

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Office of Dispute Resolution
1050 First Street, NE
Washington, DC 20002
Tel: 202-698-3819
Fax: 202-478-2956

OSSE
Office of Dispute Resolution
June 17, 2019

Confidential

Parent on Behalf of Student, Petitioner, v. District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”), Respondent. Case # 2019-0037 Date Issued: June 10, 2019	CORRECTED HEARING OFFICER’S DETERMINATION ¹ Hearing Dates: May 3, 2019, & May 10, 2019, Counsel for Each Party listed in Appendix A <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
--	--

¹ This “Corrected” HOD is issued to only make typographical and/or grammatical changes and/or to remove personally identifiable information; no substantive changes have been made. The HOD issuance date, June 10, 2019 remains unchanged, as does the applicable appeal date. Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on the following days: May 3, 2019, and May 10, 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. The parties filed written closing arguments on May 30, 2019.

BACKGROUND AND PROCEDURAL HISTORY:

Student is a former special education student who graduated with a high school diploma in June 2018 from a District of Columbia Public Schools (“DCPS”) school (“School A”). Student attended School A during school year (“SY”) 2017-2018. Prior to attending School A, Student attended another DCPS high school (“School B”) during SY 2016-2017.

Student is an adult who has granted Student’s parent a durable power of attorney for matters concerning special education. Student’s parent (“Petitioner”) filed this due process complaint against DCPS on February 1, 2019. Petitioner alleges that while Student attended School B, during SY 2016-2017, School B developed an individualized educational program (“IEP”) on January 31, 2017, and School A developed an IEP on December 13, 2017.

Principally, Petitioner alleges that DCPS should have, but failed to, remove Student from the diploma track and prematurely exited Student from special education. Petitioner alleges that DCPS failed to develop appropriate IEPs during the SY 2016-2017 and SY 2017-2018, and failed to provide Student a prior written notice (“PWN”) before exiting Student from special education at graduation.

Petitioner originally sought as relief an extension of Student’s special education eligibility for at least two years after Student’s 22nd birthday and the provision of compensatory education.

LEA Response to the Complaint:

DCPS filed a response to the complaint on February 11, 2019. DCPS denies that there has been any failure to provide Student with a FAPE. In its response DCPS asserts, inter alia, the following:

Student’s IEPs and placement have been determined by an evaluation and an Hearing Officer’s Determination (“HOD”) in 2016. Written notices were provided to Student’s parent regarding most of the issues alleged in the complaint. Student’s IEPs were implemented with fidelity, when student attended school. Student had years of truancy; but worked hard to improve attendance during Student’s last year of school. As a result, Student progressed and mastered many of Student’s IEP goals. Student’s IEPs have indicated a high school diploma graduation for years and Student and the parent, with legal counsel, participated in meetings to develop Student’s

educational programming.

DCPS appropriately evaluated, programmed and placed Student, and Student has duly graduated from high school with a diploma from DCPS. DCPS requests that Petitioner's request for relief be denied.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on February 26, 2019, and did not resolve the complaint. The 45-day period began on March 3, 2019, and ended, and the HOD was originally due, on April 17, 2019.

The HOD due date was first extended from April 17, 2019, to May 31, 2019.² Petitioner's Counsel requested a continuance of the hearing after the final date of testimony in order to provide closing arguments on May 28, 2019. Subsequently, the parties agreed to provide written closing arguments on May 30, 2019, and the HOD due date was extended to June 10, 2019.³

Pre-hearing conferences ("PHC") in this matter were held on March 19, 2019, March 28, 2019, and April 24, 2019, and the undersigned Hearing Officer issued a pre-hearing order ("PHO") on April 26, 2019, outlining, inter alia, the issues to be adjudicated.

ISSUES: ⁴

The issues adjudicated are:

² Petitioner was available on the original hearing date offered: March 27, 2019. However, Respondent was not available on that date. The parties agreed to the hearing dates listed above and an extension of the HOD due date to accommodate the requested hearing dates. Respondent's counsel filed an unopposed motion to extend the HOD due date to accommodate the hearing dates. The motion extended the HOD due date by 44 calendar days, corresponding to the change in hearing from March 27, 2019, to May 10, 2019. The motion was granted.

³ The continuance of the hearing date and extension of the HOD due date was to allow additional time for the closing arguments to be submitted beyond the original final day of testimony on May 10, 2019. The extension of the HOD due date was 10 calendar days by agreement of the parties.

⁴ 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 Petitioner's counsel attempted to withdraw some of the language and claims from issues 1 and 2, as they had been stated in the PHO. Counsel also attempted to withdraw the previous subsection (b) of both those issues (the language related to "appropriate updated information from recent assessments in the Present Levels of Performance ("PLOP") sections") and also withdraw from the previous section (c), which is now (b), the language regarding "accommodations and modifications." Respondent's counsel objected to the attempted withdrawal as untimely and requested dismissal with prejudice regarding those claims. In light of the objection, the Hearing Officer then asked Petitioner's counsel if she intended to present any evidence regarding the language she sought to withdraw. Based on her response that no evidence in that regard would be presented by Petitioner, the Hearing Officer granted Respondent's counsel's request and dismissed those portions of the issues with prejudice. Thus, that language is omitted from the issues as stated herein.

1. Whether DCPS denied Student a FAPE by failing to review and revise Student's January 31, 2017, IEP at earliest February 1, 2017, and at latest by the end of SY 2016-2017 to: (a) prescribe a certificate track rather than high school diploma track, and/or (b) include appropriate goals.
2. Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP on December 13, 2017, because the IEP failed to: (a) prescribe a certificate track rather than high school diploma track and/or (b) include appropriate goals.
3. Whether DCPS denied Student a FAPE by prematurely exiting Student from special education and thus changing Student's placement in June 2018 by Student graduating with a high school diploma.
4. Whether DCPS denied Student a FAPE by failing to provide Petitioner a PWN to note that Student was on diploma track rather than a certificate track when (a) Student's January 31, 2017, IEP should have been reviewed and revised during SY 2016-2017, and/or (b) when Student's December 13, 2017, IEP was developed, and/or (c) prior to Student being exited from special education due to graduation.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 35, DCPS Exhibits 1 through 103) that were admitted into the record and are listed in Appendix 2.⁵ The witnesses testifying on behalf of each party are listed in Appendix B.⁶

SUMMARY OF DECISION:

Based upon the evidence adduced, the Hearing Officer concluded that Respondent sustained the burden of persuasion by a preponderance of the evidence on issues 1, 2 and 3. The Hearing Officer concluded that there was no basis for DCPS to have reviewed and revised Student's January 31, 2017, IEP prior to Student's annual IEP review meeting held in December 2017. In addition, the Hearing Officer concluded that Student's December 2017 IEP was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances. Petitioner did not sustain the burden of persuasion by a preponderance of the evidence on issue #4 with regard to the alleged failure to issue prior written notices. The Hearing Officer dismissed Petitioner's complaint with

⁵ Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A. All of Petitioner's 35 documents were presented and admitted without objection. Although DCPS disclosed 103 documents, DCPS counsel only presented a limited number of those documents for admission into the record and for consideration by the Hearing Officer at the outset of the hearing.

⁶ Petitioner presented four witnesses: (1) Student (2) Student's parent ("Petitioner"), (3) Student's Educational Advocate, testifying as an expert witness, and (4) an Independent Clinical Psychologist, testifying as an expert witness. DCPS presented four witnesses: (1) a DCPS teacher from School A (2) a second DCPS teacher from School A (3) a DCPS LEA representative from School A who was qualified as an expert witness and (4) a DCPS teacher from School B.

prejudice.

FINDINGS OF FACT:⁷

1. Student is an adult who has granted Student's parent a durable power of attorney for matters concerning special education. Student's parent, Petitioner, filed this due process complaint against DCPS on February 1, 2019. Student resides with Petitioner in the District of Columbia. (Parent's Testimony, Petitioner's Exhibit 28)
2. Student is a former special education student who graduated from School A with a DCPS high school diploma in June 2018 having been awarded a total of 29 Carnegie units and 107 hours of community service. Student ended high school with a cumulative grade point average ("GPA") of 1.19 and a class rank of 90 out 127. (Petitioner's Exhibit 21-1, 21-4)
3. Student attended School A for a single year: SY 2017-2018. When Student came to School A, Student needed 3.5 credits. Student required Algebra II, Trigonometry, Probability and Statistics, U.S. History & Geography and D.C. History. Student took Chess as an elective class. At School A, Student took five courses and gained a total of 4 credits. Student twice took the following three courses after having failed the courses in the first semester: Probability and Statistics, U.S. History & Geography, Algebra II and Trigonometry. Student also took and passed the following courses in the second semester for a half credit each: District of Columbia History, and Chess. (Witness 5's testimony, Petitioner's Exhibit 21-1, 21-2)
4. Prior to attending School A, Student attended another DCPS high school, School B, for four years from SY 2013-2014 through SY 2016-2017. Student gained 25 Carnegie units at School B. (Petitioner's Exhibit 21-1)
5. While Student was attending School B, DCPS conducted a psychological triennial reevaluation report dated February 5, 2015. At the time of the reevaluation, Student was repeating the first year of high school. Student had a disability classification of multiple disabilities ("MD") including specific learning disability ("SLD") and speech language impairment ("SLI"). The evaluator reviewed and relied upon an August 2012 independent neuropsychological evaluation for Student's cognitive functioning. In August 2012, Student's cognitive functioning was assessed as Borderline with a full-scale IQ of 75. The reevaluation cited Student's January 2015 academic achievement scores which fell in the Low Average range for Broad Reading, and Broad Written Language, and in Extremely Low range for Broad Math. Student's grade equivalency in Broad Reading was 6.4, in Broad Math 4.3 and Broad Written Language 7.3. Student's Reading Fluency, Passage Comprehension and Math Fluency subtests scores were at the third to fifth grade level. (Petitioner's Exhibits 4-1, 4-20, 6-1, 8-1, 8-2, 8-6, 8-7)

⁷ 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.

6. The evaluator noted that at the time of the reevaluation, Student had an IEP that prescribed 10 hours per week of specialized instruction inside general education as well as 10 hours per week outside general education and related services of behavioral support and occupational therapy ("OT"). The evaluator also noted that Student continued to have difficulties with reading comprehension and math in the academic setting and was not making much progress toward academic IEP goals because of significant absences due to health concerns along with Student's difficulty with receptive language skills and processing large amounts of verbal information. (Petitioner's Exhibits 8-1, 8-7)
7. DCPS conducted a comprehensive psychological reevaluation in April 2016 based on a recommendation by Student's attorney at the time. The reevaluation report is dated May 23, 2016. At the time of the of the reevaluation, Student was still considered a first year high school student because Student had not gained enough credits to be in the proper grade. Student's disability classification had changed from MD to SLD solely. In April 2016 Student's cognitive functioning was assessed as Borderline with a General Intellectual Ability ("GIA") score of 75. Student's April 2016 academic achievement scores fell in the Borderline range for Broad Reading at the 7th percentile, Low Average range for Broad Written Language at the 23 percentile and in Extremely Low range for Broad Math at the 2nd percentile. No grade equivalencies were reported in this reevaluation. (Respondent's Exhibit 23 Pages 283, 290)
8. The evaluator also assessed Student's behavioral functioning which demonstrated problems with inattention, defiance, and aggression. The evaluator noted that during SY 2015-2016, Student was absent 86 days with 63 unexcused and was tardy to school 63 days which impacted Student's ability to make academic gains. The evaluator also noted that at the time of the reevaluation, Student had an IEP that prescribed 10 hours per week of specialized instruction inside general education, 10 hours per week outside general education and related services of behavioral support, speech and consultative OT. The evaluator also noted that Student continued to have weaknesses in reading vocabulary and comprehension and math. The evaluator concluded Student would continue to qualify with a SLD due to cognitive weaknesses in long term retrieval skills and general information as well as academic weaknesses in math, language and academic application skills. (Respondent's Exhibit 23 Pages 275, 295)
9. On May 27, 2016, an HOD was issued based on a due process complaint filed on March 16 2016, by Petitioner on behalf of Student, who was an adult student as of that date. Petitioner was represented by a different attorney than in the present case. The complaint alleged, inter alia, that DCPS had developed an inappropriate IEP on February 3, 2016, because it lacked sufficient hours of specialized instruction outside general education and in a separate therapeutic special education day school. The Hearing Officer found that Student was repeating the same grade for the third time due to Student's inability to pass a math class, but Student had by that time earned just over one third of the 26 credits need to graduate from high school. (Respondent's Exhibit 8)
10. Student's February 3, 2016, IEP prescribed 10 hours per week of specialized instruction inside general education, 10 hours per week outside general education and related services of

behavioral support, speech and consultative OT. The IEP noted Student's 2015 academic achievement scores with grade equivalent scores in Broad Reading of 6.4, Reading Fluency: 3.9, Passage Comprehension: 4.3, Broad Math: 4.3. The IEP included a post-secondary transition plan and projected Student would exit special education with a high school diploma rather than a high school certification either at age 21 or prior to age 21. (Petitioner's Exhibit 10-12, 10-16, 10-17, 10-21)

11. During Student's February 2016 IEP meeting, Student expressed a desire to graduate in June 2017. However, Student was not on track to graduate because of truancy and incomplete assignments. At the same time, Student's advocate wanted Student to have an abbreviated schedule and a self-contained classroom. Student did not want to be in a self-contained classroom. The IEP team also learned that Student was consumed by a romantic relationship and Student was adamant about graduating with Student's class. (Witness 6's testimony, Respondent's Exhibit 11 Pages 209 through 210)
12. In the May 27, 2016, HOD, the Hearing Officer concluded Student's lack of progress was due to Student's absences and failure to take advantage of the extra time given to complete assignments and after school tutoring, and was not caused by Student's disability. The Hearing Officer found the level of specialized instruction in Student's IEP was appropriate and dismissed the complaint. There was no challenge to the Student's projected exit of special education with a high school diploma and no conclusion by the Hearing Officer regarding appropriateness of that aspect of the IEP. (Respondent's Exhibit 98)
13. On January 31, 2017, School B convened an annual IEP review meeting and updated Student's IEP. Student and Petitioner participated in person. Petitioner's former attorney participated by telephone. The present levels of performance ("PLOP") for Student's academic goals referenced Student's 2015 academic achievement scores. The IEP included academic goals in the areas of math, reading and written expression. The IEP prescribed 5 hours per week of specialized instruction inside general education, 5 hours per week outside general education and related services of behavioral support, speech and consultative OT. (Petitioner's Exhibit 15-1, 15-2, 15-4 through 15-9, 15-15)
14. Student's January 31, 2017, IEP included an updated post-secondary transition plan that noted Student expressed interest in attending college after high school and in ultimately working in fashion design. The transition plan noted Student's average scores on the Casey Life Skills Inventory, noted Student's goal upon completing high school of enrolling at a post-secondary vocational/career training instruction to pursue a fashion, culinary, or business-related program of study and included two transition goals. The IEP projected Student would exit special education with a high school diploma rather than a high school certification either at age 21 or prior to age 21. (Petitioner's Exhibit 15-19, through 15-22, 15-25)
15. During the January 31, 2017, IEP meeting Petitioner expressed concerns about whether Student would be able to bring Student's grade up sufficiently to graduate high school at the end of SY 2016-2017. The team noted that Student's failing grades were mostly due to attendance issues and failure to complete assignments. The team focused on identifying the class assignments Student had missed and how to improve Student's class attendance and work

completion. Petitioner's attorney requested a self-contained placement for Student, however, Student and the School B team members did not agree and believed Student's current placement at School B with the amount and setting of the specialized instruction prescribed in the IEP was appropriate. The team also determined that Student's status as a DCPS diploma candidate was appropriate with a projected graduation date of August 2017. (Petitioner's Exhibit 15-26, 15-27, 15-29 15-30)

16. At the end of SY 2016-2017, Student failed a number of classes that had to be made up during SY 2017-2018. Student's educational advocate sent an email to School B requesting a meeting to discuss increasing Student's specialized instruction in light of Student's course failures during SY 2016-2017. Petitioner's then attorney filed a due process complaint on July 3, 2017. As a result, School B convened a meeting on July 14, 2017, at which Petitioner, Student and their legal representatives attended. The attorney again asked for Student to have a "full-time" out of general education IEP, tutoring and counseling/mentoring services. School B offered to increase Student's specialized instruction to 15 hours per week inside general education and 5 hours outside and provide some hours of tutoring/mentoring. The parties did not resolve the due process complaint and the complaint was withdrawn by Petitioner without prejudice on August 22, 2017. (Petitioner's Exhibit 17, Respondent's Exhibit 102 Page 783)
17. At the July 14, 2017, meeting the School B representative explained that Student's specialized instruction had been reduced from 20 hours per week total to 10 hours per week to enable Student to meet graduation requirements. Student was enrolled in summer school at the time taking Geometry and Biology. Student acknowledged during the meeting and hearing that Student was attending summer school daily and Student passed the courses at the end of summer school. Student still needed to pass four courses to graduate: Algebra II, an upper level math course, U.S. and D.C. History. Student enrolled at School A at the start of SY 2017-2018 to complete the courses required for graduation. (Student's testimony, Petitioner's Exhibits 16, 21)
18. School A is known for having a student population that is mostly comprised of students over the age of 18 who have yet to meet all of the high school requirements. School A does not have any certificate programs and only provides high school diploma track services. (Witness 4's testimony)
19. On October 7, 2017, a Prior Written Notice-Amendment of IEP was issued by DCPS to correct an error in the inappropriate percentage of time for outside of the general education setting. (Respondent's Exhibit 66 Page 522)
20. During the first semester of SY 2017-2018 Student took and failed the following courses: Algebra II & Trigonometry, U.S. History & Geography and got an Incomplete in Probability & Statistics. Student retook these three courses during the second semester of 2017-2018 and passed them. Along with these three courses Student was able to pass D.C. History and Chess and finally met the requirements for a high school diploma at the end of SY 2017-2018. (Petitioner's Exhibit 21-1, 21-2)
21. School A developed a Data Summary Report and an eligibility determination report and ASD

in preparation for Student's annual eligibility and IEP review meeting. On December 13, 2017, School A convened an annual IEP review meeting for Student. Petitioner attended; however, Student did not attend. School A concluded Student continued to meet the criteria for eligibility for special education under the SLD disability classification. The team updated the PLOPs in the IEP with the data from Student's April 2016 psychological reevaluation. The resulting IEP prescribed 5 hours per week of specialized instruction inside general education, speech language pathology and consultative services in OT, behavioral support, specialized instruction and speech language pathology. The IEP projected Student would exit special education with a high school diploma rather than a high school certification either at age 21 or prior to that age. (Petitioner's Exhibits 18, 19, 20-1, 20-20, 20-31)

22. On December 15, 2017, DCPS issued a Prior Written Notice-Development of IEP stating that Student continued to meet the criteria for special education as a student with a Specific Learning Disability ("SLD"). (Respondent's Exhibit 76 Page 523)
23. In an effort to support Student in meeting the academic requirements for graduation, Students general education teacher, with assistance from Student's special education teacher, began providing Student with one-to-one tutoring. Student received personalized learning to work at Student's pace. The general education teacher provided Student with coaching, repetition and required that Student respond using complete sentences. Although the special education teacher was in class with the general education each day, Student did not want the special education teacher to provide Student with direct assistance. The special education teacher worked with the general education teacher to appropriately modify Student's assignments. Student's general education teacher would work with Student before and after school as well as during lunch. Student met with the general education teacher two (2) to three (3) times per week. (Witness 3's testimony, Witness 4's testimony, Witness 5's testimony)
24. On June 1, 2018, approximately ten (10) days before graduation, Student and Student's parent signed the Student Acknowledgement of Summary of Performance Participation form. (Respondent's Exhibit 58 Page 432)
25. Student's Graduation with Diploma form was executed by the Principal of School A on June 15, 2018. This form served as a PWN by formally notifying Student and Student's parent that Student would be graduating from School A and that the graduation constituted a change in placement. The notice advised Student and Student's parent that Student would no longer be receiving special education or related services as of June 11, 2018, the projected date of graduation. (Respondent's Exhibit 59 Page 433)
26. On October 19, 2018, DCPS issued a Prior Written Notice-Other Notice Related to Free and Appropriate Public Education ("FAPE"), which advised that Student earned a diploma from DCPS on June 11, 2018 and had become ineligible for special education and related services. (Respondent's Exhibit 79 Page 527)
27. Since graduating, Student has attempted to enter vocational programs but Student's academic skills are too low to qualify without entering into remediation classes. Student took the CASAS assessment and had a scaled score of 186 in Life Skills Math and 217 in the Life and

Work Reading which had a corresponding grade level comparable to a first-grade level of in math (considered beginning literacy) and fifth-grade level in reading (considered low intermediate basic education. (Petitioner's Exhibit 25-13, 25-14, 25-15, 25-16, 25-18, 25-20, 25-22)

28. In Student's classes, Student used both the computer and books. In performing classroom assignments, Student would go online and get answers from a website for Biology and Geometry. Student believes that Student's ability to get answers from the website was a determining factor in the grade earned in the classes. (Student's testimony)
29. Student attributed absenteeism to not knowing how to perform classroom assignments and feeling that insufficient support was being provided at school to complete the work. Student perceived the school staff response was to simply encourage Student to try harder. (Student's testimony)
30. Student wanted to graduate with a high school diploma. However, even with the diploma Student continues to struggle with math and reading. Before graduating from high school, Student began to work with a tutor in math and reading and continues to do so regularly at a local library. Student would appreciate continued tutoring support so that Student is eventually reading and performing math with a greater independence and proficiency such that Student is able to pursue a career. (Student's testimony, Petitioner's testimony)
31. Petitioner wants Student to obtain sufficient help so that Student is able to function and live independently and able to get a job, preferably in clothing design. However, Student needs to learn to calculate money and measure materials, which Student is currently unable to do. Student's high school diploma has been of no value to Student. Student needs the support of tutoring to go back and learn what Student apparently did not learn in high school. (Petitioner's testimony)
32. Petitioner worked with her previous attorney and educational advocate who participated in Student's IEP meetings at School B. The teacher at School B also worked closely with Student. Petitioner hopes that whatever happens Student can get some type of help to feel happy and accomplished. Currently, Student is looking at Student's younger siblings who appear to be learning more, and Student is asking them for academic help. (Petitioner's testimony)
33. The option of a certificate track was discussed with Student, Student's attorney, Student's advocate and Student's parent during every IEP meeting and those conducted by School B. (Witness 6's testimony, Respondent's Exhibit 11 Page 206)
34. Whenever Petitioner raised concern that Student was not ready to graduate, the school staff countered that Student could graduate if Student worked harder. (Petitioner's testimony)
35. Petitioner's expert in special education, who currently tutors Student, was of the opinion that Student should not have been on diploma track because of the level of academic deficits and opined, based on the review of records, that it should have been apparent to DCPS that Student

could not achieve the requirements for high school diploma. (Witness 1's testimony)

36. Student's educational advocate is aware of the DCPS website's "*Is my child on track to graduate?*" and she has used this information as part of what she considered to formulate her opinion that Student should be on a certificate track. <https://dcps.dc.gov/page/my-child-track-graduate> (Witness 1's testimony)
37. A DCPS witness was qualified as an expert in the areas of special education programming and promotion. The expert taught Student at School B and participated in Student's annual IEP meetings and resolution meetings. (Witness 6's testimony Respondent's Exhibit 36 Page 360)
38. During Student's Annual IEP meeting on January 31, 2017, the team discussed IEP goals, tracking for graduation, specialized instructional hours and Student's transition plan. Student was provided with special education goals for math, reading and written expression as well as resource classes to provide Student with the assistance necessary for Student to acquire knowledge of key concepts. (Witness 6's testimony, Petitioner's Exhibit 51-1 through 15-25)
39. Student participated in a transition interview and completed a Casey Life Skills Inventory. Student was selected to participate in a paid internship Chief Executive Officer ("CEO") program to match Student with stated career interests. During the meeting, Student was also connected with the Rehabilitative Services Administration ("RSA"). Student expressed that Student's plan was to attend the University of the District of Columbia and obtain a diploma. The team members completed a statement that Student's diploma track was appropriate. There was also a discussion of Student's increasing absences. (Witness 6's testimony, Respondent's Exhibits 31 Page 346, Respondent's Exhibit 36 Pages 356 through 360)
40. The DCPS expert is of the opinion that based upon Student's cognitive level and academic abilities, Student was not a candidate for a certificate; however, Student was a candidate for the high school diploma track. Student's functional grade level in reading and math would not bar Student from earning a high school diploma. (Witness 6's testimony)
41. Petitioner presented an expert witness in clinical psychology who reviewed Student's educational records; however, the witness did not assess Student, did not speak with Student and did not attend any meetings or speak with any of [REDACTED] teachers or providers. Petitioner's expert witness reviewed goals in the compensatory education plan and opined that the goals were appropriate to acquire functional reading and math and written expression skills given Student's intellectual abilities and the skills Student appeared to have while Student was in high school, even if Student would have been on a certificate track. The expert did not agree that Student was on the level of a typically developing peer in a diploma track. She opined that by the time Student was reevaluated in 2016 there should have been a discussion to determine if Student should have remained on diploma track. (Witness 2's testimony)
42. Student can decode words but apparently does not fare as well in comprehending information. Student does well on concrete tasks, but poorly in skill application and Student's absenteeism was directly related to [REDACTED] disability. (Witness 2's testimony, Petitioner's Exhibit 14)

43. This expert also opined that a diploma is challenging for a student with the emotional, social, academic delays that Student displayed. It is better to give such a student an opportunity to choose a different route such as a certificate route to meet the Student's long-term goals.

44. In this expert's opinion common core standards cannot be sufficiently modified for someone at Student's low academic functioning level, and it was inappropriate to put Student in high level math class with Student's level of math skills. (Witness 2's testimony)

45. The Hearing Officer takes judicial notice that in accordance with DCPS policy on Academics:

A Student IS NOT a candidate to pursue a Certificate of IEP Completion if:

- The student is 20 years old or younger and is 5 credits or less away from earning a DCPS Standard High School Diploma.
- The student has satisfactorily completed all coursework required to earn a diploma, but does not have 100 hours of community services, or
- It has been documented that the student has earned credits toward a DCPS Standard High School Diploma, and has the ability to earn additional credits to complete the remaining Standard High School Diploma requirements by age 22, or
- The student has fewer than 5 credits after being introduced to DCPS graduation requirements for a minimum of 3 consecutive years, and has not had the opportunity to participate in the following interventions:
 - Tier 2 or 3 Reading Interventions
 - Attendance plans
 - Behavioral supports or a behavioral intervention plan (BIP)
 - Instruction using Credit Recovery resources

46. The Hearing Officer takes judicial notice of the DCPS course requirements for graduation with a High School diploma which are stated as:

Academic Graduation Requirements for DCPS 24.0 Diploma

To receive a diploma in DC, students who enroll in 9th grade for the first time in School Year 2007-2008 and thereafter must earn 24.0 credits (or Carnegie Units) as follows:

Subject	Credits (Carnegie Units)
English	4.0 credits
Mathematics (including Algebra I, Geometry, Algebra II)	4.0 credits

Subject	Credits (Carnegie Units)
Science (must include three lab sciences)	4.0 credits
Social Studies (must include World History 1 and 2, United States History; United States Government, and District of Columbia History)	4.0 credits
World Language	2.0 credits
Art	0.5 credits
Music	0.5 credits
Health and Physical Education	1.5 credits
Electives	3.5 credits
Total	24.0 credits

- For all students entering the ninth (9th) grade beginning school year 2009-2010, one (1) of the three (3) lab science units shall be a course in Biology.
- At least two (2) of the twenty-four (24) Carnegie Units for graduation must include a College Level or Career Preparatory (CLCP) course approved by the student's local education agency (LEA) and successfully completed by the student. The course may fulfill subject matter or elective unit requirements as deemed appropriate by the LEA. CLCP courses approved by the LEA may include courses at other institutions.
- All students must enroll in Algebra I no later than tenth (10th) grade commencing with the 2016-2017 school year.
- Students qualifying for the evening program high school diploma are not required to take the 1.5 credits in Health and Physical Education.
- All students must complete 100 hours of community service to receive a high school diploma.

<https://dcps.dc.gov/graduation>

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 issue #4. Respondent held the burden of persuasion on the remaining issues to be adjudicated, after Petitioner first established a prima facie case on each of those issues.⁸ The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied Student a FAPE by failing to review and revise Student's January 31, 2017, IEP at earliest February 1, 2017, and at latest by the end of SY 2016-2017 to: (a) prescribe a certificate track rather than high school diploma track, and/or (b) include appropriate goals.

Conclusion: Respondent, DCPS, sustained the burden of proof, by a preponderance of the evidence, that DCPS did not deny Student a FAPE by failing to review and revise Student's IEP at earliest February 1, 2017, and at latest by the end of SY 2016-2017.

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,

⁸ DC Code § 38-2571.03 (6) provides:

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

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

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

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

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. *Andrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, 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 *Andrew F.*, supra, 137 S. Ct. 988.

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.

After filing Petitioner’s due process complaint, Petitioner’s counsel clarified that she was not asserting any claims further back than two (2) calendar years prior to the date this due process complaint was filed. As DCPS counsel points out in her closing argument, the January 31, 2017, IEP falls outside of the two-year period in which Petitioner has raised claims, as does the appropriateness of Student’s January 31, 2017, IEP. Although Petitioner presented witnesses who opined regarding Student’s academic record prior to January 31, 2017, regarding courses Student took, and credits Student earned, as to Student’s high school career prior to the date the complaint was filed, the Hearing Officer did not find sufficient evidence to conclude that Student did not legitimately earn the Carnegie units Student gained prior to January 31, 2017.

Petitioner’s counsel asserted that DCPS simply gave Student sufficient Carnegie units to graduate high school and socially promoted Student to exit Student from special education. The evidence belies that assertion. A review of Student’s transcript reveals that Student remained in the same entry level high school grade for several years, because there were some essential classes Student failed several times. Over a period of time, Student gradually passed courses and was awarded credits. There was no testimony offered by Petitioner, or from any person who knew Student during the time Student completed the majority of the courses and passed the essential classes over the course of Student’s high school career. In fact, one of Petitioner’s witnesses had never even met the Student.

With regard to Student’s January 31, 2017, IEP Petitioner is asserting that regardless of whether she can legally challenge Student’s IEP developed on January 31, 2017, the IEP was not reasonably calculated to enable a Student to make progress appropriate in light of the Student’s circumstances when it was developed, and DCPS should have reviewed and revised Student’s IEP prior to the IEP annual review held in December 2017.

Petitioner alleges that DCPS should have reviewed and revised Student’s January 31, 2017, IEP to change the Student’s Graduation Planning section of the IEP from a high school diploma track to a certificate track and should have changed the goals in the IEP to reflect the change in track. The facts of this case reveal that DCPS had prevailed in May 27, 2016, HOD issued regarding a due process complaint filed by Petitioner challenging the appropriateness of Student’s prior IEP. The HOD concluded that Student’s February 3, 2016, IEP was appropriate. Although Student’s placement on high school diploma track was not a challenge made in the due process complaint or addressed in that HOD, the February 3, 2016, IEP did prescribe that Student was on diploma track rather than a certificate track.

DCPS then updated Student's IEP in the annual IEP review meeting on January 31, 2017. As DCPS counsel aptly points out in her closing argument, Petitioner's allegation rests with whether there was some trigger or event that would have demanded or warranted the DCPS to review and revise the IEP pursuant to IDEA or pursuant to a request from Petitioner to convene a meeting/IEP review.

The evidence demonstrates that as of the January 31, 2017, IEP meeting Student was attending School B and the team updated Student's IEP and determined that Student was on target to graduate in August 2017. However, Student did not pass the courses that Student anticipated completing by the end of the second semester of SY 2016-2017, and had to make up those courses during summer school.

As stated, Petitioner asserts that either during the second semester of SY 2016-2017 or at the end of SY 2016-2017, DCPS should have reviewed and revised Student's IEP to consider and change Student's programming from a high school diploma track to a certificate track, and thus changed Student's academic goals accordingly. However, the evidence demonstrates that Student successfully completed the two courses Student repeated in summer school that Student had failed during the regular school year. By the end of summer school, Student had earned sufficient credits toward a high school diploma such that Student only needed 3.5 credits to graduate.

During that summer, Petitioner's advocate wrote School B and requested an increase in Student's special education services. On July 3, 2017, Petitioner's attorney at the time filed a due process complaint seeking additional services and an out of general education placement for Student. A meeting was held between the parties to the complaint on July 14, 2017, but the meeting did not result in a resolution of the complaint. However, the evidence demonstrates that during the meeting Student acknowledged that Student was attending summer school regularly, unlike the attendance record Student had displayed during the regular school year during SY 2016-2017. As result of Student's regular attendance in the summer school courses, Student was successful in passing the two courses Student repeated in summer school.

Eventually, Petitioner withdrew the due process complaint filed on July 3, 2017, without prejudice on the first day of hearing on August 22, 2017. Thereafter, Student transferred from School B to School A at the start of SY 2017-2018, and brought with Student the January 31, 2017, IEP. It does not appear that Petitioner's legal representation with that attorney continued, and Petitioner and Student now have new legal counsel who has filed the instant complaint.

At the time Student enrolled at School A, Student only needed 3.5 credits to graduate. At that point, based on DCPS policy, Student was no longer eligible to be considered for certificate track. The policy clearly states that a student with less than 5 credits away from a high school diploma cannot be considered for the certificate track. Student voluntarily enrolled in School A. School A is an application school, specifically designed to assist students who are overaged and under credit. School A provides concentrated instruction so that students can complete their high school diploma. School A does not offer a certificate track for its students.

Based upon the facts of this case, Student's proximity to the number of credits needed to graduate high school, in light of DCPS policy regarding students who cannot qualify for certification track, which Student clearly met when Student entered School A, it is unreasonable to conclude that

School A would have, on its own volition, had any reason to initiate a meeting to review and revise Student's IEP to change graduation planning to certificate track, or to amend any of Student's IEP goals to reflect such a change.

Consequently, the Hearing Officer concludes based on the evidence adduced that Respondent sustained the burden of persuasion by a preponderance of the evidence on this issue. There was no denial of FAPE to Student in this regard.

ISSUE 2: Whether DCPS denied Student a FAPE by failing to develop an appropriate IEP on December 13, 2017, because the IEP failed to: (a) prescribe a certificate track rather than high school diploma track, and/or (b) include appropriate goals.

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that DCPS did not deny Student a FAPE by failing to develop an appropriate IEP on December 13, 2017, because the IEP did not prescribe a certificate track and did not include appropriate goals to reflect a certificate track.

As previously stated, 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.'" *Endrew 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." *Endrew 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 *Endrew 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 asserts that by December 13, 2017, School A should have been on notice, when it conducted an annual review of Student’s IEP, that Student’s IEP justified a change from high diploma track to a certificate track and corresponding change to Student’s IEP goals. These are the only allegations for which Petitioner seeks to invalidate Student’s IEP.

The evidence demonstrates that unlike in summer school during the summer 2017, when Student attended classes regularly, during the first and second trimesters of SY 2018-2019 at School A, Student seldomly attended class regularly. Although there was testimony from Student and Student’s mother that Student went to school regularly but did not attend class, and that Student did not understand the work that was going in the classes, there was also testimony that Student did not take advantage of the resources that were being provided by School A, particularly the assistance of the special education teacher that was assigned to assist Student.

At the time that School A reviewed Student’s IEP in December 13, 2017, the team discussed efforts to get Student to take advantage of the resources that were available, to attend class regularly, and complete the assignments in the remaining courses Student needed to graduate. Petitioner asserts that based upon Student’s academic deficits and academic history, along with course failures in the first part of SY 2017-2018, School A should have changed Student’s track and goals of its own initiative. However, in Student’s most recent academic setting of summer school, before Student began at School A, Student successfully completed the two courses in summer school. By the end of summer school Student had earned sufficient credits toward a high school diploma such that Student only needed 3.5 credits to graduate. Based upon this evidence alone it was, in the Hearing Officer’s opinion, unreasonable for School B of its own initiative to have changed Student’s graduation track from diploma to certificate and there was no request made at that IEP meeting by Petitioner for Student’s graduation track to be changed.

As stated, at the time Student enrolled at School A student only needed 3.5 credits to graduate. At that point, based on DCPS policy, Student was no longer eligible to be considered for certificate track. The policy clearly states that a student with less than 5 credits away from a high school diploma cannot be considered for the certificate track. Student enrolled in School A voluntarily. School A is an application school specifically designed to assist students who are overage and under credit to provide concentrated instruction so that students can complete their high school diploma. School A does not offer a certificate track for its students.

Again, based upon the facts of this case, Student's proximity to the number of credits needed to graduate high school, in light of DCPS policy regarding students who cannot qualify for certification track, which Student clearly met when Student entered School A, it is unreasonable to conclude that School A would have, on its own violation, had any reason revise Student's IEP to change the graduation planning to certificate track or to amend any of Student's IEP goals to reflect such a change. The evidence demonstrates that with regard to the specific challenges alleged by Petitioner regarding Student's IEP, the IEP was not inappropriate.

Consequently, the Hearing Officer concludes based on the evidence adduced that Respondent sustained the burden of persuasion by a preponderance of the evidence that Student's December 13, 2017, IEP was reasonably calculated to enable a Student to make progress appropriate in light of the child's circumstances. There was no denial of a FAPE to Student in this regard.

ISSUE 3: Whether DCPS denied Student a FAPE by prematurely exiting Student from special education and thus changing Student's placement in June 2018 by Student graduating with a high school diploma.

Conclusion: Respondent sustained the burden of persuasion by a preponderance of the evidence that DCPS did not deny Student a FAPE by prematurely exiting Student from special education and thus changing Student's placement by graduating Student with a high school diploma.

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.⁹

⁹ Pursuant to 34 C.F.R. § 300.115 - Continuum of alternative placements (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. (b) The continuum required in paragraph (a) of this section must-- (1) Include the alternative placements listed in the definition of special education under Sec. 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. Pursuant to DC 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.

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

The legal standard under the IDEA is that DCPS "must place the student in a setting that is capable of fulfilling the student's IEP." *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 267 (D.D.C. 2013). See also *O.O. ex rel. Pabo v. Dist. of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008) (placement must be in a school that can fulfill the student's IEP requirements).

Petitioner asserts that Student's graduation from high school was an improper change of placement. There is case law that delineates high school graduation as a change in placement.¹⁰ Petitioner asserts that DCPS exited Student from special education prematurely and that by exiting Student, DCPS changed Student's placement. The effect of fashioning the issue in this manner is to place upon DCPS the burden of proving that exiting Student from special education was appropriate.

As previously stated, Petitioner's counsel asserted that DCPS simply gave Student sufficient Carnegie units to graduate high school and socially promoted Student to exit from special education. The evidence belies that assertion. A review of Student's transcript reveals that Student remained in the same entry level high school grade for several years because there were some essential classes Student failed several times. Nonetheless, Student's transcript reflects that Student repeated classes and over time gradually passed courses and was awarded credits. There was no testimony offered by Petitioner, or from any person who knew Student during the time Student completed the majority of the courses and passed the essential classes over the course of Student's high school career.

Petitioner testified that she was never told that there was an option for Student to be on certificate track. Petitioner asserts that she became aware that Student could remain in school through age 21 and stated during an IEP meeting that Student was not ready to graduate. DCPS responded with insistence that Student could successfully complete classes if Student consistently attended class and turned in assignments. The evidence clearly demonstrates that when Student attended classes during summer of 2017 Student was able to pass courses successfully. Similarly, when Student regularly attended classes in the final trimester of SY 2017-2018, Student was able to complete the course work and pass the four remaining classes Student needed to graduate. Contrary to Petitioner's counsel's assertion that DCPS simply gave Student grades and credits that Student did not earn, the teachers who taught Student credibly

¹⁰ *B.A.W. v. East Orange Bd. Of Ed.*, U.S. District Court, New Jersey. August 31, 2010. 55 IDELR 76

testified that when Student regularly attended classes and put forth effort Student was able to master the work and pass classes.

Again, although Petitioner presented witnesses who testified regarding Student's academic record prior to January 31, 2017, and regarding courses Student took and credits Student earned during Student's high school career prior to the date the complaint was filed, the Hearing Officer did not find sufficient evidence to conclude that Student did not legitimately earn the Carnegie units Student gained prior to January 31, 2017. Similarly, the credible testimony offered by the DCPS witnesses who taught Student at School A supported a finding that Student earned the few remaining credits Student needed to graduate high school at the end of SY 2017-2018.

Based upon the evidence adduced, the Hearing Officer concludes that there was sufficient evidence that Student legitimately met the requirements for high school graduation, and that Student was not prematurely exited from special education. DCPS sustained the burden of persuasion by a preponderance of the evidence that it did not inappropriately change Student's placement as a result of graduation. The Hearing Officer concludes there was no denial of a FAPE to Student in this regard.

ISSUE 4: Whether DCPS denied Student a FAPE by failing to provide Petitioner a PWN to note that Student's was on diploma track rather than a certificate track when (a) Student's January 31, 2017, IEP should have been reviewed and revised during SY 2016-2017, and/or (b) when Student's December 13, 2017, IEP was developed, and/or (c) prior to Student being exited from special education due to graduation.

Conclusion: Petitioner did not sustain the burden of persuasion by a preponderance of the evidence that DCPS denied Student a FAPE by failing to issue a PWN on the three occasions alleged.

Pursuant to 34 C.F.R. § 300.503(b)(1)-(3); see also D.C. Code § 38-2571.03. A failure to provide prior written notice is a procedural violation of the IDEA, which constitutes a denial of a FAPE only if it negatively impacts "the student's substantive rights." *Lesesne*, 447 F.3d at 834. Procedural violations may rise to the level of denying a FAPE when they impede "the child's right to a [FAPE]," or "the parents' opportunity to participate in the decision making process regarding the provision of a [FAPE]," or deprive a student of "educational benefits." 20 U.S.C. § 1415(f)(3)(E)(ii); see also *Brown*, 179 F. Supp. 3d at 25 ("[T]here must be some rational basis [*48] to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of education benefits.").

Petitioner cited in support of her argument regarding both Student high school diploma track and the failure to issue a PWN, the case of *Shaw v. D.C.* 119 LRP 3897 (February 8, 2019). In that case, a Hearing Officer determined that DCPS failed to give the petitioner prior written notice that her child was graduating and concluded that this "failure to receive the PWN inhibited the parent's ability to participate in providing FAPE to Student." The Hearing Officer based that conclusion on the fact that the notice "would have included information about other options the school considered and rejected, such as allowing Student to remain at school beyond June 2016," The

Court in *Shaw* upheld the Hearing Officer's conclusion and went on to conclude that the failure to provide the PWN was a denial of a FAPE.

In the case at hand, however, there is evidence that the IEP itself clearly stated in the Graduation Planning section of the IEP the projected exit categories for Student: It clearly noted that the Student was to receive a high school diploma rather than the other two choices delineated: high school certificated prior to age 21 or high school certificate at age 21.

Although Petitioner testified that at one of Student's IEP meeting she asserted that Student was not ready to graduate, there was clearly an option available to Student in the third trimester of SY 2017-2018 to continue Student's pattern of skipping classes and not taking advantage of the special education services that were available to Student. As stated earlier, when Student attended classes regularly Student was able to complete the requirements of the remaining courses that Student had to complete the high school requirements and graduated.

The evidence demonstrates that unlike in *Shaw*, School A provided Student and Petitioner a notice in June 2018 of Student's completion of the requirements for graduation and provided a summary of performance prior to Student's graduation. There is insufficient evidence to conclude that in the case at hand that there was any failure to provide Petitioner sufficient notice such that Petitioner did not have an opportunity to participate in the decision-making process regarding the provision of a FAPE and there was no denial of a FAPE in this regard.

ORDER:

Based upon the evidence adduced at hearing, Petitioner's due process complaint is hereby dismissed with prejudice and all 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 ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Hearing Officer
Date: June 10, 2019

Copies to: Counsel for Petitioner
Counsel for LEA
OSSE-SPED {due.process@dc.gov}
ODR {hearing.office@dc.gov}
contact.resolution@dc.gov

Appendix A