DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

Parent, on behalf of STUDENT,[1]	)	
Petitioner,	)	
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	Hearing Officer: Frances Raskin

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STUDENT HEARING OFFICE
2012 APR -2 AM 8:33

HEARING OFFICER DETERMINATION[2]

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 §§ 3001, *et seq.*

II. BACKGROUND

Petitioner is the parent of a -year-old student ("Student") with a disability who attends a non-public school ("Non-Public School"). On January 20, 2012, Petitioner filed a due

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

[2] This Hearing Officer Determination ("HOD") contains a single revision from the original HOD issued on March 28, 2011. In response to notification from counsel for Respondent, this Hearing Officer revised this HOD to correct a scrivener's error in the first full paragraph of the Order. This paragraph contained an error in ordering Respondent to determine the Student's educational placement for the "2012-2012 school year." This Hearing Officer has since revised this section to require Respondent to determine the Student's educational placement for the "2012-2013 school year." There have been no other changes to this HOD. Thus, the date of issuance remains March 28, 2012.

process compliant ("Complaint") against Respondent District of Columbia Public Schools ("DCPS") alleging violations of the Individuals with Disabilities Education Act ("IDEA").

On January 23, 2012, this Hearing Officer was assigned to preside over this case. On February 8, 2012, Respondent DCPS filed a response to the Complaint.[3] Respondent filed its Response nine days after the deadline established by IDEA.[4]

On February 2, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties agreed to conclude the resolution session and proceed to a due process hearing. Thus, the resolution period ended on February 2, 2012. The parties agreed that the forty-five day, due process hearing timeline began on February 3, 2012.

On February 17, 2012, this Hearing Officer issued a Prehearing Conference Summary and Order.

The due process hearing commenced at 9:30 a.m. on March 1, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits and those proposed by Respondent.[5]

At the due process hearing, Petitioner testified and presented eight witnesses on her behalf, the Student; her sister, the Student's aunt ("Aunt"); her educational advocate ("Advocate"); the director of admissions ("Admissions Director") of the non-public school ("Non-Public School") the student currently attends; the reading teacher ("Reading Teacher") at the Non-Public School; the English teacher ("English Teacher") at the Non-Public School; a licensed clinical psychologist ("Psychologist"); and a clinical psychologist ("Evaluator") who conducted an independent comprehensive psychological assessment of the Student.

Respondent called one witness, a student progress monitor ("Progress Monitor"). After the parties presented oral closing arguments, the due process hearing concluded at 5:00 p.m. on March 23, 2012.

III. ISSUE PRESENTED.

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[3] Respondent did not challenge the sufficiency of the Complaint.

[4] If DCPS has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, DCPS must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. 300.508(e).

[5] This Hearing Officer admitted Petitioner's exhibits 1-29, inclusive, and Respondent's exhibit 1. Neither party objected to the admission of the other party's exhibits.

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

Whether Respondent denied the Student a free, appropriate, public education ("FAPE") by failing to review the independent comprehensive psychological assessment that Petitioner provided DCPS on June 30, 2011, and to revise the Student's individualized educational program ("IEP") and placement, i.e., to provide him additional hours of specialized instruction, to reflect the findings of this assessment..

Petitioner requests relief in the form of an order reimbursing her for the costs of the Student's enrollment at Non-Public School and ordering Respondent to place him at the Non-Public School for the remainder of the 2011-2012 school year.

IV. FINDINGS OF FACT

1. The Student is a -year-old, young man who is eligible for specialized instruction and related services as a student with an multiple disabilities.[6] The Student is currently in the grade at a Non-Public School in the District of Columbia.[7]

2. The Student's general intellectual ability ("GIA") is 85, which is in the sixteenth percentile of his same-age peers and in the average range.[8] However, because of the variability of his abilities, including a fifteen-point difference between his working memory and verbal ability, the GIA is not the best predictor of the Student's abilities.[9] His most significant deficit areas are verbal comprehension, thinking ability, and cognitive efficiency.[10]

3. The Student's verbal ability is in the fifteenth percentile and in the low average range.[11] Verbal ability includes his language comprehension, ability to name pictures of familiar objects (expressive vocabulary), and his ability to use and understand words, including identifying synonyms and antonyms of words and completing verbal analogies (abstract verbal reasoning).[12] Thus, he will have difficulty with tasks that require these skills.[13]

4. His thinking ability, i.e., intentional cognitive processing, is the twenty-second percentile and in low average range.[14] His ability to visually construct a geometric design to math a reference figure (spatial relations) is in the seventy-fourth percentile and in the high average range. His categorical reasoning skills and flexibility in thinking (concept formation), i.e., his ability to determine rules and apply them to sets of pictures, is in the sixty-eighth

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[6] Petitioner Exhibit 22 at 1 (October 7, 2010, individualized educational program ("IEP").
[7] Testimony of Admissions Director, Petitioner.
[8] Petitioner Exhibit 24 at 8, 21.
[9] *Id.* at 8; testimony of Psychologist.
[10] Testimony of Psychologist.
[11] Petitioner Exhibit 24 at 8, 21.
[12] *Id.* at 8; testimony of psychologist.
[13] Testimony of Psychologist.
[14] Petitioner Exhibit 24 at 8, 21.

percentile and in the average range.[15] His ability to orally blend syllables into words (sound blending) is in the fifteenth percentile and in the low average range.[16] This indicates that he has difficulties with hearing words and gleaning their meaning.[17]

5. Also in the area of thinking ability, the Student's long-term storage and retrieval skills (visual auditory learning) are a significant area of weakness.[18] These skills are below the first percentile and in the extremely low range.[19] Overall, the Student's low-average thinking ability indicates that he has deficits in reading and will have difficulties in this area.[20]

6. The Student's cognitive efficiency, i.e., automatic cognitive processing, is in the twentieth percentile, which is in the low average range.[21] The Student's processing speed, i.e., visual matching ability, is below the first percentile and in the extremely low range.[22] His short-term auditory memory is in the fifty-eighth percentile and in the average range.[23]

7. As a result of his low processing speed, the Student will not be able to keep up in the classroom while processing information.[24] He may have difficulty taking notes due to his hand-eye coordination problems.[25]

8. The Student's phonemic awareness, i.e., knowledge and skills related to analyzing and synthesizing speech sounds, is in the thirty-first percentile and in the average range.[26] His working memory also is in the average range.[27]

9. The Student's phonological awareness skills, i.e., his overall awareness of and access to the phonological structure of oral language, are in the sixteenth percentile and the low average range.[28] His processing skills are unevenly developed.[29] While his ability to recognize and synthesize sounds is an area of strength, he has a slight weakness in rapid naming of items less frequently utilized in language.[30] This indicates that the Student has difficulties with reading fluency.[31]

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[15] *Id.*
[16] *Id.*
[17] Testimony of Psychologist.
[18] Petitioner Exhibit 24 at 8.
[19] *Id.* at 8, 21.
[20] Testimony of Psychologist.
[21] Petitioner Exhibit 24 at 8, 21.
[22] *Id.*
[23] *Id.*
[24] Testimony of Psychologist.
[25] *Id.*
[26] Petitioner Exhibit 24 at 8, 21.
[27] *Id.* at 9, 21.
[28] *Id.* at 9, 22.
[29] *Id.* at 9.
[30] *Id.*
[31] Testimony of Psychologist.

10. The Student exhibits difficulties with executive functioning, including difficulties in switching tasks.[32] His ability to switch between tasks is in the sixteenth percentile and in the low average range.[33] Thus, he may become stuck during classroom instruction due to an inability to move from the teacher's first direction, and the first task he is to complete, to next task the teacher is directing him to work on.[34]

11. The Student's overall verbal memory is in the sixteenth percentile and in the below average range.[35] This suggests he has difficulties with short-term auditory memory and acquisition.[36] As time passes, he also loses information he has acquired.[37]

12. His visual memory is an area of weakness; it falls within the fourth percentile and the borderline range.[38] He also has delayed visual-motor-integration skills.[39] His visual-motor integration deficits make writing a challenge for him in school.[40]

13. The Student's academic achievement in reading, math, and written language ranges from the low to average range.[41] His difficulties in these areas are likely due to his language processing, inattention, memory, and executive functioning deficits.[42]

14. His overall reading skills range from the late third-grade level to the late tenth-grade level.[43] Overall, they are within the average range.[44] He has difficulty with reading comprehension and understanding written text.[45]

15. The Student's math skills range from the late third-grade to the late twelfth-grade level.[46] His overall math skills are within the below average range.[47] His math fluency in addition and multiplication is in the average range.[48] His math fluency in subtraction is in the below average range.[49] His ability to perform a series of paper and pencil math calculations also is within the below average range.[50] He demonstrates difficulty on more complex multiplication,

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[32] *Id.*
[33] Petitioner Exhibit 24 at 10, 23.
[34] Testimony of Psychologist.
[35] Petitioner Exhibit 24 at 10, 23.
[36] Testimony of Psychologist.
[37] *Id.*
[38] Petitioner Exhibit 24 at 11.
[39] *Id.*
[40] *Id.* at 16.
[41] *Id.* at 12.
[42] *Id.* at 17.
[43] *Id.*
[44] *Id.*
[45] Testimony of Psychologist.
[46] *Id.* at 13.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*

division, fractions, and geometry.[51] On problems that are accompanied by pictures and/or written information, such as story problems involvement measurement, weight, or money, his performance falls in the below average range.[52] In other words, he can perform simple math but has difficulties on higher-order math.[53]

16. In written expression, the Student's overall performance is in the below average range.[54] His skills range from the late fifth to the late sixth-grade level.[55] His performance is average in spelling, low-average in sentence composition, and low-average in essay composition.[56]

17. The Student is experiencing moderate to severe difficulties with maintaining attention at school and at home.[57] His attention, memory, planning, and organization are weak, which likely makes it difficult for him to learn in school, especially in less structured settings.[58] He demonstrates difficulties in organizing and planning academic work, solving problems flexibly, generating independent ideas, and staying on task.[59]

18. The Student needs the structure of a smaller classroom environment where he will have more direct interaction with teachers and receive more assistance to address his learning difficulties.[60] He has not received much benefit from being educated in larger classroom setting, evidenced by his lack of academic progress.[61] Additionally, because he does not speak up and request assistance, he may get lost in a large academic environment.[62]

19. The Student would benefit from a small classroom environment with individualized attention because he has social emotional concerns about his performance, which affects his self-esteem.[63] He may withdraw when presented with academic challenges.[64]

20. The Student's most recent individualized educational program ("IEP") was developed on October 7, 2010.[65] Petitioner and the Aunt participated in the IEP team meeting at

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[51] *Id.*
[52] *Id.*
[53] Testimony of Psychologist.
[54] *Id.*
[55] Petitioner Exhibit 24 at 13.
[56] Testimony of Psychologist.
[57] Petitioner Exhibit 24 at 16.
[58] *Id.*
[59] *Id.*
[60] Testimony of Evaluator.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] Petitioner Exhibit 22 at 1 (October 7, 2010, IEP).

which this IEP was developed.[66] Petitioner signed the IEP and indicated that she agreed with its contents.[67]

21. The Student's October 7, 2010, IEP includes annual goals in the academic areas of mathematics, reading, and written expression.[68] It also includes annual goals for speech and language and emotional, social, and behavioral development.[69]

22. The Student's October 7, 2010, IEP provides that he was to receive ten hours per week of specialized instruction in the general education setting.[70] It provides that, per week, the Student was to receive four hours of specialized instruction in mathematics and four hours of specialized instruction in reading outside the general education setting.[71]

23. The October 7, 2010, IEP also provides that the Student was to receive thirty minutes per week each of behavioral support services and speech-language pathology outside the general education setting.[72] In justifying the provision of behavioral support services to the Student, the IEP states that his low self-esteem makes it difficult for him to ask for assistance in the school setting.[73]

24. Around October 2010, Petitioner and the Aunt began inquiring about the school the Student would attend when he graduated from middle school and entered the ninth grade.[74] At that time, the IEP team members indicated that, because of the Student's deficits, they did not think that DCPS School 2, for which DCPS School 1 was a feeder school, was a very large school and would not be a good fit for the Student.[75] The IEP team members stated that the Student would need a smaller setting.[76]

25. Throughout the 2010-2011 school year, Petitioner and the Aunt continued to ask the staff at DCPS School 1 questions about what high school would appropriate for the Student. Their questions went unanswered.[77] By March 30, 2011, the school staff still had not given Petitioner or the Aunt any direction about what high school would be a good fit for the Student in his ninth-grade year.[78]

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[66] *Id.*; testimony of Petitioner, Aunt.
[67] Petitioner Exhibit 22 at 1; testimony of Petitioner.
[68] Petitioner Exhibit 22 at 2-6.
[69] *Id.* at 6-7.
[70] *Id.* at 9.
[71] *Id.*
[72] *Id.*
[73] *Id.* at 10.
[74] Testimony of Petitioner, Aunt.
[75] Testimony of Petitioner, Aunt.
[76] Testimony of Petitioner, Aunt.
[77] Testimony of Petitioner, Aunt.
[78] Testimony of Petitioner, Aunt.

26. On March 30, 2011, Respondent convened a meeting of the Student's IEP team.[79] At the meeting, the Aunt informed the IEP team that she and Petitioner worked with the Student on his schoolwork at home, and that their observations did not match what his teachers had reported about what he was producing at school.[80] His teachers had reported at previous meetings that the was able to write full essays and paragraphs independently.[81] The teachers had suggested reducing the Student's support in his English class.[82] The Aunt, who is a medical doctor, informed the IEP team that the Student continued to need support because, when she tutored him at home, he could not formulate complete sentences, full paragraphs, or punctuate sentences.[83] She reported that she and Petitioner had to hold his hands while he wrote, and had to force him to repeat the work several times until it was satisfactory.[84] She reported that, sometimes, the Student just was not able to produce satisfactory work.[85]

27. At the March 30, 2011, meeting, the Student's math teacher reported that the Student could not work independently on some of the math subjects.[86] She reported that he needed step-by-step assistance.[87] With reinforcement, he is able to complete the first step but needs further reinforcement and reassurance before he will attempt the second step.[88] The teacher reported that, by this time in the school year, she would have expected him to work more independently.[89]

28. At the March 30, 2011, meeting, the special education teacher who provides the Student assistance in his inclusion classes reported that he needed constant handholding in these classes.[90] The special education teacher reported that the Student was very uncomfortable receiving help from her in his general education classes, was reluctant to request assistance, and preferred his pullout classes because all of the students in those classes had some level of difficulty.[91] She reported that the Student had difficulties with higher order thinking.[92]

29. At DCPS School 1, the Student often did not receive the help he needed to make academic progress in his eighth-grade year.[93] Because there were fifteen to sixteen students in each of his regular education classes, he felt like he had to complete his work without

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[79] Testimony of Petitioner, Aunt; Petitioner Exhibit 18 (Attorney's Notes from March 30, 2011, IEP meeting).
[80] Testimony of Aunt.
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] Testimony of Student.

assistance.[94] He often did not ask for help because there were a lot of kids in his classes and he felt the teacher could not spend her time just helping him.[95]

30. At DCPS School 1, the Student received assistance from a special education teacher in his pullout math and English classes.[96] In these classes, he received more assistance than in his general education and inclusion classes.[97] Nonetheless, he cannot write fluently.[98] He does not know where to put periods and commas when writing, and he has no knowledge of other punctuation rules.[99] He writes long blocks of text that are not broken into sentences due to his inability to apply simple punctuation.[100]

31. Despite these reports from the Aunt and the Student's teachers, Respondent decided to reduce the hours of specialized instruction on the Student's IEP.[101] Petitioner and the Aunt objected, informing the IEP team that they believed the Student required more specialized instruction than he had been receiving to make academic progress.[102]

32. The March 30, 2011, IEP meeting continued to the next day so that the school psychologist could participate.[103] The school psychologist had been unavailable on March 30.[104] The IEP team developed a draft IEP for the Student that provided that he would receive provides that he was to receive six hours per week of specialized instruction in the general education setting, a reduction from the October 7, 2010, IEP.[105] It provided that, per week, the Student was to receive four hours of specialized instruction in mathematics and four hours of specialized instruction in reading outside the general education setting.[106]

33. At the April 1, 2011, meeting, the IEP team suggested to Petitioner and the Aunt that they explore DCPS School 2 and whether it would be appropriate for the Student for the 2011-2012 school year.[107] The IEP team suggested that Petitioner and the Aunt meet with the special education coordinator ("SEC") of DCPS School 2.[108]

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[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] Testimony of Aunt, Writing Teacher.
[101] *Id.*
[102] *Id.*
[103] Testimony of Petitioner, Aunt.
[104] *Id.*
[105] Petitioner Exhibit 16 at 8 (April 1, 2011, draft IEP).
[106] *Id.*
[107] Testimony of Petitioner, Aunt.
[108] *Id.*

34. On April 21, 2011, counsel for Petitioner sent a letter to the SEC of DCPS School 1 outlining Petitioner's objections to the April 1, 2011, IEP.[109] The letter provided detailed objections to the April 21, 2011, IEP.[110]

35. Within the following month, the Aunt and Petitioner met with the SEC of DCPS School 2.[111] The SEC informed the Aunt and Petitioner that DCPS School could not provide the Student the services he required.[112] The SEC informed them that all the classes at DCPS School 2 were inclusion classes and, because the classes would be quite large, the Student would not receive the individualized attention he required.[113] She informed the Aunt and Petitioner that the Student would not receive an one-to-one assistance and that he would not receive the individualized attention he had received at DCPS School 1.[114]

36. Petitioner and the Aunt then requested the staff at DCPS School 1 whether they should consider sending the Student to his neighborhood high school, DCPS School 3.[115] They asked for information about whether DCPS School 3 would be appropriate for the Student.[116] The staff at DCPS School 1 did not respond to their inquiries.[117]

37. On May 12, 2011, Respondent authorized Petitioner to obtain an independent psychological assessment of the Student at DCPS expense.[118] On June 30, 2011, Petitioner sent to Respondent a copy of the June 8, 2011, independent psychological assessment.[119] In a letter accompanying the assessment report, Petitioner requested a meeting to review the assessment.[120]

38. Between July 15, 2011, and August 30, 2011, Petitioner, the Aunt, Petitioner's Educational Advocate, and Petitioner's counsel made numerous attempts to get Respondent to hold a meeting to review the June 8, 2011, independent psychological assessment.[121]

39. Petitioner made at least phone calls to the Progress Monitor and left numerous voice mail messages for the Progress Monitor, who at that time was a compliance case manager.[122] Petitioner also sent numerous emails to the Progress Monitor, as did her counsel and

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[109] Petitioner Exhibit 15 (April 21, 2011, letter from Zachary Nahass to SEC).
[110] *Id.* at 1-2.
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] Petitioner Exhibit 14 at 1-2 (May 12, 2011, Resolution Meeting Notes and IEE Acceptance Form).
[119] Petitioner Exhibit 13 at 1 (June 30, 2011, Letter from Laura Wendorf to DCPS Office of Special Education Resolution Team).
[120] *Id.* at 1.
[121] Testimony of Petitioner, Aunt, and Educational Advocate; P-12 (email communications).
[122] Testimony of Petitioner, Aunt.

the Educational Advocate.[123] Petitioner and the Aunt then visited DCPS headquarters in an attempt to talk to the Progress Monitor.[124] They spoke to the Progress Monitor's supervisor, who told them that the Progress Monitor had a death in her family but would return soon and would schedule the meeting.[125] The Progress Monitor never contacted Petitioner or the Aunt.[126]

40. By August 29, 2011, Respondent had not scheduled a meeting to review the June 8, 2011, independent assessment. On or about this date, they enrolled the Student in the Non-Public School at their own expense.[127] Even after they enrolled the Student at the Non-Public School, Petitioner and the Aunt continued to ask Respondent to hold a meeting to review the independent assessment and discuss where the Student would attend school for the 2011-2012 school year.[128] They received no response from Respondent.[129]

41. On September 1, 2011, the Progress Monitor sent a letter of invitation to counsel for Petitioner proposing three dates for a meeting to review the June 8, 2011, independent psychological assessment and to "discuss the status" of the Student's educational needs.[130] Counsel for Petitioner did not inform Petitioner or the Aunt of this meeting invitation until September 29, 2011.[131] By that time, the three dates that Respondent had proposed for the meeting had passed.[132]

42. Had they been informed of the letter of invitation, Petitioner and the Aunt would have attending the meeting on one of the dates Respondent proposed.[133] They did not authorize their attorney to ignore the letter of invitation.[134] Yet, because the Progress Monitor had communicated with Petitioner directly, Petitioner believed she would contact her directly and personally send her an invitation to the meeting.[135]

43. About two weeks after placing the Student in the Non-Public School, Petitioner informed her attorney that the Student was now attending the Non-Public School.[136] On September 29, 2011, counsel for Petitioner informed Respondent that Petitioner had unilaterally placed the Student in the Non-Public School.[137]

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[123] Testimony of Petitioner, Educational Advocate; P-12.
[124] Testimony of Petitioner, Aunt.
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] Petitioner Exhibit 12 at 15 (September 1, 2011, email from Progress Monitor to Alana Hecht).
[131] Testimony of Aunt, Petitioner.
[132] Petitioner Exhibit 12 at 15.
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] Testimony of Petitioner.
[137] P-11 at 1-2 (Letter from Alana Hecht to Dr. Nathaniel Beers, dated August 24, 2011, but faxed on September 29, 2011).

44. The Non-Public School is a special education, day school for students with disabilities.[138] The Non-Public School only accepts students with learning disabilities and average to above average intelligence.[139] The school also has admitted a few students with attention deficit disorder.[140]

45. Of the seventy-four students enrolled in the Non-Public School, twenty-seven students are from the District of Columbia.[141] The Non-Public School has a certificate of approval from the District of Columbia Office of State Superintendant of Education ("OSSE").[142] The annual tuition at the Non-Public School is

46. Because it is an OSSE approved school, the Non-Public School provides the District of Columbia curriculum to its District of Columbia students.[144] These students are eligible to earn an OSSE-certified diploma when they finish the high school curriculum.[145]

47. The District of Columbia students at the Non-Public School may earn District of Columbia Carnegie units for each of their academic classes.[146] Every teacher who teaches academic courses at the Non-Public School is licensed to teach special education.[147]

48. The students at the Non-Public School have no interaction with their non-disabled peers.[148]The academic school year at the Non-Public School is ten months long, beginning in late August of each year and ending in June the following year.[149] The school also offers a summer program that begins in early July and ends in early August.[150] The summer program provides remedial instruction in reading, writing, and arithmetic for half a day, five days a week.[151]

49. The focus of the Non-Public School is literary remediation for children who need small classes that have a small student-teacher ratio of eight students to each teacher.[152] The school provides reading tutorial classes that have fewer students in each classroom and have a lower student-teacher ratio.[153]

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[138] Testimony of Admissions Director.
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*

50. All of the sixty high-school students at the Non-Public School receive full-time, specialized instruction in that allows them to access the general education, high school curriculum.[154] Thus, all of the students at the Non-Public School have IEPs that provide that they are to receive 27.5 hours per week of specialized instruction and related services.[155] Each of these students is on track to earn a diploma when he or she completes the requirements for graduation.[156]

51. The Student began attending the Non-Public School in late August 2011.[157] Before he enrolled, Petitioner received financial aid that pays part of the Student's tuition at the Non-Public School.[158] Petitioner's portion of the Student's tuition is per year, which she pays in monthly installments.[159] As of March 1, 2012, Petitioner had paid toward the Student's tuition for the 2011-2012 school year.[160]

52. At the Non-Public School, the Student receives one on one support in all of his classes.[161] His teachers check his work on his assignments, and if he is unable to perform a task, the teacher provides assistance.[162] Because there are fewer kids in each class at the Non-Public School than there were at DCPS School 1, his teachers are able to provide the assistance he requires to perform the work expected of him.[163] He also is receiving the one-to-one attention he needs to make academic progress.[164]

53. The Student's reading class at the Non-Public School has four students, including him.[165] The Reading Teacher is licensed to teach special education in reading, math and social studies.[166] He also has endorsements in these three content areas.[167] In other words, the Reading Teacher is dual certified in special education and these three general education content areas.

54. The Reading Teacher provides the Student one-to-one instruction for fifteen to twenty percent of each class period.[168] The Student uses the Lexia reading program to acquire basic reading skills.[169] The Lexia program has five levels, and students start at level one and progress to level five.[170] The lowest level, level one, address basic phonetics skills.[171] At level

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[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] Testimony of Admissions Director, Petitioner.
[158] Testimony of Admissions Director.
[159] *Id.*
[160] *Id.*
[161] Testimony of Student.
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] Testimony of Reading Teacher.
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*

five, a student will insert one word from a set of five words into a fairly short paragraph.[172] This exercise requires reading comprehension skills.[173]

55. When the Student arrived at the Non-Public School, he was performing at the beginning of level two in the Lexia program.[174] He has made progress during his time in the reading class, and has just moved to the third level of the program.[175]

56. The Student was a credible witness. He testified forthrightly about his areas of difficulty, although he did not appear aware of the extent of his deficits. He explained in detail his progress since he began attending the Non-Public School and the differences between the his performance there and at DCPS School 1.

57. Petitioner was a credible witness. She provided in-depth testimony about her efforts to obtain a meeting to review the independent psychological assessment, including details about her conversations with the Progress Monitor and her supervisor. She had an excellent recall of the dates of each meeting and the discussions during that meeting. She provided compelling testimony that she never intended to obtain a private education for her child but only wanted him to be in an environment where he could make academic progress.

58. The Aunt was a credible witness. She provided in-depth testimony about her involvement with the Student's education in the past year, including her efforts to assist Petitioner in her efforts to convince Respondent to hold a meeting to review the June 8, 2011, independent psychological assessment. She provided a frank assessment of the Student's academic deficits. She also testified credibly about Petitioner's dissatisfaction with the Student's April 1, 2011, draft IEP.

59. The Advocate was a credible witness. She provided a chronology of the events since she began assisting Petitioner in August 2011, and her understanding of Petitioner's efforts to obtain a meeting to review the June 8, 2011. independent psychological assessment. She did not attempt to explain away or otherwise rationalize any missteps by her law firm in informing Petitioner of the letter of invitation for a meeting in September 2011. She also testified credibly about her efforts to get the Progress Monitor and other DCPS personnel to participate in the Student's thirty-day review meeting at the Non-Public School. Her testimony was corroborated by the emails in the record between her, counsel for Petitioner, and Respondent regarding their attempts to schedule a meeting to review the independent assessment.

60. The Psychologist was a credible witness. She has extensive knowledge of psychological assessments, having conducted about four hundred of these assessments. She testified forthrightly about the Student's deficit areas, as well as the areas in which he performs in the average range. She provided a credible interpretation of the results of the June 8, 2011,

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[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.*

independent psychological assessment of the Student. Her testimony provided valuable insight into how the results of this assessment shed light on the Student's academic difficulties.

61. The Evaluator provided credible testimony. She provided a straightforward interpretation of the June 8, 2011, independent psychological assessment and the validity of the findings therein.

62. The Admissions Director provided credible testimony. She provided credible testimony about the Non-Public School's process of accepting the Student for admission, the services the Non-Public School provides, and the cost of tuition. She testified credibly about the cost of tuition at the Non-Public School, the financial aid Petitioner received, and the amount of money Petitioner has paid toward the Student's tuition. She provided credible and unchallenged testimony that the Non-Public School has received a certificate of approval from the District of Columbia Office of State Superintendant of Education and that its students graduate with District of Columbia diplomas. She testified credibly that students at the Non-Public School do not interact with their non-disabled peers and that all of the teachers at the Non-Public School are licensed to teach special education. Respondent did not challenge this testimony.

63. The English Teacher and Reading Teacher testified credibly about the Student's academic deficits and the progress he has made at the Non-Public School. Their testimony about the Student's deficits is corroborated by the June 8, 2011, independent psychological assessment, the testimony of the Student, Petitioner, and the Aunt. Respondent presented no testimony to rebut the testimony of these witnesses.

64. The Progress Monitor did not testify credibly. She gave inconsistent answers to questions about the IEP that would have been in place if the Student had attended DCPS School 2. She also did not testify credibly about her attempts to contact Petitioner by phone for a meeting to review the June 8, 2011, independent psychological assessment. In addition to stating that she did not actually recall contacting Petitioner, her testimony that she did contact Petitioner by phone and left voice mail messages was contradicted by her own emails, as well as the testimony of Petitioner and the Aunt. The Progress Monitor's testimony was based more on her understanding of DCPS policies than on her actual efforts in this case and thus was not based on her personal knowledge. However, she testified credibly that she was unaware of the events leading up to Petitioner's unilateral placement of the Student at the Non-Public School, including their conversations with the SEC of DCPS School 2.

V. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[176] FAPE is defined as:

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

[176] 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

> preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..."[177]

In deciding whether DCPS provided Petitioner a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether Petitioner's IEP is reasonably calculated to enable Petitioner to receive educational benefit.[178]

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.[179] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[180]

The burden of proof is properly placed upon the party seeking relief.[181] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[182]

A. Petitioner Proved that Respondent Denied the Student a FAPE by Failing to Timely Review the Student's June 8, 2011, Independent Comprehensive Psychological Assessment, and by Failing to Revise His IEP to Reflect the Findings of this Assessment Prior to the Start of the 2011-2012 School Year.

FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[183] The IEP is the centerpiece of special education delivery system.[184]

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[185] establishes annual goals related to those needs,[186] and provides appropriate specialized instruction and related services.[187] The program must be

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[177] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[178] *Rowley,* 458 U.S. at 206-207.
[179] 34 C.F.R. § 300.513 (a)(2).
[180] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[181] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[182] 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).
[183] *Rowley*, 458 U.S. at 188-89 (citation omitted).
[184] *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).
[185] 34 C.F.R. § 300.320 (a) (1).
[186] 34 C.F.R. § 300.320 (a) (2).
[187] 34 C.F.R. § 300.320 (a) (4).

implemented in the least restrictive environment ("LRE").[188] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[189]

Respondent must ensure that the IEP team reviews a student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved.[190] Respondent must also review a students IEP to reflect the results of any reevaluation or other information about the child provided to, or by, the parents.[191] At the beginning of each school year, Respondent must have in effect, for each child with a disability within its jurisdiction, an IEP.[192]

Respondent must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate; the results of any re-evaluation; or information about the child provided to, or by, the parents.[193] Additionally, if the parent obtains an independent educational assessment at public expense, or shares with the public agency an evaluation obtained at private expense, Respondent must consider the results of the assessment, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.[194]

Here, Petitioner informed Respondent on April 21, 2011, that she disagreed with the IEP that Respondent had proposed on April 21, 2011. Petitioner informed Respondent that she did not agree with the reduction of specialized instruction from six hours to ten hours in the general education setting.

Then, Petitioner sent Respondent a copy of the Student's June 8, 2011, independent comprehensive psychological assessment on June 30, 2011. Yet, for two months, Respondent did not respond to Petitioner's request for a meeting to review this assessment and revise the Student's IEP.

In the meantime, Petitioner and the Aunt made every attempt to get Respondent to hold a meeting to review the independent assessment, revise the Student's IEP in accordance with the findings of the assessment, and discuss the school the Student would attend for the 2011-2012 school year. Petitioner and the Aunt emailed the Progress Monitor, made at least twenty phone calls, and even went to DCPS headquarters to try to convince the Progress Monitor to schedule the meeting. The Progress Monitor failed to return Petitioner's calls until after the start of the 2011-2012 school year.

Instead, Respondent failed to ensure that the IEP team revised the Student's IEP, as appropriate, to address any lack of expected progress toward the annual goals and in the general

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[188] 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).
[189] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[190] 34 C.F.R. § 300.324 (b)(1).
[191] *Id.*
[192] *Id.* at § 300.323 (a).
[193] 34 C.F.R. § 300.324 (b)(1).
[194] 34 C.F.R. § 300.502 (c)(1).

education curriculum. Petitioner established that the Student failed to make expected progress while at DCPS School 1. Additionally, Respondent failed to consider the results of the Student's assessment and revise his IEP accordingly.

Because Respondent had failed to review the Student's independent assessment, and revise his IEP to reflect the results of the his most recent assessment, by the beginning of the 2011-2012 school year, Respondent denied the Student a FAPE.

B. Petitioner is Entitled to Reimbursement for Her Unilateral Placement of the Student in the Non-Public School for the 2011-2012 School Year and Prospective Placement of the Student in this School for the Remainder of the School Year.

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.[195]

Here, by ignoring her pleas for a meeting to review the Student's independent assessment, the Progress Monitor left Petitioner no choice but to seek a school that could provide the Student a FAPE. Petitioner had already investigated the school Respondent had proposed in April 2011, and determined that it would not be able to provide the Student the services he required. Only after, Petitioner made every possible effort to obtain a meeting to review the independent psychological assessment, revise the Student's IEP in accordance with that assessment, and discuss the school the Student would attend, did she enroll the Student in the Non-Public School.

While Petitioner should have provided Respondent notice of her unilateral placement of the Student in the Non-Public School at least ten days prior to the unilateral placement, this is only an equitable consideration to be taken into account when deciding whether Petitioner is entitled to reimbursement for the unilateral placement. Moreover, after the most recent IEP meeting, Petitioner objected to the proposed April 1, 2011, draft IEP, and provided reasons for her objection. Considering that Respondent ignored Petitioner's attempts to obtain a FAPE for her child for two months prior to the start of the 2011-2012 school year, this Hearing Officer finds that the equities of this case lie in favor of full reimbursement of the costs of Petitioner's unilateral placement.

Additionally, Petitioner has proved that the Non-Public School is appropriate for the Student. While it is more restrictive than his most recent IEP and placement contemplate, the

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[195] 34 CFR § 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).

Non-Public School provides the services and the placement recommended by the independent psychological assessment. Additionally, Respondent failed to review this assessment and revise the Student's IEP accordingly. Thus, the Student's last IEP is not appropriate considering that it does not reflect the most recent evaluative data on the Student.

For these reasons, this Hearing Officer will order Respondent to fund the Student's costs of attending the Non-Public School for the remainder of the 2011-2012 school year, through August 5, 2012.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this 28th day of March 2012 hereby:

ORDERED that, on or before April 30, 2012, Respondent shall convene a meeting of the Student's IEP team to review the Student's June 8, 2011, comprehensive psychological assessment, review and revise his IEP to reflect the findings of this assessment and other current data on his academic performance at the Non-Public School, and determine his educational placement for the 2012-2013 school year;

IT IS FURTHER ORDERED that DCPS shall reimburse Petitioner for the Student's costs of attending the Non-Public School through the date of this Order; and

IT IS FURTHER ORDERED that Respondent shall place the Student at the Non-Public School at public expense through August 5, 2012.

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

NOTICE OF APPEAL RIGHTS

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