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**Confidential**

<p>Parent on Behalf Student,<sup>1</sup></p> <p>Petitioner,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”) Local Education Agency (“LEA”)</p> <p>Respondent.</p> <p>Case # 2020-0194</p> <p>Date Issued: March 23, 2021</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: February 17, 2021, February 18, 2021, &amp; February 25, 2021</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> Personally identifiable information is in the attached Appendices A & B.

## **JURISDICTION:**

The due process 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.

## **BACKGROUND AND PROCEDURAL HISTORY:**

The student who is the subject of this due process hearing (“Student”) resides with Student’s parent (“Petitioner”) in the District of Columbia and the District of Columbia Public Schools (“DCPS”) is Student’s local educational agency (“LEA”). Student is a currently age \_\_\_<sup>2</sup> and attends a DCPS school (“School A”). Student is eligible for special education and related services pursuant to IDEA with a disability classification of Emotional Disturbance (“ED”).

DCPS developed an individualized education program (“IEP”) for Student dated January 6, 2020, that was revised on October 28, 2020. Petitioner filed her current due process complaint against DCPS on October 30, 2020, alleging the DCPS denied Student a free appropriate public education (“FAPE”) by failing to develop and/or provide Student with an appropriate IEP and/or educational placement and/or location of service from January 6, 2020 to present.

### **Relief Sought:**

Petitioner seeks the following as relief a finding that Student has been denied a FAPE; an order directing DCPS develop an appropriate IEP for Student including placing Student in a nonpublic therapeutic day school; an order that DCPS revise Student’s IEP to provide at least 25 hours per week of specialized instruction outside the general education setting, at least 240 minutes of behavior support services (“BSS”) per month; an order that Student be awarded compensatory education for denials of FAPE.

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

The LEA filed a response to the complaint on November 10, 2020. The LEA denies that there has been any failure to provide Student with a FAPE. In its response DCPS asserts, inter alia, the following:

Student is currently enrolled and attending a DCPS school (“School C”) Dunbar High School (“Dunbar”) for school year (“SY”) 2020-2021. Student was enrolled at another DCPS school (“School B”) for SY 2019-2020.

DCPS denies that the January 6, 2020, or October 20, 2020, IEPs were inappropriate. The January 6, 2020, IEP was developed while the Student was attending School B and provided for 10 hours per week of specialized instruction outside general education. The October 20, 2020,

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<sup>2</sup> Student’s age and grade are listed in Appendix B.

IEP provides for 13 hours outside the general education. DCPS asserts the Student's IEPs were appropriate at the time they were developed and were reasonably calculated to enable the Student to make progress appropriate considering Student's circumstances. Furthermore, the Student is enrolled in a new school and currently in a virtual environment. Therefore, it is premature to decide whether the current placement is appropriate.

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

The parties participated in a resolution meeting on November 19, 2020, and did not resolve the complaint. The parties did not mutually agree to shorten the 30-day resolution period. The 45-day period began on November 30, 2020, and ended, and the Hearing Officer's Determination ("HOD") was originally due on January 13, 2021. The parties were not available on the original hearing dates offered and selected, but were available on the dates they selected hearing dates in January 2021. Petitioner's counsel filed a motion to continue and extension of the HOD due date that was granted. On the first day of hearing in January 2021, Petitioner's counsel was unable to proceed and requested a continuance that was granted. The hearing was then scheduled for February 17, 2021, and February 18, 2021.

The undersigned hearing officer ("Hearing Officer") conducted a pre-hearing conference on November 18, 2020, and issued a pre-hearing order ("PHO") on November 24, 2020, a revised PHO on November 30, 2020, and a second revised PHO on December 22, 2021, outlining, inter alia, the issues to be adjudicated.

### **ISSUE ADJUDICATED:**

Whether DCPS denied Student a FAPE by failing to develop and/or provide Student with an appropriate IEP and/or placement and/or location of service from January 6, 2020 to present.<sup>3</sup>

### **DUE PROCESS HEARING:**

Due to the COVID-19 emergency, the hearing was conducted via video-teleconference on February 17, 2021, February 18, 2021, and February 25, 2021. Due to technical difficulties Petitioner's counsel was unable to proceed for the full day of hearing on February 18, 2021, and the hearing was continued and concluded on February 25, 2020. Petitioner's counsel's motion to continue was granted, extending the HOD due date to March 23, 2021.

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<sup>3</sup> Petitioner contends that Student requires substantial interventions due to severe behavioral and academic needs and DCPS knew when it was creating both the January 6, 2020, and October 28, 2020, IEPs that the goals were unattainable given Student's deficits. Petitioner asserts that in a prior due process proceeding it was established that Student required more restriction than a DCPS Behavior & Educational Support ("BES") class could provide, and Student required more than 120 minutes per month of behavior support services ("BSS"). Petitioner asserts Student's needs more support than DCPS can provide in a public-school setting and while Student may in fact require a residential placement, a nonpublic would be appropriate for Student's immediate needs.

## **RELEVANT EVIDENCE CONSIDERED:**

This Hearing Officer considered the following as evidence and are the sources of the findings of fact: (1) the testimony of the witnesses, and (2) the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 80 and Respondent's Exhibits 1 through 30) that were admitted into the record and are listed in Appendix A. Witnesses' identifying information is in Appendix B.<sup>4</sup>

## **SUMMARY OF DECISION:**

DCPS held the burden of persuasion on the issue adjudicated once Petitioner established a prima facie case. The Hearing Officer concludes, based on the evidence adduced, that Respondent did not sustain the burden of persuasion by a preponderance of the evidence on the issue adjudicated. Having found a denial of a FAPE, the Hearing Officer directed DCPS to extend Student's existing compensatory and granted Petitioner's request for Student's placement in a non-public special education day school.

## **FINDINGS OF FACT:**<sup>5</sup>

1. Student resides with Student's parent, Petitioner, in the District of Columbia and DCPS is Student's LEA. Student attends School A, a DCPS school. Student is eligible for special education and related services with a disability classification of ED. (Parent's testimony, Respondent's Exhibit 2)
2. Student was first identified for special education services in May 2016 and found eligible with the ED disability classification. Student's September 18, 2017, IEP, developed when Student was in Grade 1,<sup>6</sup> and attending a public charter school in the District of Columbia, provided for 5 hours per week of specialized instruction inside general education and 3 hours per week of

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<sup>4</sup> The Hearing Officer found the witnesses credible unless otherwise noted in the Conclusions of Law. Any material inconsistencies in the testimony of witnesses that the Hearing Officer found are addressed in the Conclusions of Law. (1) an Independent Clinical Psychologist, (2) Petitioner, and (3) Principal of the non-public school that Petitioner is seeking, and (4) an Educational Advocate employed by the law firm representing Petitioner, (6) another Educational Advocate employed by the law firm representing Petitioner, and (7) DCPS Teacher at one of Student's previous DCPS schools. DCPS presented five witnesses, all of whom testified as expert witnesses: (1) The former Special Education Coordinator at School C, (2) Special Education Coordinator at School A, (3) Student's Special Education Teacher and Case Manager at School A, (4) School A's Social Worker, and (5) The DCPS Psychologist who reviewed the IEE. Both parties disclosed and elicited testimony from two of the seven witnesses called by Petitioner.

<sup>5</sup> The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parenthesis following the finding. Documents cited are noted by the exhibit number. If there is a second number following the exhibit number, it denotes the page of the exhibit (or the page number of the entire disclosure document) 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. One of the exhibits Petitioner disclosed and adopted a significant number of Findings of Fact from the HOD issued on March 17, 2020, from the previous due process complaint Petitioner filed.

<sup>6</sup> Student's grade at the time is noted in Appendix 1.

specialized instruction outside general education, and 360 minutes per month of behavior support services (“BSS”). (Petitioner’s Exhibit 1)

3. Student transferred to a DCPS school (“School B”) in December 2017 and continued in Grade 1. Student’s March 6, 2018, IEP, developed by DCPS at School B, provided for 5 hours per week of specialized instruction inside general education (divided between reading, written instruction and math) and 3 hours per week of specialized instruction outside general education, along with a reduction in BSS from 360 to 60 minutes/month. Student’s socio-emotional goals were reduced from 8 to 2 in the March 6, 2018, IEP. (Petitioner’s Exhibit 1)
4. Student is a gregarious young person with a history of academic disengagement, emotional dysregulation and defiance. Student is small and often taken for being years younger. (Petitioner’s Exhibit 1)
5. Student is anxious and afraid to go outside due to fear of getting shot. Student has suffered a range of traumas, including sister being shot while in high school, a cousin being shot, and a great deal of violence, including shootings, in Student’s neighborhood. Student was hit by a car and lost personal belongings in a flood in the fall of 2018. (Petitioner’s Exhibit 1)
6. Student’s social worker completed a functional behavior assessment (“FBA-II”) on November 14, 2018, noting academic disengagement and disruptive behavior having a negative impact on academic performance, but not school refusal. Student’s noncompliant behavior could occur during 80-90% of class time. (Respondent’s Exhibit 1)
7. A behavior intervention plan (“BIP”) developed on December 2, 2018, noted that Student was consistently unavailable for instruction due to lack of motivation and resistance to receiving assistance. The BIP was not effective as Student’s unexcused absences greatly increased. (Respondent’s Exhibit 1)
8. Student’s psychological triennial reevaluation was conducted December 13, 2018. Cognitively, Student’s Full-Scale IQ (“FSIQ”) was 83, in the Low Average range, according to a Wechsler Intelligence Scale for Children – Fifth Edition (“WISC-V”) assessment in 2016. (Respondent’s Exhibit 1, Petitioner’s Exhibit 37)
9. Student’s January 30, 2019, developed at School B, provided for a total of 10 hours/week of specialized instruction outside general education (divided between reading, written instruction and math), along with an increase in BSS from 60 to 120 minutes/month. (Petitioner’s Exhibit 1)
10. Student had problems with certain schools due to the neighborhoods in which they were located and the potential risks to Student. After the first couple of days, Student didn’t attend summer school in 2019 for fear of being attacked after witnessing a fight at the Metro and perceiving that another student was following Student. (Petitioner’s Exhibit 1)
11. Student was assigned to a different DCPS school (“School C”) for SY 2019-2020. Student refused to go to school at all in SY 2019-2020. Student persistently refused to attend school in

SY 2019-2020 due to not feeling safe in newly-assigned School C, despite apparently not experiencing bullying, threats, or intimidation at school; Student never attended School C. Student was frustrated and angry without being able to state the cause. (Petitioner's Exhibit 1)

12. All efforts to get Student to attend School C were unsuccessful. When Student first reported to school, Student had to be coaxed to go inside the building, but still refused to attend any classes, despite Student's parent's willingness to sit with Student. On several occasions, Student was accompanied to School C by Student's parent, but refused to leave the lobby area and was unwilling to go to any classes. Many other students in School C, which was an accelerated program, were older and bigger than Student. School C students were typically "over age and under credit." (Petitioner's Exhibit 1)
13. Petitioner's counsel emailed School C on September 3, 2019, about Student feeling unsafe at School C and Student's parent conveyed updates to School C's social worker. (Petitioner's Exhibit 1)
14. School C's LEA representative responded on September 13, 2019, explaining that School C was developing a Student Entry Plan and that increasing BSS hours would not help if Student would not enter the school building. (Petitioner's Exhibit 1)
15. Student's parent offered at least four times to sit in School C to encourage Student's attendance. (Petitioner's Exhibit 1)
16. On September 13, 2019, School C's LEA representative emailed that if Student were not available for the traditional instructional-delivery she was not sure how School C could send home work for Student. (Petitioner's Exhibit 1)
17. On September 11, 2019, a Student Success Plan was created to assist Student with school re-entry due to persistent reluctance to attend school; short term goals included a medical evaluation and referral for DCPS' Home and Hospital Instruction Program ("HHIP"); Student's parent was given a HHIP packet. School C's social worker developed a transition plan for gradual re-entry to school with numerous steps. (Petitioner's Exhibit 1)
18. Student's parent completed the HHIP paperwork, got the physician portion completed, and brought it to a September 27, 2019, meeting. The School C social worker made the referral to the DCPS HHIP coordinator on September 27, 2019. The HHIP physician verification form was completed on September 25, 2019, noting Student's anxiety disorder and possible PTSD. Student's doctor was not comfortable having a conversation with DCPS HHIP staff and suggested Student's therapist be contacted instead. Student's psychiatrist on December 27, 2019, diagnosed Student with Unspecified Anxiety Disorder. HHIP personnel at DCPS did not reach out to the psychiatrist. (Petitioner's Exhibit 1)
19. Petitioner's counsel repeatedly followed up with DCPS on the HHIP application through October and November 2019, and also sought to move things forward with an alternative school location. (Petitioner's Exhibit 1)

20. DCPS's HHIP Handbook states that determination of eligibility for HHIP is to be completed within 5 business days. Student was never provided any HHIP services. (Petitioner's Exhibit 1)
21. DCPS HHIP Coordinator suggested evening and weekend support for Student, when regular teachers could assist to reconnect Student to school. (Petitioner's Exhibit 1)
22. DCPS had trouble making a safety transfer for Student due to "weak" evidence and could not substantiate mental health issues due to Student's reluctance to speak with the psychiatrist. DCPS' HHIP coordinator was trying to identify another school for Student and ensure a good fit. Between the start of SY 2019-2020 and March 2020, DCPS provided no school work for Student and has sent no instructors or social workers to see Student. (Petitioner's Exhibit 1)
23. Petitioner filed a due process complaint against DCPS on December 23, 2019, alleging inter alia that the IEP DCPS developed for Student on January 30, 2019, was inappropriate. (Petitioner's Exhibit 1)
24. On January 6, 2020, DCPS's HHIP coordinator stated that she had been speaking with the placement office about finding another school for Student and providing some evening support to get Student caught up. (Petitioner's Exhibit 1)
25. School C convened an annual review of Student's IEP on January 6, 2020. The School C staff were not familiar with Student C enough to increase or decrease Student's services. It was hard to determine because of Student's unavailability whether Student needed a more restrictive environment. They could not assess Student because of non-attendance, so the IEP team used the historical data that was available. School C made the referral to the attendance staff for truancy proceedings, but it is not clear what happened with the referral. School C put a BIP in place to get to the root of Student's chronic absenteeism. The School C team believed that Student could make progress with the IEP developed on January 6, 2020, because the goals were based on the information from the previous year. The team could have revised the IEP if the data indicated more services were needed. There was no progress on Student's IEP goals at School C because Student was unavailable to teach. (Witness 7's testimony)
26. Student's January 6, 2020, IEP acknowledged that the 2018 BIP indicated that Student was regularly unavailable for instruction while at School B since the beginning of 2018; Student's academic disengagement deteriorated even further into school refusal. A January 6, 2020, BIP focused on school refusal. (Respondent's Exhibit 1, Petitioner's Exhibits 1, 6)
27. Petitioner's December 23, 2019, due process complaint resulted a due process hearing conducted by another Hearing Officer in March 2020 with an HOD issued on March 17, 2020. The Hearing Officer concluded that DCPS had denied Student a FAPE. Although DCPS had updated Student's IEP on January 6, 2020, that IEP was not challenged in Petitioner's December 23, 2019, due process complaint as it had not yet been developed when the due process complaint was filed. (Petitioner's Exhibit 1)

28. Student's January 6, 2020, IEP provided a total of 13 hours/week of specialized instruction outside general education (divided between reading, written instruction, math, and unspecified specialized instruction) and 120 minutes per month of BSS. (Respondent's Exhibit 1)
29. Student's January 6, 2020, IEP acknowledged that Student had a history of academic disengagement, emotional dysregulation and defiance dating back to 2018; teachers reported that Student was at risk of academic failure. (Respondent's Exhibit 1, Petitioner's Exhibit 1)
30. Student's January 6, 2020, IEP stated that Student attended school "regularly" in SY 2018-2019 and only had minor problems with tardiness. However, By the January 30, 2019, IEP, Student had 24 unexcused absences, was tardy 20 times unexcused in SY 2018-2019. By April 11, 2019, Student had 65 absences, of which 58 were unexcused. By the end of SY 2018-2019, Student had been absent 76 days of which 66 days were unexcused, including 12 days absent (all unexcused) in January, 9 days (unexcused) in February, and 19 days (unexcused) in March; Student was tardy on 31 additional days. (Respondent's Exhibit 1, Petitioner's Exhibit 1).
31. The Hearing Officer in the March 17, 2020, HOD found, based on Student's longstanding behavioral and emotional difficulties, that a self-contained learning environment would have been better for Student and a DCPS BES program would have been the appropriate setting for Student earlier, but not by March 2020. The hearing officer found that Student's IEP team should have met to determine appropriate placement when Student was not accessing the curriculum and was regressing. (Petitioner's Exhibit 1)
32. In the HOD issued on March 17, 2020, the hearing officer concluded, inter alia, that regarding the LRE prescribed in Student's January 2019, IEP, "A more restrictive setting in which Student could participate is required." (Petitioner's Exhibit 1)
33. In the HOD issued on March 17, 2020, the Hearing Officer ordered DCPS to authorize an independent education evaluation ("IEE") for a comprehensive psychological evaluation and convene an IEP team to review the evaluation report and update Student's IEP as appropriate, to include determination of appropriate placement and school location and a detailed transition plan to help Student reengage at school. The Hearing Officer also stated that determination of a suitable placement for Student shall include consideration of nonpublic schools, if necessary, for Student to receive a FAPE. The hearing officer granted Petitioner the following as compensatory education 300 hours of academic tutoring, 200 hours of mentoring, and 150 hours of counseling from independent providers chosen by Petitioner, to be used within 2 years or forfeited. The Hearing Officer also stated that "[a] claim for compensatory education due to the future completion of the comprehensive psychological evaluation and FBA shall be reserved for subsequent resolution." (Petitioner's Exhibit 1)
34. Petitioner and her educational advocate along with Student visited a least one non-public school that was being proposed in the March 2020 due process hearing. Student was reluctant to go inside to see a proposed nonpublic school, but finally did so with Student's parent and other support. Student was nervous and refused to go into a second nonpublic school that Student's parent liked. Student was accepted by that nonpublic school, but placed on a waitlist as there was not a spot open for Student. Student would need a lot of coaxing to go into a nonpublic school,



but Student's parent might be able to coax Student, if Student saw it as a safe space. (Petitioner's Exhibit 1)

35. The independent psychological evaluation authorized in the March 17, 2020, HOD of Student was initiated on April 29, 2020. However, Student struggled with transitioning the psychologist's the office for testing and refused to get out of the car. Subsequent attempts on July 13, 2020, and July 26, 2020, via videoconference were unsuccessful. On August 1, 2020. Student partially completed the WISC-V via videoconference and after 1.5 hours discontinued testing. On August 29, 2020, testing was rescheduled by Student's mother due to a family emergency. On August 30, 2020, Student refused to engage in testing and reported somatic symptoms. Due to the persistent refusal, the psychologist terminated testing, and completed the evaluation results based of the partial data collected. (Witness 1's testimony, Petitioner's Exhibits, 38, 41)
36. Results of the WISC-V were similar to previous testing results from Student's 2016 evaluation. Student's performance on the verbal comprehension subtest were slightly below average while Student's fluid reasoning skills were measured in the Average range. Other composite scores were unable to be calculated due to Student's refusal to continue with testing. Updated achievement scores were also unavailable due to Student's test refusal. (Petitioner's Exhibits, 38, 41)
37. Student's social and emotional functioning was measured by parent and teacher report on the BASC-3 and the Conners Comprehensive Behavior Rating Scales. Results indicated clinically significant and subclinical levels of symptoms "indicative of emotional, behavioral, and adaptive disturbances." More specifically, Student's parent rated clinically significant concerns with Anxiety, Attention Problems, Functional Communication, Somatization, Withdrawal, Hyperactivity, Aggression, Conduct problems, and Adaptive skills. Similarly, Student's teacher reported clinically significant concerns in the areas of Aggression, Depression, Withdrawal, Atypicality, Hyperactivity, Attention Problems, Learning Problems, and Adaptive Skills. (Petitioner's Exhibits, 38, 41)
38. Despite not completing the assessment, the psychologist concluded Student has the capacity to learn, as the results did not indicate the presence of severe cognitive deficits. Based on the data, the psychologist diagnosed Student with Generalized Anxiety Disorder (GAD) and Disruptive Mood Dysregulation Disorder. It was also noted that given Student's history of exposure to neighborhood violence and intense worry about Student's own safety, a diagnosis of Posttraumatic Stress Disorder should be ruled out. It was recommended that Student receive intensive academic and therapeutic support services such as HHIP programming. (Petitioner's Exhibits, 38, 41)
39. The psychologist concluded a BES program would not be appropriate for Student, as Student is in need of a more restrictive program in which Student would have to have a strong therapeutic alliance with school staff for Student to buy into the supports being offered. The psychologist acknowledged that even a nonpublic day school may present a challenge for Student - Student may really need a residential placement with trained staff where Student would have no choice but to go to school. (Witness 1's testimony)

40. The psychologist made additional recommendations: Parent Management Training to assist Student's parent with setting appropriate limits, boundaries and expectations in the home, family therapy to support the development of a structured home environment; a detailed and specific behavior intervention plan designed to support school reentry and engagement with collaboration between parent, student and teachers in the development and implementation. Finally the psychologist recommended consultation with a psychiatrist to re-assess Student's need for medication treatment for severe anxiety and oppositional behaviors. (Petitioner's Exhibits 38, 41)
41. A DCPS psychologist reviewed the IEE and noted that Student continued to exhibit inconsistent attendance and work completion. According to the data system, Student had nine recorded absences at the time of the evaluation review. The discrepancy from teachers' reports indicate Student often logged into the "Canvas" for attendance, but did not consistently log into "Teams" to attend classes. Although Student's attendance was inconsistent, the DCPS psychologist noted that it was a slight improvement from Student's previous school data which indicated complete academic refusal. (Respondent's Exhibit 19)
42. The DCPS psychologist completed the following in her evaluation review: Record Review (Aspen), Parent Interview (attempted 10/26), Teacher Interview with two of Student's teachers, Student Interview (attempted 10/26/20), Classroom Observation (10/26/20). An attempt to interview Student before the eligibility meeting was made in conjunction with Student's special education teacher and case manager. Due to Student's anxiety and school aversion, it was believed Student would respond better if accompanied by someone Student has an established relationship with Student's self-contained World History teacher, and self-contained Algebra 1 teacher provided input on Student's academic and emotional functioning in the classroom. (Respondent's Exhibit 19)
43. Student's World History class had 17 students and was held during the first period every day except Wednesdays during distance learning. That teacher reported that Student's attendance was inconsistent. She noted that Student may have attended one to two times per week and when present, rarely participated. Student is often late and will leave the class without communication. The teacher also indicated that Student had completed a few assignments and the quality of Student's work was "satisfactory" but could be better if Student did not miss instruction. The teacher noted that the and Student had a grade of "F" at the time of the evaluation review due to missing classwork. (Respondent's Exhibit 19)
44. Student's Algebra 1 teacher, instructed Student during third period every day except Wednesdays during distance learning. This teacher completed a home visit with Student, in conjunction with the school social worker, to get to know Student and support Student with school attendance. The teacher reported that Student struggled initially with transitioning into the home visit but was eventually able to sit in the room and engage with the teacher and social worker. During the visit, they both attempted to get to know Student and provide technical support with accessing learning. Student was responsive to questions but passed the computer to Student's mother when given instructions on how to sign into the learning platforms. (Witness 8's testimony, Respondent's Exhibit 19)

45. At the time of the evaluation review, Student had attended math class a total of three times since the start of the school year and was failing the course at the time. Student's has inconsistent attendance and work completion in class. When in attendance, Student will complete some work and even volunteered an answer questions via the chat function during one class period. (Respondent's Exhibit 19)
46. The DCPS psychologist observed Student the second period English class conducted over Microsoft Teams ("Teams"). There were nine students present and one teacher; only the teacher and one other student participated with their camera on. During the observation, Student responded unprompted to some questions via the chat feature, while other times Student required large group or targeted prompts to respond to a question or provide a status update on Student's independent work. In a follow-up conversation with the teacher, she shared with the DCPS psychologist that this was a typical class period for Student. She noted that Student is often absent, but when present will engage via the chat, but never verbally. She also noted that work completion was minimal and confirmed that Student did not submit the assignment they worked on during the observation. That teacher also noted that due to distance learning and poor attendance it is challenging to get an understanding of Student's skill level but believed that if Student received instruction and engaged in class, Student could access the work with accommodations. (Witness 11's testimony, Respondent's Exhibit 19)
47. The DCPS psychologist concluded that Student's current emotional challenges have a significant impact on Student's ability to engage in the educational environment and make expected progress given Student's cognitive abilities. She noted that Student's prolonged absence from school, coupled with challenges in the home with setting appropriate limits and boundaries has perpetuated a behavior cycle that has further distanced Student from attending school, even in a virtual leaning space. She also noted that Student's traumatic history and fear of violence has contributed to Student's seclusion to home and the development many maladaptive coping strategies to manage anxiety that have resulted in persistent school refusal reinforced by persistent absence. Nonetheless, the psychologist concluded that since starting at School A, Student had demonstrated some progress by attending classes sporadically and completing some academic tasks, as Student did not attend school at all in the previous school year. (Respondent's Exhibit 19)
48. School A convened an IEP meeting on October 28, 2020, at which the team reviewed the independent psychological evaluation. Petitioner participated in the meeting along with her attorney. The IEP meetings notes indicated that the team acknowledged that for past years, Student has not been academically successful and Student's attendance continues to be a concern. Last year, they tried to get Student HIPP services but did not hear back from the HIPP team. Based on the DCPS review of the IEE, information discussed and inputs from team it was the consensus of the team, including Student's parent and her attorney that Student continued to meet criteria for special education under classification of ED and no further testing was warranted. (Respondent's Exhibit 9)

49. Student case manager reviewed the present levels for Math, reading and writing listed in the IEP. Based on the IEE review there was no new scores or data to add to the IEP. The team, including Student's parent and her attorney agreed. The team discussed Student's signs-on to Canvas and has attended some classes. Student's parent stated Student stays up late night and falls asleep through classes. She tries to get [REDACTED] up and attend. Petitioner's attorney agreed with the case manager on the PLOPs and the team transitioned to review social-emotional present levels. (Respondent's Exhibit 9)
50. The team agreed to add the BASC information from the IEE to Student's IEP. All team members, including Student's parent and her attorney, agreed to the present performance levels ("PLOP"). Student's case manager reviewed academic and transition goals. Petitioner's advocate suggested additional math and reading goals be added, as Student had not progressed. The team, including Student's mother and her attorney, agreed. (Respondent's Exhibit 9)
51. The School A social worker reviewed social-emotional goals. As Student had not taken the first step to meet with the social worker, she wanted to focus on the current goal and take things slowly. The team agreed including Petitioner's representatives. The School A team proposed that Student continue to receive specialized instruction 13 hours per week outside general education and 120 minutes per month outside general education setting for behavioral supports services. Petitioner's attorney and the advocate disagreed with the hours and pointed the team to March 17, 2020, HOD. The DCPS attorney attending the meeting noted that the hearing officer ordered the team to hold and eligibility determination and develop an IEP. On behalf of DCPS team, the DCPS attorney reiterated IEP would remain the same and Petitioner's team members could disagree. (Respondent's Exhibit 9)
52. School A team members stated that because it was their first time engaging with Student as Student had just begun attending School A, they had seen some progress, and some of the teachers had been making some progress engaging Student. They expressed that they would like to exhaust every effort before discussing a more restrictive environment for Student. The School A special education coordinator stated that the School A team wanted to have an opportunity to collaborate with Student's therapist, as they all agreed Student needed therapy and Student's mother needed help with, Student. The team concluded the IEP meeting and transitioned to a transition plan to engage Student back to school which included the actions to be taken by Student's case manager and the School A social worker to communicate with Student's parent regularly and engage Student online through scheduled contacts. (Respondent's Exhibit 9)
53. The team did not increase Student's BSS because they wanted to allow the outside support time to work. The team-initiated community-based support in addition to the in-school support and made a referral to a community-based organization that offered therapeutic interventions. (Witness 7's testimony, Respondent's Exhibit 30)
54. Based on the historic and limited current data, the IEP team at the October 28, 2020, IEP meeting concluded that Student continued to meet the criteria for ED and that Student's continued placement at School A was appropriate. Petitioner and her attorney disagreed. (Witness 9's testimony, Respondent's Exhibits, 9 19)

55. Student's October 28, DCPS developed an IEP for Student that noted that Student's non-attendance has severely impacted [REDACTED] academic progress. "[Student] has been absent a total of 34 days out of 38 days thus far. The following information is the most recent that we have for [Student]." 10/16/2020 Psychological assessment conducted, however, [Student] refused to participate in academic section." The IEP continued the same level of services as Student's previous IEP 13 hours of specialized instruction outside general education and 120 minutes of BSS per month. (Respondent's Exhibit 2)
56. At the end of the first term, Student earned four grades: F in Algebra 1, F in World History Geography 1, D in English 1, and D in Health Education. The report card notes that Student had excessive absences and failed to complete assignments. (Petitioner's Exhibits 8, 9)
57. Student parent noted that Student is not willing to turn on the camera for distance learning. Student will listen, however, really does not like to participate in distance learning. Student more likely to meet with a school social worker online if the meetings are not characterized as therapy. Student really doesn't talk the teachers at School A. Before the death of a relative in November 2020, Student was logging into virtual instruction and turning in work. Since then, Student may have shown up for class twice. Student's mother indicates that she cannot sit with Student all day and hover to make Student do school work. No strategies that DCPS put in place that she knows of have successfully got Student to participate in virtual learning. Student's mother has never been contacted by Child and Family Services about Student's non-attendance and she has never been informed by any school Student attended that truancy procedures were being considered or initiated. (Parent's testimony)
58. Student will not venture out from home alone. Student last left the house two weeks prior to the hearing, but left with Student's parent. Student's parent recalls that School A told her that Student had a seat to come to in-person learning at School A. She did not accept that offer because, with Student's anxiety level, she considered it a waste of one classroom seat that another student could use. In addition, no one mentioned to her that Student would be provided transportation to and from school. If Student were placed at a non-public school, Student's mother would try driving Student there at first and try to transition Student to use the school bus. She would cross that bridge when it comes, if Student still refuses to go into a non-public school. Student's parent has found a therapist who can provide Student regular therapy and who Student has a relationship with from Student's former public charter school. Student has not yet used any of the compensatory education from the March 17, 2020, HOD, principally because of the COVID-19 pandemic. (Parent's testimony)
59. Student has been accepted to a non-public school in the Washington, D.C. area ("School D"). School D is a therapeutic special education day school and holds an OSSE Certificate of Approval ("COA"). The annual cost for attending School D is \$55,983.00 that includes special education instruction and counseling. The school has students in grades 1 to 12. The student to teacher is 8 to 1. There 8 to 10 students in class and a total of 80 students in the school. They give students individual zoom meetings for individual sessions and groups are held twice per week via zoom for social skills sessions. There is a special education teacher and an aide in each classroom, and some students have dedicated aides. Most students have the ED disability classification. School D has a part time psychiatrist and staff trained to respond to student's

emotional outbursts. School D's admission team reviewed Student's referral packet and interviewed Student's parent virtually, but did not interview Student. School D has used virtual learning since the beginning of the school year. School D is scheduled to start a hybrid learning model on March 15, 2020, with student coming to school two and a half days per week from 9 a.m. to 12:00 noon with students then logging into virtual learning in the afternoon. (Witness 3's testimony)

60. Petitioner's educational advocate developed a proposed compensatory education plan to compensate Student for the alleged denial of a FAPE in this proceeding. She proposed that Student's IEP be revised to include at least 27.5 hours/week of specialized instruction outside general education, a separate nonpublic day school as Student's least restrictive environment ("LRE"), 240 minutes per month of behavioral support services, and place Student at and fully fund a nonpublic therapeutic day school. In addition, she proposed that DCPS fund 300 hours of private, academic tutoring, fund 300 hours of psychiatric service dog support or animal-assisted therapy, fund 20 hours of trauma-informed art/music therapy. (Witness 6's testimony, Petitioner's Exhibit 75)

### **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 the 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. West*, 546 U.S. 49, 126 S.Ct. 528, (2005). In this case, Petitioner proceeded first on the day of hearing and had the burden of production on the issue adjudicated. Petitioner established a prima facie case before the burden of persuasion fell to Respondent.<sup>7</sup> The normal

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<sup>7</sup> Pursuant to DC Code § 38-2571.03 (6):

(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

standard is the 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:** Whether DCPS denied Student a FAPE by failing to develop and/or provide Student with an appropriate IEP and/or placement and/or location of service from January 6, 2020 to present.

**Conclusion:** Respondent did not sustain 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, 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).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. See 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Andrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir.

2010).

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

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

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

In *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988 (2017), the U.S. Supreme Court elaborated on the “educational benefits” requirement pronounced in *Rowley*: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. . . . Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. . . . When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum. . . . If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives. *Andrew F.*, supra, 137 S. Ct. at 999–1000 (citations omitted).

The key inquiry regarding an IEP’s substantive adequacy is whether, taking account of what the school knew or reasonably should have known of a student’s needs at the time, the IEP offered was reasonably calculated to enable the specific student’s progress....“Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, supra, 137 S. Ct. 988.

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.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34 C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a



disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

"The IDEA requires that children with disabilities receive education in the regular classroom whenever possible" *Z.B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018) citing *Andrew F.*, *supra*, 137 S. Ct. at 999 (quoting *Rowley*, 458 U.S. at 202)

Pursuant to D.C. Code § 38-2561.02(c) Special education placements shall be made in the following order of 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.

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 contends that Student requires substantial interventions due to severe behavioral and academic needs and DCPS knew when it was creating both the January 6, 2020, and October 28, 2020, IEPs that the goals were unattainable given Student's deficits. Petitioner also asserts that in a prior due process proceeding it was established that Student required more restriction than a DCPS BES class could provide and Student required more than 120 minutes per month of behavior support services. Petitioner asserts that while Student may in fact require a residential placement, a nonpublic would be appropriate for Student's immediate needs.

The evidence in the case overwhelming demonstrates that for nearly a full school year before the COVID-19 pandemic and the start of online virtual learning in DCPS, Student had demonstrated severe school refusal. The evidence also demonstrates, based the credible testimony of the clinical psychologist who evaluated Student, that Student's school non-attendance is due to psychological trauma and anxiety. That psychologist recommended that Student be provided HHIP services. There appears to have been some action taken by DCPS in providing Student these services, but the ball was dropped. DCPS personnel in the last three schools that Student has attended have been unsuccessful in getting Student to attend. In addition, there have been no concrete actions taken by DCPS to enlist the support of the D.C. Department of Child and Family services to address Student's attendance through resources available due to truancy.

Student was assigned to School C for SY 2018-2019 and where Student's January 6, 2019, IEP was developed. Student had not attended school the entire semester prior to that IEP being developed and yet no additional services were put in place in Student's IEP to address Student nonattendance and resulting academic failure. Although Student had a BIP from Student's prior DCPS school, that BIP proved ineffective.

In the March 17, 2020, HOD the Hearing Officer found that Student's previous IEP was inappropriate and that Student's educational placement in a DCPS BES program would have been appropriate, but was no longer. However, that HOD only directed DCPS to authorize an evaluation and review and revise Student's IEP and placement and consider Student's placement in a non-public special education school. The HOD did not mandate such a placement. It appears that when that IEP meeting was held, the DCPS team members did not legitimately consider such a placement. Rather, the DCPS simply kept Student's services and LRE the same in the October 28, 2020, despite the fact that Student had barely participated in virtual learning with School A.

Although, Student was participating in virtual learning more than Student had participated in school for a year prior, the evidence demonstrates that Student never turned on the video camera during virtual learning and would only communicate with the teachers on occasion through the chat function of Teams. This was hardly the level of school attendance and participation that warranted School A continuing the same level of services and LRE that Student had been provided in the January 6, 2020. IEP. In addition, the evidence demonstrates based on Student's case manager's testimony, that Student has not participated in virtual learning since November 2020. Clearly, Student's services should have been increased and Student's LRE changed to a more restrictive setting.

Based on the overwhelming evidence adduced, the Hearing Officer concludes that the IEPs that DCPS developed for Student on January 6, 2020, and October 28, 2020, were not reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances and resulted in a denial of a FAPE to Student.

At the time of the hearing both DCPS and the school Petitioner seeks (School D), were providing instruction and services only online and virtual. Student has a history of non-engagement and limited engagement even in online. However, School D did have a specific plan to begin some in-person instruction in March 2021. The independent psychologist testified that Student is likely in need of a residential placement. However, the next level in the continuum of placements is a therapeutic special education day school and it has not yet been tried. Therefore, the Hearing Officer in the order below directs DCPS to revise Student's IEP to prescribe an LRE in a special education separate school.

### **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.

Petitioner's educational advocate developed a proposed compensatory education plan that proposed that Student's IEP be revised to include at least 27.5 hours/week of specialized instruction outside general education, a separate nonpublic day school as Student's LRE, 240 minutes per month of behavioral support services, and place Student at and fully fund a nonpublic therapeutic day school.

In addition she proposed that DCPS fund 300 hours of private academic tutoring, fund 300 hours of psychiatric service dog support or animal-assisted therapy, fund 20 hours of trauma-informed art/music therapy.

There was insufficient evidence presented that supported Student's need for animal assisted therapy or art/music therapy. In addition, the evidence demonstrates that Student has been awarded compensatory education that has yet to be used and that has an expiration date in another year. In the March 17, 2020, HOD, the hearing officer awarded Student the following as compensatory education: 300 hours of academic tutoring, 200 hours of mentoring, and 150 hours of counseling from independent providers chosen by Petitioner, to be used within 2 years of the date of the HOD or be forfeited.

Consequently, the Hearing Officer concludes that awarding Student the additional compensatory education beyond revising Student's IEP and LRE and placing Student in a non-public therapeutic special education day school would be inappropriate, as there is little indication that additional services would be used since Student has yet to engage the services already awarded. Instead, the Hearing Officer, in the order below, extends the use of the compensatory education already awarded for an additional year.

"[C]ourts have identified a set of considerations 'relevant' to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment." *Branham*, 427 F.3d at 12 (citations omitted).

The evidence demonstrates that School D has an OSSE COA, can implement an IEP that provides all instruction and services in a special education setting, has a therapeutic program with resources to address Student's trauma and anxiety, and that will immediately allow Student to attend school in-person and virtual setting that will better ensure Student's consistent participation in instruction and related services. The Hearing Officer concludes that the evidence supports a finding that School D is a school placement that is "proper under the Act"

**ORDER:**<sup>8</sup>

1. DCPS shall, within ten (10) business days of the issuance of this order, revise Student’s IEP to prescribe 25 hours per week of specialized instruction outside general education, a special education separate school as Student’s least restrictive environment (“LRE”), and to prescribe 240 minutes per month of behavioral support services.
2. DCPS shall, within fifteen (15) business days of the issuance of this order, place and fund Student at School D and provide transportation services.
3. Within twenty (20) school days of Student being assigned to School D and provided transportation services, DCPS shall convene an IEP meeting to review Student’s participation and progress in both virtual and in-person learning at School D, and make a determination whether a more restrictive placement is warranted.
4. The time frame in which the compensatory education awarded to Student in the March 17, 2020, HOD is to be used is hereby extended until the end of SY 2022-2023.<sup>9</sup>
5. 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 concerning 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 23, 2021**

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<sup>8</sup> Respondent’s deadlines for compliance any of the provisions of this order shall be extended on a day for day basis for any delay in compliance caused by Petitioner.

<sup>9</sup> In the March 17, 2020, HOD, the hearing officer awarded Student the following as compensatory education 300 hours of academic tutoring, 200 hours of mentoring, and 150 hours of counseling from independent providers chosen by Petitioner, to be used within 2 years of the date of that HOD.