

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

Student,¹

Hearing Officer: Michael Lazan

Petitioner,

v.

Date Issued: March 6, 2012

District of Columbia Public Schools,

Respondent.

2012 MAR -7
DSSE
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

INTRODUCTION

This matter comes before the undersigned Hearing Officer on Petitioner's Notice of Due Process Complaint ("Complaint") dated December 22, 2011. This IHO was appointed to hear this matter shortly thereafter, on December 23, 2011.

A resolution meeting was held on January 11, 2012. The parties, however, were not able to reach an agreement. Respondent filed a Response to the Complaint on January 13, 2012.

Petitioner filed an initial Motion to Compel Compliance with Stay-Put Provisions by written application on January 27, 2012. This application was withdrawn on February 6, 2012.

A Prehearing Conference was scheduled for February 3, 2012. A Prehearing Conference Summary and Order was issued on February 8, 2012.

¹ Personal identification information is provided in Appendix A.

A hearing was held on February 15, 2012.

At the start of the hearing, Petitioner indicated that she wished to file another Motion to Compel Compliance with Stay-Put Provisions. Witnesses were called at this hearing. Petitioner's witnesses were the Student; the parent; Director, School A; Carolyn Gravely-Moss, Director of Counseling, School A; Juan Fernandez, Educational Advocate. Respondent's witness was Nicole Rachel, Progress Monitor, DCPS. Exhibits were admitted: Petitioner's 1-21, Respondent's 1-11.

After allowing the parties an opportunity to present their positions, this Hearing Officer issued a decision on Stay-Put issues on February 23, 2012 in favor of Petitioner, ordering bus transportation to School A.

The Student turned on February 26, and counsel for Petitioner filed a document entitled "Notice of Intent to Proceed as Petitioner."

A final hearing date was held on March 1, 2012. Respondent's witnesses were Nicole Rachel and Dale Young, Program. The parties presenting oral closing arguments on this date. At the hearing, Respondent objected to the Student litigating the case as Petitioner and indicated that it would be appropriate to dismiss the case with prejudice. Counsel for Petitioner objected, and this Hearing Officer indicated that a decision would be rendered in this connection in this HOD.

JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act ("IDEIA"), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code,

Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

BACKGROUND

The Student is now years of age and eligible for services as a student with an intellectual disability. She currently attends School A, a non-public school in Washington, D.C. The Complaint alleges that Respondent deprived the Student FAPE by offering the December 6, 2011 IEP which does not provide the Student with speech and language therapy or speech and language goals. The Complaint also alleges that the District deprived the Student FAPE by changing the Student's setting to School B through the December 6, 2011 IEP. In particular, Petitioner claims that the proposed school location as designated in the Prior Written Notice: a) is not able to provide the Student with a full-time special education program; b) primarily contains students with emotional disturbances who manifest the condition through acting out behavior, which grouping of students is inappropriate for the Student; c) offers much of the instruction through computers, not teachers.

A prehearing conference in this matter was memorialized in a Prehearing Conference Summary and Order. (IHO Exh. 1).

ISSUES

The issues to be determined are as follows:

1. Whether Respondent denied the Student a FAPE by offering the December 6, 2011 IEP, which does not provides the Student with speech and language therapy and speech and language therapy goals.
2. Whether Respondent denied the Student a FAPE by offering the setting of School B in connection to the December 6, 2011 IEP. Petitioner claims that School B does not provide

full-time special education services for the Student. Petitioner also claims that School B is primarily populated by students with emotional disturbances who manifest this condition through “acting out” behavior. Petitioner also claims that much of the instruction at School B is provided through computers.

As relief, Petitioner seeks, inter alia, to continue the Student’s placement at School A “or some other non-public or public school”; that Respondent conduct or fund cognitive and achievement testing; convene a meeting to review the IEP and placement, determine compensatory education, and determine placement; that Respondent develop speech and language therapy goals and include speech and language therapy in the IEP.

FINDINGS OF FACT

1. The Student is years old, eligible for services as a student with an intellectual disability and currently attends School A. (IHO Exh. 1)
2. The Student was retained in grade at School C for the years, 2008-2009, 2009-2010, 2010-2011. (P-7-3; IHO Exh. 1; Testimony of Parent)
3. The Student could not keep up with the work or with her peers at School C. (Testimony of Parent; Testimony of Student)
4. An Adaptive Behavior Assessment by Dr. Natasha Nelson dated February 21, 2011 tested the Student on the Vineland Adaptive Behavior Scales-II. The Adaptive Behavior Composite was determined to be moderately low, with low communication functioning, adequate daily living functioning, adequate socialization, moderately high motor skills. (P-9-1-3)
5. Dr. Natasha Nelson evaluated the Student as reflected in a report dated February 23, 2011. (P-7)

6. A Vineland Adaptive Behavioral Scale administered on February 21, 2011 by Natasha Nelson, Psy. D. indicates that the Student met the criteria for moderate mental retardation. (P-7-4)

7. Dr. Nelson's testing on the BASC-2 reflecting observations by a special education teacher indicated that the Student was at-risk for externalizing problems, at risk for aggression, at-risk for conduct problems, at risk for internalizing problems, clinically significant for school problems, at risk for behavioral symptoms, at risk for adaptive skills. (P-7-6-8)

8. Dr. Nelson's testing on the ADHDT reflecting observations by a special education teacher indicated that the Student fell in the low range in terms of hyperactivity and impulsivity and in the below average range in terms of inattention. (P-7-11)

9. Dr. Nelson's evaluation recommended a program that provides a small student-to-teacher ratio, assignments broken down into small manageable bits, visual and auditory learning techniques, school-based psychotherapy, an FBA. (P-7-16)

10. An HOD dated February 23, 2011 found that the District failed to offer the Student a FAPE and ordered placement of the Student at School A. (IHO Exh. 1; P-13; R-11)

11. A speech and language evaluation by Tamara Corbin, M.A. CCC-SLP dated February 24, 2011 indicated adequate attention span, fluency, articulation. On language tasks such as in regard to vocabulary, core language, recalling statements, formulating sentences, the Student scored below average. Expressive language scores on the CELF-IV were below average. Receptive language scores on the CELF-IV were below average. Speech therapy was recommended for sixty minutes a week. (P-8)

12. A speech and language assessment review and observation by Judith A. Edghill, M.S., CCC-SLP/A dated May 3, 2011, reviewed the report by Tamara Corbin and concluded that

the Student did not meet eligibility criteria to be a student with a speech and language impairment but may need speech and language therapy as a related service so that she can successfully access high school educational curriculum. (P-17-5; R-3-5)

13. The Student had difficulty transitioning from School C to School A. For the first month or so, she was very shy and reserved, stayed to herself. Thereafter, she had problems adjusting to the new rules in the new school, such as ruled involving cell phone usage. There were issues with her staying in class, following instructions, arguing with the teachers. She was hostile and angry, did very little work at that time. Dr. Gravely-Moss had to meet with frequently, and her mother had to come into school. Dr. Gravely-Moss then slowly “weaned her down” to where she could see her once a month. (Testimony of Gravely-Moss)

14. The IEP reflecting the meeting dated May 16, 2011 indicates that the Student’s Broad Math score was at the 3.5 grade level equivalent according to the WJ-III administered at School C. (P-5-2)

15. The IEP reflecting the meeting dated May 16, 2011 indicates that the Student’s Broad Reading score was at the 3.5 grade level equivalent according to the WJ-III administered at School C. (P-5-3)

16. The IEP reflecting the meeting dated May 16, 2011 indicates that the Student’s Broad Writing score was at the 4.2 grade level equivalent according to the WJ-III administered at School C. (P-5-4)

17. The IEP reflecting the meeting dated May 16, 2011 recommended 27 hours per week of specialized instruction outside general education with 30 minutes of behavioral support services per week. (P-5-7)

18. In regard to reading, the IEP reflecting the meeting dated May 16, 2011 indicates that the Student requires a small student to teacher ratio, oral instructions repeated, extended time to complete assignments, guided instruction to reinforce comprehension, modeling of presented information, the use of checklists, rubrics, and graphic organizers for visual representation of organization, as well as information broken down into small parts for clarity and understanding. (P-5-3)

19. In regard to writing, the IEP reflecting the meeting dated May 16, 2011 indicates that the Student requires methods to organize her thoughts and ideas to develop fluidity and completeness of the writing process, expanding her working vocabulary, work on expanding sentences, work on proofreading for errors. The Student requires explicit instructions on the principles of the writing process. (P-5-4)

20. The IEP reflecting the meeting dated May 16, 2011 indicates that the Student has exhibited negative progress in academic effort and little progress with positive actions in her emotional behavioral interactions with staff and peers at School A. She cannot avoid the negativity around her in the halls, cafeteria and classroom. She does not have the initial ability to formulate alternatives to these negative actions. Counseling is required for the Student. (P-5-5)

21. Respondent designated School A as the setting to implement the May 16, 2011 IEP. (IHO Exh. 1; Testimony of Parent)

22. Grades at School A for the 3rd and 4th Quarters were C, C+ and D, with one B grade in English. (Exh. 15)

23. At School A, there are 33-34 students in the entire school, and 31 high school students. There are 4-5 students in each class. The school has a Certificate of Approval from the Office of the State Superintendent of Education. (Testimony of

24. Students in the school are eligible for services as Other Health Impaired, Intellectual Disability, Specific Learning Disability. One student is eligible for services as a student with an emotional disturbance. (Testimony of

25. The Student is making slow but steady progress at the school. Progress is noted in reading fluency and in writing. The Student has difficulty with reading. (Testimony of
Testimony of

26. The Student moves from classroom to classroom at the school. (Testimony of

27. Some of the teachers at the school are not certified to teach special education in the District of Columbia and/or in specific content areas. (Testimony of
Testimony of

28. There are 31 high school students, with 4-5 students in class. (Testimony of

29. Most of the Students at the school are male. (Testimony of

30. For 2011-2012, the Student has received instruction in English, Social Studies, Math, French, Music, Dance/Theater, Reading Resource. (Testimony of

31. The Student receives Reading Resource through the Lexia program, a computer-based program. (Testimony of

32. The Student has demonstrated an attitude problem with individuals at the school on occasion. She can withdraw or shut down. (Testimony of Logan-Staton; Testimony of Gravely-Moss)

33. The Student is fearful of going into a classroom with children who have significant behavior problems. (Testimony of Gravely-Moss)

34. The Student keeps to herself and is independent in terms of thoughts and actions. (Testimony of Gravely-Moss)

35. The Student is relaxed and comfortable in school at this time. On the whole, the Student enjoys the education at School A and comes home happy. (Testimony of Parent; Testimony of Student; Testimony of Gravely-Moss)

36. The Student observed other students with behavior problems during an observation at School B. (Testimony of Student)

37. During such observation, students in the hallways were making noise. Students came to school late and would get up and leave the classroom in the middle of class. (Testimony of Parent, Testimony of Student)

38. An IEP meeting was conducted on December 6, 2011. (P-2)

39. In regard to reading, the IEP reflecting the meeting on December 6, 2011 indicated the same needs as the IEP reflecting the May 16, 2011 meeting. (P-2-3)

40. In regard to writing, the IEP reflecting the meeting dated December 6, 2011 indicated the same needs as the IEP reflecting the May 16, 2011 meeting. (P-2-4)

41. In regard to emotional, social and behavioral development, the IEP reflecting the meeting dated December 6, 2011 indicated the same needs as the IEP reflecting the May 16, 2011 meeting. (P-2-5-6)

42. The IEP reflecting the meeting dated December 6, 2011 recommends 27 hours of specialized instruction outside the general education setting, with behavioral support services for 30 minutes per week. This is characterized as full-time special education instruction. (P-2-7-8)

43. The IEP reflecting the meeting dated December 6, 2011 recommends classroom accommodations of interpretation of oral directions, markers to maintain place, reading of test questions in math, science, composition, repetition of directions, simplification of oral directions, use of calculators, writing in test books, preferential seating, small group setting, location with minimal distractions, individual testing, breaks during a subtest, breaks between subtests, extended time on subtests. (P-2-9)

44. At the December 6, 2011 IEP meeting, Dr. Carolyn Gravely-Moss stated that the Student is progressing toward her goals in counseling, that her self-esteem has improved, that there are not behavior issues. The counselor sees the student for twice a week for thirty minutes. The Student is becoming less shy and is interacting among her peers. (P-11-4)

45. On December 6, 2011, Prior Written Notice was sent to the Student and the parent for the Student to attend School B. (R-6-1)

46. The Student's Report Card for the First Quarter for 2011-2012 reflected that the Student received an A- in Music and Dance/Theater, B in English and Writing, C in French II, Math, Social Studies. (P-14-1)

47. The School B classroom offers academics, technology and positive behavior support models. (R-9-1)

48. The School B program conducts comprehensive academic, behavioral and vocational assessments to determine specific strategies for the students. (R-9-1)

49. At School B, students participate in social skills development groups, transition planning and clinical services. (R-9-1)

50. Positive behavioral interventions and supports are provided to students at School B. (R-9-1)

51. At School B, there are two classrooms within a public high school. Each classroom has a special education teacher, up to 12 students in the class, an instructional assistant, and a behavioral intervention counselor. (Testimony of Young)

52. The instruction at School B is a combination of direct instruction from teacher and computer curriculum through "A+ software"; instruction is aligned with DCPS standards. (Testimony of Young)

53. During the time that the Student and Parent were at the school visiting, a student was escorted out of the classroom because of a behavioral incident. (Testimony of Young)

54. Students in the proposed School B classroom have mixed disabilities, including students eligible for services with the classification of Other Health Impaired, students eligible for services with the classification of Emotional Disturbance, students eligible for services with the classification of Intellectual Disability. (Testimony of Young)

55. At School B, there are 5 to 6 students attending the classroom on a regular basis. Two other students are enrolled who do not attend regularly. (Testimony of Young)

56. At School B, students work in the classroom on computers, independently, with one instructor, or in small group. There is also some large group instruction to introduce lessons. (Testimony of Young)

57. At School B, in the proposed classroom, students range from Grades 9-12, ages 14-18. The Student would be one of the oldest students in the class. (Testimony of Young)

58. At School B, students range in terms of grade level work from 3rd to 4th grade level up to 12th grade level. (Testimony of Young)

59. At School B, Students do not receive Carnegie Credits for work in the classroom except for work on the computer program. (Testimony of Young)

60. At School B, the Student would receive music, art, and physical education within the School B environment by a School B special education teacher with assistance from a general education teacher from the public high school. (Testimony of Young)

61. The Student would eat lunch with the general education students from the public high school and would be able to participate in the same extracurricular activities as the Students at the public high school. (Testimony of Young)

62. Roughly 25 to 40 percent of the school day at School B is spent on computer curriculum. (Testimony of Young)

63. Some of the students in the class at School B have behavioral issues. Students engage in work refusal, use inappropriate language, and have anger control issues. Three students can be characterized as having behavioral issues. (Testimony of Young)

64. This is School B's first year of functioning. (Testimony of Young)

65. This Hearing Officer found the District witnesses at the proceeding to be credible. This Hearing Officer also found that the Petitioner's witnesses were credible. While the parent did get up and leave the hearing during certain personal testimony about the Student, these actions did not impact on the credibility of the parent's testimony.

CONCLUSIONS OF LAW

Based upon the the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in a special education due process hearing lies with the party seeking relief. DCMR 5-3030.3; see, Schaffer v. Weast, 546 U.S. 49 (2005).

1. Impact of Petitioner Having Turned 18 on February 26.

On February 28, 2012, Petitioner's Counsel filed a document entitled "Notice of Intent to Proceed as Petitioner" on behalf of the Student. At the hearing on March 1, 2012, Respondent objected. Later during the hearing, the Student indicated affirmatively that she wanted to continue to litigate the action after having turned 18 on February 26, 2012. Respondent then indicated that they were seeking a dismissal without prejudice because the Student was not the Petitioner in the Complaint.

In a recent federal court case, this issue was raised by DCPS. In Brooks v. District of Columbia, 2012 WL 254147 (D.D.C. 2012), the Respondent moved to dismiss because Petitioner was a parent and the student turned 18 during the pendency of the litigation. Federal Judge Beryl Howell substituted the student as the Petitioner, deeming the student the real party of interest and pointing to sundry court cases, the Federal Rules of Civil Procedure Sect. 17(a)(3), and DCMR Sect. 5-3023.1.

Here, Petitioner's counsel argues that to dismiss this matter without prejudice would simply result in additional litigation and would sidestep the federal mandate to resolve IDEA cases expeditiously. This Hearing Officer agrees. Accordingly, this Hearing Officer will substitute the name of the Student for the name of the parent in connection with this decision.

2. Delivery of FAPE.

Under the IDEA, states and territories, including the District of Columbia, that receive federal educational assistance must establish "policies and procedures to ensure," among other things, that "free appropriate public education," or "FAPE," is available to disabled children. 20 U.S.C. Sect. 1412(a)(1)(A) Pursuant to the Supreme Court's decision in Board of Education of the

Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 (1982), the District's IEP must "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Id. at 203; Branham v. District of Columbia, 427 F.3d 7, 9 (D.C. Cir. 2005) A free appropriate and public education "consists of educational instruction specifically designed to meet the unique needs of the handicapped child." Id. at 188-89.

The IDEA requires the IEP to specify the location of the school on the IEP. However, courts have held that this requirement is "primarily administrative." 20 U.S.C. Sect. 1414(d)(1)(A)(vi); White v. Ascension Parish School Board, 343 F.3d. 373 (5th Cir. 2003). District may transfer students from location to location if there is no "diminution" of the educational services to which the student is entitled. A.W. v. Fairfax County School Board, 372 F.3d 674 (4th Cir. 2004). Although the LEA has the discretion with respect to the location of services, that discretion cannot be exercised in such a manner to deprive a Student of a FAPE. Holmes v. District of Columbia, 680 F. Supp. 40 (D. D.C. 1988).

In Block v. District of Columbia,² 748 F Supp. 891 (D.D.C. 1990) the Court acknowledged that while a public school might be appropriate for a learning disabled student, there was substantial evidence to support a finding that a "mid-year change of placement" would pose a serious educational risk to the student. The Court noted, inter alia, that the learning disabled Student was also emotionally fragile, had transferred from school to school previously, had made progress in the parentally placed school, and that it would be inappropriate for the student to move schools given the student's emotional state. See also Delaware County Intermediate Unit #25 v. Martin, 831 F. Supp.1206 (E.D. Pa. 1993)(noting the importance of allowing a student to

² In Petitioner's closing argument, Petitioner references two District of Columbia cases that set criteria for transfers of students from school to school during a school year. The District did not object to these assertions being made during the proceeding.

finish out a brief school period); Holmes, 680 F. Supp. 40 (D.D.C. 1988)(noting that the proposed District school was in a start-up posture and indicating that “to send the plaintiff to a new school to complete the last semester of schooling would be “insensitive”); Burger v. Murray County School Dist., 612 F. Supp. 434 (N.D. Ga. 1984)(“obvious advantages inhere to any child who is permitted to learn in a stable environment. This advantage may have even more meaning to the handicapped child”).

Here, the Student previously attended School C, where she failed classes and had to repeat 9th grade twice. The Student spent three years in the ninth grade at School C: 2008-2009, 2009-2010, and then 2010-2011 until the HOD placed her at School A. Shortly after the issuance of such HOD, a detailed psychological evaluation found the Student to have emotional issues, indicating that she was at-risk for aggression, at-risk for conduct problems, at risk for internalizing problems, clinically significant for school problems, at risk for behavioral symptoms, at risk for diminished adaptive skills. The Student also fell in the low range in terms of hyperactivity and impulsivity and in the below average range in terms of inattention.

At School A, the Student had a difficult transition. For the first month, the Student was quiet and withdrawn. Then the Student manifested problems adjusting to the new rules in the new school. There were issues with her staying in class, following instructions, arguing with the teachers. She was “hostile,” did very little work. Dr. Gravely-Moss had to meet with her frequently to manage her behavior, and her mother had to come into school at the school’s request.

Still, Respondent recommended that the Student attend School A for the start of the 2011-2012 school year during an IEP meeting dated May 16, 2011.

Since then, the Student’s emotional issues have stabilized. The Student is now “relaxed and comfortable” in school. While a counselor sees the student for twice a week for thirty

minutes, Dr. Gravely-Moss does not see the Student frequently because the Student's "emotional state" has improved. The Student is becoming less shy and is interacting among her peers.

Academically, the Student made slow but steady progress in school, as acknowledged by and through the testimony of the DCPS Progress Monitor. The Student made specific and identifiable progress in writing and reading. The Student's report card indicated that the Student received 2 grades of A-, 2 grades of B, and 3 grades of C in the first advisory at School A for 2011-2012. This represents an increase in performance when compared to the Student's grades at School A for 2010-2011, where the Student received all C and D grades with one B grade. Further, the record indicates that School A fulfills the IEP mandates, including the mandate to provide instruction in a location with minimal distractions.

As in Block, I find that the Student has significant emotional issues that would be triggered by a mid-year transfer to another school. Also as in Block, the Student transferred from school to school in the recent past. Also as in Block, I find that the Student has made identifiable progress in the parentally-placed school both in terms of academic and social/emotional issues. Further, I find that the Student experienced significant difficulty in her previous transfer between schools. I find that it would pose a "serious educational risk" to removing the Student from her current placement, mid-year. Respondent's decision to do so on December 6, 2011 denied the Student a FAPE³.

Parenthetically, I decline to find FAPE denial in connection to Petitioner's allegations that the IEP of December 6, 2011 requires a "full-time special education setting" and that the

³ Like the proposed DCPS school in Holmes, School B is in a start-up posture. Additionally, Respondent's witnesses regarding School B did not address Petitioner's contentions in the Complaint that the classroom contained children with behavioral problems that disrupt the classroom. Nor did the Respondent's witnesses rebut the testimony of the parent to the effect that students walk in and out of class at School B during the school day. On questioning from this Hearing Officer, Mr. Young indicated that about half of the regularly attending students in the proposed classroom at School B have behavioral problems, including anger management issues. Finally, the record shows that Respondent did not create any transition plan so that the Student could manage the move from School A to School B any better than she managed the transition from School C to School A.

proposed setting at School B is not a full-time special education setting. In this regard, Petitioner alleges that electives are provided in a general education setting. The record shows that this allegation is incorrect and that electives such as art and music are provided at School B in a special education setting. On this record, I agree with Respondent that School B and School A are equally restrictive. Moreover, I do not find FAPE denial premised on School B's use of computers. The record shows that School A also uses computers, and that the bulk of the instruction at School B is in fact provided through small group and individual instruction. Finally, I do not agree with Petitioner's claims that the absence of speech and language therapy and goals from the December 6, 2011 IEP is material to the delivery of a FAPE to this student. Petitioner has the burden, but did not call any witness to substantiate claims that this Student requires speech and language therapy. Moreover, Petitioner fails to harmonize her objections to the lack of speech therapy with the fact that School A does not provide speech and language therapy for the Student.

3. Parental Placement.

The Student is eligible for services as a Student with an intellectual disability. The Student also has emotional issues and is at-risk for aggression, at-risk for conduct problems, at risk for internalizing problems, clinically significant for school problems, at risk for behavioral symptoms, at risk for adaptive skills.

The evidence shows that the Student requires a small educational setting with full time special education services provided in a high teacher to student ratio. The Student requires significant modifications in terms of curriculum, a setting with minimal distractions. The Student also requires weekly behavioral support services and "at-risk" behavioral services if there are incidents during the school day.

School A has a Certificate of Approval from OSSE⁴. Although not all of its teachers are certified in special education, the evidence shows that the curriculum is modified to meet the Student's individual needs. Classes at the school are small, with 4-5 students in each class. The entire school has only 33-34 students in it. The evidence also shows that School A employs a Psychologist who oversees counseling services to the Student and provides services to the Student when she is at-risk. A counselor provides direct behavioral support services to the Student twice weekly. The undisputed record indicates that the Student has obtained social/emotional benefit at School A since her placement at School A in February, 2011. Academically, I find the Student has made slow but steady progress in school, as also indicated by the testimony of the DCPS monitor. I find that the student has made particular progress in writing and reading. The Student's report card in the first advisory at School A for 2011-2012 represents an improvement over the previous report cards. While some of the teachers are not certified at School A, I find that the program and services offered at School A are appropriate to meet the Student's needs. Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993); Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005); Jenkins v. Squillacote, 935 F.2d 303, 305 (D.C. Cir. 1991).

In regard to equities, the record reveals that Petitioner cooperated with Respondent in all respects. There is no testimony or evidence to the effect that Petitioner should be denied funding on equities grounds. As a result, I find that the equities support an award of prospective funding for placement at School A for the remainder of the 2011-2012 school year only. At the end of

⁴ Respondent suggests that Title 5-E of the DCMR, Sect. 2823.2, applies to bar the parental placement in this matter. However, this provision of the DCMR does not limit the authority of a hearing officer to order the equitable remedy of a parentally-placement for a student. Florence County School District Four et al. v. Carter by Carter, 510 U.S. 7 (1993);

the school year, Respondent shall reconvene an IEP meeting to assess the appropriateness of the Student's placement and to designate a setting⁵.

⁵ Petitioner does not reference any of her other claims for relief in her closing statement. I have considered Petitioner's such other requests for relief and conclude that such requests for relief are rendered superfluous by the award of funding for School A and/or are unsupported by the record. In particular, there is no basis for ordering for cognitive or achievement testing in this record. Moreover, there is no basis for any compensatory education here because Petitioner does not seek relief for past denials of FAPE. It should be noted that Petitioner was awarded stay-put relief at School A by decision dated February 23, 2011.

ORDER

Based upon the above Conclusions of Law, it is hereby ordered:

1. Respondent shall fund tuition at School A until the end of the 2011-2012 school year;
2. Respondent shall convene an IEP meeting within 15 days of the end of the 2011-2012 school year to review the Student's educational placement and determine an educational placement and setting for the 2012-2013 year.

Dated: March 6, 2012

Michael Lazan
Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

Date: March 6, 2012

Michael Lazan
Impartial Hearing Officer