



hearing officer was appointed on April 4, 2016. On April 4, 2016, counsel for Petitioner filed a motion to reassign the hearing officer, which I denied in an order issued on April 11, 2016. On April 19, 2016, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters. The parties convened for a resolution session on April 26, 2016, which did not result in an agreement.

The due process hearing in this case was originally scheduled for May 31, 2016. By order entered May 25, 2016, I granted Petitioner's unopposed motion to continue the hearing date due to the unavailability of a witness and to extend the decision due date from June 15, 2016 to June 25, 2016. The due process hearing was convened on June 7, 2016. The hearing was not completed that day due Petitioner's needing more time than anticipated to present her case-in-chief. A second hearing day was scheduled for July 12, 2016. On June 23, 2016, the Chief Hearing Officer granted DCPS' unopposed request to again extend the due date for the final decision to July 24, 2016.

The due process hearing was held before this Impartial Hearing Officer on June 7 and July 13, 2016 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by SCHOOL PSYCHOLOGIST and by DCPS' COUNSEL. Petitioner's Counsel made an opening statement. DCPS waived opening argument.

Petitioner testified and called as additional witnesses INDEPENDENT PSYCHOLOGIST, TUTOR, EDUCATIONAL ADVOCATE 1 and, EDUCATIONAL ADVOCATE 2. DCPS called as witnesses CASE MANAGER and School Psychologist.

Petitioner's Exhibits P-1 through P-27 were admitted into evidence, with the exceptions of Exhibits P-2, P-5, P-17 through P-19, P-25 and P-26, which were withdrawn, and P-24 to which DCPS' objection was sustained. Exhibit P-21 was admitted over DCPS' objection. DCPS' Exhibits R-1 through R-13 were admitted into evidence, including Exhibit R-12 admitted over Petitioner's objection. Exhibit R-14 was withdrawn. At the conclusion of the hearing, counsel for the respective parties made closing arguments. Neither party requested leave to file a post-hearing brief.

### **JURISDICTION**

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

### **ISSUES AND RELIEF SOUGHT**

The following issues for determination were certified in the April 22, 2016

Revised Prehearing Order:

Whether at a March 15, 2016 multidisciplinary team (MDT) meeting, DCPS failed to ensure that the MDT team gave appropriate consideration to Student's Independent Educational Evaluation (IEE) psychological evaluation, failed to ensure that a regular education teacher was present for the IEP development meeting, failed to provide an appropriate IEP that addressed Student's mental health issues, failed to address Student's high level of anxiety that inhibits her from staying on task and concentrating in a general education setting, failed to provide Student a small, highly structured, therapeutic educational setting, failed to provide adequate meaningful, appropriate annual goals in the IEP, failed in the IEP to address Student's "Thought Disorder," failed to provide Extended School Year (ESY) services, and failed to provide an appropriate transition plan;

For relief, Petitioner requests that the hearing officer:

- a. Order DCPS to fund Student's placement at NONPUBLIC SCHOOL and
- b. Order DCPS to convene an MDT meeting to review the independent psychological evaluation report in its entirety and develop a revised IEP, to include an appropriate placement and location of services and for DCPS to fund the costs of the parent's expert to participate in the meeting.

In addition, Petitioner seeks an appropriate compensatory education award to compensate Student for the denials of FAPE alleged in the complaint.

### **FINDINGS OF FACT**

After considering all of the evidence admitted at the due process hearing in this case, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is an AGE resident of the District of Columbia, where she resides with Mother. Testimony of Mother. Student is eligible for special education and related services as a student with an Emotional Disability (ED). Exhibit R-4.

2. Student has been home-schooled since the fall of 2014, following a period of hospitalization at PSYCHIATRIC HOSPITAL. Before being home-schooled Student attended PUBLIC CHARTER SCHOOL. Exhibit P-12. Student was determined eligible for special education at Public Charter School on March 31, 2014 and provided an IEP on May 5, 2014. Exhibits P-14, P-16. In her home schooling, Student is enrolled in an internet on-line learning program. For the last year and a half, Tutor has tutored Student privately in a library setting. Tutor meets with Student up to two times per week, usually for sessions of not more than two hours. Testimony of Tutor.

3. This case follows upon the administrative due process proceeding for this Student in Case No. 2015-0290, which ended upon the issuance of a Hearing Officer Determination by Hearing Officer Coles B. Ruff on November 11, 2015 (the November 11, 2015 HOD). Exhibit P-10. In the prior case, Petitioner alleged, *inter alia*, that DCPS denied Student a FAPE by failing to provide her an appropriate IEP placement for the 2014-2015 and 2015-2016 school years. Hearing Officer Ruff determined that Petitioner sustained her burden of proof that DCPS failed to offer Student an educational

placement for the 2014-2015 school year, but that Petitioner did not prove that she requested an educational placement for Student for the 2015-2016 school year. Hearing Officer Ruff ordered, *inter alia*, that DCPS convene a multidisciplinary team meeting to update Student's IEP and determine what additional evaluations and assessments were appropriate. Hearing Officer Ruff further ordered that the MDT team determine an educational placement and location of services for Student for the 2015-2016 school year. Exhibit P-10.

4. Student was hospitalized for four days in July 2015 at PSYCHIATRIC HOSPITAL, presenting with "seeing things in her mind that worry her" and "family members turning against her." She was discharged after completing a course of treatment. Her discharge diagnoses were Psychotic Disorder NOS and Anxiety Disorder NOS. She was prescribed medications for psychosis and anxiety. Exhibit P-9.

5. On November 24, 2015, School Psychologist conducted a comprehensive psychological reevaluation of Student. School Psychologist administered cognitive and educational achievement tests as well as rating scales to assess Student's emotional and behavioral profile. Student's full-scale IQ score on the cognitive test, Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), was in the High Average range. However, her scores on the Visual Spatial Index (VSI) and Processing Speed Index (PSI) subtests were both in the Very Low range. Student's Academic Functioning scores on the Wechsler Individual Achievement Test, Third Edition (WIAT-III) were in the Average range or higher for all subject areas. Mother, Student and Tutor completed rating scale questionnaires to assess Student's social and emotional functioning. On the Behavior Assessment System for Children, Second Edition (BASC-2), Student received Clinically Significant ratings in the Behavioral Symptoms Index, which includes

Atypicality, Withdrawal and Anxiety. On the Children's Depression Inventory, Second Edition (CDI-2), Tutor rated Student's Emotional and Functional problems in the Average range. Mother rated Student's Emotional and Functional problems in the High Average range. On the Scales for Assessing Emotional Disturbance, Second Edition (SAED-2), Tutor rated Student as Highly Indicative of ED with Relationship Problems and Indicative of ED in Unhappiness or Depression and Physical Symptoms or Fears. In her December 16, 2015 report, School Psychologist recommended that Student met IDEA definition and eligibility criteria for the ED disability. Exhibit P-11.

6. In February 2016, Independent Psychologist conducted an IEE combined psychological and neuropsychological evaluation of Student to assess her social/emotional functioning and attention and executive functioning skills. Using a variety of measures, Independent Psychologist found that Student's pattern of performance was consistent with an attentional control impairment that significantly impacts her ability to think, concentrate, learn and work productively; that Student had deficits in executive functioning which had a negative impact on her self-esteem and her performance in school; and that at times, Student "tunes out" inadvertently and is distracted by negative thoughts, described as voices that tell her bad things about her family. Independent Psychologist diagnosed Student with Generalized Anxiety Disorder and Dysthymic Disorder. She also reported that Student presented with evidence of a "thought disorder." Exhibit P-12. School Psychologist prepared a written review of the IEE and also went over the evaluation at the March 15, 2016 MDT/IEP meeting. Testimony of School Psychologist, Exhibit P-13.

7. Prior to the March 15, 2016 IEP meeting, Case Worker conducted a telephone interview of Student to assess her post-secondary interests. Student's goal

after completing high school was to attend college and her long term interest was to become a chemist, a fashion designer or an architect. For transition goals, Case Manager drafted a plan for Student to research entrance and graduation requirements for District area colleges and to report her findings to Case Manager. For transition services, the IEP provides for Student to work with a teacher to create a list of colleges and universities that interest her, to work with a teacher or counselor to develop a list of potential careers of interest and to work with a counselor to create a budget for independent living. Testimony of Case Manager, Exhibit P-16. Student is on the high school diploma track and expected to attend college. Testimony of Mother, Exhibit P-16.

8. DCPS convened an eligibility team meeting on March 15, 2016 to review the psychological reevaluations of Student. Mother, Educational Advocate 1 and Petitioner's Attorney attended this meeting. Case Manager, who is certified as a regular education teacher, participated in both the March 15, 2016 and March 23, 2016 MDT/IEP meetings. The team determined that Student continued to be eligible as a student with an ED disability in need of special education and related services. Exhibit P-14, Testimony of Case Manager.

9. Student's IEP team convened on March 15, 2016. The school representatives proposed that Student would receive 24 hours per month of behavioral support services provided by School Psychologist. Exhibit P-15. Those services would be provided for the first hour of every school day to facilitate Student's entry into the school environment. School Psychologist would meet Student at a separate entry door, take her to the psychologist's office to provide cognitive behavioral therapy and then

accompany Student through the school halls to her first class to try to relieve her anxiety about the school. Testimony of School Psychologist.

10. The IEP team completed the IEP on March 23, 2016. The only IEP area of concern identified in the final IEP was for Emotional, Social and Behavioral Development and the IEP included annual goals for Student to participate in cognitive behavioral therapy, to acquire and implement coping strategies in counseling sessions, to participate in counseling sessions to assist in developing coping skills, and to work with a trained professional using cognitive behavioral therapy to reduce anxiety upon entering school and other unfamiliar public establishments. The IEP provided that Student would receive 90 minutes per week of Special Education in Mathematics, but that provision was a scrivener's mistake. The IEP team was not proposing any Specialized Instruction for Student. Testimony of Case Manager, Exhibit P-16. The March 23, 2016 IEP also stated that for Other Classroom Aids and Services, Student would have either co-taught or small classrooms with a special education teacher to get the support she needs; graphic organizers, outlines, breaks when needed, redirection, a seat in class away from distractions, calculator, and other materials to help her access the lessons; and that Student would attend school on a schedule in accordance with her behavioral needs. Student's IEP would be implemented at CITY SCHOOL. Exhibit P-16, Testimony of Case Manager.

11. The March 23, 2016 IEP specifically references the February 20, 2016 IEE psychological evaluation of Student. Exhibit P-16.

12. Pending DCPS funding approval, Student has been accepted into a special program at Nonpublic School, a special education day school in suburban Maryland. Nonpublic School is skilled with working with nonviolent, severely mentally ill children.

It offers a specialized, year-round, program to teach children with severe psychiatric disorders. This program is very small, with only ■ students served by ■ full-time therapists. There would be six students in the classroom proposed for Student. The program includes individual therapy with a psychologist, daily group therapy and family therapy. Exhibit P-20, Testimony of Independent Psychologist, Testimony of Educational Advocate 2. Nonpublic School holds a current certificate of approval (COA) from the D.C. Office of the State Superintendent of Education (OSSE) to serve District students with ED and other IDEA disabilities. Hearing Officer Notice.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and argument of counsel, as well as this hearing officer's own legal research, the Conclusions of Law of this hearing officer are as follows:

#### **Burden of Proof**

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

#### **Analysis**

At the March 15 and March 23, 2016 MDT/IEP meetings, did DCPS fail to ensure that the MultiDisciplinary Team gave appropriate consideration to Student's IEE psychological evaluation, fail to ensure that a regular education teacher was present for the IEP development meeting, fail to provide an appropriate IEP that addressed Student's mental health issues, fail to address Student's high level of anxiety that inhibits her from staying on task and concentrating in a general education setting, fail to provide Student a small, highly-structured, therapeutic educational setting, fail to provide adequate meaningful, appropriate annual

goals in the IEP, fail in the IEP to address Student's "Thought Disorder," fail to provide ESY services and fail to provide an appropriate transition plan?

As explained above in this decision, this case follows upon an HOD order by Hearing Officer Ruff in Case No. 2015-0290 that DCPS convene an MDT meeting to review and update Student's May 5, 2014 IEP from Public Charter School and that the IEP team determine an appropriate educational placement for Student. On March 15, 2016, after separate psychological reevaluations were conducted by DCPS and by Independent Psychologist, DCPS convened an eligibility team meeting which confirmed Student's continued special education eligibility as a student with an Emotional Disability. Following the eligibility determination, Student's IEP team met on March 15 and 23, 2016 to update her IEP. The March 23, 2016 IEP would provide Student 24 hours per month of Behavioral Support Services and, as Other Classroom Aids and Services, the IEP specifies that Student will have "either co-taught or small classrooms with a special education teacher to get the support she needs." Student's placement would be at City School. Petitioner contends, generally, that this IEP is inappropriate to address Student's ED disability. DCPS responds that the March 23, 2016 IEP was reasonably calculated to provide Student a FAPE. For the reasons explained below, I find that the March 23, 2016 IEP does not meet the requirements of the IDEA.

In *Moradnejad v. District of Columbia*, --- F.Supp.3d ----, No. 14-1159, 2016 WL 1275577 (D.D.C. Mar. 31, 2016), the Court adopted the Report and Recommendation of U.S. Magistrate Judge G. Michael Harvey, which explained how a court or a hearing officer must assess an IEP:

The Supreme Court explained in [*Bd. of Educ. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)] that a court's assessment of an IEP involves two inquiries:

First, has the State complied with the procedures set forth in the [IDEA]? And second, is the [IEP] developed through the [IDEA's] procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Rowley*, 458 U.S. at 206–07, 102 S.Ct. 3034. Courts have consistently underscored that the “appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so.” *K.S. v. Dist. of Columbia*, 962 F.Supp.2d 216, 221 (D.D.C.2013) (citing *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148–49 (10th Cir.2008)); *Rowley*, 458 U.S. at 200, 102 S.Ct. 3034 (finding that the IDEA does not require that IEPs “maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children,” only that they be “reasonably calculated to enable the child to receive educational benefits”); *N.T. v. Dist. of Columbia*, 839 F.Supp.2d 29, 33 (D.D.C.2012) (“While the District of Columbia is required to provide students with a public education, it does not guarantee any particular outcome or any particular level of education.”).

*Moradnejad, supra*. “Courts have consistently underscored that the ‘appropriateness of an IEP is not a question of whether it will guarantee educational benefits, but rather whether it is reasonably calculated to do so’; thus, ‘the court judges the IEP prospectively and looks to the IEP's goals and methodology at the time of its implementation.’” *K.S. v. District of Columbia*, 962 F. Supp. 2d 216, 221 (D.D.C. 2013) (citing *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 1148–49 (10th Cir.2008)).

Petitioner first contends that DCPS did not comply with the IDEA’s procedural requirements in developing the March 23, 2016 IEP because the IEP team did not give appropriate consideration to Student’s February 20, 2016 IEE psychological evaluation. The IDEA regulations require that if the parent obtains an IEE the results of that evaluation must be considered by the District, if the evaluation meets agency criteria, in any decision made with respect to the provision of FAPE to the student. *See* 34 CFR §

300.502(c). Further, for every IEP, the IEP Team must consider, *inter alia*, the results of the initial or most recent evaluation of the student. *See* 34 CFR § 300.324(a)(3). In this case, the evidence establishes that DCPS and the March 15, 2016 MDT/IEP team did, in fact, consider the February 20, 2016 IEE evaluation. School Psychologist prepared a written review of the IEE and also went over the evaluation at the March 15, 2016 MDT/IEP meeting. Moreover, the IEE evaluation was specifically referenced in the March 23, 2016 IEP. I find that Student’s MDT/IEP team complied with the IDEA’s requirement to consider Student’s IEE psychological evaluation.

Next Petitioner claims that DCPS violated the IDEA’s IEP team composition requirements by not having a regular education teacher present for the March 2016 meetings. Consistent with 34 CFR § 300.321(a)(2), a regular education teacher is a required member of an IEP Team if the student is, or may be, participating in the regular education environment. Student, who has been home-schooled since 2014 does not currently have a regular education teacher. Case Manager, who is certified as a regular education teacher, filled this role at both the March 15, 2016 and March 23, 2016 MDT/IEP meetings. I find that DCPS did not violate the IDEA’s procedural requirement to ensure that a regular education teacher was a member of Student’s IEP team.

I turn, next, to the second, substantive, prong of the *Rowley* inquiry: Was the March 23, 2016 IEP reasonably calculated to enable Student to receive educational benefits? The IDEA requires that every IEP provide for special education services, including “Specially designed instruction,” defined as “adapting, as appropriate to the needs of an eligible child . . . the content, methodology or delivery of instruction – (i) To address the unique needs of the child that result from the child’s disability and (ii) to

ensure access of the child to the general curriculum so that the child can meet the education standards within the jurisdiction of the public agency that apply to all children.” See 34 CFR §§ 300.39(b)(3), 300.320(a)(4).

In this case, Student’s ED disability hampers her access to the general curriculum. Student has been hospitalized on three occasions at Psychiatric Hospital, most recently in July 2015. Student is diagnosed with Generalized Anxiety Disorder and Dysthymic Disorder. She suffers from hallucinations and paranoia. Independent Psychologist explained that these conditions are inter-related and stem from Student’s “Thought Disorder” impairment, a severe psychiatric illness. Independent Psychologist opined that Student will not be able to learn at a regular public [REDACTED] school and that she requires a therapeutic school equipped and able to work with students with severe psychiatric illnesses. Educational Advocate 2, who qualified as an expert in special education with emphasis on children with severe mental illnesses, opined that Student requires a small, nurturing, environment because the pervasiveness of her mental illness makes it impossible for her to gain educational benefit in a general education environment. I found both of these experts to be credible witnesses and both were well informed on the nature of Student’s disability. I accorded less weight to the opinion testimony of DCPS’ expert, School Psychologist. This witness conducted a psychological reevaluation of Student, but she denied knowledge of the extent of Student’s psychiatric illness or of her psychiatric diagnoses (Psychotic disorder NOS and Anxiety disorder NOS). (These diagnoses were on the July 21, 2015 Psychiatric Hospital Physician Discharge Note, Exhibit P-9, which School Psychologist reviewed in connection with her evaluation of Student.)

DCPS’ proposed March 23, 2016 IEP does explain how City School would address

the “unique needs” of Student that result for her ED disability so that she would be able to access the general curriculum, but states only that she would have “either co-taught or small classrooms with a special education teacher.” In addition, the IEP provides for 24 hours per month of behavioral support related services, that would be provided by the School Psychologist. An IEP must, at a minimum, “provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *See Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005), quoting *Rowley, supra*. Crediting the testimony of Petitioner’s experts that Student requires a therapeutic program capable of serving students with severe psychiatric illnesses, I find that DCPS’ proposed March 23, 2016 IEP, with its vaguely-worded provision for co-taught or small classrooms, does not approach this minimum standard.

Petitioner also contends that the annual goals in the March 23, 2016 IEP are not meaningful or appropriate for Student. The IDEA requires that every student’s IEP must include a statement of measurable annual goals, including academic and functional goals, designed to,

(A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child’s other educational needs that result from the child’s disability.

*See* 34 CFR § 300.320(a)(2)(i). According to the February 20, 2016 IEE psychological report, Student’s pattern of performance is consistent with an attentional control impairment that significantly impacts her ability to think, concentrate, learn and work productively. Her executive functioning issues are also related to problem solving skills

which apply to task allocation and time management. She, at times, tunes out inadvertently and at other times is distracted by negative thoughts in the form of hallucinatory voices. These impairments clearly impair Student's ability to be involved in and make progress in the general education curriculum and therefore should be addressed in her IEP goals. However, three of the four annual goals in the March 23, 2016 IEP are for Student to participate in cognitive behavioral therapy and in counseling sessions. These are not meaningful academic or functional goals, but are services intended to enable Student to meet her objectives. I agree with Petitioner that the annual goals in the March 23, 2016 IEP are not adequate.

Petitioner also alleges that the March 23, 2016 IEP is deficient for want of Extended School Year (ESY) services. However, "ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months." *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68-69 (D.D.C. 2008), adopting standard from *MM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-38 (4th Cir.2002). In this case, the evidence is undisputed that Student is a bright youth who, with appropriate supports, is able to perform well academically despite her ED disability. Petitioner did not meet her burden of proof that Student's gains during the regular school year would be significantly jeopardized if she were not provided ESY services.

Finally, Petitioner alleges that the March 23, 2016 IEP lacks an appropriate transition plan for Student. The IDEA, 20 U.S.C. § 1414(d)(1)(A)(viii), "imposes three distinct duties on school districts with respect to transition services. First, a school district must conduct 'age appropriate transition assessments related to training,

education, employment, and . . . independent living skills.’ Second, the district must draft a transition plan, including ‘appropriate measurable postsecondary goals. . . .’ Third, a school district must actually provide transition services reasonably calculated to aid student in achieving those goals.” *Forest Grove Sch. Dist. v. Student*, No. 3:12-CV-01837-AC, 2014 WL 2592654, at 27 (D. Or. June 9, 2014). For the March 23, 2016 IEP, Case Worker conducted a telephone interview of Student to assess her post-secondary interests. Student’s goal after completing high school was to attend college and her long term interest was to become a chemist, a fashion designer or an architect. For transition goals, Case Manager drafted a plan for Student to research entrance and graduation requirements for District area colleges and to report her findings to Case Manager. For transition services, the IEP provides for Student to work with a teacher to create a list of colleges and universities that interest her, to work with a teacher or counselor to develop a list of potential careers of interest and to work with a counselor to create a budget for independent living. Considering that Student is on the high school diploma track and expected to attend college, these services appear reasonably calculated to provide educational benefits. *See Moradnejad, supra*. I find that Petitioner has not met her burden of proof that the transition assessment and transition goals and services in the March 23, 2016 IEP were not appropriate for Student.

#### RELIEF REQUESTED

#### Nonpublic Placement

In this decision, I have concluded that DCPS’ proposed March 23, 2016 IEP is inappropriate for Student because it lacks appropriate annual goals and, most importantly, because it does not offer Student personalized instruction with sufficient support services, in a suitable educational setting, to permit her “to benefit

educationally from that instruction.” *See Reid, supra*. Student has been denied a FAPE as a result. As a remedy for this denial of FAPE, Petitioner requests *inter alia*, that I order DCPS to fund Student’s prospective placement at Nonpublic School for the 2016-2017 school year.

Separate schooling, or other removal of students with disabilities from the regular educational environment, may occur only if the nature or severity of the disability is such that education in a regular public school, cannot be achieved satisfactorily. *See* 34 CFR § 300.118(a)(2)(ii). In *Jenkins v. Squillacote*, 935 F.2d 303 (D.C.Cir.1991), the D.C. Circuit Court of Appeals explained that “if there is an “appropriate” public school program available, *i.e.*, one reasonably calculated to enable the child to receive educational benefits, the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child.” *Id.* at 305 (internal citations and quotations omitted).

Where, as here, DCPS has failed to offer Student an adequate IEP, the usual remedy would be to order DCPS to ensure that the IEP is appropriately revised. However, DCPS was already ordered in Case No. 2015-0290 to ensure that Student’s IEP team appropriately revised her IEP and determined a suitable educational placement and location of services. This requirement from the November 11, 2015 HOD has not been met. With only 4-5 weeks remaining before the start of the new school year, it would not be equitable to require Petitioner and Student to wait to see whether DCPS would now offer Student an appropriate IEP and educational placement. I find that a DCPS-funded nonpublic placement for Student is warranted.

Placement awards, must be tailored to meet the student’s specific needs. *Branham v. Government of the Dist. of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005).

To inform this individualized assessment, courts have identified a set of considerations “relevant” to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student’s disability, the student’s specialized educational needs, the link between those needs and the services offered by the private school, the placement’s cost, and the extent to which the placement represents the least restrictive educational environment. *Id.* at 12. Pursuant to the *Branham* guidance, I will address each of these considerations in turn.

a. Nature and Severity of Student’s Disability

The evidence in this case establishes that Student has an ED disability, stemming from a severe psychiatric illness, which impedes her ability to learn in a regular public high school setting. She has been home-schooled since she was discharged from Psychiatric Hospital following a psychosis episode in the fall of 2014 .

b. Student’s Specialized Educational Needs

According to the credible testimony of Independent Psychologist and Educational Advocate 2, Student requires a therapeutic educational setting and program designed for teaching children with severe psychiatric illnesses.

c. Link between Student’s Needs and the Services Offered by Nonpublic School

Nonpublic School is a full-time special education day school. The school is skilled with working with nonviolent, severely mentally ill children. It offers a specialized, year-round, program to teach children with severe psychiatric disorders. This program is very small, with only ■ students served by ■ full-time therapists. There would be only 6 students in the classroom proposed for Student. The program includes individual therapy with a psychologist, daily group therapy and family therapy.

d. Cost of Placement at Nonpublic School

The tuition cost for Nonpublic School was not established. However Nonpublic School is approved by the Office of the State Superintendent of Education for students from the District with ED and other disabilities. DCPS offered no evidence that tuition expenses at Nonpublic School are higher than costs at other area private schools that serve students with similar disabilities.

e. Least Restrictive Environment

The IDEA contemplates a continuum of educational placements to meet the needs of students with disabilities. Depending on the nature and severity of her disability, a student may be instructed in regular classes, special classes, special schools, at the home, or in hospitals and institutions. *See* 5E DCMR § 3012, 20 U.S.C. § 1412(a)(5), 34 CFR § 300.115. The IDEA requires that students with disabilities be placed in the “least restrictive environment” so that they can be educated in an integrated setting with students who are not disabled to the maximum extent appropriate. *See, e.g., Smith v. District of Columbia*, 846 F.Supp.2d 197, 200 (D.D.C. 2012). “In determining the least restrictive environment, consideration is given to the types of services that the child requires.” *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) (citing 34 C.F.R. § 300.552(d)). The Act further requires that the educational placement be “reasonably calculated to enable the child to receive educational benefits,” that is, “sufficient to confer some educational benefit upon the handicapped child.” *See Dawkins by Dawkins v. District of Columbia*, 1989 WL 40280, 3 (D.C.Cir. Apr. 24, 1989), quoting *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 200, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982).

Petitioner has established by the preponderance of the evidence that the least

restrictive environment for Student is a special school, capable of serving students with severe mental illnesses. Independent Psychologist testified that Student would not be able to learn in the “overstimulating environment” of a regular public [REDACTED] school. Educational Advocate 2 testified, credibly, that Student needs a small, nurturing environment because the pervasiveness of her mental illness makes it impossible for her to gain educational benefit in a general education environment. I found less credible the opinion of DCPS’ expert, School Psychologist, that Student should not be segregated from her nondisabled peers. School Psychologist claimed not to have been provided Student’s psychiatric diagnoses, even though she had reviewed the Psychiatric Hospital’s July 21, 2015 Physician’s Discharge Note, which identified Student’s discharge diagnoses as Psychotic Disorder NOS and Anxiety Disorder NOS. Considering all of the above factors, I conclude that Petitioner has met her burden of proof and has established that Nonpublic School is an appropriate placement for Student.

#### Compensatory Education

Petitioner also requests that Student be awarded compensatory education for DCPS’ failure to offer her an appropriate IEP at the March 2016 IEP meetings. If a parent has established a denial of the education guaranteed by the IDEA, the hearing officer must undertake “a fact-specific exercise of discretion” designed to identify those compensatory services that will compensate the student for that denial. The proper amount of compensatory education, if any, depends upon how much more progress a student might have shown if she had received the required special education services and the type and amount of services that would place the student in the same position she would have occupied but for the school district’s violations of the IDEA. *See Walker v. District of Columbia*, 786 F.Supp.2d 232, 238-239 (D.D.C.2011) (citing *Reid v.*

*District of Columbia, supra*, 401 F.3d at 518.) The Petitioner must shoulder the burden of proof to provide the hearing officer with sufficient evidence that demonstrates that additional educational services are necessary to compensate the student for the denial of a free and appropriate public education. *See Phillips ex rel. T.P. v. District of Columbia*, 736 F.Supp.2d 240, 250 n.4 (D.D.C.2010).

For the entire 2015-2016 school year, Student was home-schooled, using an internet on-line learning program. Student was also assisted by Tutor who provided regular one-on-one tutoring. At the due process hearing, Petitioner offered no evidence of Student's current educational achievement levels or of how much additional educational progress Student would have shown, had she been provided an appropriate IEP in March 2016. The extent of harm to Student, if any, from DCPS' not offering her an appropriate IEP in March 2016 cannot be determined from the testimony and exhibits offered at the due process hearing. I conclude that Petitioner has failed to support her claim for compensatory education for the denial of FAPE in this case. *See Gill v. District of Columbia*, 770 F.Supp.2d 112, 118 (D.D.C.2011), *aff'd.*, 2011 WL 3903367, 1 (D.C.Cir. Aug. 16, 2011) (Due to the lack of evidentiary support, the Court is compelled to find that Plaintiffs have failed to support their claim for compensatory education.)

#### Revision of IEP

Lastly, Petitioner requests that DCPS be ordered to develop a revised IEP, to include an appropriate placement and location of services, and for DCPS to fund the costs of the parent's expert to participate in the IEP meeting. Because DCPS failed to offer Student an appropriate IEP in March 2016, DCPS must ensure that Student's IEP team reviews and revises her IEP in accordance with this decision and 34 CFR §

300.320, *et seq.*, and that the IEP team is provided all additional data that may be needed to determine Student's educational needs and appropriate placement. *Cf.* 34 CFR § 300.305(a)(2) (IEP team shall identify what additional data, if any, are needed to determine the educational needs of the child.) (According to the testimony of School Psychologist, the March 2016 IEP team was not provided Student's mental health records or information on academic credits she has earned since being home-schooled.) With regard to paying the fees of the parent's expert, while the IDEA provides for individuals with special expertise regarding the student to be members of a student's IEP team at the discretion of the parent or the District, the Act does not require the District to pay the expert's fees for attending IEP meetings. *See* 34 CFR § 300.321(a)(6). I decline to order DCPS to pay for the parent's expert to attend future IEP meetings.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

#### **ORDERED:**

1. DCPS shall fund Student's enrollment at Nonpublic School, including transportation, for the 2016-2017 school year;
2. DCPS shall ensure that Student's IEP is reviewed and revised in accordance with this decision and with 34 CFR § 300.320, *et seq.* For the IEP review, DCPS must ensure that Student's IEP team is provided all additional data needed by the team to determine Student's educational needs, including, without limitation, any needed psychiatric and psychological assessments, mental health records and home schooling records. To the extent that such data and records can only be obtained from the parent, or subject to obtaining the parent's consent, DCPS must document, in writing, that it has used due diligence to obtain the data or records or to obtain the parent's written consent for their release. In order for representatives of Nonpublic School to be able to participate in the IEP review meeting and provide informed input on Student's present educational performance and the needs that result from her disability, DCPS shall ensure that the IEP meeting is held after Student has attended Nonpublic School for at least four school weeks. However, the meeting must be convened no later than October 31, 2016;

3. Petitioner's request for a compensatory education award is denied and
4. All other relief requested by the Petitioner herein is denied.

Date: July 14, 2016

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

### **NOTICE OF RIGHT TO APPEAL**

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

cc: Counsel of Record  
Office of Dispute Resolution  
Chief Hearing Officer  
OSSE - SPED  
DCPS Resolution Team