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OSSE
Office of Dispute Resolution
October 06, 2019

Confidential

<p>Parent on Behalf of Student, Petitioner,¹</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”),</p> <p>Respondent.</p> <p>Case # 2019-0183</p> <p>Date Issued: October 6, 2019</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: September 25, 2019, October 3, 2019.</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on the following days: September 25, 2019, and October 3, 2019, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 1050 First Street, N.E., Washington, D.C. 20002, in Hearing Room 112.

BACKGROUND AND PROCEDURAL HISTORY:

The student (“Student”) resides in the District of Columbia with Student’s mother (“Petitioner”) and is currently enrolled in a District of Columbia Public Schools (“DCPS”) school (“School A”). DCPS is Student’s local education agency (“LEA”). Student has been identified by DCPS as a student eligible for special education services under the classification of Multiple Disabilities (“MD”) for Specific Learning Disability (“SLD”) and Other Health Impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”). Student is age ___ and in grade ____.²

On July 23, 2019, Petitioner filed the current due process complaint against DCPS challenging the appropriateness of the individualized educational program (“IEP”) DCPS developed for Student on June 17, 2019. Petitioner had filed a previous due process complaint against DCPS that resulted in a settlement agreement executed in May 2019. The parties agreed, inter alia, to convene a meeting to review and revise Student’s IEP based on current and completed assessment reports. The agreement resulted in the IEP developed on June 17, 2019, that Petitioner is now challenging. Petitioner’s asserts that the June 17, 2019, IEP prescribed too few hours of specialized instruction and thus prescribes an inappropriate placement that deprives Student of a free appropriate public education (“FAPE”).

RELIEF SOUGHT:

Petitioner seeks as relief that DCPS be ordered to revise Student’s IEP to provide for a change in the LRE/placement to a “full-time” educational program with an increase in Student’s specialized instruction up to 27.5 hours; provide a suitable location of services (“LOS”) to implement the student’s IEP and/or place and fund Student at a nonpublic therapeutic day school with transportation; and provide compensatory education for denials of FAPE which result from delays in providing Student with an appropriate IEP/placement/LOS.

LEA Response to the Complaint:

The LEA filed a response to the complaint on August 5, 2019. In its response DCPS stated, inter alia, the following:

² Student’s age and grade are identified in Appendix B

The parties entered into a binding settlement agreement on or about May 31, 2019, for which Petitioner agreed to, inter alia, settle all claims up to the date of the agreement, tutoring services, behavior support services (“BSS”), and a meeting within 20 school days of the agreement. Petitioner was provided authorization to obtain an independent educational evaluation (“IEE”) or a comprehensive psychological on July 3, 2019. Student remains in special education evaluation for programming purposes. The parties did not disagree regarding Student’s classification/disability at the June 17, 2019, meeting.

Student was in three DCPS schools prior to entering School A for school year (“SY”) 2018-2019. Student did not always present for required extended school year (“ESY”), including summer 2019.

Student was formally assessed with a comprehensive psychological assessment and a Speech Language Assessment in March 2011. Student was assessed for academic levels in January 2017. Student was again assessed in spring 2019 in these same areas. DCPS proposed, based on the evaluation and assessment data and information, that Student be provided 10 hours of specialized instruction outside of general education, speech language services (“SL”), occupational therapy (“OT”) and BSS, and the IEP is appropriate.

Resolution Meeting and Pre-Hearing Conference:

The parties participated in a resolution meeting on September 5, 2019. The parties did not mutually agree to shorten the thirty (30) day resolution period. The 45-day period began on August 23, 2019, and ends [and the Hearing Officer’s Determination (“HOD”) is due] on October 6, 2019.

A pre-hearing conference in this matter was held on August 20, 2019. The undersigned hearing officer, (“Hearing Officer”) issued a pre-hearing order (“PHO”) on August 25, 2019, outlining, inter alia, the issue to be adjudicated at hearing.

ISSUE:³

The issue adjudicated is:

Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement and/or location of service (“LOS”) because Student’s June 17, 2019, IEP does not prescribe more than 10 hours of specialized instruction outside the general education setting.

³ At the outset of the hearing the Hearing Officer reviewed the issue to be adjudicated. Petitioner’s counsel clarified that although Petitioner was seeking as relief that Student be placed in a non-public special education day school, Petitioner is asserting that Student’s June 17, 2019, IEP is inappropriate because it prescribes too few hours of specialized instruction, not that it does not prescribe a program totally outside general education. Petitioner asserts that School A refused to increase the specialized instruction hours to more than 10 hours per week outside the general education setting. Thus, absent opposition from Respondent, the issue to be adjudicated was modified from the issue as stated in the PHO.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (Petitioner's Exhibits 1 through 30, DCPS Exhibits 1 through 34) that were admitted into the record and are listed in Appendix 2.⁴ The witnesses testifying on behalf of each party are listed in Appendix B.⁵

SUMMARY OF DECISION:

Based upon the evidence adduced, the Hearing Officer concluded that Respondent did not sustain the burden of persuasion by a preponderance of evidence on the appropriateness of Student's June 17, 2019, IEP. The Hearing Officer directs in the order below that DCPS: (a) amend Student's IEP to prescribe at least 20 hours of specialized instruction per week outside the general education setting, (b) convene an IEP meeting to review outstanding evaluation(s) and review and determine Student's disability classification, (c) determine an appropriate educational placement and LOS for Student for the remainder of SY 2019-2020 and (d) provide Student with compensatory education.

FINDINGS OF FACT:⁶

1. Student resides with Petitioner in the District of Columbia and is currently enrolled at School A, a DCPS school. DCPS is Student's LEA. Student has been identified by DCPS as eligible for special education services with an MD disability classification that includes SLD and OHI due to ADHD. (Petitioner's testimony, Petitioner's Exhibits 6-1, 13-1)
2. Petitioner filed a due process complaint against DCPS that resulted in a settlement agreement executed in May 2019. The parties agreed, inter alia, to convene a meeting to review and revise Student's IEP based on current and completed assessment reports. (Petitioner's Exhibit 18, Respondent's Exhibit 5,)
3. On June 17, 2019, the multidisciplinary team ("MDT") at School A met to review recent evaluations, determine eligibility, and revise Student's IEP. At the June 17, 2019, meeting, the MDT reviewed a comprehensive psychological evaluation, a speech language evaluation and an OT evaluation. The psychological evaluation consisted of the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ-IV COG), the Connors 3 rating

⁴ Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A.

⁵ Petitioner presented four witnesses: (1) Student's parent, Petitioner (2) Director at School B, the non-public School where Petitioner is seeking Student be placed, (3) Petitioner's Educational Advocate, and (4) a Clinical Psychologist. DCPS presented two witnesses: (1) a Special Educator and (2) School A's former LEA Representative.

⁶ The evidence (documentary and/or testimony) that is the source of the Findings of Fact ("FOF") is noted within parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party's exhibit.

scale of ADHD, and the Behavior Rating Inventory of Executive Functioning (BRIEF2). The evaluator also reviewed a WJ-IV Tests of Academic Achievement ACH conducted by Student's special education teacher. (Petitioner's Exhibits 8-1, 8-2, 13-1, 13-2, Respondent's Exhibit 15)

4. Student received mostly low, very low and low average scores for the WJ-IV COG, demonstrating weaknesses in cognitive ability. The results for both the Connors 3 and BRIEF2 indicated elevated scores indicative of ADHD. Due to missing segments of this report, Petitioner requested an IEE, that the team approved and is currently pending completion. (Witness 2's testimony, Petitioner's Exhibit 8-1, 8-6, Respondent's Exhibit 10)
5. Student is currently functioning three years below age level in reading. Based on a comparison of the academic achievement testing DCPS conducted of Student in 2017 to the testing in May 2019 Student showed regression in several areas. Student showed regression in WJ-IV ACH assessment scores including letter-word identification (9-point decrease from January 2017 assessment), applied problems (34-point decrease), spelling (15-point decrease), passage comprehension (5-point decrease), and writing samples (9-point decrease). (Witness 3's testimony, Petitioner's Exhibits 14-1, 14-2, Respondent's Exhibit 15-1, 15-2)
6. During the June 17, 2019, meeting after a review of the evaluations and Student's academic performance, the MDT determined that Student remained eligible for special education and related services with the MD classification for SLD and OHI due to ADHD. (Petitioner's Exhibit 8-2)
7. The MDT then reviewed Student's IEP. Petitioner and her representative requested that Student be provided "a full time IEP." They asserted that Student had demonstrated little academic growth and not mastered IEP goals in the last two years. (Witness 2's testimony, Petitioner's Exhibit 8-3)
8. School A's special education coordinator stated that School A could only provide either an Intellectually Disabled ("ID") or Behavior and Education Support ("BES") program, but neither would be appropriate for Student. (Witness 5's testimony, Petitioner's Exhibit 8-3)
9. The DCPS MDT members did not agree to Petitioner's request for a "full time IEP," did not increase Student's specialized instruction, or change Student's least restrictive environment ("LRE"). School A agreed to make a referral for a change in Student's LRE the following school year. The resulting IEP prescribes ten (10) hours per week of specialized instruction outside of the general education setting, 180 minutes per month of speech-language pathology, 120 minutes per month of BSS, and 120 minutes per month of occupational therapy ("OT"). The IEP also prescribed EYS services. Student's previous IEP dated December 20, 2018, prescribed the same amount and setting of specialized instruction, speech language pathology, and BSS, and prescribed ES. (Petitioner's Exhibits 6-1, 6-17, 6-19, 7-1, 8-3, 8-4, 8-5, 9-1, 9-13, 9-15)

10. According to Student's present levels of performance in the current IEP, Student is performing two to four years below Student's current grade in math. Student regressed in some subset areas such as algebra and algebraic thinking. (Petitioner's Exhibit 6-4)
11. Student's IEP indicates that Student's "ADHD and weak interpersonal skills limits [Student's] progress in the general education curriculum due to [Student's] inability to ignore distractions and focus on assigned tasks." (Petitioner's Exhibit 6-12)
12. Student's end of year report card for SY 2018-2019 listed passing grades, but indicated that Student would be retained, pending summer school. (Petitioner's Exhibit 16)
13. During SY 2018-2019 Student had 23 absences from school. Some of Student's absences were attributable to Student arriving to school late. Some days Student would not want to go to school because Student was not retaining what was being taught and felt teachers were giving too much work. (Petitioner's testimony, Petitioner's Exhibit 16-1)
14. When doing homework at home with Petitioner, Student often will shut down when attempting the work and would often have difficulty retaining what Petitioner had just helped Student with on homework. Student now receives independent tutoring. Student engages well with the tutor and appears to be making some progress as a result. (Petitioner's testimony)
15. Although Student's IEP prescribed ESY for summer 2019, Student did not attend ESY. Petitioner believed Student would be more engaged with and benefit socially from attending a tennis camp instead. (Petitioner's testimony, Petitioner's Exhibit 6-19, Respondent's Exhibit 26)
16. Petitioner presented a clinical psychologist during the hearing who testified as an expert witness. Based on her review of Student's evaluations and academic performance, she opined that Student is in need of a "full-time self-contained class," but should not be placed with students with ID classification or with students with significant behavioral difficulties. She opined that if there is not an appropriate DCPS class, then a team should consider Student for a non-public placement. (Witness 3's testimony)
17. Petitioner's educational advocate also testified as an expert witness and opined that Student's current placement at School A is not sufficient. She asserted that Student requires intense remediation and specialized instruction for all subjects that require reading, with at least 20 hours of specialized instruction to cover all academic subjects. (Witness 2's testimony)
18. Student's special education teacher at School A also testified as an expert witness. In the teacher's opinion Student's deficits in class with one to one instruction were not as low as Student academic achievement testing results indicated. Student is able to interact with ■■■■■ peers appropriately with group activities and has age appropriate behaviors. However,

the special education teacher had never observed Student in a general education classroom. (Witness 4's testimony)

19. Petitioner's educational advocate prepared a compensatory education proposal that sought to compensate Student for an inappropriate IEP and placement from June 17, 2019, to September 25, 2019, or twelve weeks. The advocate proposed that Student be provided 500 to 1000 hours of Lindamood-Bell ("LMB") instruction at \$136.00 per hour and placement in a self-contained day school program. (Witness 2's testimony, Petitioner's Exhibit 26)
20. Student was interviewed by and accepted to a non-public special education separate day school ("School B"). School B serves students with a variety of needs in small group settings with a ratio of 6 students to 1 staff member. School A has certified special education teachers, assistant teachers and offers speech language services, OT and social work services in the classroom addressing grade level standards. All students have disabilities and most students are at least 2 years behind academically. There 62 students in School B's lower and middle school and 105 students in its high school. School B's program runs from September through June and the program costs \$37,275.00 annually. School B has OSSE certification. (Witness 1's testimony, Petitioner's Exhibit 24)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i), a decision made by a Hearing Officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii), in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324.

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Respondent held the burden of persuasion on the issue adjudicated after Petitioner established a prima facie case.⁷ The normal standard is

⁷ DC Code § 38-2571.03 (6) provides:

(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. §

preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 F. Sup. 2d (D.D.C. 2008) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE: Whether DCPS denied Student a FAPE by failing to provide an appropriate IEP and/or placement and/or location of service (“LOS”) because Student’s June 17, 2019, IEP does not prescribe more than 10 hours of specialized instruction outside the general education setting.

Conclusion: Respondent did not sustain the burden of persuasion by a preponderance of the evidence on this issue. The Hearing Officer concludes Student was denied a FAPE because the IEP that School A developed for Student was not reasonably calculated to enable Student to make progress appropriate, in light of the Student’s circumstances.

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

In *Board of Education v. Rowley*, the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07. To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

“The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *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

1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

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

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

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

needs’ of a particular child.” *Andrew F.*, 137 S. Ct. at 994, quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

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

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

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

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

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

The evidence demonstrates that Student is currently functioning three years below age level in reading. Student is performing two to four years below Student’s current grade in math. Also, based on a comparison of the academic achievement testing Student showed regression is several academic areas in areas. The evidence demonstrates that despite the evaluative data that indicated Student had made little to no academic progress over a period of two years, and had even regressed

in some areas, the MDT at the June 17, 2019, meeting maintained the same level of specialized instruction that Student had been provided in Student's previous IEP. Petitioner presented credible expert witnesses who testified that Student's academic deficits and lack of academic progress warranted an increase in specialized instruction and a change in Student's LRE.

Although DCPS presented expert witnesses, one of whom was Student's special education teacher, that teacher had only observed Student in the special education setting and could not attest to Student's performance in the general education setting. Although Student's report card indicated passing grades, the report card also noted that Student would be retained pending attending summer school.

DCPS other expert witness testified that Student's level of specialized instruction in the June 17, 2019, IEP was appropriate. However, that witness had observed Student only briefly in the classroom. Neither of these witnesses' testimony sufficiently countered the evaluative data and the statements in Student's IEP that Student is performing two to four years below Student's current grade in math and three years below age level in reading. Student's IEP also clearly states that Student's "ADHD and weak interpersonal skills limits [Student's] progress in the general education curriculum due to [Student's] inability to ignore distractions and focus on assigned tasks."

Based upon this evidence, the Hearing Officer concludes Student's June 17, 2019, IEP, because it lacked any increase in specialized instruction, and any increase in instruction outside the general education setting, was not reasonably calculated to enable Student to make progress appropriate, in light of Student's individual circumstances. Thus, the Hearing Officer concludes that Student was denied a FAPE.

Petitioner has requested that Student be placed in a separate special education day school and presented evidence of Student's acceptance in such a school. However, the evidence does not sufficiently support a conclusion that Student's would be best served in setting in which Student is totally removed from non-disabled peers. Even Petitioner's expert witnesses did not provide a full-throated endorsement of such a restricted placement for Student.

The clinical psychologist testified that Student is in need of a "full-time self-contained class," but should not be placed with students with ID classification or with students with significant behavioral difficulties. She opined that if there is not an appropriate DCPS class, then a team should consider Student for a non-public placement. Petitioner's educational advocate testified that Student specialized instruction for all subjects that require reading, with at least 20 hours of specialized instruction to cover all academic subjects.

Consequently, the Hearing Officer does not grant Petitioner's requested relief that Student be placed at School B for the remainder of SY 2019-2020. However, the Hearing Officer in the order below directs that DCPS promptly amend Student's IEP to provide for a more restrictive LRE and determine and appropriate placement and location of services for Student.

Remedy:

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

Under the theory of compensatory education, "courts and hearing officers may award educational services to be provided prospectively to compensate for a past deficient program. The inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid*, 401 F.3d 522 & 524. To aid the court or hearing officer's fact-specific inquiry, "the parties must have some opportunity to present evidence regarding [the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526.

Petitioner has requested as compensatory education that Student be provided 500 to 1000 hours LMB instruction. However, the Hearing Officer is convinced that the requested amount of LMB instruction that has been requested is excessive. First, the proposal asserts that Student should be provided services from June 17, 2019, to September 25, 2019. The proposal seeks to award for missed ESY, which in the Hearing Officer's opinion, was available to Student, but Petitioner chose not to use. In the order below the Hearing Officer directs that DCPS amend Student's IEP to prescribe at least 20 hours per week of specialized instruction outside general education. This means that Student has missed approximately six weeks of these additional services since SY 2019-2020 or approximately 60 hours of instruction.

The evidence demonstrates that Student is benefiting from the independent tutoring that is being provided and based upon that evidence, the Hearing Officer concludes that a reasonable award of tutoring services that is likely to allow Student to recoup from these missed services is reflected in the order below.

ORDER: ⁸

1. DCPS shall, within ten (10) business days of the issuance of this order, do the following:
 - (a) amend Student's IEP to prescribe at least 20 hours of specialized instruction per week outside the general education setting, (b) convene an IEP meeting to review outstanding evaluation(s) and review and determine Student's disability classification, (c) determine an appropriate educational placement and LOS for Student for the remainder of SY 2019-2020 and (d) authorize and fund 100 hours of independent tutoring at the OSSE prescribed rate.

⁸ Any delay in Respondent meeting the timelines of this Order that is the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

2. All other relief requested by Petitioner is denied.

APPEAL PROCESS:

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

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: October 6, 2019

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