

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

PETITIONER, on behalf of
[STUDENT],¹

Date Issued: May 7, 2012

Petitioner,

Hearing Officer: Ternon Galloway Lee

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

OSSE
STUDENT HEARING OFFICE
2012 May

HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCUDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by PARENT ("Parent"), through her attorney, under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint, Parent alleges that District of Columbia Public Schools ("DCPS") failed to provide Student a Free Appropriate Public Education ("FAPE") because the Individualized Education Program ("IEP") DCPS implemented on or before October 27, 2011 was inappropriate for several reasons noted more specifically below. Parent also contends that DCPS failed to provide FAPE because it committed procedural violations that substantially deprived Student and/or Parent of her right under the IDEA.

For relief, Petitioner seeks an order for DCPS to fund Student's placement at a private school that serves only children with disabilities. Petitioner also seeks an award of compensatory education.

Student, a teenager, is a resident of the District of Columbia and is eligible for special education services under the disability category, Specific Learning Disability. Parent's Due Process Complaint, filed on February 22, 2012, named DCPS as respondent. The Hearing Officer was appointed on February 23, 2012. The parties met to discuss resolution on March 7,

¹ Personal identification information is provided in Appendix A.

2012; however, settlement was not reached. No request was made to adjust the resolution period and counsel for the parties agreed during the March 14, 2012 telephonic prehearing conference ("PHC") that the 45 day due process hearing time period would begin on March 24, 2012. Also during the PHC, the issues were determined as well as other matters related to managing the case and the due process hearing.

The Hearing Officer held the due process hearing on March 27, 2012, at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Petitioner was represented by an attorney at the hearing as well as DCPS. On behalf of Parent, four witnesses testified – Parent, Student, the director of _____ and Student's former special education teacher at _____ School. On behalf of DCPS, no witnesses testified. Parent's Exhibits P-1 through P-23 were admitted, as well as, Joint Exhibits J-1² through J-4.³

II. ISSUES

The issues presented to the Hearing Officer to be determined are as follows:

- A. Did DCPS' October 27, 2011 IEP deny Student a FAPE because
- (i) its PLOPs are inaccurate and impact statements minimize Student's needs;
 - (ii) the October 27, 2011 IEP changed Student's goals and objectives without reassessing the Student;
 - (iii) the goals and objectives fail to address Student's needs and low academic functioning;
 - (iv) the October 27, 2011 IEP significantly reduces Student's classroom accommodations and reduces Student's special education and related services by half; and
 - (v) the IEP provides an inappropriate placement because a more restrictive one is required?
- B. Did DCPS commit procedural violations that substantially deprived Student and/or parent of her right under the IDEA by failing to 1) convene an MDT meeting and allow parental participation in revising Student's IEP, and 2) obtain parental consent to change Student's IEP, 3) provide prior written notice of proposed changes to Student's IEP?

² "In this HOD, P" refers to Petitioner's exhibits, "J" to joint exhibits, and "Stip." to the parties' stipulations.

³ At least five business days prior to the hearing, the Hearing Officer had informed counsel that all emails, correspondence, documents, notices, and orders she had received/issued would be made part of the record.

Petitioner seeks as relief placement of Student in a fulltime nonpublic special education program for students with learning disabilities. Further, Petitioner prays for compensatory education services for the above mentioned allegations of deficits in the October 27, 2012 IEP and procedural violations.

III. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is a year old ninth grade student at She enrolled in on or about mid-September 2011 for the 2011-2012 school year.⁴ Supported by data collected during psychological testing, Student was initially found eligible for special education and related services under the learning disabled category (currently referred to as Specific Learning Disability) while attending School in 2005. (P-1, p. 1; P-5; P-8).

2. Student has continued to receive special education and related services since her initial eligibility. (P-1, p.1).

3. During the 2009-2010 school year, Student transferred from DCPS to a public charter school that serves as its own Local Education Agency ("LEA"). (Stip. 1; P-1, p.1).

4. Two Rivers developed an IEP for Student on March 9, 2010, and determined that Student's disability classification should remain Specific Learning Disability. The March 9, 2010 IEP scheduled Student for 10 hours of specialized instruction in the general education setting, two hours a week of specialized instruction out of the general education setting, one hour a week of speech and language ("speech/language") services out of the general education setting, and half an hour a week of behavioral support services out of the general education setting. (Stip. 2; J-2, p.1).

A. May 9, 2011 IEP

5. On May 9, 2011, Student's IEP team at Two Rivers conducted an annual review of Student's IEP and developed a second IEP for Student. Student's disability classification remained Specific Learning Disability. Also, the May 9, 2011 IEP scheduled Student for 12 hours a week of specialized instruction in the general education setting, 10 hours a week of specialized instruction out of the general education setting in mathematics and reading, two hours a week of speech/language pathology in the general education setting, and one hour a week of behavioral support services out of the general education setting. (J-2; Stip. 3; Testimony of Two Rivers special education teacher). Student's special education teacher participated in developing the IEP, as well as Parent and Student. Parent consented to the IEP. (J-2, p.1).

6. The end date for the services reflected on the May 9, 2011 IEP was May 9, 2012. (Stip. 4).

⁴ The evidence does not establish the exact date of Student's enrollment in DSHS.

7. In the May 9, 2011 IEP, the present level of educational performance statements (“PLOPs”) and accompanying needs statements in math, reading, written expression, and communication read as follows:

Academic-Mathematics

Present Level of Educational Performance:

[Student] has demonstrated strengths in simple calculation and geometry; however, she has trouble with multi-step word problems and problems requiring higher-order thinking skills. It takes [Student] a long time to think of an approach to solving a word problem. Her most recent MAP scores show a RIT score of 183 which ranks her in the 1st percentile.

Needs: [Student] needs teacher prompting, scaffolded assignments and remedial activities to improve on solving multi-digit calculation problems, and multi-step word problems.

Academic-Reading

Present Level of Educational Performance:

[Student] can read basic stories and passages that focus on specific decoding skills that she is comfortable with. Her current reading fluency is 50-60 wpm. Her Lexile level is in the 266-415 range. These scores are indicative of a reading level that is between a 1st and 2nd grade level. [Student] also struggles with basic comprehension skills. This year, her scores on the first three A-NET scores given were 37%, 42%, and 27% respectively, which indicate significant weaknesses in her reading skills.

Needs: [Student] needs to expand her vocabulary and word study skills. She also needs to improve her basic comprehension.

Academic-Written Expression

Present Level of Educational Performance:

[Student] can write to respond to simple questions related to a text. She also can write a response to a self-reflective question or one in which she can express ideas. However, she may misspell words and tends to have many grammatical errors. It often takes [Student] a long while to get started.

Needs: [Student] needs to improve on her spelling and understanding of the rules of grammar. She needs to vary her sentence length and include more details, and to write organized paragraphs following the steps of the writing process.

Communication/Speech and Language

Present Level of Educational Performance:

[Student] has shown inconsistent progress. She continues to benefit from a significant amount of support for understanding directions and task completion.

Needs: [Student] needs repeated directions, active discussion revolving around concepts that support understanding and expressing knowledge of the general education curriculum, reduced sampling, and extended timelines.

(J-2, pp. 2-4, 6).

8. Mathematic goals developed for the May 9, 2011 IEP appear below:

Annual Goal 1:

[Student] will select and use appropriate operations (addition, subtraction, multiplication, and division) to solve word problems in 2 out of 3 opportunities with 90% accuracy.

Annual Goal 2:

[Student] will find the perimeter and area of triangles and parallelograms in 2 out of 3 opportunities observed with 70% accuracy.

Annual Goal 3:

[Student] will solve single step word problems in 3 out of 4 trials observed with 70% accuracy.

Annual Goal 4:

[Student] will solve math problems using a variety of strategies (draw a model, graphic organizers, make a list, etc.) in 2 out of 3 trials observed with 80% accuracy.

Annual Goal 5:

[Student] will add, subtract, multiply and divide fractions in 2 out of 3 opportunities with 80% accuracy.

Annual Goal 6:

[Student] will divide a whole number by decimals with 80% accuracy in 3 out of 4 opportunities.

Annual Goal 7:

[Student] will learn multiplication facts up to 12 and their inverses to solve multiplication and division problems with 80% accuracy in 3 out of 4 opportunities.

Annual Goal 8:

[Student] will understand and apply various representations for multiplication (i.e. arrays, patterns on a hundreds chart) with 80% accuracy in 3 out of 4 opportunities.

(J-2, pp. 2-3)

9. Reading goals developed for the May 9, 2011 IEP appear below:

Annual Goal 1:

[Student] will use strategies (ex. Chunking, using word parts, prefixes, suffixes, root words, etc.) to determine the meaning of unfamiliar words and words with multiple meaning with 80% accuracy in 2 out of 3 trials observed.

Annual Goal 2:

[Student] will identify details, sequence of events, and main ideas in literary and informational text with 80% accuracy in 3 out of 4 trials.

Annual Goal 3:

[Student] will read controlled texts with natural phrasing, expression, appropriate pacing and accuracy with 90% accuracy in 2 out of 3 trials.

Annual Goal 4:

[Student] will use knowledge of phonics to decode unknown and complex words with 80% accuracy in 2 out of 3 trials observed.

Annual Goal 5:

[Student] will utilize reading strategies (make predictions, draw connections, summarize, use illustrations or visualizations, etc.) to gain understanding of a text with 80% accuracy in 3 out of 4 trials observed.

(J-2, pp. 3-4).

10. The Written Expression goals for the May 9, 2011 IEP appear below:

Annual Goal 1:

[Student] will write paragraphs that group ideas together, have a clear main idea, and include supporting details with 80% accuracy in 2 out of 3 trials observed.

Annual Goal 2:

[Student] will demonstrate correct use of grammar and punctuation within a paragraph in 2 out of 3 trials observed with 80% accuracy.

Annual Goal 3:

[Student] will use the elements of the writing process: planning, drafting, revising, editing and publishing in 3 out of 4 trials observed with 80% accuracy.

Annual Goal 4:

[Student] will use knowledge of phonics, spelling patterns, and sight words to correct spelling when writing in 3 out of 4 trials observed with 80% accuracy.

Annual Goal 5:

[Student] will determine and use appropriate writing tools (i.e. graphic organizers) to assist in the writing process in 3 out of 4 opportunities presented with 80% accuracy.

Annual Goal 6:

[Student] will write sentences that vary in length, but include a subject and predicate in 4 out of 5 trials with 80% accuracy.

Annual Goal 7:

[Student] will proofread her written assignments using a checklist to edit for punctuation, grammar, and organization, with 80% accuracy in 4 out of 5 opportunities.

(J-2, pp. 4-6).

11. The communication/speech and language goals for the May 9, 2011 IEP appear below:

Annual Goal 1:

[Student] will use academic vocabulary in semantically meaningful sentences with 100% accuracy in 8 out of 10 opportunities.

Annual Goal 2:

[Student] will identify key elements of a definition of academic vocabulary with 100% accuracy in 8 out of 10 opportunities.

Annual Goal 3:

[Student] will paraphrase definitions for academic related vocabulary with 100% accuracy in 8 out of 10 opportunities.

(J-2, p.6)

12. Special education and related services provided by the May 2011 IEP are set forth below:

Special Education Services

Service	Setting	Begin Date	End Date	Time/Frequency
Specialized Instruction	General Education	5/09/11	5/09/12	6 hr per wk
Specialized Instruction	General Education	5/09/11	5/09/12	6 hr per wk
Mathematics	Outside general Education	5/09/11	5/09/12	5 hr per wk
Reading	Outside general Education	5/09/11	5/09/12	5 hr per wk

Related Services

Service	Setting	Begin Date	End Date	Time/Frequency
Speech-Language Pathology	General Education	5/09/11	5/9/12	2 hr per wk
Behavior Support Services	Outside general Education	5/09/11	5/09/12	1 hr per wk

(J-2, p. 9)

13. The May 9, 2011 IEP noted that the least restrictive environment (LRE) for Student to receive instruction in math and reading was outside the general education setting because Student requires intensive remediation outside the general education classroom to master her IEP goals in these areas. (J-2, p.10).

14. Classroom accommodations provided by the May 9, 2011 IEP were repeating directions; reading of test questions (math, science, and composition); simplifying oral directions; and translating words and phrases (math, science, and composition). Regarding Student responding, Student was allowed to write in test books and use a calculator. Student was also accommodated by locating her in an area with the least distractions. Student was also provided extended time on subtests. (J-2, p.11).

15. Student's last progress report covering at least a portion of the time when the May 9, 2011 IEP was the current IEP reported Student's progress at Two Rivers from April 23, 2011 to June 10, 2011. It reflected Student was making progress on almost all of her IEP goals. (Stip. 18; P-12).

B. Re-evaluations Post May 9, 2011 IEP

16. When the Two Rivers MDT/IEP team developed Student's May 9, 2011 IEP, the team was waiting on assessments to be conducted to reevaluate Student. For this reason, a speech/language evaluation was conducted on May 18, 2011, and a comprehensive psychological on May 24-25, 2011. (Stip. 5; P-6; P-7; P-14; Testimony of Two Rivers special education teacher).

1. May 18, 2011 Speech/Language Evaluation ("May 2011 Speech/Language Evaluation")

17. A number of tests were administered to assess Student in speech/language. One such test, the Receptive One-Word Picture Vocabulary Test ("ROWPVT"), was administered to determine Student's understanding of vocabulary words. It revealed Student is likely to experience difficulty understanding written and oral communication above the third grade level. (P-6, p.3).

18. Another test, the Expressive One-Word Picture Vocabulary Test ("EOWPVT") was given to determine Student's expressive language. It showed Student's functioning in this area fell in the third grade range. (P-6, p. 3).

19. Also, the Word Test-2 Adolescent was administered. It assessed Student's knowledge and understanding about the meaning of words and how they can be used. Testing results demonstrated that Student was severely deficient in this area and had difficulty recalling and categorizing words. (P-6, p.4).

20. In addition, the Clinical Evaluation of Language Fundamentals ("CELF") test was administered to determine any language deficits of Student. Testing showed Student has severe deficits in defining words and recognizing the relationship between groups or pairs of words (such as antonyms/synonyms, etc.). (P-6, p.4).

21. The May 2011 Speech/Language evaluation concluded that "[Student] demonstrates a severe receptive and moderate expressive language disorder which adversely affects [Student's] ability to comprehend, analyze, recall, and communicate knowledge of the general education curriculum." (P-6, p.5; Stip. 6).

22. The evaluation also noted that without modifications and/or accommodations, Student's language difficulties affect the following areas:

1. Interpreting complex oral directions
2. Successfully completing written assignments without review of directions
3. Performing well in lab oriented environments without the benefit of a co-teacher or peer tutor.
4. Taking and relaying notes and messages without the benefit of repetition
5. Formulating stories without feedback multiple drafts

6. Performing well in lab oriented environments without the benefit of a co-teacher or peer tutor
7. Taking and relaying notes and messages without the benefit of repetition
8. Formulating stories without feedback multiple drafts
9. Creating expository and narrative essays without feedback and multiple drafts
10. Verbal reasoning
11. Making inferences without active discussion and participation
12. Analyzing and producing sentences without the benefit of a co-teacher or peer tutor
13. Interpreting idiomatic language without preteaching and active discussion and participation
14. Recalling facts given orally without adequate review and discussion and participation
15. Connecting ideas within a paragraph without active discussion and participation
16. Using appropriate vocabulary

(P-6, p. 5).

23. The speech/language evaluator recommended Student receive speech/language services 60 minutes per week. (P-6, p.5).

**2. May 24-25, 2011 Comprehensive
Psychological Evaluation
("May 2011 Psychological Evaluation")**

24. The May 2011 Psychological Evaluation was conducted to assess Student's social, emotional, behavioral, cognitive, and academic functioning. The purpose of the testing was to assist in planning Student's IEP. (P-7, p. 1).

25. The May 2011 Psychological Evaluation reports that at the time of the evaluation, Student's current school records demonstrated that her reading, writing, and math skills were significantly below grade level. (P-7, p.1).

26. In assessing Student, the evaluator reviewed, among other things, a 2008 Speech/Language Evaluation. The May 2011 speech/language evaluator reported that the 2008 Speech/Language Evaluation indicated Student requires speech/language support with reasoning, comprehension and short term memory. (P-7, p. 1).

27. The May 2011 Psychological Evaluation reported Student struggles with multiplication and word problems as [she] can only perform multiplication problems up to the number 6 and with respect to word problems "[Student] is unable to identify the correct mathematical computation to solve problems (i.e., addition, subtraction, etc.)." The evaluation went on to say "[Student's] vocabulary is very limited." (P-7, p. 2).

28. The report also noted that Student shuts down when a task is too difficult. (P-7, p. 4).

29. The evaluator performing the May 2011 Psychological Evaluation administered the Reynolds Intellectual Assessment Scale ("RIAS") to measure Student's verbal and nonverbal intelligence and memory. That testing showed that Student's Composite Intelligence ("CIX") was 82. Student's CIX score indicated Student's overall academic functioning was in the below average range. The CIX is created by combining the Verbal Intelligence Index ("VIX") and the Nonverbal Intelligence Index ("NIX"). Student's NIX score of 93 and VIX score of 75 showed a statistical significant discrepancy exists between her verbal intelligence and her nonverbal intelligence. The evaluator noted the difference in the two scores was relatively common as it occurs in 19% of the general population. (P-7, p. 5).

30. Student's academic achievement was also tested using the Woodcock-Johnson-Third Edition, Achievement Section ("WJ-III"). Student's broad reading score (measured by a cluster of tests evaluating student's ability to decode, read with speed and comprehend) fell in the low to low average range; math scores, comprised from testing various kinds of operations to include addition, subtraction, multiplication, division, (singular and in combination), as well as geometric, trigonometric, logarithmic, and calculus operations, fell in the low range; writing samples and fluency fell in the average range and spelling fell in the low range. (P-7, pp. 5-6).

31. The evaluator concluded that Student continues to have a "language based processing related learning disability" as a statistical significant discrepancy was found between Student's nonverbal and verbal intelligence. She also noted that Student's reading and math skills were below average. (P-7, p. 9).

32. The evaluator also concluded that since 2008, Student had demonstrated substantial improvement in written expression and writing fluency which fell within the average range. She noted Student's understanding of oral directions continued to fall in the low range. (P-7, p.9).

33. The May 2011 Psychological Evaluation also demonstrated that Student's inattentiveness severely impacts her learning and executive functions; Student struggles with all academic subjects and has substantial trouble remembering concepts and initiating and completing tasks; and Student exhibits worry, nervousness, low self-esteem and/or fear within the classroom setting. (P-7, p.9; Stips. 8 and 9).

34. The evaluation listed several recommendations, but fulltime specialized instruction outside the general educational setting was not specifically recommended. (P-7, pp.10-11).

35. The May 2011 Psychological Evaluation diagnosed Student with a Mathematics Disorder, a Reading Disorder, a Disorder of Written Expression, a Mixed Receptive-Expressive Language Disorder, Attention-Deficit Hyperactivity Disorder NOS, and Anxiety Disorder NOS. (P-7, p. 11; Stip. 7).

36. MDT/IEP team, including Student's special education teacher, reviewed the May 2011 Speech/Language Evaluation and the May 2011 Psychological Evaluation on or about June 24, 2012. (Testimony of _____ ' Special Education Teacher; Stip. 10).

37. After that review, MDT/IEP team did not revise the May 9, 2011 IEP. (Testimony of Special Education Teacher).

38. Student's final progress report from where the effective IEP was the May 9, 2011 IEP reflected that Student made progress on almost all her IEP goals. (Stip. 18; P-13). Student graduated from and enrolled in the District of Columbia Public Schools for the 2011-2012 School Year. In mid-September 2011, Student entered as a Student. She had been transferred from another high school in DCPS and placed at at parent's request. Student never attended the other high school. (Stip. 11; Testimony of Parent).

C. October 27, 2011 IEP

39. The May 9, 2011 IEP was never implemented by DCPS. (Testimonies of Student and Parent). provided a letter to the Parent on October 6, 2011. The letter stated that the LEA was proposing to make the following changes without convening an IEP meeting: "Correct typographical error that will result in no substantive change, Edit existing specialized instruction service setting." (Stip. 12).⁵

40. On October 27, 2011, Student's May 9, 2011 IEP was amended. The cover page of the amended IEP, dated October 27, 2011, also indicates the IEP was amended to "[c]orrect typographical error that will result in no substantive change, Edit existing specialized instruction service setting." The LEA representative who signed and certified the change was Dr. Courtney Davis. (Stip. 13).⁶ No MDT/IEP team meeting was held prior to the May 9, 2011 IEP being revised by DCPS on October 27, 2011. (J-3).

41. In the October 27, 2011 IEP, the PLOPs and accompanying needs statements in math, reading, written expression, and communication read as follows:

Academic-Mathematics

Present Level of Educational Performance:

Has demonstrated strengths in simple calculation and geometry.
Has trouble with multi-step word problems and problems requiring higher-order thinking skills. It takes her a long time to think of an approach to solving a word problem.

Needs: [Student] needs to improve on solving multi-digit calculation problems, and multi-step word problems. She can

⁵ The Hearing Officer notes that Petitioner's list of exhibits includes a listing of the joint exhibits. Petitioner identifies Joint Exhibit 1 as the October 6, 2011 letter referenced in Stipulation 1. The Hearing Officer reviewed Joint Exhibit 1 and was unable to locate the October 6, 2011 letter.

⁶ The Hearing Officer notes that Stipulation 13 omits the word "service" from the quoted section of the stipulation. The Hearing Officer finds that the cover page and quote referenced in Stipulation 13 are in evidence as Joint Exhibit J-3, p.1. A reading of this exhibit shows that the stipulation's quote omitted the word "service" from the language the stipulation purported to cite. Thus, the Hearing Officer finds the quote as set forth in Statement of Fact # 40, not the stipulated one, is the exact language appearing on the cover page of the October 27, 2011 IEP.

improve on math fluency, as it takes her a long times to arrive at an approach to the problem.

Academic-Reading

Present Level of Educational Performance:

[Student] can read basic stories and passages. She will self-correct or ask for assistance with unknown words. She is weak with complex vocabulary words, but has basic decoding skills. She is reading on a mid-year 5th grade level. However, her comprehension of what she reads in on a 4th grade level.

Needs: [Student] needs to expand her vocabulary and word attack skills. She also needs to improve her understanding when it comes to longer text.

Academic-Written Expression

Present Level of Educational Performance:

[Student] can write to respond to simple questions related to a text. She also can write a response to a self-reflective question or one that she can express ideas. However, she may misspell words and tends to have many grammatical errors. It often takes her a long while to get started.

Needs: [Student] can write to respond to simple questions related to a text. She also can write a response to a self-reflective question or one that she can express ideas. However, she may misspell words and tends to have many grammatical errors. It often takes her a long while to get started.

Communication/Speech and Language

Present Level of Educational Performance:

[Student] has shown progress in expressive language skills. His [sic] receptive and expressive vocabulary has increased.

Needs: Receptive language skills.

(J-3, pp 2-5, 7).

42. Twelve goals for mathematics appear on the October 27, 2011 IEP. Eight (goals 5-12) are identical to the mathematical goals found on the May 7, 2011 IEP. (J-2, pp. 2-3; J-3, pp. 2-3).

The first four mathematical goals appearing in the October 27, 2011 IEP do not appear on the May 7, 2011 IEP. Further, there are no baselines provided for these first four goals, and the anticipated achievement date predates the IEP; that is the anticipated achievement date for the first four goals is February 19, 2010. The four math goals that do not appear on the May 9, 2011 IEP are set forth below:

Annual Goal 1:

The Student will select and use appropriate operations-addition, subtraction, multiplication, division, and positive integer exponents-to solve problems with rational numbers including negative rationales with 80% accuracy.

Annual Goal 2:

Student will know integer subtraction as the inverse of integer addition and use the number line to model addition and subtraction of integers with 90% accuracy.

Annual Goal 3:

The Student will add and subtract positive decimals with 90% accuracy.

Annual Goal 4:

The Student will find areas of triangles and parallelograms with 90% accuracy.

(J-3, p.2).

43. The October 27, 2011 IEP includes nine goals for reading. Goals five through nine are identical to the goals for reading that appear on the May 7, 2011 IEP. (J-2, pp. 3-4; J-3, pp. 4-5). The first four reading goals found on the October 27, 2011 IEP do not appear on the May 7, 2011 IEP. Further, there are no baselines noted for these additional goals on the October 27, 2011 IEP and the anticipated date of achievement (February 19, 2010) predates the date of the IEP. The added goals are set forth below:

Annual Goal 1:

The student will use such clues as definition, example, and restatement to determine the meaning of unfamiliar words and words with multiple meanings in context with 80% accuracy.

Annual Goal 2:

The student will identify the author's purpose in a text when it is not stated with 90% accuracy.

Annual Goal 3:

The student will respond to and analyze the effects of figurative language (personification, metaphor, simile, hyperbole) and

graphics (capital letters) to uncover the meaning of a poem with 90% accuracy.

Annual Goal 4:

The student will evaluate the relevance of information in research as it is related to a project with 90% accuracy.

(J-3, p.4).

44. The October 27, 2011 IEP includes 10 goals for written expression. Goals four through 10 are identical to the goals for written expression found on the May 7, 2011 IEP. (J-2, pp. 4-6; J-3, pp. 5-7). The first three "written expression" goals appearing on the October 27, 2011 IEP do not appear on the May 7, 2011 IEP. Further no baselines are noted and the anticipated dates (February 19, 2010) of achievement predate the date of the IEP. The added written expression goals are set forth below:

Annual Goal 1:

The student will write research reports that group ideas and place them in logical order with 90% accuracy.

Annual Goal 2:

The student will create multiparagraph essays that present effective introductions and concluding paragraphs with 90% accuracy.

Annual Goal 3:

The student will write research reports that include facts and details that illuminate the main ideas with 90% accuracy.

(J-3, pp. 5-6.).

45. The October 27, 2011 IEP includes seven goals for communication/speech and language. Goals five, six, and seven are identical to the goals for communication/speech and language found on the May 7, 2011 IEP. (J-2, p.6; J-3, p. 8). On the October 27, 2011 IEP communication/speech and language goals one, two, three, and four, do not appear on the May 7, 2011 IEP. Further for goals two, three and four baselines are not provided. Also, the anticipated date of achievement for each of the added goals (February 18, 2010) predates the October 27, 2011 IEP. (J-3, pp. 7-8). The four added goals appear below:

Annual Goal 1:

[Student] will increase her receptive and expressive language skills by mastering the short term objectives with 80% accuracy.

Annual Goal 2:

Given a structured activity with picture clues, [Student] will use the following connectors: although, whenever, unless, since, while, until with 80% accuracy.

Annual Goal 3:

Given the small group setting, curriculum based material, and cues, [Student] will state the main idea and supporting details with 80% accuracy as measured by the SLP log.

Annual Goal 4:

[Student] will define words in sentences using context clues with 80% accuracy.

(J-3, pp.7-8)

46. Special education and related services provided by the October 27, 2011 IEP are set forth below:

Special Education Services

Service	Setting	Begin Date	End Date	Time/Frequency
Specialized Instruction	General Education	5/09/11	5/07/12	10 hr per wk

Related Services

Service	Setting	Begin Date	End Date	Time/Frequency
Speech-Language Pathology	Outside General Education	5/09/11	5/7/122	60 min per wk
Behavior Support Services	Outside general Education	5/09/11	5/07/12	30 min per wk

(J-3, p. 11).

47. The October 2011 IEP noted that the LRE for Student to receive speech/language and behavioral support services was outside the general education setting. As a justification for providing these services outside the general education setting, DCPS stated in the IEP "specific scheduling to accommodate for related services."⁷ (J-3, p.12).

48. Classroom accommodations provided by the October 27, 2011 IEP are repetition of directions, locating Student in an area with minimal distractions, and providing Student with extended time on subtests. (J-3,p.13).

49. The amended October 27, 2011 IEP is changed in several ways from the May 9, 2012 IEP. Changes include: different PLOPs in math, reading, and communication; different goals in all academic and service areas; and different service(s) and goal achievement dates in some areas. (J-2; J-3; Stip. 14).⁸ Parent did not consent to the changes; neither did she receive a prior written notice of the changes. (Testimony of Parent).

⁷ DCPS presented no witnesses at the due process hearing and the Hearing Officer finds the evidence is insufficient to clarify what DCPS meant by this phrase.

⁸ The parties stipulated also that the October 2011 IEP changed the PLOP in written expression. The Hearing Officer reviewed the PLOPs for written expression found in the May 2011 and October 2011 IEPs and found they were identical. Further the Hearing Officer reviewed the goals in both IEPs and found they are different in that for

50. Changes also included a reduction in special education service hours from 12 hours of specialized instruction in the general education setting to 10 hours of specialized instruction in the general education setting; 10 hours a week of specialized instruction out of the general education setting to zero hours a week of specialized instruction out of the general education setting; two hours a week of speech and language services in the general education setting to one hour a week of speech and language services out of the general education setting and one hour a week of behavioral support services out of the general education setting to half an hour a week of behavioral support services out of the general education setting. (J-2; J-3; Stip. 15). Parent did not consent to the changes; nor did she receive a prior written notice of the changes. (Testimony of Parent).

51. Changes also included reducing Student's classroom accommodations. Reading of test questions, use of calculator, and writing in test booklets were removed by the October 27, 2011 IEP. (Stip. 16).

52. DCPS admits that the changes to the Student's IEP were not based on Student's assessments or supporting data. Rather, the changes were made based on what services were available at the school at that time. (Stip. 17).

53. Student's first Progress Report under the October 27, 2011 IEP indicates Student made no progress on her math, reading, written expression and speech/language goals and she mastered only one of nine behavior goals. This progress report also shows that all other behavior goals were not introduced during the progress period.⁹ Although the amended IEP became the current IEP as of October 27, 2011, the progress report reflects Student's progress from August 22, 2011, to October 28, 2011. Student's final progress report from Two Rivers where the effective IEP was the May 9, 2011 IEP reflected that Student made progress on almost all her IEP goals. (Stip. 18; P-13; J-4).

54. Student's report card for the advisory period ending October 28, 2011, reflected the following grades and comments:

Algebra 1-A	D
Extended Literacy	A (excellent initiative noted)
World History	B- (excessive absences, excellent initiative noted)
Health Education	C - (excessive absences, need for more study, and "F")

each academic area, DCPS has added goals as noted specifically above in the relevant "Findings of Fact." The Hearing officer also notes that the parties' Stipulation 14 states that the October 27, 2011 IEP changed in some cases the end date for a goal from May 2012 to February 2012. The Hearing Officer has reviewed both IEPs and has been unable to find support for this statement. She does note, however, that the end date for some of the goals added by DCPS is February 2010. (J-2; J-3).

⁹ The Hearing Officer also notes that no progress report for any subsequent period at DSHS was provided as evidence.

grade on the exam were noted)¹⁰

(P-15, p.1).

D. Report Card Grades at

55. Student's report card for the advisory period ending December 6, 2011, reflected the following grades and comments:

Algebra 1-A	D
Extended Literacy	F (excessive absences, failure to complete class and homework assignments noted)
World History	C (excessive absences, excellent initiative noted)
Physical Education II	C (excessive absences and lacking initiative noted) ¹¹

(P-15, p.2).

E. Accotink Academy Learning Center

56. is located in Springfield, Virginia. (P-19, p.3). It is a full-time school for special education students/children with disabilities. Students receive full time specialized instruction out of the general education setting at (Stip. 19).

57. Most of the students' attending are categorized as having a learning disability. (Testimony of director; Stip. 19). However the school also provides services to students with other disorders that are usually secondary to their learning disability. Those other disorders include, but are not limited, to anxiety and depression. (Testimony of director).

58. is the director of She holds a masters in education administration. She has 35-years of experience in the area of special education. She is also licensed in special education grades K – 12 and has special training in the areas of learning and intellectual disabilities. She has worked as a special education teacher in various settings, to include the "self-contained" and "pull-out" models. She also is familiar with the IEP development process and has attended IEP meetings and reviewed IEPs. (Testimony of director).

59. has a certificate of approval from OSSE. It is also accredited by the Virginia Association of Independent Special Education Facilities ("VAISEF") and is licensed by the

¹⁰ Although listed, no grades were listed for Algebra 1-B, Physical Science, Army JROTC 1, and English I. (P-15, p.1).

¹¹ Although listed, no grades were listed for Algebra 1-B, Physical Science, Army JROTC 1, English I, and Health Education. (P-15, p.2).

Virginia Department of Education (“VDOE”).¹² The school is in session from September to June. It also offers a six week summer program for students requiring Extended School Year (“ESY”) services and provides transitional planning, to include vocational opportunities. (Testimony of _____ director).

60. Usually the student-teacher ratio at _____ is 5:1. (Testimony of _____ director).

61. All teachers at _____ are licensed through the Virginia Department of Education (“VDOE”) by content area or discipline. (Testimony of _____ director).

62. Currently, there are eight ninth grade students at _____ (Testimony of _____ director).

63. _____ also offers speech/language, counseling, and occupational services. The school is also able to provide physical therapy by contracting with an independent provider for those services if a Student needs them. (Testimony of _____ director).

64. Student has visited _____ and has been accepted by the school. (Testimony of _____ director).

65. Student’s proposed schedule should she attend AALC would be as noted below:

Period	Subject	Room
Period 1	Health/PE	Gym
Period 2	World History & Ggy 1	3
Period 3	English 9	1
Period 4		
Period 5	Algebra 1/ Possibly Pre Algebra	4
Period 6	Algebra 1/Possibly Pre Algebra	4
Period 7	Spanish 1	Conference Room
Period 8	Biology	5

(P-19, p.2)

¹² Evidence was insufficient to determine what kind of license AALC holds from VDOE.

66. When the director of _____ designed the above schedule for Student, the director was not sure what IEP was Student's current IEP. And the schedule was not based on Student's May 9, 2011 IEP or her October 27, 2011 IEP. Rather it was developed by reviewing Student's transcript from DSHS and considering what credits Student could obtain at _____ based on Student's DSHS transcript. (Testimony of _____ director).

67. At _____ Student would be provided individual/group therapy and speech/language services. The Director of _____ is not sure of the extent of speech/language services Student requires. _____ could provide Student's related services using the "pull-out" model. (Testimony of _____ director).

68. _____ plans to address Student's low academic functioning by (i) initially assessing Student to determine the skills she has learned and the skills she needs to learn to fulfill the learning standards and objectives and (ii) designing an educational plan for Student based on her academic needs as determined by the assessments to enable Student to meet the DCPS learning standards and objectives. (Testimony of _____ director).

69. Student could receive an educational benefit at _____ (Stip. 19).

F. Harm and Compensatory Education

70. Implementing the October 27, 2011 IEP reduced Student's academic and related services significantly, to harmful effect. (Stip. 18). Student was absent more and she made no progress on any of her academic goals. Likewise, on her speech/language goals, Student made no progress. Further, only one of Student's nine social/emotional goals was introduced. (J-4, pp. 1-11; P-15, pp. 1-2). Student regressed in her social emotional development. (Testimonies of Student and Parent).

71. Parent has requested a compensatory award of funding for the remainder of the 2011-2012 school year and through Summer 2012 for (i) one hour per week of tutoring in reading, written expression, and math and (ii) two hours a month of group therapy. (P-21).

IV. BURDEN OF PROOF

The Burden of proof in a due process hearing is the responsibility of the party seeking relief, in this case, Parent. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F. Supp.2d 71, 76 (D.D.C. 2006). Below, the Hearing Officer examines the issues and evidence to determine if Parent has met her burden.

V. CONCLUSIONS OF LAW/ APPLICABLE LAW AND ANALYSIS

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

The pivotal purpose of the Individuals with Disabilities Education Act ("IDEA") is to

ensure that students with disabilities have available a free appropriate public education ("FAPE"). See *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 179-81, 200-01. A FAPE includes special education and related services planned to meet the student's unique needs and provided in conformity with a written IEP. 34 C.F.R. § 300.17(d) and 34 C.F.R. § 300.320. A school district offers FAPE to a student when the IEP is reasonably calculated to enable the child with a disability to receive educational benefits and the procedural requirements of the IDEA are met. *Rowley*, 458 at 206-07.

While school districts are required to comply with IDEA procedural requirements, not all procedural errors render an IEP legally inadequate under the IDEA. In matters alleging a procedural violation, a child with a disability does not receive a FAPE only if the procedural inadequacies (1) impede the child's right to a FAPE, (2) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or (3) cause a deprivation of educational benefits. 20 U.S.C. Section 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

A. ISSUE 1

Did DCPS' October 2011 IEP deny Student a FAPE because

- (i) its PLOPs are inaccurate and impact statements minimize Student's needs;
- (ii) the October 27, 2011 IEP changed Student's goals and objectives without reassessing the Student;
- (iii) the goals and objectives fail to address Student's needs and low academic functioning
- (iv) the October 27, 2011 IEP significantly reduces Student's classroom accommodations and reduces Student's special education and related services by half; and
- (v) the IEP provides an inappropriate placement because Student requires a more restrictive placement?

IDEA requires a local educational agency ("LEA") to develop an IEP that is reasonably calculated to enable a child with a disability to receive educational benefit. *Rowley*, 458 at 206-07. The IEP sets forth the child's individual needs and provides for the proper placement and services designed to meet the child's unique needs. *Schaffer*, 546 at 49.

In this case, the revised IEP is in issue. In revising an IEP, the IEP team must consider the child's strengths; the concerns of the parents for enhancing the education of the child; the

results of the initial or most recent evaluations of the child; and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324.

Petitioner contends that DCPS' amended IEP dated October 27, 2011 is inappropriate for several reasons.

First, Petitioner claims the October 27, 2011 IEP's PLOPs for math, reading, written expression and communication/speech and language are deficient in that they minimized Student's needs. Specifically, Petitioner contends DCPS used identical evaluations as those used by the Two Rivers MDT/IEP team to develop and subsequently reapprove the May 9, 2011 IEP. Yet, Petitioner asserts DCPS in effect "watered down" the Student's needs. A review of the PLOPs appearing in both IEPs shows that DCPS omits from the PLOPs in the October 27, 2011 IEP significant information that is found in the PLOPs of the May 9, 2011 IEP. For example, in the October 27, 2011 math PLOP, DCPS omits Student's math standardized test scores that reference Student ranks in the first percentile. Also, on the October 27, 2011 reading PLOP, DCPS omitted Student's reading fluency rate which reflected Student reads no better than a second grader. Instead, DCPS' reading PLOP reported Student reading on a fourth to fifth grade level. In addition, on the October 27, 2011 IEP's communication/speech and language PLOP, DCPS failed to note - as is reported in the May 9, 2011 IEP - that Student's progress in this area is inconsistent.

Second, Petitioner contends that DCPS' October 27, 2011 IEP changes Student's goals without reassessing Student. Further, Petitioner argues that the goals and objections on the October 2011 IEP fail to meet Student's needs. The Hearing Officer notes that the evidence shows that Student was re-evaluated in May 2011 while she remained a student at Two Rivers. However upon Student graduating from _____ public charter school and becoming a Student in the District of Columbia public school district at DSHS, DCPS did not reevaluate Student. DCPS did, however, add goals to Student's IEP in all academic areas and the social emotional area. The October 27, 2011 IEP reflects that DCPS determined a baseline for only one of those new goals. Further, the Hearing Officer notes that Student's anticipated achievement date for mastering those new goals predated the October 27, IEP. Thus, the achievement dates are illogical.

Third, Petitioner contends services and accommodations were reduced when the October 27, 2011 IEP was developed. The evidence shows DCPS conceded this occurred as noted previously in "Findings of Fact" #s 50 and 51. Further DCPS admitted that the changes to Student's IEP were not based on Student's assessments or any supporting data. Rather, DCPS stipulated that all changes to Student's IEP were made based on what services and staff were currently available at DSHS. Clearly this basis for amending Student's IEP violates IDEA's requirement that the IEP be developed to meet the individual needs of student. *Rowley*, 458 U.S., at 201.

Having considered Petitioner's arguments that the October 27, 2011 IEP denies Student a FAPE, the Hearing Officer finds that as referenced above, the IEP understates Student's PLOPs in several academic areas. Further it adds goals without supporting data/assessments to justify the added goals, then invalidates them with predated achievement dates. The Hearing Officer finds these changes and deficiencies in the October 27, 2011 IEP are substantial as they

flagrantly defy IDEA's requirement to base the revision of an IEP on careful consideration of a student's academic, developmental, and functioning needs. 34 C.F.R. § 300.324. For the reasons expressed here, the October 27, 2011 IEP denies Student a FAPE.

In addition to the abovementioned contentions, Petitioner argues that the IEP is not suitable because to receive an educational benefit, Student requires an environment smaller than DSHS and one that is fully self-contained. With regard to this argument, the Hearing Officer finds no denial of FAPE. The Student's uncontradicted testimony was that from the time she became a Student at DSHS, DCPS failed to provide her with much of her special education, related services, and accommodations required by the May 9, 2011 IEP. By the October 27, 2011 revised IEP, Student's drastic reduction in services was put in writing. Student's first progress report under the October 27, 2011 IEP reflected that in all academic areas, Student had made no progress. Further, while Student mastered one behavior goal, DCPS did not introduce the other eight behavior goals. What ensued was a regression of Student's social and emotional development. Also, she experienced great anxiety, lost self-esteem, and missed school excessively to escape the anxiety. In contrast to Student making no progress under the October 27, 2011 IEP, the evidence demonstrates that as late as June 2011, when Student's May 9, 2011 IEP was the IEP being implemented, Student was progressing in all, but one of her goals.

Further, during the advisory period following implementation of the October 27, 2011 IEP at DSHS, the evidence shows Student's progress deteriorating. For example, the advisory period following the implementation of the October 27, 2011 IEP reflects that Student was failing Extended Literacy. In contrast Student did not fail any subjects when the May 9, 2011 IEP was in effect. The report of this advisory period also noted that Student failed to complete homework and class assignments in Extended Literacy. While Student had been excessively absent in the past, the advisory period report shows this problem escalated. What is more, Student was reported to lack initiative in physical education.

Hence, the above shows Student receives an educational benefit when the May 9, 2011 IEP is implemented. This IEP did not place Student in a fully self-contained environment.

The Hearing Officer does take note that Petitioner proposes placement at a fully self-contained private school that serves mainly learning disabled students. The Hearing Officer considers this proposal now.

IDEA mandates students with disabilities be educated with children who are nondisabled to the maximum extent appropriate. 34 C.F.R. 300.114. Student received an educational benefit when the May 9, 2011 IEP was implemented. The placement under this IEP does not mandate a fully self-contained environment. Petitioner has the burden of proof in this case. She has not shown that if the May 9, 2011 IEP had been implemented during the 2011-2012 school year, Student would not have received an educational benefit. Further, Student's most recent speech/language and psychological assessments make no recommendation for a more restrictive educational environment. Also, after these assessments were reviewed by the MDT/IEP team it did not revise Student's placement.¹³ The Hearing Officer finds that this

¹³ The Hearing Officer recognizes that it is the MDT/IEP team that develops the IEP. Further, the team is not bound by the recommendations of evaluators. But the fact that neither evaluator recommended a fully self-contained

decision by the MDT/IEP team reaffirmed the May 9, 2011 IEP as the appropriate educational plan and placement for Student. Thus, the Hearing Officer finds that Student does not require a full-time special education setting with only disabled students.

The Hearing Officer is mindful of the special education background of the director of and of her testimony that Student requires a self-contained setting with only nondisabled students. For the reasons already noted above the Hearing Officer is not persuaded by her testimony nor similar testimony by the special education teacher that Student requires an educational placement with only disabled students.

B. ISSUE 2

Did DCPS commit procedural violations that substantially deprived Student and/or parent of her right under the IDEA by failing to 1) convene an MDT meeting and allow parental participation in revising Student's IEP, and 2) obtain parental consent to change Student's IEP, 3) provide prior written notice of proposed changes to Student's IEP?

In matters alleging a procedural violation, a child with a disability does not receive a FAPE only if the procedural inadequacies (1) impede the child's right to a FAPE, (2) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the parents' child; or (3) cause a deprivation of educational benefits. 20 U.S.C. Section 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2).

As noted earlier, when revising a Student's IEP, the IEP team must, among other things, consider concerns of the parent. 34 C.F.R. § 300.324 (a)(1). IDEA also requires the LEA to provide prior written notice to Parent when it proposes to change the provision of FAPE to the child. 34 C.F.R. § 300.503(a)(1). The content of that notice are specific and set forth in detail in 34 C.F.R. § 300.503(b)(1).

The evidence shows that before amending Student's May 9, 2011 IEP, DCPS did not hold a MDT/IEP meeting. Instead, it sent Parent a letter asking Parent to permit DCPS to make non-substantive changes to the Student's May 9, 2011 IEP. Parent did give consent for non-substantive changes. As noted in "Findings of Fact" #50, drastic changes were made to Student's special education and related services. Further, some accommodations were cancelled. Parent had no say in these changes, nor did she consent to them. What is more, she did not receive a prior notice that these changes would be made. These procedural violations impeded Student's right to a FAPE as it caused the non-provision of significant special education and related services and accommodations. As a result, Student stopped receiving an educational benefit at DSHS. Moreover, these violations impeded Parent's opportunity to participate in the decision making process regarding providing Student a FAPE. Thus, the procedural violations denied Student a FAPE.

setting corroborates the May 9, 2011 MDT/IEP team's decision to not place Student in this highly restrictive environment.

IV. REMEDY

The Hearing Officer has determined the October 27, 2011 IEP denied Student a FAPE for the reasons noted above. Moreover, she has also found DCPS' procedural violations substantially deprived Student and Parent of their rights under IDEA. Thus, this Hearing Officer determined those procedural violations constituted a denial of FAPE also.

A. Private School

For relief Parent seeks, in part, placement at _____ a private school serving only special education students. Therefore, the Hearing Officer now turns to whether this relief is appropriate.

"[W]here a public school system has defaulted on its obligation under the IDEA, a private school placement is 'proper under the [IDEA]' if the education provided by said school is 'reasonably calculated to enable the child to receive educational benefits.'" *Wirta v. District of Columbia*, 859 F. Supp. 1 (D.D.C.) 1994) citing *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). The evidence shows Student could receive an educational benefit if she attends AALC. However, the Hearing Officer's inquiry regarding the appropriateness of a private school placement does not end with a finding that Student could receive an educational benefit at the nonpublic school. This is so because under District of Columbia law, special education placements must be made in the following priority:

- 1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
- 2) Private or residential District of Columbia facilities; and
- 3) Facilities outside the District of Columbia.

D.C. Code Ann. § 38-2561.02(c)

In this case, DCPS has not presented any evidence regarding DCPS schools, public charter schools, or private DCPS facilities that could meet Student's IEP needs. Petitioner has proposed placement at _____ a private school located in Virginia. The Hearing Officer addresses this request.

Courts have recognized additional factors to consider in determining whether a particular placement (in this case AALC) is appropriate for a particular student. They include (i) the nature and severity of the student's disability, (ii) the student's specialized educational needs, (iii) the link between those needs and the services offered by the private school, (iv) the placement's cost, and (v) the extent to which the placement represents the least restrictive educational environment. *Branham v. Government of the Dist. Of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005). Under *Branham's* direction, the Hearing Officer will now give consideration to these factors.

1. Nature and Severity of Student's Disability

The evidence in this case establishes that Student has a specific learning disability. The report from Student's May 2011 psychological evaluation concludes that Student continues to have a "language based processing related learning disability," as a statistical significant discrepancy was found between Student's nonverbal and verbal intelligence. The report also notes Student's vocabulary is very limited, her reading and math skills are below average, and she shuts down when a task is too difficult. It further expresses that Student's inattentiveness severely impacts her learning and executive functions; that Student struggles with all academic subjects and has substantial trouble remembering concepts and initiating and completing tasks; and that Student exhibits worry, nervousness, low self-esteem and/or fear within the classroom setting. The psychologist conducting the May 2011 evaluation diagnosed Student with multiple disorders: Mathematics Disorder, Reading Disorder, a Written Expression Disorder, Mixed Receptive-Expressive Language Disorder, Attention-Deficit Hyperactivity Disorder NOS, and Anxiety Disorder NOS.

Also, Student's May 18, 2011 speech/language evaluation further highlights Student's disability. The evaluation's report concludes that "[Student] demonstrates a severe receptive and moderate expressive language disorder which adversely affects [Student's] ability to comprehend, analyze, recall, and communicate knowledge of the general education curriculum."

2. Student's Specialized Educational Needs

The May 9, 2011 IEP developed and affirmed by MDT/IEP team establishes Student's educational needs.

The evidence shows that the Two Rivers MDT/IEP team met for an annual review of Student's IEP on May 9, 2011. It developed the May 9, 2011 IEP based on Student's assessments, other supporting data, and needs. Parent and Student participated in the development of this IEP and Parent consented to it. It is relevant to recognize that nothing in evidence indicated that the May 9, 2011 IEP failed to meet the requirements of IDEA set forth in 34 C.F.R. §§ 300.320 through 300.324. Moreover Student was making progress on almost all her goals under this IEP.

Under this IEP the MDT/IEP team determined Student required the special education and related services detailed previously in "Findings of Fact" # 12. This evidence demonstrates Student's IEP required her to have more hours of special education services in the general educational setting than outside of it. Further, under this IEP she was to receive two thirds of her related services in the general educational setting. Also, the May 9, 2011 IEP reflected Student received classroom accommodations as noted in "Finding of Fact" # 14 here. The evidence shows that Student progressed in almost all her goals when the May 9, 2011 IEP was implemented.

Having determined that Student's educational needs are reflected in her May 9, 2011 IEP which does not require Student to be placed outside the general educational setting on a fulltime

basis, the Hearing Officer is cognizant that the May speech/language and comprehensive psychological assessments were conducted one to two weeks after the May 9, 2011 IEP was developed. But the Hearing Officer also notes that the MDT/IEP team met again in early June 2011 to review those assessments. Subsequently, the IEP was not revised and in effect reaffirmed as the appropriate IEP for Student.

Parent contends now that Student's placement should be in a private school that serves only children with disabilities. The evidence does show that Student has made little to no progress on her academic goals at DSHS. But the evidence also demonstrates that DCPS failed to implement Student's IEP during the 2011 – 2012 school year. For this reason the Hearing Officer finds Student did not make progress.

The Hearing Officer is aware of the special education teacher's testimony from Two Rivers. That testimony recommended Student now receive all her special education outside the general education setting. The Hearing Officer does not find this testimony credible. This is so because the special education teacher was a member of the MDT/IEP team that developed the May 9, 2011 IEP. She also met with the team in June 2011 to review the most recent speech/language and comprehensive psychological evaluations. On neither occasion did this teacher recommend fulltime placement outside the general education setting. This witness did contend no change in placement was made to the IEP after the June 2011 review of the evaluations because only one week was left in the 2010-2011 school year. This Hearing Officer had an opportunity to observe the witness and consider her testimony and all other evidence. The Hearing Officer is not persuaded by this witness' explanation regarding why Student's placement was left unchanged. Further, while an MDT/IEP team is not bound by the recommendation of evaluators, the Hearing Officer also finds instructive the fact that neither of the reports of the above-referenced evaluations recommended the restrictive placement now suggested by the special education teacher.

Thus, the Hearing Officer finds Student's educational needs, including placement, are accurately set forth in the May 9, 2011 IEP.

3. Link Between Student's Needs and the Services Offered by Private School

serves special education students with mainly learning disabilities. A low student – teacher ratio is maintained by the school. Further all instruction is provided outside the general education setting. offers speech/language services and counseling. Also, Student has been accepted at and could receive an educational benefit at .

For the reasons previously noted and discussed below regarding least restrictive environment, the evidence shows Student does not require being placed in an environment where she receives all her instruction outside the general educational setting.

4. Cost of Placement at Private School

No evidence was offered regarding the cost of tuition at AALC or any DCPS private schools serving children with disabilities. Thus, the Hearing Officer is unable to consider the cost of placement at AALC.

5. Least Restrictive Environment

The IDEA requires school districts to place disabled children in the least restrictive environment possible. *Roark ex rel Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) (Citing 20 U.S.C. § 1412(a)(5); 34 C.F.R. 300.550; D.C. Mun. Regs. tit. 5, § 3011 (2006)) “In determining the least restrictive environment, consideration is given to the types of services that the child requires.” *Id.* (citing 34 C.F.R. 34 C.F.R. 300.550; D.C. Mun. Regs. tit. 5, § 3011 (2006) 300.552(d)). As a full time special education school, AALC is a very restrictive environment. Student’s MDT/IEP team did not conclude that Student required a total, self-contained setting. Further, the psychological assessments conducted during Student’s reevaluation did not recommend such. Also, Student received an educational benefit under the May 9, 2011 IEP. Considering all of the above factors, the Hearing Officer concludes that AALC is too restrictive for Student and therefore inappropriate.

B. Compensatory Education

Parent also seeks as relief compensatory education for. “Compensatory education is educational service that is intended to compensate a disabled student who has been denied the individualized education guaranteed by the IDEA.” *Wilson v. District of Columbia*, 2-11 WL 971503, (D.D.C. March 18, 2011) citing *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education is designed “to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” *Reid*, 401 F.3d at 518. Denial of a FAPE is a prerequisite to an award of compensatory services. *Id.* Further, the inquiry for compensatory education must be fact specific. *Reid*, 401 F. 3d at 524.

In this case, the Hearing Officer has found Student’s October 27, 2011 IEP denied Student a FAPE because it was not designed to meet Student’s unique needs as required by IDEA. 20 U.S.C. § 1400(d)(1)(A). Further, the Hearing Officer found DCPS denied Student a FAPE because it committed several procedural violations that substantially deprived Student and Parent of their rights under IDEA.

The effect of implementing the October 27, 2011 IEP is it reduced Student’s special education and related services significantly as noted in “Finding of Fact” #s 50 and 51. Student was harmed by the reduction. The evidence shows Student has “a language based processing related learning disability” as a statistical, significant discrepancy was found between Student’s nonverbal and verbal intelligence. Further, Student’s reading and math skills were below average. Moreover Student’s most recent psychological evaluation demonstrates that Student’s inattentiveness severely impacts her learning and executive functions; Student struggles with all academic subjects and has substantial trouble remembering concepts and initiating and completing tasks; and Student exhibits worry, nervousness, low self-esteem and/or fear within the classroom setting.

What is more, the evidence shows Student made no progress on any of her academic goals once DCPS failed to fulfill its obligation under the May 9, 2011 IEP. Likewise, on her speech/language goals, Student made no progress. Student's behavior support services were reduced by 50 percent. Further only one of Student's nine social/emotional goals was introduced. Student then regressed in her social emotional development. In contrast, when the May 9, 2011 IEP was implemented, Student made progress in almost all of her goals.

For the harm caused Student by DCPS' denial of FAPE, Parent has requested a compensatory award of funding for the remainder of the 2011-2012 school year and through Summer 2012 for (i) one hour per week of tutoring in reading, written expression, and math (ii) two hours a month of group therapy. The Hearing Officer notes controlling authority mandates that any award of compensatory education be reasonably calculated to provide the educational benefit that likely would have accrued from special education services if DCPS had supplied them in the first place. *Reid*, 401 F. 3d at 524.

Student has lost educational benefit. This is so because the IEP developed to meet Student's needs was never implemented from the time Student transferred to several weeks after the start of the 2011-2012 school year. And Student's progress report reveals she made virtually no progress on her goals. Thus, from the time Student entered until this determination, Student has lost approximately 8 months of her individualized educational programming during the 2011-2012 school year.

Having considered all the facts of this case the Hearing Officer finds that it is reasonable to conclude that tutoring for an extended period of time will enable Student to catch up in academic areas where she lost instruction and services due to DCPS' failure to implement her May 9, 2011 IEP. Further, the Hearing Officer finds it reasonable to conclude that group therapy for an extended period of time will enable Student to enhance her social and emotional development which regressed due to DCPS' non-implementation of the May 9, 2011 IEP. Accordingly, the Hearing Officer finds an appropriate equitable remedy reasonably calculated to provide the educational benefits that the DCPS should have provided from the time Student began her 2011-2012 school year at DSHS is (i) one hour per week of tutoring in reading, written expression, and math and (ii) two hours a month of group therapy. The tutoring and group therapy are to be provided for the remainder of the 2011 2012 school year and through summer 2012.

VII. DECISION

The Hearing Officer has reviewed and considered all the evidence of record whether specifically mentioned in this decision or not. Based upon the above Findings of Fact and Conclusions of Law, the Hearing Officer finds that DCPS denied Student a FAPE because the October 27, 2011 IEP was inappropriate for the reasons stated here and because it committed procedural violations that were substantive and deprived Student and Parents of their rights under IDEA. Further the Hearing Officer found compensatory education is due for the FAPE denial.

VIII. ORDER

Thus, DCPS is ordered to take the following action:

- (1) within 14 calendar days of this order DCPS shall convene an MDT/IEP meeting and revise and update Student's IEP so that the PLOPs and needs statements are consistent with current evaluations and other supporting data;
- (2) develop goals that address Student's academic, developmental, and functioning needs;
- (3) include in the IEP at least the services and accommodations found in Student's May 9, 2011 IEP.

Further, for compensatory education, the Hearing Officer orders DCPS to

- (1) within 10 calendar days of this decision to began providing (i) one hour per week of tutoring in reading, written expression, and math and (ii) two hours a month of group therapy. These services are to be provided for the remainder of the 2011- 2012 school year and through summer 2012. DCPS is ordered to provide the compensatory education because the Hearing Officer finds Student may benefit if these services are provided by DCPS as DCPS maybe in the best position to coordinate them for Student's educational benefit. DCPS may, however, decide to allow Parent to select a provider(s) for these services. If DCPS decides to allow parent to select the providers, DCPS must notify Parent within 10 calendar days of this decision and must promptly pay the cost of these services.

Petitioner's motion for summary judgment has been dismissed as the Hearing Officer found there was an issue of material fact in this case. *See* Fed. R. Civ. P. 56(c)

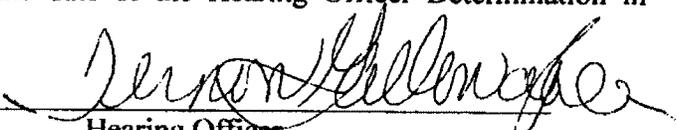
IX. PREVAILING PARTY

The Petitioner prevails on both issues for the reasons provided in this HOD.

X. NOTICE OF RIGHT TO APPEAL

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

Date: May 7, 2012



Hearing Officer