

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, D.C. 20002

OSSE
Office of Dispute Resolution
October 23, 2016

<i>Student</i> , ¹)	Date Issued: 10/23/16
through his <i>Parent</i> ,)	
<i>Petitioner</i>)	Case No.: 2016-0171
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	Hearing Dates: October 5, 12, 14, 2016
("DCPS"),)	Hearing Locations: ODR Rooms 2004,
Respondent)	2006, 2003
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") because he was not provided appropriate Individualized Education Programs ("IEPs"), his educational placement was not appropriate and was unilaterally changed, and he was on a diploma rather than certificate track, among other issues. DCPS responded that Student's IEPs and placement were appropriate and he was benefiting from the diploma track.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

Following the filing of the due process complaint on 7/22/16, the case was assigned to the undersigned on 7/26/16. DCPS filed a timely response on 8/1/16, and did not challenge jurisdiction. The resolution session meeting took place on 8/12/16, but the parties

¹ Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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neither settled the case nor terminated the 30-day resolution period, which ended on 8/21/16. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which required a Hearing Officer Determination (“HOD”) by 10/5/16, which the parties agreed by continuances to extend to 10/31/16.

The due process hearing took place on 10/5/16, 10/12/16 and 10/14/16, and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present during virtually the entire hearing.

Petitioner’s Disclosures and Supplemental Disclosures, both submitted on 9/21/16, contained documents P1 through P49, which were admitted into evidence without objection, except for an objection to P39-1 through P39-144 that was sustained, and objections to P31 and P39-145 through P39-176 that were overruled.

Respondent’s Disclosures, submitted on 9/21/16, contained documents R1 through R33, which were admitted into evidence without objection.

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. *Educational Advocate* (qualified without objection as an expert in Special Education Programming and Placement for Students with Disabilities)
2. *Community Support Worker* (qualified over objection as an expert in Determination of Appropriate Community Supports for People with Disabilities)
3. *Founder* of Compensatory Education Provider
4. *Principal* of Nonpublic School (qualified without objection as an expert in the Placement and Programming of Students Who Require Nonpublic Placements Due to Their Disabilities)

Petitioner’s counsel presented Parent as the sole rebuttal witnesses.

Respondent’s counsel presented 6 witnesses in Respondent’s case (*see Appendix A*):

1. *School Social Worker* at Public School (qualified without objection as an expert in School Social Work, Including the Development of Behavior Intervention Plans)
2. *School Psychologist* at Public School (qualified without objection as an expert in School Psychology with a Focus on Reviewing and Interpreting Special Education Assessments, and Special Education Programming)
3. *Special Education Math Teacher* at Public School

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4. *Program Manager, Secondary Transition, DCPS (qualified without objection as an expert in Transition Planning)*
5. *Special Education Coordinator at Public School*
6. *Special Education Transition Teacher at Public School*

The issues to be determined in this Hearing Officer Determination are:

Issue A: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on 4/24/15, where: (1) Student was placed on the diploma track without his IEP team determining that was appropriate; (2) the focus was on common core grade-level standards rather than functional/daily living skills; (3) the transition plan was inappropriate and not based on appropriate assessments; and (4) the IEP team never discussed or determined Student's placement for the 2015/16 school year and did not include Student's placement and Least Restrictive Environment ("LRE") in his IEP. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Issue B: Whether DCPS denied Student a FAPE by inappropriately changing his educational placement for the 2015/16 school year, which was made without involvement by Parent or the rest of his IEP team. *Respondent has the burden of persuasion on the issue of appropriate placement (but not change in placement or parental involvement), if Petitioner establishes a prima facie case.*

Issue C: Whether DCPS denied Student a FAPE by failing to implement his IEPs during the 2015/16 school year by not providing (1) an iPad and other Assistive Technology, and (2) all of his specialized instruction hours outside the general education setting.² *Petitioner has the burden of persuasion on this issue.*

Issue D: Whether DCPS denied Student a FAPE by failing to appropriately address his disability-related class attendance issues in the 2015/16 school year through his IEP/educational programming, where Student missed more than 50 days of school. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Issue E: Whether DCPS denied Student a FAPE by preventing Parent's expert from observing Student in his current placement due to unreasonable and unlawful conditions. *Petitioner has the burden of persuasion on this issue.*

² Respondent objected during the Prehearing Conference to the inclusion of part (2), asserting that Petitioner raised the issue for the first time in the Prehearing Conference. The undersigned included the issue because it is clearly stated in the complaint at pp. 10, 17 and 18, although not in the "Issues presented" section of the complaint at pp. 24-53 (as would have been desirable).

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Issue F: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on 2/9/16, where: (1) his hours of specialized instruction were reduced when they should have been increased; (2) Student remains on the diploma track; (3) the focus remains on common core grade-level standards rather than functional/daily living skills; (4) his IEP team never determined or stated Student's placement and LRE in his IEP; (5) Student was not provided ESY for Summer 2016; and (6) Student lacks an appropriate transition plan based on appropriate vocational assessments. *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Petitioner seeks the following relief:

1. A finding that Student was denied a FAPE.
2. Within 10 business days, DCPS shall place and fund Student at Nonpublic School, with transportation.
3. Within 15 school days, DCPS shall convene an IEP meeting and revise Student's IEP to: (a) provide specialized instruction of 32 hours/week outside general education; (b) provide 0.5 hours/week of speech-language services outside general education; (c) revise the LRE section to state that Student needs a separate special education school for students with cognitive and language deficits; (d) include Extended School Year, if Student is not in a full-year academic program; and (e) provide a touch-tablet as Assistive Technology. In the alternative, Student's IEP shall be revised to align with the HOD issued in this case.
4. Within 10 business days, DCPS shall provide authorization to fund an independent Vocational Assessment Level III, and upon completion shall convene an IEP team meeting to review the assessment and update the Post-Secondary Transition Plan in Student's IEP.
5. DCPS shall fund compensatory education for any denial of FAPE, from the beginning of the 2015/16 school year to the present.³

The parties were permitted to submit legal citations after the hearing, which neither did.

³ Petitioner's counsel was put on notice at the prehearing conference that Petitioner must introduce evidence supporting the requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Further, Respondent was encouraged to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact⁴ are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.⁵ Student is *Age* and is in *Grade* at Public School.⁶

2. Student is classified as having Multiple Disabilities ("MD"), with both Speech Language Impairment ("SLI") and Other Health Impairment ("OHI") due to Attention Deficit Hyperactivity Disorder ("ADHD").⁷

3. Student has low cognitive functioning as shown by Reynolds Intelligence Assessment Scales ("RIAS") and the Wechsler Individual Achievement Test ("WIAT") scores.⁸ Student's low cognitive levels have been consistent over time, with his full scale intelligence quotient (FSIQ) reported as 63, 69, and 67.⁹ Student's verbal intelligence (VIX of 63, which is at the 1st percentile rank of those Student's age) is notably lower than his nonverbal intelligence (NIX of 81, which is at the 9th percentile rank of those Student's age); his composite memory index is significantly below average (CMX of 50, which is at the 0.04 percentile rank of those Student's age).¹⁰

4. Despite his cognitive limitations, Student has never been classified as Intellectually Disabled ("ID"), which requires both low cognitive ability and low adaptive functioning.¹¹ Adaptive skills are assessed both by testing and observation; Student has quite well developed adaptive skills.¹² ID was previously ruled out by Student's 4/4/14 Psychological Re-evaluation.¹³

⁴ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

⁵ Parent.

⁶ *Id.*

⁷ P45-1; R6-1,2; R7-1,2; Educational Advocate.

⁸ P13-9; P11-7; P35-10,14; Educational Advocate.

⁹ P35-5; P34-5,6; R2-4; R3-4; Educational Advocate.

¹⁰ P35-11,12.

¹¹ School Psychologist; Educational Advocate; R6-1.

¹² School Psychologist.

¹³ R5-26; School Psychologist.

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5. Student's recent IEPs are consistent in describing a young man with significant needs who works at communicating with peers, has severe deficits in both math and reading, and struggles with memory retention.¹⁴ Student's recent IEPs have been fulltime, with 27 hours/week of specialized instruction outside general education, and 120 minutes/month of speech-language pathology outside general education.¹⁵ Given his memory challenges, Student was authorized to attend Extended School Year ("ESY") in recent IEPs, but ESY was omitted from his 2/9/16 IEP.¹⁶ Student's IEPs note that he will "benefit greatly" from assistive technology, with the 4/24/15 IEP noting that Student had been provided an iPad with various programs for academic use.¹⁷ The 4/24/15 and 2/9/16 IEPs at issue in this case included a general statement on the LRE pages that Student needs small group or one-on-one instruction and on the final pages stated that Student is projected to receive a high school diploma.¹⁸

6. Student is a beginning reader with problems recognizing sight words and sounding out words phonetically.¹⁹ A Reading Comprehension Assessment on 8/31/16 found that Student was a beginning reader at the 1st percentile rank.²⁰ Student struggles with words such as "in (is), as (is), was (whose), have (here), when (they), there (the) and could (cool)."²¹ For Student to access any form of text, he either needs to be read to or needs pictures that describe the text.²² On the 2015 PARCC, Student was on Level 1 in English Language Arts ("ELA") with a score of 666, which was better than 9% of other DCPS students in his grade.²³

¹⁴ P13-2; P11-2; P10-3.

¹⁵ P10-10 (4/28/14); P11-10 (4/24/15); P13-12 (2/9/16; only 25 hours/week listed, which DCPS counsel stated was an error and intended to be 27 hours/week).

¹⁶ DCPS indicated that omitting ESY from the 2/9/16 IEP occurred without communication with Parent so DCPS was willing to provide independent services to make up missed instruction. P13-16; P11-14; P10-13; Amended Prehearing Order (9/7/16) at 4. The undersigned takes administrative notice that ESY was held from 7/5/16 to 7/29/16 for 5 hours/school day, for a total of 95 hours, based on information posted on DCPS's website at <http://webcache.googleusercontent.com/search?q=cache:http://dcps.dc.gov/service/summer-school-programs-grades-9-12>.

¹⁷ P13-2,12; P11-2,10; P10-3.

¹⁸ P11-11,20; P13-13,21.

¹⁹ See Student's SRI on 9/9/15 and the Woodcock-Johnson III Tests of Achievement ("WJ III") in Broad Reading finding him in the very low range. P13-5; P11-5.

²⁰ P44-6,7.

²¹ P13-5; P11-5.

²² P13-5.

²³ P32-7,8.

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7. In Math, the WJ-III found that Student was at a 1.1 grade level equivalency in Broad Math.²⁴ On the 2015 PARCC, Student was on Level 1 in Math with a score of 672, which was better than 20% of other DCPC students in his grade.²⁵

8. In Written Expression, in the WJ-III for Writing Fluency Student received a score of 0; in spelling, Student was able to write upper and lower case letters but unable to spell any words.²⁶ However, Student is able to compose short sentences in response to written prompts and text dependent questions, if he receives focused instruction and small group instruction.²⁷

9. Student cannot remember what he learns from day to day, including the sounds of all letters.²⁸ Student cannot count money.²⁹ Student cannot tell time, which Special Education Transition Teacher worked on with him in his Employability Skills class.³⁰ Student needs to have information presented over and over in order to learn functional skills.³¹

10. Student is very quiet and does not present with behavioral challenges in the classroom.³² In FBA classroom observations, he exhibited appropriate behavior 100% of the time.³³ But when Student is left to proceed independently, he stops working on his assignments.³⁴ Student has no problems with other students and has received no suspensions.³⁵ Student's listening level is much higher than his reading level; he is good with concepts.³⁶ Student does a good job of articulating his thoughts and explaining himself.³⁷ Student knows a lot more than he communicates.³⁸

11. At Prior Public School in 2013/14³⁹ Student was in a self-contained special education class of 11 students who were all at about the same level of functioning as Student, with 4 who could read (below 2nd grade level), and 5 or so – including Student –

²⁴ P13-3; P11-3.

²⁵ P32-5,6.

²⁶ P13-7; P11-6.

²⁷ P13-7; P29-4.

²⁸ Educational Advocate; P45-4; Special Education Transition Teacher (difficulty remembering from day to day).

²⁹ P21-2; Educational Advocate; Community Support Worker.

³⁰ P21-1; Educational Advocate.

³¹ Educational Advocate.

³² P13-3; Educational Advocate.

³³ P29-2.

³⁴ P13-3.

³⁵ School Social Worker.

³⁶ P21-1; Community Support Worker.

³⁷ P21-1.

³⁸ Special Education Transition Teacher.

³⁹ All dates in the format “2013/14” refer to school years.

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who could not read.⁴⁰ The class focused on functional and daily living skills.⁴¹ Student's situation was much the same in 2014/15 at Prior Public School, in a satisfactory program with minimal progress.⁴²

12. The 4/24/15 IEP – the first of the 2 IEPs at issue in this case – was developed at Prior Public School without involvement of Parent.⁴³ DCPS's Parent Contacts log does not indicate when the meeting was set up initially, but notes on 4/23/15 that Parent had something come up, so planned to participate by telephone on 4/24/15, but then could not be reached in three attempts on 4/24/15.⁴⁴ The 4/24/15 IEP is signed by the DCPS participants.⁴⁵ Student's records do not contain a Letter of Invitation from Prior Public School or any notes from the 4/24/15 IEP meeting.⁴⁶ Educational Advocate wrote Prior Public School on 5/4/15 asking for a meeting to review Student's progress and goals for the next school year and did not receive any indication that an IEP meeting had just occurred with a new IEP having been finalized just 10 days earlier.⁴⁷

13. DCPS sent a location of services ("LOS") letter to Parent dated 6/12/15; the letter stated that Student would be in the Specific Learning Support ("SLS") program.⁴⁸ The SLS program is for students with a specific learning disability or cognitive impairment.⁴⁹ Parent did not receive the letter, so didn't know the program to which Student was assigned; Educational Advocate asked Public School in writing at least five times about Student's program without being told.⁵⁰

14. There was confusion at the beginning of 2015/16 when the DCPS bus tried to pick up Student and take him to the wrong school.⁵¹ In an email to the principals of Public School and the other school, Educational Advocate stated that there had been no meeting to discuss placement for 2015/16; Educational Advocate sought information about Student's school and program; no indication was given that there had been a IEP meeting.⁵² Educational Advocate communicated again after Student had missed a week of school, asking about his school and program.⁵³ Prior Public School Psychologist called and identified the school for Student, but did not know the program; Prior Public School

⁴⁰ P14-2,4; Educational Advocate.

⁴¹ Educational Advocate.

⁴² Educational Advocate.

⁴³ *Id.*

⁴⁴ R28-3.

⁴⁵ R10-1.

⁴⁶ Educational Advocate.

⁴⁷ P1-10; Educational Advocate.

⁴⁸ P46-1.

⁴⁹ P39-157; Special Education Coordinator.

⁵⁰ Educational Advocate; P1-11,12,13,15,18.

⁵¹ P1-11.

⁵² P1-11; Educational Advocate.

⁵³ P1-12; Educational Advocate.

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Psychologist indicated that the program decision was made by DCPS “downtown,” and thus not by Student’s IEP team.⁵⁴ Educational Advocate communicated with Special Education Coordinator on 9/4/15 to try to find out Student’s schedule and program, but received no response.⁵⁵ Educational Advocate asked Special Education Coordinator again on 10/2/15 and received no response.⁵⁶

15. Student’s schedule changed multiple times after he arrived at Public School in 2015/16.⁵⁷ As is typical, Student was given an initial schedule which was revised and largely finalized within the first month of school.⁵⁸ Student’s schedule changed to provide him a smaller setting in response to his complaints, as he did not like large classes.⁵⁹ Changes in his schedule made it more difficult for Student to get used to the larger building at Public School, but he settled in and soon learned his way around and was not overwhelmed by the size of the school.⁶⁰ Student now helps other students find their classes.⁶¹

16. Counsel for Parent communicated to Special Education Coordinator on 9/25/15 that Parent was “extremely concerned” about placement.⁶² At the first 10/19/15 meeting there was a lot of argument back and forth between Educational Advocate and Special Education Coordinator over the need for a different program for Student at Public School.⁶³ After the 10/19/15 meeting, Educational Advocate communicated by letter about the lack of an IEP meeting or Prior Written Notice about the change in placement when moving from Prior Public School to Public School.⁶⁴

17. Diploma Track/Certificate Track. In the first meeting at Public School on 10/19/15, Student’s classes were reviewed and Parent and Educational Advocate realized for the first time that Student was on the diploma track.⁶⁵ There was no discussion about diploma versus certificate track on 10/19/15 and only a little said at the 2/9/16 meeting; no objections to the diploma track were raised.⁶⁶

⁵⁴ P1-13; Educational Advocate.

⁵⁵ P1-15; Educational Advocate.

⁵⁶ P1-18; Educational Advocate.

⁵⁷ Educational Advocate.

⁵⁸ Special Education Coordinator.

⁵⁹ School Social Worker; School Psychologist.

⁶⁰ School Social Worker.

⁶¹ School Psychologist.

⁶² P1-15; Educational Advocate.

⁶³ Community Support Worker.

⁶⁴ P1-26; Educational Advocate.

⁶⁵ Educational Advocate; P19-1.

⁶⁶ Community Support Worker.

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18. Public School personnel understood that Parent felt it important for Student to be on the diploma track.⁶⁷ Special Education Transition Teacher perceived disagreement between Parent and Educational Advocate over whether diploma or certificate track was best for Student.⁶⁸ Parent and her advocates never specifically asked for a change from Diploma to certificate track.⁶⁹

19. School Psychologist thinks proceeding on the diploma track is a good plan for Student as long as he gets support and treatment for his OHI/SLI.⁷⁰ A diploma will help Student feel successful and is important when he hears other students and friends talking about diplomas.⁷¹ Segregating Student in a special-education-only environment would be harmful for Student, as he fares better around his general education peers.⁷² School Psychologist believes the certificate track is not appropriate for Student.⁷³ If Student had moderate, severe or profound ID, it would make sense for him to be on the certificate track.⁷⁴ Those with moderate or mild ID can be on either the diploma or certificate track; it should be a decision of the IEP team.⁷⁵

20. Public School can work with Student and Parent to get his diploma if they want to pursue it.⁷⁶ After getting to know Student, Special Education Coordinator thinks that Student has the strengths that will enable him to get a diploma, even though he cannot read or write.⁷⁷ Student can also learn life skills while on the diploma track, such as in the transition classes he has been taking.⁷⁸ But if Parent wants certificate track, Special Education Coordinator and Public School are open to changing Student to the certificate track.⁷⁹ Public School can support Student on either the diploma track or certificate track.⁸⁰ Special Education Transition Teacher, who taught life skills to Student, thinks that either track would be appropriate to prepare Student for what comes next in his life.⁸¹

⁶⁷ School Social Worker; Special Education Coordinator; Special Education Transition Teacher.

⁶⁸ Special Education Transition Teacher.

⁶⁹ Educational Advocate; Special Education Coordinator.

⁷⁰ School Psychologist.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Special Education Coordinator.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Special Education Coordinator; Special Education Transition Teacher.

⁸¹ Special Education Transition Teacher.

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21. The diploma track is the default at Public School, where there are about 700 students of which about 200 have IEPs.⁸² Public School has 25 students on the certificate track based on their level of understanding.⁸³ The 25 certificate track students are considerably lower functioning than Student and are classified as ID or on the autism spectrum.⁸⁴ Public School never suggested a certificate track for Student.⁸⁵ Many other students classified as ID – which Student does not have – are on the diploma track at Public School.⁸⁶ Student’s SLS program is not self-contained and does not move as a group during transitions; those in the certificate track ID program do move altogether and are fully supervised.⁸⁷

22. IEP Goals. Student’s goals were repeated for the third time in his 4/24/15 IEP.⁸⁸ As a practical matter, Prior Public School focused on functional skills, so that Student could live and work independently.⁸⁹ Student’s goals in his 2/9/16 IEP differed from his 4/24/15 IEP in several ways, including no longer stating that material would be read to Student, but that there would be “focused instruction.”⁹⁰

23. Grades. In 2015/16, Student failed 3 courses (Biology, Employability Skills, P.E.) and passed 11 courses, mostly with very low grades and earned 8 credits.⁹¹

24. Math. Special Education Math Teacher taught Student Algebra I the entire 2015/16 school year.⁹² There were generally 12 students in class (14 on the roster), with one teacher.⁹³ Sometimes the class of 12 was divided into smaller groups.⁹⁴ All the students had IEPs, most classified as Specific Learning Disability, two as Emotional Disturbance and one with a Traumatic Brain Injury.⁹⁵ Students were placed in Special Education Math Teacher’s class if they were low in both Math and Reading.⁹⁶ Student was similar to the others in class in his math ability, but was lower in reading, although one other student couldn’t read.⁹⁷ Special Education Math Teacher worked on math fluency in the context of Algebra I standards and IEP goals, with basic adding and subtracting (such as $x + 3 = 5$) and

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Special Education Coordinator; Special Education Transition Teacher.

⁸⁵ Special Education Coordinator.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Educational Advocate.

⁸⁹ *Id.*

⁹⁰ Educational Advocate; P13-6,8; P11-5,6.

⁹¹ P5-12,13,14.

⁹² Special Education Math Teacher.

⁹³ Special Education Math Teacher; *cf.* P20-3.

⁹⁴ Special Education Math Teacher.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

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some multiplying and dividing.⁹⁸ Student's math fluency skills improved during the course.⁹⁹ Special Education Math Teacher also worked on functional skills and daily living once a week, focusing on counting money, making change, telling time, and other real world problems.¹⁰⁰ Word problems were always read aloud many times to the entire class.¹⁰¹

25. Over the course of the year, Student got more comfortable interacting with other students in math class and raising his hand or asking his work partner for assistance.¹⁰² In working on Annual Goal 3 in Math, Student would work with polynomials by color coding with pencils.¹⁰³ Student is capable of earning credits towards his diploma; Algebra I is a diploma course.¹⁰⁴ Student received "Ds" because he was not turning in homework and not making up missed work; Student could do more.¹⁰⁵

26. Special Education Math Teacher testified that Student was able to rely on past notes and examples from past work to complete work independently.¹⁰⁶ Educational Advocate disputed that Student would be able to do that given his low reading level, but the undersigned finds Special Education Math Teacher more credible based on her regular observations of Student in the classroom and her testimony that Student is able to find and use the numbers and equations from his notes, which do not require reading text.¹⁰⁷ On the other hand, Special Education Math Teacher testified that if material is sufficiently scaffolded to meet Student's needs that he can access grade level work, which strains the credulity of the undersigned, although it is possible to credit that there is some progress occurring and that Student may gain some understanding of basic concepts and thus is receiving educational benefit.¹⁰⁸

27. World History. Student was in an inclusion class for World History with 25 students, but pulled out for specialized instruction in a group of 17.¹⁰⁹ That special education group was further subdivided into smaller groups, which Student liked.¹¹⁰ In World History, the teacher provided guided notes to Student, which were quite complex.¹¹¹

⁹⁸ *Id.*

⁹⁹ R17-2.

¹⁰⁰ Special Education Math Teacher.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Special Education Math Teacher; P13-4.

¹⁰⁴ Special Education Math Teacher.

¹⁰⁵ *Id.*

¹⁰⁶ Special Education Math Teacher; P48-1,4.

¹⁰⁷ Educational Advocate; Special Education Math Teacher.

¹⁰⁸ Special Education Math Teacher; P48-4.

¹⁰⁹ Educational Advocate.

¹¹⁰ Community Support Worker.

¹¹¹ P31-13,25.

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Community Support Worker worked at home with Student on the guided notes, but Student struggled with the concepts and would storm off to his room.¹¹²

28. Music. Student was in a general education class for Music, which he liked; Public School provided a paraprofessional to go with Student to Music.¹¹³ The paraprofessional had music training and provided support for students with IEPs; about 5 of the 15 students in Music had IEPs.¹¹⁴ At the 10/19/15 meeting, Student's schedule was reviewed and after hearing about Music and History, Parent was satisfied and had no further concerns.¹¹⁵

29. P.E. Student's physical education was a general education class, not special education.¹¹⁶ Student received an "F" in the class the first time he took it and a "C" the second time.¹¹⁷

30. Transition Classes. Student "blossomed" while Special Education Transition Teacher taught him transition courses in 2015/16.¹¹⁸ Special Education Transition Teacher's classes were helpful to Student in being able to find his voice and speak in front of the class.¹¹⁹

31. Other Courses. Biology was a special education class with 10-15 students taught by a special education science teacher, but is very difficult and Student was expected to read so attendance was a problem.¹²⁰ Art was a special education class with about 10 students.¹²¹ Student is good at art.¹²²

32. Lunch. Student was not eating lunch because the entire Public School goes to lunch at once and he was not comfortable going through the line to get food in the noisy cafeteria.¹²³ Student stated that he doesn't eat lunch because he is not hungry and likes snacks instead; his ADHD medication may suppress his appetite.¹²⁴ The concerns about Student not eating lunch were in the earlier part of 2015/16, but now he has friends and is socializing and has lunch in the cafeteria.¹²⁵ Student liked edible rewards so he wouldn't be

¹¹² Community Support Worker.

¹¹³ School Social Worker; Community Support Worker.

¹¹⁴ Special Education Coordinator.

¹¹⁵ *Id.*

¹¹⁶ P21-2; Educational Advocate; Special Education Coordinator.

¹¹⁷ P5-13,14.

¹¹⁸ Special Education Transition Teacher; P5-7 (received "B" in Employability Skills and comment that Student was a "Pleasure to have in the class").

¹¹⁹ Special Education Transition Teacher; P5-13,14.

¹²⁰ Educational Advocate; P27-1; Special Education Coordinator.

¹²¹ Special Education Coordinator.

¹²² P29-1.

¹²³ P1-25,26; Educational Advocate; Community Support Worker.

¹²⁴ School Social Worker.

¹²⁵ Special Education Coordinator.

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hungry.¹²⁶ Incentives worked well with Student, who earned snacks by reporting to class, as well as participation or engagement.¹²⁷

33. Differing Perspectives. Parent's counsel stated on 9/25/15 that Student is "very disabled" so should not wander the halls at Public School.¹²⁸ Student had a learning curve about how to find his classes, but all kids do when they arrive at Public School.¹²⁹ By 10/19/15, Public School reported that Student is "quite capable," had fully acclimated to the challenges of Public School, and that he is social and has developed relationships.¹³⁰ In arriving at the higher level school, many students find they can do more than in their previous schools.¹³¹ Student is able to joke and make wisecracks with nuances that other students sometimes don't get; he is able to help other students get to class; he is making friends at Public School and seeks out adult help when needed.¹³² Student has made progress since 2015/16 in making himself a part of a larger school.¹³³

34. On 10/20/15, Student missed the bus and Special Education Coordinator had a long conversation with Parent about Student and his desire to be more independent; Parent was definite in her view that Student should not walk home, so transportation was continued.¹³⁴ Student was capable of walking and was adamant about not taking the bus, but Parent insisted he must.¹³⁵ Special Education Coordinator respected Student's opinion, which she shared with Parent, but recognized that Student was a minor and the decision was up to Parent.¹³⁶ Student could walk home from Public School apart from the neighborhood being dangerous.¹³⁷ Public School recommended that Student apply for the summer work program, which Parent would not allow because of transportation.¹³⁸

35. Student has positive relationships with School Social Worker and School Psychologist and would frequently seek out each of them at lunch and during transitions.¹³⁹ School Social Worker would often walk Student to classes he struggled with and encourage him to attend.¹⁴⁰ Student would also talk with School Psychologist about classes or teachers

¹²⁶ P29-1.

¹²⁷ School Social Worker.

¹²⁸ P1-15.

¹²⁹ School Psychologist.

¹³⁰ P19-2.

¹³¹ Special Education Coordinator.

¹³² School Psychologist.

¹³³ *Id.*

¹³⁴ Special Education Coordinator; P1-21.

¹³⁵ Special Education Coordinator; P20-3.

¹³⁶ Special Education Coordinator.

¹³⁷ Community Support Worker; Special Education Transition Teacher.

¹³⁸ P20-2.

¹³⁹ School Social Worker; School Psychologist.

¹⁴⁰ School Social Worker.

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he didn't like.¹⁴¹ Student also stops by to see Special Education Transition Teacher before school, although he is no longer in her class.¹⁴²

36. Attendance. Attendance was an issue for Student before arriving at Public School; a 2/21/14 report indicates that Student was absent 25 of 45 days enrolled.¹⁴³ Community Support Worker began working with Student in April 2015 while he was at Prior Public School because of his difficulties with grades and attendance; Student also exhibited anxiety at that time.¹⁴⁴ Community Support Worker tried to meet with Student at Prior Public School, but he often could not be found where he was supposed to be.¹⁴⁵ Because of his anxiety and to boost his social skills, over the summer of 2015 Community Support Worker assisted Student in obtaining a dog as an emotional support animal.¹⁴⁶ Student became more anxious at Public School.¹⁴⁷

37. Attendance at Public School was a significant issue for Student; Public School called Parent on 9/25/16 and communicated many other times about Student not going to class.¹⁴⁸ On 10/19/15 a multidisciplinary team meeting was held in which a reward system for Student was expanded to assist with attendance.¹⁴⁹ On 10/20/15, Student was attempting to get signatures from teachers to show his attendance, when he missed his bus.¹⁵⁰

38. In 2015/16, Student had 57 absences (of which 48 were unexcused).¹⁵¹ Student was often at school on those days, but missing a single class results in being marked absent for the day.¹⁵² Student was picking and choosing the classes he would attend.¹⁵³ Student often would go to School Social Worker when he didn't want to go to class and she would talk to him and walk him to class; Student was able to advocate for himself.¹⁵⁴ Student was also encouraged to make up missed work by seeing teachers at lunch or after school and to attend Saturday School, which he did not do.¹⁵⁵

¹⁴¹ School Psychologist.

¹⁴² Special Education Transition Teacher.

¹⁴³ P45-3.

¹⁴⁴ Community Support Worker.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ P1-15; Educational Advocate.

¹⁴⁹ R12-1.

¹⁵⁰ P1-21.

¹⁵¹ P5-12.

¹⁵² Special Education Coordinator.

¹⁵³ *Id.*

¹⁵⁴ P20-2; School Social Worker.

¹⁵⁵ R22-4; Special Education Math Teacher; Community Support Worker (no after school tutoring).

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39. Student seems to be doing better with school in 2016/17 and once again wants to go to school.¹⁵⁶ Student's attendance is better in 2016/17, with friends and rapport with teachers.¹⁵⁷ Student does not need a smaller school in order to attend class, but just smaller classroom settings.¹⁵⁸

40. iPad. An Assistive Technology Assessment on 4/4/14 recommended that Student use a touch tablet with text-to-speech output to assist with access to grade level text; his IEP team agreed that an iPad was needed.¹⁵⁹ Student obtained an iPad near the end of 2013/14 at Prior Public School, which he was allowed to take home with him.¹⁶⁰ The iPad was used for voice recognition and speech output and was helpful with computations and phonics.¹⁶¹ Student's IEPs did not expressly require an iPad, but stated that Student would benefit greatly from use of assistive technology.¹⁶² Student's IEP classroom accommodations and assessment accommodations also listed "external assistive technology" as an alternative to speech-to-text or a human scribe, but not an iPad specifically.¹⁶³

41. In ELA, test questions would be read to Student, he would respond orally, and his answers would be written down.¹⁶⁴ Teachers, paraprofessionals and peers often would write for Student; Student is read to a lot at Public School by his teachers and aides.¹⁶⁵ Public School has tablets and desktop computers available to students, some of which had text-to-speech and speech-to-text capabilities.¹⁶⁶ Student's teachers knew that he needed access to computers in the classroom with software for speech output.¹⁶⁷ Computers were also available in the library, which Student could access.¹⁶⁸

42. Student's iPad was lost or stolen at Prior Public School; after moving to Public School, Parent raised the lack of an iPad for Student on 9/25/15 via counsel.¹⁶⁹ On 10/19/15, Public School agreed to contact the Assistive Technology department about replacing Student's iPad.¹⁷⁰ Student's replacement iPad arrived early in 2016 around the

¹⁵⁶ Educational Advocate.

¹⁵⁷ School Social Worker.

¹⁵⁸ *Id.*

¹⁵⁹ P36-4; Educational Advocate.

¹⁶⁰ P1-9.

¹⁶¹ Educational Advocate; P18-1.

¹⁶² P11-2,10 (noting that Student had been provided with an iPad); P13-2,12.

¹⁶³ P11-12; P13-14.

¹⁶⁴ Special Education Coordinator.

¹⁶⁵ *Id.*

¹⁶⁶ Special Education Coordinator; P20-2.

¹⁶⁷ Special Education Coordinator.

¹⁶⁸ *Id.*

¹⁶⁹ P1-15; Educational Advocate.

¹⁷⁰ P19-2; Community Support Worker; Special Education Coordinator.

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beginning of second semester.¹⁷¹ Student was not allowed to take the new iPad home until September 2016, but was using it at Public School.¹⁷²

43. FBA/BIP. Parent and her advocates agreed to an FBA being conducted.¹⁷³ An FBA was completed on 4/29/16 finding that Student refuses to go to class or do work in large or new classes where he does not have rapport with the teacher.¹⁷⁴ Avoiding larger classes and addressing academics by removing Student could be done in a regular public school; Student might feel different and suffer a loss of self-esteem if he went to a special education school.¹⁷⁵

44. Student is showing improvement in classes he had since the beginning of the school year.¹⁷⁶ A BIP Level II dated 4/29/16 focused on Student's attendance and anxiety issues, encouraging his teachers to have frequent check-ins, establish non-verbal and verbal cues for obtaining assistance, giving positive feedback, peer collaboration and more; these are good for anxiety.¹⁷⁷ However, these would not eliminate anxiety due to Student's work being too hard.¹⁷⁸ Student disengages when he does not understand, although he may appear to be on task.¹⁷⁹ Student's BIP was created to address his anxiety and called for smaller settings.¹⁸⁰ The BIP did not say anything about using an attendance sheet, which had been tried early in 2015/16 for a short time.¹⁸¹ The BIP was reviewed with Parent and Educational Advocate; the entire IEP team – including Parent and Educational Advocate – agreed on the plan.¹⁸² Parent should work with Student at home to reinforce his learning.¹⁸³

45. Observation Efforts. By email on 11/9/15, Educational Advocate sought to observe Student at Public School, based on concerns that Public School could not meet Student's needs and implement his IEP.¹⁸⁴ After back and forth about the focus of the observation and forms to be signed, no observation was allowed when Educational Advocate refused to sign the confidentiality agreement provided by Public School (P1-36), even when DCPS's counsel stated that she could strike out any provisions she found objectionably.¹⁸⁵ Educational Advocate viewed the form as "insulting and inappropriate" and refused to mark

¹⁷¹ Special Education Coordinator.

¹⁷² *Id.*

¹⁷³ Educational Advocate.

¹⁷⁴ P29-1.

¹⁷⁵ School Psychologist.

¹⁷⁶ P29-3.

¹⁷⁷ P30-3; School Social Worker; Community Support Worker.

¹⁷⁸ Community Support Worker.

¹⁷⁹ Educational Advocate; P30-5.

¹⁸⁰ School Social Worker.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ School Psychologist.

¹⁸⁴ P1-30,26.

¹⁸⁵ P1-31,32,33,34,35,36,38,39,40,41.

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out what was objectionable and sign the rest; Educational Advocate was not permitted to observe at Public School.¹⁸⁶

46. Transition Plan. Student's Post-Secondary Transition Plan in his 4/24/15 IEP was based on two assessments: Student Dream Sheet and Career Clueless Career Inventory, both of which can be administered orally and which were age-appropriate to begin Student thinking about his future.¹⁸⁷ Student's interests were more defined than usual at his age; his goals were appropriately broad.¹⁸⁸ This is an age-appropriate transition plan.¹⁸⁹

47. Student's Post-Secondary Transition Plan in his 2/9/16 IEP was based on three assessments: What's Your Learning Style, Job Related Interest Inventory, and Independent Living Assessment, which are often administered orally and were age-appropriate for Student.¹⁹⁰ At this stage, Student's goals remained appropriately broad; this is an age-appropriate transition plan.¹⁹¹

48. Among other things, Student indicated that he wanted to be a truck driver or a UPS driver, which Parent's advocates viewed as being unattainable and unrealistic due to Student's reading and other limitations.¹⁹² At Student's age, exploration of interests needs to come first.¹⁹³ If students' interests do not align with their capabilities, they need to realize that themselves; it is not up to the school or teachers to tell students what they can and can't do in the future.¹⁹⁴ It's not possible to know now what any student's future skills will be, but upcoming transition plans will provide a more practical assessment of skills and begin to connect skills with interests.¹⁹⁵ The job of the school is to respect Student's interests and help him achieve them.¹⁹⁶ Student's transition plans are consistent with Student's interests as expressed in his transition classes.¹⁹⁷ Special Education Transition Teacher talked with Student about how people are able to overcome disabilities to obtain their drivers' licenses.¹⁹⁸

49. Compensatory Education. Petitioner's Compensatory Education Plan calls for 150 hours of tutoring to make up for functional instruction that Student missed and 150 hours of art therapy to address his anxiety and social skills and help him re-engage the academic

¹⁸⁶ Educational Advocate.

¹⁸⁷ P11-17; R29-12,13; R29-10,11; Program Manager.

¹⁸⁸ P11-17,18,19; Program Manager.

¹⁸⁹ Program Manager.

¹⁹⁰ P13-17; R29-1,2; R29-3,4; R29-5,6,7,8,9; Program Manager.

¹⁹¹ P13-17,18,19,20; Program Manager.

¹⁹² Educational Advocate; Community Support Worker.

¹⁹³ Program Manager.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Special Education Coordinator.

¹⁹⁷ Special Education Transition Teacher.

¹⁹⁸ *Id.*

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environment.¹⁹⁹ In the expert opinion of Educational Advocate, these hours are not all that Student needed to make up what he missed based on all the claims asserted and put him in the position that he should be in, but are all the hours from which Student could benefit.²⁰⁰ Educational Advocate suggested remedial work in reading, writing and math that would help him read functional signs, such as danger signs, write brief notes when he leaves the house, and be able to make change and go shopping.²⁰¹ Student continues to need reinforcement of functional skills, such as time and money skills.²⁰²

50. Compensatory Education Provider offers tutoring (at \$65/hour), using certified teachers as tutors and selecting an appropriate tutor for the student's level of cognitive impairment.²⁰³ A plan is developed for students based on their needs; lesson plans are based on their IEPs and meetings with teachers and can include functional life skills.²⁰⁴ A literacy coach can work with a beginning reader, but to use Read 180 the student needs to be at least on a 3rd grade reading level.²⁰⁵ Compensatory Education Provider provides transportation and can pick up students from their school or home.²⁰⁶ Compensatory Education Provider also offers therapeutic art therapy (at \$95/hour) which can address anxiety, among other concerns.²⁰⁷

Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

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

"[T]o further Congress' ambitious goals for the IDEA, the Supreme Court has focused on the centrality of the IEP as 'the centerpiece of the statute's education delivery system for disabled children.'" *Harris v. Dist. of Columbia*, 561 F. Supp. 2d 63, 67 (D.D.C. 2008), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988).

¹⁹⁹ Educational Advocate.

²⁰⁰ *Id.*

²⁰¹ Educational Advocate; P2-4.

²⁰² Educational Advocate.

²⁰³ Founder of Compensatory Education Provider.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

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Once a child who may need special education services is identified and found eligible, DCPS 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); *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).

As discussed below, the Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. Congress, however, "did not intend that a school system could discharge its duty under the [Act] by providing a program that produces some minimal academic advancement, no matter how trivial." *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

In addition, Respondent must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114.

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights.

Petitioner shall carry the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent shall have the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). "Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5-E D.C.M.R. § 3030.3.

Issue A: *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on 4/24/15, where: (1) Student was placed on the diploma track without*

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his IEP team determining that was appropriate; (2) the focus was on common core grade-level standards rather than functional/daily living skills; (3) the transition plan was inappropriate and not based on appropriate assessments; and (4) the IEP team never discussed or determined Student's placement for the 2015/16 school year and did not include Student's placement and Least Restrictive Environment in his IEP. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)

Petitioner did establish a prima facie case on each part of Issue A, shifting the burden of persuasion, but Respondent succeeded in meeting its burden of proof on parts (1), (2) and (3), but not (4), as discussed below.

The applicable legal standard is whether Student's 4/24/15 IEP was "reasonably calculated to produce meaningful educational benefit" and permit him to access the general education curriculum so he could advance toward meeting his annual goals pursuant to 34 C.F.R. 300.320(a)(4). *See Damarcus S. v. Dist. of Columbia*, 2016 WL 2993158, at *12 (D.D.C. May 23, 2016); *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 204 (D.D.C. 2013), quoting *Rowley*, 458 U.S. at 206-07. The measure and adequacy of the IEP are to be determined as of 4/24/15, the time it was offered to Student. *See, e.g., S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008). The suitability of Student's IEP is analyzed by considering each of the concerns raised by Petitioner in turn. *See* 34 C.F.R. 300.320(a)(4),(5); *Honig*, 484 U.S. at 311.

(1) Petitioner's first concern is that Student was improperly placed on the diploma track by his 4/24/15 IEP. This question goes to the heart of the case, but comes down to the fact that, pursuant to the D.C.M.R., the diploma track is the default. DCPS has established the necessary course work, described as Carnegie Units, that students must successfully complete to earn a regular high school diploma, which is known as the "diploma track." *See* 5A D.C.M.R. § 2203.2. DCPS has also established an alternative for special needs students to receive an Individualized Education Program (IEP) Certificate of Completion, known as the "certificate track," instead of a regular high school diploma. The D.C.M.R. requires that the decision to pursue a non-diploma program leading to a certificate must be made by the Student's IEP team including the parents and, where possible, the student. *See* 5A D.C.M.R. § 2203.8.

Here, Petitioner's allegation is backwards, as Student must be on the diploma track unless specific action has been taken by his IEP team to shift him to the certificate track. But even after Parent and Educational Advocate discovered that Student was on the diploma track in the first meeting at Public School on 10/19/15, they did not seek then (nor later) to have Student shifted to the certificate track. Public School personnel believed and still believe that Student is capable of earning a diploma and should be on the diploma track, despite his virtual inability to read and write due to his disabilities. However, Public School is willing to meet and discuss moving Student to the certificate track if Parent is clear that would be best for Student.

This Hearing Officer need not and does not make a determination of whether the diploma track or certificate track would be best for Student. But significant detail is set

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forth in the factual findings of this HOD on the perspectives of Public School personnel who believe that Student would be best served by earning a diploma and could do so despite his limitations. In particular, details of Student's Algebra 1 class from 2015/16 are included in the factual findings as an example of how modifications and accommodations may work for Student in diploma courses, permitting Student to achieve educational benefit, as his math fluency skills improved during the course of the year.

Thus, although there is no violation of the IDEA due to Student being on the diploma track, as part of the IEP meeting ordered below to address another issue, Public School is directed to meet with Parent, her representatives, and Student if possible, to discuss whether to shift Student to the certificate track, as Public School representatives stated during the due process hearing that they would be willing to do.

(2) The second concern raised by Petitioner is about focusing on common core grade-level standards rather than functional/daily living skills, which flows directly from Student being on the diploma track. As long as Student is on the diploma track the appropriate reference point for his goals are the common core standards as modified and tailored to take into account Student's disabilities. In fact, in Student's IEPs, the common core standards are referenced and then goals are developed that are substantially modified and adjusted to individualize them to Student. There is no violation of the IDEA by including common core standards, although if Student ends up shifting to the certificate track it will certainly impact both the reference to common core standards and his goals.

(3) The third concern of Petitioner is whether Student's post-secondary transition plan in his 4/24/15 IEP is appropriate and based on appropriate assessments.²⁰⁸ When considering the adequacy of a transition plan, the test is "whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits." *Lessard v. Wilton Lyndeborough Coop. School Dist.*, 518 F.3d 18, 30 (1st Cir. 2008) (citations omitted). Here, Student's transition plan in his 4/24/15 IEP was based on two assessments, the Student Dream Sheet and Career Clueless Career Inventory. Both of these assessments can be carried out orally and both were age-appropriate to begin Student thinking about his future. Moreover, Student's transition plan is consistent with the interests he expressed in his transition classes. In the expert and highly credible opinion of Program

²⁰⁸ The IDEA's transition provisions require that beginning not later than the first IEP to be in effect when the student turns 16, and updated annually, the IEP must include:

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

34 C.F.R. 300.320(b).

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Manager, Student's interests were more defined than usual at his age and his goals were appropriately broad; this was an age-appropriate transition plan.

Among other things, Student's interests included being a truck driver, which Parent's advocates challenged as being unattainable and unrealistic due to Student's reading and other limitations. But as Program Manager persuasively explained, at Student's age, exploration of interests needs to come first. If students' interests do not align with their capabilities, they need to realize that themselves, rather than being constrained by the school or teachers telling them what they can and can't do in the future. Moreover, a student's future skills are unknowable now and upcoming transition plans will provide more practical assessments of skills and begin to connect those skills with interests.

Accordingly, this Hearing Officer concludes that Respondent did establish that further assessment was not required and that the transition plan in Student's 4/24/15 IEP was appropriate and reasonably calculated to enable him to receive educational benefits. Indeed, an IEP is not required to offer Student the "best" transition plan – but only be reasonably calculated to provide him with meaningful benefit. *See K.S. v. Dist. of Columbia*, 962 F. Supp. 2d 216, 220-222 (D.D.C. 2013).

(4) Respondent failed to prove that it adequately discussed placement and LRE and included the requisite detail about Student's placement and LRE in his IEP, thereby providing Student a FAPE. The legal standard is set forth in the Court's recent decision in *Brown v. Dist. of Columbia*, 2016 WL 1452330, at *9 (D.D.C. Apr. 13, 2016), which found a student's IEP legally deficient because it failed to include a discussion of student's LRE and type of placement needed along the continuum of alternative placements. *See also* 34 C.F.R. 320(a)(5),(7); *A.I. ex rel. Iapalucci v. Dist. of Columbia*, 402 F. Supp. 2d 152, 159 (D.D.C. 2005). The insufficient IEP in *Brown*, 2016 WL 1452330, at *9, n.2, merely included the hours per week of specialized instruction and behavioral support, but omitted a sufficient description of student's LRE and placement.

Here, there was an IEP meeting on 4/24/15 in which neither Parent nor her representatives participated. Public School couldn't reach Parent for the IEP meeting and apparently did not attempt to reach her advocates who had been previously involved on Parent's behalf. The meeting was not delayed and there was apparently no follow up with Parent. While there might have been discussion of placement and LRE among the DCPS participants at the IEP meeting, no notes demonstrate that. More significantly, there was no indication in the 4/24/15 IEP about the details of Student's LRE and placement beyond the total number of hours outside general education and a general statement about the need for small groups or one-on-one instruction, which was not sufficient in *Brown*. As a result, Parent and her advocate couldn't tell from the IEP what program Student was in. Nor was it possible to tell from his IEP what sort of program Student had been in at Prior Public School had Public School sought to maintain a similar placement. Certain other statements were included in Student's 4/24/15 IEP about communication needs and assistive technology being helpful, but rather than providing enough detail to bring clarity they caused much contention at Public School over whether an iPad was actually required by the IEP, as discussed below.

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While this Hearing Officer concludes that the minimal statements in Student's IEP do not meet the legal standard set forth in *Brown*, that is simply a procedural violation of the IDEA, *id.* at n.3, and not an automatic denial of a FAPE. Thus, the question is whether that failure amounted to a substantive violation under 34 C.F.R. 300.513(a) by significantly impeding Parent's opportunity to participate in decision-making regarding a FAPE, by impeding Student's right to a FAPE, or by depriving Student of educational benefit. *Brown*, 2016 WL 1452330, at *7, quoting *N.S. ex rel. Stein v. Dist. of Columbia*, 709 F.Supp.2d 57, 67 (D.D.C. 2010). Parent and her representatives were very concerned about Student's placement at Public School but were impeded by the lack of a full description of Student's LRE and placement in his IEP, which this Hearing Officer concludes did have a negative impact on Parent's participation in decision-making and possibly on Student's education and thus was a substantive violation and a denial of FAPE. This violation contributes to the compensatory education awarded below.

Issue B: *Whether DCPS denied Student a FAPE by inappropriately changing his educational placement for the 2015/16 school year, which was made without involvement by Parent or the rest of his IEP team. (Respondent has the burden of persuasion on the issue of appropriate placement (but not change in placement or parental involvement), if Petitioner establishes a prima facie case.)*

Petitioner met her burden of proving that a change in placement occurred and that she was not involved as she should have been. Petitioner established a prima facie case on the issue of whether Student's placement for 2015/16 was appropriate, but Respondent met its burden of proving that it was.

The initial question here is whether there was an actual change in educational placement or just the differences inherent in moving from a smaller school to a more advanced level in a bigger school, now that Student was in Grade. The undersigned does conclude this is a change in placement due, among other things, to the fact that Student went from a self-contained program at Prior Public School where the entire class moved together throughout the day to a very different situation at Public School where Student had to find his way in a much larger environment and was expected to handle transitions and lunch on his own.²⁰⁹ See *A.M. v. Dist. of Columbia*, 933 F. Supp. 2d 193, 199 (D.D.C. 2013); *Lunceford v. Dist. of Columbia Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C. Cir. 1984).

As to the underlying issue of the appropriateness of Student's placement at Public School, the undersigned recognizes the serious challenges faced by Student in coming into a much bigger school with much less support, having to navigate the larger environment and difficulties of the noisy lunchroom, and get used to making more decisions for himself about going to class and how to engage with peers and staff. But, on balance, this Hearing Officer

²⁰⁹ The certificate track program for ID students at Public School appears to be a more similar placement, as it is self-contained with all students moving together from place to place. However, the undersigned was not persuaded that the certificate track was required for an appropriate placement at Public School.

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concludes that Student's placement was appropriate in 2015/16, as it was reasonably calculated to enable Student to receive educational benefits by implementing his fulltime IEP in small special education classes, such as his Algebra 1 class, but not in a self-contained program so that at Student's higher grade he was able to experience more independence, make more decisions for himself, and have more autonomy. *See Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991). With the benefit of hindsight, given Student's ability to acclimate to Public School and build positive relationships with both staff and peers and make a place for himself in the larger school over the course of 2015/16, it is clear to this Hearing Officer that a continuation of his 2014/15 placement, being fully self-contained and escorted at all times throughout the day, would not have been Student's least restrictive environment in 2015/16. *See* 34 C.F.R. 300.114.

However, even though placement at Public School was appropriate, Parent should have been involved in the change of placement decision. The IDEA could not be clearer about requiring parental involvement in "decisions on the educational placement of [her] child." 34 C.F.R. 300.327; 34 C.F.R. 300.116(a)(1) (requiring public agency to ensure that the educational placement decision is made by a group that includes parents); 34 C.F.R. 300.501(c) (same); *Aikens v. Dist. of Columbia*, 950 F. Supp. 2d 186, 190 (D.D.C. 2013). Here, Prior Public School's log indicates that it tried to include Parent in the 4/24/15 IEP meeting, although it is not at all clear to the undersigned that the change of placement decision was made at that meeting, which would have been apparent had sufficient information been included in the IEP to meet the *Brown* standard discussed above. Here, it seems that Student may well have been put on the default diploma track which ended his self-contained setting without any conscious decision by his IEP team, which is suggested by Prior Public School Psychologist not knowing what program Student was going into at Public School and indicating the decision was being made by DCPS "downtown," rather than by Student's IEP team. Notes from the IEP team meeting on 4/24/15 would likely shed light on this question, but there are no notes.

Excluding Parent from the placement decision is a procedural violation of the IDEA that "[s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child," so is a substantive violation as well, and thus a denial of FAPE. 34 C.F.R. 300.513(a). In this case, Public School even refused to tell Parent or her advocate what program Student was in, so she could not participate in decision-making for her child and join in the collaboration that is a vital aspect of IEPs. *See Brown*, 2016 WL 1452330, at *9. It should not have been difficult for Parent to find out Student's program at Public School. But the evidence is that Parent couldn't find out despite email after email from Educational Advocate to Public School, which the undersigned views as part of the unfortunate friction between school personnel and Petitioner's advocates, which left Parent in the middle to the detriment of Student. The lack of parental involvement in the change of placement contributes to the award of compensatory education below.

Issue C: *Whether DCPS denied Student a FAPE by failing to implement his IEPs during the 2015/16 school year by not providing (1) an iPad and other Assistive*

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Technology, and (2) all of his specialized instruction hours outside the general education setting. (Petitioner has the burden of persuasion on this issue.)

Petitioner failed to meet her burden of proof on this issue. For a failure to implement claim, the IDEA is violated only when a school district deviates materially from a student's IEP. *See Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). A material deviation requires more than a minor discrepancy or a “*de minimis* failure to implement all elements of [the student's] IEP.” *Johnson v. Dist. of Columbia*, 962 F. Supp. 2d 263, 268 (D.D.C. 2013), quoting *Catalan v. Dist. of Columbia*, 478 F. Supp. 2d 73, 75 (D.D.C. 2007). Courts are clear that it is “the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” *Turner v. Dist. of Columbia*, 952 F. Supp. 2d 31, 41 (D.D.C. 2013), citing *Wilson v. Dist. of Columbia*, 770 F. Supp. 2d 270, 275 (D.D.C. 2011).

(1) First considering Petitioner's concerns about assistive technology, Student had obtained an iPad near the end of 2013/14 at Prior Public School, which he was allowed to take home and was helpful with computations and phonics. Unfortunately, Student's iPad was lost or stolen before he left Prior Public School, and Parent sought a replacement from Public School when Student began there. Public School agreed on 10/19/15 to work on getting Student a replacement, but it was a few months before Student's iPad arrived and even then he was not allowed to take it home until the current school year.

Student's relevant IEPs did not expressly require an iPad, but did state that Student would benefit greatly from use of assistive technology. Student's classroom accommodations and assessment accommodations on his IEPs also listed “external assistive technology” – but not an iPad specifically – as an alternative to speech-to-text or a human scribe. Public School has tablets and desktop computers available for use of students, some of which had text-to-speech and speech-to-text capabilities. Student's teachers knew that he needed access to computers in the classroom with software for speech output. Computers were also available in the library, which Student could access. In addition to technology, the uncontroverted testimony was that Student was read to a lot at Public School by his teachers and aides, and that teachers, paraprofessionals and peers often would write for Student. Thus, test questions were read to Student in ELA, Student responded orally, and his answers were written down.

In sum, this Hearing Officer does not find a failure to implement Student's IEPs by Public School's delay in providing an iPad or other lack of assistive technology.

(2) Turning next to Petitioner's concerns about Student not having all of his classes out of general education as required by his fulltime IEPs, there was focus on 3 classes: Student's physical education class was unambiguously a general education class. Student's Music class was an inclusion class, in which a paraprofessional with music training worked with Student and others with IEPs, who made up about one-third of the 15 students in the class. Third, Student's World History class was an inclusion class of 25, from which the 17

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students with IEPs were pulled out and often divided into smaller groups. The remaining 11 of Student's classes during 2015/16 were special education.

In the view of the undersigned, P.E. was clearly improper as it was general education; Music was likely improper, although there was not sufficient evidence on the role of the paraprofessional and whether the special education children were given specialized instruction; and the special education students did appear to be sufficiently separated for differentiated instruction in World History. Thus, this Hearing Officer concludes that Petitioner has failed to demonstrate a material failure to implement Student's IEPs, as P.E. and possibly Music were *de minimis* when compared to all of Student's remaining classes.

Issue D: *Whether DCPS denied Student a FAPE by failing to appropriately address his disability-related class attendance issues in the 2015/16 school year through his IEP/educational programming, where Student missed more than 50 days of school. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Petitioner established a prima facie case on Student's attendance issues, but Respondent met its burden of persuasion, showing that it had taken reasonable action. The IDEA does require that a school district respond to a student's frequent and extended absences, *see, e.g., Springfield Sch. Comm. v. Doe*, 623 F. Supp. 2d 150, 159 (D. Mass. 2009), but this is not a case where Student was expected to overcome his truancy on his own without assistance. Here, the record demonstrates that Public School did attempt to address Student's attendance issues in various ways including an FBA and a BIP Level II ("BIP-II"), with the consent and support (at the time) of Parent and her advocates.

Student's level of absenteeism is a significant concern, but it must be recognized that even missing one class at Public School results in being marked absent for a full day, and the undisputed testimony was that Student was picking and choosing the classes he was willing to attend. It is also important that Student was not disconnected from school but was often at school even when cutting classes and regularly checked in with School Social Worker, School Psychologist, and Special Education Transition Teacher, who would often work with Student to try to overcome his reluctance to attending particular classes. Public School had several meetings with Parent in 2015/16 at which Student's attendance was discussed and, after a short-lived attendance sheet requirement and an emphasis on rewards for attendance, all agreed on the FBA and BIP-II in an effort to address Student's attendance.

To the extent that Petitioner simply argues that Student's truancy could have been addressed by putting him into easier classes on the certificate track, this would merely rehash the diploma track issues considered above. Moreover, it is not clear to the undersigned that a move to the certificate track would have remedied Student's absenteeism. Student was allegedly in that sort of self-contained/life-skills setting at Prior Public School, yet had attendance issues there as well, with evidence that he missed 25 of 45 days enrolled and obtained the assistance of Community Support Worker while at Prior Public School due in part to attendance concerns.

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DCPS is of course not a guarantor of each student attending each class at Public School. But in the view of this Hearing Officer, Public School did what it could to address Student's attendance and there was no IDEA violation on this issue based on the facts presented in this case.

Issue E: *Whether DCPS denied Student a FAPE by preventing Parent's expert from observing Student in his current placement due to unreasonable and unlawful conditions. (Petitioner has the burden of persuasion on this issue.)*

The law is clear in the District of Columbia that parents and their designees have the right to observe the student's educational setting, pursuant to the Special Education Student Rights Act of 2014, D.C. Code § 38-2571.03.²¹⁰ In this case, on 11/9/15 Educational Advocate sought to observe Student based on concerns that Public School could not meet his needs and implement his IEP. After back and forth about the focus of the observation and the forms to be signed, observation was not allowed when Educational Advocate refused to sign the confidentiality agreement provided by Public School, even after DCPS's counsel permitted her to strike out any provisions she found objectionable.

The Special Education Student Rights Act clearly provides that the "LEA shall not impose any conditions or restrictions on such observations" except for three listed exceptions which clearly do cover at least a good portion of the confidentiality agreement

²¹⁰ D.C. Code § 38-2571.03, which took effect on 3/10/15, provides in relevant part:

(5)(B) The time allowed for a parent, or the parent's designee, to observe the child's program shall be of sufficient duration to enable the parent or designee to evaluate a child's performance in a current program or the ability of a proposed program to support the child.

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) The LEA shall not impose any conditions or restrictions on such observations except those necessary to:

(i) Ensure the safety of the children in a program;

(ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee; or

(iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

See also 34 C.F.R. 300.121. This right of observation by Parent or designee is tantamount to a regulation clarifying what is required to provide Parent the right to participate meaningfully in determining Student's placement. *See Cano-Angeles v. Puerto Rico (Dept. of Educ.)*, 2015 WL 6133130, at *4 (D.P.R. 2015) ("hearing officers [are to] consider both state and federal law to ensure that the [IDEA] is properly being implemented").

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that Educational Advocate was asked to sign. However, reflecting the unfortunate level of animosity in this case, Educational Advocate viewed the form as “insulting and inappropriate,” although it is not apparent to this Hearing Officer from reviewing the form which provisions were so offensive. In any case, Educational Advocate refused to mark out what she found objectionable and sign the remaining provisions to protect confidentiality, so she was not permitted to observe at Public School.

In the view of this Hearing Officer, DCPS did not need to be as obstructionist as it was, but nonetheless prevails on this issue. Based on the evidence, Petitioner did not demonstrate that the observation could not have taken place if Educational Advocate (or counsel) had simply marked out any objectionable language in the confidentiality agreement and Educational Advocate had signed it. If DCPS had balked at observation at that point, Petitioner might very well have prevailed on this issue.

Issue F: *Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP on 2/9/16, where: (1) his hours of specialized instruction were reduced when they should have been increased; (2) Student remains on the diploma track; (3) the focus remains on common core grade-level standards rather than functional/daily living skills; (4) his IEP team never determined or stated Student’s placement and LRE in his IEP; (5) Student was not provided ESY for Summer 2016; and (6) Student lacks an appropriate transition plan based on appropriate vocational assessments. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

The legal analysis of the concerns relating to the 2/9/16 IEP in this final issue are largely the same as Issue A above, to which reference is made as appropriate. Petitioner did establish a prima facie case on each part of Issue F, shifting the burden of persuasion, but Respondent succeeded in meeting its burden of proof on all parts of Issue F, except part (5).

As stated above, the applicable legal standard is whether Student’s 2/9/16 IEP was “reasonably calculated to produce meaningful educational benefit” and permit him to access the general education curriculum so he could advance toward meeting his annual goals pursuant to 34 C.F.R. 300.320(a)(4). *See Damarcus S.*, 2016 WL 2993158, at *12; *A.M.*, 933 F. Supp. 2d at 204, *quoting Rowley*, 458 U.S. at 206-07. The measure and adequacy of the IEP are to be determined as of 2/9/16, the time it was offered to Student. *See, e.g., S.S. ex rel. Shank*, 585 F. Supp. 2d at 66. The suitability of Student’s IEP is analyzed by considering each of the concerns raised by Petitioner in turn. *See* 34 C.F.R. 300.320(a)(4),(5); *Honig*, 484 U.S. at 311.

(1) On Petitioner’s first concern about specialized instruction being reduced from 27 to 25 hours/week, DCPS represented that this was a simple error and that Student actually received fulltime services as intended. The undersigned takes DCPS at its word and directs it below to amend Student’s IEP to provide the intended 27 hours/week of specialized instruction outside general education. However, this is not a FAPE violation and does not contribute to the award of compensatory education.

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(2) The second concern is the same as in Issue A above, with the added facts that Parent and Educational Advocate attended the 2/9/16 IEP meeting, but did not raise the issue of Student remaining on the diploma track as a significant concern, so it is even clearer that DCPS prevails here.

(3) The third concern is the same as in Issue A above, on which DCPS prevails.

(4) The fourth concern is similar to Issue A above, except that Parent and Educational Advocate did participate in the 2/9/16 IEP meeting where Student's courses and program were discussed. Nor was there any ambiguity or uncertainty at that point about Student's placement and program at Public School, so that lack of more specificity in his 2/9/16 IEP is simply a procedural violation, and not a substantive violation because there was no impact on Parent's participation in decision-making or educational impact on Student from not having placement and LRE fully spelled out. Thus, there was no denial of FAPE here.

(5) DCPS acknowledged that removing ESY for the summer of 2016 from Student's IEP was done without consultation with Parent and that DCPS would make up the hours missed, but has not yet done so. For ESY last summer, Student missed some 5 hours/school day from 7/5/16 to 7/29/16, for a total of 95 hours, which do contribute to the compensatory education ordered below.

(6) Finally, the transition concern is similar to Issue A above. In addition to the general points made there, Student's transition plan in his 2/9/16 IEP was based on three assessments, What's Your Learning Style, Job Related Interest Inventory, and Independent Living Assessment, each of which are often administered orally and were age-appropriate for Student. At this stage, Student's goals remained appropriately broad. This is an age-appropriate transition plan in the credible expert opinion of Program Manager. Thus, this Hearing Officer concludes that Respondent did demonstrate that further assessment was not required and that the transition plan in Student's 2/9/16 IEP was appropriate and reasonably calculated to enable him to receive educational benefits.

Nonpublic Placement

Based on all the evidence, this Hearing Officer concludes that Public School was appropriate for Student and did provide a fulltime out of general education placement to carry out Student's IEPs, which were reasonably calculated to provide educational benefit and address his needs. Since an appropriate public school program – whether he continues on the diploma track or is switched to the certificate track – is available for Student, DCPS need not consider nonpublic placement, even though Nonpublic School might be more appropriate or better able to serve Student. *Jenkins*, 935 F.2d at 304-305, *citing Rowley*, 458 U.S. at 207. Moreover, it is clear to this Hearing Officer from Student's ability to acclimate to Public School and connect with both teachers and peers there, that separating him from all nondisabled students in a nonpublic school would not be his least restrictive alternative. 34 C.F.R. 300.114.

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Compensatory Education

The IDEA gives Hearing Officers “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 522-23 (D.C. Cir. 2005); *B.D. v. Dist. of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at *25 (D.D.C. Aug. 26, 2016) (IDEA prescribes broad discretion in fashioning relief for educational deprivation). The proper amount of compensatory education, if any, depends on how much more progress Student might have shown if he had received the required special education services, and the type and amount of services that would place Student in the same position he would have occupied but for DCPS’s violations of the IDEA. *See Walker v. Dist. of Columbia*, 786 F. Supp. 2d 232, 238-239 (D.D.C. 2011), *citing Reid*, 401 F.3d 516. In short, “compensatory education aims to put a student . . . in the position he would be in absent the FAPE denial.” *B.D.*, 817 F.3d at 798.

The Circuit Court for the District of Columbia recently made plain that “compensatory education awards require a ‘flexible approach’ tailored to the facts of each case, and, as we made clear in *Reid*, a mechanical award of services identical to those wrongly denied is inappropriate. *Reid*, 401 F.3d at 524.” *B.D.*, 817 F.3d at 799. While there is “difficulty inherent in figuring out both what position a student would be in absent a FAPE denial and how to get the student to that position,” *id.*, that does not permit the effort to be avoided. *See Henry v. Dist. of Columbia*, 750 F. Supp. 2d 94, 98 (D.D.C. 2010) (a disabled student who has been denied special education services is entitled to a tailored compensatory education award and limitations of the record are no excuse). Moreover, a student is not required “to have a perfect case to be entitled to compensatory education.” *Cousins v. Dist. of Columbia*, 880 F. Supp. 2d 142, 148 (D.D.C. 2012) (citations omitted). Indeed, “hearing officers are reminded that ‘[t]he essence of equity jurisdiction’ is ‘to do equity and to mould each decree to the necessities of the particular case.’” *Lopez-Young v. Dist. of Columbia*, 2016 WL 5485101, at *9 (D.D.C. Sept. 29, 2016), *quoting Reid*, 401 F.3d at 523-24.

Based on careful consideration of the facts and circumstances resulting in the denial of FAPE found above, this Hearing Officer awards 250 hours in total of tutoring and/or art therapy to be provided by Compensatory Education Provider in the proportions determined best by Parent and her advisors. The hours awarded are based on a denial of FAPE due to failure to discuss placement and LRE and include a sufficient description in Student’s 4/24/15 IEP (Issue A(4)), a denial of FAPE due to changing Student’s educational placement without parental involvement when moving from Prior Public School to Public School (Issue B), and the specialized instruction that Student missed from not being authorized to attend ESY during the summer of 2016. Even though Petitioner did not prevail on other issues, the undersigned determines that 250 hours are appropriate, as Educational Advocate made clear in her testimony that the 300 hours of compensatory education that she recommended in the Compensatory Education Plan for all issues alleged was capped as a practical matter by Student’s inability to benefit from more than 300 hours. Further, this HOD is not providing a nonpublic placement, so the entire remedy is in the compensatory education hours awarded. The hours awarded are to be used within 18 months from the date of this HOD in order to ensure that the remedial services that Student

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needs are obtained without undue delay, along with minimizing any administrative burdens on Respondent that would result from compensatory education awards stretching over excessively long timeframes.

ORDER

Petitioner has prevailed on specified issues as set forth above. Accordingly, **it is hereby ordered that:**

(1) DCPS shall convene an IEP team meeting within 15 school days to discuss the issue of diploma track versus certificate track and shall amend Student’s IEP to (a) include a sufficient description of his LRE and placement on whichever track Parent, after input from the rest of the IEP team, determines is best, and (b) provide 27 hours/week of specialized instruction outside general education (corrected from 25 hours/week). Lack of availability of Parent or her representatives to meet within the required time limit shall extend the deadline in this paragraph on a day-for-day basis.

(2) DCPS shall, within 10 business days after receiving a request from Petitioner, provide a letter or letters of funding for a total of 250 hours of services by Compensatory Education Provider, divided between tutoring and/or art therapy services, as Parent deems best. All such service hours are to be used within 18 months from the date of this Order; any unused hours will be forfeited.

Any and all other claims and requests for relief are **dismissed with prejudice.**

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat
Keith L. Seat, Esq.
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Copies to:

Counsel of Record (Appendix A, by email)
OSSE-SPED (due.process@dc.gov)
ODR (hearing.office@dc.gov)
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