

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
 Student Hearing Office
 810 First Street, N.E.
 Washington, D.C. 20002

Parents, on behalf of)	
STUDENT,¹)	
)	
Petitioners,)	
)	
v.)	
)	
THE DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
)	Hearing Officer: Frances Raskin
Respondent.)	

OSSE
 STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. JURISDICTION

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

II. BACKGROUND

Petitioners are the parents of an -year-old student ("Student") with a disability. On August 15, 2011, Petitioners filed a Due Process Complaint ("Complaint") against the District of Columbia Public Schools ("DCPS") pursuant to IDEA. On August 16, 2011, the Student Hearing Office appointed this Hearing Officer to preside over this case. On September 1, 2011, Respondent filed a Response to Petitioner's Due Process Complaint.²

The parties participated in a resolution meeting on September 6, 2011, and agreed to continue to work to resolve the Complaint through the end of the thirty-day resolution

¹ Personal identification information is provided in Attachment A.

² Respondent did not challenge the sufficiency of the Complaint.

session. The parties agreed that the forty-five day, due process hearing timeline began on September 16, 2011.

On September 15, 2011, this Hearing Officer held a prehearing conference in which counsel for Petitioners, and counsel for Respondent, participated. On September 20, 2011, this Hearing Officer issued a prehearing conference summary and order.

On October 17, 2011, Petitioners provided their five-day disclosures to Respondent and this Hearing Officer. On October 18, 2011, Respondent provided its five-day disclosures to Petitioners and this Hearing Officer.

The due process hearing commenced at 9:30 a.m. on October 24, 2011. At the outset of the hearing, this Hearing Officer entered into evidence all of Petitioners' proposed exhibits³ and all of Respondent's proposed exhibits.⁴

Petitioners presented five witnesses, the Student's father ("Father"); an expert in the special education requirements of students with attention deficit hyperactivity disorder ("Education Expert"); an expert in speech-language pathology ("Speech-Language Expert"); an expert in psychology ("Psychology Expert"), and an expert in special education administration ("Administration Expert") who is the academic director of the non-public school the Student currently attends.

Respondent presented six witnesses, a special education teacher who, as of the 2011-2012 school year, is the special education coordinator of DCPS School 1 ("SEC 1"); the special education coordinator of DCPS School 2 ("SEC 2"); an expert in communication disorders with a specialization in audiology ("Audiology Expert"); an expert in clinical and school psychology ("Psychology Expert"); a speech-language pathologist ("DCPS Speech-Language Pathologist"); and an expert in special education administration ("Administration Expert"). The due process hearing concluded at 4:00 p.m. on October 26, 2011.

After the parties filed written closing arguments, the record closed at 11:59 p.m. on October 1, 2011.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether Respondent denied the Student a free, appropriate, public education ("FAPE") by failing to provide an individualized educational program ("IEP")

³ This Hearing Officer admitted into evidence Petitioners' exhibits 1-27, inclusive.

⁴ This Hearing Officer admitted into evidence Respondent's exhibits 1-16, inclusive.

for the 2011-2012 school year that provides the Student full-time, specialized instruction outside the general education setting, short classes designed to address the Student's ADHD, speech-language services integrated in the classroom, and instruction designed to address his auditory processing and phonological impairments; and

B. Whether Respondent denied the Student a FAPE by failing to provide for the 2011-2012 school year a full-time, non-public, outside-general-education placement with small classes that have low student- to-teacher ratios.

As relief, Petitioners request that this Hearing Officer order Respondent to reimburse Petitioners for the costs of the Student's enrollment at a non-public school ("Non-Public School") since the first day of the 2011-2012 school year. Petitioners further request that this Hearing Officer order Respondent to fund the Student's enrollment at the Non-Public School for the remainder of the 2011-2012 school year.

IV. FINDINGS OF FACT

1. Petitioners are the father ("Father") and stepmother of an -year-old boy ("Student"). Petitioners and the Student reside in the District of Columbia.⁵

2. The Student is eligible for specialized instruction and related services as a student with multiple disabilities.⁶ He meets the diagnostic criteria for mixed receptive-expressive language disorder, reading disorder (dyslexia), written expression disorder, attention deficit hyperactivity disorder ("ADHD"), phonological disorder, stuttering, and developmental coordination disorder.⁷

3. The Student has a history of early developmental delays for language and motor functions and substantial learning disabilities.⁸ He has received speech-language therapy services since he was two years old, and occupational therapy services since he was three years old.⁹ He continues to have deficits in cognitive functioning, academic performance, gross-motor skills, and communication skills.¹⁰

⁵ Petitioners Exhibit 11 at 54 (May 18, 2010, Neuropsychological Evaluation); Respondent Exhibit 9 (July 7, 2011, IEP).

⁶ Petitioners Exhibit 8 at 44 (January 4, 2011, Final Eligibility Determination Report).

⁷ Petitioners Exhibit 11 at 62.

⁸ *Id.*

⁹ *Id.* at 52.

¹⁰ *Id.* at 62. See Petitioners Exhibit 16 at 107 (finding that Student had visual-motor integration deficits, not fine motor coordination issues).

4. The Student currently attends a non-public school ("Non-Public School) in the District of Columbia.¹¹ The Student's parents placed him in the Non-Public School at their expense for the past two school years, as well as for the current school year.¹²

5. The Non-Public School is a day school for students with language-based, learning disabilities.¹³ Many of the students who attend the Non-Public School have attention disorders, language issues, and sensory integration and occupational therapy needs.¹⁴ Many of the students also have the social, attention, and executive-functioning issues that often accompany these disabilities.¹⁵

6. The Non-Public School provides full-time, specialized instruction and related services to all of its students.¹⁶ The school provides multisensory instruction to its students because they cannot learn using traditional means.¹⁷ It utilizes multisensory, project-based learning, which makes the material more meaningful to the students and helps them to retain information.¹⁸

7. In addition to providing full-time specialized instruction to its students, the Non-Public School provides intensive related services in speech-language, counseling, occupational therapy, and physical therapy to its students.¹⁹ The Non-Public School's delivery system is unique in that it provides pullout services to students as well as a collaborative program in which the related service providers work with students in their classrooms.²⁰ By providing related services in the classroom, the providers ensure that the students carry over skills from their pullout sessions to the classroom.²¹ The related service providers also focus on students' skills in the functional environment to ensure that their skills are carrying over from their individual sessions.²²

8. The Student is placed in the division of the Non-Public School for fifth and sixth grade students.²³ This division has a total of seventy-five students.²⁴ The Student's

¹¹ Petitioners Exhibit 11 at 62; testimony of Father, Petitioners' Administration Expert.

¹² Testimony of Petitioners' Administration Expert.

¹³ Testimony of Petitioners' Speech-Language Expert, Petitioners' Administration Expert.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Testimony of Petitioners' Administration Expert.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

class has twelve students, one nationally board certified special education teacher, and two teaching assistants who possess bachelor's degrees or post-graduate degrees.²⁵

9. The Student receives full-time, specialized instruction and related services at the Non-Public School.²⁶ The instruction in his math class is individualized because every student is working at a different level.²⁷ The students use a lot of manipulatives to help them retain information. ²⁸ The Student's science and history/social studies classes also employ a hands-on, multisensory approach to instruction.²⁹

10. The educational curriculum at the Non-Public School is derived from the District of Columbia, Maryland, and Virginia standards of learning. The District of Columbia Office of State Superintendent of Education ("OSSE") has provided the Non-Public School a certificate of authority to provide services to District of Columbia students.

11. The base tuition for students at the Non-Public School is If a student receives one session a week of occupational therapy, and integrated services, the Non-Public School charges an additional \$2300 per year. The Non-Public School charges \$4200 per year to students who require speech-language pathology. OSSE has approved these tuition rates.

The Student's Cognitive Functioning and Academic Performance

12. The Student's full-scale IQ is 96, which is in the thirty-ninth percentile and in the average range.³⁰ This score is not useful as a general description of his current intellectual functioning due to his varied performance in verbal comprehension, perceptual reasoning, working memory, and processing speed.³¹ He presents with average to superior reasoning abilities that are potentially undermined by his low average to borderline processing-speed.³²

13. The Student's performance on the general ability index is a more reliable measure of his general intelligence.³³ His score of 110 falls in the seventy-fifth percentile, which is in the high-average range.³⁴

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Petitioners Exhibit 11 at 55-56.

³¹ *Id.* at 56.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

14. Neurocognitively, the Student exhibits a pattern of weaknesses associated with encoding information, retrieving words efficiently, organizing and planning, processing visual to verbal information, focusing attention, and sustaining auditory attention.³⁵ He exhibits executive function problems associated with inhibiting impulsive responses, sustaining working memory, planning and organizing problem-solving approaches, and organizing his materials.³⁶ His attention deficit disorder is so extreme that it is extremely difficult for him to process information.³⁷ Even in a one-to-one teaching environment, it is difficult for him to learn.³⁸

15. The Student's verbal comprehension abilities are in the ninetieth percentile, which is in the high average range.³⁹ The Student's performance in vocabulary and comprehension is in the ninety-first percentile, which is in the superior range.⁴⁰

16. The Student's perceptual reasoning abilities are in the forty-fifth percentile, which is in the average range.⁴¹ Perceptual reasoning is a measure of perceptual and fluid reasoning, spatial processing, and visual-motor integration.⁴² The difference between the Student's verbal comprehension and perceptual reasoning abilities is twenty-one points, which indicates that his ability to reason with verbally presented material is much stronger than his ability to reason with nonverbally presented material.⁴³ Relative weaknesses in the perceptual reasoning domain can make it difficult to accurately process nonverbal aspects of communication.⁴⁴

17. The Student's working memory is at the third percentile of his same-age peers, which is in the borderline range.⁴⁵ Working memory refers to a person's ability to temporarily retain information in memory, perform some operation with it, and produce a result.⁴⁶ Working memory involves attention, concentration, and mental control.⁴⁷ The Student exhibits deficits on tasks requiring rote memory abilities.⁴⁸ He is able to benefit from context and structure when encoding verbally presented material.⁴⁹ In contrast, his

³⁵ *Id.* at 63.

³⁶ *Id.*

³⁷ Testimony of Petitioners' Psychology Expert.

³⁸ *Id.*

³⁹ Petitioners Exhibit 11 at 55.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 55-56.

⁴⁴ *Id.* at 56.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 62.

⁴⁹ *Id.* at 56.

ability to use rote memory is impaired.⁵⁰ Deficits of inconsistencies in the ability to sustain working memory can interfere with a person's ability to grasp new information.⁵¹

18. The Student's working memory impairment is both pervasive and significant.⁵² His working memory is so significantly impaired that, in the general education setting, by the time his teacher finished a long paragraph, he would have forgotten the first part of the paragraph.⁵³ At this level of impairment, he will have difficulties in all areas of life.⁵⁴

19. The Student's processing speed is in the twenty-first percentile, which is in the low average range.⁵⁵ Processing speed refers to a person's ability to quickly and correctly scan, sequence, and discriminate simple, visual information.⁵⁶ The Student's moderate weaknesses in the ability to process routine information efficiently can make learning new and complex information time-consuming, difficult, and frustrating.⁵⁷

20. Due to his low processing speed, the Student would be unable to keep up with the pace of instruction in the general education environment.⁵⁸ His processing speed difficulties impair his ability to answer a question or interact with peer.⁵⁹ He must be in a learning environment that will address these difficulties and give him time to process information.⁶⁰ Even in a setting where he is educated with two other students and one teacher, he needs repeated prompts, repetition, and multiple directions just to start the task.⁶¹ He would not receive this level of instruction in the general education setting.⁶²

21. The Student's broad reading and broad math skills are solidly within the average range.⁶³ In contrast, his performance in broad written language performance is in the low average range.⁶⁴ His math fluency and spelling skills are in the borderline range.⁶⁵ His deficits in math fluency and spelling are substantial and his performance in these

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Testimony of Petitioners' Psychology Expert.

⁵³⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Petitioners Exhibit 11 at 56.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Testimony of Petitioners' Psychology Expert.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Testimony of Petitioners' Educational Expert.

⁶² *Id.*

⁶³ Petitioners Exhibit 11 at 57.

⁶⁴ *Id.*

⁶⁵ *Id.*

areas was significantly below expectation considering his age, reasoning abilities, and the quality of his educational experiences.⁶⁶

The Student's Speech and Language Functioning

22. The Student presents a highly complex speech and language profile, including limitations that negatively impact his ability to access the curriculum in reading, writing, speaking, and listening.⁶⁷ His attention difficulties impact his ability to consistently follow directions.⁶⁸ His diminished auditory processing capacity, which includes a memory component, impacts his academic functioning.⁶⁹

23. The Student has difficulties sustaining attention.⁷⁰ Thus, a teacher cannot simply get his attention once during classroom instruction and expect him to proceed.⁷¹

24. The Student has an auditory perception disorder, i.e., difficulty attaching an abstract meaning to a sound.⁷² His dichotic listening ability, i.e., ability to separate words and sentences presented at the same time to different ears, is not within the range of typically developing children his age.⁷³ His auditory maturation, i.e., ability to process speech presented at a rapid rate, also is not within average range.⁷⁴ As a result of this disorder and his ADHD, the Student cannot perform academically in a noisy environment with a lot of visual stimulation.⁷⁵

25. The Student's phonological processing abilities are variable.⁷⁶ He performs well in deleting phonemes but struggles to blend phonemes.⁷⁷ His ability to encode digits and repeat them accurately is below expectations.⁷⁸ His ability to listen and repeat novel (nonword) words, his performance also is below expectations.⁷⁹

⁶⁶ *Id.* at 62.

⁶⁷ Petitioners Exhibit 13 at 76 (March 2011 Annual Speech and Language Report).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Testimony of Petitioners' Speech-Language Expert

⁷¹ *Id.*

⁷² Petitioners Exhibit 12 at 69 (November 9 and 12, 2010, Auditory Processing Assessment); testimony of Respondent's Audiology Expert.

⁷³ Petitioners Exhibit 12 at 69.

⁷⁴ *Id.*

⁷⁵ Testimony of Petitioners' Speech-Language Expert.

⁷⁶ Petitioners Exhibit 11 at 58-59.

⁷⁷ *Id.* at 59.

⁷⁸ *Id.*

⁷⁹ *Id.*

26. Phonological awareness and rapid-naming skills are areas of strength for the Student.⁸⁰ Despite his relatively strong phonological awareness skills, he has difficulty applying them to the task of encoding and mispronounces common words (e.g., *chir* for *chair*, *bey* for *buy*).⁸¹

27. His phonological memory skills are below age expectancy.⁸² Thus, auditory memory and phonological memory are areas of need for the Student.⁸³ Overall, his phonological skills are uneven and an area of vulnerability.⁸⁴

28. His auditory comprehension, reasoning, and inferencing are his strongest auditory perception skills.⁸⁵ He has a significant weakness in short-term rote memory for digits.⁸⁶ His working memory, memory for meaningful, non-contextual stimuli (i.e., words), and memory for meaningful contextual stimuli (i.e., sentences) also are impaired.⁸⁷

29. Weaknesses in auditory memory impact the Student's ability to retain and understand the information he hears.⁸⁸ He requires repetition of instructions and of information during conversations, indicating vulnerabilities in auditory memory and contextual comprehension.⁸⁹ Even with repetition, he has difficulty comprehending instructions.⁹⁰ As a result, the Student's teachers must modify oral instructions and directions, supplement auditory information with visual cues to aid him in processing acoustic signals, and repeat and rephrase oral instructions and directions.⁹¹

30. His receptive language abilities, i.e., his ability to attend to, process, and respond to what he hears, are variable and not commensurate with his verbal cognitive abilities.⁹² He has unstable skills in making inferences and understanding figurative and ambiguous language.⁹³ This is of particular concern because, as he ages, the information he is expected to understand becomes longer and more complex and contains an

⁸⁰ Petitioners Exhibit 15 at 92.

⁸¹ *Id.* at 94-95.

⁸² *Id.* at 92.

⁸³ Petitioners Exhibit 15 at 93.

⁸⁴ Petitioners Exhibit 14 at 81 (March 2010 Annual Speech and Language Report).

⁸⁵ Petitioners Exhibit 14 at 81 (March 2010 Annual Speech and Language Report).

⁸⁶ *Id.*; Petitioners Exhibit 13 at 72.

⁸⁷ *Id.*

⁸⁸ Petitioners Exhibit 15 at 95.

⁸⁹ *Id.* at 92.

⁹⁰ *Id.* at 95.

⁹¹ Petitioner Exhibit 12 at 69.

⁹² Petitioners Exhibit 13 at 73.

⁹³ Petitioners Exhibit 13 at 77.

increasing degree of abstraction.⁹⁴ Moreover, salient information is often embedded within the context of the presentation rather than explicitly stated.⁹⁵

31. His ability to understand and explain concepts is within normal limits.⁹⁶ His comprehension of stories that are shorter and less complex than those he might encounter in the classroom is below expectancy and significantly discrepant from his verbal cognitive abilities.⁹⁷ His ability to identify the main idea in a story is similarly below expectancy.⁹⁸

32. He is most successful in providing details but least successful in reasoning.⁹⁹ He has strong sentence-level syntax but has comprehension difficulties in less structured contexts such as conversation.¹⁰⁰ He also has difficulty comprehending passage-level auditory information.¹⁰¹ He skips lines, deletes and inserts words, and repeats phrases.¹⁰² As the passages become more difficult, he inserts and deletes morphological markers.¹⁰³ For example, he changes the word “park” to “parking,” and “weeds” to “weed.”¹⁰⁴ Despite relatively strong decoding, the Student’s oral reading comprehension is not commensurate with his verbal comprehension.¹⁰⁵ Thus, he has relatively weak reading comprehension abilities.¹⁰⁶

33. The Student’s expressive language skills also are not commensurate with his verbal cognitive abilities.¹⁰⁷ His expressive language output is characterized by substantial word retrieval difficulties, indicated by pauses, fillers (e.g., “um” and “uh”), and nonspecific vocabulary words (e.g., “thing” and “stuff”).¹⁰⁸ His oral output also is negatively impacted by word retrieval deficits and behaviors that are consistent with stuttering.¹⁰⁹ These include part- and whole-word repetitions as well as single-sound

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Petitioners Exhibit 15 at 95.

¹⁰¹ *Id.*

¹⁰² *Id.* at 94.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Petitioners Exhibit 13 at 74.

¹⁰⁸ Petitioners Exhibit 15 at 91 (May 9, 2008, Comprehensive Speech and Language Assessment).

¹⁰⁹ Petitioners Exhibit 13 at 76.

repetitions that are sometimes accompanied by secondary behaviors such as eye blinking.¹¹⁰

34. The Student requires prompting to provide sufficient information in conversation or when providing narratives.¹¹¹ He has difficulty with sentence formulation for more complex utterances as evidenced by restarts and reformulations.¹¹² His verbal expression is further compromised by dysfluencies (pause fillers and repeated words).¹¹³ Although he has a remarkable "bank" of understood vocabulary words, he has significant difficulty retrieving these words on demand.¹¹⁴

35. Combined with his tendency to speak rapidly and his stuttering, the Student often has difficulty expressing his ideas clearly and completely.¹¹⁵ Often, it is difficult for his listener to attend to his message due to these factors.¹¹⁶ While the Student's stuttering is not caused by stress, it can be exacerbated by linguistic, academic or social stress.¹¹⁷

36. His linguistic executive functioning is variable, and his sequencing and organizational issues are pervasive.¹¹⁸ He has difficulties recalling sentences.¹¹⁹ While he is able to repeat the essence of sentences presented to him, he makes semantic substitutions, inserts words, and deletes phrases.¹²⁰ For example, when asked to repeat a sentence such as "the boy bought a book for his friend," the Student repeated "the boy bought a book for the lady."¹²¹

37. The Student is often dysfluent during on-demand activities.¹²² Although his stuttering does not inhibit him, he is aware of its severity, as evidenced by the emergence of a nervous tic (eye blinking).¹²³ Although he often volunteers to lead expressive language activities at the Non-Public School,¹²⁴ his dysfluencies increase when teachers question

¹¹⁰ *Id.*

¹¹¹ Petitioners Exhibit 15 at 92.

¹¹² *Id.*

¹¹³ *Id.* at 91, 95.

¹¹⁴ *Id.* at 89, 91, 95.

¹¹⁵ Petitioners Exhibit 13 at 76.

¹¹⁶ *Id.*

¹¹⁷ Testimony of Petitioners' Speech-Language Expert.

¹¹⁸ Petitioners Exhibit 13 at 76.

¹¹⁹ Petitioners Exhibit 15 at 91.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Petitioners Exhibit 13 at 75.

¹²³ Petitioners Exhibit 13 at 75; testimony of Petitioners' Speech-Language Expert.

¹²⁴ *Id.*

him during on-demand activities.¹²⁵ His stuttering intensity is related to his diminished linguistic self-confidence.¹²⁶

38. In contextual oral language, the Student's strengths are in vocabulary and understanding sentence structure.¹²⁷ He has difficulties in auditory recall, word retrieval, and contextual sentence formulation.¹²⁸

39. In oral reading, his skills are in the twenty-first percentile, which is in the low-average range.¹²⁹ His oral reading fluency is in the average range but his comprehension is in the low average range.¹³⁰ His stuttering negatively impacts his functional reading.¹³¹

40. In written expression, the Student performs solidly in the average range.¹³² He is able to write dictated sentences and generate his own sentences in response to pictured and written stimuli.¹³³ He reviews and corrects his sentences for punctuation.¹³⁴

41. However, his reading fluency and decoding accuracy are unstable at the multi-syllabic word level.¹³⁵ His single-word spelling abilities are inconsistent.¹³⁶ He substitutes vowel sounds, omits consonant sounds in consonant clusters, and omits other sounds as he spells.¹³⁷ He makes assimilation errors and transpositions.¹³⁸

42. In light of his expressive and receptive language deficits, dyslexia, and written expression disorder, the Student requires individual speech and language therapy for 45 minutes per week and group speech and language therapy for 45 minutes per week in the school setting.¹³⁹ He requires regular, integrated, speech-language services to

¹²⁵ Petitioners Exhibit 13 at 76.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Petitioners Exhibit 11 at 58.

¹³⁰ *Id.*

¹³¹ Petitioners Exhibit 13 at 77.

¹³² Petitioners Exhibit 15 at 95.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Petitioners Exhibit 13 at 77.

¹³⁶ *Id.* at 75.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Petitioners Exhibit 15 at 96.

ensure that he transfers and maintains his skills in the classroom.¹⁴⁰ Additionally, his speech and language goals must be integrated into the curriculum.¹⁴¹

43. Because of the complexity of the Student's speech and language deficits, he must receive specialized instruction, outside the general education setting in all of his academic courses.¹⁴² Due to his auditory processing deficits and fragile linguistic confidence, he would have extreme difficulties during transitions, lunch and physical education, in part due to the intensity of the reverberation and level of noise in these settings.¹⁴³ Thus, from a speech-language perspective, the Non-Public School is an appropriate setting for the Student.

The Student's Neuromuscular Functioning

44. The Student has difficulties with strength and agility, prone extension, supine flexion, and general posture.¹⁴⁴ This suggests that he does not have adequate central postural stability.¹⁴⁵ Because motor control develops from the center of the body and extends out, his lack of a solid, proximal base impacts upon his ability to develop more refined, fine-motor skills.¹⁴⁶

45. He has low muscle tone and poor posture.¹⁴⁷ At his desk, he sits with his shoulders rounded forward and his hips extended.¹⁴⁸ He also props his head on his hand during pencil and paper tasks.¹⁴⁹ He alternates between a slumped posture and using "fixation" patterns, such as holding his shoulders fixed in an elevated position.¹⁵⁰ He frequently leans forward with his face very close to his work and his shoulders rounded forward (fixed in protraction).¹⁵¹

46. Use of such fixation patterns is one method the Student uses to compensate for decreased postural control.¹⁵² When fine motor precision is required, his need for fixation increases the motoric demands of the task and contributes to eventual fatigue.¹⁵³

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Testimony of Speech-Language Expert.

¹⁴³ *Id.*

¹⁴⁴ Petitioners Exhibit 18 at 125 (February 12, 2009, Occupational Therapy Evaluation).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Testimony of Father; Petitioners Exhibit 18 at 122.

¹⁴⁸ Petitioners Exhibit 18 at 122.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 125.

In other words, these compensation measures require physical effort, which increases his fatigue and compromises his alertness and availability for learning.¹⁵⁴

47. He has below average strength, low physical endurance, and poor kinesthetic body awareness.¹⁵⁵ He struggles tasks requiring him to maintain a static position, and exercises such as push-ups and sit-ups.¹⁵⁶ He is able to flex his body against gravity with a good quality of body flexion for only a very short time.¹⁵⁷

48. The Student has considerable difficulty modulating sensory input,¹⁵⁸ which significantly affects his auditory and tactile processing.¹⁵⁹ He frequently chews on non-food objects,¹⁶⁰ including the collars of his shirts for oral stimulation.¹⁶¹ He is fidgety and disruptive when standing in line or close to other people, and he frequently touches people and objects.¹⁶² He seeks out close physical contact.¹⁶³

49. The Student also has significant vestibular processing deficiencies.¹⁶⁴ He has difficulty sitting still, fidgets, and kicks his feet, all of which interfere with his daily routine.¹⁶⁵ He uses a chair band to keep him from kicking others.¹⁶⁶

50. He struggles with tasks requiring bilateral control and balance.¹⁶⁷ He avoided crossing his body midline and evidenced issues associated with laterality and weaknesses with spatial organization.¹⁶⁸ Spatial organization issues affect academic skills in many areas, including mathematics and legibility of the Student's written work.¹⁶⁹ His

¹⁵⁴ *Id.* at 122.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Sensory modulation is a normal neurological process as the brain attempts to regulate sensory information to generate an appropriate response. Petitioners Exhibit 18 at 121. The brain uses sensory input to achieve self-regulation as an appropriate level of alertness. *Id.* An imbalance in how a child's brain organizes sensory information, alertness, attention, and behavior, negatively affects peer relationships and the child's ability to function effectively in the environment. *Id.* at 121-22.

¹⁵⁹ Petitioners Exhibit 18 at 122.

¹⁶⁰ *Id.* at 121.

¹⁶¹ Testimony of Father.

¹⁶² Petitioners Exhibit 18 at 121.

¹⁶³ *Id.*

¹⁶⁴ Petitioners Exhibit 18 at 121.

¹⁶⁵ *Id.*; testimony of Father.

¹⁶⁶ Testimony of Father.

¹⁶⁷ Petitioners Exhibit 18 at 125.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

tight and static pencil grip evidences an attempt to achieve stability by sacrificing mobility.¹⁷⁰

51. Balance is important for the Student to be able to execute self-care tasks such as putting on his pants or socks.¹⁷¹ Balance also helps the Student stoop and retrieve objects, pick up a dropped pencil while at a desk, and stay erect if jostled.¹⁷² He struggles with tasks requiring both sides of the body to perform different movements simultaneously.¹⁷³ He also struggles to keep his hands on his hips, especially with his eyes closed.¹⁷⁴

52. The Student performs in the below average range in visual-motor coordination, which impacts his ability to efficiently perform age-appropriate eye-hand coordination and fine motor skills.¹⁷⁵ As a result, he has spatial organization problems when handwriting.¹⁷⁶ His spatial organization when printing continues to be more problematic than that of his cursive, even when he uses double-lined paper.¹⁷⁷ When writing, he often does not keep the letters and words above the writing lines, he spaces words too closely together, and makes letters too large or too small.¹⁷⁸

53. The Student has below-average ocular-motor functions.¹⁷⁹ He has a binocular vision dysfunction as well as astigmatism.¹⁸⁰ He has weak focusing skills, inefficient eye movements, and an eye alignment issue.¹⁸¹ He struggles with isolating eye movements from head movement when visually tracking.¹⁸² He loses track of moving objects and does not maintain a consistent shift in gaze.¹⁸³

54. Smooth eye movements are important for maintaining a constant gaze, which enables one to read a line of print without skipping lines and copy from a paper or

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 122.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Petitioners Exhibit 16 at 107.

¹⁷⁶ *Id.*

¹⁷⁷ Petitioners Exhibit 16 at 104.

¹⁷⁸ *Id.*

¹⁷⁹ Petitioners Exhibit 18 at 122-23.

¹⁸⁰ Petitioners Exhibit 16 at 105.

¹⁸¹ *Id.*

¹⁸² Petitioners Exhibit 18 at 123.

¹⁸³ *Id.*

the board.¹⁸⁴ Smooth eye movements also help one scan the environment and to catch a ball.¹⁸⁵

55. The Student's ocular-motor issues make reading, writing, and copying inefficient.¹⁸⁶ He complains of eyestrain and tilts his head excessively while working at his desk.¹⁸⁷ He misaligns digits in number columns and has difficulty learning from left to right.¹⁸⁸ He has messy writing and demonstrates problems with letter size, placement of letters on a writing line, and using margins.¹⁸⁹

56. To compensate for his ocular-motor issues, the Student is exerting greater effort and energy than usual when reading, writing, keyboarding, and copying text.¹⁹⁰ This causes eye fatigue, which prevents him from continuing to focus on activities requiring the use of vision.¹⁹¹ Thus, his ocular-motor issues may be exacerbating his attention issues.¹⁹²

57. The Student's manual dexterity is in the below average range.¹⁹³ He has difficulty picking up coins from a table.¹⁹⁴ When placing pegs in a pegboard, he drops the pegs repeatedly.¹⁹⁵ His upper limb coordination also is in the below average range.¹⁹⁶ He struggles with catching a tennis ball in one hand and throwing a ball accurately at an intended target.¹⁹⁷

The Student's Unique Educational Needs

58. The Student's complex set of problems continues to prevent him from accessing the curriculum without systematic educational interventions, support, and accommodations.¹⁹⁸ He requires a classroom with a low student-teacher ratio and evidence-based, specialized instruction throughout the school day.¹⁹⁹ He requires

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Petitioners Exhibit 16 at 106.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Petitioners Exhibit 18 at 123.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Petitioners Exhibit 11 at 63.

¹⁹⁹ *Id.*

strategies and support to improve his organizational skills and study skills.²⁰⁰ He also requires direct services to promote organization, preparation, and completion of assignments.²⁰¹

59. To access the curriculum, the Student requires a lot of staff attention.²⁰² He very often does not comprehend group instruction, even in a class of six.²⁰³ He needs the instruction delivered to him individually, one-to-one intervention, and significant cueing.²⁰⁴

60. The Student requires school-based occupational therapy at least forty-five minutes each week.²⁰⁵ He also requires occupational therapy as an integrated part of his complete academic program, including classroom observation, monitoring, and direct service in the functional environment.²⁰⁶ Occupational therapy in the classroom should focus on the Student's acquisition of skills within the functional environment as well as his development of compensatory strategies to facilitate academic performance.²⁰⁷

61. Due to his multiple disabilities, the Student requires intensive levels of service.²⁰⁸ Due to his pervasive speech-language disability, he would not benefit from inclusion with nondisabled peers.²⁰⁹

The Student's Academic Performance During the 2010-2011 School Year

62. During the 2010-2011 school year, the Student's IEP, developed by the Non-Public School, provided that he was to receive 32.75 hours of specialized instruction, 45 minutes of individual speech-language therapy, 45 minutes of group speech-language therapy, and 45 minutes of individual occupational therapy.²¹⁰ The IEP identified the Student's placement as outside the general education classroom for 100 percent of the time.²¹¹ Thus, the Student was not educated with his non-disabled peers during the 2010-

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Testimony of Petitioners' Speech-Language Expert.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Petitioners Exhibit 18 at 125.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Petitioners Exhibit 11 at 63.

²⁰⁹ Petitioners Exhibit 11 at 62; testimony of Petitioners Speech-Language Expert.

²¹⁰ Petitioners Exhibit 21 at 153 (April 16, 2010, IEP).

²¹¹ *Id.* at 176.

2011 school year.²¹² However, he participated in extra-curricular activities with non-disabled peers in his community.²¹³

63. The Student made academic growth and achievement during the 2010-2011 school year.²¹⁴ He exhibited remarkable effort in the classroom and utilized the strategies that were provided.²¹⁵ The Non-Public School's structured environment and consistent routines enabled him to use his many strengths and participate in the classroom.²¹⁶ His growing self-confidence, willingness to take risks, and ability to recognize his needs in order to sustain his attention were key determinants in his academic accomplishments.²¹⁷

64. During the 2010-2011 school year, the Student read chapter books at the fourth-grade level.²¹⁸ His knowledge of sound/symbol associations, as measured by the Wilson Assessment of Decoding and Encoding, increased from 56 percent proficiency to 72 percent proficiency over the school year.²¹⁹ He displayed a strong fund of knowledge, read for meaning, self-corrected errors that affected meaning, adhered to punctuation, and read with expression.²²⁰ He auditorily recognized words that he had decoded phonetically.²²¹ He possessed strong, literal comprehension skills, used picture clues to enhance the meaning of text, made good predictions, and recalled facts and characters.²²²

65. During the 2010-2011 school year, the Student continued to omit sounds in some words, including substituting insect for inspect.²²³ He had difficulty with some sound/symbol associations, including writing "berricade" instead of "barricade."²²⁴ He guessed at words based on their initial sound (saying "bungle" for "bugle") and struggled to apply his decoding skills effectively when reading in context.²²⁵ He had difficulty with fluency, as he read with excessive speed, added words, and made tracking errors.²²⁶ His

²¹² Testimony of Father.

²¹³ *Id.*

²¹⁴ Petitioners Exhibit 19 at 127.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

comprehension was hindered by his weak recall of the sequence of events, understanding abstract language, identification of main ideas, and ability to infer information.²²⁷

66. Using the *Read Naturally* program, the Student increased his fluency from 109 words per minute to 153 words per minute by the end of the 2010-2011 school year.²²⁸

67. In math, the Student increased his knowledge of multiplication concepts.²²⁹ At the beginning of the 2010-2011 school year, he struggled with basic multiplication concepts.²³⁰ He discovered patterns for multiples of ten.²³¹ He began by multiplying two-digit by one-digit numbers with one of the numbers consisting of a multiple of ten.²³² By mid-March 2011, he was proficient with division of one-digit divisors and moved on to divisors that were multiples of ten.²³³ In April, he solved long division equations with any two-digit divisor and was introduced to fraction concepts.²³⁴ He worked with fraction circles, fraction pizzas, and other concrete manipulatives to gain a basic understanding of fraction concepts.²³⁵

68. During the 2010-2011 school year, the Student lacked a systemic approach to solve word problems independently.²³⁶ His weak language skills affected his problem solving and ability to explain his thinking.²³⁷ His weak attention affected his work completion.²³⁸

69. In written language, he had a basic sight-word vocabulary of the one hundred most common words during the 2010-2011 school year.²³⁹ He encoded one-syllable words correctly.²⁴⁰ Overall, he had a limited sight-word vocabulary.²⁴¹

70. He initially wrote simple and compound sentences but as the 2010-2011 school year progressed, he created complex sentences with guidance.²⁴² He applied capitalization and periods in his writing.²⁴³

²²⁷ *Id.*

²²⁸ *Id.* at 128.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* at 128-29.

²³⁸ *Id.*

²³⁹ *Id.* at 129.

²⁴⁰ *Id.*

²⁴¹ *Id.*

71. Using the *Wilson Reading System* for encoding, the Student learned strategies to discriminate and sequence sounds in one-, two-, and multi-syllable words.²⁴⁴ With guidance, he utilized the strategy of encoding one syllable at a time.²⁴⁵ As his confidence increased, he employed this strategy more independently.²⁴⁶

72. During the 2010-2011 school year, the Student was highly motivated to succeed and put forth his best effort.²⁴⁷ He responded well to positive reinforcement and praise, increasing both his academic skills and availability to take risks.²⁴⁸ He showed a strong desire to learn new concepts by asking questions and contributing relevant information.²⁴⁹ He needed reassurance that he was making progress to help increase his self-esteem.²⁵⁰

73. During the 2010-2011 school year, the Student was a well-liked member of his class and enjoyed socializing with his classmates.²⁵¹ He readily engaged in conversations during lunch and other less-structured periods.²⁵² He completed his homework, followed his daily schedule, and put forth tremendous effort to keep his personal belongings organized.²⁵³ However, he struggled to remain on task for a substantial amount of time.²⁵⁴

74. The Student made similar progress in museum club (history and culture), science, drama, and physical education during the 2010-2011 school year.²⁵⁵ Through multisensory activities in museum club, the Student successfully processed and retained course material.²⁵⁶ He was able to grasp the most important content through hands-on, project-based learning.²⁵⁷ His memory for information was strong and he was able to

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 129-134.

²⁵⁶ *Id.* at 130.

²⁵⁷ *Id.*

understand the connections between the ancient civilizations and the religions of the world.²⁵⁸

75. In science, the students focused on ecology and astronomy.²⁵⁹ The Student demonstrated an understanding of the five-steps of the scientific method.²⁶⁰ He demonstrated the ability to follow concrete procedures safely during an experiment.²⁶¹ And he demonstrated the ability to work effectively in a group to complete a scientific investigation.²⁶² He mastered, sometime with cues, the basic scientific concepts of geology, biology, and the process of evolution.²⁶³ He mastered the concepts of outer space, often with cues.²⁶⁴

The Student's Performance in Related Service Areas During the 2010-2011 School Year

Speech and Language

76. During the 2010-2011 school year at the Non-Public School, the Student received direct individual and small group speech and language services as well as integrated services in the classroom.²⁶⁵ He exhibited excellent social pragmatic skills.²⁶⁶ While at times he was distracted by auditory and visual stimuli within the classroom, and by social interactions with his peers, he was able to appropriately engage in all activities presented in the classroom.²⁶⁷ He benefited from receiving instructions that were broken into segments, i.e., "chunked," repeated, and rephrased prior to being asked to summarize what he was asked to do.²⁶⁸ When he was confident that he understood what was expected of him, he always fully complied with the instructions.²⁶⁹

77. The Student was hardworking and serious, and he willingly participated in all tasks during individual, small group, and integrated speech and language therapy at the Non-Public School.²⁷⁰ While he was at times distracted by auditory and visual stimuli

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 131.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ Petitioners Exhibit 13 at 71, 75.

²⁶⁶ *Id.* at 75.

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 76.

²⁶⁹ *Id.*

²⁷⁰ Petitioners Exhibit 13 at 75.

within the classroom and by social interactions with peers, the Student was able to appropriately engage in all activities presented.²⁷¹

78. He responded well to all highly structured therapeutic tasks, including those designed to ease his word-retrieval difficulties.²⁷² He began to utilize retrieval skills independently and thus was more successful in retrieving words during conversation and in class.²⁷³ He was able to combine sentences, both orally and in writing.²⁷⁴ He benefited from the use of templates to organize his oral and written output, particularly above the sentence level.²⁷⁵

79. During the 2010-2011 school year, the Student did not suffer any adverse effects in his peer relations due to his stuttering.²⁷⁶ He freely interacted with his peers at the Non-Public School and demonstrated oral negotiation and problem-solving skills.²⁷⁷ Additionally, he increased his ability to scan both text and auditory information for the presence of multiple meaning words and figurative language, although he continues to experience difficulty understanding and explaining the ambiguities of language.²⁷⁸

Occupational Therapy

80. During the 2010-2011 school year, the Student used several sensory strategies in the classroom setting to improve his functional attending skills.²⁷⁹ He uses small manipulatives (“fidgets”), chews gum for oral sensory input, requests to work in the quiet hallway when classroom activity is distracting, asks for movement breaks in which he leaves the room for a drink or to use the restroom, and requests adaptive seating, particularly a t-shaped, single-legged stool.²⁸⁰ This “t-stool” forces the Student to make changes in his head position and small postural adjustments to maintain his balance, thereby helping him maintain attention.²⁸¹ He wears a vest to calm him down and provide sensory input to his muscles.²⁸² However, these sensory strategies have not been

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.* at 76-77.

²⁷⁴ *Id.*

²⁷⁵ Petitioners Exhibit 13 at 76.

²⁷⁶ *Id.* at 75.

²⁷⁷ Petitioners Exhibit 13 at 75.

²⁷⁸ *Id.* at 77.

²⁷⁹ Petitioners Exhibit 16 at 103 (March 2011 Occupational Therapy Annual Progress Report).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Testimony of Father.

completely successful in optimizing his attention even though he has a strong work ethic.²⁸³

81. He made progress in his touch-typing keyboarding skills.²⁸⁴ He learned to automatically use correct finger placement to type all the letter keys and several of the function keys.²⁸⁵ He also completed a short copying task while looking at the keyboard, although not at a functional speed.²⁸⁶ His rate was slowed somewhat by lowing his place and he could not copy without looking at the keyboard.²⁸⁷

82. The Student made progress in learning cursive as well.²⁸⁸ He independently recalled and formed almost all of the lower-case letters, signed his first name, and copied at a slow rate.²⁸⁹

The Development of the Student's Proposed IEPs

83. On September 21, 2010, a DCPS psychologist reviewed the Student's May 8, 2010, independent neuropsychological assessment, conducted by Petitioners' Psychological Expert.²⁹⁰ The psychologist found that the conclusions of the neuropsychological assessment are supported by the data in the report.²⁹¹

84. The conclusions of Petitioners' Psychological Expert in his May 8, 2010, independent neuropsychological assessment are that the Student meets the diagnoses of mixed receptive-expressive language disorder, reading disorder (dyslexia), disorder of written expression, ADHD, phonological disorder, stuttering, and developmental coordination disorder.²⁹² The conclusions of the assessment include that the Student has deficits in working memory, and substantial deficits in math fluency, spelling, reading comprehension, and aspects of phonological processing.²⁹³ The conclusions include that the Student's current profile and developmental history indicate dyslexia.²⁹⁴

²⁸³ *Id.* at 103-4.

²⁸⁴ *Id.*

²⁸⁵ *Id.* at 105. The Student uses Velcro on specific keys to provide tactile cues to guide his finger placement on the keyboard. *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Respondent Exhibit 2 at 1 (September 21, 2010, Independent Educational Evaluation Checklist); Respondent Exhibit 2 at 3-7 (September 24, 2010, Review of Independent Educational Evaluation).

²⁹¹ *Id.*

²⁹² Petitioners Exhibit 11 at 62.

²⁹³ *Id.*

²⁹⁴ *Id.*

85. The conclusions of Petitioners' Psychological Expert in his May 8, 2010, independent neuropsychological assessment include that the Student exhibits a pattern of weaknesses associated with encoding information, retrieving words efficiently, organizing and planning, processing visual to verbal information, focusing attention, and sustaining auditory attention.²⁹⁵ The assessment also concludes that the Student exhibits executive function problems associated with inhibiting impulsive responses, sustaining working memory, planning and organizing problem-solving approaches, and organizing his materials.²⁹⁶

86. On October 21, 2010, the Speech-Language Pathologist conducted a speech-language evaluation of the Student.²⁹⁷ The Speech-Language Pathologist incorporated the findings of assessments in the Non-Public School's *Annual Speech and Language Report*. The Speech-Language Pathologist found that the Student consistently demonstrated dysfluencies, difficulty verbally expressing his thoughts in a concise manner, word-finding difficulties, sustained attention, and writing difficulties.²⁹⁸ She found that the Student has several diagnoses that encompass speech and language disorders, including mixed receptive-expressive language disorder and stuttering, as well as phonological disorder, reading disorder, and disorder of written expression.²⁹⁹

87. In the October 21, 2010, speech-language evaluation, the Speech-Language Pathologist concluded that the Student would benefit from speech and language therapy in the area of expressive and receptive language and fluency.³⁰⁰ She found that the speech and language goals on the Non-Public School's IEP correlate with the Student's areas of concern.³⁰¹ She further found that intervention services are important for the Student as he is at-risk for falling behind.³⁰²

88. On December 17, 2010, a DCPS audiologist conducted a review of the Student's November 2010 audiological assessment, conducted by Julie Verhoff, a DCPS contractor.³⁰³ The DCPS audiologist who reviewed the assessment found that the Student has difficulty in dichotic listening.³⁰⁴ The DCPS audiologist further found that the

²⁹⁵ *Id.* at 63.

²⁹⁶ *Id.*

²⁹⁷ Respondent Exhibit 5 at 13 (October 25, 2010, Report of Confidential Speech and Language Evaluation).

²⁹⁸ *Id.* at 16.

²⁹⁹ *Id.* at 16-17.

³⁰⁰ *Id.* at 17.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ Respondent Exhibit 6 at 18 (December 17, 2010, APD Audiological Evaluation Review); Petitioner Exhibit 12 (November 15, 2010, Report of Assessment of Auditory Processing).

³⁰⁴ Respondent Exhibit 6 at 19.

Student's auditory maturation is not within the range of children his age who do not have problems with auditory processing.³⁰⁵

89. The DCPS audiologist who reviewed the Student's audiological assessment supported the evaluator's recommendation that the Student continue in speech-language therapy.³⁰⁶ The DCPS audiologist supported the evaluator's recommendation that the rate of oral instructions be modified to help the Student process the auditory information.³⁰⁷ She supported the evaluator's recommendation that the Student's attention be gained before speaking to him to allow him to focus his attention.³⁰⁸ The DCPS audiologist supported the evaluator's recommendation that visual cues be given to the Student to aid his processing of information.³⁰⁹ Finally, she supported the evaluator's recommendation that repeating and rephrasing should be used.³¹⁰

90. On January 4, 2011, Respondent convened a meeting to develop a proposed IEP for the Student.³¹¹ The Father attended the meeting, along with his attorney and the Special Education Expert.³¹² Also present at the meeting were the special education coordinator of DCPS School 1,³¹³ a DCPS social worker; the DCPS psychologist who reviewed the Student's May 8, 2010, independent neuropsychological assessment; the DCPS special education teacher (SEC 1);³¹⁴ the principal of DCPS School 1; the DCPS audiologist who conducted the review of the Student's November 2010 audiological assessment; a DCPS occupational therapist; and the DCPS Speech-Language Pathologist.³¹⁵

91. At the January 5, 2011, IEP meeting, the DCPS Speech-Language Pathologist recommended that the Student receive small-group speech and language therapy as a related service on the DCPS proposed IEP.³¹⁶ The DCPS Speech-Language Pathologist helped develop the speech-language goals and present levels of performance for the

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ Petitioners Exhibit 6 at 22 (January 5, 2011, IEP); Respondent Exhibit 7 at 20 (January 4, 2011, IEP (with signatures of participants)).

³¹² *Id.*

³¹³ This person did not testify at the due process hearing. At the time of the due process hearing, she was no longer the SEC of DCPS School 1.

³¹⁴ This person is now SEC of DCPS School 1.

³¹⁵ Petitioners Exhibit 6 at 22; Respondent Exhibit 7 at 20; testimony of Father, Educational Expert, SEC 1, and DCPS Speech-Language Pathologist.

³¹⁶ Testimony of DCPS Speech-Language Pathologist.

proposed IEP.³¹⁷ In developing the goals and present levels of performance for the proposed IEP, she relied on the Non-Public School's May 9, 2008, speech-language assessment as well as her October 21, 2010, speech-language evaluation.³¹⁸

92. At the January 5, 2011, meeting, the DCPS Speech-Language Pathologist recommended that proposed DCPS IEP adopt all of the speech-language goals in the Student's April 16, 2010, Non-Public School IEP.³¹⁹ She believed that the Student's speech-language goals in his Non-Public School IEP were appropriate.³²⁰ She found that there are no differences between the findings and recommendations in the Non-Public School's speech-language assessment and the findings and recommendations of her October 21, 2010, speech-language evaluation.³²¹

93. The DCPS Speech-Language Pathologist did not participate in the discussion regarding the Student's hours of specialized instruction on the proposed IEP.³²² She also did not participate in the discussion about the setting in which the instruction was to be provided pursuant to the proposed IEP.³²³

94. SEC 1, who was a special education teacher at the time, led the development of the proposed DCPS IEP on January 5, 2011.³²⁴ Her duties included creating the present levels of performance, baseline, needs, and impact statement for the mathematics and reading sections of the proposed IEP.³²⁵ She determined the hours of specialized instruction, the setting in which the instruction would be provided, the least restrictive environment, and the list of accommodations.³²⁶

95. The social worker developed the social-emotional goals and the occupational therapist developed the occupational therapy goals for the IEP.³²⁷

96. SEC 1 designed the annual goals in mathematics to increase the Student's fluency with basic math facts.³²⁸ She considered the Student's performance in May 2010 on the Woodcock-Johnson III Test of Academic Achievement in developing these goals

³¹⁷ *Id.*; Respondent Exhibit 7 at 28-29.

³¹⁸ Testimony of DCPS Speech-Language Pathologist.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ Testimony of SEC 1.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*; see Petitioners Exhibit 6 at 23-24 (mathematics annual goals); Respondent's Exhibit 7 at 22-23 (same).

and the present level of educational performance section of the DCPS proposed IEP.³²⁹ Because math fluency was the only area in which she believed the Student exhibited difficulties on the May 2010 Woodcock-Johnson, all of the goals she developed for the proposed DCPS IEP addressed math fluency.³³⁰ The DCPS proposed IEP contains no other math goals.³³¹

97. She developed the reading goals on the DCPS proposed IEP from information she gathered when she observed the Student at the Non-Public School in May 2010.³³² She also gleaned information from the Student's April 16, 2010, Non-Public School IEP.³³³ She simply copied the accommodations from the Student's April 16, 2010, Non-Public School IEP onto the DCPS proposed IEP. She developed the present level of educational performance section and the baselines by taking data from the May 2010 Woodcock Johnson test and a prior Gray Oral Reading Test.³³⁴

98. At the January 4, 2011, meeting, the DCPS staff developed written expression goals on the DCPS proposed IEP in part by adopting the goals from the Student's April 16, 2010, Non-Public School IEP.³³⁵ They developed the present level of performance section and baselines from the score report from May 2010 Woodcock Johnson test.³³⁶

99. The DCPS staff then agreed to provide the Student ten hours per week of specialized instruction.³³⁷ They proposed that the Student would receive 2.5 hours of specialized instruction in reading and written expression outside the general education setting.³³⁸ They proposed that the Student would receive the remaining 7.5 hours per week of specialized instruction in the general education setting.³³⁹ Pursuant to the proposed IEP, the Student would spend the remaining twenty hours of the school week in general education classes and lunch without any supports.³⁴⁰

100. The DCPS staff did not believe that the Student's attentional difficulties, auditory processing deficits, and ADHD warranted educating outside the general education setting for more than 2.5 hours per week.³⁴¹ Because DCPS School 1 is a "SAM

³²⁹ Testimony of SEC 1.

³³⁰ *Id.*; see Petitioners Exhibit 6 at 23-24; Respondent's Exhibit 7 at 22-23.

³³¹ Petitioners Exhibit 6; Respondent's Exhibit.

³³² Testimony of SEC 1.

³³³ *Id.*

³³⁴ Respondent Exhibit 7 at 23-25.

³³⁵ Testimony of SEC 1.

³³⁶ Respondent Exhibit 7 at 25-28.

³³⁷ Testimony of SEC 1.

³³⁸ *Id.*

³³⁹ Respondent Exhibit 7 at 34.

³⁴⁰ *Id.*; testimony of SEC 1.

³⁴¹ Testimony of SEC 1.

School," it provides support and accommodations to all students in the general education setting.³⁴² This "School-wide Application Model" is designed to provide supports, instructional methods, and accommodations to all students, not just the students who receive these services on their IEPs.³⁴³

101. The SAM model is designed to ensure that students are placed in the inclusion setting to the greatest extent possible.³⁴⁴ It emphasizes collaboration between special education teachers and general education teachers to ensure lesson plans are tied to the needs of each student.³⁴⁵ Thus, the DCPS staff believed that the accommodations that the Student needs would be present regardless of whether a special education teacher was in his classroom.³⁴⁶ These accommodations would include a school-wide FM system that is designed to reduce auditory distractions within the classroom by piping the teacher's voice directly to each student.³⁴⁷

102. The Father and the Education Expert objected vehemently to the proposed DCPS IEP.³⁴⁸ The proposed DCPS IEP would not provide sufficient support to the Student.³⁴⁹ The DCPS staff had tailored the IEP to what was available at the DCPS School 1, not to the Student's needs.³⁵⁰

103. In the inclusion classes at DCPS School 1, the Student would be among twenty-five children in each class, with one special education teacher and one general education teacher.³⁵¹ This is not enough support for the Student.³⁵² Moreover, the art and music classes at DCPS School 1 do not provide specialized instruction, modifications, or additional supports for students with disabilities.³⁵³ Thus, it would be impossible for the Student to access the instruction.³⁵⁴

104. The Father informed Respondent that he disagreed with the January 4, 2011, IEP.³⁵⁵ The Student remained at the Non-Public School, at his parents' expense, for the remainder of the 2010-2011 school year.³⁵⁶

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ Testimony of Audiology Expert.

³⁴⁸ Testimony of Education Expert.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ Testimony of Father.

105. On July 7, 2011, Respondent convened a meeting at DCPS School 1 to revise the proposed IEP for the Student.³⁵⁷ Petitioners, the Educational Expert, and Petitioners' counsel attended the meeting.³⁵⁸ The SEC of DCPS School 1 and the SEC of DCPS School 2 ("SEC 2") were the only representatives of DCPS who attended the meeting.³⁵⁹

106. At the July 7, 2011, meeting, the Father raised concerns that the Student would not make academic progress with an IEP that provides only 2.5 hours of specialized instruction outside the general education setting.³⁶⁰ The SEC of DCPS School 1 and SEC 2 responded by changing the proposed IEP to specify that the Student would receive ten hours of specialized instruction outside the general education setting.³⁶¹ They made no other changes to the IEP.³⁶²

107. On July 12, 2011, Petitioners' attorney sent a letter to the SEC of DCPS School 1.³⁶³ The attorney sent this letter at the request of Petitioners.³⁶⁴ In the letter, the attorney advised the SEC that Petitioners rejected Respondent's proposed placement in a part-time, inclusion-based, setting at DCPS School 2.³⁶⁵ The letter provided the reasons that Petitioners rejected Respondent's proposed placement, including the lack of sufficient, direct, specialized instruction in all academic areas, the Student's need for a full-time, self-contained, special education program, and the lack of integrated speech-language services.³⁶⁶ The letter further stated that the program that Respondent proposed at DCPS School 2 was not reflective of the discussions at the July 7, 2011, meeting, which evidenced the Student's inability to obtain educational benefit in an inclusion environment.³⁶⁷

108. In the July 12, 2011, letter, Petitioners provided notice that they planned to return the Student to the Non-Public School.³⁶⁸ Petitioners informed Respondent that they intended this placement to be at public expense.³⁶⁹

³⁵⁶ *Id.*

³⁵⁷ Testimony of Father, SEC 2, Educational Expert.

³⁵⁸ Respondent Exhibit 8 at 39 (July 7, 2011, meeting notes).

³⁵⁹ Respondent Exhibit 9 at 41 (July 7, 2011, IEP).

³⁶⁰ Testimony of Father.

³⁶¹ Respondent Exhibit 8 at 40; Respondent Exhibit 9 at 56; testimony of Father, SEC 2.

³⁶² Compare Respondent Exhibit 9 to Petitioners Exhibit 6.

³⁶³ Petitioner Exhibit 2 at 12 (July 12, 2011, letter from Brian Gruber to the SEC of DCPS School 1).

³⁶⁴ Testimony of Father.

³⁶⁵ Petitioners Exhibit 2 at 12.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.*

109. On July 18, 2011, the SEC of DCPS School 1 acknowledged receipt of the July 12, 2011, letter.³⁷⁰

Credibility Determinations

110. Petitioner was a credible witness. He testified forthrightly about the Student's shortcomings and academic challenges, as well his developmental history. He had in-depth knowledge of the Student's disabilities, especially his neuromuscular challenges. He testified in detail about his interactions with Respondent, extensive efforts to obtain services for the Student, the meetings at which Respondent developed IEPs for the Student, as well as the shortcomings of those IEPs.

111. The Educational Expert was a credible witness. She has twenty-seven years of experience in education, including working as a general education teacher, a special education teacher, and director of education. She has worked in public and nonpublic school settings. She is affiliated with Johns Hopkins University where she teaches and supervises teachers who are working on a special education endorsement. She trains these teachers in special education procedures, IEP development and implementation, and other aspects of special education. She possesses in-depth knowledge of the Student's complex array of disabilities, had excellent recall of the Student's evaluations, and provided in-depth testimony about the meetings at which Respondent developed the Student's proposed IEPs, as well as about her visit to the proposed location of services (DCPS School 2).

112. The Speech-Language Expert was a credible witness. She has thirty-four years of experience in speech-language pathology, including evaluating and providing direct services to students. She has worked in the public school and non-public school settings, including at the Non-Public School, where she supervised the other speech-language pathologists who provided services to students at the Non-Public School. She evaluated, observed, and provided speech-language therapy to the Student. She provided in-depth testimony about his speech-language deficits well as his daily challenges in the classroom and socially. She provided detailed testimony on educational programming he requires and provision of instruction necessary to address the Student's severe expressive-receptive language disorder.

113. Petitioners Psychology Expert was a credible witness. He has a Ph.D. in clinical psychology with a concentration in developmental psychology. He has practiced in a variety of settings, including a children's hospital, residential and public school settings, and in private practice. He is a nationally certified school psychologist and serves as a consultant to public and private schools. He works with teachers and speech-language pathologists to develop and implement intervention programs to support students in the classroom. He is a practicing neuropsychologist and provides direct

³⁷⁰ Petitioners Exhibit 3 at 13 (July 18, 2011, email from SEC of DCPS School 2 to Petitioners and their attorney).

services in school psychology and neuropsychology to students, performs evaluations, and conducts training in psychology and neuropsychology. He conducts research on attention in the school setting, from a neuropsychological and functional perspective and the impacts of attention deficits in attention. He provided detailed, in-depth testimony about the nature of the Student's disability, the interaction between his attention deficits, impairment in working memory, and processing speed, how these impairments impact him in the classroom and socially, and his educational programming needs. Respondent presented no testimony to rebut the testimony of this witness.

114. Petitioner's Administration Expert was a credible witness. She has a master's degree in special education and has been the educational director of the Non-Public School for thirty-three years. She provided detailed testimony about the Non-Public School, the programs, specialized instruction, and related services it has provided to the Student and the multisensory approach used to address his learning challenges. Respondent presented no testimony to rebut the testimony of this witness.

115. Respondent's Psychology Expert was generally a credible witness. She has a Ph.D in clinical psychology and has worked as a clinical psychologist for DCPS for eleven years. She also worked as the staff psychologist, clinical director, and later as a consultant, for a company that operates residential treatment facilities. She provided in-depth testimony about the Student's areas of disability based upon her review of the documents admitted into evidence. She also testified about the strategies that should be employed in the classroom to address his disabilities. She testified at length about the benefits of educating students with disabilities with their nondisabled peers and the strategies that could be employed to assist the Student in an inclusion setting. She testified forthrightly about the shortcomings of the July 7, 2011, IEP that Respondent proposed and the ways in which it was not appropriate for the Student. However, this Hearing Officer did not find credible her testimony about the Student's ability to participate in general education music, physical education, and art classes as well as lunch with his nondisabled peers. Petitioner's Psychology Expert, Educational Expert, and Speech-Language Expert provided in-depth testimony about the ways in which the Student's disability, especially his attention deficits, expressive and receptive language difficulties, and working memory and processing speed deficits would prevent him from receiving educational benefit in the general education setting.

116. SEC 1 did not provide credible testimony. She did not address the challenges the Student would face due to his ADHD, impaired working memory, slow processing speed, and speech-language disorder. Her conclusions about the appropriateness of the proposed IEPs were based on her favorable opinion of the SAM model of inclusion rather than on the Student's individualized needs. She had insufficient knowledge of the nature of the Student's disabilities to testify credibly about the appropriateness of the proposed January 4, 2011, IEP or the programming, accommodations, and other supports that DCPS School 1 could offer him.

117. SEC 2 did not provide credible testimony. He had not reviewed the Student's neuropsychological evaluation and could not remember the details of the other evaluations. He was unable to explain how the July 7, 2011, IEP that Respondent proposed would address the full panoply of the Student's disabilities.

118. The Audiology Expert provided credible testimony about the field of audiology, evaluation procedures, the nature of the Student's audiological functioning, and the inappropriateness of the IEPs that Respondent proposed for the Student. She has worked with students with ADHD for seven years. She provided credible testimony that the IEPs Respondent proposed were not appropriate in that they did not address the Student's extensive disabilities and needs for extensive accommodations. Although she agreed with the Speech-Language Expert that the level of noise in a general education classroom would make it extremely difficult for the Student to process information, this Hearing Officer did not find credible her testimony that his audiological and speech-language impairments could be addressed by the use of an FM system in the classroom. She admitted that the Student would require a small, quiet setting, but failed to recognize his need for instruction provided to him individually or in a very small group, with instructions repeated several times, and information "chunked" so that he could process and commit it to memory.

119. Similarly, the Speech-Language Pathologist did not provide credible testimony. Although she had training and knowledge of speech-language pathology in general, and had observed his attentional difficulties in the classroom, she lacked a sufficient understanding of the full extent of the Student's disabilities. She admitted that she did not review several of the Student's evaluations. She also did not recall much of the discussion at the January 4, 2011, IEP meeting. She admitted that she focused only on the speech-language goals for this IEP and did not participate in the discussion regarding the proposed hours of specialized instruction. She did not appear to recognize the severity of his receptive-expressive language disorder, and how this disorder combined with his ADHD, impaired working memory, and processing speed deficits would affect his ability to receive educational benefit in an inclusion setting.

120. Respondent's Administration Expert was not credible. Her testimony was colored by her experience with her grandson, who has autism. Because of her experience with this child, and his success in the inclusion setting, she expressed her opinion that the Student should be in an inclusion setting. Her opinion was not based on his evaluations, but rather on her personal experience with another student. Finally, she was not credible when she testified that the Student may have autism, not ADHD, an opinion that was not supported by his extensive evaluative history or the testimony of the other witnesses at the due process hearing.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."³⁷¹ Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.³⁷² 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 State Education Agency . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP).³⁷³

In deciding whether Respondent provided a student a FAPE, the inquiry is limited to (a) whether Respondent complied with the procedures set forth in IDEA; and (b) whether the student's IEP is reasonably calculated to enable the student to receive educational benefit.³⁷⁴

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.³⁷⁵ In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.³⁷⁶

The burden of proof is properly placed upon the party seeking relief.³⁷⁷ Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.³⁷⁸

³⁷¹ *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

³⁷² *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).

³⁷³ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

³⁷⁴ *Rowley*, 458 U.S. at 206-207.

³⁷⁵ 34 C.F.R. § 300.513 (a)(2).

³⁷⁶ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

³⁷⁷ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

³⁷⁸ 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).

VI. DISCUSSION

A. Petitioners proved that Respondent failed to develop an appropriate IEP for the Student and provide an appropriate placement for the 2011-2012 school year.

Petitioner proved by a preponderance of the evidence that, on January 4, 2011, and July 7, 2011, Respondent failed to develop an appropriate IEP for the Student for the 2011-2012 school year. As discussed below, the IEP is not specially designed to meet the unique needs of the Student or reasonably calculated to provide the Student meaningful educational benefit. Petitioner also proved that Respondent failed to propose an appropriate placement for the 2011-2012 school year.

School districts must ensure that all children with disabilities residing in the State who are in need of special education and related services are identified.³⁷⁹ Once such children are identified, a team, including the child's parents and select teachers, as well as a representative of the local educational agency with knowledge about the school's resources and curriculum, develops an IEP, for the child.³⁸⁰ The IEP must, at a minimum, provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.³⁸¹

The adequacy of the student's IEP is determined by whether the student has access to specialized instruction and related services that are individually designed to provide educational benefit.³⁸² IDEA does not require that the services provided maximize each child's potential.³⁸³

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.³⁸⁴ 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.³⁸⁵ An

³⁷⁹ *Branham v. District of Columbia*, 427 F.3d 7, 8 (D.C. Cir. 2005) (citing *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005)).

³⁸⁰ *Branham*, 427 F.3d at 8.

³⁸¹ *Id.* (citing *Rowley*, 458 U.S. at 203).

³⁸² *Rowley*, 458 U.S. at 201 (1982).

³⁸³ *Id.* at 198.

³⁸⁴ 34 C.F.R. § 300.324 (a).

³⁸⁵ 34 C.F.R. § 300.320 (a) (1); D.C. Mun. Reg. tit. 5-E § 3009.1 (a); *A.I. ex rel. Iapalucci v. District of Columbia*, 402 F. Supp. 2d 152, 159 (2005) (finding that an IEP must include measurable goals and benchmarks to measure the child's progress toward the annual goals).

IEP also must include a statement of measurable annual goals.³⁸⁶

The term "educational placement" refers to the type of educational program prescribed by the IEP.³⁸⁷ "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.³⁸⁸

The considerations relevant to determining whether a particular placement is appropriate for a particular student include 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.³⁸⁹

Educational placement is based on the IEP, which is revised annually.³⁹⁰ The general rule is that placement should be based on the IEP.³⁹¹ The decision to place a student before developing an IEP on which to base that placement violates the IDEA regulations.³⁹² It also violates the spirit and intent of IDEA, which emphasizes parental involvement.³⁹³ After the fact involvement is not enough.³⁹⁴

In determining whether a "change in educational placement" has occurred, the Local Education Agency ("LEA") must determine whether the proposed change would substantially or materially alter the child's educational program.³⁹⁵ In determining whether the change in location would substantially or materially alter the child's educational program, the LEA must examine the following factors: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.³⁹⁶ In other words, if the proposed change substantially or materially affects the composition of the educational program and services provided the

³⁸⁶ 34 C.F.R. § 300.320 (a) (2) (i).

³⁸⁷ *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).

³⁸⁸ *Id.*

³⁸⁹ *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). See also D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).

³⁹⁰ *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).

³⁹¹ *Id.* at 259 (citing 34 C.F.R. § 300.552).

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

³⁹⁶ *Id.*

student, it is a change in placement.³⁹⁷

In contrast, a simple change in location is limited to the physical characteristics associated with a particular site. A transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location only.³⁹⁸ Simple changes in the location of a building or facility are not generally viewed to be a change in placement where there are no significant changes in the educational program.³⁹⁹

Here, Respondent developed two IEPs for the Student, the first on January 4, 2011, and the second on July 7 2011. Both were woefully insufficient to meet his unique needs.

In the January 4, 2011, IEP, DCPS proposed providing the Student 2.5 hours of specialized instruction outside the general education setting and 7.5 hours of specialized instruction in the general education setting. Thus, The Student would spend 27.5 hours of his school week in the general education setting with his nondisabled peers.

On July 7, 2011, Respondent revised this IEP slightly, increasing his hours of specialized instruction to ten hours outside the general education setting. Thus, pursuant to this IEP, the Student would spend twenty hours of his school week in the general education setting with his nondisabled peers.

The parties stipulated that the July 7, 2011, IEP was the IEP that Respondent proposed for the 2011-2012 school year. This IEP included goals in the areas of mathematics, reading, written expression, speech and language, and social emotional functioning.

Respondent's proposals ignored the nature of the Student's extensive and significant disabilities, notably his extreme ADHD and executive functioning deficits, audiological processing deficits, severe expressive and receptive language disorder, and impairments in working memory and processing speed. In essence, Respondent failed to appropriately consider the findings of all of the Student's evaluations.

The Student's neuropsychological evaluation, which Respondent reviewed prior to the January 4, 2011, meeting, found that the Student exhibits a pattern of weaknesses associated with encoding information, retrieving words efficiently, organizing and

³⁹⁷ *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18, 1980); *Letter to Fisher*, 21 IDELR 992.

³⁹⁸ See, e.g., *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 753-54 (2d Cir. 1980), cert. denied, 449 U.S. 1078 (1980).

³⁹⁹ *Letter to Flores*, 211 IDELR 233. See also *A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.)

planning, processing visual to verbal information, focusing attention, and sustaining auditory attention. It further found that the Student exhibits executive function problems associated with inhibiting impulsive responses, sustaining working memory, planning and organizing problem-solving approaches, and organizing his materials.

In other words, the Student's attention deficit disorder is so extreme that it is extremely difficult for him to process information. The evaluation further reported that the Student's working memory is in the borderline range, making it extremely difficult for him to temporarily retain information in memory, perform some operation with it, and produce a result. In other words, his working memory is so significantly impaired that by the time his teacher finished a long paragraph, he would have forgotten the first part of the paragraph.

The neuropsychological evaluation found that the Student's moderate weaknesses in the ability to process routine information efficiently would make learning new and complex information time-consuming, difficult, and frustrating. It found that, due to his low processing speed, the Student would be unable to keep up with the pace of instruction in the general education environment. In other words, the Student must be in a learning environment that will address these difficulties and give him time to process information.

The Student's speech-language evaluation, which Respondent reviewed prior to the January 4, 2011, meeting, found that the Student presents a highly complex speech and language profile, including limitations that negatively impact his ability to access the curriculum in reading, writing, speaking, and listening. This evaluation found that the Student's attention difficulties impact his ability to consistently follow directions. It further found that his diminished auditory processing capacity, which includes a memory component, impacts his academic functioning. In other words, the Student has difficulties sustaining attention. Thus, a teacher cannot simply get his attention once during classroom instruction and expect him to proceed.

The Student's auditory processing assessment, which Respondent reviewed before the meeting, found that he has an auditory perception disorder, i.e., difficulty attaching an abstract meaning to a sound. As a result of this disorder and his ADHD, the Student cannot perform academically in a noisy environment with a lot of visual stimulation.

Yet, Respondent did not develop IEP goals in occupational therapy, even though the Student has severe needs in this area. The Student's deficits include his below average range in visual-motor coordination, which impacts his ability to efficiently perform age-appropriate eye-hand coordination and fine motor skills, and his ocular-motor issues, which make reading, writing, and copying difficult for him.

Respondent also did not include on the IEP any accommodations or supports that would direct the Student's teachers to address the Student's speech-language and auditory process deficits by modifying oral instructions and directions, supplementing

auditory information with visual cues to aid him in processing acoustic signals, and repeating and rephrasing oral instructions and directions.

Instead, Respondent ignored the findings of the Student's evaluations. Respondent's own experts acknowledged this, as the Audiological Expert and the Psychological Expert agreed with Petitioners' experts that the July 7, 2011, IEP was not appropriate for the Student.

Thus, Respondent failed to ensure that the Student has access to specialized instruction and related services that are individually designed to provide educational benefit. This Hearing Officer finds that Respondent denied the Student a FAPE by failing to develop an appropriate IEP on July 7, 2011.

Respondent also failed to consider the Student's need for full-time, specialized instruction, outside the general education setting even though these needs were evident from a review of his evaluations. The Student's neuropsychological evaluation found that his complex set of problems continues to prevent him from accessing the curriculum without systematic educational interventions, support, and accommodations. The evaluation found that the Student requires a classroom with a low student-teacher ratio and evidence-based, specialized instruction throughout the school day. He requires strategies and support to improve his organizational skills and study skills. He also requires direct services to promote organization, preparation, and completion of assignments.

Moreover, to access the curriculum, the Student requires a lot of staff attention. He very often does not comprehend group instruction, even in a class of six. He needs the instruction delivered to him individually, one-to-one intervention, and significant cueing.

By specifying in the July 7, 2011, IEP that the Student would be educated in the general education environment for twenty hours per week, Respondent failed to consider the nature and severity of the Student's disability; his specialized educational needs, and the link between those needs and the services it offered. Thus, this Hearing Officer finds that Respondent denied the Student a FAPE by failing to provide him an appropriate placement in the July 7, 2011, IEP.

B. Petitioners are entitled to reimbursement for their unilateral placement of the Student in the Non-Public School.

If the parents of a child with a disability enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the hearing officer finds that the agency had not made FAPE available

to the child in a timely manner prior to that enrollment and that the private placement is appropriate.⁴⁰⁰

A parental placement may be found to be appropriate by a hearing officer even if it does not meet the State standards that apply to education provided by the SEA and LEAs.⁴⁰¹

Here, Respondent failed to ensure that the Student has access to specialized instruction and related services that are individually designed to provide educational benefit. On July 7, 2011, Respondent proposed an IEP and placement that were not specially designed to meet the unique needs of the Student or reasonably calculated to provide the Student meaningful educational benefit.

As a result, Petitioners opted to place the Student at the Non-Public School and seek reimbursement from Respondent. Petitioner's provided notice at the January 4, 2011, and July 7, 2011, meetings of their disagreements with the IEPs and intent to reject the proposed IEPs and placement. On July 12, 2011, Petitioners sent a letter to the SEC who chaired both IEP meets explaining the basis of their disagreements with the IEPs and placements. Thus, Petitioners provided the notice required under the Act.

The Non-Public School has provided the Student a FAPE. He has made academic progress, albeit it at a slow pace. The Non-Public School developed an IEP that addresses the Student's unique needs. And, the Non-Public School has provided the services and supports that the Student requires to make academic progress.

Thus, Petitioners are entitled to reimbursement for their unilateral placement of the Student.

C. The Non-Public School is the appropriate setting for the Student and his least restrictive environment.

The Non-Public School is a day school that serves students, like the Student, with language-based, learning disabilities. It provides full-time, specialized instruction and related services to the Student as well multisensory instruction. It utilizes multisensory, project-based learning, which makes the material more meaningful to the Student and helps him retain information.

⁴⁰⁰ 34 C.F.R. § 300.148 (c); see also *Forest Grove Sch. Dist. v. T.A.*, 129 S. Ct. 2484 (IDEA authorizes reimbursement for private special-education services when a public school fails to provide a FAPE and the private-school placement is appropriate); *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 369 (1985) (parents may be reimbursed for private-school tuition when school district fails to provide a child a FAPE and the private-school placement is appropriate).

⁴⁰¹ 34 C.F.R. § 300.148 (c); *Florence County School Dist. Four v. Carter*, 510 U.S. 7 (1993).

The Non-Public School also provides the Student intensive related services in speech-language and occupational therapy. The Non-Public School's unique delivery system that provides pullout services as well as related services in the classrooms, which ensures that the Student carries over skills from his pullout sessions to the classroom.

The Student's class has twelve students, one nationally board certified special education teacher, and two teaching assistants who possess bachelor's degrees or post-graduate degrees. The instruction in his math class is individualized to his performance level and abilities. The Student uses a lot of manipulatives to help him retain information. The Student's science and history/social studies classes also employ a hands-on, multisensory approach to instruction.

The educational curriculum at the Non-Public School is derived from the District of Columbia, Maryland, and Virginia standards of learning. The District of Columbia Office of State Superintendent of Education ("OSSE") has provided the Non-Public School a certificate of authority to provide services to District of Columbia students. OSSE also has approved the tuition rates of the Non-Public School.

Petitioner established that, due to his multiple disabilities, the Student requires intensive levels of service that the Non-Public School provides. Thus, at the Non-Public School, the Student is receiving the services he requires to address his complex set of disabilities.

Petitioner established that, due to the extent and severity of his disabilities, the Student cannot make progress, or function socially, in inclusion setting. Petitioner further established that, as a result of his pervasive speech-language disability, the Student would not benefit from inclusion with nondisabled peers. Thus, Petitioner established that the Student's least restrictive environment is a full-time, out-of-general-education, separate day school for Students with disabilities.

Thus, this Hearing Officer will place the Student at the Non-Public School at public expense for the remainder of the 2011-2012 school year.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this 8th day of November hereby:

ORDERED that Respondent shall reimburse Petitioners for the cost of the Student's enrollment at the Non-Public School, including all related services and transportation, during the 2011-2012 school year to the date of this Order; it is further

ORDERED that Respondent shall fund the Student's enrollment at the at the Non-Public School, including all related services and transportation, from this date forward until the end the 2011-2012 school year.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

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