

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 June 10, 2014, June 12, 2014, and concluded on July 11, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.²

BACKGROUND AND PROCEDURAL HISTORY:

The student is a _____ resident of the District of Columbia who has been determined eligible for special education services pursuant to IDEA with a disability classification of emotional disability (“ED”). The student recently turned age 22, days after the due process complaint was filed and is currently attending a private high school diploma program. (“School A”).

In September 2009 _____ he was _____ committed to the D.C. Department of Youth Rehabilitation Services (“DYRS”) until his 21st birthday and was thus a ward of the District of Columbia. After being committed to DYRS the student lived in various group homes and facilities and had sporadic schooling at either a DYRS facility school when he was in secure detention or at DYRS affiliated school in the community during the times he was not in secure detention.

Prior to his DYRS commitment the student attended a DCPS high school (“School B”) in ninth grade during school year (“SY”) 2007-2008 and had an individualized educational program (“IEP”) and a disability classification of learning disability (“LD”). During SY 2007-2008 the student had failing grades in virtually all subjects and repeated ninth grade at School B during SY 2008-2009. To date the student has earned 1 credit of the 24 needed to obtain a high school diploma.

In January 2011 the student’s IEP was updated and his disability classification was changed from LD to ED. In March 2011 the student was working toward his high school diploma equivalency (“GED”) at a DYRS affiliated school. He did not attend school at all during SY 2011-2012 and his IEP consequently expired in January 2012.

On November 30, 2012, DYRS placed the student at its Youth Services Center (“YSC”) while a group home placement was being identified. DCPS is the LEA for the school operated at YSC. After a brief two-week stay in a group home the student returned to YSC on December 17, 2012, and remained there until he was placed in a residential placement outside the District of Columbia on or about January 18, 2013.

² The hearing was held in room 2006 with exception of the morning of July 11, 2014, when the hearing was held in hearing room 2004.

During the student's stay at YSC, DCPS conducted an educational assessment of the student and updated his IEP at a meeting held on January 18, 2013. At the January meeting the student's attorney requested updated evaluations for the student. DCPS did not agree to conduct the evaluations, but nonetheless concluded the student remained eligible for special education with an ED classification. The IEP developed prescribed 8 hours of specialized instruction per week in general education, 4 hours per week outside, 240 minutes per month of behavioral support and 30 minutes per week of speech language services.

By January 21, 2013, the student arrived at the residential placement ("School C") and remained there until March 26, 2013. A representative of School C participated in the student's January 18, 2013, IEP meeting by telephone and expected that evaluations would be conducted to ascertain the student's academic functioning. OSSE eventually instructed DCPS to facilitate the evaluations being conducted. However, the evaluations were never completed prior to the student leaving his residential placement.

Upon his return from residential placement the student began living temporarily with his aunt who is a Maryland resident. On April 3, 2013, DCPS convened a "step down" meeting for the student for his transition from residential placement. The student was days away from his DYRS commitment ending and the DCPS personnel at the meeting stated the student would need to be able to prove residency in the District of Columbia ("D.C.") in order to attend a DCPS school.

The student attempted to enroll at a DCPS high school on April 17, 2013, and was unable to enroll because he could not prove D.C. residency. Consequently, the student did not enroll in a DCPS school or any other school for the remainder of SY 2012-2013.

On July 8, 2013, the student's attorney filed a state complaint with OSSE that resulted in a letter of decision ("LOD") issued November 20, 2013, that determined, inter alia, DCPS and DYRS had failed to comply with its obligations pursuant to IDEA and ordered, inter alia, corrective action by OSSE and DCPS. As result of the LOD DCPS conducted a speech language evaluation and psychological evaluation of the student in January 2014 and February 2014 respectively.

DCPS held a meeting in January 2014 to discuss compensatory services that would be provided as a result of the LOD including the student's prospective educational placement. The student had been unable to enroll in a school for SY 2013-2014 and on March 12, 2014, the student had a meeting with the DCPS Office of Youth Engagement at which DCPS proposed the student enroll a traditional DCPS high school, which the student declined. The student began receiving compensatory education services pursuant to the LOD at School A. The student has requested that DCPS place him at School A as his school placement.

On April 4, 2014, the student's attorney on his behalf filed the current due process complaint asserting DCPS and OSSE had failed to provide the student a free appropriate public education ("FAPE") by inter alia, failing to provide him an appropriate IEP and educational placement.

Petitioner seeks as relief that his eligibility to be extended to age 25, specific remedies including compensatory education and other relief the Hearing Officer deems appropriate for the alleged violations by both DCPS and OSSE.

DCPS filed a timely response to the complaint on April 11, 2014. DCPS asserted, inter alia, the student is no longer eligible under IDEA, and that the claims/issues in the complaint had been determined by the OSSE LOD. DCPS also asserted Petitioner was not a D.C. resident. Nonetheless, DCPS informed the student of specific high school locations where he should register and demonstrate either residence in D.C. or homelessness and advised him of a specific person to contact. DCPS asserted the student would have been provided a FAPE had he registered, enrolled, and been homeless or a residing student in D.C.

OSSE filed a timely response to the complaint on April 15, 2014, asserting, inter alia, that the claims alleged did not apply to OSSE and the violations alleged against OSSE were covered by the LOD and should be dismissed.³

The resolution period expired on May 4, 2014. The parties did not resolve the complaint and did not mutually agree to proceed directly to hearing. The 45-day period began on May 5, 2014, and originally ended (and the Hearing Officer Decision (“HOD”) was due) on June 18, 2014.

The case was originally assigned to another Hearing Officer who convened prehearing conferences and issued a pre-hearing conference order on May 20, 2014. The case was subsequently reassigned to the current Hearing Officer on May 22, 2014. The current Hearing Officer convened a pre-hearing conference on May 28, 2014, and on June 3, 2013, issued a second pre-hearing conference order and an order addressing OSSE’s motion to dismiss that delineated, inter alia, the issues to be adjudicated as to each Respondent.

The parties appeared for hearing on June 10, 2014, and June 12, 2014. At the conclusion of Petitioner’s and OSSE’s cases DCPS requested a continuance for a third day of hearing because the remaining time was insufficient to present its case. The motion was opposed by Petitioner but ultimately granted for a third day of hearing on June 24, 2014. A day prior to the June 24, 2014, hearing DCPS counsel was injured and unable to attend the hearing. A second continuance and extension of the decision due date was requested and granted. The final day of hearing was July 11, 2014, and the parties submitted written closing arguments on July 15, 2014. The decision is now due on July 22, 2014.

ISSUES: ⁴

The issues adjudicated as to DCPS are:

³ It was determined by the Hearing Officer that LOD did not bar the claims raised in the due process complaint but any relief obtained there by may be considered in any relief granted should Petitioner sustain the burden of proof of a denial of a FAPE to the student.

⁴ The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order(s) may not directly correspond to the issues outlined here. The Hearing Officer reviewed the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

1. Whether DCPS denied the student a FAPE by failing maintain and collect, and provide the student access to his educational records.
2. Whether DCPS denied the student a FAPE by failing to comprehensively reevaluate the student in all areas of suspected disability, conduct triennial evaluations, and reevaluate upon request of the student.
3. Whether DCPS denied the student a FAPE by failing to have an IEP in effect from November 30, 2012, through January 18, 2013, and from January 2014 through April 2014.
4. Whether DCPS denied the student a FAPE by failing to develop an appropriate IEP on January 18, 2013, because (a) DCPS failed to allow the student meaningful participation, (b) had an inappropriate IEP team in place, (c) failed to develop appropriate present levels of performance, (d) failed to develop appropriate goals, (e) failed to develop an appropriate transition plan, and (f) failed to provide an appropriate amount of specialized instruction and related services.
5. Whether DCPS denied the student a FAPE by failing to implement the January 18, 2013, IEP while he was at School C and thereafter by not providing him any location of services when his residential placement ended.
6. Whether DCPS denied the student a FAPE by failing to provide a placement in the least restrictive setting for the two years prior to the filing of the complaint.

The issues adjudicated as to OSSE are:

1. Whether OSSE failed to ensure a FAPE to the student while a dispute was pending (between DCPS and DYRS regarding the student's evaluations) by (a) failing to ensure an interagency agreement was in effect and (b) failing to pay for the student's evaluations.
2. Whether OSSE failed to ensure a FAPE to the student while he was at Alternative Solutions for Youth ("AYS") from December 5, 2012, to December 17, 2012.
3. Whether OSSE failed to implement and/or monitor the OSSE, DYRS, and DCPS Memorandum of Agreement "MOA" dated November 20, 2012.

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 138 and Respondent's DCPS Exhibit 1

through 75, and OSSE Exhibits 1 & 2, & Joint Exhibit 1, & Hearing Officer Exhibit 1) that were admitted into the record⁵ and are listed in Appendix A. Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁶

1. The student is a resident of the District of Columbia who has been determined eligible for special education services pursuant to IDEA with a disability classification of emotional disability (“ED”). The student recently turned age 22, days after the due process complaint was filed and is currently attending a private high school diploma program, School A. (Student’s testimony, Petitioner’s Exhibit 19-1)
2. The student grew up living with his father and his paternal grandparents until his father passed away in 2006. The student then began living with his mother. In February 2007, , the D.C. Department of Child and Family Services Agency (“CFSA”) removed the student from his mother’s home due to neglect. Thereafter, the student lived in multiple group and foster homes. (Petitioner’s Exhibit 37-2)
3. The student attended School B, a DCPS high school in ninth grade during SY 2007-2008. At the time the student entered School B he had an IEP dated May 31, 2007, that was developed at his DCPS middle school. During SY 2007-2008 the student had failing grades in all subjects except one. (DCPS Exhibit 6-1, Petitioner’s Exhibit 49)
4. In January 2008 the student had an IEP at School B that prescribed the following weekly services: 12 hours per week of specialized instruction outside general education and 12 hours per week inside general education, 60 minutes per week of psychological services and 30 minutes per week of speech/language services. The student’s disability classification was learning disabled. (DCPS Exhibit 6-1)
5. In February 2008 DCPS conducted a psychological evaluation of the student when he was age 15 and in ninth grade at School B. At the time the student was residing in a group home. The student’s cognitive abilities were determined to be in the borderline range and there were several indications of problems with depression, attention and hyperactivity. The evaluator concluded the student met the criteria for an emotional disturbance eligibility classification. (DCPS Exhibit 11-1, 11-6)

⁵ The parties filed disclosures on May 20, 2014, in anticipation of a May 28, 2014, hearing date. When the first day of hearing was changed to June 10, 2014, Petitioner filed another disclosure with most of the same documents except for 10 new documents. Some of the new documents were filed timely and some were not. The Hearing Officer allowed the documents filed timely on June 3, 2014, to be admitted pending DCPS objections to some of the documents on other reasons. Some of the documents filed untimely by Petitioner were replaced with the same documents filed timely in Petitioner’s May 28, 2014, disclosure. The documents in Petitioner’s June 3, 2014, disclosures that were admitted are noted 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.

6. In October 2008 DCPS conducted an educational assessment of the student. He was age 16 and 6 months at the time of the assessment and had been retained in ninth grade at School B. School B administered the Woodcock Johnson III and the student had the following scores:

7. (DCPS Exhibit 12-2)

<u>Cluster/Test</u>	<u>Standard Score</u>	<u>Age Equivalent</u>	<u>Grade Equivalent</u>
Broad Reading	69	9-9	4.4
Broad Math	51	8-6	3.2
Broad Written Language	67	9-5	4.1
Academic Skills	72	10-6	5.1
Academic Fluency	59	8-10	3.5
Academic Knowledge	52	7-2	1.9

8. In September 2009 when he was age 17 the student was committed to DYRS until his 21st birthday and was thus a ward of the District of Columbia. After being committed to DYRS the student lived in various group homes and facilities⁷ and had sporadic schooling at either a DYRS facility school when he was in secure detention or at a DYRS affiliated school in the community during the times he was not in secure detention. (Petitioner’s Exhibit 37-2, DCPS Exhibit 60)

9. DYRS is the juvenile justice agency that administers detention, commitment and aftercare services for youth committed to DYRS’ legal custody. DYRS is responsible for providing youth in its custody with food, shelter, education and ordinary medical care. DYRS is the public agency responsible for ensuring FAPE for youth committed to DYRS and attending school at the [DYRS Facilities] for all purposes except for determining educational placement and location of services after discharge from [DYRS facility]. (Joint Exhibit 1-3)

10. In January 2011 while the student was assigned to a DYRS operated school, his IEP was updated and his disability classification was changed from LD to ED. In March 2011 while the student was living in a group home where he was placed by DYRS and attending a DYRS affiliated school⁸ a triennial psychological evaluation was conducted. The student was age 18 and 11 months at the time of the evaluation. His cognitive, academic and social emotional functioning was assessed. The evaluator reviewed an IEP for the student dated January 11, 2011. The IEP prescribed 8 hours per week of specialized instruction in general education and the following related services: 60 minutes per week of behavioral support and 30 minutes per week of speech-language pathology. (Petitioner’s Exhibits 25-1, 25-4, 40-1)

⁷ During some of this period the student also lived in his mother’s home once the CFSA neglect case was reportedly closed in October 2009. His mother passed away in 2012. (Petitioner’s Exhibit 37-2)

⁸ There was no evidence presented that this was a school for which DCPS was the local education agency “LEA.”

11. At the time of the March 2011 evaluation the student was working toward his GED. The evaluator attempted to verify the student's cognitive functioning but because of the student's inconsistent application of effort during the assessment the cognitive measures may have underrepresented his true cognitive capacity therefore his cognitive abilities were not categorized in the evaluation. The student's academic achievement in broad reading was standard score of 81, with a grade level of 6.4. The student's passage comprehension was standard score of 86 and grade level of 5.4 and his reading fluency was standard score of 76 with a grade equivalency of 6.1. The student was diagnosed with Anxiety Disorder, Post-Traumatic Stress Disorder and a Mathematics Disorder. (Petitioner's Exhibits 40-1, 40-2, 40-3, 40-7)
12. The student did not attend an official school at all during SY 2011-2012 and his IEP was consequently not updated when it expired on January 11, 2012. To date the student has earned 1 credit of the 24 needed to obtain a high school diploma. On November 30, 2012, DYRS placed the student at YSC while a group home placement was being identified. DCPS is the LEA for the school operated at YSC.⁹ (DCPS Exhibit 2-17, Petitioner's Exhibit 49-1, 49-2)
13. The student was at YSC from November 30, 2012, to December 5, 2012, when he was transferred to a group home, Alternative Solutions for Youth ("ASY")¹⁰ where had a two-week stay and returned to YSC on December 17, 2012. The student was officially added to the YSC school roster on January 8, 2013.¹¹ ASY is an extension of YSC for DYRS committed youth awaiting placement at a therapeutic group home or regular group home. The student spent approximately two weeks at ASY and was then returned to YSC until he was placed at the out of state group home. (Witness 3's testimony, DCPS Exhibit 2-11, 2-12, 2-13, 2-14)
14. The student remained at YSC until he was placed in a residential placement in Virginia, School C, on or about January 18, 2103. During the student's stay at YSC, DCPS conducted an educational assessment of the student and updated his IEP at a meeting held on January 18, 2013. (DCPS Exhibit 2-11)
15. On January 9, 2013, YSC administered the Wide Range Achievement Test ("WRAT") to the student. He was assessed as having reading skills at the 6.4 grade level, spelling at 5.5 grade level and math at the 3.5 grade level. (Petitioner's Exhibit 48-1)
16. On January 14, 2014, there was a review by DC Superior Court of the student's commitment to DYRS. It was later determined by DYRS that the student would be

⁹ The Hearing Officer takes administrative notice that DCPS is the LEA for the school at YSC.

¹⁰ It is not clear whether he was in school while at the group home ("ASY") or what agency is responsible for ASY.

¹¹ The LOD determined that DCPS failed to promptly obtain the student's educational records from all the agencies that had previously provided him educational services prior to him being placed at YSC on December 17, 2012. Consequently, the LOD determined DCPS was in violation of 34 C.F.R. 300.323 (g).

placed at the residential group home in Virginia and attend School C there. (DCPS Exhibit 35-2, 35-3, 35-4, Witness 3's testimony)

17. In January 2013, the student was provided at least 1 hour of behavior support services at YSC. (DCPS Exhibits 33-1, 37)
18. From December 17, 2012, until the student left YSC in January 2013, he was at YSC for approximately 34 days, 15 of which were school days, due to winter break. During that time the student was not in class all the time, he would attend class 50 % of the time. The student was in inclusion English and math classes and received speech and language services. (Witness 10's testimony)
19. On January 16, 2013, the student was admitted to the residential group home and an academic schedule and course placement was generated. (DCPS Exhibit 30-1)
20. On January 18, 2013, prior to the student leaving YSC for the residential placement, a meeting was held at YSC at which it was noted that the student's IEP and eligibility had both expired by at least two years. The meeting participants were the student and his attorney and the YSC participants were the student's special education teacher, the assistant principal, special education coordinator, the school psychological and speech language provider. A representative of School C participated by telephone. There was no general education teacher who participated. (DCPS Exhibits 32-1, 34)
21. In 2012 the student participated in a DYRS academic remediation "boot camp" leading to a GED program run by Seeds of Tomorrow a private tutoring service. The student received instruction in reading and writing. One his instructors at Seeds of Tomorrow participated by telephone in the student's January 18, 2013, IEP meeting. (Witness 2's testimony, Witness 5's testimony)
22. At the January 18, 2013, IEP meeting the student's attorney requested updated evaluations for the student. DCPS/YSC team members allegedly concluded the student was too old to be evaluated. DCPS did not agree to conduct the evaluations, but nonetheless concluded the student remained eligible for special education with an ED classification and updated the student's IEP. The School C representative expected that evaluations would be conducted to ascertain the student's academic functioning. OSSE eventually instructed DCPS to facilitate the evaluation being conducted. However, the evaluations were never completed prior to the student leaving his residential placement. (DCPS Exhibits 32-1, 34, 38-1, 38-2, Student's testimony)
23. The IEP developed on January 18, 2013, prescribed 8 hours of specialized instruction per week in general education, 4 hours per week outside, 240 minutes per month of behavioral support and 30 minutes per week of speech language services. (DCPS Exhibits 32-1, 34, 38-1, 38-2, Petitioner's Exhibit 19-9)
24. The student's severe deficits make it imperative that he be provided an appropriate IEP and educational placement. The student's current IEP lacks an appropriate transition plan

as he is likely to have difficulty transitioning from school to work life. The services listed in his current transition plan are not services but a list of tasks. Because the student's current housing difficulties it would be appropriate to include obtaining housing resources as a part of his transition planning. Because the student is over age and has so few credits toward graduation it needs to be with peers who also over age and under credited. The level of special education services in the student's most recent IEP is insufficient and the student's needs a full time IEP outside general education to address his severe deficits and for him to efficiently progress and obtain a high school diploma. (Witness 5's testimony)

25. The student was officially withdrawn from YSC on January 21, 2013. (DCPS Exhibit 36-1)
26. By January 21, 2013, the student arrived at the residential placement, School C, and remained there until March 26, 2013. The student reported that he was higher functioning than most of the students at School C. (Petitioner's Exhibit 37-2)
27. OSSE addressed the confusion about what agency would conduct the evaluations by notifying DCPS and DYRS of DCPS' responsibility to provide evaluations for the student. (Witness 6's testimony, OSSE Exhibit 1)
28. On February 13, 2013, after it was clarified that DCPS should also assist in securing the student's evaluations the DCPS program manager reached out to the student's attorney and assigned a DCPS staff member to communicate with School C and make certain the student's evaluations were conducted. (Witness 8's testimony, DCPS Exhibit 39-1)
29. On February 21, 2013, the student's attorney inquired of the DCPS monitor for School C when the student's updated evaluations would be completed and also requested additional educational records for the student. (DCPS Exhibit 45)
30. On February 22, 2013, the DCPS program manager responded stating that because DCPS was not the agency that placed the student at School C the evaluation billing concerns should be addressed with the student's DYRS case manager who would work with School C to get the evaluations completed. (DCPS Exhibit 46)
31. While the student was at the out of state group home, he was transported from his group home to the residential facility (School C) where he was provided educational instruction. The student's attorney traveled to School C during the student's stay there and met with the School C staff and the student. There was discussion about needed records and no one seemed to be able to provide him needed evaluations. DCPS did not participate in the meeting. (Witness 3's testimony)
32. On March 6, 2013, the student's attorney wrote to DYRS, prior to the student's release from his residential placement, in anticipation of his DYRS commitment ending on his 21st birthday and requested that an appropriate plan be put in place for the student's education, job training and housing once his commitment ended. (DCPS Exhibit 47)

33. On March 18, 2014 no DC agency had yet made payment available for the student evaluations to be conducted. (DCPS Exhibit 48-2)
34. On March 19, 2013, School C wrote the student's attorney a letter reiterating that during the student's January 18, 2013, IEP meeting that there was an agreement for additional assessments of the student to be conducted including a psychological and speech language evaluation to determine the student's processing deficits. The team was to reconvene to discuss the evaluation results. School C noted that although the student had a current IEP and eligibility determination the additional evaluations were necessary and they had not yet been conducted because the financial responsibility for the evaluations had not been determined. (Petitioner's Exhibit 87-1)
35. On March 21, 2013, the DCPS program manager sent an email again stating that the DCPS placement monitor for School C would work with the school to get the student's evaluations completed. The evaluations were never completed while the student was at School C. (Witness 8's testimony, Petitioner's Exhibit 48)
36. On March 26, 2013, the student returned to the District of Columbia and a discharge meeting was held and a DCPS program manager stated DCPS would issue a prior notice to a non-public school in three days. The student tried to enroll in a DCPS school the following day but was told registration was closed until after spring break. (DCPS Exhibit 53)
37. Upon his return from residential placement the student began living temporarily with his aunt who is a Maryland resident. On March 28, 2013, there was a Youth Family Team meeting. (DCPS Exhibit 50)
38. On April 3, 2013, DCPS convened a "step down" meeting for the student for his transition from residential placement. The student was days away from his DYRS commitment ending and the DCPS personnel at the meeting stated the student would need to be able to prove D.C. residency in order to attend a DCPS school. (Witness 8's testimony, DCPS Exhibits 54, 55)
39. On April 5, 2013, the student wrote an email to DYRS personnel stating that DCPS would not allow him to attend a DCPS school because he was not a DC resident as he was living temporarily with his aunt in Maryland and complaining that DYRS did nothing to plan for his return to D.C. after his commitment ended. The student stated that he was facing homelessness and requested flex funds. The student was attempting to locate housing in D.C. including a shelter when his commitment ended on his 21st birthday. (DCPS Exhibit 55-1, 55-2, 55-9)
40. The student lived a short time with his aunt in Maryland until she asked him to leave. (Petitioner's Exhibit 37-2)

41. The DC Superior Court Judge responded to a letter the student sent the Judge expressing his disappointment with his residential placement and his time at School C. In her letter to the student the Judge apologized for the student's placement at School C being disappointing and his not receiving the services that the DYRS case worker represented to the judge would be provided there. As the student's commitment to DYRS had ended prior to the letter, the judge wished him luck and suggested he put the past behind him. (DCPS Exhibits 56, 57)
42. DCPS identified a DCPS high school as the school where the student's IEP could be implemented and DCPS staff made efforts for the student to be enrolled there by contacting the staff at the school and alerting the staff the student would be coming there to enroll. There were attempts to assist the student in enrolling at that school. (Witness 9's testimony)
43. The student attempted to enroll at a DCPS high school on April 17, 2013, and was unable to enroll because he could not prove D.C. residency. Consequently, the student did not enroll in a DCPS school or any other school for the remainder of SY 2012-2013. (DCPS Exhibit 58-1)
44. On July 8, 2013, the student's attorney filed a state complaint with OSSE that resulted in a letter of decision ("LOD") issued November 20, 2013, that determined, inter alia, DCPS and DYRS had failed to comply with their obligations pursuant to IDEA and ordered, inter alia, corrective action by OSSE and DCPS. As result of the LOD, DCPS conducted a speech language evaluation and psychological evaluation of the student in January 2014 and February 2014 respectively. (DCPS Exhibit 2-1, 2-5, Petitioner's Exhibits 37, 38)
45. On February 13, 2014, the student's attorney requested the student's educational records from DCPS including report cards, progress reports, attendance records, disciplinary records, IEPs, notice of placement evaluations, standardized tests, and related service provided progress notes and logs. (DCPS Exhibit 72-1)
46. DCPS provided the student's attorney all documents based upon the initial document request. DCPS held two meeting following the LOD one in January 2014 and the other in March 2014 regarding the outcome of the state complaint to discuss compensatory services that would be provided as a result of the LOD including the student's prospective educational placement. At the time of the meetings the student was homeless and he was seeking a school. In April 2013 through January 2014 there had been no information to DCPS that the student was homeless. At the January 2014 and March 2014 meetings DCPS determined that the student's IEP could be implemented at a DCPS comprehensive high school. During the meetings with the student they also discussed stay programs and GED programs. At the end of January 2014 meeting the student stated that he wanted to consider what was offered. Because of his homeless status he could attend any comprehensive high school that have students enrolled up to age 22. (Witness 7's testimony, DCPS Exhibits 72, 73)

47. The DCPS psychological re-evaluation conducted in February 2014 measured the student's level of cognitive and academic functioning to determine whether the student met the criteria as a special education student with a disability classification of learning disabled. The evaluator reviewed the student's prior evaluations and IEPs including his 2011 psycho-educational evaluation and administered among other assessments, the Reynolds Intelligence Assessment Scale (RIAS) and the Woodcock-Johnson Test of Academic Achievement-Third Edition (WJ-III). (Petitioner's Exhibit 37-1)
48. The psychological evaluation determined the student's overall cognitive functioning falls within the Moderately Below Average range with a RIAS score of 77. The DCPS evaluator determined that because of the student's inconsistent school attendance he did not meet the criteria for specific learning disability ("SLD") but continued to meet the criteria for an ED disability classification. (Petitioner's Exhibit 37-2, 37-10)
49. The evaluator administered the Woodcock Johnson III and the student had the following scores:

<u>Cluster/Test</u>	<u>Standard Score</u>	<u>Classification</u>
Broad Reading	77	Low
Broad Math	60	Very Low
Broad Written Language	72	Low

(Petitioner's Exhibit 37-10)

50. The DCPS speech language evaluation conducted in February 2014 determined the student had a standard score profile that would indicate a severe spoken language deficit. However, the evaluator cautioned that the student's scores may reflect the student's lack of experience with or exposure to formal or academic language. His weaknesses appeared to be symptomatic of a more global cognitive and academic deficit rather than a separate language disorder. The evaluator noted the student has communication strengths of social language and speaking vocabulary that can be used to further his communication outcomes. (Petitioner's Exhibit 38-11)
51. On February 24, 2014, and February 25, 2014, DCPS provided the student's attorney all the student's records that could be located. (DCPS Exhibits 73-1, 74)
52. The student had been unable to enroll in a school for SY 2013-2014 and on March 12, 2014, the student had a meeting with DCPS Office of Youth Engagement at which DCPS proposed the student enrolling in a traditional DCPS high school. (Student's testimony, Witness 7's testimony)
53. In April 2014 the student's attorney had another independent speech language evaluation conducted because she was not satisfied with the evaluation DCPS conducted and wanted clarification of the student's speech and language impairments. The independent evaluator found the student has a severe communication disorder involving both oral and written language and a central auditory processing disorder and dysphasia - a learning

disability. The student's 2005 speech language evaluation did not test for auditory processing or hearing sensitivity nor did the DCPS evaluation in January 2014. However, the independent evaluator noted the student has made definite growth since his previous speech/language evaluation in 2005. In her opinion the level of speech language services in the student's January 2013 IEP were not enough to address his deficits. She believes the student needs 2 hours of services per week and that if he is attending School A it should plan a period of intervention that can accommodate his schedule. (Witness 1's testimony, Petitioner's Exhibit 36)

54. The student had been unable to enroll in a school for SY 2013-2014 and on March 12, 2014, the student had a meeting with DCPS Office of Youth Engagement at which DCPS proposed the student enroll in a traditional DCPS high school, which the student declined. The student began receiving compensatory education services pursuant to the LOD at School A. The student has requested that DCPS place him at School A as his school placement. (Student's testimony)
55. School A is an afternoon and evening educational program for non-traditional students in need of a special education placement. The program compacts the curriculum in a way to earn credits toward a high school diploma. The program had three students graduate this year. The curriculum is tailored to various learning styles to individualize the program for the student. The program has an OSSE certificate of approval ("COA") and its tuition is regulated by OSSE and is \$39,500.00 annually. The program runs from 10am to 7pm daily and the student and School A staff make arrangements as to the time of attendance for each student. There are currently 14 students enrolled with disabilities classifications including SLD, other health impairment ("OHI") and ED. Related services are provided including speech/language, behavior support, occupational therapy, and physical therapy. There is currently one certified special education teacher and another is being hired this summer to accommodate the current number of students. (Witness 4's testimony)
56. The School A program is designed for a student to complete a high school diploma with 3 to 4 students at a time in the classroom. Between hours of 2 pm to 4 pm there can be as many as 4 students present. The program is individualized and designed for the student to have maximum one to one support. The student has been attending School A since March 2014 and the staff believes the type of instruction will effectively help address his academic deficits and allow him to obtain a high school diploma. (Witness 4's testimony)
57. School A can meet the student's needs and he is doing well there. He attends regularly and manages his frustration when things are difficult. He is open to support and polite with staff. He wants to get things completed and wants to do them well. The student would be able to graduate from School A; however, he would struggle in a ninth grade classroom in a general education school. (Witness 4's testimony)
58. Petitioner proposed as compensatory education to compensate the student for the alleged denials of FAPE that the student's eligibility for special education services be extended

until he reaches age 25 (nearly three years) and funding at School A for that duration and additional services including remedial related services in speech language and tutoring and transition services. (Witness 2's testimony, Petitioner's Exhibit 16)

59. A Memorandum of Agreement ("MOA") dated November 20, 2012, exists between OSSE, DYRS and DCPS related to the educational services for youth committed to DRYS. The MOA is designed to minimize disruption in the general and special education services of youth during times of transition between DYRS and other placements by facilitating prompt transfer of records and coordination by DYRS and DCPS representatives in monitoring the delivery of educational services. The MOA applies to youth who are committed to DYRS and are detained and housed at [DYRS facilities] or placed by DYRS in resident treatments facilities ("RTCs") psychiatric residential treatment facilities ("PRTFs") or out of state ("OOS") group homes. Each agency has agreed it is responsible for the duties and obligations set forth in the agreement. (Joint Exhibit 1-3)
60. Pursuant to the MOA, when timely notified by DYRS of placement, DCPS is the LEA for all youth committed to DYRS who are placed in RTCs, PRTFs, and OOS group homes. (Joint Exhibit 1-3)
61. Pursuant to the MOA, DCPS is the local educational agency ("LEA") with responsibility for serving all D.C. children of compulsory school age who enroll in DCPS. When timely notified by DYRS of placement, DCPS is the LEA for all youth committed to DYRS who are placed in RTSS, PRTFs and out of state group homes. (Joint Exhibit 1-3)

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.¹² *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) see also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied the student a FAPE by failing to maintain, collect, and provide the student access to his educational records.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS denied the student a FAPE by failing to maintain, collect and provide the student's educational records.

34 C.F.R. §300.501(a) provides:

- (a) The parents of a child with a disability must be afforded, in accordance with the procedures of Sec. Sec. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to--
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.

The evidence demonstrates that DCPS provided Petitioner's attorney all the requested educational documents that it had maintained for the student.¹³ There was insufficient evidence presented that any other documents were not provided. In addition, the evidence indicates that the student's records became available to DCPS upon his return to a DCPS school, YSC, after his arrival there and that YSC had his previous IEP.

Although Petitioner in its closing arguments argued that the LOD found DCPS had failed to maintain the student's records, the Hearing Officer did not interpret this issue to assert a failure by DCPS to promptly gain access to the student's records but to promptly make the records available to the student and his representative(s). Albeit it may have been an

¹² 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.

¹³ FOF #s 45, 46, 51

unreasonable time for DCPS to have obtained the student's records while he was YSC, the Hearing Officer concludes that DCPS had access to the student's IEP within a reasonable time after he arrived and after the winter break in order for him to be provided services pursuant to the IEP. Based on Witness 10's credible testimony when he arrived at YSC he was assessed and provided inclusion education services as his IEP prescribed. The Hearing Officer does not conclude that any failure to promptly obtain the student's records resulted in denial of a FAPE to the student.

ISSUE 2: Whether DCPS denied the a FAPE by failing to comprehensively reevaluate the student in all areas of suspected disability, conduct triennial evaluations, and reevaluate upon request of the student.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.303(a)(2) make clear that, "A local education agency ("LEA") *shall ensure* that a re-evaluation of each child with a disability is conducted...if the child's parents or teacher requests a re-evaluation." (emphasis added). 34 C.F.R. § 300.305(d)(2) also clarifies that the parent must be advised by the LEA of the right to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs. *See also Letter to Copenhaver*, 108 LRP 16368 (OSEP 2007).

The evidence demonstrates that a triennial evaluation was conducted of the student in January 2011. Thus, the student was due for triennial evaluations in January 2013.¹⁴ At the January 18, 2013, IEP meeting the student's attorney requested the student be reevaluated. DCPS did not agree. Ultimately, the student's eligibility was continued and his IEP updated with the same level of services as his January 2011 IEP: no specialized instruction outside general education.

There were repeated attempts to obtain evaluations once the student arrived at School C. However, the evaluations never got completed until 2014 after the LOD was issued. The evidence demonstrates that despite the initial confusion by DCPS as to what agency was responsible to fund the evaluations, DCPS was the responsible agency and failed to get the evaluations completed.¹⁵ The evaluations once completed reflect continued academic deficits and little if any progress for the student since his last evaluation. Had School C had the benefit of prompt evaluations perhaps the student's time at School C would have been more productive and less of a waste of time for the student as he lamented in his letter to the D.C. Superior Court Judge. Based upon DCPS' failure to ensure the evaluations were completed while the student was at School C the Hearing Officer concludes the student was harmed thereby and denied a FAPE.

ISSUE 3: Whether DCPS denied the student a FAPE by failing to have an IEP in effect from November 30, 2012, through January 18, 2013, and from January 2014 through April 2014.

¹⁴ FOF #s 10, 11

¹⁵ FOF #s 33, 34, 35

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence on this issue.

Pursuant to 34 C.F.R. 200.323 (a) and (e) DCPS had an obligation to have an IEP in effect at that start of school year or in the case of this student, who was effectively a transfer student from a DYRS school when he arrived at YSC, to provide him services comparable to his existing IEP until DCPS develops an updated IEP.¹⁶

The evidence demonstrates that at the time the student entered YSC he had an IEP that prescribed specialized instruction in an inclusion setting. The evidence demonstrates that he was provided such services until his IEP was updated on January 18, 2013, and that the student had an IEP in effect thereafter while he attend School C.¹⁷ Albeit the IEP was not based on current evaluations, it had been updated by an IEP team at YSC. Consequently, the Hearing Officer concludes that there was no denial of FAPE to the student in this regard and Petitioner did not sustain the burden of proof on this issue.

ISSUE 4: Whether DCPS denied the student a FAPE by failing to develop an appropriate IEP on January 18, 2013, because (a) DCPS failed to allow the student meaningful participation, (b) had an inappropriate IEP team in place, (c) failed to develop appropriate present levels of performance, (d) failed to develop appropriate goals, (e) failed to develop an appropriate transition plan, and (f) failed to provide an appropriate amount of specialized instruction and related services.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that the student's IEP developed on January 18, 2013, was inappropriate because it was developed by an inappropriate IEP team, was not based on current evaluations, failed to have an appropriate transition plan and failed to prescribed an appropriate level of services.

“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

¹⁶ 34 C.F.R. 300.323 (a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Sec. 300.320. (e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--(1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in Sec. 300.320 through 300.324.(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--(1) Conducts an evaluation pursuant to Sec. Sec. 300.304 through 300.306 (if determined to be necessary by the new public agency); and (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in Sec. Sec. 300.320 through 300.324.

¹⁷ FOF #s 17, 18, 23

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).

To be appropriate under 34 C.F.R. § 300.324, the IEP must consider the (i) strengths of the child; (ii) concerns of the parents; (iii) results of the initial or most recent evaluation; and (iv) academic, developmental, and functional needs of the child.

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

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).

The evidence demonstrates the student fully participated in the January 18, 2013, IEP meeting along with his attorney. Although the student's IEP developed on January 18, 2014, effectively continued the level of services the student had in his January 2011 IEP, as previously noted the student was lacking a triennial evaluation. Even though DCPS had conducted the WRAT to assess the student's academic functioning and from which to measure present levels of performance, this was not a comprehensive evaluation as is generally conducted. In addition, the evidence demonstrates the IEP team did not include a general education teacher as is required pursuant to IDEA.¹⁸ Based upon the evidence it was apparent that the student's would soon be transitioning from his DYRS commitment, yet based upon the expert testimony of Petitioner's witness the student's transition plan in the IEP lacked key goals and skill development that would have been appropriate for this student. Finally, the student's level of specialized instruction was woefully inadequate for the level of his academic deficits that were apparent even with the scores DCPS obtained with WRAT. As Petitioner expert witness pointed out this student is clearly in need of a full time out of general education placement and that should have been apparent when his IEP was updated on January 18, 2013. DCPS presented no witness that effectively countered the evidence that demonstrates the student's need for a significant level of special education services. With the evidence as to the inappropriateness of the IEP that clearly exists the Hearing Officer did not find the need to cite any additional weakness of the IEP' goals.

ISSUE 5: Whether DCPS denied the student a FAPE by failing to implement the January 18, 2013, IEP while he was at School C and thereafter by not providing him any location of services when he residential placement ended.

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student's IEP was not implemented while he attended School C.¹⁹ However, there was

¹⁸ FOF #s 20, 22, 23, 24

¹⁹ FOF # 31

sufficient evidence that the student, upon his return from School C for at least a week prior to his 21st birthday, was a ward of the District of Columbia and was due an educational school placement if only for a few days during the time he remained a D.C. ward. DCPS was obligated even at the April 3, 2013, meeting to immediately provide the student a school placement where his IEP could be implemented. Although DCPS identified a school the student could attend his March 2013 transition meeting occurred in sufficient enough time for a school to identified early enough for him to have been enrolled and not simply told to show up at a particular school and prove his residency. DCPS effectively failed to provide the student an educational placement upon his discharge from School C. Rather than doing so, DCPS waited until the student's DYRS commitment expired which thus had the effect of shutting him out of services he was entitled to if only for only a short period prior to his 21st birthday. Any deprivation of educational services for a student this in need amounted to denial of FAPE.

ISSUE 6: Whether DCPS denied the student a FAPE by failing to provide a placement in the least restrictive setting for the two years prior to the filing of the complaint?

Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that DCPS was obligated to provide the student any educational placement prior to him being placed at YSC. At his placement at YSC with the development of his most recent IEP, which the evidence demonstrates was inappropriate, the student was without an appropriate placement from January 18, 2013, until his DYRS commitment ended. Thereafter, the evidence demonstrates that until the student met with DCPS following the issuance of the LOD, when it was clear he was homeless in D.C., the student was living with his aunt in Maryland. Until January 2014, the evidence does not support that the DCPS was obligated to provide the student an appropriate placement.

But once it was clear that the student was homeless in D.C. and in need of an educational placement it was incumbent upon DCPS to provide him an appropriate educational placement. Although DCPS discussed with and offered the student school options the evidence demonstrates that none of the offers included a full time out of general education placement as the evidence now demonstrates the student required. Consequently, the Hearing Officer concludes DCPS did not provide the student an appropriate educational placement from January 2014 up to an including the date the due process complaint was filed and thus denied the student a FAPE.

The issues adjudicated as to OSSE:

ISSUE 1: Whether OSSE denied the student a FAPE by failing to ensure a FAPE to the student while a dispute was pending (between DCPS and DYRS regarding the student's evaluations) by (a) failing to ensure an interagency agreement was in effect and (b) failing to pay for the student's evaluations.

ISSUE 2: Whether OSSE denied the student a FAPE by failing to provide a FAPE to the student while he was at Alternative Solutions for Youth ("AYS") from December 5, 2012, to December 17, 2012.

ISSUE 3: Whether OSSE denied the student a FAPE by failing to implement and/or monitor the OSSE, DYRS, and DCPS Memorandum of Agreement, November 2012 “MOA”.

In the Hearing Officer’s June 3, 2013, Order on OSSE’s motion to dismiss the Hearing Officer stated the following:

“Given the lack of clarity and absence of evidence and legal authority as to OSSE’s responsibilities to the student while he was at AYA, the Hearing Officer concludes that a viable claim against OSSE under IDEA may exist even though, as OSSE’s motion points out, generally a LEA is an independent entity for the purpose of ensuring compliance with IDEA, and is required to provide special education to the disabled children enrolled at its facilities. *Murphy*, 448 F. Supp. 2d. at 169 (citing D.C. MUN. REGS. tit. 5, §§ 3019.3, 3019.8).²⁰”

However, as to the other two issues raised against OSSE regarding the interagency agreement requirements and as to the MOA, the Hearing Officer was not convinced pre-hearing that these were issues that can be considered in a due process hearing but deferred an ultimate decision on this until evidence was presented and did not dismiss these two issues pre-hearing.

After a review of the evidence presented at hearing and the arguments made by the parties the Hearing Officer concludes that the two claims against OSSE raised in due process complaint regarding the MOA are not within the purview of the Hearing Officer to decide and are not causes of action that are anticipated pursuant to the a complaint filed pursuant to 34 C.F.R. 300.507. Accordingly, the Hearing Officer concludes that those issues are dismissed.

There was insufficient evidence presented that OSSE was responsible for not providing the student special education services during the two weeks he was in a group home from December 5, 2013, until December 17, 2013, when he was returned to YSC. Although there was some testimony offered about ASY there was no credible testimony or documentation as to who is responsible for the education of a student who is placed at ASY. Petitioner’s witnesses were uncertain of what entity operated ASY and/or the testimony was based on third party information rather than personal knowledge. Consequently, the Hearing Officer concludes there was insufficient evidence that either DCPS or OSSE were responsible for the student’s educational services during the two-week period he was placed there before being returned to YSC. Consequently, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this issue.

²⁰ IDEA is administered by state education agencies (“SEAs”) and local education agencies (“LEAs”). See 34 C.F.R. 300.608; id. § 300.200. A SEA is responsible for general supervision and enforcement, see D.C. MUN. REGS. tit. 5, § 300.149, usually accomplished by apportioning and restricting funds, see 34 C.F.R. § 300.608. A LEA is specifically responsible for providing a FAPE. See D.C. MUN. REGS. tit. 5, § 3002.1, and a LEA may only be excused from these responsibilities if it previously notified the SEA that it is unwilling or unable to provide a FAPE to a child, and the SEA agreed to assume responsibility. *S.S. v. Howard Road Acad.* 562 F. Supp. 2d 126, 131 (D.D.C. 2008); *Belton*, 2006 U.S. Dist. LEXIS 13321, 2006 WL 667072; *Murphy*, 448 F. Supp. 2d. at 169 (citing D.C. MUN. REGS. tit. 5, §§ 3019.3, 3019.8).

Compensatory Education

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

The evidence demonstrates that the student was denied a FAPE by DCPS failing to timely conduct triennial evaluations, failing to develop and appropriate IEP and provide an appropriate educational placement upon his leaving School C and from January 2014 to the date the due process complaint was filed. Consequently, the student is entitled to compensatory services. The evidence presented sufficiently demonstrates that the student is benefitting from and making academic progress at School A and that School A meets the standards that the Hearing Officer is to consider in determining an appropriate private educational placement.²¹ Consequently, as compensatory education for the violations proved the Hearing Officer concludes that it is appropriate to extend the student special education eligibility beyond age 22 for the completion of one academic year to July 22, 2015, and to provide his funding during that time at School A.

ORDER:²²

As compensatory education for the denials of FAPE determined pursuant to this HOD the Hearing Officer concludes that the student shall be granted the following:

1. The student's eligibility for special education services and his rights and protections pursuant to IDEA are extended beyond his twenty-second birthday for one full calendar year following the issuance of this Order.
2. DCPS shall within five (5) business day of the issuance of this Order place and fund the student at School A (Kingsbury Center HOPE Program) through SY 2014-2015 up to and including July 22, 2015.

²¹ FOF # 55, 56, 57 A hearing officer or court may award a prospective private placement as relief to ensure that a child receives the education required by the IDEA in the future where a balance of the relevant factors justifies such a placement. In addition to the conduct of the parties, which is always relevant in fashioning equitable relief, the following factors must be balanced before awarding such relief: the nature and severity of a student's disability; the student's specialized individual educational needs; the link between those needs and the services offered by the private school; the private school placement's costs; and the extent to which the placement represents the least restrictive environment. *Branham ex rel. Branham v. District of Columbia*, 427 F. 3d 7; 44 IDELR 149 (D.C. Cir. 10/25/05).

²² Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

3. Within thirty (30) school days of the issuance of this Order DCPS shall convene an IEP meeting and review the student's most recent evaluations and review and revise his IEP to appropriately address his academic deficits and related services needs and transition planning.
4. All other requested relief is denied.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 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: July 22, 2014