DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
1150 Fifth Street, S.E.
Washington, DC 20003

RECEIVED
JUN 14 2010

STUDENT, through her legal guardians,[1]	)
	)
Petitioners,	)
	)
v.	)
	)
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)
	)
Respondent.	)

HEARING OFFICER DETERMINATION

[1] Personal identification information is provided in Attachment A.

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act ("IDEA") of 2004, codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; and the regulations at 34 C.F.R. §§ 300.1 *et seq.*; and D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

II. BACKGROUND

Petitioners are the Mother and Father of a special education student ("Student") who attends a District of Columbia school.[2] Petitioners and the Student are residents of the District of Columbia.[3]

On March 11, 2010, Petitioners filed a Due Process Compliant Notice ("Complaint") against the District of Columbia Public Schools ("DCPS") and the Office of State Superintendent of Education ("OSSE"). On March 19, 2010, with the consent of all parties, this Hearing Officer dismissed OSSE from this action and consolidated this case with that of the Student's twin sister (case no. 2010-0257) for the due process hearing only.

In the Complaint, Petitioners allege that DCPS denied the Student a free, appropriate, public education ("FAPE") by failing to:

A. Convene an appropriate individualized educational program ("IEP") team by failing to include a general education teacher;
B. Consider all available evaluation reports;
C. Evaluate or observe the Student prior to developing the Student's IEP;
D. Develop an appropriate IEP, including an appropriate educational placement;[4] and
E. Provide Petitioners an opportunity to observe the proposed location of services and participate in the development of the Student's IEP.[5]

Petitioners seek an order requiring DCPS to reimburse them for all costs related to the provision of special education and related services to the Student during the 2008-2009 and 2009-2010 school years, including all costs incurred at the Non-Public School. Petitioners also seek an order placing the Student at the Non-Public School for the 2010-2011 school year at DCPS expense.

In its Response, filed on March 22, 2010, DCPS asserts that it reviewed all of the evaluation reports Petitioners provided and convened an appropriately constituted IEP team. DCPS asserts that it provided Petitioners and their educational advocate ("Advocate") a

---

[2] DCPS Exhibit 2, p. 000006 (Annual Student Enrollment Form).
[3] Id. at p. 000007 (DC Residency Verification Form).
[4] This Hearing Officer interprets Petitioners' claims A-C as subsumed into claim D, as they are allegations of procedural violations that this Hearing Officer considers in determining whether DCPS denied the Student a FAPE. *See Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006).
[5] This claim asserts a procedural violation of IDEA. This Hearing Officer interprets this claim as subsumed into the question of whether DCPS provided the Student an appropriate IEP.

meaningful opportunity to participate in the meeting and placement decision, and that Petitioners and their Advocate fully participated.

DCPS asserts that it developed an IEP and placement that provides the Student a FAPE. DCPS asserts that the IEP is reasonably calculated to provide her with meaningful educational benefit. DCPS asserts that the Student's proposed placement represents the least restrictive environment for her. DCPS further asserts that the proposed location of services ("DCPS School") can implement the Student's IEP.

The due process hearing commenced on April 14, 2010. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. After two and a half days of testimony, the due process hearing was continued to June 2, 2010. After an additional two days of testimony, the hearing concluded on June 3, 2010.

III. RECORD

Due Process Complaint Notice, filed March 11, 2010;
Petitioners' Motion to Consolidate, filed March 15, 2010;
Notice of Withdrawal (against OSSE), filed March 16, 2010;
Interim Order, issued March 19, 2010;
DCPS Response, March 22, 2010;
Prehearing Notice, issued March 25, 2010;
Prehearing Conference Order, issued March 31, 2010;
Petitioners' Five-Day Disclosure Statement, listing eight witnesses and including twenty-one proposed exhibits, filed April 6, 2010;
DCPS Five-Day Disclosure; listing ten witnesses and including seven proposed exhibits, filed April 7, 2010;
Petitioners' Letter of Objection to DCPS Witness List, filed April 9, 2010;
Petitioner's (sic) Objections to DCPS' Witnesses and Documents, filed April 13, 2010;
Consent Motion for Continuance, filed April 20, 2010;
Continuance Order, issued April 29, 2010;
Demonstrative Exhibit (notes of Non-Public School Speech-Language Pathologist);[6] and
Petitioner Exhibit 22, admitted into evidence on June 2, 2010.

IV. ISSUES PRESENTED

This Hearing Officer interprets Petitioners' legal claims as whether DCPS denied the Student a FAPE by failing to provide the Student an appropriate IEP for the 2009-2010 school year.

[6] This document was developed at the hearing as a demonstrative exhibit, and was not admitted into evidence.

V. FINDINGS OF FACT

1. The Student is a special-education student who is in the grade at a full-time, out-of-general-education, non-public, special-education school in the District of Columbia.[7] The Student was determined to be eligible for special education and related services as early as 2003.[8]

2. The Student's most recent psycho-educational evaluation was conducted in 2007.[9] Her performance on the Wechsler Intelligence Scale for Children –Fourth Edition ("WISC-IV"), revealed that she has average cognitive abilities.[10] However, the Student's overall Full-Scale IQ score, which was at the 42nd percentile, is not the best indication of her abilities as her scores on the subtests varied widely.[11] Even the General Ability Index ("GAI"), which is often a more accurate measure of a student's intellectual ability, masks disparate scores.[12] While the Student's score on the GAI, which was at the 61st percentile, is a better indication of her thinking and reasoning abilities than the Full-Scale score, a single number cannot accurately represent her abilities.[13]

3. On the WISC-IV, the Student demonstrated strengths on tasks of verbal reasoning and on completing and extending visual patterns.[14] She showed that she has a solid fund of knowledge.[15] Her strengths in these areas contrasted with her marked difficulty on tasks of working memory, visuospatial analysis, and speeded transcription.[16]

4. The Student's verbal comprehension summary score was at the seventieth percentile, which is near the top of the average range of scores.[17] This score is based on three subtests, similarities, comprehension, and vocabulary.[18] The Student performed best on the similarities and comprehension subtests, which involve verbal reasoning.[19] She earned scores at the seventy-fifth percentile in each of these subtests, and a score in the sixty-third percentile on the vocabulary subtest.[20]

---

[7] Testimony of Advocate.
[8] *See* DCPS Exhibit 1 (March 2003 letter from Arlington, Virginia, Public Schools informing Petitioners that the Student was a student with a disability and eligible for special education and related services).
[9] Petitioners Exhibit 5 (Confidential Report of Psycho-educational Evaluation).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* Scores between the twenty-fifth percentile and the seventy-fifth percentile fall in the average range. *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

5. The Student's working memory summary score was at the twenty-first percentile, which is classified as a low average score.[21] This score was below expectation given the Student's verbal comprehension score. Working memory is important for many academic tasks, including taking notes while attending to instruction, and retaining information while reading, performing math calculations, and organizing one's thoughts for written expression.[22]

6. The subtests that contribute to the working memory score require attention, concentration, and auditory memory.[23] The Student's performance on two of these subtests was inconsistent.[24] She earned a score in the 50th percentile for her age on the letter-number sequencing test, which required her to listen to strings of mixed numbers and letters and then repeat the numbers in numerical order and the letters in alphabetical order.[25] She performed without error on strings of four numbers.[26]

7. In contrast, she scored in the ninth percentile for her age on the digit-span subtest, which required her to repeat random strings of numbers in the same order she heard them or in the reverse order.[27] When she repeated the strings in a forward order, which is a hear-and-repeat exercise, she could repeat only four digits.[28] When she repeated the strings in the reverse order, she obtained practically the same result.[29] Thus, the Student showed weaknesses in both immediate auditory memory and in mentally juggling information.[30]

8. The perceptual reasoning score on the WISC-IV is derived from three subtests that examine visual analysis and visuospatial abilities.[31] The Student scored at the forty-fifth percentile for her age, which is in the average range.[32] However, this is not a reliable estimate of her abilities in this area because she earned scattered scores on the component subtests, and exhibited task-specific strengths and weaknesses.[33] Although the Student worked well with some visual-based reasoning tasks, visuospatial analysis and organization are difficult for her.[34] She was most successful when she has explicit models to follow and she is able to use verbal mediation.[35]

9. The Student earned a score in the ninety-first percentile for her age on the matrix-reasoning subtest, which required her to study a partially filled grid and then select the item that

---

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* She made an error when reversing one of the three-item strings. *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*

properly completes the matrix.[36] In contrast, she earned a score in thirty-seventh percentile on the picture concepts subtest, which required her to categorize objects by grouping the pictures that are associated with each other in some way.[37] On this subtest, the Student not only had to recognize the relevant grouping principles, she also had to determine which of the pictures should be included in each group.[38] The visual component of this test seemed to make the task more difficult for the Student than the similarities subtest, which required her to categorize objects provided verbally.[39]

10. The Student had significant difficulties with the block design subtest, in which she was required to duplicate geometric designs with colored blocks.[40] She earned a score at the ninth percentile compared to her same-age peers.[41] While she used a trial and error approach, she did not always recognize when she had correctly constructed elements of the designs.[42] Her work on these designs was very slow, taking her three to four times longer than the standard time limit.[43]

11. The Student earned a low score on the processing speed index, which is composed of relatively simple, visually based tasks that require fast work.[44] The Student's score was at the twenty-first percentile of her same-age peers, which is classified as low average.[45] This score was below expectations giving her WISC-IV verbal comprehension score at the seventieth percentile.[46] Students who show such a large discrepancy in these two indices often have difficulty producing work efficiently.[47]

12. The Student earned discrepant scores on the subtests in the processing speed index.[48] She was especially slow when she had to write out her responses.[49] On the symbol search subtest, which required her to make rapid comparisons of symbols, the Student earned a score at the fiftieth percentile.[50] She worked more slowly on the coding subtest, and earned a score in the ninth percentile.[51] For this task, she was shown a key listing pairs of numbers and symbols.[52] She was then given a series of randomly ordered numbers and asked to quickly write the

---

[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*

corresponding symbol beneath each number.[53]

13. During the coding subtest, the Student tended to use her earlier work as a reference instead of using the key provided.[54] A surprise immediate memory task showed that the Student had learned only four of the nine number-symbol associations, which was a weak score.[55] She remembered seven of the symbols but did not pair all of them with the correct numerals.[56] Thus, she had difficulty remembering arbitrary associations as well as performing the mechanical aspects of the task such as visual tracking and writing symbols.[57]

14. As part of the 2007 psycho-educational evaluation, the Student performed the achievement portion of the Woodcock Johnson III (WJ-III) assessment.[58] On this test, she earned her best score in the oral language cluster, followed by the reading cluster.[59] She earned scores that were below expectation on the math and broad written language clusters.[60]

15. On the WJ-III, the Student earned significantly discrepant scores in the oral language subtests.[61] On the story recall subtest, she was required to listen to short stories and then repeat them.[62] Her immediate recall was at the ninety-sixth percentile for her age and her delayed recall was at the ninety-first percentile.[63] Thus, she performed well at processing and remembering narrative material.[64]

16. By contrast, the Student had difficulty on the understanding directions subtest and scored at the sixteenth percentile, which was below expectation.[65] For this task, she examined pictures and then listened to instructions that directed her to point to certain items in the pictures.[66] She did not seem to attend to or process grammatical words that indicated sequence but instead tended to point to the items in the same order that they were used in the directions.[67] That is, if she were directed to "point to the kettle after you point to the picture in the bookcase," she tended to point to the kettle first.[68]

17. The Student's scores on the WJ-III tests of reading mechanics and comprehension were at the twenty-ninth and twenty-sixth percentiles, respectively, which was barely within

---

[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*

expectation according to national normative data.[69] They were below expectation given her WISC-IV verbal comprehension score and the special reading instruction she had been provided.[70] She earned similar scores whether she was reading single words out loud on the letter word identification subtest or reading aloud nonsense words on the word-attack subtest.[71]

18. While the Student's word recognition and decoding skills were near the bottom of the average range for her age, she was able to use meaningful context to support her reading.[72] She earned a score at the fifty-ninth percentile on the reading fluency subtest, which assess the efficiency of reading simple material under pressure.[73]

19. The Student obtained a score at the twenty-third percentile for her age on the WJ-III passage comprehension subtest, which shows that her reading comprehension of complex material that relies on an ability to use grammatical context was relatively weak.[74] For this task, she was asked to complete short passages that were each missing one word.[75] She seemed to base her responses on the general meaning of the passages but many of her responses were incorrect based on the grammatical constraints of the sentences.[76]

20. The Student also was asked to read a long passage from the qualitative reading inventory.[77] The passage was classified as an "upper middle school literature passage.[78] The meaningful context of the narrative helped the Student's word recognition and she earned an oral reading accuracy score at the independent level.[79] In responding to questions about the passage, however, she earned a comprehension score at frustration level.[80] While she generally remembered facts, she could not always recall the most important facts.[81] On interpretive questions that required her to discuss assumptions or make conclusions beyond the text, she earned no credit, although she often had elements of the correct answers.[82]

21. The Student's knowledge of math algorithms and facts was below expectation even though she obtained a score that was within expectation for her age on a math-reasoning test.[83] The Student obtained a score at the eleventh percentile for her age on the math fluency subtest, which required her to solve simple math calculations under time constraints.[84] She corrected the

---

[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.* The Student was in grade at the time the test was administered.
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*

only two errors that she made, but worked slowly.[85] Thus, her knowledge of math facts was not automatic.[86]

22. On the untimed calculation subtest, the Student's performance was at the fourteenth percentile for her age.[87] This test required her to solve many problems listed on a page in a traditional format.[88] Her errors included misreading operational signs; perhaps they were due to her failure to shift from the previous problem's operational sign.[89] She did not attempt long divisions, but she correctly solved basic addition, subtraction, and multiplication.[90] She worked only the simplest of the problems involving fractions and made errors working with decimals and negative numbers.[91]

23. The Student earned a score at the forty-ninth percentile for her age on the applied problems subtest, which required her to solve oral story problems.[92] She solved simple word problems correctly; however, her performance deteriorated when the problems involved multiple steps and she was required to decide which numerical operation to use.[93] When organizing math calculations on paper, she showed at least one reversal of digits.[94]

24. In written language, the Student exhibited good ability to organize her thoughts when writing a story.[95] She had difficulty following directions to construct complex sentences, and her weak spelling abilities underscore the difficulties she has with basic visual and phonetic codes used in written language.[96] She produced simple, structured writing at a level within expectation for her age.[97]

25. On the highly structured task of writing fluency, the Student obtained a score at the fortieth percentile for her age.[98] On this task, she was instructed to produce short sentences that contained specified sets of words and that described accompanying pictures.[99] Despite having words listed for her use, she misspelled them and made other errors of attention.[100] She showed good ability to write simple sentences with a variety of structures.[101]

---

[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*

26. The Student's score on writing samples subtest was in the seventeenth percentile for her age.[102] She lost most of her points because she often used more than one sentence to express complex ideas even though she was explicitly directed to write single sentences.[103] She exhibited significant problems with spelling and punctuation such as quotation marks, although spelling and punctuation rarely contribute to the scores on this task.[104]

27. The Student's score on a formal spelling test was at the thirteenth percentile for her age.[105] She produced spellings that violated basic rules, such as the requirement that each syllable contain a vowel.[106]

28. Her score on story construction was at the fiftieth percentile; her writing vocabulary and basic sentence construction was within expectation for her age.[107] Despite requiring additional time to complete the task, she demonstrated a good understanding of the narrative process and the importance of including exciting events in the story.[108] However, her problems with the basic mechanics of written expression, such as spelling and punctuation, placed her in the sixteenth percentile in the contextual conventions category.[109]

29. In summary, the WJ-III revealed that, even though the Student exhibited improvement from the previous evaluation in 2002 in her ability to sustain focus and apply herself, her difficulties with attention and executive functioning reduce her efficiency.[110] This makes it more difficult for her to acquire new material and produce work.[111] Fortunately, the Student has important strengths in her reasoning abilities and personal strengths such as a desire to perform well and an ability to persevere.[112] She is willing to seek and accept help, and she has shown progress in compensating for her difficulties.[113]

30. On two speech-language evaluations, the first conducted in May 2008[114] and second in March 2009,[115] the Student exhibited significant language-based disabilities. In a one-on-one setting, she has strong social pragmatics, although her weak processing skills impact her ability

---

[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.* The Student was diagnosed with specific learning disabilities of reading disorder, math disorder, and disorder of written expression. DCPS did not contest these disability classifications.
[112] *Id.*
[113] *Id.*
[114] Petitioner Exhibit 6 (May 2008 Comprehensive Speech and Language Assessment).
[115] Petitioner Exhibit 7A (March 2009 Annual Speech and Language Report).

to navigate group situations.[116]

31. Her auditory processing skills are scattered.[117] Although her phonological blending score was average, her word discrimination and phonological segmentation scores were one standard deviation below the mean.[118] This was a weakness when compared to her ability to blend auditory sounds into words.[119] This may have a significant impact on her ability to decode and encode new words she encounters.[120]

32. The Student's memory index score was scattered as well.[121] Her score on the number memory forward subtest was more than two standard deviations below the mean.[122] Her word memory subtest score was below average.[123] These scores indicate significant weaknesses related to short-term auditory rote memory.[124]

33. In contrast, the Student's scores on the number-memory-reversed and sentence-memory subtests were average, which indicates that her auditory working memory, or ability to employ the details she remembers, is a relative strength.[125] Solid scores on the auditory-comprehension subtest further indicated that the Student is able to understand and remember details in paragraph-level spoken information.[126]

34. Her score on the auditory reasoning subtest was one standard deviation below the mean, which indicates that the Student has difficulties related to higher-order linguistic processing.[127] In other words, the Student is not consistently able to understand inferences, implied meanings, and figurative language or draw conclusions when information is presented orally.[128] The discrepancy between her auditory comprehension and auditory reasoning skills demonstrates that she understands concrete details but cannot think abstractly about what she has heard.[129] This may impact her academic performance, especially during class discussions when she will be required to process abstract concepts.[130]

35. Overall, the Student's scores indicated inconsistent auditory processing skills.[131] These weaknesses and vulnerabilities likely will affect the Student's classroom performance as

---

[116] *Id.*
[117] Petitioner Exhibits 6, 7A.
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] Petitioner Exhibit 6.

they impact her ability to follow classroom instructions and lectures presented orally.[132] They also may affect her interactions with peers by impacting her ability to process dialogue during conversation.[133]

36. On single-word measures of both receptive and expressive vocabulary, the Student scored above age-level expectations.[134] However, on most of the expressive vocabulary test, she took the full allotment of time to answer the questions.[135] She also needed occasional prompting because she gave semantically related answers to questions but could not produce the correct form of the word.[136] At times, the Student appeared not to have processed the questions, providing answers relating to the pictures rather than the questions.[137] Further, the difference in her scores on the picture vocabulary test, which assessed her receptive semantic skills, and the expressive vocabulary test, which assessed her ability to provide synonyms for words, indicate that she may have difficulty retrieving words from memory.[138]

37. The Student showed improvement on the 2009 evaluation in both expressive and receptive oral language.[139] While both of these scores were below average in 2008, the following year she exhibited a real strength on receptive single-word vocabulary test and earned an above age-level score on a measure of expressive single-word vocabulary.[140] However, she had difficulty isolating and demonstrating understanding of ambiguous language.[141]

38. The Student displayed an average ability for her age when making inferences within a highly structured task.[142] However, she required the maximum time allotted to provide answers.[143] She also benefited from the multiple-choice format of this test and would struggle more with open-ended inference questions.[144]

39. The Student exhibited significant difficulty on a task requiring her to orally create sentences with specific target words and a picture prompt to provide a context for each of her sentences.[145] She struggled to provide responses without revising or restarting her sentences, and she often provided a final sentence that was awkwardly worded, nonsensical, or missing words.[146] She often revised or restarted her sentences, suggesting weaknesses integrating

---

[132] Petitioner Exhibit 7A.
[133] *Id.*
[134] Petitioner Exhibits 6, 7A.
[135] Petitioner Exhibit 6.
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] Petitioner Exhibits 6, 7A.
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] Petitioner Exhibits 6, 7A.
[146] Petitioner Exhibit 6.

sentence structure and meaning.[147] For example, when presented with the words "different," "might," and "regardless," she answered, "records are different regardless they might scratch easily."[148]

40. The Student attained a below-average score on the figurative-language subtest, indicating that this is an area of relative weakness.[149] She had difficulty providing an accurate interpretation verbally, suggesting difficulty with open-ended tasks.[150] However, she often was able to identify an alternate meaning for a figurative expression with in a multiple-choice format.[151]

41. Overall, the Student's performance on receptive and expressive tasks was variable.[152] Her performance indicated weak oral language skills, including isolating and demonstrating understanding of ambiguous language.[153] This impacts her performance in the classroom and on reading comprehension when higher-level analysis is required, participation in class discussions, social interactions, and appreciation of some forms of humor.[154]

42. The Student exhibited overall average single-word decoding skills.[155] However, her sight-word efficiency score was higher than her phonemic decoding efficiency score.[156] This discrepancy indicates that the Student has a strong bank of sight words from which to draw but has difficulty applying phonological skills and knowledge to the decoding of novel words.[157] She struggled the most with correctly decoding various sounds such as long and short vowels, vowel combinations (ee, oo, etc.), and consonant digraphs (two or three letters that combine to make one sound such as "sh" in "she").[158]

43. The Student also exhibited significantly impaired contextual-level decoding skills.[159] Her poor rate and accuracy skills resulted in a poor fluency skill.[160] Her comprehension score also was poor.[161] It is likely that her errors and reading disfluency, in conjunction with her weaknesses in short-term rote memory and oral receptive language, prevented her from gleaning enough information to correctly answer the multiple-choice questions.[162]

---

[147] Petitioner Exhibits 6, 7A.
[148] Petitioner Exhibit 6.
[149] Petitioner Exhibits 6, 7A.
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] Petitioner Exhibit 6.
[158] *Id.*
[159] Petitioner Exhibits 6, 7A.s
[160] *Id.*
[161] *Id.*
[162] *Id.*

44. Her contextual writing reflected errors in syntax (i.e., sentence structure), word choice, and use of style conventions (i.e., capitalization and punctuation).[163] She utilized lackluster vocabulary, demonstrated weak use of a variety of sentence structures, and demonstrated inconsistent spelling ability.[164] She had difficulty organizing her thoughts when subject matter became more abstract, which usually resulted in her veering off topic.[165] Her perception of her own writing skills was noted to be vulnerable and she seemed to rate herself based on the idea of what she had written rather than the work she actually produced.[166] It was noted that the Student had difficulty proofreading her contextual written language and did not seem aware of syntactic errors.[167]

45. While at the Non-Public School, the Student's linguistic profile has been corroborated in her performance in the classroom setting as well as in language therapy sessions.[168] In the classroom, she often struggles to independently follow instruction and has difficulty remaining focused during lectures.[169] Thus, she benefits when instructions and lectures are presented visually and orally as well as from multiple repetitions of auditory information.[170] The Student also benefits from cues from her speech-language therapist to prompt her to self-advocate when she misses information (e.g., meeting with instructors during lunch or after class), and her ability to independently self-advocate is emerging.[171]

46. The Student has made gains in her ability to utilize auditory memory strategies (e.g., rehearsal, asking for information to be rephrased) during language therapy sessions at the Non-Public School.[172] Notably, the Student has been exploring use of her laptop computer for taking notes during class.[173] She has required specific prompting on how she can use her laptop in a way that does not interfere with auditory processing during class.[174] For instance, she often focuses too much attention on organizing her notes and/or using the Internet to look up novel words and misses important information that is simultaneously being discussed or presented in class.[175] Thus, her therapy has focused on helping her discern between the most efficient ways, from a linguistic standpoint, to use her laptop in class.[176]

47. The Student often participates willingly in the classroom; however, language-formation and word-retrieval weaknesses sometimes interfere with her ability to express her

---

[163] *Id.*
[164] Petitioner Exhibit 7A.
[165] Petitioner Exhibit 6.
[166] Petitioner Exhibit 7A.
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.*

ideas in a clear, concise manner.[177] At the Non-Public School, she has benefited from the use of word retrieval strategies such as phonemic cues, visual imagery, and descriptors, and language organization strategies such as language grids and wh- (who, what, when, where) templates.[178] The Student also benefits from audiotape activities in which she records speech samples while utilizing language organization strategies and discusses her performance with the related-service provider.[179]

48. The Student often needs support with grade-level vocabulary skills, notably in the comprehension of abstract terms.[180] At the Non-Public School, she benefits from the use of strategies, such as pairing an abstract term with a more concrete visual to aid her understanding.[181] She has made rapid gains using this strategy and has demonstrated independent use of software, such as PowerPoint, to help her improve comprehension of vocabulary terms.[182]

49. The Student has shown a relative strength with respect to aspects of higher-order language skills, such as comprehension of ambiguous language and making inferences within structured tasks.[183] In the context of a more open-ended format, these skills have proven somewhat more difficult for her.[184] The Student has benefited from applying structure to these tasks.[185] For example, she uses graphic organizers to chart and then review information so she can infer its meaning and/or draw a conclusion.[186] She also benefits from focusing on isolating ambiguous words and phrases at the sentence level from the rest of the information she has heard or read prior to providing an explanation of the ambiguity.[187]

50. When reading aloud, the Student struggles to decode multi-syllabic and unfamiliar words.[188] At the Non-Public School, the use of strategies including cues from the speech-language provider that target sound-symbol correspondence (e.g., providing an alternate sound that a target letter or letter combination can represent) and improving the Student's awareness of prefixes and suffixes have helped improve the consistency of her decoding.[189] When targeting this skill, the Student is receptive to exploring various decoding strategies and enjoys sharing the strategies she has learned with the members of her small group.[190]

51. The Student has exhibited difficulties in reading comprehension that requires higher-

---

[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] *Id.*
[189] *Id.*
[190] *Id.*

level linguistic skills, such as inferring meaning and understanding abstract language, when reading curricular material.[191] At the Non-Public School, the Student has benefited from identifying and discussing the main idea and supporting details at the paragraph level, as well as isolating and using a dictionary to define abstract vocabulary terms within the text as strategies to aid her comprehension.[192] She also benefits from using contextual clues to help her infer the meaning of novel vocabulary words.[193]

52. The Student's written language continues to reflect weaknesses in spelling skills.[194] Inconsistent use of appropriate sentence mechanics (i.e., capitalization and punctuation) and difficulty with semantic-syntactic integration have been evident in writing assignments.[195] Organizational issues also weaken her writing, i.e., her ability to use transition words and provide sufficient supports and elaborate on her ideas are inconsistent.[196]

53. The Student has been receiving speech-language therapy at the Non-Public School since August 2008.[197] In the classroom, the Non-Public School Speech-Language Pathologist provides integrated services by assisting the Student with her goals on in-class assignments.[198] This includes helping the Student use her organizational skills and apply them to the assignments.[199]

54. The Non-Public School Speech-Language Pathologist provides therapy to the Student individually and in a small group of two students.[200] The Student has significant weaknesses in social pragmatics, which are evident in her classroom interaction, and lead to difficulty establishing and maintaining friendships.[201] The small group session helps the Student work on social interactions, including staying on topic in conversation.[202] The Student often perseverates and fails to notice when the other person stops listening.[203]

55. At the Non-Public School, the Student continues to develop her use of written language and organizational strategies (e.g., outlining, graphic organizers), which help her organize information and elaborate on thoughts and ideas.[204] She benefits from clues from the speech-language provider that prompt her to use phonological awareness strategies while encoding.[205] She has made progress in her ability to identify and correct run-on sentences within

---

[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] *Id.*
[197] Testimony of SLP 1.
[198] *Id.*
[199] *Id.*
[200] Testimony of SLP 1.
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] Petitioner Exhibit 7A.
[205] *Id.*

written language tasks.[206]

56. The Student's IEP should address the Student's social pragmatic weaknesses because they impact her in classroom.[207] In small classes of just five to six students, the Student has had difficulty interacting with the other students.[208] Her social pragmatics also are a weakness in a small group and thus the Student needs a low student-teacher ratio.[209] At the Non-Public School, the Student's classes have no more than 6-7 students to each teacher, yet the Student requires a 2-1 student-teacher ratio in other classes.[210]

57. The Student should continue to receive speech-language therapy at the frequency of one forty-five minute individual and one forty-five minute small group session per week.[211] The Student also requires integrated services (i.e., push-in) to be provided in the classroom to ensure that she maintains and transfers the skills she learns in therapy to the classroom and social settings.[212] The Student would have difficulty accessing the curriculum unless she receives speech-language therapy frequently in individual and small group session as well as therapy integrated into the classroom.[213]

58. The Student's Non-Public School IEPS address each of her speech-language weaknesses and provide the therapy she needs.[214] Because the Student is tested annually, the goals on these IEPS are individually designed to address the areas in which she exhibited below average performance on the evaluations.[215]

59. As a result, the Student has made progress on speech-language skills. She has developed various strategies to improve her auditory processing skills, improved her strategies to address her weaknesses in written expression, and made gains in her vocabulary skills.[216] She also has benefited from the low student-teacher ratio, hands on learning, focus on inferential and higher language skills, and from working with teachers who understand her learning style and are willing to modify the curriculum to meet her needs.[217] The Student requires this type of environment in order to feel comfortable and make gains in executive functioning.[218]

---

[206] *Id.*
[207] Testimony of SLP 1.
[208] *Id.*
[209] *Id.*
[210] *Id.*
[211] *Id.*
[212] *Id.*
[213] Testimony of Non-Public School Speech-Language Pathologist ("SLP 1").
[214] Testimony of SLP 1.
[215] *Id.*
[216] *Id.*
[217] Testimony of SLP 1.
[218] *Id.*

60. The Student has impaired social emotional functioning.[219] This is a result of her combination of anxiety disorder and social pragmatic problems.[220] She has a history of taking on issues of her friends as if they are her own, including other students' self-mutilation and eating disorders and physical ailments.[221] In February 2009, the Student indicated a desire to engage in self-injurious behavior after hearing other students discussing their attempts to cut themselves.[222]

61. After observing the Student in her classes, the Non-Public School Social Worker ("Social Worker") concluded that the Student's social emotional issues also affect her in classroom setting.[223] The Student also has difficulty relating to peers, which leads to further deterioration in her emotional functioning.[224] Because of her difficulty reading social cues, the Student often pesters and annoys other students, and speaks out of turn.[225] Because the Non-Public School is a forgiving environment, the Student has made friends but she needs constant adult guidance in order to maintain relationships with her peers.[226]

62. The Student has difficulty focusing, staying in the classroom, and accessing the curriculum.[227] She often leaves her classes, sometimes even every class throughout the day, complaining of a physical impairment.[228] The Social Worker believes that these problems are manifestations of the Student's anxiety disorder, attentional deficits, and social pragmatic problems.[229]

63. The Student is a poor self advocate and hesitates to seek adult support when she is struggling.[230] Adults must constantly monitor her interactions with peers so that they can catch issues early and address them.[231] If she is not constantly monitored, she likely will engage in self destructive behaviors, including self-harm and eating disorders.[232]

64. Thus, the Student should be educated in a small setting with a low student-teacher ratio.[233] If she is placed in a setting with a student-teacher ratio that exceeds six students to each

---

[219] Testimony of Non-Public School Social Worker ("Social Worker").
[220] *Id.*
[221] *Id.*
[222] *Id.* The Student was referred to a psychiatrist after this incident. *Id.*
[223] *Id.*
[224] *Id.*
[225] *Id.*
[226] *Id.*
[227] *Id.* The Social Worker provided about twenty-five hours of individual counseling sessions each year the Student has attended the Non-Public School. *Id.*
[228] *Id.*
[229] *Id.*
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*

teacher, the Student will fall through the cracks.[234]

65. The IEPs the Non-Public School developed for the Student are appropriate to meet her needs.[235] They contemplate the effect of the Student's strengths and weakness in each content area.[236] The goals are based on baseline information and are measurable and observable, and they contain clear impact statements, modifications, and accommodations.[237] Moreover, the goals and specialized instruction span across multiple curriculum areas.[238] The Student requires integrated services, which the IEPs provide.[239]

66. The Student has been bullied by other students since her early years in elementary school.[240] In second grade, the Student was continually excluded from play groups on the school playground.[241] In her third grade, when the Student was assigned to a new seat in her classroom, one of the students stood up and announced that he did not want to sit near her.[242]

67. In fourth grade, the Student and another special education student were at a skating rink when they were surrounded by boys who circled around the Student and her friend, yelling, screaming, and taunting them.[243]

68. After this incident, Petitioners withdrew the Student from her elementary school and placed her in a school in Arlington, Virginia, in the hopes of breaking the bullying cycle.[244] During the Student's first week in her new school, other students informed her that she could not site at their lunch table.[245] Petitioners later discovered that another student had filmed the Student dancing at a school dance and posted the video on You Tube.[246]

69. In January 2009, the Mother first enrolled the Student at the DCPS School as a "non-attending" Student.[247] That same month, Petitioners retained the Advocate to assist them with the DCPS IEP process.[248] The Advocate then observed the Student in the academic environment.[249]

---

[234] *Id.*
[235] Testimony of Advocate re: Petitioners' Exhibit 2-4.
[236] *Id.*
[237] *Id.*
[238] *Id.*
[239] *Id.*
[240] Testimony of Father.
[241] *Id.*
[242] *Id.*
[243] *Id.*
[244] *Id.*
[245] *Id.*
[246] *Id.*
[247] DCPS Exhibit 2 (Annual Student Enrollment Form for school year 2008-2009).
[248] Testimony of Mother.
[249] Testimony of Advocate. The Advocate continued to observe the Student throughout spring of 2009, and observed her four times in the 2009-2010 school year. *Id.*

70. In February 2009, DCPS sent Petitioners a letter notifying them that the DCPS Private-Religious Office had reviewed the Student's "referral packet" for consideration of special education services and had forwarded the referral packet to the DCPS School.[250] The letter suggested that Petitioners contact the Special Education Coordinator ("SEC") at the DCPS School.[251]

71. Subsequently, the Advocate and Petitioners participated in several multidisciplinary team ("MDT") meetings with DCPS to discuss the Student, her current evaluations, and whether DCPS needed to conduct any re-evaluations or further evaluate the Student. [252] During those meetings, each of which lasted several hours, Petitioners and the Advocate provided to the DCPS MDT the Student's 2008-2009 Non-Public School IEP, as well as her psycho-educational, speech and language, and occupational therapy evaluations.[253] The MDT reviewed these evaluations and the Non-Public School IEP, and indicated that it did not need any more evaluative data on the Student in order to develop an IEP and placement for her.[254]

72. On May 12, 2009, DCPS convened an IEP meeting.[255] The DCPS staff members present at the meeting were the SEC ("SEC 1"), School Psychologist, Speech-Language Pathologist, and Occupational Therapist.[256] Several members of the Non-Public School staff, including the Academic Coordinator, High School Coordinator, and Speech-Language Pathologist, also attended the meeting.[257] Also attending were the Advocate and the Father.[258]

73. The Father shared with the IEP team his concerns about the Student.[259] The Non-Public School participants in the meeting imparted their knowledge of the Student's cognitive profile and academic achievement, her speech-language and executive functioning limitations, as well as her academic and social needs. The Non-Public School participants also shared with the IEP team their views of the programming the Student required to access the curriculum.[260]

74. The IEP team found the Student eligible for special education and related services.[261] The IEP team also indicated that it would incorporate into an IEP all of the information provided

---

[250] DCPS Exhibit 3.
[251] *Id.*
[252] Testimony of Advocate.
[253] *Id.*, referring to Petitioners' Exhibits 2 (Nov. 6, 2008, IEP), 5 (Oct. 2007 psycho-educational evaluation), and 6 (June 2008 comprehensive speech and language report) . Petitioners subsequently forwarded to the DCPS MDT the Student's May 21, 2009, Non-Public School IEP. Testimony of Advocate.
[254] *Id.*
[255] *Id.*; testimony of Mother; DCPS Exhibit 4.
[256] DCPS Exhibit 4.
[257] *Id.*; Testimony of SLP-1, High School Coordinator, Advocate.
[258] Testimony of Advocate, Father; DCPS Exhibit 4.
[259] Testimony of Father.
[260] *Id.*
[261] *Id.*; testimony of Advocate, High School Coordinator, SLP-1, and SEC 1.

by Petitioners, the Advocate, and the Non-Public School participants in the meeting.[262]

75. DCPS then attempted to incorporate the entire Non-Public School IEP in the DCPS IEP.[263] However, the IEP team's ability to translate all of the components of the Non-Public School IEP was constrained by their use of a computer program called "Easy IEP."[264] The IEP team openly discussed the failings of Easy IEP, including the program's inability to capture annual goals in a measurable way.[265]

76. As a result, the annual goals on the DCPS IEP address many behaviors and skills that are not observable or measurable.[266] For example, Annual Goal 1 in the motor skills/physical development area is stated simply as "[The Student] will demonstrate improved visual perceptual skills/visual spatial skills for improved classroom functioning 4/5 trials."[267] This goal contains no baseline or guidance on how her improved visual perceptual skills/visual spatial skills are to be observed or measured, other than stating "observation/each nine weeks; practice and drill/each nine weeks."[268]

77. Annual Goal 1 in the speech and language area is stated simply as "[The Student will develop improved phonological skills to improve development of structural analysis, and orthographic knowledge to the decoding and encoding of words in context."[269] This goal also contains no baseline or guidance on how her improved phonological skills are to be observed or measured, other than stating "checklist/each nine weeks; practice and drill/once a month."[270]

78. Thus, the evaluation procedures and schedule are essentially the same for each goal. This is due to a default in the program that specifies the same procedures and schedule for every goal on the IEP.[271] As a result, the DCPS IEP fails to capture the observation and measurement procedures and schedule that the Student requires to ensure she makes academic progress.[272] Evaluation procedures and schedule are really important for the Student because she needs very strict procedures and weekly evaluations so that she is instructed and corrected frequently enough for her to make progress.[273]

79. The speech-language goals on the IEP also fail to address her weakness in semantics.[274] The IEP lacks goals that address the Student's linguistic executive functioning,

---

[262] *Id.*
[263] Testimony of SEC 1.
[264] Testimony of Advocate.
[265] *Id.*
[266] *Id.*
[267] *See* DCPS Exhibit 4, p. 0000017.
[268] *Id.*
[269] *Id.* at p. 0000016.
[270] *Id.*
[271] Testimony of Advocate.
[272] *Id.*
[273] *Id.*
[274] Testimony of SLP-1.

which is affects her ability to complete written assignments, for example.[275] The Student also needs more frequent S&L therapy than the IEP provides.[276] A single, sixty-minute session is not enough for her to progress in this area.[277]

80. The Student also requires individual and small group therapy, neither of which are on the DCPS IEP.[278] The IEP also fails to address her social pragmatic weaknesses and thus would not allow her to progress in this area.[279]

81. The DCPS IEP also fails to include a sufficient list of classroom accommodations on the IEP even though the Non-Public School staff explained the accommodations that the Student requires to be successful.[280] Thus, the DCPS IEP lacks the supplementary aids, services, accommodations, methods, goals, and evaluation methods that the Student requires to make academic progress.[281]

82. The DCPS IEP also lacks sufficient details in the Student's transition plan. [282] The annual goals each contain only a single sentence.[283] The first annual goal states simply "[The Student] will complete goals related to her post-secondary education goals to attend college."[284] The third goal, pertaining to "independent living," states only that the Student "will acquire the necessary skills for independent living.[285] Both of these goals fail to provide any further detail, baselines, and any observation and measurement procedures.[286]

83. The IEP specifies the Student's placement (hours and location of special education and related services) as twenty-four hours of specialized instruction, forty-five minutes per week of occupational therapy, sixty hours (sic) of speech-language pathology, and sixty minutes per week of behavioral support services (counseling).[287] It specifies that the Student will receive all of her specialized instruction and related services outside the general education setting.[288]

84. However, the DCPS School Psychologist explained the team felt that the Student would be challenged by attending the DCPS School[289] She explained that counseling was necessary to address the social emotional concerns that would arise as a result of the Student's

---

[275] *Id.*
[276] *Id.*
[277] *Id.*
[278] *Id.*
[279] *Id.*
[280] *Id.*
[281] *Id.*
[282] *Id.*
[283] *See* DCPS Exhibit 4, p. 0000024.
[284] *Id.*
[285] *Id.*
[286] *Id.*
[287] DCPS Exhibit 4, p. 0000019.
[288] *Id.*
[289] Testimony of Advocate.

challenges attending the DCPS School.[290] Presumably, these challenges include her interactions with general education students during transitions between classes.

85. The Advocate and the Father responded that any placement for the Student that would generate frustration and dysregulation would be inappropriate.[291] They also explained that they opposed removing the Student from class to attend counseling because she would miss classroom instruction.[292] The Advocate, Father, and Non-Public School staff also expressed their opposition to placing the Student in the general education setting for any amount of time.[293]

86. The DCPS IEP team members acknowledged that, in developing the Student's placement, they were constrained by the resources of the DCPS School.[294] They explained that they did not have authority to place the Student in a placement other than what was available at the DCPS School.[295] Thus, the Student's placement was driven by DCPS resources rather than the Student's individualized needs.

87. The IEP team explained that they were crafting the Student's IEP for a program that they did not have in place but were hoping to have in place.[296] The Special Education Coordinator explained that she was hoping that over the summer, DCPS would provide the DCPS School more resources so that they could implement the Student's IEP.[297]

88. DCPS failed to include a general education teacher in the development of the IEP.[298] The general educator would have provided information on general education curriculum.[299] Without input from a general education teacher, the IEP team cannot develop an IEP that ensures the student will be able to access the general curriculum and earn her Carnegie units.[300] The Student is on track to earn a diploma, and thus must earn Carnegie units.[301] Moreover, the IEP team did not explain how it arrived at the number of hours, if any, the Student would be placed in the general education setting.[302]

89. The IEP team was unable to produce a final IEP at the May 2009 IEP meeting.[303]

---

[290] *Id.*
[291] *Id.*
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.* (referring to conversation with SEC-1).
[298] *Id.*
[299] *Id.*
[300] *Id.*
[301] *Id.*
[302] *Id.* The Advocate testified that the IEP provides that the Student will spend about five hours in the general education setting. Since the IEP contains no mention of general education classes, it is not clear whether the Advocate's perception is correct.
[303] *Id.*

Nonetheless, the IEP team issued a prior notice of placement for the DCPS School.[304] A couple of days later, DCPS faxed the IEP to the Advocate.[305]

90. In September and October 2009, the Father attended further meetings at the DCPS School.[306] Present at these meetings were the new Special Education Coordinator (SEC-2), the School Psychologist, and a supervisor.[307] The meetings concerned the Student's 2009-10 class schedule.[308]

91. The Supervisor described the schedule as a "block schedule," which compressed a full year of course work into a single semester.[309] After several iterations, DCPS provided the Father a copy of the Student's schedule.[310] The Father immediately indicated that he disapproved of schedule as too intense to accommodate the Student's cognitive and academic deficits.[311]

92. That fall, Petitioners observed classes at the DCPS School.[312] In October 2009, the Father observed a special education geometry class.[313] He noted that most of the students were not paying attention to teacher and the classroom was somewhat chaotic.[314] The students were not taking in what was being taught in the class and instead were talking to each other and walking around classroom.[315]

93. The mother visited the DCPS School four times in October and November 2009.[316] Her general impression was that the hallways were extremely chaotic, sometimes to the point of feeling threatening.[317] In one of the classes on the Student's schedule, the Mother observed students blurting out, cursing, and stomping feet.[318] Other students were flirting with girls and talking among themselves while the teacher was talking.[319]

94. In another classroom, the Mother observed students burping, throwing condoms around, taking orders for lunch, and defying the teacher's commands.[320] The teacher had to use her cell phone to call and ask that the student be removed.[321]

---

[304] *Id.*
[305] *Id.*
[306] Testimony of Father.
[307] *Id.*
[308] *Id.*
[309] *Id.*
[310] *Id.*
[311] *Id.*
[312] Testimony of Petitioners.
[313] Testimony of Father.
[314] *Id.*
[315] *Id.*
[316] Testimony of Mother.
[317] *Id.*
[318] *Id.*
[319] *Id.*
[320] *Id.*

95. The Student would not feel safe in this environment.[322] Nor would she be able to focus or learn.[323] The Student also would not benefit from exposure to non-disabled peers, even if some of those students had higher social-pragmatic skills.[324] This applies to every content area, every classroom, lunch, music.[325]

96. Nonetheless, Petitioners did not share their observations and concerns with SEC-2 or anyone else at DCPS.[326] They also did not request any changes to the IEP.[327]

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible with the exception of the testimony of DCPS SEC 1 and 2. This Hearing Officer especially did not find credible their testimony about the ability of DCPS to implement the Student's IEP as it was contradicted by both the Advocate and the Father.

The Advocate was admitted as an expert in special education, with a particular emphasis on learning disabled children, analysis and development of IEPs, interpretation of evaluative data, and evaluating programs and placements. She testified credibly and knowledgeably about the Student's individualized needs, the DCPS IEP process, and the appropriateness of the Non-Public School.

The Non-Public School Speech-Language Pathologist also was especially credible. She was admitted as an expert in speech-language pathology, and testified knowledgeably about the Student's individualized needs, the appropriateness of the Non-Public School placement, and the flaws in the DCPS IEP.

VII. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[328] FAPE is defined as:

> [S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the

---

[321] *Id.*
[322] *Id.*
[323] *Id.*
[324] Testimony of SLP 1.
[325] *Id.*
[326] *Id.*
[327] *Id.*
[328] 20 U.S.C. §§ 1400(d) (1)(A),1412 (a) (1); *Bd. of Education v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

> State involved; and are provided in conformity with the individualized education program (IEP)..."[329]

In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEIA; and (b) whether the Student's IEP is reasonably calculated to enable the Student to receive educational benefit.[330]

In matters alleging a procedural violation, a hearing officer may find that the 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.[331] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[332]

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.[333] The court should not "disturb an IEP simply because [it] disagree[s] with its content."[334] The court is obliged to "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides."[335]

The burden of proof is properly placed upon the party seeking relief.[336] Under IDEIA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[337]

VIII. DISCUSSION

A. Petitioners Proved that DCPS Failed to Provide the Student an Appropriate IEP for the 2009-2010 School Year.

FAPE "consists of educational instruction specially designed to meet the unique needs of

---

[329] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[330] *Rowley,* 458 U.S. at 206-207.
[331] 34 C.F.R. § 300.513 (a)(2).
[332] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").
[333] *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).
[334] *Id.*
[335] *Id.*
[336] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[337] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[338] The IEP is the centerpiece of special education delivery system.[339]

IDEA does not specify the specific level of educational benefits that must be provided through the child's IEP, nor is the LEA required to maximize the child's potential.[340] In developing an IEP, the IEP team must consider the strengths of the child; concerns of the parents for enhancing the education of the child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.[341] An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.[342]

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[343] establishes annual goals related to those needs,[344] and provides appropriate specialized instruction and related services.[345] The program must be implemented in the least restrictive environment.[346] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[347] As discussed herein, DCPS failed to develop an appropriate IEP and placement for the Student.[348]

The limitations of the Easy IEP program led to the development of annual goals that are neither observable nor measurable. For many of the goals, the IEP fails to reflect the Student's baseline performance. Thus, it is unlikely this IEP will produce progress.

Most of the annual goals on the Student's IEP include scant direction into how the Student's progress is to observed or measured. They each contain stock language that is a default in the Easy IEP program, including meaningless statements such as "observation/each nine weeks; practice and drill/each nine weeks." Thus, the DCPS IEP fails to capture the observation and measurement procedures and schedule that the Student requires to ensure she makes academic progress.

---

[338] *Rowley*, 458 U.S. at 188-89 (citation omitted).
[339] *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).
[340] *Rowley,* 458 U.S. at 188, 99.
[341] 34 C.F.R. § 300.324 (a).
[342] 34 C.F.R. § 300.320 (a) (1); D.C. Mun. Reg. tit. E § 3007.2 (a).
[343] 34 C.F.R. § 300.320 (a) (1).
[344] 34 C.F.R. § 300.320 (a) (2).
[345] 34 C.F.R. § 300.320 (a) (4).
[346] 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).
[347] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[348] The term "educational placement" refers only to the general type of educational program in which the child is placed. *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted). "Educational placement" refers to the general educational program, such as the classes, individualized attention and additional services a child will receive, rather than the "bricks and mortar" of the specific school. *Id.*

For example, one of the speech-language goals states only that the Student will "develop improved phonological skills to improve development of structural analysis, and orthographic knowledge to the decoding and encoding of words in context." It provides no detail on how the Student is to achieve these improved phonological skills, no indication of her current skill levels, and no guidance on how her improved phonological skills are to be observed or measured.

The speech-language goals on the IEP also fail to address some of the Student's weakness, including in semantics, social pragmatics, and linguistic executive functioning. Thus, DCPS failed to develop an IEP that accurately reflects the results of evaluations to identify the student's needs and establishes annual goals related to those needs.

The IEP also contains insufficient and inappropriate related services. For example, the Student also needs more frequent S&L therapy. As a single, sixty-minute session is not enough for her to progress in this area. She also requires individual and small group therapy, neither of which the IEP provides.

The DCPS IEP also fails to include a sufficient list of classroom accommodations on the IEP even though the Non-Public School staff provided explicit detail to the IEP team on the accommodations that the Student requires to be successful. Thus, the DCPS IEP lacks the supplementary aids, services, accommodations, methods, goals, and evaluation methods that the Student requires to make academic progress.

Moreover, the Student's transition plan is woefully inadequate. The annual goals each contain only a single sentence. The first annual goal states simply "[The Student] will complete goals related to her post-secondary education goals to attend college." The third goal, pertaining to "independent living," states only that the Student "will acquire the necessary skills for independent living. Neither of these goals provide any further detail, baselines, and any observation and measurement procedures.

DCPS also failed to include a general education teacher in the IEP team.[349] As explained above, without input from a general education teacher, the IEP team could not determine whether the student will be able to access the general curriculum in order to earn Carnegie units required for a diploma. Although the failure by DCPS to constitute a proper IEP team is a procedural violation, in this case its failure to include a general education teacher significantly impeded the parent's opportunity to participate in the decision-making process.[350]

Thus, DCPS failed to develop an IEP that accurately reflects the results of evaluations to identify the student's needs, establishes annual goals related to those needs, and provides appropriate specialized instruction and related services. The DCPS IEP does not ensure that the Student will receive "personalized instruction with sufficient support services to permit the child

---

[349] 34 C.F.R. § 300.321 (general education teacher is an essential member of an IEP team).

[350] During the IEP-development process, parental involvement is critical; indeed, full parental involvement is the purpose of many of the IDEA's procedural requirements. *See*, e.g., *M.M. v. Sch. Bd. of Miami-Dade County*, 437 F.3d 1085, 1095 (11th Cir. 2006); *Weber v. Cranston Sch. Comm.*, 212 F.3d 41, 51 (1st Cir. 2000); 34 C.F.R. § 300.345.

to benefit educationally from that instruction" and earn a diploma. Instead, as discussed above, DCPS developed an IEP that fits the services available at the DCPS School.

However, this is not the end of the inquiry. Petitioners must demonstrate that the services selected by the parent, i.e., the Non-Public School, are appropriate under the Act, and that equitable considerations support the parent's claim for reimbursement.[351]

When a state receiving IDEA funding fails to give a disabled child such an education, the child's parent may remove the child to an appropriate private school and then seek retroactive tuition reimbursement from the state.[352] A court may award tuition reimbursement "if it appears (1) that the proposed IEP was inadequate to afford the child an appropriate public education, and (2) that the private education services obtained by the parents were appropriate to the child's needs."[353]

In determining the appropriate placement for a child, preference given to the least restrictive environment.[354] Further, mainstreaming of children eligible for special education services under the IDEA is "not only a laudable goal but is also a requirement of the Act."[355] If no public school can accommodate the student's needs, the government is required to place the student in an appropriate private school and pay the tuition.[356]

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 school, the placement's cost, and the extent to which the placement represents the least restrictive environment.[357]

As discussed above, the Non-Public School is the Student's least restrictive environment.[358] She is significantly impaired in her relations with peers, has been repeatedly

---

[351] *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369-70 (1985).

[352] *See Burlington*, 471 U.S. at 369-70. The court found that this type of retroactive relief was appropriate as it would merely require the state to "belatedly pay expenses that it should have paid all along." *Id. at 370-71. See also Knight by Knight v. District of Columbia,* 877 F.2d 1025 (D.C. Cir. 1989).

[353] *Id.* at 370; *see also Florence County*, 510 U.S. at 15-16 (emphasizing that award of tuition reimbursement is discretionary).

[354] *34 C.F.R. ß 300.116.*

[355] *Roark v. District of Columbia, 460 F. Supp.2d 32, 43 (D.D.C. 2006)* (quoting *DeVries v. Fairfax County Sch. Bd., 882 F.2d 876, 878 (4th Cir. 1989))*; *Rowley, 458 U.S. at 201* ("The Act requires participating States to educate handicapped children with non-handicapped children whenever possible.").

[356] 20 U.S.C. § 1412(a) (10) (B) (I); *see also Burlington*, 471 U.S. at 369.

[357] Branham, 427 F.3d at 12 (citing Rowley, 458 U.S. at 202).

[358] Counsel for DCPS tried to establish the special education teachers and related service providers may not meet DCPS licensing requirements. However, state special education requirements do not apply to private parental placements. *Florence County, 510 U.S. at 13.*

bullied when exposed to general education students, and requires a small, structured setting to make educational progress. Thus, the record supports a finding that the Non-Public School is appropriate for the student.

Petitioners proved by a preponderance of the evidence that DCPS failed to develop an appropriate IEP for the Student for the 2009-2010 school year. Thus, Petitioners proved by a preponderance of the evidence that DCPS denied the Student a FAPE.

However, Petitioners failed to prove that they are entitled to reimbursement for the expenses of the Student's education during the 2008-2009 school year. Petitioners did not refer the Student to DCPS for evaluation and IEP development until January 2009. DCPS developed the Student's IEP approximately four months later, which is a reasonable amount of time.[359] By then, the 2008-2009 school year had ended. Thus, Petitioners are not entitled to reimbursement for this school year.

Finally, Petitioners did not give proper notice to DCPS before unilaterally placing her in the non-public school for the 2009-2010 school year. In another case, this may lead to a reduction in the reimbursement for the costs incurred in educating the Student during the 2009-2010 school year.[360] In this case, Petitioners went to extraordinary lengths to cooperate with DCPS and thus should not be penalized for ensuring the Student is provided a FAPE.

---

[359] Once a child has been referred to an IEP team for an eligibility determination, the IEP team must conduct an "initial evaluation" which "shall consist of procedures (I) to determine whether a child is a child with a disability . . . within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and (II) to determine the educational needs of such child." 20 U.S.C. § 1414(a)(1)(C)(i). In the District of Columbia, DCPS shall evaluate a child suspected of having a disability within a reasonable time (formerly 120 days from the date the student was referred for an evaluation). D.C. Code § 38-2561.02

[360] The cost of reimbursement may be reduced or denied if at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or ten business days prior to the removal of the child from the public school, the parents did not give written notice to the public agency of this information. 20 USC § 1412(a)(10)(C)(iii).

ORDER

Upon consideration of Petitioners' request for a due process hearing, the exhibits and the testimony admitted at the hearing, it is this 13th day of June 2010 hereby:

ORDERED that the Student shall attend the non-public school at DCPS expense for the 2010-2011 school year;

IT IS FURTHER ORDERED that DCPS shall reimburse Petitioners for all tuition, related services, and other costs related to the Student's attendance at the Non-Public School during the 2009-2010 school year;

IT IS FURTHER ORDERED that Petitioners' request for reimbursement for tuition, related services, and other costs related to the Student's attendance at the Non-Public School during the 2008-2009 school year is **DENIED**; and

IT IS FURTHER ORDERED that this Order is effective immediately.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

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. § 415(i)(2).