

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 [Chapter E30](#). The Due Process Hearing was convened on September 16, 2014, at the District of Columbia Office of the State Superintendent of Education (“OSSE”) Office of Dispute Resolution 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2006.

BACKGROUND AND PROCEDURAL HISTORY:

Petitioner (alternatively “the student”) is an adult student with a disability pursuant to IDEA with a classification of specific learning disability (“SLD”). The student is attending a private special education program (“School A”) where he began attending on trial basis in November 2013. Currently the student’s attendance at School A is not funded by DCPS. Prior to attending School A the student had been assigned to three different DCPS high schools but has a history of truancy and earned minimal credits toward a high school diploma.

In March 2011 the student was removed from his mother’s care by D.C. Child and Family Services Administration (“CFSA”), resided in a group home and attended the DCPS high school (“School B”) closest to his group home. The student started attending School B for ninth grade during school year (“SY”) 2011-2012. The student failed all classes except one during SY 2011-2012 and repeated ninth grade at School B for SY 2012-2013. In August 2012 the D.C. Department of Youth Rehabilitation Services (“DYRS”) detained the student at its Youth Services Center (“YSC”) because of his school truancy.

The student remained at YSC until November 2012 when he was returned to the group home and resumed attending School B. The student’s truancy at School B continued and he was eventually removed from School B and began attending another DCPS high School (“School C”) where he was assigned for SY 2012-2013 and for the start of SY 2013-2014.

During SY 2013-2014 the student was repeating ninth grade for the third time. Because of his continued pattern of truancy a multi-disciplinary team (“MDT”) meeting was convened at School C to address the student’s failure to attend school. The student attended the meeting along with his CFSA social worker and a representative of his group home. The student cited safety concerns as to why he was not attending school. An attendance support plan was put in place.

On September 27, 2013, the student’s social worker contacted a DCPS official seeking to have the student transferred to another school in light of his safety concerns and on October 1, 2014, the social work met with the DCPS official. The student’s educational attorney participated in that meeting by telephone. The social worker stated the student would attend another DCPS high School (“School D”) if DCPS transferred him to School D. However, the student later visited School D and refused to attend School D when he realized it was a school with a large student population as the previous DCPS schools he had attended.

On October 15, 2013, the student's social worker withdrew the student from School C and then pursued two other DCPS schools she thought the student might agree to attend. Those schools were not available because they were at capacity for the student's grade.

In November 2013 the student began attending School A on trial basis. The student's social worker sought to have DCPS place and fund the student at School A and was informed by DCPS personnel that he first needed to register at School B, his local DCPS school.

On February 4, 2014, Petitioner attempted to enroll at School B but could not complete the enrollment. On February 12, 2014, the student and his social worker returned to School B and submitted enrollment documentation for the student to be enrolled at School B.

On February 21, 2014, the student's educational attorney made a request in writing to School B for a meeting to review the student's IEP and noted her availability for dates in March 2014. The attorney was later informed that despite the enrollment documents having been submitted the student had not yet been officially enrolled at School B.

On March 27, 2014, the student's social worker and educational attorney met with the DCPS official regarding the student's school placement and was informed that they should provide DCPS the student's evaluations, educational records and that the DCPS Office of Specialized Instruction would provide a final response to their request for a placement.

During the month of April 2014 the student's educational attorney awaited a response from DCPS but got no information regarding the student's placement from DCPS until April 24, 2014, when she was informed the student needed to enroll at School B for his needs to be assessed.

On May 6, 2014, the student's social worker took him to School B to enroll. The student made clear that he would not attend School B. School B agreed to waive the requirement that student attend School B for 30 days prior to convening an IEP meeting and agreed to schedule a meeting the following week. An IEP meeting was eventually scheduled for May 21, 2014. However, the student failed to arrive timely and the meeting was rescheduled for June 17, 2014.

On June 17, 2014, the student finally was registered in School B and DCPS convened an IEP meeting for the student at which an IEP was developed to be implemented at School B that prescribes the following services: 10 hours per week of specialized instruction outside general education, 13 hours per week of specialized instruction inside general education and 240 minutes per month of counseling services.

Petitioner filed this due process complaint on July 25, 2014, asserting there was undo delay by DCPS in reviewing the student's IEP and reviewing his 2013 evaluation and in determining an appropriate educational placement following the February 12, 2014, request by the student's educational attorney. Petitioner also alleged the June 17, 2014, IEP is inappropriate and that School B is an inappropriate placement/location of services for the student. Petitioner asserts that DCPS should have provided the student a free appropriate public education ("FAPE") starting with the first attempt on February 4, 2014, to register the student at School B. Petitioner seeks as relief an order placing and funding Petitioner at School A

DCPS filed a timely response to the complaint on July 31, 2014. DCPS denied any alleged violation(s) and denied that it failed to provide Petitioner with a FAPE. DCPS asserted Petitioner frustrated the enrollment process by refusing to have his IEP services provided to him at any DCPS school and DCPS made significant and diligent efforts to convene a meeting prior to the expiration date of the student's IEP. Petitioner failed to show up at the scheduled initial meeting. DCPS then scheduled a meeting for May 21, 2014, in order to help the student enroll so DCPS could develop an IEP. The student once again failed to show up. It was not until June 17, 2014, that the student finally came to School B in order to enroll.

DCPS was prepared to review Petitioner's assessment at the May 21, 2014 meeting, when the student failed to arrive and that the reviewing psychologist was not available for the June 17, 2014, meeting. Nonetheless, DCPS used the other information it had on the student in order to develop updated present levels of performance, goals, and service hours and expressed its intention to review the Petitioner's neuropsychological assessment a few weeks after the beginning of the school year.

DCPS claimed that during the June 17, 2014, meeting, Petitioner made it clear that all he wanted was DCPS to pay for him to attend School A despite the lack of any determination by any IEP team this educational setting is appropriate. While Petitioner was refusing enrollment in a DCPS school he was attending School A and therefore suffered no academic harm. DCPS asserts the June 17, 2014, IEP is reasonably calculated to provide the student educational benefit.

A resolution meeting was held on August 13, 2014.³ The case was not resolved. The parties did not mutually agree to proceed to hearing. The 45-day period began on August 25, 2014, and ends [and the Hearing Officer's Determination ("HOD") is due] on, October 8, 2014.

The Hearing Officer convened a prehearing conference on August 19, 2014, and issued a pre-conference order outlining, inter alia, the issues to be adjudicated.

ISSUES:⁴

1. Whether DCPS denied the student a FAPE by failing to convene an IEP and placement meeting in a timely manner following Petitioner's February 4, 2014, request for a meeting.
2. Whether DCPS denied the student a FAPE by failing to provide the student with an

³ The parties agreed to meet on September 4, 2014, to review the student's independent evaluation and update his IEP. DCPS maintained that in convening another meeting it was not conceding that the June 17, 2014, IEP is inappropriate. The case was still not resolved by the parties as a result of the September 4, 2014, meeting.

⁴ The alleged violation(s) and/or issue(s) listed in the complaint or in the pre-hearing order may not directly correspond to the issues outlined here. The Hearing Officer restated the issue(s) at the outset of the hearing and the parties agreed that these were the issue(s) to be adjudicated.

appropriate IEP and placement within a reasonable time following the February 4, 2014, request.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 23 and Respondent's Exhibits 1 through 20) that were all admitted into the record and are listed in Appendix A.⁵ Witnesses are listed in Appendix B.

FINDINGS OF FACT:⁶

1. Petitioner is an adult student with a disability pursuant to IDEA with a classification of SLD. The student is attending a private special education program, School A, where he began attending on trial basis in November 2013. Currently the student's attendance at School A is not funded by DCPS. Prior to attending School A the student had been assigned to three different DCPS high schools but has a history of truancy and earned minimal credits toward a high school diploma. (Student's testimony, Witness 1's testimony, Respondent's Exhibits 16-1, 20-1, Petitioner's Exhibit 3)
2. In March 2011 the student was removed from his mother's care by CFSA. He resided in a group home and attended the DCPS high school, School B, closest to his group home for ninth grade during SY 2011-2012. The student failed all classes except one during SY 2011-2012 and repeated ninth grade at School B for SY 2012-2013. In August 2012 DYRS detained the student at YSC because of his school truancy. (Petitioner's Exhibits 1-1, 5-2, 5-3)
3. In September 2012 a psycho-educational evaluation was conducted of student. The academic testing placed the student's reading skills at a third grade level, his writing and math skills at a fourth grade level. (Petitioner's Exhibit 5-4)
4. The student remained at YSC until November 2012 when he was returned to the group home and resumed attending School B. The student's truancy at School B continued and he was eventually removed from School B and began attending School C where he was assigned for SY 2012-2013 and for the start of SY 2013-2014. (Petitioner's Exhibit 5-2, 5-3)

⁵Any items disclosed and not admitted or admitted for limited purposes was noted on the record and summarized in Appendix A.

⁶ The evidence that is the source of the Finding of Fact ("FOF") is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately the Hearing Officer may only cite one party's exhibit.

5. In April 2013 the D.C. Department of Mental Health conducted a neuropsychological evaluation of the student when he was age sixteen and residing in the group home and assigned to School C. The evaluation revealed a full scale IQ of 70 and his adaptive skills were rated in the average range. The student was diagnosed with, among other things, a learning disorder, mood disorder and borderline intellectual functioning. The evaluator recommend the student have a smaller school with a low student to teacher ratio and a school campus that would make it difficult for him to leave school. (Petitioner's Exhibit 5-1, 5-2, 5-3, 5-7, 5-10, 5-12)
6. On May 9, 2013, DCPS developed an IEP for the student at School C. The IEP prescribed the following of services: 12 hours of specialized instruction: 6.5 hours in general education and 6.5 hours outside general education and 120 minutes per month of behavioral support. (Respondent's Exhibit 13-1, 13-9)
7. During SY 2013-2014 the student was repeating ninth grade for the third time. Because of his continued pattern of truancy and as a result of a request by the student's CFSA social worker School C convened a MDT meeting to address the student's failure to attend school. The student attended the meeting along with his social worker and a representative of his group home. The student cited safety concerns at to why he was not attending school. An attendance support plan was put in place. (Witness 1's testimony, Student's testimony, Petitioner's Exhibits 6, 7, 8)
8. On September 27, 2013, the student's social worker contacted a DCPS official seeking to have the student transferred to another school in light of his safety concerns and on October 1, 2014, the social work met with the DCPS official. The student's educational attorney participated by telephone. The social worker stated the student would attend School D if DCPS transferred him there. The DCPS official suggested that instead of School D the student attend a new program within DCPS hosted at two different high schools that was designed for third year repeat ninth graders. The program had smaller classes with more remediation and the student could earn 8 to 12 credits in the school year. The social worker stated she would discuss the options with the student. The student later visited School D and refused to attend School D when he realized it was a school with a large student population as the previous DCPS schools he had attended. (Witness 1's testimony, Student's testimony, Petitioner's Exhibits 9, 10, 11, 17-1)
9. On October 15, 2013, the student's social worker withdrew the student from School C and then pursued two other DCPS schools for the student to attend. Those schools were not available because they were at capacity for the student's grade. (Witness 1's testimony, Petitioner's Exhibit 12)
10. The student's social worker then identified School A and talked with its staff and later took the student to School A for interview and tour. In November 2013 the student began attending School A on trial basis. The student attended school every day during the three-week trial period and has continued to attend since. The student's social worker sought to have DCPS place and fund the student at School A and was informed that he

first needed to register at School B, his local DCPS school. (Witness 1's testimony, Petitioner's Exhibits 17-1, 19-2, 23)

11. On February 4, 2014, Petitioner attempted to enroll at School B but was unable to complete the enrollment. On February 12, 2014, the student's social worker picked the student up from School A and transported him to School B and submitted enrollment documentation for the student to be enrolled at School B. They informed School B that the student would be pursuing a victim's transfer and not attending School B. (Witness 1's testimony, Petitioner's Exhibits 14, 15)
12. On February 21, 2014, the student's educational attorney requested a meeting to review the student's IEP and noted her availability for dates in March 2014. The attorney was later informed that despite the enrollment documents having been submitted the student had not yet been officially enrolled at School B because the DCPS official the social worker contacted in October 2013 had informed School B not to enroll the student. (Witness 1's testimony, Petitioner's Exhibit 16-1, 16-2)
13. On March 12, 2014, the student's social worker emailed the DCPS official that she contacted in October 2013 and stated that the student had been attending School A consistently for four months and was making progress there and she and the student's educational attorney had attempted to enroll the student at School B and requested an IEP meeting to pursue the student being placed by DCPS at School A. (Petitioner's Exhibit 17)
14. On March 27, 2014, the student's social worker and educational attorney met with the DCPS official regarding the student's school placement and was informed that they should provide DCPS the student's evaluations, educational records and that the DCPS Office of Specialized Instruction would provide a final response to their request for a placement. The requested documents were then provided to DCPS. (Witness 1's testimony, Petitioner's Exhibits 18, 20-1)
15. During the month of April 2014 the student's educational attorney awaited a response from DCPS but got no information regarding the student's placement from DCPS until April 24, 2014, when she was informed the student needed to enroll at School B for his needs to be assessed. (Petitioner's Exhibit 20)
16. On May 6, 2014, the student's social worker took the student to School B to enroll. The student made clear that he would not attend School B. School B agreed to waive the requirement that student attend School B for 30 days prior to convening an IEP meeting and agreed to schedule a meeting the following week. An IEP meeting was scheduled at the school for May 21, 2014. However, the student failed to arrive timely and the meeting was rescheduled for June 17, 2014. (Witness 1's testimony, Petitioner's Exhibit 22, Respondent's Exhibit 8-1)
17. On June 17, 2014, the student finally was registered in School B and DCPS convened an IEP meeting for the student at which an IEP was developed to be implemented at School

B that prescribes the following services: 10 hours per week of specialized instruction outside general education, 13 hours per week of specialized instruction inside general education and 240 minutes per month of counseling services. (Respondent's Exhibit 14-1, 14-10, 15-1)

18. A DCPS psychologist reviewed the student's April 2013 neuropsychological evaluation on May 14, 2014, and was available to participate in a team meeting on May 21, 2014, when the student did not show. However, she was not available on June 17, 2014. The psychologist who participated in the June 17, 2014, meeting had not yet formally reviewed the evaluation but the evaluation was available during meeting. (Witness 4's testimony, Respondent's Exhibit 17)
19. During the June 17, 2014, meeting School B did not have any information regarding the student's present academic levels or his school performance from School A for the IEP team to consider. Based upon the student's prior IEP and the evaluation the IEP team increased the student's special education services from what was prescribed in his previous IEP. The increase was based on the student not having been successful at School C with the level of services he was provided. The School B team members strongly believed that with increased services the student would be successful at School B. However, the student repeatedly stated in his interaction with the School B staff and the IEP team that he will not attend School B. (Witness 4's testimony)
20. The student's representatives at the June 17, 2014, meeting requested the team prescribe full time out of general education services. However, based upon the limited information available to the team to justify that level of service the DCPS team members did not believe full-time services were warranted and would be inconsistent with the requirement that the student be in his least restrictive environment. On September 4, 2014, DCPS convened another IEP in which the student's neuropsychological evaluation was reviewed. School B attempted to obtain information regarding the student from School A to no avail. The team agreed to maintain the same level of services in the student's IEP as was prescribed at the June 17, 2014, meeting. The team agreed to conduct an occupational therapy evaluation and agreed that the student needed transition assessments. (Witness 4's testimony, Respondent's Exhibit 11, 16)
21. Since attending School A the student has made significant progress emotionally and behaviorally and has earned four credits toward his high school diploma. He no longer displays depressive symptoms and has begun to actively contemplate and plan for his future. He has not absconded from his group home. He trusts the staff at School A and has developed significant relationships with the staff. The student's social worker believes that if the student does not continue at School A he will lose the progress he has made. School A has become the one stable thing in his life. His social worker believes the student would refuse to attend any large DCPS high school if he is assigned to one because he does not feel safe in such a school. (Witness 1's testimony)
22. School A is an alternative special education program designed for students who have not been successful in a traditional school setting and who are over age and under-credited

and are seeking a high school diploma rather than a GED. School A offers individualized instruction and provides related services. The program currently has 18 students, 14 of whom are funded by DCPS. The program has a special education teacher, teacher assistants and related service providers. School A can implement the goals in the student's current IEP. The student has attended school every day since he began and is currently taking a full load of academic courses. The School A staff believe the student is in need of full time out of general education supports based upon his academic performance. However, there has been no determination by an IEP team that he needs a full time out of general education program. School A developed an individualized learning plan for the student based on assessments the school administered to the student. If the student is not ultimately placed at School A the school will work with him to transition him as smoothly as possible. The student has earnestly stated that he feels unsafe in a large DCPS high school but he has not stated that he would refuse to attend any school other than School A. (Witness 2's testimony, Witness 3's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a 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. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief.⁷ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed

⁷ The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

placement is inadequate or adequate to provide the student with FAPE.

Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. See DCMR 5-3030.34. The normal standard is preponderance of the evidence. See, e.g. *N.G. V. District of Columbia* 556 f. Sup. 2d (D.D.C. 2008) se also 20 U.S.C. §1451 (i)(2)(C)(iii).

ISSUE 1: Whether DCPS denied the student a FAPE by failing to convene an IEP and placement meeting in a timely manner following Petitioner's February 4, 2014, request for a meeting.

Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence that DCPS failed to promptly enroll the student in a DCPS school so that an IEP team meeting could be convened and educational placement determined after the student first attempted to enroll at School B on February 4, 2014.

In *Board of Education v. Rowley* the United States Supreme Court set forth a two-part inquiry for determining whether a school district has satisfied the FAPE requirement. First, the state must have "complied with the procedures set forth in the Act." *Rowley*, 458 U.S. at 206. Second, the IEP that is developed must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07.

34 C.F.R. 300.324 (b)⁸ provides that DCPS must ensure that the IEP team reviews a student IEP periodically to determine whether the annual goals of child are being achieved and revise the IEP as appropriate to address any lack of progress.

The evidence demonstrates that this student had truancy issues at School C during SY 2012-2013 and expressed that the reason for his non-attendance was that he feared for his safety. Although his concerns apparently were not independently verified by DCPS and were perhaps suspect due to his pattern of truancy at his previous school the fact remains that the student was not attending school and efforts to get him to attend had been unsuccessful.

⁸ 34 C.F.R. 300.324 (b) Review and revision of IEPs.

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address--

(A) Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under Sec. 300.303;

(C) Information about the child provided to, or by, the parents, as described under Sec. 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

The student's social worker identified School A for the student and he began attending there on a trial basis. Unlike at his previous schools the student attended School A daily during the trial period. His social worker and then his educational attorney sought to have DCPS place and fund the student at School A and began to explore with DCPS personnel how that might be accomplished. They were instructed that he would have to first enroll in his local DCPS high school so his needs could be assessed. They attempted to comply with this requirement to begin the process of the student's IEP and placement being reviewed by seeking to enroll the student in School B on February 4, 2014. The student was not able to enroll that day despite his and social worker's efforts and when they returned on February 12, 2014, and submitted the required registration documents they presumed the process of reviewing his IEP and placement had begun.

The student's educational attorney then made a formal written request for an IEP meeting on February 21, 2014. Although it had not yet been a year since the student's IEP had been reviewed, which is the minimal requirement pursuant to 34 C.F.R. 300.324(b), it is clear from the evidence that the student's failure to attend school at School B and then School C and his need for educational placement warranted DCPS acting promptly to convene an IEP meeting for the student after the request for a meeting was made.

To the student's representative's surprise School B had been instructed by a DCPS official not to enroll the student. Consequently, there was nearly a three-month delay before an IEP meeting was scheduled. The meeting was eventually convened on June 17, 2014, after the student himself failed to show up for the May 21, 2014, meeting.

Although the student during the three month delay in DCPS convening the requested IEP meeting was attending School A, and it can be argued that he perhaps suffered no educational harm, during this delay the student apparently became more attached to the school and its staff and the uncertainty of whether he would be able continue there has potentially set him up for an educational setback. The Hearing Officer concludes that the student's (and his parent's)⁹ opportunity to participate in the decision making process regarding the provision of FAPE was significantly impeded by DCPS' delay in promptly convening his IEP meeting.

ISSUE 2: Whether DCPS denied the student a FAPE by failing to provide the student with an appropriate IEP and placement within a reasonable time following the February 4, 2014, request.

Conclusion: Petitioner did not sustain the burden of proof that the IEP developed by DCPS on June 17 2014, or on September 4, 2014, were inappropriate based upon the data available to the team at the time.

“The IEP is the “centerpiece” of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the

⁹ At the time the meeting was requested and should have been convened the student had not yet turned age 18.

implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

Pursuant to *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009), the Hearing Officer must “focus on the adequacy of the IEP at the time it was created, and ask if it was reasonably calculated at that time to enable the student to receive educational benefits.” *Schaefer v. Weast*, 554 F.3d 470 (U.S. App. 2009).

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is made in conformity with the Least Restrictive Environment (“LRE”) provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; (3) is determined annually; (4) is based on the child’s IEP; and (5) is as close as possible to the child’s home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

The evidence demonstrates that when the student’s IEP team met on June 17, 2014, the team reviewed the student’s prior IEP that had been developed at School C and had available to them the student’s neuropsychological evaluation conducted in April 2013. The educational assessment contained in that evaluation and available to the team, however, was conducted in September 2012, nearly two years prior. In addition, the team did not have the benefit of any information regarding the student’s present levels of performance or his academic progress from any teachers or staff from his most recent school, School A, despite their efforts particularly for the September 4, 2014, meeting to obtain this data.

Based upon the information that the student had been unsuccessful with his prior level of services it was reasonable for the IEP team to have increased his special education services. However, there was, as the DCPS witness credibly testified, insufficient data to warrant the student being prescribed an IEP with all services outside general education. This action would have been contrary to IDEA’s requirement that a student placed in the least restrictive environment. Although the student’s April 2013 evaluation recommends the student be in a setting with a low student to teacher ratio, the evaluation did not recommend the student be totally removed from interaction with is non-disabled peers. Consequently, the Hearing Officer concludes that Petitioner did not sustain the burden of proof that the student’s IEP, based upon

the data available to the team, was not reasonably calculated to provide the student educational benefit.

Although the evidence demonstrates that the student has apparently flourished at School A and has attended school daily since he started in November 2013, the Hearing Officer concludes that this is sufficient evidence that the student needs to be totally removed from his non-disabled peers and that School A is his LRE, absent additional data to support such a conclusion. Consequently the Hearing Officer will not grant the relief sought by Petitioner for the student's prospective placement at School A.

However, as a remedy for the denial of a FAPE determined herein and the apparent need for more recent data on the student's present levels of performance and the basis of his former non-attendance in his DCPS schools, the Hearing Officer directs that in addition to the evaluations that DCPS has determined should be conducted Petitioner will be granted an independent comprehensive psychological evaluation to be reviewed by an IEP team and that the student's IEP and placement be reviewed and revised as appropriate.

ORDER:¹⁰

1. Petitioner is hereby granted authorization to obtain an independent comprehensive psychological evaluation at the OSSE/DCPS prescribed rate.
2. DCPS shall within thirty (30) calendar days of the issuance of this order conduct an occupational therapy evaluation and a transition assessment of the student.
3. DCPS shall, within ten (10) school days after its receipt of the independent comprehensive psychological evaluation authorized above, convene an IEP team meeting to review that evaluation and other evaluations DCPS has been directed in this order to complete (if those evaluations are complete and available pursuant to the time frame in #2 above) and review and revise the student's IEP and placement as appropriate and determine the student's location of services¹¹ for remainder of SY 2014-2015.
4. All other requested relief is denied.

APPEAL PROCESS:

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

¹⁰ Any delay in Respondent in meeting the timelines of this Order that are the result of action or inaction by Petitioner shall extend the timelines on a day for day basis.

¹¹ The Hearing Officer further directs that in determining a location of services for the student all efforts be made to consider and address the student's resistance to attend a large comprehensive DCPS high school and his evident concern for his safety at such a school.

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).

/S/ Coles B. Ruff

Coles B. Ruff, Esq.
Hearing Officer
Date: October 8, 2014