

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

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

OSSE  
Office of Dispute Resolution  
October 25, 2017

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2017-0208
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 10/14/17
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Dates: 9/28/17 & 10/2/17
("DCPS"),	)	Hearing Room: 2006
Respondent.	)	

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**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 Student had not been provided appropriate Individualized Education Programs (“IEPs”) with suitable programming and Parent was misled about Student’s progress. DCPS, the Local Education Agency (“LEA”), responded that the IEPs and programming were appropriate and that it was also misled by Student’s *Nonpublic School*.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the 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 initial filing of the due process complaint on 7/28/17, the case was assigned to the undersigned on 8/1/17. An amended complaint was filed on 8/4/17, restarting the timeline. DCPS filed a response on 8/15/17, and did not challenge jurisdiction

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

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apart from asserting that the statute of limitations precludes any issue prior to 7/28/15. The resolution session meeting took place on 8/17/17, but the parties neither settled the case nor terminated the 30-day resolution period, which ended on 9/3/17. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 10/18/17.

The due process hearing took place on 9/28/17 and 10/2/17, and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by *Respondent’s counsel*. Petitioner was present throughout most of the hearing.

Petitioner’s Disclosures, submitted on 9/21/17, contained documents P1 through P24, which were admitted into evidence over a number of objections. Respondent’s Disclosures, submitted on 9/21/17, contained documents R1-R6, R8-R17, and R19-R22, which were admitted into evidence without objection.

Petitioner’s counsel presented 5 witnesses in Petitioner’s case-in-chief (*see Appendix A*):

1. *School Psychologist* (qualified without objection as an expert in Psychology)
2. Parent
3. *Educational Advocate* (qualified without objection as an expert in Special Education Programming and Placement)
4. *Center Director at Reading Provider*
5. *Admissions Director* at Nonpublic School

Respondent’s counsel presented 4 witnesses in Respondent’s case (*see Appendix A*):

1. School Psychologist (qualified without objection as an expert in Psychology)
2. *Program Manager* (qualified without objection as an expert in Special Education Programming and Placement)
3. *LEA Monitor*
4. *Monitoring Specialist* (qualified without objection as an expert in Special Education Programming and Placement)

Petitioner’s counsel recalled Parent as the only rebuttal witness.

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

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**Issue 1:** Whether DCPS denied Student a FAPE by failing to identify an appropriate location of services for Student from 2014/15<sup>2</sup> through 2017/18 when (a) Nonpublic School did not have a Certificate of Approval (“COA”) for intellectual disability (“ID”) from March 2014 to present and Student’s disability category had changed to ID in March 2014, and/or (b) *New Nonpublic School* is too far from home and a change of location at this point in Student’s education would be inappropriate.<sup>3</sup> *Petitioner has the burden of persuasion on this issue.*

**Issue 2:** Whether DCPS denied Student a FAPE by failing to develop appropriate IEPs on 12/2/14, 11/20/15 and/or 10/18/16, when Student’s disability category changed to ID in March 2014, but the IEPs kept Student on a diploma track and did not include the functional academic skills that Student needed due to Student’s disability.<sup>4</sup> *Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.*

Petitioner seeks the following relief<sup>5</sup>:

1. A finding that Student was denied a FAPE.<sup>6</sup>
2. DCPS shall provide compensatory education for denial of FAPE, with 1,000 hours of academic instruction in the Reading Provider program.<sup>7</sup>
3. Any other just and reasonable relief.

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<sup>2</sup> All dates in the format “2014/15” refer to school years.

<sup>3</sup> Issue 1 combines the first and third issues from the amended due process complaint.

<sup>4</sup> At the beginning of the due process hearing, Petitioner’s counsel expressly withdrew the phrase “vocational skills and life skills” following the words “functional academic skills” in Issue 2.

<sup>5</sup> Stay-put was requested as relief in paragraph 2 of the amended due process complaint, but has already been ruled on and denied by the undersigned’s order dated 8/18/17. Further, at the beginning of the due process hearing, Petitioner’s counsel expressly withdrew the requested relief that “DCPS shall maintain Student’s placement at Nonpublic School on the diploma track,” which had been number 2 in the Prehearing Order.

<sup>6</sup> This paragraph combines the detailed relief requested in paragraphs 3 and 4 of the amended due process complaint, with the concurrence of Petitioner’s counsel at the prehearing conference.

<sup>7</sup> 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. Respondent was encouraged to be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

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At the conclusion of Petitioner's case-in-chief, Respondent's counsel moved for directed findings on all issues. After a brief oral argument, Respondent's motion for directed findings was taken under advisement by this Hearing Officer based on the need to review documents and hear additional testimony and is **hereby denied for the record**.

### Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact<sup>8</sup> are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>9</sup> Student is *Age*, *Gender* and has consistently attended Nonpublic School, where Student began in 2009/10.<sup>10</sup>
2. Special Education Needs; Evaluations. Student has long been eligible for special education and related services; in March 2014 Student became eligible as a child with an intellectual disability, which along with Attention Deficit Hyperactivity Disorder ("ADHD") resulted in a Multiple Disability ("MD") classification.<sup>11</sup> There was no support for ADHD in Student's records, as Parent reported repeatedly; OHI was to be removed from Student's classification in October 2016, without further assessment.<sup>12</sup> Student's special education eligibility was confirmed on 2/28/17 based on intellectual disability.<sup>13</sup> Parent did not agree with the ID classification and asked for Student to be reassessed.<sup>14</sup> A comprehensive psychological re-evaluation was completed in May 2017, which supported Student's disability classification of intellectual disability.<sup>15</sup>
3. When Student was initially categorized as ID at the Multi-disciplinary Team ("MDT") meeting on 3/24/14, Parent asked what that meant for Student's placement and whether Nonpublic School would be able to meet Student's needs.<sup>16</sup> DCPS responded that it would "look into programs that could best meet" Student's needs and contact Parent and

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<sup>8</sup> 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.

<sup>9</sup> Parent.

<sup>10</sup> *Id.*

<sup>11</sup> P2-1,2; P5-2; P6-2; Educational Advocate.

<sup>12</sup> P5-2; P6-2 (MD is not appropriate); School Psychologist.

<sup>13</sup> P23-1,3,4; P24; School Psychologist (ID classification "not in question").

<sup>14</sup> P6-2,3; P23-3.

<sup>15</sup> P22-12,13.

<sup>16</sup> Parent; P2-2; Educational Advocate.

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“make needed referrals.”<sup>17</sup> Parent did not hear back from DCPS so assumed all was well.<sup>18</sup> At the end of each IEP team meeting, the team regularly agreed that Nonpublic School was the proper school for Student.<sup>19</sup>

4. Student’s 12/2/14 IEP listed Student as MD (ID and OHI) and provided 27 hours/week of specialized instruction outside general education, along with 6 hours/month of Behavioral Support Services (“BSS”) outside general education, 8 hours/month of speech-language pathology outside general education, and 6 hours/month of occupational therapy outside general education.<sup>20</sup> Student’s 11/20/15 IEP had the same MD classification and the same services as Student’s previous 12/2/14 IEP.<sup>21</sup> Student’s 10/18/16 IEP had the same MD classification and the same services as the 2 previous IEPs, except speech-language pathology services were reduced from 8 to 4 hours/month, so specialized instruction was increased to 28 hours/week outside general education.<sup>22</sup> Student’s 7/25/17 IEP changed the disability category from MD to ID (omitting ADHD), but made no change in services from the 10/18/16 IEP.<sup>23</sup>

5. As noted above, the comprehensive psychological re-evaluation dated 5/6/17 was conducted due to Parent’s disagreement with Student’s intellectual disability classification.<sup>24</sup> The evaluation confirmed Student’s serious cognitive deficits; the evaluation was in the same range as previous instruments and consistent with Student’s ID classification as well as Student’s academic testing.<sup>25</sup> In 2004, Student’s Full Scale IQ (“FSIQ”) was either 79 or 70 (Wechsler Preschool and Primary Scale of Intelligence – Third Edition (“WPPSI-III”)); in 2007, Student’s FSIQ was 73 (Wechsler Intelligence Scale for Children – Fourth Edition (“WISC-IV”)); in 2011, Student’s FSIQ was 60 (WISC-IV); in 2014, Student’s Brief Intellectual Ability was 59 (Woodcock-Johnson Cognitive).<sup>26</sup> The 2017 psychological re-evaluation administered a Reynolds Intellectual Assessment Scales, 2<sup>nd</sup> Edition (“RIAS-2”) to measure cognitive ability: Student had a Composite Intelligence Index (“CIX”) of 46; a Verbal Intelligence Index (“VIX”) of 59, and a Nonverbal Intelligence Index (“NIX”) of 44, all of which are Significantly Below Average.<sup>27</sup> In addition, Student had a RIAS-2 Composite Memory Index (“CMX”) of 49 and a Speeded Processing Index (“SPI”) of 68, both of which are Significantly Below Average.<sup>28</sup>

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<sup>17</sup> P2-2; Educational Advocate.

<sup>18</sup> Parent.

<sup>19</sup> *Id.*

<sup>20</sup> P8-1,16.

<sup>21</sup> P9-1,15.

<sup>22</sup> P10-1,15.

<sup>23</sup> P11-1,15.

<sup>24</sup> P22-1,5 (the stated service hours from Student’s IEP are not accurate; report of a previous score does not match the speech-language re-evaluation).

<sup>25</sup> P7-3.

<sup>26</sup> P22-3,4; R9-3 (conflicting data re 2004).

<sup>27</sup> P22-7,8.

<sup>28</sup> *Id.*

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6. Academic Concerns. At the due process hearing, Educational Advocate testified that Student was some 10 grades behind in reading, at least 9 grades behind in math, and 9-10 grades behind in writing, and that Student was not making progress in reading, math or writing.<sup>29</sup> The May 2017 psychological re-evaluation found that Student was 8 or 9 grades behind in core subjects, with poor academic achievement and regression of academic skills. P22-1. In 2017, Student was found to be 8 or 9 grades behind in reading.<sup>30</sup> As of 6/1/17, teachers reported that Student's writing was more than 8 grades behind.<sup>31</sup> The present levels in each of Student's IEPs revealed that Student was years behind academically.<sup>32</sup>

7. A Woodcock-Johnson IV ("WJ-IV") assessment dated 9/20/16 indicated that in 10 academic subtests Student was rated Very Low in all but one, in which Student was Low; Student was at least 7 grades behind on every subtest; and Student's percentile ranking was "3" on one subtest, "1" on two others and "0.1" on the remaining seven subtests.<sup>33</sup>

8. Academic concerns were not new: in a 1/7/14 IEP meeting, Parent raised concerns about Student's lack of progress; the team also expressed concerns.<sup>34</sup> Nonpublic School's special education teacher responded that in 2011/12 Student was a "non-reader," but by 1/7/14 Student was "really applying" effort.<sup>35</sup>

9. School Psychologist observed Student in class at Nonpublic School before the October 2016 meeting and noted that Student was not doing the same work as others in the class; Student was given packets to work on alone in class.<sup>36</sup> Nonpublic School is a college preparatory school; Student is not on track to attend college based on Student's scores and abilities.<sup>37</sup> None of the students at Nonpublic School are on the certificate track.<sup>38</sup>

10. Student received good grades at Nonpublic School.<sup>39</sup> Over the previous 3 years, Student's grade point average at Nonpublic School was 3.1, just above a "B" average.<sup>40</sup> In 2015/16, Student's lowest grade was a single "B," with 4 grades of "B+" and 9 grades of "A" (several were "A-" and "A," with one "A+" in Spanish).<sup>41</sup> On 2/28/17, Nonpublic School explained that Student's good grades were "reflective of [Student's] gains in self-confidence" and also benefitted from a modified curriculum.<sup>42</sup> Student's grades for 2016/17

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<sup>29</sup> Educational Advocate.

<sup>30</sup> P6-2; P7-2; P11-5; P21-1.

<sup>31</sup> P7-2.

<sup>32</sup> P8-4,6,7, P9-4,6,8, P10-4,6,8.

<sup>33</sup> R5; P22-9.

<sup>34</sup> P1-2; Educational Advocate.

<sup>35</sup> P1-2.

<sup>36</sup> School Psychologist.

<sup>37</sup> *Id.*

<sup>38</sup> Monitoring Specialist; School Psychologist.

<sup>39</sup> Parent.

<sup>40</sup> R19.

<sup>41</sup> *Id.*

<sup>42</sup> P6-3.

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at Nonpublic School declined from previous years.<sup>43</sup> Nonpublic School rated Student as Progressing in every IEP Progress Report in 10 entries prior to 2016/17, except for one that was Not Introduced; Nonpublic School rated Student as making No Progress in all 8 entries in 2016/17.<sup>44</sup>

11. The Nonpublic School representative apologized to Parent and said that Nonpublic School did not have a COA or supports in place for intellectual disability, so Nonpublic School was not appropriate for Student.<sup>45</sup> Nonpublic School “changed its mind” in July 2017 and stated that it can program for Student at Nonpublic School, even though nothing had changed; Student is still categorized as ID and Nonpublic School still does not serve ID students.<sup>46</sup>

12. *Diploma versus Certificate.* Student’s 11/20/15 IEP, 10/18/16 IEP and 7/25/17 IEP all stated that Student was expected to graduate with a high school diploma on *Graduation Date*; Student’s 12/2/14 IEP did not address graduation planning.<sup>47</sup> As of 7/25/17, Student continued on the diploma track due to the strong views of Parent and Petitioner’s counsel, despite the recommendation from the rest of the IEP team and the 2017 psychological re-evaluation.<sup>48</sup> Parent believes Student deserves a diploma because Student worked hard for it for years.<sup>49</sup> Parent very much wants Student to go to college.<sup>50</sup> Student is well aware of the expected Graduation Date.<sup>51</sup> If Nonpublic School gives Student a diploma on Graduation Date, it would not be a DCPS diploma, but only a Nonpublic School diploma.<sup>52</sup> According to School Psychologist, a Nonpublic School diploma would “not be worth the paper it is printed on.”<sup>53</sup>

13. Early in 2015/16, School Psychologist observed Student in class at Nonpublic School and concluded that Student’s cognitive ability was not sufficient to earn a high school diploma.<sup>54</sup> Student would be better off working for a longer time on a certificate track, working on skills and learning a trade.<sup>55</sup> According to Educational Advocate, Nonpublic School did not appear to be an appropriate setting for Student; Student did not progress at all in the last 3 years.<sup>56</sup>

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<sup>43</sup> R19.

<sup>44</sup> R9-7,8,5,6.

<sup>45</sup> School Psychologist; Monitoring Specialist; P6-3.

<sup>46</sup> Monitoring Specialist.

<sup>47</sup> P9-23; P10-23; P11-26; P8.

<sup>48</sup> P21-3; School Psychologist.

<sup>49</sup> Parent.

<sup>50</sup> Parent; R15-4.

<sup>51</sup> Educational Advocate.

<sup>52</sup> Monitoring Specialist; School Psychologist.

<sup>53</sup> School Psychologist.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Educational Advocate.

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14. In October 2016, concerns were raised about Student's lack of progress at Nonpublic School and ability to succeed on a college track.<sup>57</sup> Student had been earning diploma credit at Nonpublic School when it reported that it was unable to meet Student's needs, causing "great concern" to Parent, who wants Student to graduate with a diploma.<sup>58</sup> Parent didn't know before October 2016 that Student was not capable of earning a diploma.<sup>59</sup> Parent retained Petitioner's counsel and became hard to reach by school personnel and was often nonresponsive.<sup>60</sup>

15. As of February 2017, Nonpublic School believed that the certificate track would be more appropriate; Student did not have the skills to be independent.<sup>61</sup> Nonpublic School did not have the COA or supports to address Student's intellectual disability.<sup>62</sup> Both Nonpublic School and DCPS recommended Student move to a certificate track both in the February 2017 eligibility meeting and in June 2017, so Student could obtain the life skills needed.<sup>63</sup>

16. As of 6/1/17, DCPS was to make referrals to other schools with COAs for ID: *Possible Nonpublic School B, Possible Nonpublic School C, Possible Nonpublic School D, New Nonpublic School*.<sup>64</sup> As of 7/25/17, referrals had been made to *Possible Nonpublic School B, New Nonpublic School* and *Possible Nonpublic School A*, and Student had visited *New Nonpublic School*; both *Possible Nonpublic School A* and *Possible Nonpublic School B* had been unable to reach Parent.<sup>65</sup> School Psychologist agreed that Student's location needed to change and that *New Nonpublic School* was a good move for Student.<sup>66</sup> Parent didn't want to move Student from *Nonpublic School*, so didn't visit other schools.<sup>67</sup> Parent does not think that Student would attend other proposed schools because, according to images Parent saw online, the other students "look like" ID children and don't look like Student.<sup>68</sup> Parent testified that she would not now be willing to visit other schools that serve ID students even if given the chance.<sup>69</sup>

17. *New Nonpublic School* is the only appropriate school that serves ID students and has accepted Student for 2017/18.<sup>70</sup> *New Nonpublic School* offers functional academics and a school-to-work program.<sup>71</sup> *New Nonpublic School* would accept Student's transcript from

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<sup>57</sup> P5-7; School Psychologist.

<sup>58</sup> P6-1; Parent; Monitoring Specialist.

<sup>59</sup> School Psychologist.

<sup>60</sup> School Psychologist; Monitoring Specialist.

<sup>61</sup> P6-3.

<sup>62</sup> P6-3; Admissions Director.

<sup>63</sup> P7-3.

<sup>64</sup> P7-4.

<sup>65</sup> P21-3; R1-2; Monitoring Specialist.

<sup>66</sup> School Psychologist.

<sup>67</sup> Parent.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Monitoring Specialist.

<sup>71</sup> LEA Monitor.

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Nonpublic School at face value, but if Student couldn't do diploma-level work, a team meeting would be held to switch Student to the certificate track.<sup>72</sup>

18. Monitoring Specialist acknowledged that DCPS “messed up” with Student, but that there is time to remedy the lack of functional skills, as there is no reason to cut off Student's education at Graduation Date.<sup>73</sup> Monitoring Specialist convincingly testified that cutting off Student's special education eligibility by receiving a diploma on Graduation Date is a bad idea; Student could benefit from additional years of functional education on a certificate track.<sup>74</sup> Student's entire IEP team viewed receipt of a diploma as not appropriate.<sup>75</sup> Student needs additional years of functional training due to the level of Student's disability.<sup>76</sup> Student can still move to New Nonpublic School if desired.<sup>77</sup>

19. Parent opposes the certificate track and additional years in school for Student, viewing it as unfair for Student to be required to do extra work when Nonpublic School didn't do its job.<sup>78</sup> Parent views the possibility of additional years of education at New Nonpublic School or a similar certificate track school as “keeping back” Student for others' mistakes.<sup>79</sup>

20. Personal Characteristics. Student is a “pleasant, cooperative and well-liked” student who “enjoys interacting with school staff and is always respectful and helpful.”<sup>80</sup> Student is always smiling in class and greets adults; Student is a “pleasure to be around.”<sup>81</sup> Outside school, Student works hard with Outward Bound for a large part of the day on Saturdays during the school year and in a full-time program during the summer.<sup>82</sup>

21. When observed prior to the 10/18/16 IEP meeting, Student did “not put forth tremendous effort” and either put head down or asked to leave the classroom; after going to the bathroom Student was found talking to someone from another class with no intention of returning to class.<sup>83</sup> During the 2017 psychological re-evaluation observation, Student worked on completing the assignment when peers around Student were engaged in “horseplay” or played on their phones; Student had no off-task or disruptive behaviors.<sup>84</sup> During the 2017 speech-language re-evaluation, Student demonstrated work avoidance

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<sup>72</sup> *Id.*

<sup>73</sup> Monitoring Specialist.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Parent.

<sup>79</sup> *Id.*

<sup>80</sup> P9-11; P10-12; P11-11; P22-3.

<sup>81</sup> P21-2.

<sup>82</sup> Parent.

<sup>83</sup> P5-5,6.

<sup>84</sup> P22-6.

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behaviors, including asking to go to the bathroom and stating that Student's head was hurting, which the teacher characterized as "predictable" of Student.<sup>85</sup>

22. Parent did not return the rating scales for the 2017 psychological re-evaluation, nor make herself available for a parent interview.<sup>86</sup> Parent did not return the Parent Form for scoring in the May 2011 adaptive behavior assessment.<sup>87</sup> Parent had been asked to complete rating scales to confirm the lack of ADHD after Parent asserted that ADHD was not accurate, but Parent did not complete the rating scales.<sup>88</sup> Parent acknowledged not filling out the rating scales, but asserted scheduling and vacation impediments, rather than lack of cooperation.<sup>89</sup>

23. DCPS Actions, Responsibility. DCPS is the LEA for Nonpublic School.<sup>90</sup> DCPS representatives regularly attended Student's IEP team and MDT meetings.<sup>91</sup> On 2/28/17, School Psychologist recognized that Nonpublic School was not presenting information to Parent in an "open and honest manner" and was not offering sufficient data.<sup>92</sup> Parent was always told that Nonpublic School could meet Student's needs.<sup>93</sup> Nonpublic School has not been appropriate for Student since at least 3/25/14.<sup>94</sup>

24. DCPS sent Parent a letter dated 8/4/17 stating that New Nonpublic School had been identified as Student's location of service.<sup>95</sup> DCPS sent Nonpublic School a letter dated 8/4/17 withdrawing Student from Nonpublic School.<sup>96</sup> Student has not attended New Nonpublic School; New Nonpublic School called and scheduled an attendance meeting since Student has not shown up for school.<sup>97</sup> Student is continuing to attend Nonpublic School in 2017/18; Parent is not paying; Student has a "scholarship" from Nonpublic School.<sup>98</sup>

25. Nonpublic School's CEO/Head of School acknowledged in a letter dated 8/29/17 that Nonpublic School does not have a COA for ID and did not have one during the past 3

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<sup>85</sup> R9-11.

<sup>86</sup> P7-3; P22-2 ("multiple attempts" to conduct parent interview unsuccessful); P22-11 (adaptive behavior assessment Parent Form not returned); Monitoring Specialist; School Psychologist.

<sup>87</sup> P22-4.

<sup>88</sup> School Psychologist.

<sup>89</sup> Parent; R15-3.

<sup>90</sup> Monitoring Specialist.

<sup>91</sup> Parent; P1-1; P2-1; P3-1; P8-1; P4-1; P9-1; P5-1; P10-1; P6-1; P7-1; P21-1; P11-1.

<sup>92</sup> P13.

<sup>93</sup> Parent.

<sup>94</sup> Educational Advocate.

<sup>95</sup> R13-1.

<sup>96</sup> R14-1; Admissions Director.

<sup>97</sup> Parent.

<sup>98</sup> *Id.*

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school years (2014/15, 2015/16 and 2016/17).<sup>99</sup> The Office of the State Superintendent of Education (“OSSE”) incorrectly listed Nonpublic School as having a COA for ID, which was corrected in 2016.<sup>100</sup> Student should not have been at Nonpublic School if it knew Student was ID; ID has been a listed disability on Student’s IEPs since 12/2/14.<sup>101</sup>

26. Remedies. Student missed a lot of basic skills at Nonpublic School; to help to close large gaps, Student needs intense tutoring in reading, math and writing.<sup>102</sup> Tutoring should not be limited to academics, but should include life skills training.<sup>103</sup> Student should receive “survival skills” at the highest level Student can attain.<sup>104</sup> Educational Advocate estimates that, to put Student in the position Student should have been without a denial of FAPE, Student should receive at least 2 school years’ worth of compensatory education, calculated as 72 weeks at 28 hours/week or about 2,000 hours of services, divided 2/3 for academics and 1/3 for other functional skills.<sup>105</sup>

27. School Psychologist credibly testified that Student needs functional academics and vocational training.<sup>106</sup> Student’s IEP team meeting on 6/1/17 reviewed the speech-language re-evaluation and stated that Student would benefit from a life skills curriculum to assist in the transition to adulthood.<sup>107</sup>

28. The 2017 speech-language re-evaluation recommended that Student may benefit from a mentor.<sup>108</sup> School Psychologist credibly testified that Student could “definitely benefit” from mentoring, but that Nonpublic School doesn’t offer any.<sup>109</sup> Monitoring Specialist endorsed mentoring.<sup>110</sup>

29. DCPS knew Reading Provider was not the best programming for Student, but DCPS was trying to work with Parent, who would only consider Reading Provider, so DCPS agreed to fund an evaluation of Student by Reading Provider.<sup>111</sup> Reading Provider estimated that Student needed 600 to 1,000 hours of services to be able to reach a level of functional reading.<sup>112</sup>

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<sup>99</sup> P16.

<sup>100</sup> P16; Admissions Director.

<sup>101</sup> Admissions Director.

<sup>102</sup> Educational Advocate.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> School Psychologist.

<sup>107</sup> P7-3; R9-17.

<sup>108</sup> R9-20.

<sup>109</sup> School Psychologist.

<sup>110</sup> Monitoring Specialist.

<sup>111</sup> *Id.*

<sup>112</sup> Center Director.

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30. DCPS contracted with Reading Provider for a couple of years to try to raise the reading skills of DCPS students and enable students in self-contained special education programs to catch up, but DCPS found the reading growth wasn't very significant and considered the program a failure; DCPS ended its relationship with Reading Provider in June 2016.<sup>113</sup> Reading Provider is proposing the same programs for Student that it used at DCPS, which did not work well there and would not be appropriate for Student.<sup>114</sup>

31. Reading Provider does not use certified teachers; it is inappropriate to have teachers work with ID students if the teachers are not trained for that disability.<sup>115</sup> Apart from reading, Reading Provider couldn't provide the life skills or other help that Student needs.<sup>116</sup> Student is not a child with average cognitive ability for whom Reading Provider's program was developed.<sup>117</sup>

32. Attending Reading Provider's program 4 hours/day would be too intense for Student, causing extreme frustration and making it difficult to attend for extended periods; even 2-3 hours/day would be too much.<sup>118</sup> School Psychologist would favor tutoring over Reading Provider, as tutoring with functional academics could be created specifically for Student; 1,000 hours would be too much unless it included a vocational program.<sup>119</sup> Monitoring Specialist endorsed 600-1,000 hours of functional academics and life skills for transitioning to adulthood, which would be much more appropriate for Student than Reading Provider.<sup>120</sup>

33. Tutoring would be good for Student, providing the flexibility for what is most appropriate to work with Student's severe cognitive deficits.<sup>121</sup> Tutoring with a focus on sight-words would be better than Reading Provider's phonemic approach, which would frustrate Student due to memory limitations.<sup>122</sup> According to Program Manager, 600-800 hours would be appropriate for Student to make up for 2 years.<sup>123</sup> DCPS has qualified ID teachers who provide tutoring.<sup>124</sup> DCPS staff often provide tutoring to parents after hours.<sup>125</sup>

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<sup>113</sup> Program Manager; R21.

<sup>114</sup> Program Manager.

<sup>115</sup> Program Manager; School Psychologist (just trained on the Reading Provider approach); Monitoring Specialist.

<sup>116</sup> School Psychologist.

<sup>117</sup> School Psychologist; Monitoring Specialist.

<sup>118</sup> School Psychologist.

<sup>119</sup> *Id.*

<sup>120</sup> Monitoring Specialist.

<sup>121</sup> School Psychologist; Monitoring Specialist.

<sup>122</sup> Program Manager.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Monitoring Specialist.

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### 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").

"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, 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); *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).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 1001. 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 *Rowley*, 458 U.S. at 203. 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. In its recent decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that "[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." *Andrew F.*, 137 S. Ct. at 1001.

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

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achieved satisfactorily. 34 C.F.R. 300.114; *Andrew F.*, 137 S. Ct. at 1000 (children with disabilities should receive education in the regular classroom to the extent possible).

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. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Schaffer ex rel. Schaffer v. West*, 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 1:** *Whether DCPS denied Student a FAPE by failing to identify an appropriate location of services for Student from 2014/15 through 2017/18 when (a) Nonpublic School did not have a COA for ID from March 2014 to present and Student's disability category had changed to ID in March 2014, and/or (b) New Nonpublic School is too far from home and a change of location at this point in Student's education would be inappropriate. (Petitioner has the burden of persuasion on this issue.)*

**Issue 2:** *Whether DCPS denied Student a FAPE by failing to develop appropriate IEPs on 12/2/14, 11/20/15 and/or 10/18/16, when Student's disability category changed to ID in March 2014, but the IEPs kept Student on a diploma track and did not include the functional academic skills that Student needed due to Student's disability. (Respondent has the burden of persuasion on this issue, if Petitioner establishes a prima facie case.)*

Considering both issues in this case together, Petitioner prevails on Issue 1(a) and Issue 2, but not Issue 1(b), as the essence of this dispute is that Student was not provided appropriate special education services as a result of Student's IEPs inappropriately keeping Student on a diploma track<sup>126</sup> and Student's location improperly keeping Student in a

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<sup>126</sup> DCPS has established the necessary course work 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 IEP Certificate of Completion, known as the "certificate track," instead of a regular high school diploma. See 5A D.C.M.R. § 2203.8.

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college preparatory school that did not have a certificate track and seriously misled Parent about Student's academic abilities and performance.

IEPs. Turning first to Student's IEPs – the “centerpiece” of the special education delivery system, *Andrew F.*, 137 S. Ct. at 994 – Petitioner did establish a prima facie case on Issue 2 and Respondent failed to meet its burden of showing that Student's IEPs were appropriate.

The applicable legal standard for analyzing the appropriateness of an IEP has recently been articulated by Chief Justice Roberts for a unanimous Supreme Court as whether it is “reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Andrew F.*, 137 S. Ct. at 1001. The undersigned views this new standard as building on and buttressing prior articulations of whether the challenged IEPs were “reasonably calculated to produce meaningful educational benefit” and to permit Student to access the educational curriculum to the extent possible. See *Damarcus S. v. Dist. of Columbia*, 190 F. Supp. 3d 35, 51 (D.D.C. 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 an IEP is to be determined as of the time it was provided 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 appropriateness of Student's IEPs is analyzed by specifically considering the specific concerns raised by Petitioner, which were keeping Student on the diploma track and not providing functional academic skills. See 34 C.F.R. 300.320(a)(4),(5); *Honig*, 484 U.S. at 311.

Here, the heart of the case is that Student was determined to have a serious intellectual disability in 2014, but Nonpublic School was not equipped for students with intellectual disability. Nonetheless, Nonpublic School not only repeatedly reassured Parent that Nonpublic School was a suitable school for Student, but gave Student good grades – mostly “A”s and “B”s in 2014/15 and 2015/16, and “B”s and “C”s in 2016/17 – so that Parent thought Student would be receiving a diploma on Graduation Date and be on the way to college. Instead, in October 2016 Parent's expectations were dashed, as School Psychologist conveyed to Parent that Student could not do the work at Nonpublic School and was not actually earning the high grades reported. At that time it became clear to Student's IEP team that Student needed to be on a certificate track and that Nonpublic School was not the right location for Student. Student's team urged a shift to the certificate track which would permit several more years of functional education, rather than ending Student's eligibility for special education services with a diploma on Graduation Date.

The October 2016 developments clearly came as a shock to Parent. At that point Parent was not even convinced that Student's disability was ID and sought another comprehensive psychological re-evaluation, which was completed in May 2017, confirming intellectual disability. Notwithstanding that evaluation and DCPS withdrawing Student from Nonpublic School, Parent continues to strongly believe it is unfair to take away the diploma for which Student worked so hard, so has kept Student at Nonpublic School on a scholarship, heading toward a diploma on Graduation Date.

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Parent's position in this litigation is that Student should have been placed on a certificate track and moved to a school that works with ID students back in 2014. For at that time Parent did ask whether Nonpublic School was an appropriate location and DCPS promised to look into it and make referrals as needed. Had that been done, Student would have received the functional education that Student's team now says Student has needed all along. But having misled Parent and Student for so long with good grades and IEPs specifying the diploma track, Parent does not think that Student would be willing at this stage to attend school for several additional years to obtain skills that Student should have been taught by this point. Thus, Parent apparently intends for Student to remain at Nonpublic School and receive a diploma on Graduation Date.<sup>127</sup>

Importantly, the decision about where Student attends school in 2017/18 and whether a Nonpublic School diploma should be awarded on Graduation Date are not at issue in this case and are not directly before this Hearing Officer. What this decision must resolve are the more basic questions of whether Student suffered a denial of FAPE and, if so, what remedy is appropriate.

Focusing on the issue raised by Petitioner of maintaining Student on the diploma track, both Student's 11/20/15 and 10/18/16 IEPs stated that Student was expected to graduate with a high school diploma on Graduation Date, although Student's 12/2/14 IEP did not address graduation planning. However, it is clear to this Hearing Officer from Student's low levels of academic performance as noted throughout the present levels in the IEPs, as well as the March 2014 evaluation and other evidence, that Student was unable to succeed on the diploma track and instead needed to focus on functional academic skills and pursue a certificate track. This was School Psychologist's strong conclusion from observing Student in class at Nonpublic School, which was bolstered by Educational Advocate's conclusion that Nonpublic School was not an appropriate setting for Student, as Student did not progress at all in the last 3 years.

In sum, DCPS failed to meet its burden of demonstrating that Student's 11/20/15 and 10/18/16 IEPs were appropriate when created. Student's IEPs were not reasonably calculated to enable Student to make appropriate progress, as they kept Student on the diploma track when Student was many grades behind in reading and clearly needed functional academics, life skills and vocational skills. The inappropriate IEPs are a substantive violation of the IDEA and result in the compensatory education award discussed below.

Issue 1(a). Turning next to Issue 1(a), the advocacy of Petitioner's counsel made clear that Petitioner is not concerned about Nonpublic School's lack of a COA for ID, yet that is simply a formal way of stating that Nonpublic School did not have the trained staff and services in place to support a child with intellectual disability. There is no doubt that Nonpublic School was not a suitable location for Student, at least from March 2014 when it

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<sup>127</sup> For reasons unexplained in the due process hearing, Nonpublic School has changed its position and now asserts that it can appropriately program for Student at Nonpublic School leading to a diploma.

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became clear that Student's disability was ID and Nonpublic School could not support a child with ID. The inappropriateness of Nonpublic School is further highlighted by the fact that Nonpublic School did not have any students on the certificate track and for whatever reason seriously misled Parent about both Student's abilities and academic performance.

The legal standard under the IDEA is that Respondent "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) (must implement IEP in a school that can fulfill the student's IEP requirements). As concluded above, Student's IEPs made clear that Student was ID and needed supports for an ID child, which Nonpublic School did not and could not provide. This was a material failure and "discrepancy between the services a school provides to a disabled child and the services required by that child's IEP." *N.W. v. Dist. of Columbia*, 2017 WL 2080250, at \*7 (D.D.C. May 15, 2017), quoting *James v. Dist. of Columbia*, 194 F. Supp. 3d 131, 139 (D.D.C. 2016).

In short, the undersigned concludes that it was not appropriate for Student to have been maintained at Nonpublic School once Student's disability changed to ID in 2014, which is a denial of FAPE since a location capable of dealing with Student's intellectual disability would have provided needed educational benefit to Student that was not received at Nonpublic School. *See* 34 C.F.R. 300.513(a)(iii). This denial of FAPE also contributes to the compensatory education awarded below.

Issue 1(b). Finally, as for Issue 1(b), Petitioner did not meet her burden on the issue of New Nonpublic School being too far from home and it not being a good time to change Student's location. As Petitioner's counsel argued, 34 C.F.R. 300.116(b)(3) does require that a child be placed in a school as close to home as possible, while New Nonpublic School is in

But the uncontroverted evidence in this case was that New Nonpublic School was the closest school able to implement Student's IEP that had accepted Student. Moreover, the reason other options were not available was because Parent did not cooperate in school visits required by other nonpublic schools that might have been appropriate for Student and closer to home. But by the time that DCPS was seeking to find an appropriate school for Student in 2017, Parent did not want Student to leave Nonpublic School, so was not responsive when schools such as Possible Nonpublic School A and Possible Nonpublic School B were trying to reach her.

It is always unfortunate to require a change in school by a student who is happily enmeshed in the current school environment. However, the undersigned is not aware of any legal grounds – and Petitioner's counsel has not suggested any – preventing Respondent from moving a child to an appropriate school if the current location is not appropriate, as here where Nonpublic School had no COA and was misleading Parent about its suitability.

The undersigned concludes that Petitioner has not met her burden on Issue 1(b) and Respondent prevails on this issue, for Petitioner may not blame DCPS for a lack of school choices that she prevented.

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Responsibility of DCPS. At the due process hearing, DCPS sought to cast itself as a victim of the misleading actions of Nonpublic School, along with Parent. To the extent that is true, the undersigned is confident that DCPS will be able to look out for its interests and the interests of the children for whom it is responsible. In this action by Petitioner, however, DCPS is clearly responsible to Parent for both legal and practical reasons.

From a legal perspective, 34 C.F.R. 300.3(c) makes clear that even when children are placed in private school, it is the public agency – i.e., the LEA, which is DCPS here – that is responsible for ensuring their rights and protections. Further, 34 C.F.R. 300.325(c) provides that responsibility for compliance with the regulations remains with the public agency and the State Educational Agency (“SEA”).<sup>128</sup> The LEA cannot avoid its responsibilities for a student’s education by arguing that it has no control over the private school. *Smith v. James C. Hormel Sch. of Virginia Inst. of Autism*, 2009 WL 1081079, at \*8 (W.D. Va. 2009), *report and recommendation adopted sub nom. Smith v. James C. Hormel Sch. of Virginia Institute of Autism*, 2009 WL 1360657 (W.D. Va. 2009). *See also Bishop v. Oakstone Acad.*, 477 F. Supp. 2d 876, 883 (S.D. Ohio 2007) (“in an IDEA action, a plaintiff’s remedy is against the local school district who made the placement, not against the private school itself”).

In addition, the responsibility of DCPS for the denial of FAPE found here is clear because DCPS itself did not act as it should have. As Monitoring Specialist succinctly acknowledged in her testimony, DCPS “messed up” by not supervising Nonpublic School and ensuring that Student was long ago moved to an appropriate school that could adequately address Student’s intellectual disability. Indeed, in 2014 when Student was classified as ID, Parent asked what that meant for Student’s placement and whether Nonpublic School would be able to meet Student’s needs. DCPS responded that it would look into programs that could best meet Student’s needs, be in touch with Parent, and make needed referrals. But Parent did not hear back from DCPS, even though DCPS representatives regularly attended Student’s IEP team meetings. At the end of each IEP meeting, the team regularly agreed that Nonpublic School was the proper school for Student. Thus, there can be no doubt that DCPS is responsible here, both on legal and factual bases.

### Remedies

The IDEA gives Hearing Officers “broad discretion” to provide 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. 2016) (IDEA

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<sup>128</sup> Respondent’s counsel also argued that the SEA, OSSE, should be responsible here and found liable instead of DCPS, even though the SEA is not a party and is generally only the backup when an LEA cannot carry out its responsibilities. *See Carnwath v. Grasmick*, 115 F. Supp. 2d 577, 582 (D. Md. 2000) (“IDEA does not create a type of respondeat superior liability, imputing liability to SEAs for every local deviation from the State-created standards”), *citing Gadsby by Gadsby v. Grasmick*, 109 F.3d 940, 955 (4th Cir.1997).

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prescribes broad discretion in fashioning relief for educational deprivation). In determining appropriate compensatory education, which is the sole remedy sought by Petitioner here, the award must undo the FAPE denial's affirmative harm and compensate for lost progress. *Butler v. Dist. of Columbia*, 2017 WL 3491827, at \*4 (D.D.C. Aug. 14, 2017). There is often "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," *B.D.*, 817 F.3d at 799, but 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). 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*, 211 F. Supp. 3d 42, 55 (D.D.C. 2016), quoting *Reid*, 401 F.3d at 523-24.

The undersigned found Educational Advocate, Parent's expert in Special Education Programming, credible in her testimony that Student had missed a lot of basic skills at Nonpublic School, so needs intensive tutoring in reading, as well as math and writing, and that the tutoring should not be limited to academics but include life skills training as well. In her expert opinion, Educational Advocate estimated that to put Student in the position Student should have been in absent the denial of FAPE, Student should receive at least 2,000 hours of services, divided 2/3 for academics and 1/3 for other functional skills.

School Psychologist, an expert and key participant called by both sides in this case, confirmed that Student needs functional academics and credibly testified that Student would benefit from vocational training and could "definitely" benefit from mentoring. Monitoring Specialist also endorsed mentoring in her testimony. Student's IEP team on 6/1/17 stated that Student would benefit from a life skills curriculum to assist in the transition to adulthood.

The undersigned carefully considered Petitioner's desire for 1,000 hours of instruction from Reading Provider, along with the testimony of Center Director about the need for such reading instruction, but was persuaded by the testimony of several other witnesses that Reading Provider does not offer the best approach for Student at this time. The regimentation of Reading Provider's program likely would be too intense for Student, causing frustration and difficulty in attending for the extended periods required. Tutoring would be preferable for Student, providing flexibility for what is most helpful to work with Student's severe cognitive deficits and including life skills or vocational training in addition to functional academics.

Student is a dedicated and hard worker, so the undersigned is convinced that Student needs and will benefit from a total of 1,000 hours of services. This award is based on the undersigned's determination of what would be most beneficial to put Student in the position Student should have been in at this point had Student not suffered the denial of FAPE. The 1,000 hours of independent services are ordered below as follows:

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(a) Student very much needs functional academic skills, so the order below provides for 500 hours of academic tutoring. Parent, in consultation with her advisors and Student’s tutor(s), can determine how much to focus on reading and how much on other areas.

(b) In addition, the order provides for 200 hours of life skills and/or vocational training at the option of Parent, in consultation with her advisors and experts.

(c) The remaining 300 hours of services for Student are to be determined by Parent, in consultation with her advisors and experts, and divided among mentoring, academic tutoring, life skills training, and/or vocational training.

DCPS is ordered below to provide Parent with letters of authorization for independent providers within 10 business days of her requests for the services above. All hours are to be used within 24 months in order to ensure that the remedial services that Student needs are obtained without undue delay, along with minimizing any administrative burdens on Respondent which may result from compensatory education awards stretching over excessively long timeframes.

Respondent has repeatedly urged Parent and Student to shift to New Nonpublic School, where Student could obtain life skills and functional academics during Student’s remaining years of potential eligibility. While Parent was certain that Student would not be willing to engage in additional schooling, this Hearing Officer would also encourage Parent and Student to reconsider New Nonpublic School or a similar school and the importance of maximizing Student’s skills at this stage before transitioning to adulthood. If Student is willing to attend additional schooling, it will not reduce or impact the compensatory education awarded in this HOD, which is focused on where Student should be at this point.

**ORDER**

Petitioner has prevailed in significant part, as set forth above. Accordingly, **it is hereby ordered that:**

Within 10 business days after Petitioner’s requests, DCPS shall provide letters of authorization for independent providers chosen by Petitioner for (a) 500 hours of academic tutoring, (b) 200 hours of life skills and/or vocational training, and (c) 300 hours for mentoring, academic tutoring, life skills training, and/or vocational training, at the option of Petitioner. All hours are to be provided and used within 24 months; 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

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**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](mailto:due.process@dc.gov))

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