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OSSE  
Office of Dispute Resolution  
March 12, 2019

**Confidential**

Parent on Behalf of Student,  Petitioner,  v.  District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”),  Respondent.  Case # 2018-0334  Date Issued: March 3, 2019	REVISED HEARING OFFICER’S DETERMINATION <sup>1</sup>  Hearing Dates: February 25, 2019 February 26, 2019  Counsel for Each Party listed in Appendix A  <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>
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<sup>1</sup> This “Revised HOD” is issued to correct errors and to remove personally identifiable information. The language in the Order section of the HOD has been changed to remain consistent with requirements of the HOD issued on March 3, 2019. 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 February 25, 2019, and February 26, 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. 20003, in Hearing Room 112.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student or ("Student") is age \_\_\_\_\_ and in grade \_\_\_\_\_.<sup>2</sup> Student resides with Student's parent ("Petitioner") in the District of Columbia. Student has been determined eligible for special education and related services pursuant to the IDEA with a disability classification of multiple disabilities ("MD") including visual impairment ("VI") and orthopedic impairment ("OI"). District of Columbia Public Schools ("DCPS") is Student's local educational agency ("LEA"). Student is currently assigned to attend a DCPS school ("School A").

On December 14, 2018, Petitioner filed her due process complaint asserting DCPS ("Respondent") denied Student a free appropriate public education ("FAPE") by, inter alia, failing to provide Student an appropriate individualized educational program ("IEP") and failing to implement Student's IEP.

Petitioner seeks as relief a finding that DCPS denied Student a FAPE, and that the Hearing Officer order DCPS to: provide the hours and services already outlined in Student's IEP; immediately convene the IEP team to develop an appropriate IEP that provides Student with home-based instruction until such time as Student's medical doctors recommend that Student is sufficiently strong enough to attend a brick and mortar school and then revise the IEP to provide for a dedicated nurse, one-to-one, on the bus, at the bus stop, and at school; provide Student with compensatory education for denials of FAPE; provide a dedicated nurse during home-based instruction; add ESY services and ESY transportation, adaptive seating, stander and gait trainer to Student's IEP; clarify that the 2 hours of specialized instruction per month is for vision services, and provide the parent access to Student's educational records from School A and Early Stages as well as any updated records.

## **LEA Response to the Complaint:**

The LEA filed a response to the complaint on December 26, 2018. In its response DCPS stated, inter alia, Student is enrolled at School A for school year ("SY") 2018-2019. Student has not attended School A yet in SY 2018-2019 as the Student's doctor recommended the Student not attend school "at this time". Student is currently receiving services through the Home and

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

Hospital Instruction Program (“HHIP”) as recommended by the Student’s pulmonary doctor on or about November 19, 2018.

Student transferred from the D.C. Early Intervention Program (“DCEIP”) with an Individual Family Services Plan (“IFSP”) dated May 25, 2018. The multidisciplinary team (“MDT”) convened on August 9, 2018, and reviewed assessments and determined Student eligible for Part B special education and related services as a child with an MD disability classification. On August 9, 2018, the team developed an IEP that is reasonably calculated to enable the child to make progress appropriate, in light of the child's circumstances. A dedicated aide was not recommended and the team reviewed strategies for the classroom staff and therapists to use. The team determined Student’s placement to be a Medical and Education Support (“MES”) classroom. The classrooms have 1 teacher, 1 teacher assistant, 1 nurse, and 2 nurses who rotate between two classrooms.

Student's IEP was amended October 5, 2018, with consent from Petitioner without convening an IEP meeting to make a change to the present levels of performance and annual goals, and to edit the least restrictive environment justification statement. DCPS denies a failure to provide an appropriate IEP, placement, and location for SY 2018-2019, failure to appropriately amend the IEP, timely and appropriately implement the IEP; and/or to provide access to educational records.

**Resolution Meeting and Pre-Hearing Conference:**

The parties participated in a resolution meeting on January 15, 2019. The complaint was not resolved, and the parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on January 14, 2019, and ends [and the Hearing Officer’s Determination (“HOD”) was due] on February 27, 2019. The parties were not available on the first hearing date offered, February 22, 2019, and agreed to file a motion to continue/extend the HOD due date by 4 calendar days to accommodate the change in hearing date(s). Petitioner’s counsel filed an unopposed motion to extend the HOD due date. The motion was granted extending the HOD due date to March 3, 2019.

The undersigned Hearing Officer (“Hearing Officer”) convened a pre-hearing conference (“PHC”) on January 28, 2019. The Hearing Officer issued a pre-hearing order (“PHO”) on February 1, 2019, outlining, inter alia, the issues to be adjudicated.

**ISSUES:**<sup>3</sup>

The issues adjudicated are:

1. Whether DCPS denied Student a FAPE by failing to provide Student with an appropriate IEP for services, placement, and location of service for SY 2018-2019 by (a) failing to include a dedicated nurse to address Student’s significant medical needs including while

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<sup>3</sup> The Hearing Officer restated the issues at the hearing, and the parties agreed that these were the issues to be adjudicated.

Student is receiving home-based instruction, and/or (b) failing to add ESY, ESY transportation services, adaptive seating, stander and gait trainer to Student's IEP, and/or (c) failing to clarify in Student's IEP that the 2 hours of specialized instruction per month is for vision therapy.

2. Whether DCPS denied Student a FAPE by failing to amend Student's IEP to provide Student with a more restrictive setting to include home-based instructional services based on medical recommendations that Student is currently too fragile to attend a brick and mortar school.
3. Whether DCPS denied Student a FAPE by failing to timely implement [REDACTED] IEP during the 2018-2019 school year, because (a) Student was not enrolled in HHIP to receive home-based educational instruction until November 28, 2018, and HHIP services were not implemented until December 3, 2018, and/or (b) because DCPS failed to provide all of Student's required hours of specialized instruction outlined in Student's IEP while Student received HHIP services.
4. Whether DCPS denied Student a FAPE by failing to provide Petitioner access to Student's educational records to include the following: (a) any evaluations that School A or Early Stages conducted including the BSID-III and BDI-II,<sup>4</sup> and (b) any service logs from services provided through the IFSP.

#### **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 72 and Respondent's Exhibits 1 through 25) that were admitted into the record and are listed in Appendix 2.<sup>5</sup> The witnesses testifying on behalf of each party are listed in Appendix B.<sup>6</sup>

#### **SUMMARY OF DECISION:**

Petitioner held the burden of persuasion on issues #3 and #4. Respondent held the burden of persuasion on issues #1 and #2 after Petitioner established a prima facie case. Based on the evidence adduced at hearing, the Hearing Officer concluded that Respondent did not sustain the burden of persuasion by a preponderance of the evidence on issues #1 and #2. Petitioner

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<sup>4</sup> Bayley Scales of Infant and Toddler Development, 3<sup>rd</sup> Edition (BSID-III) and Battelle Development Inventory, 2<sup>nd</sup> Edition (BDI-II).

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

<sup>6</sup> Petitioner presented four witnesses: (1) Student's parent ("Petitioner"), (2) Student's primary medical care nurse practitioner, testifying as an expert witness, (3) Student's physician, testifying as an expert witness, and (4). Petitioner's educational advocate employed by the law firm representing Petitioner, testifying as an expert witness. Respondent presented two witnesses: (1) DCPS Program Manager, testifying as an expert witness, and (2) DCPS HHIP Manager, testifying as an expert witness.

sustained the burden of persuasion by a preponderance of the evidence on issue #3, but not as to issue #4. The Hearing Officer orders DCPS to convene an IEP meeting to review and revise Student's IEP, in light of Student not currently being to attend school, and to provide Student with compensatory education based on the missed services because of DCPS' failure provide Student an appropriate IEP and failure to implement Student's IEP.

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

1. Student resides with Petitioner in the District of Columbia and has been determined eligible for special education and related services pursuant to the IDEA with an MD disability classification including VI and OI. DCPS is Student's LEA. Student is currently assigned to attend School A, a DCPS school. (Respondent's Exhibits 6-2, 12-1,10-1)
2. Petitioner gave birth to Student after only 25 weeks of gestation. Petitioner had a difficult delivery marked by Student suffering from prematurity, a lack of oxygen to the brain, underdeveloped lungs, cerebral palsy, physical ailments and global delays. Petitioner stays at home with Student full-time. She is involved with taking care of Student and going to Student's doctor and therapy appointments. (Petitioner's testimony)
3. On March 13, 2018, OSSE Strong Start Program assessed Student's developmental skills, communication speech and language, physical, motor, emotional, social and behavioral development using the Bayley Scales of Infant and Toddler Development, 3<sup>rd</sup> Edition (BSID-III) and Battelle Development Inventory, 2<sup>nd</sup> Edition (BDI-II). These evaluations were reviewed on July 9, 2018. (Respondent's Exhibits 5-2, 6-9, 6-11, 6-12)
4. Student received early intervention services at home under OSSE Strong Start Program pursuant to an IFSP. On May 25, 2018, DCPS Early Stages conducted a transition meeting at which Petitioner signed a document selecting the option for Student to participate in an extended IFSP. (Respondent's Exhibit 4, Petitioner's Exhibit 30-1)
5. Pursuant to the IFSP, Student received occupational therapy for 60 minutes per week, physical therapy for 60 minutes per week, speech and language therapy 120 minutes per month, and vision services for 60 minutes per month. (Respondent's Exhibit 3-1)
6. On August 9, 2018, an MDT convened and reviewed assessments performed by the Strong Start evaluators and determined Student eligible for IDEA Part B special education and related services as a child with MD. On August 9, 2018, DCPS developed an IEP for Student. (Respondent's Exhibits 5, 6-1, 6-2)

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<sup>7</sup> 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.

7. The IEP prescribed 2 hours per month of specialized instruction outside general education, 24.5 hours per week of specialized instruction outside general education, 240 minutes per month of physical therapy outside general education, 4 hours per month of occupational therapy outside general education, 4 hours per month of speech and language pathology outside general education, 30 minutes per month of physical therapy consultative services, and transportation services. (Respondent's Exhibit 8-15, 8-16)
8. The justification statement in the IEP's least restrictive environment ("LRE") section for the 2 hours of specialized instruction per month stated the following: "[Student] requires services provided in a low student to teacher ratio setting." The justification statement for the 24.5 hours of specialized instruction per week stated the following: "[Student's] visual impairment, (CVI) requires a controlled environment and an extended wait time to visually attend to objects. These supports would be provided with specialized instruction by a TVI outside of general education." (Respondent's Exhibit 8-16)
9. On August 9, 2018, DCPS Early Stages issued Petitioner a letter stating that Student's location of services, where Student's IEP would be implemented for SY 2018-2019, would be School A. (Petitioner's Exhibit 30-8)
10. On September 11, 2018, Petitioner signed consent for Student to be provided special education and related services pursuant to the IEP that DCPS developed. (Petitioner's Exhibit 30-2)
11. The team determined Student's placement to be a MES classroom at School A. There is one MES classroom for students in pre-kindergarten ("Pre-K") with medically complex issues such as a feeding tube and/or tracheostomy ("trach") and one for medically fragile students in kindergarten through 2<sup>nd</sup> grade ("K through 2<sup>nd</sup>"). The classrooms have 1 teacher, 1 teacher assistant, 1 nurse, and 1 nurse who rotates between classrooms. The DCPS program manager who manages nursing services for the MES classroom, and who qualified as expert witness, in order to determine an appropriate placement and level of support for students, reviews a packet provided by the IEP team. She may observe a student in that student's current environment, and then make a recommendation to the team regarding an appropriate placement. Nurses who provide services pursuant to a student's IEP are provided with medical orders prior to being assigned. A licensed practical nurse ("LPN") is supervised by a registered nurse ("RN") several times per week. (Witness 4's testimony)
12. School A has three nurses for its pre-K and K through 2<sup>nd</sup>-grade classrooms. There is one nurse for each of the two classrooms, and one nurse floats between the two classrooms. One of the students has a private duty nurse not provided by DCPS. Student's classroom is attached to the nursing suite and has 7 students. Student is the only child with a trach and 4 students, including Student, have gastrointestinal tubes. Student's medical orders were reviewed in the normal course of the duties of the programming and placement expert, and the three nurses assigned to the MES program are trained and qualified to perform the tasks contained in Student's orders, including trach monitoring, care, and changing and implementing Student's feeding and swallowing plan. Student also

requires a nurse on the school bus that has been approved and is provided by OSSE. (Witness 4's testimony, Respondent's Exhibits 14, 15, 16)

13. On September 21, 2018, Student's primary care nurse practitioner signed a letter addressed "To whom it may concern" listing Student's medical conditions and requesting that Student be provided a private duty nurse for school attendance to accompany Student to, and from, school on the bus, and support Student's medical needs while at school. The letter noted the nursing interventions that were required including gastrostomy tube feeds, respirator medication administration, oxygen administration, tracheostomy and oral suctioning, tracheostomy tube changes, medication administration via gastrostomy tube and pulse oximetry measurements. She also completed medical procedure forms for each of the interventions needed. (Petitioner's Exhibit 11)
14. Student is provided home nursing services through insurance. Student receives 16-hours of nursing care per day, with 8-hours provided during the day and 8-hours during the night. Petitioner has learned how to care for Student and learned how to change, and suction Student's trach and tubing. On a good day for Student, Student's trach may be suctioned 10 to 12 times. The need to suction Student's trach may be triggered by the weather, air particles, a cough, or a sneeze. Student's trach tubing is replaced once each week, and Petitioner assists Student's home nursing care provider with this task. Petitioner has experienced a situation involving Student's trach tube dislodging, while Student's home care nurse was administering a breathing treatment. At that time, Petitioner heard Student gasping for air. The situation was handled, and Student suffered no issues from the incident. (Petitioner's testimony, Petitioner's Exhibit 8-1)
15. Although Student cannot sit without assistance, Student makes attempts at sitting up. Student is also active and moving when Student's trach tubing is changed, so one person must hold Student still while another changes the tubing. If the tubing becomes blocked, Student's pulse monitor will sound an alarm. (Petitioner's testimony)
16. Petitioner visited School A in September 2018 and saw that Student's classroom was on the lower level and the nurses' suite was next door to the classroom. There is another classroom for medically fragile students across the hallway from Student's class. During Petitioner's visit, she saw one nurse inside the suite, and one nurse came into the classroom. The nurse left the classroom and did not return to the classroom for the remainder of Petitioner's approximately 30-minute visit. (Parent's testimony, Petitioner's Exhibit 8)
17. On October 5, 2018, with Petitioner's consent, DCPS amended Student's IEP without convening an IEP meeting to, inter alia, change the present levels of performance and annual goals in a single area of concern and/or to switch the LRE justification statements for specialized instruction to indicate that the 2 hours per month of specialized instruction was to address Student's visual impairment. (Petitioner's testimony Respondent's Exhibit 11)

18. On October 11 2018, Petitioner inquired by email as to whether Student would be provided a one-on-one nurse. A DCPS representative responded by email stating that OSSE had been informed that Student would need a nurse on the bus when Student was transported to school, and Student's first day for the bus was scheduled for October 22, 2018. The representative stated that the request for a one-to-one nurse in the classroom was being reviewed. (Petitioner's Exhibit 4-3, 4-4, 4-5)
19. On October 17, 2018, a DCPS program manager sent an email stating that Petitioner's request for an individual nurse at school was under review by DCPS' central office team. The email stated that if Student had been placed in a classroom other than the MES classroom, a 1-to-1 nurse would be immediately provided, but due to the presence of a 3 nurse staff for all children in Student's program at School A, the request was under consideration. The email went on to state that based upon the pending request, unless Petitioner was okay with the nurses in Student's class implementing the nursing orders, Student would presumably not be able to start school at School A. (Petitioner's Exhibit 4-1)
20. Because DCPS did not grant Petitioner's medically documented request for a dedicated nurse at School A, based on the doctor's medical advice, Petitioner did not send Student to school without a dedicated nurse. (Petitioner's testimony)
21. On October 25, 2018, Petitioner's attorney requested Student's educational records from DCPS. DCPS provided the vast majority of the requested records. (Petitioner's Exhibit 46)
22. On October 26, 2018, Petitioner's attorney sent an email to DCPS requesting a dedicated nurse for Student at School A, and requesting a multi-disciplinary team ("MDT") meeting to the resolve the request. (Petitioner's Exhibit 7-1)
23. Student's pediatric nurse practitioner was qualified as an expert in Pediatric Nursing. The pediatric nurse has been Student's primary care provider and provides Student with wellness checks. She also answers questions Student's mother may have as to Student's care, provides instructions to Student's private duty nurse, and reviews and signs off on the records of Student's nursing care. (Witness 1's testimony)
24. The pediatric nurse practitioner began seeing Student in early 2016 when Student was first released from the hospital. Student was born prematurely and experienced brain damage and lung disease. At the time Student arrived home, Student had trach tube and was on a ventilator. Although Student has been weaned from the use of the ventilator, Student still has the trach tube and has a gastrointestinal tube. (Witness 1's testimony)
25. With respect to Student's physical functioning, currently, Student is unable to crawl, walk or stand. Student can grab a toy, but not in a purposeful way. Student can make vocalizations; however, Student does not speak and does not have words. Student is dependent upon care for all Student's daily living needs. Due to Student's trach tube, Student remains at an increased health risk. Exposure to the common cold or flu virus



may cause Student to require a ventilator. Although the Pediatric Nurse Practitioner assisted Petitioner in the completion of paperwork related to Student attending school, Student's pulmonary physician strongly suggested that Student not attend school until flu season ends. (Witness 1's testimony)

26. The nurse practitioner explained the importance of the trach and tubing to Student's health and survival. The tubing is held in place with Velcro ties and should the tubing come away from the trach, it must be replaced immediately. The trach can also become blocked due to naturally produced mucus. If this occurs, the mucus would have to be suctioned out of the trach. The trach and tubing may also become blocked by an object, which would require immediate intervention to prevent Student from undergoing respiratory distress. This expert witness opined that Student requires an experienced registered nurse or licensed practical nurse in the classroom with Student at all times to assure the proper functioning of the trach and tubing. (Witness 1's testimony)
27. Student's pediatric otolaryngologist was qualified as an expert in pediatric ailments of the ear, nose, and throat. The doctor began treating Student when Student was three months of age. She made the recommendation for Student's trach and performed that surgical procedure. Student cannot verbalize through the use of words. (Witness 2's testimony)
28. The otolaryngologist recently attempted to cap Student's trach to see if Student could breathe comfortably through Student's nose and mouth; however, Student seemed to be uncomfortable and displayed signs of airway obstruction above the trach. One sign of Student having difficulty with the trach and/or tubing is decreasing oxygen or increasing the rate of breathing marked by gasping for air. Student may even appear upset. If no one notices that Student is in distress, Student has a pulse monitor that will sound, alerting of the danger. Overall, there is a 1% per year fatality rate for all persons with trachs. Student could die, if not attended to when in emergency respiratory distress. Once Student's trach is removed, Student will not need the continuous monitoring by a nurse that Student now requires. Witness 2's testimony)
29. On November 14, 2018, Student's primary nurse practitioner informed Petitioner that Student's respiratory physician directed that Student not attend school until after winter ends because of concern that Student had recently been weaned from the use of a ventilator, and might be susceptible to colds or even life-threatening illness from exposures at school. On November 26, 2018, Student's primary nurse practitioner completed a DCPS verification form to that effect. (Petitioner's Exhibits 8-1, 8-4, 9)
30. On November 19, 2018, School A convened an MDT meeting at which the main issue was Petitioner's demand that Student receive a one-on-one dedicated nurse. DCPS asserted three nurses attending to the children in Student's classroom at School A sufficiently met Student needs. The IEP team authorized Student for ESY, ESY transportation, vision therapy for 2-hours per month, and the equipment requested: adaptive seating, a gait trainer and standard. The team advised that these would be placed in Student's amended IEP. However, the team would not agree to the dedicated nurse. Because one of Student's doctors was opposed to Student attending school due to

concerns related to medical regression, HHIP services were discussed. (Petitioner's testimony, Witness 3's testimony, Petitioner's Exhibit 40)

31. On November 20, 2018, Petitioner completed a request form for Student to receive services from DCPS' HHIP. (Petitioner's Exhibit 10-1, 10-2)
32. HHIP services started on December 3, 2018. Under HHIP, Student is to receive two hours of instruction per week on Tuesdays and Fridays from 2:00 p.m. to 3:00 p.m. and receive related services of OT, PT and speech and language services for one hour each on Mondays. (Petitioner's Exhibit 22-7)
33. Student was without IEP services from October 16, 2018, until Student entered the HHIP, and the HHIP services were first provided on December 3, 2018. The HHIP services have been provided since December 3, 21018. (Petitioner's testimony, Petitioner's Exhibit 22-7, 22-8)
34. Student has an HHIP schedule, and providers are assigned to Student in coordination with the related services team. The team is updated on Student's progress on a weekly basis, and once per month, the team discusses Student's progress. Student is owed 15-minutes of OT services due to a snow day. There has also been difficulty coordinating Student's and parent's schedules with Student's teacher's hours. The teacher's schedule has remained the same; however, parent's and Student's schedules are in flux. (Witness 5's testimony, Respondent's Exhibit 19)
35. HHIP is provided with the goal of a student returning to, or transitioning to school. The services are not for the exclusive use of students receiving special education and related services. When a referral is made for the services, the parent is asked for medical documentation. The documentation is reviewed in conjunction with the school-based team, and the team determines which services will be provided and whether services should be paused and/or reduced. The team also considers the student's fatigue. Whether a student receives all the instruction/services contained in an IEP varies when the student is receiving one-on-one services. Generally, the instruction and services provided are not at the same level as the student receives at school. The HHIP services are intended to be short-term. (Witness 5's testimony)
36. The DCPS HHIP Handbook states that for students with an IEP who receive HHIP services an IEP team meeting to review and revise a student's IEP must be convened within 10 school days of the eligibility determination for HHIP. All members of the IEP team must be present including the parent(s)... "It might be necessary to adjust the hours of specialized instruction to meet the current needs of the student as they may differ from the hours received in a classroom setting. The amount of instructional time deemed necessary by the IEP should be informed by the instructional approach used in a one-to-one home or hospital setting as compared to the instructional approach normally implemented in the student's school-based classroom setting. In addition, the student's physician may determine that the number of instructional hours should be reduced based on the student's medical status and needs. It should be noted that the HHIP or any

member of the team does not have veto authority on the decision made by the IEP team.”  
(Petitioner’s Exhibit 27-12)

37. Currently, Student’s HHIP services consist of 2-hours of specialized instruction per week, and this amount has been reduced to one hour due to Student’s standing medical appointments. However, Student receives one-hour each of OT, PT and speech and language services on three different days per week. According to Student’s IEP, Student is to receive 4-hours per month of speech and language services and 240 minutes per month of PT. Petitioner believes Student’s full-time IEP should be implemented at Student’s home. (Petitioner’s testimony)

38. On December 10, 2018, the coordinator of HHIP informed Petitioner that only 2 hours of specialized instruction would be provided instead of the 25.4 hours outlined in Student’s IEP. The coordinator explained they would revisit the idea of increasing Student’s hours once they see how Student responds because they did not want to overwhelm Student. Since Student entered HHIP, DCPS has not convened an IEP meeting to amend Student’s IEP or adjust Student’s IEP services. (Petitioner’s testimony)

39. On December 12, 2018, Petitioner’s attorney sent an email to DCPS stating Petitioner agreed to ESY, transportation for ESY, and a gait trainer be added to Student’s IEP, and wanted an IEP meeting. Petitioner was not in agreement with the changes in the IEP without an IEP meeting. (Petitioner’s Exhibit 43-1)

40. Petitioner’s educational advocate has observed Student at home and has participated in two of Student’s IEP meetings. The advocate believes that Student would have made more progress had Student received instruction with Student’s teacher earlier. The advocate proposed a compensatory education plan that alleged that Student missed approximately 18-weeks of school because of DCPS’ failure to provide Student with a FAPE. The advocate recommended that in addition to Student’s IEP being amended to include the requested services, that Student be provided the following as compensatory education: 30 hours of adaptive daily living skills tutoring, 10 hours of speech and language, 10 hours of physical therapy, 10 hours of occupational therapy, and 10 hours of vision therapy. (Petitioner’s Exhibit 53)

## **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 production and the burden of persuasion on issues # 3 and #4. Petitioner was to establish a prima facie case on issue #1, and #2 before the burden of persuasion fell to Respondent. <sup>8</sup> The normal standard is a 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 provide Student with an appropriate IEP for services, placement, and location of service for SY 2018-2019 by (a) failing to include a dedicated nurse to address Student's significant medical needs including while Student is receiving home-based instruction, and/or (b) failing to add ESY, ESY transportation services, adaptive seating, stander and gait trainer to Student's IEP, and/or (c) failing to clarify in Student's IEP that the 2 hours of specialized instruction per month is for vision therapy.

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

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,

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<sup>8</sup> 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.

the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.”

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

In *Andrew F. ex rel. Joseph F. v. Douglas 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.

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.")

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

Petitioner asserts that Student's IEP, placement, and location of service for SY 2018-2019 are inappropriate principally because the IEP does not include a dedicated nurse both in school and while Student is receiving home-based services through HHIP. In addition, Petitioner asserts the IEP is inappropriate because it does not include ESY, ESY transportation services, adaptive seating, stander and gait trainer and does not clarify that the 2 hours of specialized instruction per month is for vision therapy.

With regard to the need for the dedicated nurse while Student is at school, Petitioner presented two expert witnesses who are medical professionals and who are familiar with and treat Student. These witnesses testified that Student needs a dedicated nurse in school and that the shared nursing services that are available to Student at School A in the MES classroom are insufficient to monitor Student and ensure Student’s continual health and safety. These witnesses had, however, never visited or observed Student’s designated School A classroom, participated in Student’s IEP meetings, or directly conferred with the staff at DCPS or School A regarding the capabilities of the staff and the facilities to address Student’s needs.

On the other hand, the expert witnesses who testified on behalf of DCPS were quite familiar with the staffing, capabilities, and facilities available in the MES classroom, but had not personally observed Student. Rather, they based their opinions on the appropriateness of the MES classroom on a review of Student's records. In the Hearing Officer's opinion, as to whether Student requires a dedicated nurse in school, the evidence was equipoised. Because DCPS has the burden of persuasion on this issue, the Hearing Officer concludes that DCPS did not meet the burden of persuasion by a preponderance of the evidence that Student’s October 5, 2018, amended IEP was reasonably calculated to meet Student’s needs and enable Student to make progress appropriate in light of Student’s circumstances. Thus, Student was denied a FAPE in this regard.

The evidence demonstrates that Student was due to start at School A soon after October 16, 2018. Although a dedicated nurse had been authorized for Student while being transported to school by bus, there had been no authorization for a dedicated nurse for Student at school. Consequently, Petitioner did not send Student to school.

The parties corresponded regarding Petitioner’s request, which was supported by documents from Student’s medical provider(s). DCPS eventually convened an IEP meeting on November 19, 2018. By the time of this meeting, however, it was determined by Student’s physician that Student should not attend school due to health risks and HHIP services were thereafter initiated.

The HHIP services appear to have promptly begun by December 3, 2019, after Petitioner submitted the required documents.

Between October 16, 2018, when Student was first entitled to IEP services until December 3, 2018, Student received no services. Had Student had a dedicated nurse at school and had Petitioner sent Student to school, Student would have received the services on the IEP. As a result of not attending school for approximately 7 weeks, Student missed approximately 185 hours of specialized instruction, 6 hours of physical therapy, 6 hours of OT and 6 hours of speech and language pathology. Once HHIP services began, Student was provided 2 hours of specialized instruction per week and the related services prescribed in the IEP.

The DCPS HHIP procedures require that once a Student who has an IEP is found eligible for HHIP services, an IEP team meeting is to be held within 10 school days to review, and if necessary, revise Student's IEP in light of Student's condition that might require long term at home or hospital services. The evidence demonstrates that although Student's physician recommended Student not attend school for the duration of flu season, DCPS did not convene an IEP meeting after being so notified. As a result, Student's HHIP services have remained at a significantly reduced level as compared to the services prescribed by Student's IEP.

Petitioner also asserts Student's IEP is inappropriate because it does not prescribe a dedicated nurse while Student is being instructed at home. As DCPS' witness testified HHIP services are designed to be short-term services and not designed to replicate the services in a student's IEP. The evidence demonstrates that Student is already provided 16 hours per day of nursing services. Because Student is already being provided nursing services, and because the in-home services Student has received under HHIP are significantly reduced, the Hearing Officer does not conclude that the IEP is inappropriate because it does not prescribe a dedicated nurse while Student is provided in-home services. Had an IEP team met and determined the level of services Student should receive while at home, then this consideration of a dedicated nurse might be reasonable to consider. However, in this instance, the preponderance of the evidence does not support a finding that the IEP is inappropriate because it does not prescribe a dedicated nurse while Student is provided in-home services.

Petitioner also asserts that Student's IEP is inappropriate because it did not prescribe ESY, ESY transportation services, adaptive seating, stander and gait trainer and failed to clarify that the 2 hours of specialized instruction per month is for vision therapy. The evidence does not support Petitioner's contentions in this regard. Student's October 5, 2018, amended IEP in LRE page reflects that the 2 hours of specialized instruction per month is for vision therapy.

The evidence demonstrates that the IEP team at the November 19, 2018, meeting agreed to add ESY, ESY transportation services, adaptive seating, stander and a gait trainer to Student's IEP. The IEP meeting notes reflect this. Although Petitioner has not received an amended IEP that reflects this agreement, there is no evidence that Student's has in any way yet been harmed because the document does not directly reflect the decisions of the IEP team. ESY and ESY transportation services do not occur for several months to come. There was no evidence that the adaptive seating and stander have been needed because Student has not been attending school. Consequently, the Hearing Officer concludes that the preponderance of the evidence does not support a finding that Student's IEP is inappropriate because the amendments agreed to at the

November 19, 2018, IEP meeting have not yet been incorporated into an IEP document that Petitioner has been provided, or that such procedural inadequacies impeded the Student's right to FAPE, significantly impeded the Petitioner's opportunity to participate in the decision-making process regarding provision of FAPE, or caused Student a deprivation of educational benefits.

**ISSUE 2:** Whether DCPS denied Student a FAPE by failing to amend Student's IEP to provide Student with a more restrictive setting to include home-based instructional services based on medical recommendations that Student is currently too fragile to attend a brick and mortar school.

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

As previously noted, 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).

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.")

34 C.F.R. § 300.324 (b) Review and revision of IEPs—(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.

The evidence demonstrates that Petitioner provided DCPS documentation that Student could not attend school and on November 20, 2018, and provided DCPS the documentation to request



HHIP services. DCPS determined Student was eligible for HHIP services and those services began on December 3, 2018. DCPS was required within 10 school days of determining Student eligible for HHIP services to convene an IEP meeting to review Student's IEP and determine if any change in services was necessary. DCPS failed to conduct such a meeting. Consequently, Student has continued to receive reduced services that are typically provided on a short-term basis by HHIP, rather than the full measure of Student's IEP services or the services that might have been provided to Student had an IEP meeting been convened and Student's IEP revised.

As a result, Student has missed significant services as already noted in the discussion of the issue above. Consequently, the Hearing Officer concludes that DCPS' failure to convene the IEP meeting and review and revise Student's IEP to prescribe appropriate IEP services for Student while Student was home for an extended period was a procedural inadequacy that impeded the Student's right to FAPE, significantly impeded the Petitioner's opportunity to participate in the decision-making process regarding provision of FAPE, and caused Student a deprivation of educational benefits.

**ISSUE 3:** Whether DCPS denied Student a FAPE by failing to timely implement [REDACTED] IEP during the 2018-2019 school year, because (a) Student was not enrolled in HHIP to receive home-based educational instruction until November 28, 2018, and HHIP services were not implemented until December 3, 2018, and/or (b) because DCPS failed to provide all of Student's required hours of specialized instruction outlined in Student's IEP while Student received HHIP services.

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

In reviewing a failure-to-implement claim, a hearing officer must ascertain whether the aspects of the IEP that were not followed were "substantial or significant" or, in other words, whether the deviations from the IEP's stated requirements were "material." See *Catalan ex rel. E.C. v. District of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007), *aff'd sub nom. E.C. v. District of Columbia*, No. 07-7070 (D.C.Cir.) Sept. 11, 2007). Where an LEA's failure to implement is material (not merely de minimus), courts have held that the standard for determining whether there has been a denial of FAPE is not tied to whether the student has suffered educational harm. See *Wilson v. District of Columbia*, 770 F. Supp. 2d 270 (D.D.C. 2011) (finding a student had been denied a FAPE, even where the student made academic progress despite the LEA's material failure to implement part of the student's IEP). Rather, "it is the proportion of services mandated to those provided that is the crucial measure for determining whether there has been a material failure to implement." *Turner v. District of Columbia*, 952 F. Supp. 2d 31 (D.D.C. 2013).

The evidence demonstrates that Petitioner submitted the request for HHIP services on November 20, 2018. The Hearing Officer takes administrative notice that this request was made on the cusp of the Thanksgiving school break. The HHIP services were approved and began on December 3, 2018. The Hearing Officer does not find that there was any unreasonable delay in the start of the HHIP services and as a result there was no material failure to implement Student's IEP in this regard.

However, as noted in the discussion of the two issues above, although DCPS approved Student for HHIP services and began to promptly provide those services, the services were a drastic

reduction from the services prescribed by Student's IEP. As previously noted, DCPS failed to convene an IEP meeting to review Student's IEP and make any appropriate adjustments to Student's IEP. DCPS' failure to do so resulted in Student's IEP remaining in effect and the majority of the services that were prescribed by that IEP remaining undelivered. Although Student has been provided virtually all the related services prescribed in the IEP since the HHIP services began, Student has not been provided the lion share of the specialized instruction Student was due pursuant to the IEP. Consequently, the Hearing Officer concludes this is a material failure to implement Student's IEP and denial of a FAPE.

**ISSUE 4:** Whether DCPS denied Student a FAPE by failing to provide Petitioner access to Student's educational records to include the following: (a) any evaluations that School A or Early Stages conducted including the BSID-III and BDI-II, and (b) any service logs from services provided through the IFSP.

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

IDEA regulations provide that each agency "must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under [IDEA]." 34 CFR § 300.613 (a). "The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing ... or resolution session ... , and in no case, more than 45 days after the request has been made." *Id.* In addition, a parent's right to inspect and review includes: (1) the "right to a response from the participating agency to reasonable requests for explanations and interpretations of the records"; (2) the "right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records"; and (3) the "right to have a representative of the parent inspect and review the records." *Id.* § 300.613 (b).

The evidence demonstrates that DCPS has provided Petitioner the vast majority of the records that have been requested. The remaining records that Petitioner seeks appear to be records that were developed and maintained by OSSE when OSSE Strong Start was servicing Student. There was insufficient evidence presented to support a finding that DCPS has failed to provide Petitioner the educational records that are in its possession. Consequently, the Hearing Officer concludes that there was insufficient evidence presented by Petitioner to sustain the burden of persuasion by preponderance on this issue.

**Remedy:**

A hearing officer may award appropriate equitable relief when there has been an actionable violation of IDEA. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II); *Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C. Aug. 24, 2012) (citing *Branham v. District of Columbia*, 427 F.3d at 11–12.) The Hearing Officer has concluded that Student was denied a FAPE by DCPS and has directed that DCPS, in the order below, remedy that denial.

Under the 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.

As noted above, Student missed at least 185 hours of specialized instruction and 6 hours of physical therapy, 6 hours of OT and 6 hours of speech and language pathology. Petitioner's educational advocate recommended that in addition to Student's IEP being amended to include the requested services, that Student be provided the following as compensatory education: 30 hours of adaptive daily living skills tutoring, 10 hours of speech and language, 10 hours of physical therapy, 10 hours of occupational therapy, and 10 hours of vision therapy. Student has been provided the vast majority of related services since HHIP services began. Consequently, the Hearing Officer concludes that the number of hours of related services that the advocate has requested is overstated.

Nonetheless, based upon the evidence of Student's challenges, the testimony of Petitioner, and the individuals who provide medical services to Student, the Hearing Officer concludes that provision of the requested number of hours of adaptive daily living skills tutoring is appropriate to remedy the harm and put Student in the stead Student would have been but for the denials of FAPE. In addition, the Hearing Officer will grant Student 4 hours each of the other related services: OT, PT, and speech-language to compensate Student for missed related services.

Petitioner has also requested that Student's IEP be amended to reflect a dedicated nurse. However, as noted in the discussion of issue #1 above, the Hearing Officer concluded that the evidence presented by the parties with regard to need for a dedicated nurse in Student's classroom at School A was equivoical. In addition, Student is currently receiving home-based services and the Hearing Officer has concluded that the evidence does not support a finding that Student is in need of a dedicated nurse while Student is receiving home-based services.

Rather than grant Petitioner's request that Student's IEP be amended to provide the dedicated nurse, the Hearing Officer finds it more appropriate to direct that prior to Student being released by Student's physician to return to School, DCPS convene an IEP meeting to discuss and determine Student's continued need given that by that time Student's trach may be removed and the level of monitoring needed may be significantly reduced. In addition, the Hearing Officer directs that when that IEP meeting is ultimately held prior to Student returning to School that the DCPS program manager for the MES nursing services first have an opportunity to observe Student personally and directly communicate with Student's health care provider(s) and offer him/her/them an opportunity to observe Student's MES classroom and participate as a member of the IEP team, if Petitioner so chooses.

**ORDER:** <sup>9</sup>

1. DCPS shall, within ten (10) business days after March 3, 2019, convene an IEP meeting to review and revise Student's IEP as appropriate in light of Student not being able to currently attend school.
2. Within ten (10) business days of Petitioner notifying DCPS that Student has been authorized by Student's health care provider(s) to return to School, DCPS shall convene an IEP meeting to review and revise Student's IEP as appropriate and discuss and determine Student's need for a dedicated nurse at school. In addition, the DCPS program manager for the MES nursing services shall, prior to that meeting, have an opportunity to observe Student personally and directly communicate with Student's health care providers and offer them an opportunity to observe Student's MES classroom and participate as a member of the IEP team, if Petitioner so chooses to have them participate as IEP team members.
3. DCPS shall, within ten (10) business days after March 3, 2019, authorize Petitioner to obtain, 30 hours of independent tutoring in adaptive daily living skills, and 4 hours each of the following related services: OT, PT, and speech-language pathology, all at the OSSE prescribed rates.
4. All other relief requested by Petitioner is denied.

**APPEAL PROCESS:**

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

*/S/ Coles B. Ruff*

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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: March 12, 2019**

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<sup>9</sup> Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioners shall extend the timelines on a day for day basis.