

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> floor  
Washington, D.C. 20002

OSSE  
Student Hearing Office

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PARENT on behalf of  
STUDENT,<sup>1</sup>

Petitioner,

v

Erin H. Leff, Hearing Officer

PCS,

Respondent

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**HEARING OFFICER DETERMINATION**

**STATEMENT OF THE CASE**

On \_\_\_\_\_ parent, Petitioner herein, on behalf of the student (“Student”) filed an Administrative Due Process Complaint Notice (“Complaint”), HO 1,<sup>2</sup> requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education (“FAPE”) to Student by District of Columbia Public Schools (“DCPS”) under the Individuals with Disabilities Education Act, as amended (“IDEA”). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a Response to Petitioner’s Administrative Due Process Complaint Notice (HO 5) on \_\_\_\_\_. This was one day beyond the 10 day timeline for filing a response established in 34 C.F.R. § 300.508(e)(1). A resolution meeting was held on \_\_\_\_\_ and the Resolution Period Disposition Form was executed on \_\_\_\_\_. No agreement was

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<sup>1</sup> Student has reached the age of majority and brings this action on his own behalf. Personal identifying information is provided in Appendix A, attached hereto.

<sup>2</sup> Hearing Officer Exhibits will be referred to as “HO” followed by the exhibit number; Petitioner’s Exhibits will be referred to as “P” followed by the exhibit number; and Respondent’s Exhibits will be referred to as “R” followed by the exhibit number.

reached, and the parties agreed to go to hearing. HO 7. The 45 day timeline began to run on the day after the 30 day resolution period ended. Following the Prehearing Conference held on I issued a Prehearing Conference Order on HO 6. My Hearing Officer Determination is due on

By agreement of the parties, the hearing was scheduled for and 16, 2013. PCS Director of Special Education served as party representative throughout the hearing. The hearing was held as scheduled in the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C. §§ 1400, *et seq.*; District of Columbia Code, §§ 38-2561.01, *et seq.*; federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

### ISSUE

The issue<sup>3</sup> is:

Whether PCS denied Student a free, appropriate public education (“FAPE”) by failing to develop appropriate individualized education programs (“IEPs”) on 2012<sup>4</sup> and The IEPs did not provide Student sufficient instructional services outside the general education setting. Student requires a minimum of 15 hours outside the general education setting.

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<sup>3</sup> A second issue was withdrawn prior to hearing by email, stating the issue had been resolved to the parent’s satisfaction. The related request for relief also is not identified herein.

<sup>4</sup> The IEP discussed at hearing was The Complaint references an IEP The Joint exhibit entered into evidence is an IEP No IEP was introduced into evidence, and no witnesses testified regarding an IEP of this date. I therefore conclude the Complaint referencing an IEP was a typographical error and address the IEP herein. The statement of the issue has been amended to reflect the date.

**RELIEF REQUESTED**

Petitioner requested:

- 1) PCS revise the student's IEP to increase the hours of instruction outside the general education environment; and
- 2) PCS provide the student compensatory education.

**SUMMARY OF THE EVIDENCE**

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

- P-1 Advocate's Annual IEP meeting notes
- P-2 PCS MDT notes
- P-3 PCS MDT notes
- P-4 Teacher Comments First Quarter through Fourth Quarter, 2012-2013 School Year (Grade 8)
- P-5 Letter to parent from PCS
- P-6 Reading/Vocabulary Pre and Post test                      October 2012 and May 2013  
(Community Based Program)
- P-7 Mathematics Pre and Post test                      October 2012 and May 2013 (Community  
Based Program)
- P-8 Withdrawn
- P-9 Curriculum Vitae, Clinical Psychologist
- P-10 Curriculum Vitae, Educational Advocate
- P-11 Curriculum Vitae, Representative, Community Based Program

Respondent offered no exhibits to be entered into evidence. Rather Respondent relied on the joint exhibits entered into evidence.

Joint exhibits admitted on behalf of the parties are:

- J-1                      Psycho-educational Evaluation
- J-2                      IEP Meeting Notes
- J-3                      IEP
- J-4                      Woodcock Johnson Results
- J-5                      Final Eligibility Determination Report
- J-6                      Evaluation Summary Report
- J-7                      IEP
- J-8                      IEP Meeting Notes
- J-9                      IEP
- J-10                     IEP Meeting Notes
- J-11                     IEP
- J-12                     IEP Meeting Notes

J-13	Student Profile
J-14	2012-2013 SY IEP Progress Reports
J-15	2011-2012 SY IEP Progress Reports
J-16	2012-2013 SY Report Cards
J-17	2011-2012 SY Report Cards
J-18	PowerSchool Log
J-19	DC CAS Scores – 2011, 2012, and 2013
J-20	ANET Scores – ELA 2011 and 2012
J-21	ANET Scores – Math 2011 and 2012

Exhibits admitted by the Hearing Officer are:<sup>5</sup>

HO 1	Administrative Due Process Complaint Notice filed
HO 2	Notice of Hearing Officer Appointment of
HO 3	Prehearing conference Scheduling Letter and Order re Timelines of
HO 4	Prehearing Notice
HO 5	DC Prep Public Charter School’s Answer of 20113
HO 6	Prehearing Conference Order
HO 7	Resolution Period Disposition Form executed
HO 8	Miscellaneous emails <ul style="list-style-type: none"> <li>● Chain of 6/19 &amp; 20, 2013 re scheduling PHC</li> <li>● from Respondent’s counsel re telephone contact for PHC</li> <li>● Chain of re scheduling DPH</li> <li>● Chain of 8/5 &amp; 8/6, 2013 re dates of hearing and withdrawal of Issue 2</li> <li>● Chain of re filing disclosures with Hearing Officer</li> </ul>
HO 9	Compensatory Education Proposal of
HO 10	List of Proposed Hearing Officer Exhibits filed

**B. Testimony**

Petitioner testified and presented the following witnesses:

- Student
- Educational Advocate
- Clinical Psychologist testified as an expert in clinical and school psychology in terms of programming and providing recommendations based on results of evaluations
- Youth Development Worker, Community Based Program (“YDW”)
- Representative, Community Based Program (“CBP Rep”).

PCS presented the following witnesses:

- Special Education Math Teacher PCS (“Sp. Ed. Math Teacher”)
- Special Education ELA Teacher PCS (“Sp. Ed. ELA Teacher”)
- General Education Math Teacher PCS (“Gen. Ed. Math Teacher”)

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<sup>5</sup> Emails forwarding the documents of record to opposing counsel and the hearing officer are filed with the documents of record unless otherwise noted.

- Special Education Coordinator PCS (“SEC”)

### **FINDINGS OF FACT**

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:<sup>6</sup>

1. Student attended from the 2008 – 2009 school year through the 2012 - 2013 school year. He will be attending HS in 2013-2014 SY.

Testimony of Petitioner; Testimony of Student; Testimony of Educational Advocate; Testimony of Psychologist; J 1; J3; J 7; J 9; J 11.

2. Student is eligible for special education and related services as a student with a specific learning disability. He was first found eligible in April 2009. Student has disabilities in reading and writing. Testimony of Petitioner; Testimony of Student; Testimony of Educational Advocate; Testimony of Psychologist; J 1; J3; J 7; J 9; J 11.

3. Student is motivated to learn. He attends his classes consistently and obtains additional assistance. He puts out considerable effort. Student becomes frustrated when he cannot understand the work that is presented to him. Student’s motivation increased as the 2012 - 2013 school year progressed. He performed better at the end of the school year than he had at the beginning. Student’s grades improved in the fourth quarter because he pushed himself. Testimony of Petitioner; Testimony of Student; Testimony of Educational Advocate; J 12;

4. Student received mostly Fs on his report card in the last two academic years. Grades at PCS include a component reflecting homework. Homework accounts for between 20% and 25% of a student’s grade in each course. Students’ report cards include both a letter grade and a numerical grade representing a percentage. Passing requires a 70 which is equivalent to a C. Other

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<sup>6</sup> In the findings that follow I cite exhibit numbers and/or testimony as bases for the findings. Some exhibits were introduced by both Petitioner and Respondent. The citations to exhibits reference only one party’s exhibits in those instances where both parties have introduced the same exhibit.

schools allow students to pass with Ds, but PCS does not. Student earned a C in Math and Fs in social studies, language arts and science in 7th grade (the 2011-2012 school year) and Cs in math and social studies and Fs in science and language arts in 8th grade (the 2012-2013 school year). Student attended summer school each of these years (2011-2012 and 2012 -2013) and was able to matriculate to the next grade at the end of summer school. J 16; J 17; Testimony of Sp. Ed. ELA Teacher; Testimony of SEC; Testimony of Petitioner; Testimony of Educational Advocate.

5. Student did not turn in homework on a consistent basis in the 2011-2012 and 2012-2013 school years. Student failure to complete homework is at least partially attributable to his lack of understanding of the assignments. Many of Student's failing grades were within a few points of passing (70). Testimony of Petitioner; Testimony of Student; Testimony of

6. requires all students attend "Prep Hour" after school each day. Student gets assistance with homework during this hour. Testimony of Student.

7. Student attends Community Based Program ("CBP") four or five days per week after "Prep Hour." At CBP Student receives tutoring, and mentoring. He participates in sports and other activities including college tours. Student receives tutoring at CBP twice each week. The tutoring is part of two different programs at CBP. One program's tutoring focuses on math and reading as well as completing Student's homework when there is time. Between the pre-test provided by this program on \_\_\_\_\_ and the post – test,<sup>7</sup> Student showed slight improvement. Testimony of CBP Rep; Testimony of Student; P 6; P 7

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<sup>7</sup> CBP Rep. created the pre and post tests. She has many years of experience working with children. She is not a certified teacher and does not have a degree in education. She participates in relevant training two or three times a year . The tests she created were based in the Spectrum curriculum used by the CBP for tutoring in the program discussed here. Site words provided Student are at the 6<sup>th</sup> grade level. The Woodcock-Johnson is used for the math assessment. P 11.; Testimony of CPB Rep.

8. \_\_\_\_\_, Student's godmother, also provides Student assistance with homework, particularly reading, after he attends CBP. She sometimes provides Student assistance at CPB.

9. Student responds well to one on one tutoring or small group work. \_\_\_\_\_ ;  
Testimony of Student; Testimony of Petitioner; Testimony of Sp.Ed. Math Teacher.

10. Student's disability does not impact him socially. He gets along well with adults and his peers. Testimony of Student; Testimony of CBP Rep.; \_\_\_\_\_ Testimony of Student.

11. Petitioner did not attend Student's \_\_\_\_\_ IEP meeting. The IEP developed at this meeting required Student receive 5 hours of special instruction inside the general education environment and 4 hours of special instruction outside the general education environment each week. This is the same number of hours of special education services Student had received under his prior IEP of \_\_\_\_\_. Petitioner did not express concerns with this IEP. She deferred to the PCS staff's judgment. In retrospect, she has concerns that this IEP did not provide Student the program and services he needed. J 3; J 7; J 8; Testimony of Petitioner; Testimony of SEC.

12. An IEP meeting was held at PCS on \_\_\_\_\_. Petitioner did not participate although she had indicated she would attend. The team considered Student's impending transition to high school for the 2013- 2014 school year. This IEP increased Student's hours of service inside the general education inclusion setting from 5 hours to 8 hours and from 4 hours to 6 hours outside the general education setting. Petitioner spoke to SEC about the IEP after the meeting. J 7; J 9; J 10; Testimony of Petitioner; Testimony of SEC.

13. A second IEP meeting was held \_\_\_\_\_. This meeting was held to review the IEP with Petitioner and provide her an opportunity for in-put. Petitioner attended the

meeting with Educational Advocate. The team discussed Student's strengths, needs and performance. The team recognized many supports to all students in its program and, therefore, added specific supports to Student's IEP in an effort to assure he receive needed supports in high school. The IEP was revised, at this second meeting, to include extended school year services, pre-teaching of vocabulary and reading intervention support. Educational Advocate requested all hours of special instruction be provided outside general education. The team, other than Educational Advocate and Petitioner, did not agree with this recommendation indicating Student was able to access the curriculum in the general education setting when he made effort and received the supports described in his IEP. Testimony of Petitioner; Testimony of Educational Advocate; Testimony of SEC; P 1; J 12; J 13

14. Math is student's strength. He made more than one year's growth in one year's time in the 2012-2013 school year. Student is particularly good at visual/spatial reasoning such as found in geometry. Student's math grade would be higher if he turned in homework on a consistent basis. His most recent IEP, includes math goals tied to 8<sup>th</sup> grade level common core standards. His prior IEP included similar math goals, but these goals addressed lower grade level skills which are not as rigorous. Student achieved Proficiency on the DC CAS standardized test in the 2012-2013 school year as he had in the two prior school years. J 6; J 7; J 11; J 20; Testimony of Student; Testimony of Petitioner; Testimony of CDW; Testimony of Sp. Ed. Math Teacher; Testimony of Gen. Ed. Math Teacher.

15. Student received considerable math support in the 2012- 2013 school year. He often worked in small group within his general education math class. He attended the math prep session daily. On Thursday the General Education Math Teacher reviewed homework with him and three other students for 25 minutes. During lunch the same group reviewed old

tests, and three afternoons each week the same group of students worked with a volunteer for one hour. Testimony of Gen. Ed. Math Teacher.

16. Student is able to access the English Language Arts (“ELA”) curriculum in the general education classroom with the supports provided on his IEP. He requires support in the general education classroom, including verbal and nonverbal reminders provided 5 to 10 times in a 45 minute period, special education support within the classroom such as small group work and pull out instruction. Despite failing grades Student showed improvement in ELA. Student progressed from the O (mid third grade level) to R level in coding related tasks and the O to T (4<sup>th</sup> to 5<sup>th</sup> grade level) in comprehension as measured by the Fountas and Pinnell reading program assessments.<sup>8</sup> J 13; Testimony of Sp. Ed. ELA Teacher; Testimony of Educational Advocate

17. Goals on Student’s IEP in reading and written language are based on the Common Core Standards. These standards increase in difficulty with increase in a student’s grade level. The goals address the changing standards reflected as the student’s grade level increases. J 7; J 11; Testimony of Sp. Ed. ELA Teacher.

18. Student performed well in science class in the 2012 – 2013 school year, but scored low on assessments. He used learning strategies when he had some familiarity with the subject matter. Pre-teaching vocabulary was helpful to him. J 12; Testimony of Petitioner; Testimony of Educational Advocate; Testimony of SEC.

19. Student’s DC CAS scores show he has made one year’s growth in one year’s time in reading in his last two years at PCS. One year’s growth is established by an increase of 100 points. In 6<sup>th</sup> grade Student earned a 643 in reading. In 7<sup>th</sup> grade he earned 745, and in 8<sup>th</sup> grade he earned an 844. J 19; Testimony of SEC.

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<sup>8</sup> The Fountas and Pinnell is not a standardized test akin to a Woodcock Johnson. The Fountas and Pinnell assesses the ability to read and comprehend a leveled text.

20. Student functions in the low average range cognitively other than in working memory in which he functions in the low range. The lower score in working memory suggests Student has problems related to short term memory which can impact his school performance particularly in following directions and taking notes during a lecture. Working memory issues impact retention because information comes in through short term memory gates and then is stored in long term memory. J 1; Testimony of Psychologist

21. Between February 2009 and April 2012 there was little change in Student's standard scores in the areas of reading and written language on the Woodcock Johnson Tests of Academic Achievement ("WJ III"). His scores were in the low or low average range. Student made significant improvement<sup>9</sup> in math during the same time period. His standard score in Broad Math increased 18 points from 77 to 93 which is in the average range, and his Calculation score increased 26 points from 72 to 98, a score in the average range. Student also scored in the average range in Applied Problems with a 97. However, this score only increased 10 points which is not considered a significant increase. Student's Math Fluency score remained about the same in the low average range. These WJ III scores reflect deficits in verbal areas and the related need for intensive, special instruction in reading and writing. J 1; J 4; Testimony of Psychologist.

22. The Compensatory Education Plan ("Plan") proposed by Petitioner addresses the time between April 2012 and the filing of the Complaint on \_\_\_\_\_ The Plan posits that but for the denial of the increase in instructional hours in April 2012 Student would be achieving at the eighth grade level. The Plan recommends Student be provided 30 hours of counseling and 20 hours of mentoring services to compensate Student for the alleged loss. The counseling and mentoring are intended to assist Student in functioning better in the classroom. The Plan presumes

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<sup>9</sup> For a change in score to be deemed significant it must change by 15 points or more.

Student should make one year's growth in one year's time. Testimony of Educational Advocate;  
HO 9.

### DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Where these differences in persuasiveness are relevant to my determination, I so indicate.

*ISSUE: Whether PCS denied Student a FAPE by failing to develop appropriate IEP on and The IEPs did not provide Student sufficient instructional services outside the general education setting. Student requires a minimum of 15 hours outside the general education setting*

Under the IDEA each local education agency is required to provide a free appropriate public education ("FAPE") to each student found eligible for special education and related services. A FAPE is:

Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . . [a]re provided in conformity with an . . . IEP that meets the requirements of [the IDEA regulations].  
34 C.F.R. § 300.17. *See also*, D.C. Code § 30.3001.1.

An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the effect of the student's disability on his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in

nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. *See also*, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. If a student's behavior impedes the student's learning or that of other students, the team is to consider interventions and strategies to address the behavior. *Id.* An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

The content of an IEP is a team decision 34 C.F.R. §§ 300.320 – 300.323. *See also*, D.C. Code §§ 30.3007.1 & 3008.1. Teams are required to consider all the relevant information before them. *Id.* In reviewing whether an IEP provides a student a FAPE as required by IDEA, a hearing officer must consider whether the district complied with IDEA's procedural requirements and determine whether the program was reasonably calculated to enable the student to receive educational benefit. *Rowley*, 458 U.S. at 207.

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). The placement decision is to be made by a group of individuals, including the parent. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34

C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform to the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2).

*IEP*

The IEP provided Student 5 hours of special instruction inside the general education environment and 4 hours of special instruction outside the general education environment each week. This is the same number of hours of special education services Student had received under his prior IEP of The IEP was in effect from the end of Student's 7<sup>th</sup> grade year through the majority of Student's 8<sup>th</sup> grade year at PCS. Student maintained his tested academic skill level relative to his peers from the date of his initial evaluation, to the administration of the WJ III three years later on in reading and writing. He made significant progress in math during the same time period. In 7<sup>th</sup> grade Student earned a C in math and was proficient on the DC CAS in math. He failed ELA, social studies and science. Student attended summer school and gained sufficient mastery of the subject matter to matriculate to 8<sup>th</sup> grade for the 2012 – 2013 school year.

Petitioner argued that Student's failing grades in the 2011-2012 school year indicate he was not making educational progress, and the IEP, therefore, was not designed to provide him educational benefit. In making this argument, Petitioner oversimplifies Student's academic struggles and development. It is true that Student failed the majority of his 2011-2012 classes, and it is true that Student needed to attend summer school in order to pass to the eighth grade. However, these facts must be considered in context.

IDEA does not require a district to provide maximum educational benefit to a student. Rather the IEP must provide the student an opportunity for some educational benefit. *See Rowley, Supra*. At the time the April 2012 IEP was developed the WJ III test results demonstrated that

Student was in the same relative academic position *vis a vis* his peers as he had been in 2009. I recognize these results do not suggest that Student had closed the gap – other than in mathematics where he had moved from the low or low average range of achievement to the average range of achievement in almost all areas – between him and his classmates. He continued to score in the low and low average range in reading and written language as he had three years earlier.

The parties presented a range of evidence regarding whether these results demonstrated progress. Petitioner's position was that as Student's scaled scores remained low they showed he had not progressed. Respondent's position, in contrast, was that, as reflected by his scaled scores remaining relatively consistent in reading and written language, Student had made progress equivalent to that made by his peers. These are not contradictory positions. Rather they are different views of the same information. Student was able to learn at a pace akin to his peers. He did not, however, learn at a faster rate, and nothing in IDEA requires that he do so. As Student started significantly behind his peers' levels of academic achievement when he was first classified, he remained at an academic skill level significantly behind his peers' achievement three years later. He was receiving educational benefit, and this benefit appears to have amounted to that which Petitioner's own witness indicated would be appropriate – that is one year's progress in one year's time. I note I am not suggesting this was optimal progress, nor did Petitioner's witness make such a suggestion. Rather, it reflects some educational benefit which is what is required under the *Rowley* standard. In addition to the WJ III test results other indices also reflect Student's having received educational benefit. He was able to develop sufficient mastery of subject matter to pass to the next grade level after summer school. The DC CAS evidenced a year's growth in reading, and he tested at the proficient level on the DC CAS in math.

Moreover, Student's failing grades were due, at least in part, to his failure to turn in homework on a consistent basis during the 2011- 2012 school year. While it may be true that he did not turn in homework because he did not understand it, there are indications that there may have been additional reasons. Whatever the cause, it is clear that the inconsistent provision of homework impacted Student's grade. As homework accounts for 20% to 25% of the grade in each course at PCS, it is likely Student would have earned passing grades in some, if not all of the courses he failed had he consistently turned in his homework.<sup>10</sup>

The issue here specifically alleges Student required 15 hours of special instruction outside the general education environment. Petitioner's evidence does not support such a claim. While Petitioner's witnesses testified Student required more services outside the general education environment than he was receiving the number of hours he required in that environment were not identified as to the 2012 IEP, and as I determine here that the 2012 IEP provided Student a FAPE there is no basis for finding he required more special education instruction hours outside the general education setting.

I therefore find by a preponderance of the evidence that the IEP was appropriate. PCS did not deny Student a FAPE. The IEP provided Student appropriate educational services both inside and outside the general education setting. It was designed based on the information available to PCS at the time it was developed to provide Student educational benefit.

*IEP*

The IEP was developed with a focus on Student's transition to high school for the 2013 – 2014 school year. This IEP increased Student's hours of service inside the general

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<sup>1010</sup> Student failed all three courses in the 2011 – 2012 with numerical scores in the 60s. Homework accounts for 20 to 25 percent of the grade. Thus, for example, assuming Student received some credit for homework in each course, adding only 10% of the grade he earned back into the grade for the course would have resulted in his earning a passing grade in each course.

education setting from 5 hours to 8 hours and from 4 hours to 6 hours outside the general education setting. The IEP includes additional supports for extended school year services, pre-teaching of vocabulary and reading intervention support.

At the \_\_\_\_\_ meeting, Educational Advocate asked that all hours of special instruction occur outside the general education environment.<sup>11</sup> The \_\_\_\_\_ members of the team disagreed with this request. \_\_\_\_\_ staff members indicated Student was able to access the curriculum in the general education environment with the support identified in the combination push – in/pull - out program defined by his IEP. This program provides Student a FAPE in the least restrictive environment as required by IDEA. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. Moreover, the team supplemented the supports identified in the 2013 IEP, as compared to the 2012 IEP, in an effort to assure Student’s success in high school.

I note that Student’s academic growth and the complexity of the analysis of Student’s grades as distinguished from his academic progress discussed in relation to the 2012 IEP, *Supra* at pp. 13 -15, apply to the \_\_\_\_\_ IEP as well. Student’s failing grades were due, at least in part, to his failure to turn in homework on a consistent basis during the 2012- 2013 school year. Student again was able to develop sufficient mastery of subject matter to pass to the next grade level after summer school. The DC CAS evidenced a year’s growth in reading for the year, and he tested at the proficient level on the DC CAS in math.

I therefore find by a preponderance of the evidence that the \_\_\_\_\_ IEP was appropriate. PCS did not deny Student a FAPE. The IEP provided Student appropriate educational services both inside and outside the general education setting. It was designed based on the information available to PCS at the time it was developed to provide Student educational benefit.

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<sup>11</sup> I note, that even had the team amended the IEP to reflect this request, Student would have received 14 hours of instruction (the total number of hours of instruction both in and out of general education provided on this IEP) outside the general education environment, not the 15 requested by Petitioner in the instant Complaint.

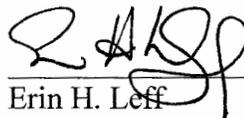
**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that PCS did not deny Student a FAPE by failing to develop appropriate IEPs on \_\_\_\_\_ and \_\_\_\_\_. The IEPs provided Student sufficient instructional services outside the general education setting.

**ORDER**

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that the instant Complaint be **DISMISSED** with prejudice.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Erin H. Leff  
Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).