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 Office of Dispute Resolution  
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**Confidential**

<p>Parent on Behalf Student<sup>1</sup>,</p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools          (“DCPS”) (“LEA”) &amp;</p> <p>School A Public Charter School          (“LEA”) Name of LEA is listed in Appendix B</p> <p>Respondents.</p> <p>Case # 2016-0068</p> <p style="text-align: center;">Date Issued: June 1, 2016</p>	<p>HEARING OFFICER’S          DETERMINATION</p> <p>Hearing Dates:</p> <p>May 4, 2016          May 5, 2016</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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<sup>1</sup> Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to

## **JURISDICTION:**

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on May 4, 2016, and concluded on May 5, 2016, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2004.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student is age \_\_ and in grade \_\_<sup>2</sup> and is enrolled in a public charter school (“School A”) located in the District of Columbia that is its own local educational agency (“LEA”). The student began attending School A at the start of the current school year.

On March 18, 2016, the student’s parent (“Petitioner”) filed the due process complaint and on March 25, 2016, filed an amended complaint alleging violations of IDEA by both the District of Columbia Public Schools (“DCPS”) and School A.<sup>3</sup> During school year (“SY”) 2014-2015, when the student attended another public charter school (“School B”) for which DCPS is the LEA, DCPS identified him as a child with a disability pursuant to IDEA.

Petitioner alleges that on May 15, 2015, DCPS developed an individualized education program (“IEP”) for the student that was not finalized, not appropriate and not implemented at School B during SY 2014-2015. Petitioner asserts the May 15, 2015, IEP is inappropriate because it prescribes too few hours of specialized instruction to meet the student’s needs and the student is in need of a full-time, out of general education IEP and placement in a separate school.

Petitioner also claims that School A failed to provide the student with an appropriate IEP and corresponding placement, and did not implement the student’s IEP after he began attending School A at the start of SY 2015-2016. Petitioner also alleges that despite the parent's requests, School A failed to provide the student with any services after he was assaulted by other School A students outside of school in November 2015. The parent alleges that as a result of the assault the student has been unable to attend school.

Petitioner seeks as relief that the Hearing Officer find that DCPS and School A denied the student a FAPE and that School A be ordered to develop a full-time out of general education IEP for the student and provide in-home services until a school placement can be determined, and that DCPS and/or School A be ordered to place and fund the student at a non-public separate school and provide the student the requested compensatory education.

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<sup>2</sup> The student’s current age and grade are indicated in Appendix B.

<sup>3</sup> The facts and issues raised in both complaints are adjudicated and decided in this HOD. Petitioner filed a previous complaint in December 2015 that was withdrawn without prejudice.

DCPS filed a timely response to the complaint on March 31, 2016. DCPS denied that it failed to provide the student a FAPE. DCPS asserts, inter alia, that on May 15, 2015, DCPS developed an IEP for the student that was reasonably calculated to provide the student educational benefit; Petitioner participated in the IEP meeting, did not object to the IEP and agreed to review the IEP during SY 2015-2016 but withdrew the student from School A prior to the start of SY 2015-2016; DCPS provided Petitioner the student's records upon withdrawal.

Respondent, School A, filed a timely response to the complaint on March 31, 2015. School A stated that it was not provided a copy of the student's IEP or draft IEP when he began attending School A at the start of SY 2015-2016, and was not aware the student had an IEP from a previous LEA and he was therefore not provided special education services. The school was aware the student had a BIP and implemented it with fidelity.

School A was aware of the alleged assault that occurred off school grounds and encouraged Petitioner to report the incident to police. However, not until mid January 2016 did Petitioner provide the school any documentation regarding the student's absence from school from November 2016 to January 2016. Respondent held a meeting with Petitioner and developed a safety plan for the student to return to school. Petitioner thereafter presented the school a letter from a therapist stating the student was unable to return to school.

Petitioner participated in resolution meetings with DCPS and School A on April 8, 2016, and April 13, 2016 respectively. The parties did not resolve the complaint and did not mutually agree to proceed directly to hearing. Thus, The 45-day period began on April 18, 2016, and ends [and the Hearing Officer's Determination ("HOD") was due] on June 1, 2016.

The Hearing Officer convened a pre-hearing conference on the complaint on April 7, 2016, and issued a pre-hearing order on April 12, 2016, outlining, inter alia, the issues to be adjudicated.

**ISSUES:** <sup>4</sup>

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate IEP and placement for SY 2014-2015 (from May 15, 2015 to end of SY 2014-2015) that prescribed full time out of general education services with a corresponding LRE.
2. Whether DCPS denied the student a FAPE by failing to implement the student's IEP during SY 2014-2015.
3. Whether School A denied the student a FAPE by failing to implement the student's IEP during SY 2015-2016.

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<sup>4</sup> The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

4. Whether School A denied the student a FAPE by failing to provide the student with an appropriate IEP and placement for SY 2015-2016 (from the start of SY 2015-2016 to the date the complaint was filed) that prescribes full time out of general education services with a corresponding LRE.
5. Whether School A denied the student a FAPE by failing to provide requested in-home services and accommodations once the student was assaulted outside the school building in November 2015 and was allegedly unable to return to school.

**RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 26 and DCPS Exhibits 1 through 15 and School A Exhibits 1-18) that were admitted into the record and are listed in Appendix A).<sup>5</sup> Witnesses' identifying information is listed in Appendix B.<sup>6</sup>

**SUMMARY OF DECISION:**

Petitioner did not sustain the burden of proof by a preponderance of the evidence as to DCPS on either of the two issues alleged. Petitioner sustained the burden of proof by a preponderance of the evidence that School A failed to implement the student's IEP from the start of SY 2015-2016 to late October 2015, and from January 2016 until the date of issuance of this order by failing to provide in home services when the student was unable to attend school. Petitioner did not sustain the burden proof by a preponderance of the evidence that the student's IEP was inappropriate or that he is in need of a non-public separate special education school placement. The Hearing Officer grants Petitioner compensatory education and directs School A to evaluate the student to determine, inter alia, his current social emotional functioning, and convene a meeting to update the student's IEP and determine his placement for the remainder of SY 2015-2016 and for SY 2016-2017.

**FINDINGS OF FACT:**<sup>7</sup>

1. The student is currently enrolled in School A, a public charter school located in District of Columbia that is its own LEA. The student began attending School A at the start of SY 2015-2016. (Mother's testimony)

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<sup>5</sup> Any documents that were objected to by either party, admitted over objection or not admitted and/or withdrawn by either party are noted as such in Appendix A.

<sup>6</sup> Petitioner presented four witnesses: Mother and Father, a psychologist, and a representative of the non-public school Petitioner is seeking as part of the requested relief. Respondent School B presented four witnesses: a psychologist, an attendance specialist, the special education coordinator and the school principal. DCPS did not present any witnesses.

<sup>7</sup> The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. If the source of the finding is a document then 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.

2. Prior to attending School A, the student was attending School B, a different public charter school for which DCPS is the LEA. The student began attending School B at the start of SY 2013-2014. The student failed several of his classes during SY 2013-2014 but attended summer school and was promoted to the next grade for SY 2014-2015. (Mother's testimony, Petitioner's Exhibit 7-4)
3. In January 2015 DCPS conducted a comprehensive psychological evaluation. The reason for the evaluation was to determine whether the student met the criteria for special education with a disability classification of specific learning disability ("SLD"). The DCPS psychologist assessed the student's cognitive and academic functioning, conducted classroom observation(s) of the student, and interviewed the student, his parents and teachers. The student's cognitive functioning was determined to be average and his academic functioning in reading and written language was average; his math functioning was low average. The evaluator concluded the student did not meet the criteria for SLD. (Petitioner's Exhibit 7-1, 7-4, 7-15, 7-16, 7-19, 7-20)
4. The DCPS evaluator also assessed the student's behavior with the Behavior Assessment System for Children, Second Edition (BASC-2). The BASC-2 included rating scales completed by the student's parent, a teacher and the student. The assessment indicated the student was experiencing some emotional concerns related to home and school including difficulty focusing and attending during class instruction, anxiety, feelings of depression, withdrawal and a sense of inadequacy. The assessment results correlated with information disclosed during the evaluator's parent interview in which the parent shared the student's emotional concerns as well as the suicidal ideations the student displayed at home. (Petitioner's Exhibit 7-12, 7-13, 7-14, 7-15 7-20)
5. The DCPS evaluator noted the student had never engaged in self-harm behaviors or experienced any suicidal ideations in the school environment. The evaluator did not conclude the student was eligible for special education services, but recommended, among other things, that the student be provided academic and emotional support through the school's Student Support Team ("SST") in an effort to closely monitor his academic performance and his emotional status. (Petitioner's Exhibit 7-12, 7-13, 7-14, 7-21)
6. In March 2015 School B instituted a behavior intervention plan ("BIP") for the student to address his class avoidance behavior, absenteeism and late arrivals to school. (DCPS Exhibit 7-5)
7. The student's parents, through their attorney, engaged the services of a psychologist who met with the student individually and with the student's parents in April 2015. The psychologist noted that the student was exhibiting signs of depression when they met. (Witness 1's testimony)
8. The psychologist reviewed the psychological evaluation DCPS completed and opined that the recommendations in DCPS' psychological evaluation did not effectively address

the student's social emotional issues, both his depression and his ability to cope with stresses in school and in the community.<sup>8</sup> (Witness 1's testimony)

9. On April 23, 2015, DCPS found the student eligible for special education and related services pursuant to the IDEA with an ED disability classification.<sup>9</sup> The student's parent and her counsel participated in the meeting. (DCPS Exhibit 5)
10. On May 15, 2015, DCPS developed an IEP for the student. The student's parent and her counsel participated in the meeting and the parent signed the IEP. The IEP prescribed the following services: 9 hours per week of specialized instruction inside general education and 240 minutes per month of behavior support services outside general education along with classroom aides, accommodations and a transition plan. The IEP included goals in the areas of reading and emotional, social and behavioral development. The emotional, social and behavioral goals focused on coping with frustration, developing peer relationships, self-advocacy and completing work. The LRE page of the IEP indicated that the only services that would be provided outside general education would be behavioral support services. (DCPS Exhibits 6-1, 8-1, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 8-10)
11. No team member, including the parent and her counsel expressed that the student was in need of a full time out of general education IEP or placement at the April 23, 2015, eligibility meeting, or the May 15, 2015, IEP meeting. (DCPS Exhibits 5, 6)
12. At the May 15, 2015, IEP meeting the student's parent expressed concern that there were no math and writing goals included in the IEP. In response, the team clarified that reading was the student's sole area of difficulty. The team agreed there would be a follow up meeting on the student's IEP after the start of the next school year. (DCPS Exhibits, 6-3, 6-4, 7-7)
13. The student's parent consented to the student being provided special education services by School B. (Mother's testimony, DCPS Exhibit 9)
14. School B began implementing the student's IEP after the IEP was developed and continued through the end of SY 2014-2015 by providing him both specialized instruction and behavioral support services as demonstrated by the service tracker forms and the student's IEP progress report.<sup>10</sup> (DCPS Exhibits 10, 11, 12)

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<sup>8</sup> The Hearing Officer does not accept or agree with the witness' opinion in this regard, but simply noted as a finding of fact that this witness expressed this opinion.

<sup>9</sup> The eligibility meeting notes state the following: "The team determined that the [student] will qualify for special education for [AD]." The Hearing Officer concluded based on the meeting notes and the front page of the IEP that there was a typographical error in the notes and the correct disability classification was emotional disability ("ED"). (DCPS Exhibit 5-2)

<sup>10</sup> Although the student's mother testified that School B did not provide the student services prescribed by his IEP and that the IEP was not finalized but was a draft IEP, the Hearing Officer did not find the mother's testimony credible in this regard. Nor did not Hearing Officer find the father's testimony that the School B did not provide behavioral support services credible. The evidence clearly indicates the mother signed the IEP. There was no

15. The student's father attended three meetings at School B with the student's counselor about the student's behaviors. The student was missing classes and was aggressive toward, and had altercations with, other students. (Father's testimony)
16. The student's final transcript at School B indicates he failed all classes at the end of SY 2014-2015. (DCPS Exhibit 13)
17. The student's mother expected that the student would be returning to School B for SY 2015-2016. However, she did not submit the student's re-enrollment documents timely, and as a result the student could not return to School B. Consequently, on August 8, 2015, the student's mother enrolled the student in School A for SY 2015-2016. The student's mother officially withdrew the student from School B on August 18, 2015, and School B provided her the student's educational records including his IEP and evaluations. (Mother's testimony, Petitioner's Exhibits 16, 17)
18. By the start of SY 2015-2016 the student's parent gave School A the student's records School B provided to her, including the student's IEP and evaluations. The student's parent believed IEP had not been finalized because it was to be reviewed again for SY 2015-2016 at School B. The parent also believed the IEP did not adequately address the student's social and emotional concerns. The student's parent did not express any of this to School A. (Mother's testimony)
19. When the student's mother enrolled him at School A, she believed that School A could address the student's needs because it was a small school environment. Although the student's parent had knowledge of issues related to the student's aggression toward other students as well as the fact that the student had not been attending class at School B, she never shared these concerns with School A. The parent also did not tell School A about her belief that the student was in need of a full time, self-contained environment. (Mother's Testimony)
20. School A is a college preparatory public charter [REDACTED] school with [REDACTED] students and a typical class size of 15 to 20 students per class, depending upon the course. (Witness 4's Testimony)
21. After the student began attending School A at the start of SY 2015-2016 he had problems arriving to school on time and began to acquire significant absences. He had six unexcused late arrivals and two excused absences and during September 2015. In October 2015 he had three unexcused late arrivals, five excused absences and one

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documentation that indicated the IEP was a draft document. The service trackers and IEP progress reports indicate that the student was provided services pursuant to the IEP. The Hearing Officer found the documents in the record, including the DCPS and School B meeting notes, the IEP and the consent for services to be provided, more probative as to whether the IEP was finalized and implemented at School B. As result, the Hearing Officer did not credit the mother's testimony, or the father's testimony, that the IEP was not implemented. Petitioner presented no documentation to support the parents' testimony that the IEP was not implemented.

unexcused absence.<sup>11</sup> In the first week of November 2015 the student had four unexcused late arrivals and one unexcused absence. In the second week of November 2015 the student had three unexcused late arrivals and one excused absence. The student had an unexcused late arrival on November 16, 2015. (School A's Exhibit 3)

22. In October 2015 School A called the student's father to pick the student up because he was being disruptive. (Father's testimony)
23. Although the student had an IEP, the student did not receive any of the specialized instruction required in his IEP until the end of October 2015. Until then School A had overlooked the fact that the student had an IEP. At the end October 2015 the student began receiving specialized instruction pursuant to his IEP. The student missed approximately two months of specialized instruction prior to the time the student's IEP began being implemented by School A. The student has a schedule in which his core classes are co-taught by special education teachers with general education teachers. (Witness 6's Testimony, School A Exhibit 11)
24. The student's IEP also required that the student receive 240 minutes per month of behavioral supports. School A initiated a system of behavioral tracking for teachers to comment on the student's behavior from class to class. However, School A did not provide the student 240 minutes per month of behavioral supports required by the student's IEP at all during SY 2015-2016. (Witness 6's testimony)
25. At School A the student missed 9 hours of specialized instruction per week from the start of SY 2015-2016 until his IEP began being implemented in late October 2015. The student missed approximately 10 weeks of specialized instruction for total of 90 hours. In addition, during that same period the student missed approximately 8 hours of behavioral support services. (DCPS Exhibit 8-9)
26. On November 16, 2015, after school hours, the student was in a fight with other students at a shopping mall in the general vicinity of School A, but in Prince George's County, Maryland. The student claimed four other students assaulted him, three of whom attended School A. As a result of the incident the student was afraid to return to school and has not attended School A since the alleged assault. From November 18, 2015 to date, the student has not attended School A, or any school. (Father's testimony)
27. Two weeks prior to the November 16, 2015, incident the student's parents attended a meeting at School A to address a conflict the student was having with one of the four students later involved in the alleged assault in Prince Georges County. The School A dean and counselor participated in the meeting along with the two students. After the discussion both students agreed to stay away one another. (Father's testimony)
28. The student's parent reported the On November 16, 2015, incident to the Prince Georges County Police and a police detective told the parent that he would investigate and go to

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<sup>11</sup> During October 2015 the student also had two days of in school suspension.

School A. The parent has not heard from the detective since and has not followed up with the detective. (Father's testimony)

29. After the November 16, 2015, incident the student was afraid to return to School A, as he received threats via social networking and peers he was in contact with after the incident. The student's parents took him to a therapist strongly who suggested the student to attend School A. The student sees the therapist once per month and is currently on medication for depression. Since the incident the student has remained at home mostly idle and/or on his computer and has not been provided any educational services. (Father's testimony, Mother's testimony)
30. After the November 16, 2015, the student's father spoke with the School A principal, stated the student could not return to school and requested in-home tutoring. The principal stated that unless there was medical documentation the student would be expected to attend school and School A had no ability to provide in-home tutoring. The father did not provide any medical documentation that indicated the student was so impaired that he could not come to school. The principal explained to the student's father that she would have to report the student for truancy. (Witness 4's testimony)
31. The School A principal spoke with the student's parents again in early in December and suggested that the first speak with the school security resource officer to identify the students who allegedly assaulted the student and conduct a mediation. School A offered to then take additional steps if that was not successful. The principal assured the parent the school would prepare a safety plan to keep the student safe. She noted that in the alternative, the parents had the option to withdraw the student and enroll him in another school. The parents did not accept the principal's suggestions and said if she needed to file truancy papers she should go ahead. (Witness 4's testimony)
32. The student's absences from school from November 17, 2015, were being recorded as unexcused absences. The School A attendance monitor unsuccessfully attempted to reach the student's parents by telephone about the student's absences, and on December 1, 2015, reported the student as truant. When the attendance monitor was finally able to reach the parents, they informed the monitor that the student was afraid to return to school and feared for his life. (Witness 4's testimony, School B's Exhibits 3, 4)
33. The student's parents explored the student attending a private special education school, School C. The parent's also checked to see if the student could return to School B; however, School B did not have a slot for the student. The student's parents did not consider the student's local DCPS school because they believed one of the boys who allegedly assaulted the student attended the local DCPS school. The student's parents also explored another charter school for the student to attend to no avail. (Father's testimony)
34. The psychologist Petitioner's engaged also met with student after the November 16, 2015, incident for approximately an hour and half. Although the student was depressed on their first meeting, at this second meeting the psychologist noticed a marked

difference in the student. He was more anxious, withdrawn and fearful. (Witness 1's testimony)

35. Petitioner's psychologist acknowledged that he believes the services the student needs now are more intense than he needed in April 2015. Because the student has been out of school so long his condition has not and will not change without direct intervention and support. The psychologist opined that the student needs a full time structured program focused on his social emotional issues and where appropriate professionals can monitor him.<sup>12</sup> However, the psychologist is not involved in ongoing treatment of the student and did not conduct any formal assessment of the student. He did not communicate with School A regarding the student or any one other than the student and his parents. (Witness 1's testimony)
36. In January 2016, after a resolution meeting for the first complaint Petitioner filed that was withdrawn, School A developed a safety plan for the student to return to school and offered the student tutoring two days per week to insure the student could understand classroom instruction. The proposed safety plan required that the student arrive to school between 7:40 a.m. and 8:00 a.m. and that the student go to a resource room rather than his advisory room. The student's classes remained the same and he would have a teacher "shadowing" him to his classes all day. The student had people designated to check-in with, should the need arise, and he would stay at school until all students had been dismissed. (Witness 6's, School A's Exhibit 2)
37. The safety plan was individually devised for the student. However, School A has a school wide security plan, two security officers and head of security. If there is a safety problem for any student there are options available including allowing a student to be dismissed early or a parent can pick up a student early. A security officer is always posted outside the school when students are coming to and leaving school. The school can also make arrangements for students to partner with one another for travel to and from school. (Witness 4's testimony)
38. School A sent the safety plan to the parents' attorney but they never saw the plan despite the attorney having it. (Witness 6's testimony, Mother's testimony)
39. School A's special education coordinator ("SEC") made two attempts to call the student's parents to advise that the student's work packets were available at School A. However, the SEC was never able to speak to the parents. The SEC left a message advising that the student's work packets were available to be picked up at School A. (Witness 6's Testimony)
40. The student's parents provided School A's principal a letter dated January 14, 2016, from the student's psychotherapist (a clinical social worker) who stated in the letter the student was not emotionally ready to return to School A because of the November 16, 2015,

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<sup>12</sup> The Hearing Officer does not accept or agree with the witness' opinion that the student is in need of a full-time out of general education placement, but noted as a finding of fact that this witness expressed this opinion.

incident and the student's reports of threats. The letter asked for suggestions and help from School A to resolve the matter. (Petitioner's Exhibit 13)

41. When the student's parents came to School A in January 2016 for a meeting, they brought the letter explaining the student's absences. School A then changed the student's absences after November 17, 2015, from unexcused to excused absences. From February 22, 2016, the student's absences have been recorded as unexcused. (Witness 3's testimony, School A's Exhibit 3)
42. Petitioner's psychologist assisted in developing a request to School A, dated March 15, 2016, for in-home services for the student. The plan proposed that School A provide the student the following services at home: three hours of direct instruction per day and one hour of behavioral support per day. (Witness 1's testimony Petitioner's Exhibit 15)
43. After the current complaint was filed School A convened a resolution and multidisciplinary team ("MDT") meeting on April 13, 2016, at which the student's DCPS speech an language and psychological evaluations were reviewed. School A engaged the services of a psychologist to review and explain the results of the psychological evaluation DCPS conducted and participate in the MDT meeting. (Witness 2's testimony, School A Exhibit 12)
44. During the meeting the student's eligibility for special education services was discussed. Based upon the evaluation data, the School A psychologist agreed with the DCPS psychologist's conclusion that the student did not meet the SLD criteria. However, because the DCPS psychological evaluation did not specifically make a determination about the student's social emotional functioning related to a disability, the School A psychologist could not state that she agreed that the student met the criteria for ED classification. (Witness 2's testimony, School A Exhibit 12)
45. The School A psychologist noted that the DCPS evaluation contained data that could potentially support the student's ED disability classification, but would not have enough information herself to confirm the ED classification without observing the student and collecting her own data. The School A psychologist wanted to conduct additional assessment(s) of the student to measure his mental health functioning both in school and at home to see if his emotional functioning is a barrier to his education. The School A psychologist stated at the meeting that she would recommend the student be assessed for both the ED classification and other health impairment ("OHI") classification. (Witness 2's testimony, School A Exhibits 13, 18)
46. School A provided the student's parents a consent form for the evaluation(s) to be conducted and requested the student return to school with the assistance of the safety plan so that the evaluations could be conducted and a team could review the student's eligibility. (Witness 2's testimony, School A Exhibits 13, 18)

47. The student's parents have not executed a consent form in order for School A to perform additional evaluation(s), and the student has not returned to School A. (Witness 6's Testimony)
48. School A did not agree to provide, and has not provided, the student any home instruction or otherwise implemented the student's IEP during the period he has been absent. School A considered the letter from the student's clinical social worker an insufficient basis to provide the student services at home. School A believes that the safety plan it has offered is sufficient for the student to return to school for him to be provided the services pursuant to his IEP at School A. (Witness 4's testimony, Witness 6's testimony)
49. Since the student's parent provided School A with documentation regarding the student's absence from school on January 14, 2016, to date, the student had missed approximately 20 weeks of specialized instruction and four months of behavioral support services prescribed by his IEP for a total of approximately 180 hours of specialized instruction and 16 hours of behavior support services missed. (DCPS Exhibit 8-9)
50. The student has been accepted to School C, a private special education school with ■ students. In addition to core curriculum, School C offers vocational programs including programs in auto mechanics technology and hospitality. There is a social worker on staff to provide behavioral support services. The average class size is between four and five students to one teacher. School C has not received the student's IEP or his evaluations. The student and his parents visited School C and discussed the student's educational needs, and they took a tour. (Witness 5's testimony, Petitioner's Exhibit 12)
51. Petitioner proposed a compensatory education plan that presumes the student missed six months of specialized instruction and behavior support services totaling 180 hours of specialized instruction and 18 hours of behavior support. Petitioner asserted the student is owed a total of 360 hours of specialized instruction in the form of independent tutoring and 36 hours of behavior support services for both missed services and the alleged inappropriate IEP and placement. In addition, Petitioner asserts the student should be provided a laptop computer with educational programs and an instructor to train the student and parent on the use of the software. (Petitioner's Exhibit 3)

## **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. 7 *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. 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) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

**ISSUE 1:** Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate IEP and placement for SY 2014-2015 (from May 15, 2015 to end of SY 2014-2015) that prescribed full time out of general education services with a corresponding LRE.

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

To provide a FAPE, the school district is obligated to devise an IEP for each eligible child, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. See 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *School Comm. of the Town of Burlington, Mass. v. Department of Educ. of Mass.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 2002, 85 L.Ed.2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir.1991); *District of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir.2010).

The FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. District of Columbia*, 846 F.Supp.2d 197, 202 (D.D.C.2012) (citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)).

The standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the "basic floor of opportunity," is whether the child has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F.Supp.2d 152, 167 (D.D.C.2005) (quoting *Rowley*, 458 U.S. at 201.) The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with

the opportunity provided other children. *Id.* at 198 (internal quotations and citations omitted.) Congress, however, “did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial.” *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985).

*Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 200 (1982), the Hearing Officer must first look to whether the State complied with the procedures set forth in the IDEA, and second, whether an individualized educational program developed through the IDEA’s procedures is reasonably calculated to enable the child to receive educational benefits. If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more. *Id.* at 206-07

“[T]he measure and adequacy of an IEP can only be determined as of the time it is offered to the student. Neither the statute nor reason countenance 'Monday Morning Quarterbacking' in evaluating the appropriateness of a child's placement.” *S.S. ex rel. Schank v. Howard Road Academy*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008) (quoting *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10th Cir. 2008)). An IEP “should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Rowley*, 458 U.S. at 204. “An IEP is a snapshot, not a retrospective. In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken, that is at the time the IEP was promulgated.” *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 992 (1st Cir. 1990). *District of Columbia v. Walker*, 2015 WL 3646779, \*6 (D.D.C. Jun. 12, 2015) (“the adequacy of an IEP can be measured only at the time it is formulated, not in hindsight.”).

An IEP need not conform to a parent’s wishes in order to be sufficient or appropriate. See *Shaw v. Dist. of Columbia*, 238 F. Supp. 2d 127, 139 (D.D.C. 2002). While parents may desire “more services and more individualized attention,” when the IEP meets the requirements discussed above, such additions are not required. See, e.g., *Aaron P. v. Dep't of Educ., Hawaii*, No. 10-574, 2011 WL 5320994 (D. Hawaii Oct. 31, 2011)

IDEA requires that children with disabilities be placed in the least restrictive environment (“LRE”) so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate. See 20 U.S.C. § 1412(a)(5)(A). 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.” See 20 USC 1412(a)(5), 34 CFR 300.114(a)(2)(i)-(ii) (emphasis added); 34 C.F.R. § 300.550; *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.”) Further, an appropriate location of services under the IDEA is one that is capable of “substantially implementing” a Student’s IEP. *Johnson v. District of Columbia*, 962 F. Supp. 2d 263 (D.D.C., 2013).

Pursuant to D.C. Code § 38-2561.02. (c): Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter:

1. DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
2. Private or residential District of Columbia facilities; and
3. Facilities outside of the District of Columbia.

In this case there was no evidence presented that demonstrated that DCPS did not comply with procedural requirements in developing the student's IEP at the May 15, 2015, meeting. Petitioner asserted that the student's IEP was inappropriate because it did not require a full time out of general education and placement in a separate school.

The evidence in this case demonstrates that on May 15, 2015, the student's IEP team, that included Petitioner and her counsel, agreed that the student's needs could be met with specialized instruction inside the general education setting and behavioral support outside the general education setting.<sup>13</sup> The evidence demonstrates that the only reservation Petitioner had during the IEP meeting was her belief that student needed academic goals in math and written expression in addition to reading. There is no indication that Petitioner her counsel expressed or requested that the student be provided all services outside general education.<sup>14</sup>

The DCPS psychological evaluation noted that both the student's cognitive and academic functioning were average. The evaluator pointed out the student's emotional concerns and recommended that both his academic performance and his emotional status be monitored. But the evaluator did not recommend the student for special education, much less that he be placed outside general education. Although the student had a BIP and there was testimony from both parents that the student was having difficulties with peers in school while attending School B and had suicidal ideations in the past, there was no evidence that the student had displayed behaviors at School B that would have warranted the student being totally removed from non-disabled peers and that a separate school was his LRE because of his social and emotional concerns or otherwise.

The sole witness Petitioner presented to support the assertion the student was in need of a full-time out of general education placement was the psychologist who noted that in April 2015 the student was depressed. The psychologist also noted that level of services he believes the student now needs is greater than what he believed the student needed in April 2015 when he and the student first met. This testimony supports a conclusion that when the student's IEP was developed on May 15, 2015, there were not significant enough behavior or emotional difficulties that the student displayed to warrant his total exclusion from general education. The evidence supports a conclusion that that the IEP DCPS developed while the student was attending School B was reasonably calculated to confer educational benefit.

Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS denied the student a FAPE by failing to develop an appropriate IEP and provide the student an appropriate placement for SY 2014-2015.

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<sup>13</sup> FOF #s 10, 11

<sup>14</sup> FOF # 12

**ISSUE 2:** Whether DCPS denied the student a FAPE by failing to implement the student’s IEP during SY 2014-2015.

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

34 C.F.R. § 300.323(c)(2) requires that, as soon as possible following the development of an IEP, special education and related services are made available to the child in accordance with the child’s IEP.

5E DCMR 3002.3 provides that:

(c) The LEA shall ensure that an IEP is developed and implemented for each eligible child with a disability served by the LEA.

(d) The LEA shall ensure that special education and related services are provided to an eligible child with a disability in accordance with the child's IEP...

(f) The LEA shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

“To prevail on a claim under IDEA, a party challenging the implementation of an IEP must show more than a de minimus failure to implement all elements of that IEP, and, instead, must demonstrate that the ...authorities failed to implement substantial or significant portions of the IEP.” *Savoy v. District of Columbia* (DC Dist. Court) February 2012 adopted *Houston Indep. School District v. Bobby R.* 200 F3d 341 (5th Circ. 2000)

The evidence demonstrates that School B implemented the student’s IEP from May 15, 2015 until the end of SY 2014-2015. The School B documents prove that the student was provided both specialized instruction and related services that were prescribed by the IEP.<sup>15</sup> Although the student’s mother and father testified that School B did not provide the student IEP services, the Hearing Officer did not find this part of their testimony credible.

The service trackers and IEP progress reports indicate that the student was provided services pursuant to the IEP. The Hearing Officer found the documents in the record including the service trackers, the IEP progress report, the meeting notes, the IEP, and the consent for services to be provided, more probative as to whether the IEP was finalized and implemented at School B. Based on the foregoing, the Hearing Officer concludes that Petitioner did not sustain the burden of proof on this issue.

**ISSUE 3:** Whether School A denied the student a FAPE by failing to implement the student’s IEP during SY 2015-2016.

**Conclusion:** Petitioner sustained the burden of proof by a preponderance of the evidence of on this issue.

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<sup>15</sup> FOF # 14

The evidence demonstrates that at the start of SY 2015-2016 the student's parent provided School A the student's IEP. Yet from the start of the school year School A was not implementing the IEP and did not provide the student specialized instruction pursuant to his IEP until late October 2015.<sup>16</sup> In addition, the evidence demonstrates that that School A did not provide the student any behavioral support services from the start of the school year up until he stopped attending school after the November 16, 2015, incident.<sup>17</sup> The Hearing Officer determines that School A's failure to provide the student services pursuant to his IEP during this period was more than a de minimus failure to implement all elements of that IEP. School A failed to implement substantial and significant portions of the student's IEP and thus denied him a FAPE.

**ISSUE 4:** Whether School A denied the student a FAPE by failing to provide the student with an appropriate IEP and placement for SY 2015-2016 (from the start of SY 2015-2016 to the date the complaint was filed) that prescribes full time out of general education services with a corresponding LRE.

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

At the start of SY 2015-2016 the student's parent provided School A the student's IEP and she also provided his evaluations. The IEP prescribed specialized instruction inside general education, and behavioral support outside general education. Albeit School A did not implement the IEP until October 2015 it can only be held responsible for the IEP and evaluations that were provided. Although the parent testified she believed the student is need of full time placement, she did not share that belief with School A when she enrolled the student or thereafter.

The DCPS psychological evaluation noted that both the student's cognitive and academic functioning were average. Even though the student's IEP noted the student had an ED disability classification, and the DCPS psychological evaluation noted the student's emotional concerns, the evaluator did not recommend the student for special education, much less that he be placed outside general education. Although the student had late arrivals, absences, an in-school suspension and an altercation with a School A student, this is insufficient evidence to support a conclusion that the student was in need of a full time special education placement and/or a separate school prior to the date the student stopped attending School A in November 2015.

The evidence demonstrates that after the student was involved in the November 16, 2015, incident he was afraid to return to School A. Petitioner's psychologist who met with the student both before and after the incident testified the student is in need of a full time out of general education placement. That determination was based simply on his meeting with the student for one and half hours. The psychologist is not involved in ongoing treatment of the student, did not conduct any evaluations of the student and did not communicate with School A staff or anyone

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<sup>16</sup> FOF # 23

<sup>17</sup> FOF # 24

other than the student and his parents.<sup>18</sup> Thus, the Hearing Officer gives this witness' opinion regarding the student's need for a separate school placement little weight.

The student is clearly in need of behavioral support services and there is evidence the student was receiving out of school therapy weekly. But there was no testimony from any treating health care professional that would substantiate the need for such a restrictive placement as a separate school. Thus, the Hearing Officer concluded Petitioner did not sustain the burden of proof that the student is in need of a full time out of general education IEP and placement or in need of a separate school.

**ISSUE 5:** Whether School A denied the student a FAPE by failing to provide requested in-home services and accommodations once the student was assaulted outside the school building in November 2015 and allegedly unable to return to school.

**Conclusion:** Petitioner sustained the burden of proof by a preponderance of the evidence on this issue.

Pursuant to 34 C.F.R. § 300.115(a), DCPS “must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Additionally, when determining the Least Restrictive Environment of a student, “in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.” 34 C.F.R. § 300.116(d).

5E DCMR 3002.3 provides that:

- (c) The LEA shall ensure that an IEP is developed and implemented for each eligible child with a disability served by the LEA.
- (d) The LEA shall ensure that special education and related services are provided to an eligible child with a disability in accordance with the child's IEP...
- (f) The LEA shall make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.

The evidence demonstrates until the student's parents presented the letter from the student's psychotherapist, the student's absences from November 2015 were noted as unexcused absences. Once that documentation was provided the student's absences were converted to excused absences.<sup>19</sup> The parents' request for home instruction for the student continued after they provided School A the letter. In response School A offered a plan to help make the student safe so he could return to school. Ultimately, there was no agreement between the parties for either the student to return to school or for the student to be provided home instruction.

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<sup>18</sup> FOF # 35

<sup>19</sup> FOF # 41

During the hearing the School A principal testified that she stated to the student's parent that School A could not provide in-home services, and unless medical documentation was provided School A would report the student as truant. The principal also advised the student's parents they could withdraw the student from School A and place him in another school. However, once documentation from a mental health care professional was provided, School A continued to refuse to provide the student services.

School A, after being provided the January 14, 2016, document from a mental health care professional, was aware there was a health reason for student was not attending School A.<sup>20</sup> Although the student could not, according to document, attend School A, School A's responsibility to implement the student's IEP and to provide him a placement on the continuum of placements continued.

There was no challenge made by School A to the validity of the letter from the student's psychotherapist. Although the documentation was not from a physician, the Hearing Officer is not aware of any legal authority, and none was provided by Respondent, that such documentation needs to be and can only be provided by a physician.

School A developed and proposed a safety plan, and had security measures available, and even offered to mediate with the students involved. However, this action was insufficient to obviate School A's responsibility to provide the student services in light of the letter from the psychotherapist regarding the student's emotional inability to return to school.

School A had an affirmative duty armed with the documentation of a health care professional to either provide the student in home services in an attempt to implement his IEP or inform OSSE that it could not provide services to the student and request that another school be identified for the student rather than simply relying upon the student's parents to withdraw him from School A and find another school.

The Hearing Officer concludes that School A had an affirmative duty to implement the student's IEP or make efforts to do so to the greatest extent possible under the circumstances and should have provided the student at least some form of in-home services after it was provided the January 14, 2016, letter. Such action would have been ensuring that a continuum of alternative placements was available to meet the needs of the student's needs pursuant to 34 C.F.R. § 300.115. Consequently, the Hearing Officer concludes School A denied the student a FAPE by failing to provide a appropriate alternative placement on the continuum of placement under the circumstances by providing him in home services and/or taking action to locate another school for the student from January 14, 2015, the present.

**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

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<sup>20</sup> FOF # 40

3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.)

The student is due the missed behavioral support services he was not provided from the start of SY 2015-2016 to November 16, 2016, and the specialized instruction from the start of SY 2015-2016 until late October 2015. The Hearing Officer concludes that the student is also due the specialized instruction and related services in his IEP from January 14, 2016, (when School A was provided documentation of the health reasons for the student's absence from school) through the date of this order. Prior to that documentation being provided, School A was justified in considering the student's absences unexcused and in the Hearing Officer's opinion should not be held responsible for missed services during this period.

The Hearing Officer, in the order below, also directs that School A provide the student compensatory education for the missed services. Because the student's mental health was the documented reason for the student's absence from school and need for in-home services, the Hearing Officer concludes that it is appropriate and warranted that School A conduct an evaluation to determine, inter alia, the student's current social emotional functioning. It has been more than four months since that document was generated and no medical update as to the student's condition has been provided. Petitioner has simply insisted that the student should be placed in the non-public school with no contact with non-disabled peers.

Finally, the Hearing Officer, in the order below, directs School A to update the student's IEP and determine his educational placement for the remainder of SY 2015-2016 and for 2016-2017.

### **Compensatory Education**

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

Petitioner proposed a compensatory education plan that presumes the student missed six months of specialized instruction and behavior support services for a total of missed services of 180 hours of specialized instruction and 18 hours of behavior support services for both missed services and an alleged inappropriate IEP and placement. Petitioner asserted the student is owed a total of 360 hours of specialized instruction in the form of independent tutoring and 36 hours of behavior support services. In addition, Petitioner asserts the student should be provided a laptop computer with educational programs and an instructor to train the student and parent on the use of the software.

The Hearing Office concludes the student should have then been provided some support services after the student's parent provided School A with mental health documentation for the student's

absences on January 14, 2016. From January 14, 2016, to date, the student had missed approximately 20 weeks of specialized instruction and four months of behavioral support services. Thus, the student missed approximately 180 hours of specialized instruction and 16 hours of behavior support services for that period. When added to the specialized instruction and behavioral support services the student missed from the start of SY 2015-2016 until late October 2015 and November 16, 2015, respectively, there is a total 270 hours of specialized instruction and 24 hours of behavioral support services missed.<sup>21</sup>

Although Petitioner has requested that the student be provided 360 hours of specialized instruction and 36 hours of behavioral support the request is exorbitant and not based upon any evidence that demonstrates that the requested services have a relationship to the services missed and the student's ability to recoup what was missed. Consequently, the Hearing Officer concludes, based upon the student's cognitive abilities and academic functioning when he was last evaluated<sup>22</sup> and his attendance problems when was attending school,<sup>23</sup> that he would benefit from independent tutoring and independent behavioral support services. The Hearing Officer finds it reasonable to conclude the student would benefit from an amount of independent tutoring in the range of the number of hours of specialized instruction he missed since he was stopped attending school in November 2015 and the full amount of behavior support services missed, in order to provide him needed academic instruction and to address his emotional concerns.

**ORDER:**<sup>24</sup>

1. All issues and claims raised by Petitioner against DCPS are hereby dismissed with prejudice.
2. As to School A, National Collegiate Academy Public Charter School, having denied the student a FAPE, shall, within 15 business days of the issuance of this order, provide Petitioner compensatory education in the form of 180 hours of independent tutoring and 24 hours of independent behavioral support services at the OSSE prescribed rates. Because of the student's history of absences and late arrivals to school during SY 2015-2016 the Hearing Officer is concerned that leaving the implementation of these independent services open indefinitely will not serve the purpose of immediately remediating the loss the student has incurred and that there should be an incentive for the student to use the services as promptly as possible. Therefore, Petitioner shall use the compensatory services awarded herein by June 30, 2017.
3. Within ten (10) business days of the date of this order, School A shall convene an MDT meeting, and Petitioner shall attend, and review any current medical documentation for

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<sup>21</sup> FOF #s 25, 49

<sup>22</sup> FOF # 3

<sup>23</sup> FOF #21

<sup>24</sup> Any delay in Respondent School A in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

the student and discuss and determine what, if any, evaluations shall be conducted of the student, update the student's IEP and determine his educational placement for the remainder of SY 2015-2016 and issue a prior notice of placement to that effect.

4. Contingent upon Petitioner providing written consent, School A shall, within thirty calendar days of written consent to evaluate being provided by Petitioner, conduct a comprehensive psychological evaluation of the student including assessments of his cognitive, academic and social emotional functioning, and any other evaluation(s) that were determined should be conducted at the meeting ordered in paragraph 3 above, if any.
5. School A shall within fifteen calendar days of the completion of the evaluation(s) mentioned in paragraph 4 above, convene a meeting to review the student's evaluations, update his IEP, determine his educational placement for SY 2016-2017 and issue a prior notice of placement to that effect.
6. If the student's parent do not consent to any evaluation(s) being conducted of the student, School A shall at latest by August 1, 2016, convene a meeting with Petitioner present and review and update the student's IEP and determine the student's placement for SY 2016-2017 and issue a prior notice of placement to that effect.
7. All other requested relief 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 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*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: June 1, 2016**

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