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Office of the State Superintendent of Education
Office of Review and Compliance
Office of Dispute Resolution
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Confidential

Parent on Behalf of Student, ¹ Petitioner, v. Public Charter School ("School A") Local Educational Agency ("LEA"), Respondent. Case # 2019-0023 Date Issued: July 9, 2019	HEARING OFFICER'S DETERMINATION Hearing Dates: May 22, 2019 May 23, 2019 June 13, 2019 Counsel for Each Party listed in Appendix A <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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¹ 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 the following days: May 22, 2019, May 23, 2019, and June 13, 2019, 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. 20002, in Hearing Room 112.

BACKGROUND AND PROCEDURAL HISTORY:

The student (“Student”) is age ____ and during school year (“SY”) 2018-2019 was in ____ grade, attending a public charter school located in the District of Columbia (“School A”).² School A was Student’s local educational agency (“LEA”) during SY 2018-2019.

On January 25, 2019, Student’s parent (“Petitioner”) filed a due process complaint against School A (“Respondent”) alleging that School A had denied Student a free appropriate public education (“FAPE”) due to, inter alia, an inappropriate individualized educational program (“IEP”).

Petitioner sought as relief that the Hearing Officer order the LEA to place Student at, and provide Student transportation to, the identified non-public special education therapeutic day school (“School B”), conduct additional evaluations,³ review and revise Student’s IEP to reflect the least restrictive environment (“LRE”) to a non-public therapeutic day school, to reflect appropriate level of instruction and related services, baselines, goals and services and to fund compensatory education; alternatively to conduct any assessments, evaluations, observations and or screenings required to appropriately determine compensatory education.

At the outset of the hearing on May 22, 2019, the parties noted that there had been evaluations conducted and an IEP meeting held after the complaint was filed, and the LEA had held a change of placement (“CIP”) meeting with OSSE, the State Education Agency (“SEA”), and the IEP team determined Student qualified for a non-public placement and amended Student’s IEP to reflect the change in LRE on April 26, 2019.

The parties informed the Hearing Officer that the SEA had issued a location assignment to a non-public special education day school and a full acceptance was later offered by School B, the non-public school that Petitioner was seeking. As result, the parties stipulated during the hearing that School B holds an OSSE Certificate of Approval (“COA”) and that it is an appropriate

² Student’s age and grade are noted in Appendix B.

³ Petitioner sought the following evaluations: functional behavior assessment (“FBA”) to develop an updated behavior intervention plan (“BIP”), a comprehensive psychological reevaluation and or neuropsychological, speech assessment, orientation and mobility assessment, occupational therapy (“OT”) assessment, auditory/adiological.

placement for Student. Respondent's counsel represented that School A would be notifying OSSE to initiate a location assignment for Student to attend School B and School A would issue a PWN and send an IEP amendment form to reflect the placement change and to add extended school year ("ESY") to Student's IEP. By the final date of hearing, June 17, 2019, Student had already begun attending School B.

LEA Response to the Complaint:

The LEA filed a response to Petitioner's due process complaint on February 5, 2019. The LEA denied that there has been any failure to provide Student with a FAPE. In its response the LEA asserted, *inter alia*, the following:

The LEA denied that Student's IEP is inappropriate. The issue of whether Student's IEP is currently appropriate is not ripe given that Student was recently reevaluated and the team had not yet had an opportunity to meet to review the evaluations. The LEA also denied that Student's previous IEP was inappropriate or that it has not been responsive to Student's needs. The March 2018 IEP was reasonably calculated to enable Student to make appropriate progress in light of Student's circumstances. The LEA denied that Student required more services than were prescribed in that IEP at the time the IEP was developed. The LEA had been working with Student's parent and her attorney during SY 2018-2019 to address the parent's concerns, but the attorney has repeatedly delayed and frustrated the IEP process.

The LEA denied that it failed to comprehensively evaluate Student. A comprehensive psychological evaluation was recently completed and had yet to be reviewed by the team when the complaint was filed. An occupational therapy evaluation was also recently completed and was due to be reviewed by the team. The LEA denied that any additional evaluations are warranted at this time. A student evaluation plan meeting was held in November 2018 and the parent and her advocate agreed with the evaluation plan determined by the team. The parent has never requested a neuropsychological evaluation.

Resolution Meeting, Pre-Hearing Conference:

The parties participated in a resolution meeting on March 7, 2019, and did not resolve the complaint.⁴ The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on February 25, 2019, and was to end [and the Hearing Officer's Determination ("HOD") was originally due] on April 10, 2019.

The parties were not available on hearing date offered: March 15, 2019, and agreed to an extension of the HOD due date to accommodate their requested hearing dates. The LEA filed an unopposed motion to extend the HOD due date to accommodate the hearing dates. The motion was granted and extended the HOD due date by 69 calendar days from April 10, 2019, to June

⁴ On February 25, 2019, Respondent filed a motion to dismiss alleging that Petitioner failed to participate in a resolution meeting. On February 28, 2019, Petitioner filed an opposition to Respondent's motion. The parties were eventually able to conduct a resolution meeting. The Hearing Officer, therefore, deemed Respondent's motion moot as noted in the pre-hearing order.

19, 2019. Petitioner's counsel was not able to secure her final witness on the scheduled hearing dates of May 22, 2019, and May 23, 2019, and requested a continuance and extension of the HOD due date. The parties then agreed to a third hearing date of June 13, 2019, for both parties to complete their cases. After the May 23, 2019, hearing date, Petitioner had a change in counsel, but no change in law firm. Petitioner's new counsel filed an unopposed motion to continue the hearing to June 13, 2019, and to extend the HOD due date. That motion was granted, extending the HOD due date to July 9, 2019.

A pre-hearing conference ("PHC") was held on April 2, 2019.⁵ The Hearing Officer issued a pre-hearing order ("PHO") on April 8, 2019, and a revised PHO⁶ on April 23, 2019, outlining the issues to be adjudicated.

ISSUES:⁷

The issues adjudicated are:

1. Whether the LEA denied Student a FAPE by failing to provide an appropriate IEP on March 20, 2018, because the IEP failed to include: (a) appropriate hours of academic instruction outside of general education, and/or (b) baselines and/or (c) appropriate accommodations given Student's diminished hearing.⁸
2. Whether the LEA denied Student a FAPE by failing to review and revise Student's March 20, 2018, IEP, starting in October 2018, to include: (a) appropriate hours of academic instruction outside of general education, and/or (b) baselines and/or (c) all behavioral support services outside general education, and/or (d) appropriate accommodations given Student's diminished hearing, and/or (e) an appropriately restrictive, therapeutic and structured LRE placement, setting, location of services.⁹

⁵ After Petitioner filed the due process complaint and before the due process hearing was convened, the parties held an IEP meeting at which the recent evaluations were reviewed and an updated IEP was developed. Petitioner's counsel stated during the PHC that Petitioner's educational advocate would be sending the school a dissent letter regarding the new IEP. It was made clear by the Hearing Officer during the PHC that the most recent IEP would not be in question and adjudicated at the hearing. However, Respondent's counsel stated during the PHC that Respondent planned to present evidence about the evaluations and about the team's discussion and agreement at the meeting related to the services needed by Student.

⁶ This PHO was entitled "Second Revised", however, there was only one revised PHO.

⁷ The Hearing Officer restated the issues at the hearing, and the parties agreed that these were the issues to be adjudicated. At the outset of the hearing on May 22, 2019, Petitioner's counsel withdrew, the 4th issue listed in the Revised PHO related to educational records.

⁸ Petitioner asserted that some of Student's instruction should have been outside general education. Petitioner alleged that throughout the 03/20/2018 IEP baselines are missing, diminishing the meaningfulness and measurability of the IEP's goals and PLOPs. Petitioner also alleges Student's program should have been adjusted to address the fact that Student did not have hearing aides for a while and could not process appropriately.

⁹ Petitioner asserted that in October 2018 when the school starting calling Petitioner about Student's behavior, the LEA should have initiated a review of Student's March 20, 2018, IEP, completing the IEP revision by January 2019 to an LRE in a full-time program with all services outside general education.

3. Whether the LEA denied Student a FAPE failing to timely (by October 2018) and appropriately (a) update/modify Student's FBA and BIP and/or (b) conduct a comprehensive reevaluation of Student in all suspected areas of disability including: a comprehensive psychological with clinical testing, occupational therapy for orientation-mobility, hearing, speech and language, audiology and auditory processing and neuropsychological.¹⁰

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures and supplemental disclosures (Petitioner's Exhibits 1 through 91 and Respondent's Exhibits 1 through 77) that were admitted into the record and are listed in Appendix 2.¹¹ The witnesses testifying on behalf of each party are listed in Appendix B.¹²

SUMMARY OF DECISION:

Based on the evidence adduced during the hearing, the Hearing Officer concluded that Respondent sustained the burden of persuasion on the appropriateness of Student's March 20, 2018, IEP and that there was no finding of denial of FAPE in that regard. The Hearing Officer found that Petitioner did not sustain the burden of persuasion on issues #2 and #3 and the Hearing Officer dismissed Petitioner's due process complaint with prejudice.

¹⁰ Petitioner asserted Student required an appropriate and timely FBA and BIP, which should have been conducted and reviewed by the time the complaint was filed. In addition, Petitioner alleged speech and language and orientation and mobility assessments and an occupational therapy evaluation were more than three years overdue. Petitioner asserted that Student requires an audiological/auditory assessment given some suspected auditory processing issues. Petitioner also requested a neuropsychological evaluation to assess the full impact of Student's rare genetic Stickler syndrome on Student's education.

¹¹ Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A.

¹² Petitioner presented three witnesses: (1) Student's parent ("Petitioner"), (2) an Independent Audiologist, testifying as an expert witness, and (3) Petitioner's Educational Advocate, testifying as an expert witness and (4) a second Educational Advocate testifying as an expert witness in clinical psychology. Respondent presented six witnesses: (1) School A's Audiologist, testifying as an expert witness (2) School A's Speech Language Pathologist testifying as an expert witness, (3) School A's Social Worker, testifying as an expert witness (4) School A's Clinical Psychologist, testifying as an expert witness, (5) School A's Occupational Therapist, testifying as an expert witness, and (6) School A's Director of Student Support Services, testifying as an expert witness.

FINDINGS OF FACT:¹³

1. Student resides with Student's parent, Petitioner, in the District of Columbia. Student attended School A, a public charter school located in the District of Columbia, for several years and most recently during SY 2018-2019. School A is Student's LEA. Student qualifies for special education as a student with Multiple Disabilities ("MD") including Hearing Impairment ("HI") and Other Health Impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD") and most recently Autism Spectrum Disorder ("ASD"). (Petitioner's testimony, Respondent's Exhibits 35-A 38, Petitioner's Exhibit 19-1,)
2. Student has a medical history of a number of illnesses, including Stickler Syndrome, a rare genetic disorder characterized by a distinctive facial appearance, eye abnormalities, hearing loss, and joint problems. Student also suffers from asthma. Student's psychiatric diagnoses include Major Depressive Disorder, General Anxiety Disorder, and Oppositional Defiant Disorder. Student has a neurodevelopmental ADHD and in the last year has started to have seizures. (Petitioner's testimony, Respondent's Exhibit 27, pgs. 197, 198)
3. In March 2017, School A conducted a comprehensive psychological evaluation of Student as a part of Student's triennial assessment. Student's cognitive functioning was Average. Student's academic functioning was also Average. Student had elevated symptoms at home and school for inattention, hyperactivity/impulsivity, defiance and aggression and peer relations. The evaluator also conducted an autism rating scale and noted some of Student's behaviors overlapped with ASD, but the evaluator noted that the uptick in behavior difficulties were likely related to Student recently being without Student's prescribed medication and hearing aids. The evaluator noted Student met the eligibility criterion for HI and OHI due to ADHD. (Petitioner's Exhibit 19-1, 19-7, 19-8, 19-9, 19-11, 19-12)
4. On June 8, 2017, School A conducted an annual review of Student's IEP. Student's June 8, 2017. IEP noted on recent assessments Student performed at the 82nd percentile in math, at the 56th percentile in reading. The IEP included goals in reading, math, hearing and emotional/social/behavioral development ("ESBD"). The IEP prescribed the following services: 5 hours per week of specialized instruction within general education, 30 minutes per month of audiology outside of general educational education, 120 minutes per month of behavioral support services outside of general education, and 120 minutes per month of behavioral support services within general education. (Respondent's Exhibit 5)

¹³ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within 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.

5. During the first term of SY 2017-2018, Student made progress in some IEP goals; however, Student made no progress on one the ESBD goals; rather Student was observed frequently calling out in the classroom during independent work and moving around the classroom. (Respondent's Exhibit 12)
6. On October 25, 2017, School A notified Student's parent that School A wanted to conduct an FBA to better understand Student's needs and pinpoint trends and functions of Student's behaviors. Student's parent granted consent for School A to conduct the FBA. (Respondent's Exhibit 6)
7. Between October and December 2017, School A conducted a functional behavioral assessment ("FBA") of Student due to concern that Student's behaviors of calling out during instruction, difficulty staying on task and following directions to go to specific locations, were impacting Student's learning in the classroom. The FBA report was dated December 13, 2017. (Respondent's Exhibit 8)
8. School A developed a behavior intervention plan ("BIP") to address Student's behaviors and on January 16, 2018, convened a team meeting with Student's parent participating to review and adopt the BIP. The BIP included strategies to address Student's targeted behaviors. (Respondent's Exhibit 9)
9. In March 2018, School A completed a Student Data Review of Student's behaviors of difficulties following directions, specifically refusing to go to a specific location. The document noted that per the Dean's List incident log, Student had 43 incidents during SY 2017-2018, with 38 for disruptive behaviors, one for a physical altercation and three for sexual misconduct/harassment and one was threat/intimidation. These incidents resulted in 33 detentions, one in-school suspension, two losses of privileges and one parent phone call and four office visits. (Petitioner's Exhibit 31)
10. During the second and third reporting periods of SY 2017-2018 Student made progress in most academic IEP goals. Student regressed relative to the hearing goals due to Student not consistently wearing hearing aids in school. (Respondent's Exhibit 12)
11. On March 20, 2018, School A convened an annual IEP review meeting for Student and increased Student's specialized instruction. Student's March 20, 2018. IEP prescribed the following services: 12.5 hours per week of specialized instruction within general education; 2.5 hours per week of specialized instruction within general education; 30 minutes per month of audiology outside of general educational education; 120 minutes per month of behavioral support services outside of general education; and 120 minutes per month of behavioral support services within general education. (Petitioner's Exhibit 8)
12. Petitioner recalls that in March 2018 School A updated Student's IEP and remembers agreeing to increased services but she did not recall what level of services. Generally, Petitioner does not believe Student's School A IEP provided Student appropriate

services. Petitioner believes Student should have been in classes with fewer students in the past two years. (Petitioner's testimony)

13. The School A audiologist instructs regarding Student's hearing loss and hearing aids and confers with Student in maintenance of the hearing aids and ensuring that the School A FM system is working proficiently in assisting Student's hearing needs. The audiologist also consults with Student's teacher regarding these matters. Student sees an outside audiologist once every 6 months and the School A audiologist regularly consults with Student's outside audiologist. (Witness 4's testimony, Respondent's Exhibits 24, 46)
14. Student's School A IEP included accommodations for preferential seating, where most of the teaching is done and away from noises. The IEP also prescribes the use of an FM system. This system and Student's consistent use of hearing aides are sufficient to address Student's hearing deficits and needs and IEP goals. Student has a mild to moderate hearing loss and did not need an audiogram or auditory processing evaluation. An individual has to have normal hearing in order for an audio processing evaluation to be useful, because the assessment is normed for people who have normal hearing. (Witness 4's testimony)
15. School A's social worker worked with Student's during SY 2017-2018 and SY 2018-2019 providing Student's individual and group counseling inside and outside the classroom and provide support at other time when needed. She taught Student a specific skill outside class and then observed and coached on the skill inside the classroom. It would not have been appropriate to provide Student's all behavior support outside the general education classroom because the classroom coaching would have been lost. The School A social worker also interacted with Student's teaching team every other week and by email to ensure they all were on same page as to what is happening with Student. (Witness 6's testimony)
16. The School A social worker participated in Student's IEP team and reviewed documents including the May 2017 evaluation and eligibility documents, the IEP and meeting notes from 2017, the FBA in December 2017 and developed the BIP. She reviewed the BIP in March 2018 to determine if changes were needed. None were needed; but after speaking with Petitioner about Student's behavior, she provided Petitioner a list of resources. (Witness 6's testimony, Respondent's Exhibit 8, 9, 10)
17. Although Student's School A IEPs did not include baselines for math goals, the absence of baselines did not impact the Student's instructors' and team members' ability to use present levels of performance ("PLOP") data to measure Student's progress relative to goals and whether the goals remained appropriate. Although Student's academic performance in SY 2017-2018 and 2018-2019 was variable, Student demonstrated the ability to access the curriculum in the general education setting and Student was generally operating on grade level. The School A team believed that the IEPs proposed were appropriately challenging for Student in light of Student's circumstances. (Witness 9's testimony)

18. Petitioner's counsel sent a letter to School A dated October 5, 2018, requesting that School A conduct the following evaluations of Student: OT, psychological and speech and language along with a consent form signed by Petitioner. (Respondent's Exhibit 16)
19. Thereafter, School A proposed dates to convene an IEP team meeting to discuss Petitioner's concerns regarding Student's educational performance and behavior. School A scheduled and confirmed a meeting for October 16, 2018. That meeting was rescheduled to November 26, 2018, due to Petitioner's attorney's absence at the October 16, 2018, meeting. (Respondent's Exhibits 17 (pg. 129), 19 (pgs. 147, 149))
20. On October 25, 2018, School A completed an analysis of existing data ("AED"). The AED noted Student had 23 incidents in SY 2018-2019: 6 for refusing to comply with directions, 5 for leaving the assigned space without permission/skipping class, 4 for sexual harassment/sexual misconduct; 4 for repeated tantrums/unsafe behavior 2 for disruptive behavior and 2 for peer related incidents, one of which was a fight and the other bullying. The incidents resulted in detentions, loss of privileges, phone calls to Student's parent and the sexual misconduct incident resulted in an out of school suspension. (Petitioner's Exhibit 30, Respondent's Exhibit 18 pg. 139)
21. The AED noted in recent assessments Student performed at the 37th percentile in math and Student's reading assessment declined from the 13th percentile the year before to the 5th percentile. School A conducted a speech language assessment on November 5, 2018, noted in the AED, that revealed an above age level score and demonstrated relative strengths using age appropriate grammar skills and identifying related vocabulary words. Student demonstrated a mild weakness in following multi-step directions. The AED noted Student's distraction in class and difficulties complying with teacher and staff directions. School A's occupational therapist observed Student and noted Student was easily distracted and that Student's handwriting speed and legibility were good. (Witness 3's testimony Respondent's Exhibit 21 pgs. 165, 167, 169)
22. On October 25 2018, School A updated Student's BIP which addressed the targeted behavior of displaying difficulties communicating with peers and instead using appropriate and kind language and touch. (Respondent's Exhibit 18-A)
23. On November 26, 2018, School A conducted a student evaluation plan ("SEP") meeting with Student's parent and her legal representative and educational advocate. Student's special education and general education teachers, the School A psychologist and School A staff representing other disciplines. During the meeting the parent's attorney asked for, among other things, that Student be placed in a stand-alone therapeutic placement. Petitioner's educational advocate asked that Student be moved to a separate class for math. The team to not agree to these requests; but agreed to maintain behavior trackers and review at the end of the second term and to conduct two evaluations. A full speech language evaluation was not recommended based on screener that School A conducted. (Witness 2's testimony, Respondent's Exhibits 22, Petitioner's Exhibit 29-3)

24. On November 27, 2018, School A issued a prior written notice (“PWN”) noting that intended to proceed to conduct an occupational therapy (“OT”) evaluation and a psychological assessment. (Petitioner’s Exhibit 29-1)
25. In December 2018 and January 2019 School A’s psychologist assessed Student and completed a triennial psychological reevaluation report dated January 29, 2019. The evaluator reviewed Student’s previous evaluations and Student most recent in school academic performance assessments and observed Student in the classroom and assessed Student’s cognitive functioning, executive functioning, academic functioning and behavioral functioning. The evaluator also conducted an assessment for ASD. Student’s cognitive functioning was Average with a Full-Scale IQ score of 96. (Witness 7’s testimony, Respondent’s Exhibit 27)
26. The evaluator noted with regard to executive functioning Student struggles with, inter alia, inhibition, self-monitoring, and emotional control. Student’s social emotional functioning demonstrated elevated levels of defiant and aggressive behaviors, hyperactivity and depressive symptoms. Student’s math skills were Average, while Student’s reading and written language skills were in the Below Average (one point below average) compared to same age peers. The evaluator noted that Student’s classroom performance was below what was expected for Student’s current grade, but Student’s teachers stated Student is capable of grade level work when focused and engaged and Student’s low grades were due to no turning in homework. The evaluator concluded that based on the data Student continued to meet the criteria for the HI and OHI disability classifications. The evaluator concluded that Student did not meet the criteria for a specific learning disability. Also in her report noted and outlined factors for the multidisciplinary team to consider with regard to whether Student also met the disability classifications of ASD and emotional disability (“ED”). (Witness 7’s testimony, Respondent’s Exhibit 27)
27. On January 9, 2019, School A’s occupational therapist conducted an OT evaluation of Student that included formal testing and observations. Student’s fine motor skills, manual dexterity and coordination were all assessed as Average. Student’s visual perception was at the 77th percentile. During observation, Student did not display difficulties with handwriting speed or legibility. The evaluator did not recommend the need for OT interventions for Student. (Witness testimony, Respondent’s Exhibit 25)
28. School A’s occupational therapist observed Student walking through the hallways, going up and down stairs and observed that Student has no problems with these activities. There was not indication that Student required additional assessment for mobility and orientation or any other OT assessments. He noted his impressions and conferred with Student’s parent. Although Student has Stickler syndrome and muscle issues may eventually be problematic for Student, Student does not display any of problems at present. (Witness 8’s testimony, Respondent’s Exhibit 47)
29. On February 6, 2019, School A convened an MDT meeting to review the evaluations that had been conducted. The School A team members participated. Petitioner and her

educational advocate participated. The OT and psychological evaluations were reviewed. The psychologist expressed to the team that based on the data Student would qualify for the disability classifications of HI, OHI, Autism, and ED. The team noted that a speech language evaluation was not warranted and Petitioner agreed. The team reviewed the criteria and the team agreed Student met the eligibility for ASD and ED, but ultimately agreed to the MD classification for OHI, HI and ASD. The team also agreed that Student would need a dedicated aide. The team also reviewed Student's BIP. (Respondent's Exhibits 30, 31, 32, 35-A)

30. Following the February 6, 2019, meeting School A sent a letter to Petitioner's attorney, who did not attend the meeting, noting, inter alia, that based on the team's discussion during the meeting, the team determined that speech language and audiological evaluations were not warranted. Also, rather than conduct the neuropsychological evaluation the attorney requested, the team agreed it was more appropriate to conduct evaluation into Student's anxiety and depression. (Respondent's Exhibit 33)
31. On February 28, 2019, School A convened an IEP meeting and developed an IEP for Student. The IEP noted the recent evaluation results, included goals in the areas of math, reading, hearing, ESBD and prescribed a total of 16 hours per week of specialized instruction inside general education, 30 minutes of audiology per month outside general education and 240 minutes per month of behavioral support services outside general education. The IEP continued to prescribe an FM system as assistive technology and included a dedicated aide for 8 hours per day. At the meeting Petitioner and her educational advocate agreed to the level of services in the IEP. (Respondent's Exhibits 38, 39)
32. On March 21, 2019, Petitioner's educational advocate sent School A a letter of dissent outlining the remaining concerns and that School A reconsider conducting additional evaluations including a speech language, clinical, OT, a school based audiological, orientation and mobility assessment, that Student's IEP also include goals to address ASD, and that Student be in a full-time stand alone therapeutic placement. (Respondent's Exhibit 42)
33. On April 4, 2019, School A responded to the letter of dissent addressing each concern raised and noting that the School A team was requesting an MDT meeting to discuss recent and new behaviors being displayed by Student. (Respondent's Exhibit 43)
34. On March 12, and 21, 2019, School A conducted the additional psychological assessments of Student that were included in a psychological evaluation report dated April 5, 2019. The evaluator also conducted observations of Student. The evaluator noted that Student was struggling with board intensifying anxiety due to family/parental conflict and uncertainty regarding Student's developmental stage compared to peers. The evaluator noted that Student's anger is primarily in response to perceived criticism/threat or dissatisfaction with limit setting. The evaluator recommended that Student would benefit from therapeutic interventions included social skills training. (Witness 7's testimony, Respondent's Exhibit 45)

35. In April 2019, School A conducted an audiology evaluation and a speech language evaluation. The School A audiologist, after a thorough review the results of the audiological evaluation conducted at Children's National Medical Center in November 2018, determined that no additional assessments were warranted. The audiologist completed a report that summarized Student's use of hearing aids and the FM system in the school setting and made recommendations. Student's assessed communication and speech language skills were Average and the evaluator did not recommend the need for speech language services. (Witness 3's testimony, Respondent's Exhibit 46, 48)
36. During SY 2018-2019 Student's outside audiologist at CNMC provided Student two new pair of hearing aids. One was kept at school and one at home. That arrangement worked well until the beginning April 2019 when the working pair at home went missing and Student's parent requested that the pair at school be sent home. (Witness 4's testimony)
37. On April 26, 2019, School A convened an IEP meeting; Student and Student's parents participated in the meeting along with their educational advocate. The team reviewed the BIP and new behaviors Student had been demonstrating at school. Student's dedicated aide also participated in the meeting and noted that Student was still engaging in inappropriate touching of others and the aide redirects Student on these occasions. The team noted that Student was physically and verbally aggressive toward the dedicated aide. The team reviewed the psychological evaluation and Student's parent was satisfied with the testing and had no questions. The team updated Student's BIP. The team discussed that Student inconsistently wore hearing aids and that the pair used at school had been sent home at Student's parent's request. Petitioner then stated she would send the hearing aids to school. The speech language evaluation report was not yet completed. The team agreed to a change in placement ("CIP") meeting with the SEA for May 6, 2019, and to review the speech language evaluation and the ESY eligibility decision and a disability classification based on the new evaluations when the team met again on May 7, 2019. (Petitioner's Exhibit 83, Respondent's Exhibits 51, 53)
38. The School A social worker believed the function of Student's new the behaviors was attention. The team added structured positive peer time and a tracker as incentive for Student to engage in reflective activity when Student got in difficulty. A new FBA was not necessary because the function of behavior had already been identified. Initially what was needed was to just update the BIP and try additional interventions first. Once the dedicated aide was in place the behavior support services were adjusted to 240 minutes outside classroom in February 2019. (Witness 6's testimony, Respondent's Exhibits 18, 22)
39. On May 6, 2019, School A convened the CIP meeting with Petitioner and her counsel and educational advocate and the OSSE representative. Despite OSSE's recommendation that Student was not in need of a non-public therapeutic placement, the team determined that agreed Student was in need of such a change in LRE. The OSSE representative stated that OSSE would proceed in identifying programs based on the

team's decision. Petitioner noted Student's acceptance to School B. (Petitioner's Exhibit 79, Respondent's Exhibit 56)

40. School B holds an OSSE Certificate of Approval ("COA") and that it is an appropriate placement for Student. School A notified OSSE to initiate a location assignment for Student to attend School B and School issue a PWN and sent an IEP amendment form to reflect the placement change and to add ESY to Student's IEP. By the final date of hearing, June 17, 2019, Student had begun attending School B. (Stipulation)
41. Although Student has been at School A since pre-kindergarten in the last two school years Student has struggled. SY 2018-2019 was particularly rough for Student. Student does not have many friends at school and was on occasion bullied. Petitioner received frequent calls to home from School A about Student's inappropriate behaviors. Student was assigned a dedicated aide in the second half of SY 2018-2019 but Student's relationship with the aide was not positive. SY 2018-2019 has also been the worse year with regard to Student consistently wearing hearing aids. The hearing aids often got damaged. (Petitioner's testimony)
42. Petitioner presented an expert witness in the area of audiology, auditory processing and speech language. The witness had never met Student or talked with Student's teachers or providers, but reviewed Student's evaluations and educational records, and spoke with Student's parent. The evaluator was most concerned about Student not wearing hearing aids and the social emotional factors that may be causing Student not to wear them consistently in school, particularly given Student's recent behavioral incidents. The witness wanted to know Student's language processing skills, such as Student's ability to understand stories and Student's speech reading abilities. However, the witness did not suggest that Student required an audio processing evaluation. (Witness 1's testimony)
43. The witness also noted that hearing aides are an assistive technology and before getting any other AT device for Student it would more appropriate to assess why Student is not consistently wearing hearing aids. In his opinion, without hearing aids, the other AT systems would be useless. The witness could not opine as to the reasons for Student's in school behaviors, but believed Student not wearing ■ hearing aids consistently could contribute to Student's behavior difficulties. With regard to placement the witness suggested that Student being in a setting where there are some other hard of hearing students. (Witness 1's testimony)
44. Petitioner's educational advocate prepared a compensatory education proposal that sought to compensate Student for the alleged failure to have an appropriate IEP with sufficient hours of instruction outside general education, and sufficient behavioral support services during SY 2017-2018 and the alleged failure to have an appropriate placement in a full-time therapeutic setting for SY 2018-2019. The advocate recommended the following services as compensatory education: 36 weeks of specialized tutoring, 20 weeks of counseling, 20 weeks of mentoring and placement in a self-contained special education program. However, the advocate when she testified reduce the period of harm that she presumed in her proposed plan to February 2019, noting that

Petitioner and the advocate did not disagree with the IEP that School A had developed at the meetings they attended. The advocate opined that had Student been provided additional services and a more restrict LRE sooner Student would have had improved behavior and mastered IEP goals. However, she had never observed Student at School A and did not request changes to IEP regarding baselines for math and did not raise that as a concern at the IEP meetings she attended. (Witness 2's testimony, Petitioner's Exhibit 72)

45. Petitioner presented another educational advocate who was an expert witness in psychology and was familiar with Student from review of the documents, spoken Student's parent and the other advocate. However, this witness never met Student, observed Student at School and never conferred with any of Student's teachers or service providers. She noted that the most significant change in the 2019 psychological evaluation were the number of behavioral referrals with most notable change being sexual harassment. She opined that the behavior may be explained by Student becoming an adolescent but could be related to ADHD and seizure disorder diagnosis. She also opined that because Student's behaviors were affecting Student's academic functioning, changes should have been made to Student's IEP and programming sooner. Although this witness opined that additional assessments could have been conducted in light of Student's peer relations, she did not recommend a full neuropsychological evaluation. (Witness 5's testimony)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Petitioner held the burden of persuasion on issues #2, and #3. Respondent held the burden of persuasion on issue #1 after

Petitioner established a prima facie case on issue #1. The burden of persuasion shall be met by a preponderance of the evidence. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether the LEA denied Student a FAPE by failing to provide an appropriate IEP on March 20, 2018, because the IEP failed to include: (a) appropriate hours of academic instruction outside of general education, and/or (b) baselines and/or (c) appropriate accommodations given Student's diminished hearing.

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that Student's March 20, 2018, IEP was reasonably calculated to enable a Student to make progress appropriate in light of the Student's circumstances when it was developed.

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). See *Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

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 statute's education delivery system for disabled children.'" *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

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 City. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the "educational benefits" requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate, in light of the child's circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated in the regular classroom, as the

Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious, in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Endrew 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, what 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 *Endrew F.*, supra, 137 S. Ct. 988.

Petitioner asserted that some of Student’s instruction should have been outside general education and the IEP baselines are missing, diminishing the meaningfulness and measurability of the IEP’s goals and PLOPs. Petitioner also alleges Student’s program should have been adjusted to address the fact that Student did not have hearing aides.

The evidence demonstrates that Student attended School A since kindergarten and progressed and moved from grade to grade. In March 2017, School A conducted a comprehensive psychological evaluation of Student as a part of Student’s triennial assessment. Student’s cognitive functioning was average. Student’s academic functioning was also average.

In SY 2017-2018 Student began to display behavior difficulties. The evidence demonstrates that Student made progress relative to Student’s IEP goals except with regard to behaviors. As result, School A conducted an FBA and developed a BIP to address Student’s behaviors.

When School A conducted an annual review of Student’s IEP in March 2018, School A increased Student’s specialized instruction and reviewed Student’s BIP. The School A witnesses credibly testified that Student was generally able to access the curriculum in the general education setting was generally operating on grade level when this IEP was developed. School A’s expert witness also credibly testified that even though Student’s IEP did not include baselines, Student’s instructors were, nonetheless, able to use the PLOP and effectively measure Student’s progress relative to IEP goals.

Petitioner’s educational advocate’s testimony relative to this point was less persuasive as she had not ever observed Student in the classroom and did not point to any data that refuted Student’s IEP progress reports that indicated Student was making progress relative to academic goals. In balancing this evidence, the Hearing Officer concluded that Respondent presented the stronger case. There was also sufficient evidence to support that Student’s specialized instruction and behavior support being provided in the general education setting, along with behavioral support outside the classroom, was appropriate. Petitioner did not present sufficient evidence to counter this evidence that supports a conclusion that School A’s actions in developing Student’s March 20, 2018, IEP were reasonable, the increase in services, adjustment to Student’s IEP and continuation of Student’s behavioral support services inside and outside the classroom was appropriate.

Student IEP included the use of an FM system to assist Student hearing which School A provided. CNMC provided Student's hearing aids and the evidence demonstrates that Student had a set of hearing aids at school and a set at home. The evidence demonstrates that during SY 2017-2018 Student began to wear hearing aids inconsistently. Yet, Student was to maintain a set of hearing aids at school and one at home and eventually Petitioner requested the hearing aids at school be brought home.

The evidence demonstrates that School A's audiologist regularly met with and conferred with Student and School A staff about Student's use of hearing aids and the FM system. Although Student's IEP progress report indicated regression with regard to hearing goals as a result of Student's inconsistent use of the hearing aids, the evidence does demonstrate that the audiologist regularly met with Student and Petitioner was informed regularly when Student was without hearing aids. There was insufficient evidence presented by Petitioner to indicate that the provisions and prescriptions in Student's IEP relative to assistance for Student's hearing were not reasonable.

Consequently, for all the above reasons, the Hearing Officer concludes that Respondent sustained the burden of persuasion by a preponderance of the evidence that Student's March 20, 2018, IEP was reasonably calculated to enable a Student to make progress appropriate in light of the Student's circumstances when it was developed and there was no denial of a FAPE in this regard.

ISSUE 2: Whether the LEA denied Student a FAPE by failing to review and revise Student's March 20, 2018, IEP, starting in October 2018, to include: (a) appropriate hours of academic instruction outside of general education, and/or (b) baselines and/or (c) all behavioral support services outside general education, and/or (d) appropriate accommodations given Student's diminished hearing, and/or (e) an appropriately restrictive, therapeutic and structured LRE placement, setting, location of services.

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that School A denied Student a FAPE by failing to review and revise Student's March 20, 2018, IEP by October 2018.

Pursuant to 34 C.F.R. § 300.324 (b) (1) Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team— (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address— (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under § 300.303; (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2); (D) The child's anticipated needs; or (E) Other matters.

Petitioner asserted that in October 2018 when the school started calling Petitioner about Student's behavior, the LEA should have initiated a review of Student's March 20, 2018, IEP, completing the IEP revision by January 2019 to an LRE in a full-time program with all services outside general education.

The evidence demonstrates that on October 5, 2018 Petitioner's counsel requested evaluations be

conducted. School A promptly scheduled an MDT meeting to discuss the request as well as Student's behaviors. The meeting was delayed due to Petitioner's counsel being unavailable. The meeting was eventually held in November 2018. At that meeting Petitioner's counsel requested that Student's LRE be changed to a therapeutic day school. School A team members did not agree to that request, but agreed to conduct an OT and psychological evaluation and then meet to review the evaluations and consider changes to Student's IEP.

School A conducted the evaluations in December and January 2019 and convened a meeting on February 6, 2019, and on February 28, 2019, convened a meeting and updated Student's IEP to increase Student's specialized instruction and add a dedicated aide to assist in addressing Student's behaviors. Petitioner's counsel filed the current due process complaint prior to the evaluations being completed and reviewed.

Petitioner asserts that as early as October 2018 School A should have reviewed and revised Student's IEP to increase the hours specialized instruction and prescribe the hours outside of general education, include baselines all behavioral support services outside general education, accommodations given Student's diminished hearing, and changed Student's LRE to therapeutic day school. The evidence belies this assertion.

During the hearing Petitioner's advocate opined that Student's March 2018 should have been reviewed and revised because the baselines were lacking and Student was not consistently wearing hearing aids. She also opined that Student's services should have been increased and the LRE changed early in 2018-2019 by the first term. However, during Student's subsequent IEP meetings the educational advocate did not object to the course of action the team took.

As discussed in the issue above, Student's March 20, 2018, IEP was appropriately developed. Petitioner asserts that as soon as Student's began to display more behavior difficulties in of October 2018, School A should have immediately convened a meeting and adjusted Student's IEP. However, the course of action that School A took following Petitioner's requests seems far more reasonable. School A immediately scheduled a meeting that was delayed by Petitioner's counsel. School A agreed to conduct evaluations and promptly did so and reviewed Student's BIP. When the IEP team met in February 2019, the team increased Student's services and then agreed to conduct additional evaluations. As noted, however, at both the November 26, 2018, and the February 2019, meetings Petitioner and her educational advocate did not object to the course of action the team took.

There was insufficient evidence as early as October 2018 or even as late as February 2019, that there was a basis to provide Student instruction outside general education, provide all behavior support services outside general education or provide Student a LRE placement in a therapeutic day school. Likewise, there was insufficient evidence, based upon the discussion relative to the other elements of the IEP that Petitioner asserts were inappropriate, that were discussed in the issue above, including baselines, accommodations for hearing, that there was any need for School A to have revised Student's IEP in this regard.

Although the evidence demonstrates that subsequent to the complaint being filed School A conducted additional evaluations and held additional IEP meetings and the IEP team eventually

determined that Student is now in need of a non-public special education day school, the data and information that was available to the team during the period at issue in the due process hearing, including Student's behaviors at the time, did not sufficiently demonstrate that Student was in then in need of such a restrictive LRE.

Consequently, the Hearing Officer concludes that Petitioner did not sustain the burden or persuasion by a preponderance of the evidence on this issue.

ISSUE 3: Whether the LEA denied Student a FAPE failing to timely (by October 2018) and appropriately (a) update/modify Student's FBA and BIP and/or (b) conduct a comprehensive reevaluation of Student in all suspected areas of disability including: a comprehensive psychological with clinical testing, occupational therapy for orientation-mobility, hearing, speech and language, audiology and auditory processing and neuropsychological.

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that School A denied Student a FAPE by failing to conduct the above evaluations.

34 C.F.R. § 300.303(a) makes it 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. (*Emphasis added*)

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 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).

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5E § 3005.9(b).

All areas "related to the suspected disability" should be assessed, including: academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title. 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5E § 3005.9(h) (2007).

Petitioner asserted Student required an appropriate and timely FBA and BIP, which should have been conducted and reviewed by the time the complaint was filed. In addition, Petitioner alleged speech and language and orientation and mobility assessments and an occupational therapy evaluation were more than three years overdue. Petitioner asserted that Student requires an audiological/auditory assessment given some suspected auditory processing issues. Petitioner

also requested a neuropsychological evaluation to assess the full impact of Student's Stickler syndrome on Student's education.

The evidence demonstrates that School A conducted a comprehensive psychological evaluation of Student in 2017 and agree to conduct another evaluation of Student pursuant to Petitioner's counsel's October 5, 2018, request. School A had previously conducted a speech language assessment that demonstrated Student had no speech language deficits that required speech language services. The evidence demonstrates that Student is examined by an outside audiologist at CNMC one every six months and that evaluation report is provided to School A and the School A audiologist consults with the outside audiologist. There was credible testimony from School A's audiologist that Student is not in need of any other assessment relative to hearing and that audio processing evaluation would be inappropriate given Student's hearing loss. Petitioner's expert witness also did not recommend that Student be provided an audio processing evaluation or any audiological evaluation outside that conducted by CNMC.

With regard to the need for a new FBA to develop a new BIP for Student, School A's social worker credibly testified that Student's behaviors have been assessed and the function of the behaviors including Student's more recent behaviors has been determined, and another FBA would not be necessary. Rather, Student's BIP was amended to address the additional behaviors and to add additional interventions. There was insufficient evidence presented by Petitioner to counter this credible testimony.

Likewise, the credible testimony of the School A's occupational therapist demonstrated that Student's orientation-mobility was appropriately assessed, he conducted observations of Student and there was no indication that Student had difficulties with orientation or mobility or that any further assessment in this regard was warranted. There was insufficient evidence presented by Petitioner to counter this credible testimony.

As to the need for a neuropsychological evaluation, School C psychologist credibly testified as to the extensive evaluation she conducted of Student and saw no need for a neuropsychological. Even Petitioner's educational advocate/psychologist testified that she would not recommend a full neuropsychological, but suggested a single assessment tool be administered. Consequently, the Hearing Officer concludes that there was insufficient evidence to conclude that School A had failed to conduct all appropriate evaluations of Student and that the remaining evaluations Petitioner claims should have been conducted were in fact warranted. The Hearing Officer concludes that Petitioner did not sustain the burden of persuasion by a preponderance of evidence that School A denied Student a FAPE in this regard.

ORDER:

Petitioner's due process complaint is hereby dismissed with prejudice and all 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: July 9, 2019

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