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OSSE
Office of Dispute Resolution
December 29, 2014

Confidential

<p>Parent on Behalf of Student¹,</p> <p>Petitioner,</p> <p>v.</p> <p>Maya Angelou Public Charter School (“LEA”)</p> <p>Respondent.</p> <p>Date Issued: December 27, 2014</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on December 16, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, DC 20003, in Hearing Room 2003. The record was closed with the submission of written closing arguments on December 20, 2014.

BACKGROUND AND PROCEDURAL HISTORY:

The student has been determined eligible to receive special education and related services pursuant to IDEA a with a disability classification of specific learning disability (“SLD”).

The student attended a D.C. public charter school, (“School A”) during school year (“SY”) 2012-2013 and SY 2013-2014. School A is its own local education agency (“LEA”). The student no longer attends School A and now attends a District of Columbia Public Schools (“DCPS”) middle school.

When the student attended School A her individualized educational program (“IEP”), developed on September 9, 2013, required that she receive 15 hours per week of specialized instruction outside general education, speech and language services, occupational therapy and behavioral supports.

Petitioner filed this due process complaint on October 9, 2014.² Petitioner asserted, inter alia, that the student’s 2012 and 2013 IEPs were inappropriate and her placement at School A was inappropriate because the IEPs lacked sufficient service hours, and contained goals which were copied and pasted from the student’s previous IEPs, and while at School A the student made little to no academic progress.

Petitioner asserted School A should have conducted a comprehensive psycho-educational evaluation and a speech language assessment on the student in September 2012, and in light of the student’s behavioral problems and academic underachievement should have performed a functional behavioral assessment (“FBA”) in 2012 and 2013. Petitioner also alleged the student also should have received a triennial evaluation in September 2013.

The LEA (“Respondent”) filed a timely response to the complaint on October 20, 2014, and denied any violation or denial of a free appropriate public education (“FAPE”) to the student. Respondent asserted that prior to SY 2012-2013 the student attended another D.C. public charter school (“School B”) and was already behind academically performing at 2nd grade level

² Petitioner’s counsel styled her complaint with a summary of facts and alleged violations/claims/issues that were presented in 14 counts. The Hearing Officer after a clarification of the alleged facts and violations during the pre-hearing conference (“PHC”) reorganized and/or consolidated the issues to be adjudicated.

in math and at 4th grade level in reading. Respondent asserted it implemented the July 27, 2012, IEP it received from School B and the student made progress on her goals throughout SY 2012-2013. Respondent asserted an IEP team reviewed and updated the student's IEP on September 9, 2013, and determined that the student made progress in all areas; School B conducted a reevaluation of the student on July 27, 2012, and Petitioner never requested reevaluation(s) while the student attended School A.

A resolution meeting was held on October 21, 2014. The case was not resolved. The parties did not mutually agree to proceed to hearing. The 45-day period began on November 9, 2014, and ended [and the Hearing Officer's Determination ("HOD") was originally due] on December 23, 2014. At the conclusion of the hearing the parties submitted a consent motion to extend the HOD due date to allow for written closing arguments. That motion was granted. The HOD due date is now December 27, 2014.

The Hearing Officer convened a pre-hearing conference on October 31 2014, and issued a pre-hearing order on November 13, 2014, outlining, inter alia, the issues to be adjudicated.

ISSUES: ³

The issues adjudicated are:

1. Whether the LEA denied the student a FAPE by failing to provide the student appropriate IEPs for SY 2012-2013 and/or SY 2013-2014 because of the IEPs had (1) insufficient behavioral support and/or (2) inappropriate goals.⁴
2. Whether the LEA denied the student a FAPE by failing to provide the student an appropriate placement for both SY 2012-2013 and 2013-2014, because it was not a full-time therapeutic placement.
3. Whether the LEA denied the student a FAPE by failing to conduct triennial evaluations (at latest by September 2013) by failing to conduct a comprehensive psychological and speech language evaluation.
4. Whether the LEA denied the student a FAPE by failing to update the student's 2010 FBA in 2012 & 2013 based the student's continued school suspensions and emotional outbursts and psychiatric hospitalization.
5. Whether the LEA denied the student a FAPE by failing to discuss and/or provide the student extended school year ("ESY") for summers 2012 and/or 2013 and/or 2014.

³ The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

⁴ Petitioner contends the IEP goals were simply copied and pasted from year to year.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 19 and Respondent's Exhibits 1 through 19) that were all admitted into the record and are listed in Appendix A.⁵ Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁶

1. The student _____ who attended School A during school SY 2012-2013 and SY 2013-2014 School A is public charter school and its own LEA. The student no longer attends School A and now attends a DCPS middle school. (Respondent's Exhibit 9-1, Petitioner's Exhibit 9-1).
2. The student has been determined eligible to receive special education and related services pursuant to IDEA a with a disability classification of SLD. (Respondent's Exhibit 13-1)
3. Prior to attending School A the student attended another D.C. public charter school, School B, for one year during SY 2011-2012. (Parent's testimony)
4. In _____ 2010 when the student was attending a DCPS school ("School C") an independent comprehensive psychological evaluation of the student was conducted. The evaluation determined the student's intellectual functioning to be in the borderline range with a Full Scale Score of 72. The student's academic achievement scores placed her at least two years below her age equivalency in all academic areas measured. On the WJ-III the student obtained the following scores: Broad Reading SS = 64, Broad Math = 67, Broad Written Expression = 48. The student's previous diagnoses of Attention Deficit Hyperactivity Disorder ("ADHD") and Oppositional Defiance Disorder ("ODD") were confirmed. The evaluator recommended the student IEP reflect multiple disabilities: learning disabilities, emotional disturbance ("ED") and other health impairment ("OHI"). The evaluator recommended a full time special education placement for the student. (Petitioner's Exhibit 1-3, 1-5, 1-13, 1-17)
5. A DCPS psychologist conducted a review of the student's independent comprehensive psychological evaluation and did not conclude the student met the criteria for emotional disability ("ED") or that she was in need of a full time out of general education

⁵Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

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

placement. This reviewing psychologist also evaluated the student in December 2008. (Respondent's Exhibit 2-1)

6. Two years prior, in December 2008 the student had an educational evaluation conducted when she was in second grade and was age eight years 9 months her academic achievement scores were at first grade level. (Petitioner's Exhibit 2-3)
7. During the student's time at School C the school monitored her behavior, conducted behavior observations of the student and had the student complete behavior self assessments. (Petitioner's Exhibits 3, 4, 5, 8, 12)
8. During the SY 2009-2010 the student's IEP prescribed 25 hours of specialized instruction per week outside general education and 30 minutes per week of behavior support inside general education. (Petitioner's Exhibit 19-1, 19-5, 19-6)
9. The student's special education eligibility was reconfirmed on September 27, 2012, at School B. The student's parent did not participate in the eligibility meeting. In July 2012 School B conducted a Woodcock Johnson-III (WJ-III). It along with other information and assessments were reviewed as a part of the student's September 27, 2012, eligibility meeting. On the WJ-III the student obtained the following scores: Broad Reading SS = 73, Broad Math = 69, Broad Written Expression = 66. Based upon assessments including the WJ-III, Benchmark Assessments; mock DC-CAS assessments in reading and mathematics; and the student's grades for SY 2012-2013 School B determined the student met the criteria for SLD classification. (Respondent's Exhibit 3-1, 3-3, 3-5, 3-6, 3-7, 3-9)
10. On July 27, 2012, School B developed an IEP for the student that prescribed the following services: 15 hours of specialized instruction outside general education and the following related services: speech language pathology and behavioral support of 30 minutes each per week outside general education. Neither the student, nor her parent attended the IEP meeting. The IEP did not prescribed ESY services. (Respondent's Exhibits 4-1, 4-8, 4-12)
11. The student's School B IEP contained the following academic goals: four math goals⁷, three reading goals⁸, and one goal in written expression.⁹ The IEP had two goals in the

⁷ (1) Given a set of problems, the student will be able to multiply multi-digit whole numbers using the standard algorithm, utilizing multiplication charts, with 80% accuracy over 3 consecutive trials. (2) Given a set of problems, the student will be able to find whole-number quotients of whole number with up to 3 digit dividends and 1 digit divisors with 80% accuracy over 3 consecutive trials. (3) Given a set of patterns, the student will be able to a) identify the relationship between term with 80% accuracy over 3 consecutive trials; and b) determine the following two numbers in that pattern with 80% accuracy over 3 consecutive trials. (4) Given a set of problems, the student will be able to fluently add and subtract multi-digit whole numbers using the standard algorithm with 80% accuracy over 3 consecutive trials.

⁸ (1) Given a list of themes, the student will be able to determine the theme or central idea of a text and how it is conveyed through specific details with 100% accuracy over 3 consecutive trials. (2) Given an instructional level text, the student will be able to ask an answer questions to demonstrate understanding of a text, referring explicitly

area of social/emotional/behavioral development.¹⁰ (Respondent’s Exhibit 4-1, 4-2, 4-3, 4-4, 4-6, 4-8)

12. The student’s School B IEP stated the following, inter alia, in the Present Levels of Academic Achievement and Functional Performance (“PLOP”) in the area of emotional, social and behavioral development: that the student “has difficulty applying the breaks when she get upset or frustrated. She requires prompts cues, and guided assistance to help self-calm and regroup. When she does have a problem, it tends to be extended and prolonged. She tends to overact and over dramatize the situation. [The student] has instigated conflicts between her[self] and peers. She will get in the face of others which can crate chaos in the classroom. She often feels like she must have the last word in arguments. She tends [to] stomp out her assigned areas when she is upset. [The student] often feels misunderstood. She feels that her side in situations is not valued. It is difficult for her see beyond this perception.” (Respondent’s Exhibit 4-5)
13. When the student began attending School A at the start of SY 2012-2013 she brought with her the School B IEP. School A adopted and implemented that IEP during SY 2012-2013. The student’s IEP progress reports for that school year indicate she made progress on her IEP goals particularly when she was focused and available for learning. By the end of the school year she had not mastered any of her IEP goals but was progressing on all her IEP goals. (Respondent’s Exhibit 6)
14. At the end of SY 2012-2013 the student was promoted from sixth to seventh grade and earned the following year end grades:

Subject:	Grade:
Academic Resource ELA	B
Academic Resource Math	B
Academic Resource Science	B
Academic Resource Social Studies	A
Health	B
Physical Education	Pass

to the text as the basis of the answers with 80% accuracy over 3 consecutive trials. (3) Given decoding instruction, the student will be able to know and apply grade-level phonic and word analysis skills in decoding words by a) distinguishing between long and short vowels when reading regularly spelled on syllable words with 80% accuracy over 3 consecutive trials; b) know spelling-sound correspondences for additional common vowel teams with 80% accuracy over 3 consecutive trials c) decode regularly spelled two-syllable words with long vowels with 80% accuracy over 3 consecutive trials.

⁹ (1) With graphic organizers the student will write narratives to develop real or imagined experiences or events using effective technique, relevant descriptive details, and well-structured event sequences in 3 out of 4 trials.

¹⁰ (1) [The student] will use coping techniques during times of crises or stress independently or without prompts (i.e, take slow deep breaths, count to ten slowly, use laughter, planned ignoring, say positive affirmations, i.e. I will have a good ay or use positive self-talk...; (2) [The student] will demonstrated appropriate social interaction skills with peers as evidenced by her ability to engage appropriately with peers on 4 out of 5 occasions without verbal or physical aggression. A. [the Student] will develop and demonstrate conflict resolution skills for talking through and resolving conflict situations with her peers on 3 out of 5 occasions.

(Respondent's Exhibit 7)

15. September 2013, School A convened an IEP meeting and updated the student's IEP. The student's parent participated by telephone. The team reviewed the student's IEP goals. The student's parent requested that the student be moved to a self-contained special education class and the School A staff agreed. The specialized instruction listed in the IEP remained at 15 hours per week outside general education and the related services included speech and language services behavioral support and occupational therapy. The team discussed ESY and determined the student did not qualify for ESY. (Witness 3's testimony, Respondent's Exhibit 9-1, 9-9, 10-1)
16. The student's goals from her 2012 IEP were continued in the September 9, 2013, IEP as she had not mastered any of the goals from that IEP. However, there were additional goals added for which the student's progress was measured during SY 2013-2014. (Respondent's Exhibits 9, 13-5)
17. School A issued progress reports for the student during her seventh grade year during SY 2013-2014 that indicated the student made progress in her IEP goals. (Respondent's Exhibit 13)
18. At the end of SY 2013-2014 the student was promoted from seventh to eighth grade and earned the following year end grades:

Subject:	Grade:
Academic Resource ELA	A
Academic Resource Math	B
Academic Resource Science	A
Academic Resource Social Studies,	A
Physical Education,	Pass
Technology	Pass

(Respondent's Exhibit 14)

19. The student's attendance records at School A during SY 2013-2014 reflect 22 days absent, 10 of which were excused absences. (Petitioner's Exhibit 15)
20. School A maintained a log of the student's disciplinary incidents. During SY 2012-2013 most of the log entries were regarding the student's attendance. During SY 2013-2014 the log contained four instances in December 2013 where the student displayed inappropriate behavior such as being disruptive in class or walking out class. (Respondent's Exhibit 16-1)
21. School A convened an MDT meeting after a parent request on April 11, 2014. The meeting notes indicate that the student's parent shared that the student's behavior had

improved. The major focus of the meeting was the student's school placement for the following school year. (Witness 3's testimony, Respondent's Exhibit 12-1)

22. For SY 2014-2015 the student's parent enrolled her in a DCPS middle school. After enrolling the student at her current DCPS middle school the student's parent completed behavior rating scales for the student. (Petitioner's Exhibit 10)
23. The student's parent is concerned most about the student's attention, attending to her work and her difficulties in reading and math. Her parent believes that the student has had behavioral problems since kindergarten
24. During her sixth grade year the student's had few behavioral incidents. However, her seventh grade year the student's behavior became more problematic. She displayed disruptive behaviors in the classroom sometimes screaming and yelling and running down the hallway and running in and out of class. (Student's testimony)
25. The student now realizes that high school is soon to come and she has to alter her behavior and she wants to take her eighth grade year seriously because she wants to make it to high school. She hopes to go to a particular DCPS high school because it has the curriculum she is interested in and has, among other things, a debate team. (Student's testimony)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief.¹¹ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether the LEA denied the student a FAPE by failing to provide the student appropriate IEPs for SY 2012-2013 and/or SY 2013-2014 because of the IEPs had (1) insufficient behavioral support and/or (2) inappropriate goals.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student was denied a FAPE by the LEA failing to provide appropriate IEPs for 2012-2013 and/or 2013-2014 due to insufficient behavioral support, and/or inappropriate goals.

A primary purpose of the enactment of IDEA was "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]" 20 U.S.C. § 1400(d)(1)(A); § 1412 (a)(1)(A) ("A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21").

To ensure access to a free appropriate public education for children with disabilities, "the child's parents, teachers, school officials, and other professionals collaborate in a 'multi-disciplinary team' to develop an individualized educational program [IEP] to meet the child's unique needs." *Smith v. Dist. of Columbia*, No. 12-2058, 2014 WL 1425737 (D.D.C. Mar. 14, 2014) (citing *D.K. v. Dist. of Columbia*, 983 F. Supp. 2d 138, 141 (D.D.C. 2013) (citing 20 U.S.C. § 1414(d)(1)(B)); see also *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005); *Dist. of Columbia v. Wolfire*, No. 12-01527, 2014 WL 169873 (D.D.C. Jan. 16, 2014); *Dist. of Columbia v. Oliver*, No. 13-00215, 2014 WL 686860 (D.D.C. Feb. 21, 2014).

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must

¹¹ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

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

Once the IEP has been developed, "the school system must provide an appropriate placement that meets those needs and, if an appropriate public placement is unavailable, the school system must provide an appropriate private placement or make available education-related services provided by private organizations to supplement a public placement." *Petties v. Dist. of Columbia*, 238 F. Supp. 2d 114, 116 (D.D.C. 2002) (citing 20 U.S.C. § 1412(a)(10); 34 C.F.R. §§ 300.349, 300.400-402.); see also *S.S. ex rel. Street v. Dist. of Columbia*, No. 13-557, 2014 WL 4650885 (D.D.C. Sept. 19, 2014) ("A student's IEP determines whether an educational placement is appropriate; the placement does not dictate the IEP.") (citations omitted).

Conformity with the dictates of IDEA also requires that children with disabilities be educated in the least restrictive environment: "To the maximum extent appropriate, children with disabilities[] ... are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A); see also *N.T. v. Dist. of Columbia*, 839 F. Supp. 2d 29, 35 (D.D.C. 2012) (IDEA requires local education agencies to place students with disabilities in "the least restrictive environment possible") (citations omitted).

In this jurisdiction, the educational placement is based upon the child's IEP, and the school designated by the public agency to implement the child's IEP is the location of services. *Johnson v. District of Columbia*, 2012 L 883125 (D.C.C., March 16, 2012). The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

The IDEA only mandates a "basic floor of opportunity." *Id.*; *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995). To accomplish this, an IEP must only "be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *Chambers v. Sch. Dist. of Philadelphia Bd. of Educ.*, 587 F.3d 176, 182 (3d Cir. 2009) (quoting *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004)).

Petitioner contends that the student's 2012 and 2013 IEPs were inappropriate because they lacked sufficient behavioral supports and appropriate goals. The evidence demonstrates that the IEP that School A implemented during SY 2012-2013 was the IEP that was developed at School

B in July 2012 and that the student made some progress during the year toward the goals that were delineated in that IEP, the student earned above average grades and was promoted from sixth grade to seventh grade at the end of the school year.¹² There was no evidence from which the Hearing Officer could conclude that the student's IEP (including the goals listed therein) was not reasonably calculated to provide the student educational benefit when it was developed by School B in July 2012 and when it was adopted and then implemented by School A during SY 2012-2013. There was no evidence that during the student's first year at School A she exhibited behavioral difficulties that warranted behavioral support services beyond those provided in her 2012 IEP.¹³ Thus, this Hearing Officer concludes that Petitioner did not sustain the burden of proof by a preponderance of the evidence on this issue.

As the student's 2013 IEP, in September 2013, School A convened an IEP meeting with the student's parent participating at which the student's academic performance was reviewed and her progress toward her IEP goals was considered along the request by the student's parent that from that point the student be in a self-contained special education classroom.¹⁴ The evidence demonstrates that during SY 2012-2013 the student did not display significant behavioral concerns despite the fact that the PLOP in her IEP in the area of emotional, social and behavioral development stated that she had significant behavior difficulties.¹⁵ The fact that the student was not displaying significant behavioral difficulties yet at School A was a sufficient basis for School A to have not instituted any additional behavioral supports when the student's IEP was updated in September 2013. Albeit later that year in December 2013, as documented in School A records, the student began to display behaviors consistent with the descriptions in the PLOP, by the time of the April 2014 IEP meeting as documented in the IEP meeting notes the student's parent acknowledged the student's behavior had improved significantly.¹⁶

Petitioner asserts the student's IEP goals were inappropriate because they were simply copied and pasted from year to year. However, the evidence indicates that the student was making progress toward the IEP goals during SY 2012-2013 but had yet to master them.¹⁷ The lack of mastery was a reasonable basis for the goals to have been continued. There was no convincing evidence that the student goals should have been changed when her IEP was updated in September 2013.

The Hearing Officer notes that there were additional goals that were being measured in the student IEP progress reports which indicates that the student's teacher(s) were adjusting the measures for the student based upon her performance. There was insufficient evidence of any significant lack of academic performance by the student that would indicate her IEP goals were inappropriate simply because there were continued from one school year to the next. During the student's seventh grade years she earned above average grades and was promoted to the next grade.¹⁸ Based on the evidence this Hearing Officer concludes that the student's 2013 IEP at the

¹² FOF #s 10, 11, 13, 14

¹³ FOF # 24

¹⁴ FOF #15

¹⁵ FOF #12

¹⁶ FOF #s 20, 21

¹⁷ FOF #s 13, 14

¹⁸ FOF # 16, 17, 18

time it was developed in September 2013 was reasonably calculated to provide her educational benefit and Petitioner did not sustain the burden of proof on this issue.

ISSUE 2: Whether the LEA denied the student a FAPE by failing to provide the student an appropriate placement for both SY 2012-2013 and 2013-2014, because it was not a full-time therapeutic placement.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the LEA failed to provide the student with an appropriate placement for the SY 2012-2013 and 2013-2014.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is made in conformity with the Least Restrictive Environment ("LRE") provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; (3) is determined annually; (4) is based on the child's IEP; and (5) is as close as possible to the child's home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

The "educational placement" consists of: (1) the education program set out in the student's IEP, (2) the option on the continuum in which the student's IEP is to be implemented, and (3) the school or facility selected to implement the student's IEP. *Letter to Fisher*, 21 IDELR 992 (1994).

In this jurisdiction, the educational placement is based upon the child's IEP, and the school designated by the public agency to implement the child's IEP is the location of services. *Johnson v. District of Columbia*, 2012 L 883125 (D.C.C., March 16, 2012). The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982).

The IDEA only mandates a "basic floor of opportunity." *Id.*; *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 534 (3d Cir. 1995). To accomplish this, an IEP must only "be reasonably

calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *Chambers v. Sch. Dist. of Philadelphia Bd. of Educ.*, 587 F.3d 176, 182 (3d Cir. 2009) (quoting *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 198 (3d Cir. 2004)).

Petitioner asserts that during SY 2012-2013 and 2013-2014 the student's appropriate placement was a full time out of general education therapeutic placement. The evidence does not support this assertion. When the student arrived at School A, as discussed above, her IEP she brought with her from School B was reasonably calculated to convey educational benefit. The evidence demonstrates as already cited above the student made progress toward her IEP goals during both her school years at School A, earned above average grades and was promoted the next grade each year. Although in the student's second year at School A she began to display behavioral difficulties in December 2013 that were consistent with the descriptions in her IEP of problematic emotional and behavioral functioning she had displayed in the past, by April 2014 her behaviors had improved significantly.

The Hearing Officer concludes that there insufficient evidence presented that the student's placement at School A in the special education program that was being implemented for her there was inappropriate and the Hearing Officer concludes based on the evidence that her placement at School A was her LRE.¹⁹ Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

ISSUE 3: Whether the LEA denied the student a FAPE by failing to conduct triennial evaluations (at latest by September 2013) by failing to conduct a comprehensive psychological and speech language evaluation.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the LEA failed to conduct triennial evaluations to include a comprehensive psychological and speech/language evaluations.

34 C.F.R. § 300.303 states:

(a) A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311— (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the

¹⁹ Although Petitioner presented witnesses including the student, the parent and an expert witness who testified as to the student's behavioral difficulties and that the student was in need of a full time out of general education placement, this Hearing Officer did not credit significant portions of their testimony. The Hearing Officer considered the student's testimony about the frequency and duration of her behavioral dysfunction and the level of academic work she was provided at School A to lack veracity; the parent's testimony regarding the frequency of the student's behavioral disruptions during the student's seventh grade year were generalized and she could not remember making statements that were documented that she made; and the expert witness had no contact or communication with the student, her parent, or any of the School A staff to gain first hand knowledge of the student and her behaviors, academic functioning or what services were provided her at School A.

child's parent or teacher requests a reevaluation. (b) Limitation. A reevaluation conducted under paragraph (a) of this section—(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

The evidence in this case demonstrates that in 2010 DCPS conducted a psychological evaluation of the student that included cognitive, academic achievement and social emotional behavioral assessments. In 2012 the School B conducted evaluations of the student pursuant to which the student's eligibility for special education was re-determined.²⁰ Although School B in re-determining the student's eligibility did not conduct another comprehensive psychological or a speech language evaluation, it conducted sufficient assessments including the WJ-III, Benchmark Assessments; mock DC-CAS assessments in reading and mathematics; and the student's grades for SY 2012-2013 School B to determine the student continued to meet the criteria for a SLD classification and her related services of speech and language were continued in the IEP that was drafted following these 2012 assessments.

Based upon this evidence this Hearing Officer concludes that School B conducted the triennial evaluation of the student required by 34 C.F.R. § 300.303 to determine whether the student continued to be eligible for services. There is no mandate by IDEA that the identical evaluations and/or assessments tools that were previously conducted be re-administered when triennial evaluation(s) are conducted and when eligibility is re-determined. Consequently, when the student was attending School A, there was no obligation for School A to conduct triennial evaluation(s) and there no evidence any evaluations were requested by the student's parent or her teachers. Therefore, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

ISSUE 4: Whether the LEA denied the student a FAPE by failing to update the student's 2010 FBA in 2012 & 2013 based the student's continued school suspensions and emotional outbursts and psychiatric hospitalization.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the LEA failed to update the student's 2010 FBA in 2012 and 2013.

As previously stated 34 C.F.R. § 300.303 requires a public agency to ensure that a reevaluation is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if the child's parent or teacher requests a reevaluation.

There was no evidence that the student's parent or her teacher(s) requested that the student's FBA be updated. There was no evidence presented that the student was suspended or hospitalized during her time at School A. There was evidence that the student in December 2013 began to display behavioral difficulties and that these difficulties were addressed by School A staff and the student's behaviors improved. Although an update of the student's FBA may have proved helpful, there was insufficient evidence that the lack of an update FBA caused any

²⁰ FOF #s 4, 9

significant harm to the student as she made educational progress during SY 2013-2014 earning above average grades and being promoted to the next grade. Consequently, this Hearing Officer concludes Petitioner did not sustain the burden of proof by a preponderance of the evidence on this issue.

ISSUE 5: Whether the LEA denied the student a FAPE by failing to discuss and/or provide the student extended school year (“ESY”) for summers 2012 and/or 2013 and/or 2014.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the LEA failed to discuss and/or provide the student with ESY for the summer of 2012 and/or 2013 and/or 2014.

34 C.F.R. 300.106 (a) provides:

- (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
- (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Sec. Sec. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

The evidence in this case demonstrates that the student’s IEP developed prior to her entry to School A at the start of SY 2012-2013 did not prescribe ESY services and was not developed by School A but developed prior to her attendance at School A.²¹ Consequently, the Hearing Officer concludes School A had no input into or responsibility for determining whether the student needed ESY for summer 2012 for providing her ESY that summer.

For the following year, School A conducted an IEP meeting in September 2013 at which ESY was discussed and the team determined the student was not in need of ESY services and the IEP meeting notes and the IEP reflect that decision. There is insufficient evidence presented from which the Hearing Officer could reasonably conclude that School A failed to consider the student’s need for ESY or that the student was in need of ESY. The evidence demonstrates the student was progressing toward her IEP goals and she received passing grades and was promoted to the next grade.²² Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

ORDER:

The due process complaint in this matter is hereby dismissed with prejudice and all requested relief is denied

²¹ FOF # 10

²² FOF #s 15, 18

APPEAL PROCESS:

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

/S/ Coles B. Ruff

Coles B. Ruff, Esq.

Hearing Officer

Date: December 27, 2014