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

Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

through

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: July 1, 2010

Hearing Officer: Kimm Massey, Esq.

Case No:

Hearing Date: June 14 and 21, 2010
Rooms: 5B and 4A, respectively

HEARING OFFICER DETERMINATION

BACKGROUND

Student is a _____ year-old girl, who has an IEP that entitles her to receive 27.5 hours per week of special education and related services.

On May 14, 2010, Petitioner filed a Complaint against Respondent DCPS, which included the following caption: REQUEST FOR EXPEDITED HEARING. In the Complaint, Petitioner alleged that DCPS denied Student a free appropriate public education ("FAOE") by (1) failing to issue a Prior Notice of Placement ("PNOP") prior to Student's discharge from the _____ and (2) failing to provide Student with a dedicate aide notwithstanding the request of her surrogate parent ("Parent") for such an aide. The Complaint did not include any section or attachment setting forth facts and argument in support of the request for an expedited hearing.

On May 24, 2010, the hearing officer issued an Order Concerning Petitioner's Request for Expedited Hearing. In this Order, the hearing officer explained that Petitioner had failed to file a written motion setting forth the grounds for the request, as required by § 1008 of the Student Hearing Officer's Standard Operating Procedures ("SOPs"). The hearing officer nevertheless agreed to delay consideration of Petitioner's request to allow Petitioner an opportunity to

verbally explain its position at the forthcoming conference, which had been scheduled for May 25, 2010.

Also on May 24, 2010, DCPS filed its Response to the Complaint. In its Response, DCPS asserted that Student was not “forbidden from” her DCPS school, but instead Student had been “denied entrance” because she needed to properly re-enroll in the school. DCPS further asserted that placement had to be based upon a team review and could not be based upon a doctor’s recommendation. Finally, DCPS asserted that Petitioner’s request for expedited status should be denied as that status is only mandatory when discipline is at issue.

On May 25, 2010, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. During the conference, DCPS indicated that its sole defense was that Student needed to re-enroll before she could return to her DCPS school, but counsel was unable to point to any regulation, statute or factual circumstance that would support a re-enrollment requirement in this case. In any event, Petitioner’s counsel represented that Student had been unilaterally placed at a private special education school on the ground that Student’s previous DCPS school was not an appropriate placement. During the course of the conference, Petitioner agreed to file a Notice withdrawing its request for an expedited hearing to facilitate the scheduling of a second due process hearing for this case. Moreover, Petitioner indicated that it wished to question two DCPS employees, and the hearing officer explained the process for obtaining Notices to Appear if same became necessary. The hearing officer issued the Prehearing Order on May 27, 2010.

On May 25, 2010, Petitioner filed Petitioner’s Motion to Withdraw Request for Expedited Hearing. On May 27, 2010, the hearing officer issued an Order Granting Petitioner’s Motion to Withdraw Request for Expedited Hearing.

On June 1, 2010, Petitioner filed a Motion for Issuance of Notice to Appear Due to Inability to Secure Witness’ Voluntary Attendance at Due Process Hearing. On June 4, 2010, the hearing officer issued an Order Granting Petitioner’s Motion for Issuance of Notice to Appear.

By their respective cover letters dated June 7, 2010, Petitioner disclosed 24 documents (Petitioner’s Exhibits 1 through 24) and DCPS disclosed 16 documents (DCPS-1 through DCPS-16).

On June 15, 2010, the hearing officer convened the due process hearing for this case. Petitioner’s disclosed documents and DCPS-1 through DCPS-13 were admitted into the record without objection. However, Petitioner objected to DCPS-14 and DCPS-15, a Letter of Invitation and Petitioner’s counsel’s email concerning same, because they were created/issued subsequent to the filing of the Complaint. Petitioner also objected to DCPS-16, DCPS’s sealed “10-day letter” submitted pursuant to 34 C.F.R. § 300.517(c), because counsel did not understand why the letter was being submitted. After discussion, the hearing officer admitted DCPS-14 through DCPS-16 over Petitioner’s objection.

¹ Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

Thereafter, the hearing officer received testimony from Petitioner's witnesses, including two DCPS employees who appeared pursuant to Notices to Appear. In the interest of judicial economy and efficiency, the hearing officer permitted DCPS to conduct its direct examination of the two DCPS employees when it cross-examined those witnesses, and then Petitioner was allowed to cross-examine the witnesses on matters raised during DCPS's direct examination. After Petitioner presented indicated that it wished to call its final witness, whom it had been unable to reach all day, during the second scheduled due process hearing, the hearing officer adjourned the hearing.

On June 21, 2010, the hearing officer reconvened the due process hearing, at which point Petitioner indicated that it had decided the final witness's testimony was unnecessary, and DCPS indicated that it was unable to reach its final witness. Thereafter, the hearing officer received testimony from Petitioner's two rebuttal witnesses and closing arguments prior to concluding the second and final hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to IDEIA, the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUES

The issues to be determined are as follows:

1. Did DCPS deny Student a FAPE by failing to issue a PNOP prior to her discharge from PIW?
2. Did DCPS deny Student a FAPE by failing to provide her with a dedicated aide upon Parent's request?

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student's current IEP is dated January 5, 2010. The IEP does not list a primary disability category for Student. Nevertheless, it requires Student to receive 25.5 hours per week of specialized instruction outside general education, 1 hour per week of speech-language pathology services outside general education, and 1 hour per week of behavioral support services outside general education. The IEP indicates that Student does not require the support of a dedicated aide and does not qualify for ESY, but does require transportation services. At Student's January 5th IEP meeting, DCPS team members reported that Student needed testing/evaluations but would not take the tests and was being noncompliant.²

² DCPS-5; Petitioner's Exhibit 1; testimony of Parent.

2. In Student's February 5, 2010 IEP Progress Report, which covered the period from November 2, 2009 through January 26, 2010, Student's speech language pathologist reported that Student had a remarkable history for service refusals and exhibited consistently disruptive and volatile behavior. Similarly, the social worker indicated that Student was displaying a behavioral response far different from age-appropriate peers and exhibiting direct aggression toward others by physical and/or verbal means. However, the Progress Report also indicated that Student was able to think before acting sometimes.³
3. On March 9, 2010, the social worker at Student's DCPS school prepared a memo entitled "Antedotes," which indicates that on that day in school, Student was very hyper and defiant. She used profanity and would not listen or follow directions. Student also engaged in a new behavior, which was screaming at the top of her lungs without provocation, screaming about three times in one hour with each scream lasting approximately 1 minute. Student was also more aggressive that day, as she was hitting her peers, throwing things, and ranting and raving for 10-minute intervals before taking a little break and returning to the ranting and raving for approximately two hours total. When the SEC attempted to test Student, Student refused to take the test and eventually ran away from the SEC and the school.⁴
4. Student is a committed ward of the District of Columbia. On March 10, 2010, Student's social worker from D.C. Child and Family Services Agency ("CFSA") received a call from Student's DCPS school to come pick up Student immediately because she was being violent, verbally abusive to staff, and destroying property. When the social worker arrived (with a colleague for safety), Student was in a conference room pacing the floor. When the social worker stated that Student would have to go to Children's National Medical Center, Student began to curse, yell and tear items off the wall. The Children and Adolescent Mobile Psychiatric Service ("CHANCE") was present, so they issued an FD-12 document to have Student admitted to the psychiatric unit overnight. However, at the hospital, Student took the document from the social worker and chewed and swallowed it. By the time the psychiatrist arrived, Student was calm enough that the psychiatrist did not admit her to the hospital.⁵
5. On March 22, 2010, DCPS conducted an eligibility meeting for Student. The then SEC of Student's DCPS school participated in a discussion concerning a dedicated aide after Petitioner's counsel raised the issue. Parent recalls discussing an aide too after Petitioner's counsel raised the subject. However, the SEC did not believe an aide was necessary because, in his opinion, Student's circumstances were dictating her behavior in that Student's behavior was fine during the first semester of the school year, but after Student was removed from her grandmother's home her behavior became problematic. Student began acting out, being very disruptive in class, and cursing out staff and students, and she was unresponsive to interventions by the social workers who were

³ DCPS-6.

⁴ Petitioner's Exhibit 9.

⁵ Testimony of CFSA social worker.

meeting with her on a daily basis. Subsequent to the eligibility meeting, the then SEC submitted a packet to the appropriate DCPS employee for a site review for consideration of a more therapeutic DCPS placement for Student, but the SEC did not agree to recommend a nonpublic placement for Student. In fact, the then SEC continues to believe Student's DCPS school is an appropriate placement for her. Student was in an ED cluster program at the school, which cluster contained 15 students total in 2 cluster classrooms with one teacher and 1 aide for each class.⁶

6. In connection Student's eligibility meeting, on March 22, 2010, DCPS prepared (i) a disability worksheet, which indicates that Student met all of the eligibility criteria for emotional disturbance ("ED"), and (ii) a final eligibility determination report, which indicates that Student's primary disability is emotional disturbance ("ED"), and that Student's disability impacts her participation in the general education curriculum in the academic areas of math, reading, and written expression, as well as in the area of emotional, social, and behavioral development.⁷
7. Subsequent to observations of Student conducted on February 1, and March 9, 2010, DCPS prepared an FBA to address the following behavior of concern: being out of seat, defiance, physical aggression, noncompliance, picks on others, verbal aggression, fighting, off task, talking out, disorganization, hyperactivity, yelling, distracting others. The behaviors reportedly occurred in all settings, on a continuous basis, and included instances when Student would "literally" yell and scream for periods lasting from 5 to 45 minutes and anything, including a person entering the room, would lead to Student beginning to yell and scream again. The FBA was created with the participation of only the social worker and two special education teachers.⁸
8. On April 7, 2010, another DCPS social worker completed a discipline referral form for Student, indicating that from 11 to 12:20 plus and from 1:00 on, Student misbehaved in school in that she kicked and pushed the desk around, snatched the telephone and threw it to the floor, kicked the door, hit the social worker's hands, yelled repeated profanities in the class, hall, and counseling room, refused to do any work, repeatedly visited unauthorized sites on the computer, and demonstrated physical aggression toward her peers.⁹
9. On April 9, 2010, Student's CFSA social worker received a call from Student's DCPS school indicating that Student needed to be picked up because she was out of control, cursing, yelling, being physically aggressive, and had destroyed a staff member's phone. Upon arriving to pick up Student, the social worker and her supervisor spotted Student, but Student ran down the street. Student was eventually captured by a school staff member, who was on guard duty, and the staff member actually picked up Student and put her in the CFSA van. When Student was being placed in the van, she kicked the rear panel of the vehicle, leaving a large dent. Once in the van, Student began yelling,

⁶ Testimony of former SEC; testimony of Parent.

⁷ Petitioner's Exhibit 2; DCPS-7 and DCPS-v 8.

⁸ DCPS-11.

⁹ Petitioner's Exhibit 10.

screaming, and verbally abusing the social worker and her supervisor. Student was taken to a D.C. Mental Health Department office to see a psychiatrist. Student poured a cup of water on the desk, threw a cup, closed the door to prevent the social worker from leaving and attacked the social worker and vandalized the social worker's property and the room. The psychiatrist called _____ to have Student admitted.¹⁰ The social worker then took Student to _____ where she was admitted.¹¹

10. Between the time of Student's January 10, 2010 IEP meeting and her hospitalization at _____ parent received approximately 7 to 8 calls from Student's DCPS school. The calls were from the DCPS social workers, who were seeking more assistance outside of school to help them control Student's behavior. Parent tried to help. Student was very bonded to the school and to one of the social workers in particular, with the result that Student would go to school even when she had absconded from her foster home. Unfortunately, the situation seemed to spin out of control and the school became less and less able to address Student's needs.¹²

11. When Student's behavior problems began after Winter Break, she began having frequent emotional crises – up to 3 to 4 times per week. Factors in the community began spilling over into school and affecting the safety and security of Student and her fellow students. The social workers at the school became more proactive in providing more hands-on, in class support for Student, but Student's issues after school and at home continue to impact her in the classroom. Under those circumstances, where her basic needs were not being met outside of school and were taking precedence, the DCPS school was not able to meet Student's academic needs.¹³

12. On April 16 and 17, _____ conducted a psychological evaluation of Student, which consisted of the following assessments: chart review, Rorschach Inkblot Test-Exner Comprehensive System; Wechsler Intelligence Scale for Children-Fourth Edition; Children's Depressive Inventory; Adolescent Dissociative Experiences Scale-II; Roberts Apperception Test for Children; and Trauma Symptoms Checklist for Children. The evaluation report reveals, by way of background, that Student was removed from her family foster care in December 2009 for alleged sexual abuse by a family member and had been in three foster homes since then. The evaluator noted that at the time of the evaluation, Student seemed animated, scattered in thought and speech, tangential and rambling. The cognitive testing revealed that Student's general cognitive ability is within the Borderline range, with a Full Scale IQ score of 73, but the evaluator noted that significant situational stress and observable agitation may have influenced the scores. With respect to social and emotional functioning, Student's performance on the tests administered revealed that Student was depressed and experiencing substantial intensity of emotion related to trauma, susceptible to episodes of affective disturbance that were likely to involve depression but were likely to be expressed through angry acting out behaviors, lacking psychological resources to cope with the internal and external stressors

¹⁰ Testimony of CFSA social worker; Petitioner's Exhibit 11.

¹¹ Stipulation of parties.

¹² Testimony of Parent.

¹³ Testimony of assistant principal.

in her life. On a positive note, Student was relatively free of impairment in her reality testing capacity, generally able to think logically, and able to model herself after people she knows well. Student's memories of scary things that happened to her made her feel afraid, distrustful of people, sad and lonely. The evaluator opined that Student would benefit from a nurturing and structured environment so that she can develop healthy inner resources and coping skills.¹⁴

13. On April 26, 2010, Petitioner's counsel forwarded Student's psychological evaluation report from [redacted] to the Assistant Principal at Student's DCPS school by way of a memo, which indicated that counsel had submitted referrals for admission for Student to two private schools and was trusting that, with the Assistant Principal's support, DCPS would agree to place Student in whichever school accepted her.¹⁵
14. On April 28, 2010, Student's attending psychiatrist at PIW and the court documentation specialist prepared a report concerning Student for the Family Division of the D.C. Superior Court. The report indicated that an April 12, 2010 court order for a 21-day inpatient mental examination had been ordered subsequent to Student's admission to [redacted] and that the precipitating factor of Student's April 9, 2010 hospitalization was danger to others in that Student became out-of-control at school. The report listed a diagnosis of Mood Disorder NOS for Student and revealed that she had been prescribed Risperdal to assist in managing and regulating her mood. The report noted that Student remained unstable and continued to require acute inpatient hospitalization, but recommended a therapeutic foster home, medication management from a child psychiatrist, individual therapy to work on emotion regulation, and a therapist to work on family issues for Student. The report estimated that Student would be ready for release in approximately two weeks.¹⁶
15. On April 30, 2010, Petitioner's counsel advised the Assistant Principal at Student's DCPS school of the possibility that Student would be discharged at the end of the following week. Counsel inquired about the status of a more restrictive placement and indicated that Student would return to her DCPS school if there was no other placement.¹⁷
16. By letter dated May 4, 2010, Petitioner's counsel advised the Assistant Principal at Student's DCPS school that counsel had been trying to reach the Assistant Principal by phone over the past week and wanted an update regarding a placement for Student. Counsel reminded the Assistant Principal that Student would likely be discharged from [redacted] on Friday, May 7, 2010, and asked the Assistant Principal to contact counsel via phone, email or letter. Also on May 4, 2010, Petitioner's counsel sent an email to the Assistant Principal at Student's DCPS school asking to whom Student's placement

¹⁴ Petitioner's Exhibit 12.

¹⁵ Petitioner's Exhibit 13.

¹⁶ Petitioners' Exhibit 14.

¹⁷ Petitioner's Exhibit 15.

referral package was sent so that counsel could follow up to ensure an appropriate placement for Student upon her return to school.¹⁸

17. The Assistant Principal did not respond to counsel's communications. However, unbeknownst to counsel, the assistant principal was forwarding Petitioner's counsel's emails to the then SEC at the DCPS school because they were still waiting for potential placement options for Student so that they could arrange a meeting about those options.¹⁹
18. By letter dated May 5, 2010, Petitioner's preferred private placement accepted Student for admission pending a hearing and/or Settlement Agreement. The school is a nonpublic full-time special education school that serves learning disabled, emotionally disturbed, other health impaired and autistic students. It is a one-level school building, with no more than 9 to 10 kids in each class. The teachers are special education certified, and the school has teaching assistants, speech/language and OT providers, 3 social workers, and 2 reading resource teachers who offer pullout services. There are 76 students in the school, and the school offers a 5-week ESY program from July 1st through August 4th. The school utilizes a behavior management system and a therapeutic aggression control system, TAC-2, which involves therapeutic holds, self-time-outs, access to counselors, and very experienced teachers taking Student's for a walk or to a room to deescalate if necessary. The school accepted Student on a trial basis based on her 2010 IEP, her psychological evaluation from _____ and an interview with Parent. The school accepted Student on a trial basis even though she did not have any funding. The tuition for the school is _____ per year, including related services.²⁰
19. On May 7, 2010, Student received a new social worker due to her placement in therapeutic foster care.²¹
20. On May 11, 2010, Student attempted to return to her DCPS school, but DCPS denied her admission on the ground that she needed proof of residency and an ID (with an adult, although an adult was with her) to reenroll.²² When Student's new case manager/social worker asked another social worker to take Student back to school, the second social worker picked Student up from home and took her to the DCPS school. The security guard at the front desk told Student that she could not go to class and would have to talk to an administrator first. The administrator came out and said Student had been absent for too many days and needed to completely re-enroll before she would be allowed to come back to school. The social worker who was there called Student's case manager/social worker on the phone and had her talk to the administrator. The case manager was also told that Student had been withdrawn and couldn't return to school until she had been re-enrolled. The case manager asked whether DCPS could fax the required application to her so that she could complete it and fax it back to the school while Student was there. The administrator said no, the form would have to be mailed or

¹⁸ Petitioner's Exhibits 16 and 17.

¹⁹ Testimony of assistant principal.

²⁰ Petitioner's Exhibit 24; testimony of Director of private school.

²¹ Testimony of CFSA social worker; testimony of Petitioner's rebuttal witnesses.

²² Stipulation of parties.

sent by the social worker who was there. The administrator gave the application to the social worker who was there.²³

21. The former SEC of Student's DCPS school is not aware of any policy of dropping students from the rolls of DCPS schools due to absences.²⁴
22. On May 11, Petitioner's counsel sent emails to the Assistant Principal at Student's DCPS school and several other DCPS employees, including a special education cluster supervisor. In the emails, counsel explained that Student had been turned away from her DCPS school on the ground that she was no longer enrolled, inquired about a placement at Petitioner's preferred private school, and requested responsive communications in reply.²⁵
23. On May 12, 2010, the cluster supervisor advised Petitioner's counsel by email that Student was to be enrolled at her DCPS school, and the cluster supervisor stated her understanding that Student's social worker had been provide with the enrollment information and planned to return to school with Student. By emails dated May 12 and 14, 2010, Petitioner's counsel continued to request a more restrictive placement at Petitioner's preferred private school.²⁶
24. In a May 13, 2010 letter, Student's treating psychologist at _____ noted that Student was in an emotionally unstable place prior to her admission to _____ which resulted in her extreme agitation and aggressiveness at school. However, Student did very well in the very small, highly structured classroom at _____ with medication management and staff who were able to identify Student's triggers and address problematic behaviors before they spiraled totally out of control. The psychiatrist opined that Student would have a high likelihood of relapse and future crises if she returned to the DCPS school she attended prior to her admission to _____. The psychiatrist has determined that Student needs a highly structured full-time special education placement in a small school that has defined rules of conduct and offers professionals who are trained to manage students in crisis, access to social skills groups, and individual therapy. Based on the psychiatrist's understanding that Petitioner's preferred private school meets these criteria and has accepted Student, as well as the psychiatrist's experience with other children before and after they attended Petitioner's preferred private school, the psychiatrist recommended that DCPS place Student in that private school.²⁷
25. Petitioner filed the Complaint in the instant action on May 14, 2010.
26. Student has been attending Petitioner's preferred private school on a temporary basis.²⁸ Student is doing very well academically at the school. Behaviorally, there are no major

²³ Testimony of Petitioner's rebuttal witnesses.

²⁴ Testimony of former SEC.

²⁵ Petitioner's Exhibits 18 and 19.

²⁶ Petitioner's Exhibits 20 and 21.

²⁷ Petitioner's Exhibit 23; testimony of attending psychologist.

²⁸ Stipulation of parties.

concerns such as fighting and physical aggression. However, if the teachers notice that Student is becoming agitated, they help to defuse the situation.²⁹

27. At a May 25, 2010 prehearing conference, the hearing officer set the due process hearings for this case for June 14, and June 21, 2010.³⁰
28. On June 7, 2010, DCPS issued a Letter of Invitation for a meeting on June 9, 2010 to review assessment results, review/revise or update Student's IEP, and discuss placement for SY 2010/11. By email on June 7, 2010, Petitioner's counsel advised DCPS that counsel and Petitioner were not available to participate in the requested meeting.³¹
29. On June 14, 2010, DCPS counsel presented the hearing officer with a sealed "10-day" letter that was submitted pursuant to 34 C.F.R. § 300.517(c). DCPS's sealed 10-day letter contains a June 2, 2010 Proposed Settlement Agreement from DCPS, in which DCPS offered to (i) fund Student's placement at Petitioner's preferred private school from Student's first date of attendance through the end of the 2009/10 school year; (ii) conduct a meeting prior to the end of SY 2009/10 to determine, with input from PIW and the private school, placement and location of services for SY 2010/11; and (iii) to discuss and determine compensatory education, if warranted, at the meeting to be held for Student.³²

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, 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:

1. PNOP/Placement

IDEIA provides that a public agency must provide an appropriate educational placement for each child with a disability, so that the child's needs for special education and related services can be met. See 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. Moreover, "where a public school system has defaulted on its obligations under the IDEA, a private school placement 'is proper under the Act' if the education provided by said school 'is reasonably calculated to enable the child to receive educational benefits.'" *Wirta v. District of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994) (quoting *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176).

In the instant case, the evidence convincingly proves that Student attended a DCPS school for the 2009/10 school year until April 9, 2010, when her aggressive, disruptive, destructive and out of control behavior at school ultimately led to her admission to the

Student remained at for approximately one month, during which time she

²⁹ Testimony of Director of private school.

³⁰ See May 27, 2010 Prehearing Order.

³¹ DCPS-14 and DCPS-15.

³² DCPS-16.

received an evaluation and medication management, and attended small, highly structured school. As Student's release date neared, Petitioner's counsel began advising an assistant principal at Student's DCPS school of Student's impending release. Counsel requested a more restrictive placement for Student but indicated that if no other placement was provided, Student would return to her DCPS school. DCPS never responded to any of counsel's communications.

On May 11, 2010, after Student had been released from a social worker took Student back to her DCPS school but DCPS refused to permit Student to return to school, indicating that Student had been withdrawn from school due to too many absences and would have to re-enroll before she would be allowed to return. Student's case manager asked if DCPS would fax the enrollment form to her so that she could complete it and return it by fax while Student was still at the school, but DCPS refused the case manager's request and sent Student and the social worker away with an enrollment application. As DCPS did not offer another school for Student to attend, Student effectively was left without any DCPS school to attend.

At the due process hearing in this case, DCPS counsel asserted that Student had been "un-enrolled," probably because of too many absences, and all she had to do was go back and re-enroll in her DCPS school. However, DCPS knew all along that Student was in a psychiatric hospital. Moreover, counsel could not point to a single statute, regulation or case that authorizes DCPS to drop a Student from its rolls when the Student is receiving inpatient treatment in a psychiatric facility.

On the other hand, DCPS counsel also acknowledged that mistakes were made in this case because DCPS should have acted on a placement for Student earlier. DCPS counsel asserted that a placement meeting needs to be held in this case to continue the placement process. However, the evidence in this case proves that despite repeated communications from Petitioner's counsel that began near the end of Student's stay at and continued through May 11, 2010 when DCPS refused to allow Student to return to her DCPS school, DCPS never made any attempts at all to schedule a meeting to discuss a placement for Student. Indeed, it was not until June 7, 2010, exactly one week prior to the initial due process hearing in this case, that DCPS sent a letter inviting Parent to attend a meeting two days later on June 9th.

In the interim, Parent secured an acceptance for Student on a temporary basis (due to lack of funding) at a nonpublic full-time special education school that serves, *inter alia*, ED students. The school offers a low student-teacher ratio, special education certified teachers, a behavior management system and a therapeutic aggression control system, and Student is currently attending the school on a temporary basis. Student's attending psychiatrist from has determined that Student requires a highly structured full-time special education placement in a small school that has defined rules of conduct and offers professionals who are trained to manage students in crisis, access to social skills groups, and individual therapy, and the psychiatrist has further opined that the private school Student is currently attending on a temporary basis meets these criteria.

Moreover, Petitioner has repeatedly asserted throughout this case that Student's DCPS school is not an appropriate placement for her at this time because the school's staff has been unable to control Student and handle the extremely aggressive, disruptive and out of control behavior she

routinely engages in at the school. The evidence in this case fully supports DCPS's position about the current inappropriateness of Student's DCPS school. Moreover, Student's treating psychiatrist at _____ noted Student's emotionally unstable condition at the time of her admittance to _____ and opined that Student would be highly likely to relapse and experience future emotional crises if she returns to her DCPS school.

Based on the detailed evidence and factual circumstances reviewed herein, the hearing officer concludes (1) that DCPS has violated its obligation under IDEIA to provide Student with a placement where her needs for special education and related services can be met, (2) that at the present time, Student's DCPS school is not an appropriate placement for Student, and (3) that the private school Student is currently attending on a temporary basis is an appropriate placement that is reasonably calculated to provide Student with educational benefits. As a result, the hearing officer will order DCPS to fund Student's placement at the private school for the period of her attendance on a temporary basis during the latter portion of the 2009/10 school year, for the 5-week ESY program for Summer 2010, and for the 2010/11 school year.³³ The hearing officer will also order DCPS to provide Student with transportation to the private school moving forward. *See Branham v. District of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005) (award of a private school placement should be based upon a fact-intensive and child-specific inquiry and should be designed to ensure child receives prospectively the education required by IDEA).

2. Dedicated Aide

Petitioner has asserted that DCPS violated IDEIA by failing to provide Student with a dedicated aide upon Parent's request. However, Petitioner has failed to provide citations to statutes, regulations or case law that require DCPS to provide a dedicated aide upon a parent's request. Moreover, the evidence in this case does not convincingly demonstrate DCPS agreed to provide Student with a dedicated aide but then failed to do so. As a result, the hearing officer concludes that Petitioner has failed to meet its burden of proof on this claim.

3. DCPS's 10-day Letter

DCPS's sealed 10-day letter contained a June 2, 2010 Proposed Settlement Agreement, in which DCPS offered to fund Student's placement at the private school she is attending on a temporary basis from Student's first date of attendance through the end of the 2009/10 school year; to conduct a meeting prior to the end of SY 2009/10 to determine, with input from _____ and the private school, placement and location of services for SY 2010/11; and to discuss and determine compensatory education, if warranted, at the meeting to be held for Student. By contrast, in the instant HOD DCPS has been ordered to fund Student's placement at the private school for the period of her attendance on a temporary basis during the latter portion of the 2009/10 school year, for the 5-week ESY program for Summer 2010, and for the 2010/11 school year. After comparing the relief offered by DCPS to the relief awarded in this HOD, the hearing officer

³³ Although Student is not entitled to receive ESY services under her current IEP, the evidence in this case proves that Student is performing well academically and behaviorally at the private school, despite months of acting out and misbehaving at her DCPS school prior to entering PIW, and the hearing officer has concluded that Student's continued attendance at the private school during the 5-week ESY program for Summer 2010 will greatly increase her chances of continued academic and behavioral success during the 2010/11 school year.

concludes that the relief finally obtained by Petitioner is more favorable than DCPS's offer of settlement.

ORDER

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

1. DCPS shall fund Student's placement at the private school that accepted her by letter dated May 5, 2010 for (i) the period of her attendance on a temporary basis during the latter portion of the 2009/10 school year, (ii) the 5-week ESY program for Summer 2010, and (iii) the 2010/11 school year.
2. Within 10 calendar days of the issuance of this Order, DCPS shall also begin providing Student with transportation to and from the private school.

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: 7/1/2010

/s/ Kimm Massey

Kimm Massey, Esq.
Hearing Officer