DC Office of the State Superintendent of Education

Office of Review & Compliance
Student Hearing Office
1150 5th Street, S.E.
Washington, D.C. 20003

CONFIDENTIAL

OSSE STUDENT HEARING OFFICE
2012 OCT 31 AM 8:46

STUDENT[1], by and through Student's Parent Petitioners, v. DCPS Respondent.	HEARING OFFICER'S DETERMINATION Impartial Hearing Officer: Joseph Selbka

[1] Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. Introduction and Procedural Background

1. Student is with multiple disabilities. Student has an intellectual disability which makes academically performing at grade level impossible (Independent Psychologist Testimony) Student is also medically fragile (Independent Psychologist Testimony, Parent Testimony).

2. The Circumstances which prompted this hearing was a claim that from April, 2010 to November, 2011, Student was not provided homebound services; The District failed to reevaluate for two years; the District failed to comprehensively evaluate Student in her April, 2012 triennial reevaluation, and the District failed to design an appropriate IEP for Student in May, 2012.

3. The parties agree that the complaint was filed on October 16, 2012. The parties conducted a resolution meeting on November 13, 2012, while the thirty day timeline ended on November 15, 2012. The parties have not agreed to shorten or waive the resolution period. Accordingly, the parties agreed that the 45-day timeline started to run on November 16, 2012. Accordingly, a final decision shall be due on December 30, 2012. The Parent filed a motion for an expedited hearing which was denied by the undersigned on October 29, 2012 in a written order.

4. The District filed a response on October 31, 2012.

5. A prehearing conference occurred on November 20 and 27, 2012, which resulted in a prehearing order that issued on November 29, 2012. The hearing occurred on December 6, 2012 in Room 2003 of the Student Hearing Office and December 7, 2012, in Room 2009 of the Student Hearing Office. The Parent called seven witnesses: Parent, Student, Independent Physical Therapist, Educational Advocate, Intake Person, Independent Psychologist, and Independent Assistive Technology Consultant. Parent Exhibits ##1-2, 6-35 were admitted into evidence without objection. Parent Exhibits ##3-5 were admitted into evidence over the District's objection. District Exhibits 1 to 70 were admitted. Numerous District exhibits were objected to in an e-mail by the Parent's Counsel on the basis of relevance. Those objections were overruled. The Parents initially made and then withdrew an objection based upon the five day rule. The District called two witnesses, School Physical Therapist and Teacher. Carolyn Houck and Michelle Kotler represented the Parent. Tanya Chor represented the District. The hearing was closed to the public. Closing briefs were filed

6. The due process hearing was held and a decision in this matter is being rendered, pursuant to 20 U.S.C.A. 1400 et seq., and its implementing regulations, 34 CFR 300 et seq. and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

II. Issues to be Decided

7. The issues initially raised by the Petitioner at the prehearing conference were:

Issue #1- Whether the District failed to provide FAPE by failing to provide any special education placement to Student after April, 2010. Specifically, the Parent contends that the Student was entitled to homebound services after April, 2010.

Issue #2- Whether the District failed to provide Student FAPE by failing to take necessary steps to allow Parent to participate in an April 10, 2012, IEP meeting.

Issue #3- Whether the District failed to provide Student FAPE by failing to develop an appropriate IEP in May 30, 2012. According to Parent; Student needs related services in speech and language in the amount of 30 minutes per week; physical therapy services to be determined by a physical therapy assessment; and Student needs ESY. Moreover, according to Parent, the District developed an IEP without comprehensively evaluating Student first.

Issue #4- Whether the District failed to provide Student FAPE by failing to comprehensively evaluate Student in the April, 2012 triennial reevaluation. Specifically, the Parent contends that the District needed to conduct an audiological assessment; developmental vision assessment; physical therapy assessment; and assistive technology assessment.

Issue #5- Whether the District failed to reevaluate Student as required by law during the two years prior to the filing of the complaint.

Parent's requested remedy is a prior written notice and funding for a placement at the Kennedy Institute ("Proposed Private Placement" or "Proposed Private Location of Services").

8. At the prehearing conference, Parent withdrew her claim regarding the inappropriateness of the goals of the May 30, 2012, IEP and the need for a 1:1 paraprofessional with prejudice. Parent also withdrew her claim for compensatory education without prejudice. Later, in an e-mail on December 3, 2012, the Parent also withdrew Issue #2 without prejudice; withdrew claims of misrepresentations by Paris Adon; and withdrew a request for developmental vision assessment in Issue #4, amending the issue to claiming a vision assessment. The withdrawals without prejudice were all allowed by the undersigned, and Parent will be able to bring such claims at a later date.

9. There were a number of issues which were tangentially touched upon in the complaint, and a number of legal theories under which the Parent could have brought her claims against the District. However, in two prehearing conferences, the undersigned specifically requested and ordered Parents to state the issues for hearing with particularity and clarify the legal theories under which Parents were bringing their complaint against the District. The Parents were given an opportunity to object to the order, and their objections were noted for hearing and the issues amended pursuant to the Parent's objections.

10. Moreover, a significant problem with the issues as set forth by the Parent arises from the nature of Parent's claim, specifically Parent's claim that the District allowed bullying and harassment of Student in violation of IDEA. Although most courts agree that allowing bullying and harassment of a disabled

student can violate IDEA, courts have not set forth a legal theory through which to analyze bullying and harassment claims. *See TK v. New York City Department of Education,* 779 F.Supp.2d 289 (E.D.N.Y. 2011), for an extended discussion noting that courts have not agreed upon a legal theory under which claims for bullying can be brought. In this case there is no harm to the parties (as the undersigned addressed the issue of bullying under the District's duty to evaluate). However, a better legal theory through which to analyze the Parent's claims may be: (1) the bullying and harassment was so severe so as to create an inappropriate placement for Student; and/or (2) the location of services was so inappropriate due to a culture of bullying and harassment that the District could not have implemented the IEP at Johnson or Rock Creek Academy. *See Lunceford v. District of Columbia Board of Education,* 745 F.2d 1577 (D.C. Cir. 1984); *Savoy v. District of Columbia,* 844 F.Supp.2d 23 (D.D.C. 2012); *Eley v. District of Columbia,* 59 IDELR 189 (D.D.C. 2012) (a location of services which has characteristics that prevent a disabled child from receiving an educational benefit can give rise to an inappropriate placement claim or a failure to implement IEP claim). Because those legal theories were not presented at the prehearing conference, the undersigned will not analyze Parent's case through the lens of an inappropriate placement claim or a failure to implement claim.

III. Findings of Fact

Student's Disability

11.
Student had to undertake several aggressive rounds of chemotherapy and radiation therapy (Parent Testimony). To this day, Student takes several medications for her disabilities, and Student wears two hearing aides and, due to issues with her inner ears, she must have the fluid build- up in her ears medically addressed (Parent Testimony). During any change of the season, Student often becomes ill and is in constant pain due to the inner ear infections (Parent Testimony). Due to the aggressive treatments in Student's early childhood, Student is approximately half the height and weight of her age appropriate peers (Parent Testimony).

13. Student's extensive treatments have also left her with significant cognitive disabilities as well as physical disabilities (Independent Psychologist Testimony, P.Ex. 21-9). Student's verbal reasoning is in the borderline range while nonverbal reasoning is in the extremely low range (P.Ex. 21-9). Student also has extremely poor executive functioning (P.Ex. 21-9). Student also has problems related to spatial memory (Independent Psychologist Testimony).

14. Student also has significant fine motor problems and vision motor integration problems (P.Ex. 16-3,4, Independent Psychologist Testimony).

Student's Experiences at Various District Schools

15. From First through Seventh Grade, Student was at a District school, Rock Creek Academy (Parent Testimony). Student was bullied when left alone (Parent Testimony).

16. In March, 2012, Student enrolled at Johnson Middle School (Parent Testimony). Student was harassed and bullied nearly daily (Parent Testimony).

17. Parent entered into a safety plan with the District apart from the provision of special education at Johnson Middle School (Parent Testimony). The safety plan was ineffective (Parent Testimony).

18. Parent made numerous complaints to administration at Rock Creek Academy and Johnson Middle School (Parent Testimony). These complaints did not lead to a physically safe environment for Student at either location of services (Parent Testimony).

19. Parent has held her child back from school since the end of the 2012-2013 school year, due to her child's fear of school and the Parent's fear that Student will not be safe in the school environment presented by the District; and the fact that the District has failed to identify a location of services for Student (Parent Testimony).

Facts Related to the Evaluation Conducted by the District

20. As early as November, 2010, Parent reported concerns with Student's safety related to bullying and harassment (R. Ex. 20).

21. Student received a triennial evaluation in May, 2012 and a revised psychological assessment in Jul, 2012 (P.Ex. 11-14, 16, 17, 21). There was no "medical assessment," "nursing assessment," or "health assessment" in the assessments conducted as part of Student's comprehensive triennial evaluation (*id.*). The assessments demonstrate and District counsel confirmed in closing argument, that Student's health and medical information is located in various assessments (for purposes of this HOD, in the social-emotional assessment and the psychological assessment).

23. The assessments also do not address the psychological and educational effects of persistent harassment and bullying on Student (P. Ex. 11-14, 16, 17, 21). The undersigned adopts the opinion of Independent Psychologist that bullying and harassment caused Student to lose a substantial benefit from school, and that Student's disability caused some of the bullying and harassment. Specifically,

24. The undersigned makes an inference that Student had educational needs arising from her disability to be physically protected from bullying and harassment based upon the testimony of Parent as to Student's fragility; and the testimony of Parent and Student as to the nature of the bullying and harassment. The undersigned makes a further inference that Student needed to be evaluated to determine the extent of Student's disability in this area and Student's needs for accommodation in this area.

25. The undersigned makes a further inference that Student had educational needs arising from her disability to be psychologically protected from bullying and harassment based upon the testimony of Independent Psychologist, Student, and Parent as to the nature of the bullying and harassment and the effects on Student of the bullying. The undersigned makes a further inference that Student needed to be evaluated to determine the extent of Student's disabilities when manifestations of Student's disabilities interacted with a culture of bullying and Student's needs for accommodation when Student had to interact with a culture of bullying.

26. The undersigned further makes an inference that the District should have known that the District needed to assess how Student's disabilities interacted with the pervasive bullying and harassment Student experienced at the various District schools in order to determine whether Student required accommodations or a different placement.

27. The District performed a "screener" wherein the District Physical Therapist observed the Student to see if Student was able to navigate the school including the stairs and doors (District Physical Therapist Testimony).

28. According to Independent Physical Therapist, use of the screener alone was inadequate because it only addressed Student's functioning in the school environment (Independent Physical Therapist Testimony). Rather, according to Independent Physical Therapist, the screener should have tested for range of motion, elasticity, strength, and balance (Independent Physical Therapist Testimony). Moreover, according to Independent Physical Therapist, the screener should have been validated and objectively verifiable (Independent Physical Therapist Testimony). However, according to the District Physical Therapist, in the school setting, physical therapy is unnecessary as long as Student can function

in the school building (District Physical Therapist Testimony). There was no evidence or testimony that District Physical Therapist screened Student as she became fatigued, and District Physical Therapist admitted that Student is not as robust as other children. Parent testified that Student was not able to open doors or function in a school environment (Parent Testimony).

30. The District Physical Therapist noted that the sole purpose of the screener was to determine whether Student needed physical therapy to navigate the school (District Physical Therapist Testimony). However, Independent Physical Therapist opined that assessments in physical therapy had to be completed in all areas where physical ability could affect the completion of all goals in the IEP (and thus, more than function had to be assessed)(Independent Physical Therapist Testimony).

31. The undersigned rejects the opinion of District Physical Therapist that range of motion, elasticity, strength, and balance are not subjects to be assessed in the school setting. Specifically, deficiencies in all of these areas may require physical therapy related services in order for Student to benefit from vocational education and transition services; physical education, and other aspects of special education required by law. Moreover, the strength, range of motion, elasticity, and balance of Student are interrelated to function in the school building. The undersigned therefore makes an inference that a full screener would have to address the areas set forth by the Independent Physical Therapist (range of motion, strength, elasticity, and balance) in order to assess Student's disability and how aspects of Student's disability would affect Student's ability to benefit from aspects of special education such as vocational education, physical education, and transition services.

32. The undersigned further makes an inference that physical therapy was an area of suspected disability which the District should have known needed to be evaluated to determine the extent of Student's disability in this area and Student's needs for accommodation based upon the testimony of Independent Physical Therapist. In support of said inference, the undersigned adopts the opinions of Independent Physical Therapist to the extent that said opinions are summarized in these findings of fact. Moreover, the undersigned makes an inference that the screener was not a technically sound instrument within the meaning of IDEA because the screener was not a standardized or validated assessment.

33. Educational Advocate performed a vision and learning "screener" which revealed that Student had significant vision problems which may affect her learning (P. Ex. 15). Educational Advocate also noted that Student had hearing problems which could be affecting her learning (Educational Advocate Testimony).

34. There is no evidence that the District ever performed a vision or hearing assessment or screener. In a previous HOD from 2009, Parent was given authority to have an independent vision developmental assessment completed (See R. Ex. 5). However, there is no evidence an independent developmental vision assessment was completed, and the District never completed a vision assessment as part of Student's triennial assessment (See P. Ex.11-14 , 16, 17). In its closing argument, the District

admits the District is aware of Student's vision issues (District Closing Brief). The District's own speech pathologist also noted that Student's hearing was interfering with Student's ability to take speech and language assessments (P. Ex. 12-1,2).

35. Based upon the above stated evidence and admissions, the undersigned makes an inference that Student's vision is an aspect of her disability which the District knew needed to be evaluated to determine the extent of Student's disability in this area and Student's needs for accommodation in this area.

36. Based upon Student's disability in hearing and District observations that hearing was a problem for Student to understand verbal directions, the undersigned makes an inference that hearing is an area of suspected disability which needs to be evaluated to determine Student's needs and the need for accommodations for Student to receive FAPE.

37. Student's problems with fine motor skills, vision issues, executive functioning problems, and decreased recall make it difficult for Student to learn and absorb information (Independent Assistive Technology Evaluator Testimony). Student has problems taking notes and absorbing information at the same time (*Id.*). Because of Student's disabilities, Student may need technological support to learn until her fine motor skills can develop (*Id.*). Technology such as keyboarding or voice operated software would be very helpful in allowing Student to take notes (*Id.*). Some forms of assistive technology may be the only way for Student to obtain an educational benefit. (*Id.*) Student also needs other assistive technology to aid her in organizing her thoughts and taking notes to make up for executive functioning deficits (*Id.*). There is no evidence that the District performed an assistive technology assessment as part of Student's triennial evaluation.

38. Based on the above stated factual findings, the undersigned makes an inference that the District should have known that an assistive technology assessment is necessary to determine how Student's needs could have been accommodated in the classroom and whether assistive technology is the only way to accommodate Student in the classroom.

Facts Related to Student's May, 2012, IEP

39. The District finalized Student's IEP in May 20, 2012, IEP contains a list of accommodations (P.Ex. 19-12). However, there is no evidence and no accommodations designed to protect Student from bullying (*Id.*). Similarly, there is no evidence that the District took into account the psychological and educational effects of a culture of bullying on Student.

40. There is also no evidence of assistive technology accommodations (other than pencil grips) in the May, 2012 IEP (*Id.*).

41. The May, 2012, IEP provides for Student to receive approximately 15 minutes per week of speech and language services (60 minutes per month) (P.Ex. 19-10). There was no evidence presented at hearing that this was insufficient for Student's needs. Parent made no argument and provided no expert testimony that more speech and language therapy services were required. In Parent's closing

brief, Parent does not address whether additional speech and language services were/are necessary for Student to receive FAPE.

42. There was no testimony that Student regresses to a greater extent than other children when she is not provided educational services for a long period of time. Educational Advocate's opinion was premised on the basis that all children will regress when not provided educational services for a long period of time.

43. The undersigned makes an inference that the May, 2012, IEP is not reasonably calculated to provide Student FAPE because the IEP is not based upon a comprehensive evaluation. Specifically, the District formulated an IEP without a physical therapy assessment, vision assessment,audiological assessment, and assistive technology assessment. As such, the IEP Team did not have a full picture of the extent of Student's disabilities (in the areas of vision, hearing, and gross motor control). This led to an incomplete picture of Student's educational needs. Moreover, the lack of an assistive technology assessment led to an incomplete picture as the range of options possible to accommodate Student in the classroom.

44. Moreover, the undersigned makes an inference that the May, 2012, IEP is not reasonably calculated to provide Student FAPE because the IEP is not based upon a comprehensive evaluation in another way. The IEP is clearly deficient in that there are no accommodations to protect Student from bullying. The IEP Team also did not have any assessment addressing how Student would be safely accommodated in the classroom in light of bullying. The IEP Team also did not have any assessment addressing the psychological impacts of bullying on Student. Without this vital information, the IEP Team could have designed an IEP reasonably calculated to provide Student with FAPE.

Facts Related to Student's Receipt of Homebound Services

45. Due to infections which Student is often subject to, she is unable to attend school for long periods of time (Educational Advocate Testimony, Parent Testimony).

47. Student received minimal homebound services while she was unable to attend school (approximately 2-3 hours of services over the course of months) (Parent Testimony, R. Ex. 20).

48. In November, 2010, the District changed Student's IEP LRE to homebound (R. Ex. 25). The District noted that Student hadn't been receiving IEP services for months on end (*Id.*).

49. The District was aware of these periods of prolonged illness and repeatedly failed to provide homebound services (Parent Testimony, R. Ex. 20). Student only received two total hours of homebound instruction for the months Student was on homebound (P.Ex. 17, Parent Testimony)

50. Student regressed extensively when she should have been receiving homebound services but was not (Educational Advocate Testimony).

51. Parent claims misrepresentations that the lack of provision of homebound services was going to be resolved. However, Parent's claim that the District failed to provide homebound services from July, 2010, to September, 2010, were more than two years old when the District had completely failed to provide the services in question. Thus, no credible misrepresentation could have occurred at that time, and the Parent was well aware that no homebound instruction had occurred by October, 2010. As such, there is no statutory or equitable reason to toll the statute of limitation for a failure to provide homebound services.

52. However, after November, 2010, Student's placement was explicitly changed to homebound. The District's failure to provide homebound services at that point of time is unequivocally within the statute of limitations.

Student's Needs and the Proposed Private Location of Services

53. At the Proposed Private Location of Services, Student has been and will be in a class with approximately 8 students (Intake Person Testimony). The Proposed Private Location of Services is a small school (Intake Person Testimony).

54. Proposed Private Location of Services has a program designed to prevent bullying and harassment (Intake Person Testimony). Because of size of the staff, the Private Placement can intervene and prevent bullying and harassment (*Id.*).

55. Proposed Private Location of Services works to interact with peers in the community in a variety of settings and provides functional skills which will allow Student to live independently (*Id.*).

56. Private Location takes students out into the community and in job settings and tries to teach students academic and functional skills in a job setting (*Id.*). This demonstrates to the students the need to learn academics to function in real world settings (*Id.*).

57. Proposed Private Location of Services always supervises students who have been placed in community settings so as to give students the ability to interact with the outside world while insuring the physical and psychological safety of the students (*Id.*).

58. Proposed Private Location of Services provides academics, social skills, and life skills tailored to the needs of its students (*Id.*). Private Location can provide related services in occupational therapy, physical therapy, and social work (*Id.*). Private Location can break up assignments and tests into smaller tasks; have aides copy notes and work for students; and can voice record lectures for students (*Id.*).

59. Proposed Private Location of Services is certified by OSSE (P.Ex. 25-5).

60. Student needs a small school environment which can provide her with physical, social, and emotional safety, instruction which matches her academic achievement levels and abilities;

accommodations for executive functioning deficits (Including small classrooms, repetition, and having tasks broken down,); and community and functional training (Independent Psychologist Testimony) .

61. Student needs a small class size, frequent interaction with instructors to keep her on task and to monitor task completion. Student needs her strengths to be capitalized on (verbal functioning); elementary academic training which are in accord with her current academic skill levels (Independent Psychologist Testimony).

62. Student would benefit for copies of notes provided for her because her visual motor coordination is problematic; tests and assignments need to be broken up into small chunks; and relatively high repetition in instruction (*Id.*).

The Student's Least Restrictive Environment

63. Student also can learn better in a community based mode of learning (Independent Psychologist Testimony). Specifically, because of her disabilities, Student would learn best in an environment based upon community based model where she can learn community life skills in the community (*id*).

64. Student's intellectual disability is so severe that she is unable to obtain an educational benefit from the instruction provided to her age appropriate peers (Independent Psychologist Testimony). Student is also behind her age appropriate nondisabled peers in social-emotional functioning and subject to constant bullying and harassment so as to outweigh any nonacademic benefit Student would achieve from mainstreaming (Independent Psychologist Testimony).

65. Student has had no friends among her age-appropriate peers (Parent Testimony). Because of the continuous harassment and bullying, Student has become afraid of attending school (Parent Testimony), and sought to avoid school (Independent Psychologist Testimony). In the present case, Student has not attended school since June, 2012 (Parent Testimony). Because of Student's frail physical stature and intellectual disabilities, Student is not able to make friendships and grow as a result of interactions with her age appropriate peers (Independent Psychologist Testimony).

66. When students are concerned about their physical safety, said students are distracted and not focusing, and lose academic benefit from school (Independent Psychologist Testimony). Student has been concerned about her physical safety in the District schools she has attended (Parent Testimony). District counsel admitted that all District schools would have students who acted inappropriately and bullied Student (District Counsel admission).

67. Because of Student's spatial memory problems, fatigue issues, and fine motor problems, Student can have problems navigating the building, and thus it creates a problem to allow Student to wander the hallways of a school building alone (Independent Psychologist Testimony).

68. The undersigned makes an inference based upon Student's lack of academic and social and emotional progress, mainstreaming attempts by the District at two separate schools have failed.

69. Student needs a small class size, frequent interaction with instructors to keep her on task and to monitor task completion. Student needs her strengths to be capitalized on (verbal functioning); elementary academic training which are in accord with her current academic skill levels (Independent Psychologist Testimony).

70. For the above stated reasons, the undersigned makes an inference that the segregated placement at the Proposed Private Placement would be superior to the general education placement proposed by the District.

71. The District presented the testimony of Teacher suggesting that it was good for Student to learn social interactions in a mainstreamed environment. Teacher's opinion was unsupported by any demonstration as to how the District would protect Student's safety while learning how to interact with students. As this student is medically fragile and inappropriate interactions with fellow students could be fatal to Student, the undersigned rejects Teacher's opinion that Student should be mainstreamed as unreasonable (the undersigned makes no finding as to whether Teacher's philosophy could be worthwhile for nondisabled students and/or students who are not medically fragile).

Facts Related to the Conduct of the Parties (not already set forth in this Decision)

72. There is no evidence in the record that the District has assigned a new location of services for Student since she graduated from Johnson Middle School.

The Cost of the Private Placement

73. Proposed Private Placement is certified by OSSE (Intake Person Testimony). Proposed Private Placement charges tuition at the rates as set by OSSE (Intake Person Testimony).

IV. Conclusions of Law

74. The Federal and State Special Education Laws are set out in the Individual with Disabilities Education Act, 20 U.S.C.A. 1400 *et seq.* ("IDEA") and in the District of Columbia Municipal Code. In enacting IDEA, Congress intended to establish a "cooperative federalism." *Evans v. Evans*, 818 F.Supp.1215, 1223 (N.D. Ind. 1993). Compliance with minimum standards set out by the federal act is necessary, but IDEA does not impose a nationally uniform approach to the education of children with a given disability. *Id.* Thus IDEA does not preempt state law if the state standards are more stringent than the federal minimums set by IDEA. *Id.*

75. In regard to the burden of proof in a special education proceeding, the Supreme Court has held that the ultimate burden of persuasion lies with the party filing the due process complaint. *Schaffer v. Weast* 546 U.S. 49 (2005). Parents must prove their case by a preponderance of the evidence. However, once a parent has proven a denial of FAPE, the parents have met their burden. *Henry v. District of Columbia,* 55 IDELR 187, 750 F.Supp.2d 94 (D.D.C. 2010). At that point, the hearing officer must provide the student with an individualized remedy to make the student whole for the denial of FAPE. *Id.*

76. In determining whether a placement is proper under IDEA, the hearing officer does not need to defer to the party witnesses. *Block v. District of Columbia,* 748 F.Supp. 891 (D.D.C. 1990)(hearing officer characterized as having specialized expertise in special education and special education law); *See also School District of the Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002); *Board of Education of Murphysboro Community Unit School District No. 186 v. Illinois State Board of Education*, 41 F.3d 1162, 1167 (7th Cir. 1994)(hearing officer characterized as expert witness in determining whether placement is proper). A hearing officer can thus use his/her expertise to determine an appropriate placement for the student. *Id.*

77. In administrative proceedings, hearsay is admissible as long as it is relevant and material. *Hoska v. United States Department of the Army,* 677 F.2d 131 (D.C. Cir. 1982); *Johnson v. United States,* 628 F.2d 187 (D.C. Cir. 1980). To the extent hearsay is admitted without objection, the evidence can be given its natural weight. *Sykes v. District of Columbia,* 518 F.Supp.2d 261, 49 IDELR 8 (D.D.C. 2007).

78. Admissions by counsel constitute evidentiary admissions and can be considered by the trier-of-fact. *A-J Marine, Inc. v. Corfu Contractors*, 810 F.Supp.2d 168 (D.D.C. 2011) *Burman v. Phoenix Worldwide Industries, Inc.* 384 F.Supp.2d 316 (D.D.C. 2005).

79. Inferences are conclusions of fact derived from the evidentiary facts introduced at hearing. *Bray v. United States,* 306 F.2d 743 (D.C. Cir. 1962); *Dell v. Department of Employment Services,* 499 A.2d 102 (D.C. Ct. of App. 1985). Hearing officers can make reasonable inferences from the evidence adduced at hearing. *Dell, supra.* However, like in all administrative adjudications, the inferences must be supported by facts proved or admitted. *National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 814-815 (1990)(Scalia, j. dissenting). The inferences must be drawn from facts through a process of logical reasoning. *Id.* Thus, the hearing officer must draw an accurate and logical bridge between the evidence and result. *Charles v. Astrue,* 2012 WL 1194707 (D.D.C. 2012).

80. A factfinder is entitled to draw an adverse inference when a party has peculiar knowledge and ability to provide a pertinent piece of evidence or testimony and inexplicably fails to provide the evidence in question. *Czekalski v. LaHood,* 589 F.3d449 (D.C. Cir. 2010).

81. Expert opinions are admissible if the experts are considered qualified through either training or experience. *Jenkins v. United States,* 307 F.2d 637 (D.C. Cir. 1962). To the extent the hearing officer relies upon expert opinions, the expert opinions must be inferred ultimately from facts in the record, and the inferential process by which an expert reaches his/her conclusions must be fully explained. *Giant Food Stores, Inc. v. Fine*, 269 F.2d 542 (D.C. Cir. 1960) (expert testimony must be grounded by material facts in the record); *The Nereide*, 9 Cranch 388 (1815) (in litigation, witnesses must testify as to the train of their inferential reasoning).

82. Expert testimony can be based on facts supplied by a hypothetical question or by testimony from another witness at trial. *Hartford Accident and Indemnity Co. v. Dikomey Manufacturing Jewelers, Inc.* 409 A.2d 1076 (D.C. App. 1979).

83. In determining whether an expert is qualified on a specific subject matter, education, experience, or other training can provide the appropriate qualifications for an expert. *Jenkins v. United States, supra.* See also *Fox v. Dannenberg*, 906 F.2d 1253, 1255 (8th Cir. 1990) and *United States v. Briscoe,* 896 F.2d 1476, 1498-1497 (7th Cir. 1990).

84. Hearing officers are entitled to and often need to make credibility findings. *Stephens Media, LLC v. National Labor Relations Board,* 677 F.3d 1241 (D.C. Cir. 2012).

85. The IDEA also requires a decision based upon substantive grounds based on whether a child received FAPE. 20 U.S.C.A. 1415(f)(3)(i); *A.G. v. District of Columbia.* 57 IDELR 9, 794 F.Supp.2d 133 (D.D.C. 2011). This requirement imposes upon all administrative hearing officers the obligation to structure the hearing so as to properly make an administrative record. *Id.* As in most state administrative proceedings, District of Columbia impartial hearing officers have the power not only to listen to evidence presented by the parties, but to affirmatively find facts necessary to properly to determine which party should prevail under the law. *A.G., supra, Gill v. District of Columbia,* 751 F.Supp.2d 104 (D.D.C. 2010) (the educational needs of a special needs child cannot be forfeited by poor lawyering and an incomplete record); *See also,* Frank Cooper, State Administrative Law, Vol. 1, Bobbs-Merrill Company, Inc. (1965), pg. 336 .

In administrative litigation, the hearing officer must be concerned with not only ensuring a fair process wherein the parties can present evidence, but also a proper result under the law because there is a significant public interest in properly having the law carried out. Landis, John, "*The Administrative Process*," Yale University Press (1938) excerpted in Foundations of Administrative Law, Schuck, Peter (ed.) Foundation Press (2004), pp. 13-14. For this reason, administrative hearing officers are constitutionally permitted to depart from the adversarial model and independently obtain evidence and develop an administrative record while remaining a neutral and impartial decision maker. *Sims v. Apfel,* 530 U.S. 103, 110-11 (2000); *Richardson v. Perales,* 402 U.S. 389, 400-401 (1971) (social security administrative law judges constitutionally permitted to develop the record to determine all facts necessary whether benefits should be granted under law).

Conclusions Related to IEP Design and Revision

86. Student is entitled to an IEP designed to provide a Free Appropriate Public Education ("FAPE"). FAPE is defined as an educational placement reasonably calculated to provide Student with an educational benefit. *Board of Education of Henrik Hudson Central School District v. Rowley,* 458 U.S. 176 (1982). The District need not provide a program designed to maximize Student's educational potential. *Id.* Rather, the District only needs to provide a program designed to produce substantial educational progress. *Id.*

87. An IEP team must thus develop an IEP which is reasonably calculated to provide the student with an educational benefit. *Board of Education of Henrik Hudson Central School District v. Rowley,* 458 U.S. 176 (1982); *T.H. v. District of Columbia,* 52 IDELR 216, 620 F.Supp.2d 86 (D.D.C. 2009). *Hunter v. District of Columbia,* 51 IDELR 34 (D.D.C. 2008). To do so, the IEP must be reasonably calculated to

produce substantial progress, not regression or trivial academic advancement. *M.B. v. Hamilton Southeastern Schools,* 668 F.3d 851 (7th Cir. 2011).

88. As part of the IEP Team's responsibilities, it must design must determine the safety and health needs of a child in order to provide accommodations designed to protect the child in his/her educational environment. *Lillbask v. State of Connecticut Department of Education,* 397 F.3d 77, 42 IDELR 230 (2nd Cir. 2005). To fail to protect a disabled child's safety (especially a medically fragile child) through accommodations constitutes a denial of FAPE. *Id.* The physical and psychological safety of the child is also an important factor (mandated by regulation) in determining the LRE of the disabled child. 34 CFR 200.116(d).

89. Specifically, when a hearing officer determines whether an IEP is reasonably designed to provide a student with FAPE, the hearing officer must judge the district based upon what the district knew or reasonably could have known at the time the IEP was drafted—not solely on whether academic progress occurred. *S.S. v. Howard Road Academy,* 51 IDELR 151, 585 F.Supp.2d 56 (D.D.C. 2008). *See also M.B. v. Hamilton Southeastern Schools,* 668 F.3d 851 (7th Cir. 2011); *Thompson RJ-J School District v. Luke P.,* 540 F.3d 1143 (10th Cir. 2008); *Adams v. State of Oregon,* 195 F.3d 1141, 1149 (9th Cir. 1999); *Fuhrmann v. East Hannover Board of Education,* 993 F.2d 1031, 1041 (3rd Cir. 1993); *Roland M. v. Concord School Committee,* 910 F.2d 983, 992 (1st Cir. 1990).

90. However, a District is not entitled to use an IEP which is not producing progress for years on end. *O'Toole v. Olathe District Schools Unified School District No. 233,* 144 F.3d 692 (10th Cir. 1998). Moreover, a District must revise an IEP when the IEP is obviously failing to produce progress or in any other situations when it would be appropriate to do so. *M.M. v. Special School District No. 1,* 512 F.3d 455, 49 IDELR 61 (8th Cir. 2008).

91. An IEP must be revised "as appropriate" when a district knows or should know that the IEP is clearly failing. 34 CFR 300.325(b); *M.M. v. Special School District No. 1,* 512 F.3d 455, 49 IDELR 61 (8th Cir. 2008).

92. Student must also be educated in the least restrictive environment appropriate. 34 CFR 300.114(a)(1). Districts must educate disabled students with their nondisabled peers to the maximum extent appropriate, and separate classes or schools are only permissible if the nature or severity of the disability is such that a student cannot be educated with his/her nondisabled peers satisfactorily (even with accommodations and aids). 34 CFR 300.114(a)(2).

93. Thus, in determining whether a student needs a more restrictive environment, the ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so." *Beth B. v. Van Clay,* 282 F.3d 493, 499 (7th Cir. 2002). In determining whether Student is receiving a satisfactory education, some factors which the undersigned uses to evaluate the placement are: (1) whether a segregated placement is superior, and if so, whether the services which make the segregated placement superior can be replicated in the classroom, *Roncker v. Walter,* 700 F.2d 1058 (6th Cir. 1983); (2) whether there are educational benefits to mainstreaming, *Sacramento v. Rachel H. by Holland,* 14 F.3d 1398 (9th Cir. 1994); (3) whether there are non-academic

benefits to mainstreaming, *Id.*; (6) whether there is a danger that the student is in danger of physical or psychological harm in the regular classroom, 34 CFR 300.116(d).

94. Under certain circumstances, a district must provide extended school year services to provide a student FAPE. 34 CFR 300.106. In the District of Columbia, ESY is only necessary if the student faces a significant risk of having the gains of a school year jeopardized if the student is not provided with ESY. *Jackson-Johnson v. District of Columbia,* 59 IDELR 101 (D.D.C. 2012); *Jackson-Johnson v. District of Columbia,* 112 LRP 36774 (D.D.C. 2012)[2]. Regression-recoupment problems triggering the need for ESY occur when: A child suffers an inordinate or disproportionate degree of regression during the summer break; and it takes an inordinate or unacceptable length of time for the child to recoup the lost skills upon returning to school. *Alamo Heights Independent School District v. State Board of Education,* 790 F.2d 1153 (5th Cir. 1986).

Conclusions of Law Related to an Appropriate Location of Services

95. While a district generally has discretion to choose a location of services to provide special education to a child, a location which cannot implement large portions of the child's IEP amounts to a change of placement, a material failure of implementation of the IEP, and denial of FAPE. *Lunceford v. District of Columbia Board of Education,* 745 F.2d 1577 (D.C. Cir. 1984); *Savoy v. District of Columbia,* 844 F.Supp.2d 23 (D.D.C. 2012); *Eley v. District of Columbia,* 59 IDELR 189 (D.D.C. 2012).

96. Moreover, the appropriateness of the location of services can affect implementation of the IEP, and thus a location of services must be included in the IEP. 20 USCA 1414(d)(1)(A)(i)(VII), *Eley v. District of Columbia, supra. See also A.K. v. Alexandria City School Board,* 484 F.3d 672 (4th Cir. 2007).

97. Bullying in a given school is generally a problem of school culture. *TK v. New York City Department of Education,* 779 F.Supp.2d 289 (E.D.N.Y. 2011). When bullying causes a disabled student to be prevented from receiving a substantial educational benefit, it renders a location of services inappropriate and amounts to a denial of FAPE. *Id. See also Shore v. Regional High School Board of Education v. P.S.* 41 IDELR 234, 381 F.3d 194 (3rd Cir. 2004) and *Charlie F. v. Board of Education of Skokie School District 68,* 98 F.3d 989 (7th Cir. 1996). In general, pervasive verbal abuse, repeated indignities, stealing of property, coupled with a failure of the District to ameliorate the effects of the bullying amounts to a denial of FAPE. *TK, supra.*

Conclusions of Law Related to Failure to Evaluate

98. Students must be reevaluated when the District determines that the child's educational and related services needs require reevaluation and, at a minimum, once every three years. 34 CFR 300.303(a),(b)(2).

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[2] Other Circuits have adopted a much broader set of reasons why ESY might be necessary. *See Johnson v. Independent School District No. 4,* 17 IDELR 170 (10th Cir. 1990). The D.C. Circuit Court of Appeals has not yet ruled on this issue, and therefore the undersigned treats the district court rulings on this issue as binding precedent until the D.C. Circuit Court of Appeals chooses to address this matter.

99. The District has the responsibility to conduct a full and individual initial evaluation in accordance with pertinent regulations before the provision of special education and related services. 34 CFR 300.301(a). An appropriate evaluation is one which complies with the pertinent federal and state regulations. *Hawkins v. District of Columbia,* 539 F.Supp.2d 108 (D.D.C. 2008); *Kruvant v. District of Columbia,* 2005 WL 3276300 (D.D.C. 2005).

100. An evaluation must assess a student in all areas related to the suspected disability, 34 CFR 300.304(c)(4); and be sufficiently comprehensive to identify all of the Student's special education and related services needs, whether or not linked to the disability category(ies) in which the child has been classified. 34 CFR 300.304(c)(6).

The District's evaluation must be "comprehensive" to be appropriate. 34 CFR 300.304(c)(6). This means that the District must evaluate: (1) all areas of disability or suspected disability; (2) to the extent necessary to identify the needs of the child to special education and related services. 34 CFR 300.305(a)(2)(i)(A). As part of determining the nature and extent of the special education services and related services a child needs, the School District must determine the extent of the student's disability. *In Re Yuba City (CA) Unified School District,* 22 IDELR 1148 at 4 (OCR 1995)(in determining whether evaluation under Section 504 complaint was adequate, School District failed to properly evaluate Student by not determining the extent of the disability- Section 504 evaluation standards are essentially the same as evaluation standards under IDEA see e.g. 34 CFR 104.35). The District must determine the cause of Student's behaviors to the extent necessary to classify Student's disability(ies) as defined by IDEA and provide Student with special education and related services. 34 CFR 300.301(c)(2).

101. The District must conduct assessments necessary to allow the IEP Team to properly determine the content of Student's IEP. 34 CFR 300.304(b)(1)(ii), 304(b)(7). For medically fragile children, the District must conduct an assessment of a disabled student's medical condition to the extent necessary to provide the student with FAPE in a safe environment. *Shelby S. v. Conroe Independent School District,* 454 F.3d 450, 45 IDELR 269 (5th Cir. 2005).

102. In evaluating a student, the district must also consider: (1) the present educational needs of the child; (2) whether the child needs special education and related services; and (3) whether any modifications or accommodations are required to meet the requirements of an IEP and to participate, as appropriate in the general education curriculum. 34 CFR 300.305(a)(2)(i)(B)(i-iv).

103. During an evaluation, the District must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. 34 CFR 304(b)(1). Moreover, a school district must properly administer tests it does use to evaluate students. 34 CFR 300.304(b)(3),(c)(iii), (c)(iv). The District is not allowed to use any single measure or assessment as the sole criterion for whether a student has a disability. 34 CFR 300.304(b)(2).

In addition, during an evaluation, the District must review existing evaluation data on the child, evaluations and information provided by the parents; current classroom based assessments and classroom based observations; and teacher and service provider observations. 34 CFR 300.305(a)(1)(i-iii). The School District must then determine what additional data, if any, is needed to determine

whether the child has a disability; the needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services and whether additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP. 34 CFR 300.305(b).

104. The assessments must be provided in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer. 34 CFR 300.304(c)(1)(ii), (c)(3). The assessments must be administered by trained and knowledgeable personnel; used for the purposes for which the assessments are valid; and are administered in accordance with any instructions provided by the producer of the assessments. 34 CRF 300.304(c)(1)(iii-v).

105. The assessments must be conducted using technically sound instruments. 34 CFR 300.304(b)(3).

106. The District must administer assessments which assess specific areas of educational need and not merely to provide a single general intelligence quotient. 34 CFR 3300.304(c)(2).

107. Although the School District must evaluate properly and according to the OSEP regulations, hearing officers are entitled to make a finding against the District only if the procedural inadequacies impeded the Student's right to a free appropriate public education or denied the student some educational benefit. 20 U.S.C.A. 1415(f)(E)(ii)(I-III); *Taylor v. District of Columbia,* 770 F.Supp.2d 105 (D.D.C. 2011).

Conclusions of Law Related to Procedural Violations of IDEA Alleged in the Complaint and Other Miscellaneous Legal Conclusions

108. Parents must file their due process complaint alleging violations of IDEA within two years of the time the parents knew or should have known of the alleged action which forms the basis of the complaint. 20 U.S.C. 1415(f)(3)(C). The timeline begins to run when the parent knew or should have known about the injury to the child. *Centennial School District v. S.D.*, 58 IDELR 45 (E.D. Penn. 2011), *R.B. v. Department of Education of the City of New York,* 57 IDELR 155 (S.D.N.Y. 2011). *Mittman v. Livingston Township Board of Education,* 55 IDELR 139 (D.N.J. 2010); *Gwinnett County School District v. A.A.,* 54 IDELR 316 (N.D. Ga. 2010).

Conclusions Related to Parents' Remedies

109. If there is proof of failure to provide FAPE, the undersigned must provide declaratory relief to make the child and the parents whole. *A.G. v. District of Columbia,* 57 IDELR 9 (D.D.C. 2011). The ultimate relief depends upon the equitable factors in each individual case. *Branham v. District of Columbia,* 427 F.3d 7 (D.C. Cir. 2005).

110. The undersigned is also entitled to place a student in a private placement/location of services as compensatory education or if the equities of a situation require such a finding when a district failed to provide a student with FAPE. *Branham v. District of Columbia,* 44 IDELR 149, 427 F.3d 7 (D.C. Cir.

2005). See also *Draper v. Atlanta Independent School System,* 49 IDELR 211, 518 F.3d 1275 (11th Cir. 2008); *NT v. District of Columbia,* 839 F.Supp.2d 29 (D.D.C. 2012). If a District cannot or will not provide a Student with FAPE, the undersigned is able to place Student in a private location of services/private placement. *Id.*

111. In making decisions to award a prospective placement at a private locations of services, the undersigned must weigh the equitable factors in each case including: whether a particular placement is appropriate for the student; the nature and severity of the student's disability; the student's specialized educational needs; the link between those needs and the services offered by the private school; the placement's cost; and the extent to which the placement represents the least restrictive environment. *Branham, supra.* The conduct of the parties is also an equitable factor in determining whether a prospective placement is proper. *Id.*

112. When the District proposes an inappropriate placement, the undersigned has the authority to place Student in an appropriate private placement. *Holmes v. District of Columbia,* 680 F.Supp. 40 (D.D.C. 1990). As long as there is sufficient evidence in the record to determine the private placement appropriate, the undersigned does not have to wait for the IEP Team to finish the IEP design process. *Id.*(District court placed a child for an additional year in a private placement after finding the private placement appropriate. In *Holmes,* the district court judge specifically rejected the district's argument that because the child's IEP for the additional year had not been designed yet, a private placement for an additional year was premature).

V. Application of Law to Fact

113. The undersigned finds that the District failed to comprehensively evaluate Student in May, 2012. To wit, the undersigned finds that the District failed to conduct a physical therapy assessment, audiological assessment, vision assessment, and assistive technology assessment. As to the vision and hearing assessment, the undersigned rejects the District's defense that Student was awarded independent vision and audiological assessments in 2009. If Student had not obtained the assessments in nearly three years, the District had an obligation to conduct the assessments as part of Student's triennial assessment.

114. The undersigned finds the physical therapy screener was not a technically sound instrument in that it was not standardized or validated; the screener was not designed to provide the most accurate information possible; and did not assess Student in all areas of need in regard to her physical therapy needs.

115. The undersigned finds that the District failed to comprehensively evaluate Student by failing to determine how Student could be safely educated in light of her physical disabilities and the bullying and harassment of which Parent had repeatedly complained. The District failed to determine Student's educational need for safety in failing to determine how bullying affected Student's safety.

116. The undersigned finds that, upon learning of the bullying and harassment Student was subject to, the District had an obligation to reevaluate Student so as to ensure the culture of bullying did not deprive Student of FAPE. By November, 2010, the District had a duty to reevaluate Student.

117. The undersigned finds that the District failed to comprehensively evaluate Student from November, 2010, to May, 2012, by failing to determine how bullying and harassment psychologically affected Student's ability to learn. The District failed to determine how aspects of Student's disability would psychologically affect Student after Student was exposed to pervasive bullying and harassment.

118. The undersigned finds that Student was denied FAPE by the District's failure to evaluate in May, 2012, because the May, 2012, IEP was not reasonably calculated to provide Student with FAPE due directly to the District's failure to evaluate. Similarly, earlier IEPs were not appropriately revised to be reasonably calculated to provide Student with FAPE. Specifically, earlier IEPs should have been revised after a reevaluation to address the effects of bullying.

119. The undersigned finds that Parent did not prove by a preponderance of the evidence that Student needs 30 minutes of speech and language services per week.

120. The undersigned finds that Parent did not provide by a preponderance of the evidence that Student needs ESY to obtain FAPE. Specifically, the undersigned finds that Parent did not prove that Student would be vulnerable to inordinate regression due to a summer break or that it would take an inordinate amount of time for Student to recoup learning lost during the summer break.

121. The undersigned finds that the District denied Student FAPE by failing to provide appropriate homebound services from November, 2010, to March, 2012. The undersigned finds that claims prior to November, 2010, for failure to provide homebound services are barred by the statute of limitations, and that there is no equitable or statutory reason to toll the statute of limitations.

Application of Law to Fact Related to Remedies

122. Based upon the testimony of Intake Person and Independent Psychologist, the OSSE Certification, and the lack of any testimony to the contrary, the undersigned finds that Proposed Private Placement is an appropriate location of services for Student to receive special education and related services in light of the nature of Student's disability and the services Student needs.

123. The undersigned finds that there is a link between the services Student needs and the Proposed Private Placement. Specifically, the community based education model provided by Proposed Private Placement is a good fit to teach Student academic and functional skills; Proposed Private Placement offers the accommodations and class size Student needs to succeed; Proposed Private Placement has the programs and staff necessary to provide Student with FAPE; Proposed Private Placement has a strong anti-bullying policy which is enforced allowing Student a safe environment to learn; Proposed Private Placement can provide Student with needed related services. As such, the undersigned finds there is a strong link between the services offered by Proposed Private Placement and Student's educational needs.

124. The undersigned makes an adverse inference against the District and finds that there is no appropriate public location of services for Student. Specifically, the undersigned finds that appropriate locations of services within the public school system for Student's unique needs are within the peculiar knowledge of the District; that the District had an obligation prior to the beginning of the 2012-2013 school year to designate an appropriate location of services; and that the District inexplicably failed to designate such a location of services for the 2012-2013 school year to the Parent. As such, the undersigned makes an adverse inference against the District that there is no appropriate public location of services for the undersigned to consider placing Student.

125. The undersigned finds that the least restrictive environment for Student should be a 100% out of general education placement. In making the determination, the undersigned finds: (1) a segregated environment would be superior to a general education placement for the reasons set forth by Independent Psychologist; (2) there are no academic and no nonacademic benefits to mainstreaming for this Student for the reasons set forth by Independent Psychologist; (3) a partially mainstreamed environment has proven to be dangerous both physically and psychologically to Student; and (4) multiple mainstreaming attempts have ended in complete failure for this Student.

126. The undersigned further states that the conduct of the District in this case is a factor in favor of a private placement. The District failed in one of its most important responsibilities- it failed to ensure a safe environment for a medically fragile disabled child. The District failed to provide a safe environment in the face of complaints of bullying for years. Moreover, while Student was on homebound, the District failed to provide services for months on end, and failed to provide more than three hours of services over the course of months. The District's neglect of Student has led to some of the most egregious violations of IDEA imaginable. In light of the severity of the District's violations of the Act and the fact that the violations occurred for an extended period of time, the undersigned makes a finding that this District, if provided with the option of a public placement, will still be unable or unwilling to provide Student FAPE. To quote the Circuit Courts for the 11th Circuit, ". . .the relevant question is not whether a student could in theory receive an appropriate education in a public setting but whether he will receive such an education." *Draper v. Atlanta Independent School System,* 49 IDELR 211, 518 F.3d 1275 (11th Cir. 2008). In the present case, in light of the District's violations of IDEA as proved in this case, the undersigned specifically finds that it is more likely than not that a future public placement will result in a further denial of FAPE for this medically fragile student.

127. The Undersigned finds the costs are reasonable in light of the fact that Proposed Private Placement charges OSSE approved rates.

128. The undersigned finds that the equitable factors (as enunciated above) require an award of a private location of services for the reasons set forth above.

VI. Order

129. The District has failed to appropriately evaluate Student; the Student's IEP is found to be inappropriate for the May, 2012, IEP for the reasons set forth in this decision. The District is found to have failed to reevaluate from 2010 forward. The District is found to have failed to provide appropriate

homebound services as required by IDEA from November, 2010, forward until Student enrolled at Johnson Middle School.

130. The Parent's other requests are denied.

131. By January 15, 2013, the District shall issue a prior written notice placing Student at Kennedy Institute as her location of services for the remainder of the 2012-2013 school year. The District shall pay for the private location of services and transportation to the new location of services. By May 15, 2013, the District shall issue a prior written notice placing Student at Kennedy Institute as her location of services for the 2013-2014 school year (pursuant to the undersigned's authority under *Holmes v. District of Columbia* to set a private placement prior to completion of the IEP design process as an equitable remedy to prevent further litigation in this matter and because the new IEP which I am ordering will presumably be for an additional school year). The District shall pay for the private location of services and transportation at the Kennedy Institute for the 2013-2014 school year.

132. By January 15, 2013, the District shall begin to conduct: a physical therapy assessment; a vision assessment; an assistive technology assessment; an audiological assessment. The District shall also conduct a medical assessment to determine what accommodations Student requires to be provided a safe environment from bullying; and an updated psychological assessment to determine the psychological effects of bullying on Student. All assessments set forth in this paragraph must be completed within sixty days of January 15, 2013.

133. By this order, Student's LRE determination is revised to have a 100% of services outside the general education curriculum for the remainder of the 2012-2013 school year and the 2013-2014 school year.

134. Within fourteen days of completion of all assessments required by this order, the IEP Team shall meet to consider the results of the assessments ordered by this HOD and all other District assessments. The IEP Team shall reconsider and develop a new IEP for Student. The IEP Team shall determine what updated accommodations and supports for Student are necessary in light of the new assessments. The IEP Team shall also determine what related services are necessary in light of the new assessments. The IEP Team shall not change Student's LRE designation as stated by this order or change Student's location of services as required by this order for the remainder of the 2012-2013 school year and for the 2013-2014 school year.

135. The Kennedy Institute staff may implement the May, 2012 IEP (except for the LRE determination and location of services) until a new IEP is available. However, the Kennedy Institute staff may, in the discretion of the school staff, modify Student's services and accommodations to fit Student's educational needs until a new IEP becomes available. When the new IEP is available, the Kennedy Institute shall institute the new IEP.

Dated this 30th day of December, 2012.

/S Joseph P. Selbka

Joseph Selbka, Esq.

Hearing Officer

NOTICE OF APPEAL RIGHTS

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 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. § 415(i)(2).