg. 423)
81. On October 7, 2016, DCPS issued a letter of invitation for Petitioner to attend an IEP meeting at School A to review the Adaptive PE evaluation. (Respondent's Exhibit 66 pg. 431)

82. On November 18, 2016, DCPS conducted an adaptive physical education assessment that concluded Student did not qualify for adaptive physical education. (Respondent's Exhibit 69 pg. 454)
83. DCPS convened an IEP meeting on December 13, 2016, that Petitioner participated in by telephone. During the meeting the adaptive physical education assessment was reviewed. (Stipulation)
84. On December 14, 2016, DCPS issued a PWN indicating that Student was not eligible for adaptive physical education. (Respondent's Exhibit 69 pg. 461)
85. Petitioner eventually visited School B and observed the self-contained special education program there in December 2016. Petitioner did not believe the students she observed were Student's peer group and the classroom was in her opinion chaotic. Although students in the class read at a higher level than Student, Petitioner thought overall the students in the program had lower cognitive abilities than Student. (Petitioner's testimony)
86. On February 22, 2017, Petitioner's attorney sent a letter to DCPS stating that Petitioner rejected the IEP and placement proposed by DCPS for Student for SY 2016-2017 at School B. The letter also stated that Student would be attending School E for the remainder of SY 2016-2017 within 10 days of the letter and asked DCPS to fund Student at School E. (Respondent's Exhibit 73 pg. 484)
87. Student was withdrawn from DCPS by Petitioner as of March 10, 2017. (Respondent's Exhibit 84 pg. 526)
88. On May 2, 2017, DCPS issued Petitioner a letter stating that DCPS was proposing to implement Student's IEP at School C for SY 2017-2018. The letter stated that no IEP revisions were being proposed. (Respondent's Exhibit 75 pg. 491)
89. On August 7, 2017, Petitioner counsel sent a letter to DCPS stating that Student would be attending School E for SY 2017-2018. The letter asked DCPS to fund Student at School E. The letter stated that Petitioner was not seeking equitable services but a provision of FAPE including an IEP and an offer of placement. (Respondent's Exhibit 79 pg. 495)
90. On August 11, 2017, DCPS acknowledged receipt of Petitioner's attorney's letter requesting that DCPS fund student at School E, declined the request and stated that it was DCPS' position that it had made a FAPE available to the Student with an appropriate IEP and placement. (Respondent's Exhibit 77 pg. 493)
91. On August 11, 2017, DCPS issued Petitioner a letter stating that DCPS was proposing to implement Student's IEP at School D for SY 2017-2018. The letter stated that no IEP revisions were being proposed. (Respondent's Exhibit 76 pg. 492)

92. Petitioner and her consultant later visited School D and were of the opinion that program was inappropriate for Student. Behavior management was carefully directed, and in one class Students were engaged in an independent research project that Petitioner believed Student could not have completed independently. Petitioner and her consultant did not believe the School D program was inappropriate for Student because it is not a “full time program” and there were a number of students who appeared to have significant behavioral problems. (Petitioner’s testimony, Witness 1’s testimony)
93. Student’s June 16, 2016, IEP expired as of June 15, 2017. DCPS did not conduct an annual review meeting of Student’s IEP even after it received the August 7, 2017, letter stating that Petitioner was seeking a FAPE for Student including an IEP and an offer of placement. (Petitioner’s Exhibits 42-1, 45-1)
94. On November 9, 2017, DCPS completed a review of the independent speech and language evaluation that was conducted on September 17, 2017. (Witness 6’s testimony, Witness 10, testimony, Respondent’s Exhibit 83 pg. 510)
95. On December 5, 2017, a DCPS speech language pathologist received a May 2017 speech and language report from School A regarding Student. On December 6, 2017, DCPS completed a review of the School E speech language report. Based upon the School E speech language report, the DCPS speech language pathologist believed Student would warrant speech language services. DCPS has not yet convened a meeting for a team to review the independent speech language evaluation and the School E speech language report. (Witness 10’s testimony, Respondent’s Exhibit 83 pg. 512, Petitioner’s Exhibit 50)
96. School E is private special education day school servicing primarily students with ADHD and/or SLD disability classification from grades 1 through 12. School E has a total of 105 students in the two grades that match Student’s age. School E has an OSSE certification of approval (“C of A”) and its annual tuition is approximately \$45,000.00. Related services are an extra cost. (Witness 3’s testimony)
97. After Student participated in School E’s summer program during 2016 School E determined Student needed one to one instruction. School E was not able to sufficiently support Student and could not offer Student acceptance. Petitioner reapplied mid-year and School E adjusted staffing and offered Student acceptance for the second half of SY 2016-2017. (Witness 3’s testimony)
98. School E provided Student one to one instruction every day in reading and math. Student has made progress in math and been in small group for math since the beginning of SY 2017-2018. Student is currently functioning approximately three grade levels behind in math. Student was provided one to one instruction for 40 minutes per day working on phonemic awareness decoding and fluency. (Witness 3’s testimony)
99. Student will be retained in the same grade at School E. At School E Student has made friends, participates in the theatrical program, has continued to progress, and has gained

confidence as a learner. Student has made progress in reading and is now a first grade reader. Student attends PE, theater and music every day. Student is gregarious but has struggles with social pragmatics. In Student's latest individual learning plan ("ILP") at School E, in addition to specialized instruction in reading and math, Student is provided individual and group speech language services and receives OT three times per week. (Petitioner's testimony, Witness 3's testimony, Petitioner's Exhibit 68)

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). Petitioners have both the burden of production and persuasion on the following issues above: #3 and #6. Respondent shall hold the burden of persuasion on the following issues #1, #2, #4, #5. Petitioners shall establish a prima facie case on issue #1 before the burden of persuasion falls to Respondent. The burden of persuasion shall be met by a preponderance of the evidence.⁸ The normal standard is

⁸ 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

preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied Student a FAPE by failing to provide Student an appropriate IEP for SY 2016-2017 and 2017-2018 because the IEP(s) did not include a sufficient (a) amount of specialized instruction and/or (b) speech language services.

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that the IEP DCPS developed on June 11, 2016, and amended on October 11, 2016, was reasonably calculated to provide Student educational benefit in light of Student’s unique circumstances.

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

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.

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.

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)

Petitioner asserts that the IEP DCPS developed for Student on June 16, 2016 is inappropriate, because it did not include a sufficient amount of specialized instruction and/or speech language services.

The evidence demonstrates that Student was first found eligible for special education while in kindergarten and was provided special education for the remainder of time Student attended School A. Despite being provided specialized instruction two hours per day and Student’s parent working with Student at home consistently and diligently over the years, Student made little academic progress in math and even less progress in reading.

Although Student’s School A report cards indicated Student was operating at or near grade level in most areas, Student’s parent had an outside assessment completed in December 2015 that indicated Student was several grade levels behind in reading and more than one grade level behind in math.

At Student’s March 21, 2016, IEP meeting Petitioner participated in the meeting with her attorney who requested that Student be moved to a self-contained special education program. The team initiated evaluations of Student that were conducted in April 2016 and included a psychological, a speech and language, an OT and an auditory processing assessment.

The evaluations revealed that Student has average cognitive functioning, but Student has executive functioning deficits. Student's academic achievement testing indicated Student has severe deficits in reading and written expression and below average functioning in math. There was no auditory processing disorder found, but the evaluator cautioned that Student should be evaluated again within a year or two.

As result of the evaluations, DCPS significantly increased Student's specialized instruction to 20 hours per week outside general education and continued OT services outside general education. The speech language evaluation noted Student's deficits in language areas related to reading but did not conclude that Student had any communications deficits that warranted speech language services. Petitioner and her attorney disagreed with the level of services and instead of again asking for a self-contained special education program asked that Student's IEP reflect 32.5 hours outside general education. The School A members of the team did not agree that Student required that level of restriction outside general education.

At the June 16, 2016, IEP meeting the School A team stated that School A could not implement an IEP with 20 hours of specialized instruction outside general education. School A sought a school location where Student's IEP could be implemented. DCPS later determined that the IEP could be implemented in a self-contained special education program at School B.

Although Student's June 16, 2016, IEP prescribed ESY services Petitioner declined those services during summer 2016 and instead placed Student in a summer program at School E. The evidence demonstrates that Petitioner actually desired that Student attend School E at the start of SY 2016-2017, but School E had determined it did not have the staffing to provide the level of services that it believed Student required.

Rather than allow Student to be enrolled in the self-contained special education program DCPS proposed for Student at School B, based upon recommendation from Petitioner's consultant and Petitioner desire that Student remain with Student's peers at School A, Petitioner insisted that Student remain at School A where Student's needs could not be met. DCPS entreated Petitioner that Student could be harmed by not being in a placement where Student's needs could be met and that could implement Student's IEP. Student remained at School A and School A provided student increased services including one to one reading instruction and small group instruction for approximately 10 hours per week of specialized instruction outside general education. Student made progress, but the progress was slow.

Although Petitioner's consultant averred that Student needed specialized instruction throughout the school day totally separated from non-disabled peers, Petitioner obviously believed Student was benefitting socially and emotionally from being with non-disabled peers and remaining at School A, although Student lacked the level of specialized instruction Student needed.

Student's report cards at School A indicated that although Student was below grade level expectations in reading and math, in the other areas measured by the report card including Art, Music and Physical Education, Student was in some instances exceeding grade level. This evidence demonstrates that at the time DCPS developed Student's June 16, 2016, IEP it was reasonable for the team to have moved Student to a higher level of restriction on the continuum

of special education placements by prescribing 20 hours per week of specialized instruction outside general education. In fact, at Student's March 21, 2016, IEP meeting that was the level of program that Petitioner's attorney initially suggested. There was an insufficient basis, even with the Student's recent evaluations data, for the team to have immediately moved Student to a placement where Student would have been totally removed from non-disabled peers.

Petitioner and her consultant did not visit School B until December 2016 after Student's IEP had failed to be fully implemented at Petitioner's insistence for nearly four months. The consultant originally based her recommendation to Petitioner not to enroll student in School B upon what she supposedly knew about the School B program from over a year prior.

When they finally observed the School B program, Petitioner saw that students in the program had reading abilities above Student's but she and the consultant believed based on their observation that the students had lower cognitive abilities than Student. There is no indication that they ever had any definitive information of the profiles of any of the students in that program. The Hearing Officer did not find the consultant's or Petitioner's testimony asserting the inappropriateness of School B's program for Student convincing because it lacked any concrete data. Rather, it was based merely upon conjecture. The evidence demonstrates that by the time the Petitioner visited School B Petitioner had already reapplied to School E and was apparently holding out and waiting for an acceptance for Student to attend School E that she finally obtained in second semester of SY 2016-2017.

On the other hand the DCPS witness credibly described the type of self-contained program that DCPS offered to implement Student's IEP at School B for SY 2016-2017. That program was designed for students with severe learning disabilities and is one of the most restrictive learning-based disability programs that DCPS provides. Each class in the School B program has a special education teacher and a paraprofessional. These classrooms include no more than 10 to 12 students. Students in the program take all core academic classes in a special education setting and have specials, lunch and recess with nondisabled peers.

The weight of the evidence supports a conclusion that the amount of specialized instruction that School A proposed in Student's June 16, 2016, IEP was reasonably calculated to provide Student educational benefit in light of Student's unique circumstances.

The DCPS Speech/Language Pathologist completed a Speech and Language Therapy Criteria Checklist. It was determined that Student did not require speech and language services as Student did not fit within the required criteria and had adequate speech and language skills that did not limit Student's access to the curriculum. Student was able to access oral communication and Student's teachers did not have any concerns about Student's oral communication. The evaluation data did not support a finding that Student had a speech language disability or needed speech language services at the time Student's June 16, 2016, IEP was developed.

Petitioner requested DCPS fund an independent speech language evaluation that DCPS approved. DCPS received that independent evaluation along with a School E speech language report. Although the DCPS speech language pathologist testified that based on the School E report she would consider Student to be in need of direct speech language, there was no such

information available to the June 16, 2016, IEP team that indicated Student was in need of such services when Student's DCPS IEP was developed. Consequently, the Hearing Officer does not conclude that Student's IEP was inappropriate because it did not prescribe speech language services.

ISSUE 2: Whether DCPS denied Student a FAPE by failing to include Student's parents in the placement determination and thereby preventing them from participating in the IEP process.

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

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

"Educational placement" means educational program, not the particular institution where that program is implemented." *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003), 39 IDELR 182. A placement is not a physical location, but a program of educational services offered to the student. *Sherri A.D. v. Kirby*, 19 IDELR 339 (5th Cir. 1992).

The evidence demonstrates that at the IEP team meeting on June 16, 2018, at which the team determined the level of services that Student would be provided Petitioner and her attorney were present and were allowed to fully express their opinions. The DCPS team members proposed that Student be provided 20 hours per week of specialized instruction outside general education along with related services outside general education as well as classroom aids and accommodations. Petitioner and her representative(s) asserted Student should have more hours of specialized instruction to the level that Student would have been removed from a setting with general education peers altogether.

School A staff disagreed with that level of restriction. The evidence demonstrates that School A could not implement the level of services that the School A team determined Student needed and informed Petitioner that a school location where the IEP could be implemented would be provided to her by DCPS. DCPS later informed Petitioner that Student's IEP could be implemented at School B. Although Petitioner was not involved in the final selection of school location where Student's IEP would be implemented, Petitioner was fully involved in determination of Student's level of services and Student's LRE as prescribed in Student's IEP. The Hearing Officer concludes based on the evidence that Petitioner was given an opportunity to fully participate in determining Student's LRE and placement.

Generally, a school district has the discretion to determine the actual school location where a Student's IEP is to be implemented, and parents are generally given an opportunity to visit that location prior to a student's enrollment. Petitioner was also provided an opportunity to observe

School B, but concluded prior to such a visit to oppose the school location DCPS had selected. Petitioner chose to finally visit the school location DCPS offered four months after SY 2016-2017 began and after Student had endured four months in a placement that DCPS had clearly informed Petitioner was inappropriate for Student. The Hearing Officer concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on this issue.

ISSUE 3: Whether DCPS denied Student a FAPE by providing inappropriate placements at School B, School C and School D.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence on this issue that it offered an appropriate placement to Student for SY 2017-2018.

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).

The evidence demonstrates that DCPS offered to implement Student's IEP for SY 2016-2017 at School B. As already discussed in issue #1 above, there was sufficient evidence that the IEP DCPS proposed for Student for SY 2016-2017 was appropriate and there was sufficient evidence that the IEP could be implemented at School B and insufficient evidence presented to indicate that School B was an inappropriate placement for Student.

DCPS initially proposed School C for Student's IEP to be implemented for SY 2017-2018. Then prior to the start of SY 2017-2018, DCPS made a change and proposed that Student's IEP be implemented at School D. Although Petitioner and her consultant visited and offered testimony regarding School D and asserted that that school location was inappropriate, any determination regarding the appropriateness of School C or D in this instance was premature.

The Hearing Officer concludes in issue #4 below that by the start of SY 2017-2018 Student's June 16, 2016, IEP had expired and DCPS took no action to conduct an annual review and update Student's IEP. A valid IEP is primary and essential in determining an appropriate placement for a Student. The Hearing Officer thus, concludes that for SY 2017-2018 although DCPS notified Petitioner of Student's assignment to School C and then School D, because there was no valid IEP for Student, DCPS failed to provide Student an appropriate placement for SY 2017-2018.

ISSUE 4: Whether DCPS denied Student a FAPE by failing to update Student's IEP for SY 2017-2018.

Conclusion: Petitioner sustained 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).

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.

As noted above, the evidence demonstrates that Student's June 16, 2016, IEP expired as of June 15, 2017. Although there was at least one document in the record (Respondent's Exhibit 61 pg. 419) that indicated that Student's last IEP annual review meeting was October 11, 2016, the IEP document itself indicates that the goals expired on June 15, 2017. The Hearing Officer finds this far more compelling an indication that Student's IEP had expired as of June 15, 2017.

Following the August 11, 2017, letter from Petitioner's counsel requesting an IEP and placement for Student, DCPS took no action to conduct an annual review and update Student's IEP, even after DCPS was provided the independent speech language evaluation in September 2017 and then the School B speech language report in December 2017.

The Hearing Officer concludes that DCPS' action of simply sending a letter indicating a location of service where Student's expired IEP could be implemented was a failure to provide Student an appropriate IEP and placement for SY 2017-2018 and was a denial of a FAPE to Student. Consequently, in the order below the Hearing Officer grants Petitioner's request for reimbursement for Student's tuition at School E for SY 2017-2018.

ISSUE 5: Whether DCPS denied Student a FAPE by failing to review and consider the independent speech language evaluation DCPS authorized and Petitioner provided to DCPS and the School E speech language report Petitioner provided to DCPS.

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

34 C.F.R. § 300.303(a) makes clear that, "A local education agency ("LEA") *shall ensure* that a re-evaluation of each child with a disability is conducted...if the child's parents or teacher requests a re-evaluation." and that the reevaluation must be conducted at least once every three years.

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that a "a full and individual evaluation is conducted for each child being considered for special education and related services." D.C. Mun. Regs. Title. 5E, § 3005.1 (2006). "Qualified evaluators [are to] administer tests and other assessment procedures as may be needed to produce the data required" for the MDT to make its determinations. D.C. Mun. Regs. Title. 5E § 3005.5 (2006).

Requests for evaluations/reevaluations are to be conducted in a timely manner. *Herbin v. Dist. of Columbia*, 362 F. Supp 2d. 254, 259, 261 (D.C.C. 2005).

The evidence demonstrates that Petitioner requested an independent speech language evaluation (“IEE”) in June 2016 and DCPS authorized and funded the IEE. DCPS was apparently presented with the in IEE in November 2017 and was not provided the School E speech language report until December 2017. A DCPS speech language pathologist has now reviewed the IEE and School E’s report. However, a team has not yet met to review the evaluation. IDEA does not prescribed a specific time frame by which an evaluation needs to be reviewed by a team. However, evaluations should clearly be conducted and reviewed in a timely manner. The evidence reflects the fact that the parties have been engaged in litigation shortly after DCPS received and reviewed these evaluations, which has undoubtedly been a barrier to an IEP meeting being convened.

Absent a showing that there was any deliberate ill will by DCPS in this instance, the Hearing Officer does not conclude that DCPS’ failure to have yet reviewed the evaluation and report has denied Student a FAPE. Although a team has yet to meet and review the evaluation, the evidence reflects that at School E Student has been receiving speech language services and in the order below DCPS has been ordered to reimburse Petitioner for the services that School E has provided Student for SY 2017-2018. Consequently, the Hearing Officer concludes that Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that Student has been denied a FAPE because DCPS has not yet reviewed the evaluation and report. The Hearing Officer, however, in the order below directs DCPS have an IEP team review these documents.

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.

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)).

The Hearing Officer concludes that the evidence supports a finding that School A is a private placement that is “proper under the Act” and that Petitioner is entitled to reimbursement for Student’s attendance at School E for SY 2017-2018.

However, based upon the evidence adduced the Hearing Officer did not conclude that Student’s appropriate LRE at the time the June 16, 2016, IEP was developed was a placement totally removed from non-disabled peers. The Hearing Officer, therefore, does not grant Petitioner’s requested relief that Student’s prospective placement be School E. Because DCPS has yet to develop an IEP for Student since the June 16, 2016, IEP expired, the Hearing Officer directs in the order below that DCPS develop an appropriate IEP for Student for SY 2017-2018 and also provide student an appropriate placement and location of services.

ORDER:⁹

1. DCPS shall, within thirty (30) calendar days of Petitioner presenting DCPS satisfactory proof of payment to School E, reimburse Petitioner the costs of Student’s attendance at School E consistent with OSSE rates, for Student attending School E for SY 2017-2018.
2. Petitioner and School E 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).
3. DCPS shall, within thirty (30) business days of the issuance of this order, observe, and evaluate Student consistent with paragraph #2 above including conducting an auditory processing assessment, and convene a multi-disciplinary team (“MDT”) meeting with DCPS personnel and Petitioner(s) and School E personnel to review evaluation(s), including the speech language evaluation(s) provide DCPS by Petitioner, 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

⁹ 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.

placement and location of service where Student's IEP will be implemented.

6. All other relief requested by Petitioner is denied.

APPEAL PROCESS:

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

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: June 28, 2018

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