

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

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

RECEIVED
AUG 09 2010

through

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: August 7, 2010

Hearing Officer: Kimm Massey, Esq.

Case No:

Hearing Date: July 26 and 28, 2010

Room: 5B

HEARING OFFICER DETERMINATION

BACKGROUND

Student is a _____ year-old boy, who has been classified as emotionally disturbed ("ED). Student attended a private full-time special education school for the 2009/10 school year ("SY"), but DCPS has assigned Student to attend a DCPS middle school for the 2010/11 school year.

On May 26, 2010, Petitioner filed a Complaint against Respondent DCPS, to which Petitioner attached a "typed statement of facts, allegations made and result sought."¹ On June 8, 2010, DCPS filed its Response to the Complaint.

On June 24, 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, the hearing officer determined that the following three claims were at issue: (1) DCPS's alleged denial of ESY (and funding for same) for Summer 2010; (2) DCPS's alleged intent to inappropriately remove Student from his private placement and place him at a DCPS middle school that allegedly is inappropriate for lack of an ED program, lack of a psychologist or licensed social worker, and lack of ability to implement Student's IEP; and (3) a group of alleged procedural violations by DCPS. DCPS's defenses to the allegations were as follows: that DCPS

¹ See Complaint.

issued a PNOP for Student to attend the DCPS middle school that Student had made gains in all areas, including academics and behavior, and that the LRE provisions provide for a student's removal from the regular education setting only when the nature and severity of the student's disability so require. DCPS further asserted that it has proposed DCPS school where Student's needs can be met and an appropriate program will be provided, and that its PNOP explained the actions taken, the reasons therefore, and the basis for taking same. The hearing officer issued the Prehearing Order on June 29, 2010.

By their respective disclosure letters, Petitioner disclosed 12 documents (Petitioner's Exhibits 1 through 12) and DCPS disclosed 30 documents (DCPS-1 through DCPS-30).

The hearing officer convened the scheduled due process hearings on July 26 and 28, 2010.² DCPS's disclosures numbered 1 through 24, 26 through 28 and 30 were admitted without objection; while DCPS's disclosures numbered 25 through 29 were admitted over Petitioner's objection. Petitioner voluntarily withdrew the last two pages of its disclosures numbered 7 and 8, the description of Petitioner's Exhibit 8 was changed to reflect that it contained two educational evaluations, and the description of Petitioner's Exhibit 9 was changed to reflect that it consisted of meeting notes. Petitioner's disclosures numbered 7 through 9 were then admitted without objection, as were Petitioner's disclosures numbered 1 through 6. Petitioner's Exhibit 10 was admitted over objection by DCPS.

Petitioner had indicated during the prehearing conference that it intended to call three witnesses, as well as two DCPS employees, to testify. On the first day of the hearing, Petitioner stated that it did not intend to call one of the DCPS employees because that employee was on maternity leave. Petitioner then used all the remaining time to present the testimony of two of its three witnesses and did not have time to question the second DCPS employee, who was present at the hearing and serving as DCPS's party representative. On the second day of the hearing, Petitioner was unable to question DCPS's party representative because the party representative's employment with DCPS had terminated the day before. Therefore, after Petitioner presented the testimony of its final witness, DCPS presented the testimony of two witnesses, and the hearing officer brought the hearing to a close. The hearing officer allowed the parties until midnight on July 29, 2010 to submit written closing statements.

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 denying Student ESY (and funding for same) for Summer 2010?

² Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

2. Has DCPS attempted to inappropriately remove Student from his private placement and place him at a DCPS middle school that allegedly is inappropriate for lack of an ED program, lack of a psychologist or licensed social worker, and lack of ability to implement Student's IEP?
3. Did DCPS deny Student a FAPE by committing a variety of procedural violations, including the following: an alleged failure to notify Parent of the intent to change Student's school site, an alleged failure to state the purpose of the MDT meeting, an alleged failure to consider all necessary factors (e.g. strengths and weaknesses of child, evaluations, etc.) in deciding to change the school site, an alleged failure to issue a PNOP that contains the detail required by applicable law, an alleged failure to inform Parent of her due process rights, and an alleged failure to have the team, including Parent, make the placement decision.

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 past academic experiences include a significant history of disruptive behaviors at school that interfered with his functioning.³
2. On September 6, 2006, Student began attending the private full-time special education school he attended for SY 2009/10.⁴ Hence, Student has attended the private for a total of four school years.
3. On September 28, 2009, Student completed the Woodcock-Johnson III Tests of Achievement ("WJ-III"), which resulted in the following grade equivalencies ("GE"): Total Achievement – 4.3 GE; Broad Reading – 3.6 GE; Broad Math – 5.5 GE; Broad Written Language – 4.0 GE. A previous administration of the WJ-III on November 10, 2008 yielded the following results: Total Achievement – 3.8 GE; Broad Reading – 3.1 GE; Broad Math – 4.8 GE; and Broad Written Language – 4.0 GE.⁵
4. Student's most recent IEP is dated October 1, 2009. The IEP classifies Student as ED and requires him to receive 28 hours per week of specialized instruction outside general education and 2 hours per week of behavioral support services outside of general education. The IEP entitles Student to receive a host of classroom and statewide assessment accommodations, as well as transportation services. The IEP indicates that Student is not entitled to ESY services.⁶

³ DCPS 07-2.

⁴ DCPS 06-1.

⁵ Petitioner's Exhibit 8; *see also* DCPS-5.

⁶ DCPS-21; Petitioner's Exhibit 11.

5. At Student's October 1, 2009 IEP meeting, Student's teacher stated that Student was experiencing a lot of anxiety and frustration regarding his academics and interacting with peers; however, the teacher also stated that Student was making excellent progress in terms of being able to identify what is upsetting him and finding a way to regroup although he continued to require support when frustrated.

The team noted that Student had made progress at the following levels since he began attending the private school in September 2006: broad reading improved from 2.2 GE to 3.6 GE, math showed four years' progress, and writing level jumped 3+ years, but reading was the area where Student continued to lag behind with historically uneven progress. The team ultimately recommended a comprehensive evaluation for Student and agreed to determine eligibility after completion of the evaluation.⁷

6. In October 2009, Student received a comprehensive evaluation that included cognitive, emotional and academic testing. In the resulting November 13, 2009, evaluation report, the evaluator noted that although Student has a history of physical abuse, foster care placement, psychotic symptoms, depression, and difficulties in attention and hyperactivity, he presently displays significant improvements in behavior and emotional regulation compared to previous functioning. Student's history includes psychiatric hospitalization for suicidal and homicidal ideation in 2005, as well as at least one additional episode of hospitalization. Student presently takes Risperdal and Adderall.

Student's performance on the Wechsler Adult Intelligence Scale-Fourth Edition resulted in a full scale IQ score of 104, which is within the Average range of cognitive abilities, as well as scores in the Average range on the Verbal Comprehension, Perceptual Reasoning, Working Memory, and Processing Speed Indices. Student's performance on the WJ-III resulted in a Total Achievement score within the Low Average range, scores in the areas of Mathematics and Writing in the Average range, and a score in the area of Reading in the Low range. Social/emotional testing revealed significant concerns about depression and anxious behaviors, as well as concerns related to acts of aggression, conduct and emotional control to a lesser degree. The evaluator noted Student has a lack of awareness of his personal experiences and a tendency to withdraw into fantasy, but he nevertheless displays growth, resilience and an ability to maintain appropriate relations with others.

Overall, the evaluator opined that Student met the criteria for ED based upon criteria met for Bipolar Disorder, including marked irritability, observed depressed mood, and impulsive behaviors displayed, especially when unmedicated. The evaluator noted that even when Student was adhering to medication treatment, he continued to struggle with negative emotionality and self-regulation. The evaluator also commented upon Student's eligibility for an LD classification based upon criteria met for Reading Disorder as his skills in that area were far below what was expected given his cognitive abilities. The evaluator rendered the following Axis I diagnostic impressions: Bipolar Disorder-In Remission (Rule-out); Attention Deficit Hyperactive Disorder (NOS); Physical Abuse of Child (history); and Reading Disorder.⁸

⁷ Petitioner's Exhibit 10.

⁸ Petitioner's Exhibit 7.

7. On January 27, 2010, DCPS convened an IEP meeting to review Student's November 13, 2009 psychological evaluation report and determine the level of services required. The team noted that grade was Student's grade level, and he was functioning on the 6th grade level in math, the 4th to 5th grade level in reading, and the 3rd to 4th grade level in reading comprehension. The team noted that these levels are higher than some of the levels reported on Student's evaluation report and questioned whether Student's lack of glasses and possible lack of medication on the day of testing caused the discrepancy.

Individual team members commented, *inter alia*, upon Student's violent and graphic drawings during the previous year, his elaborate false story to teachers and Emergency Medical Technicians the week before that resulted in a trip by ambulance to the emergency room for reported symptoms of asthma and anxiety on Student's part,

Ultimately, the team determined that Student continued to be eligible for special education as an ED student. Student's services were kept at existing levels, but the team authorized a speech and language evaluation of Student and agreed to discuss the possibility of adding a learning disability ("LD") classification to Student's IEP at the next meeting for review of the speech and language evaluations.⁹

8. On April 23, 2010, DCPS reconvened Student's MDT to discuss ESY eligibility. Student's teacher recommended ESY based on emerging skills because of the possibility that Student would lose those skills without ESY and because of regression in behavior following breaks that impacted Student's academics. The teacher reported that Student required more support after breaks, which couldn't be shown in work samples because it was more of a behavioral issue. Team members noted that Student does not have major breakdowns and is consistently on the highest level of the behavior system. The team ultimately determined that Student met only 3 of the 6 criteria for ESY but agreed to reconvene on May 4, 2010 to allow the teacher time to find the correct documentation.¹⁰
9. On April 28, 2010, DCPS issued a Confirmation of Meeting Notice for a May 4, 2010 meeting to develop/review Student's IEP (including consideration of ESY services) and discuss guardianship and placement.¹¹
10. On May 4, 2010, DCPS reconvened Student's MDT to revisit the issue of ESY and discuss the status of guardianship. The team noted Student's academic and behavioral progress, as reported at Student's April 23, 2010 ESY meeting. The team also noted that Student is consistently on level 5, the highest behavioral level at school. The team also reported that Student did not meet 4 of the 6 criteria for ESY at the April 23rd meeting. After Student's teacher reviewed various work samples and the team discussed the matter further, DCPS was of the opinion that Student did not meet the second criteria – substantial regression in critical skills without ESY – for ESY and, therefore, was not eligible for ESY. The private school staff was of the opinion that Student requires ESY, stating that Student was more shut down on Mondays and required additional emotional support, that Student showed academic regression after breaks from school, and that ESY would be helpful given Student's transition in his living situation from a foster home to a

⁹ DCPS-15 and DCPS-16; Petitioner's Exhibit 9.

¹⁰ DCPS-14.

¹¹ DCPS-25.

home with his biological aunt, uncle and sister. Ultimately, however, DCPS determined that Student was not eligible for ESY because he did not meet 4 of the 4 criteria. Another meeting was scheduled for May 27, 2010 to determine location of services.¹²

11. All students regress to some extent after a break from school. The purpose of ESY under IDEIA is to make up for time when a Student could not access the curriculum during the school year, to address significant regression problems, or to continue instruction when a student is on the verge of breakthrough skills.¹³
12. On May 7, 2010, DCPS issued a Confirmation of Meeting Notice for a May 27, 2010 meeting to develop/review IEP (including consideration of ESY services), and discuss location of service and placement.¹⁴
13. On May 12, 2010, DCPS's nonpublic placement specialist sent a email to Petitioner's counsel and others advising counsel that a particular DCPS middle school had been chosen as the location of services for Student. The email further advised counsel that the middle school principal had visited the private school to observe Student and felt Student would do well at the middle school. The placement specialist asked counsel to ensure that Parent visited the school, and he also provided counsel with the school's phone number and the name of its principal and special education coordinator.¹⁵
14. On May 27, 2010, DCPS reconvened Student's MDT to discuss guardianship, review Student's progress, review Student's speech/language and psychological evaluations, review available data and the documented level of services, revise the IEP if necessary, and determine the location of services for the coming school year. The Meeting Notes indicate that the principal of a DCPS middle school observed Student in the classroom on May 10, 2010, and Parent, Student and Petitioner's counsel visited the DCPS school on May 24, 2010.

The Notes also reflect the team's determination at previous meetings on April 23 and May 4, 2010 that Student had made tremendous academic and behavioral progress. The team determined that Student required the following special education and related services: 1 hour of psychological services, 1 hour of speech language services, specialized instruction in the amount of 4 hours of reading, 3 hours of writing, and 1 hour of math. DCPS offered the DCPS middle school Student had visited as the location of services, stating that the school was the LRE and could implement Student's revised IEP in an inclusion setting. The private school staff, Parent, Student's guardian *ad litem*, and petitioner's counsel disagreed with the proposed placement. The DCPS middle school principal requested that Student spend several half days at the school before the regular school year ended and also wanted Student to participate in the school's summer program. The principal felt that Student would do well at the DCPS middle school with transitional support, i.e. a dedicated aide. DCPS also felt that Student is a college bound student who is not being pushed enough academically at the private school and that he

¹² Petitioner's Exhibit 5; DCPS-13.

¹³ Testimony of DCPS psychologist.

¹⁴ DCPS-29.

¹⁵ DCPS-12.

needs to progress to an LRE. Ultimately, Petitioner's counsel disagreed and did not want to review evaluations, achievement assessments, report cards, observations, and other data, or revise the IEP to reflect a reduction in the documented level of services. DCPS disagreed with Petitioner's counsel's position and indicated that a PNOP to the DCPS middle school would be issued.¹⁶

15. DCPS proposed a reduction in Student's hours of service at the May 27th meeting after DCPS's psychologist reviewed Student's progress, especially in math, as well as his evaluations the notes from previous meetings, his progress reports from art therapy and group and individual therapies. The DCPS psychologist found that Student had been at the private school for 4 years and had made tremendous progress. His treatment summaries showed that he was not working on goals that indicate a severe level of psychiatric concern and his bipolar disorder was in remission according to his psychological evaluation. So, although Student still requires support, he no longer needs the level of support he was receiving. Moreover, Student's problems with frustration can be addressed in a regular education setting. In fact, Student would benefit from being around his non-disabled peers to see how they react to frustration and he is so bright that he would benefit academically from being around his non-disabled peers. This is confirmed by Student's WJ-III scores, as well as his "Basic" performance on the DC-CAS. As a result, the DCPS team members felt that the private school is no longer Student's LRE. DCPS developed a reintegration plan to be used along with the goals from Student's current IEP immediately upon his entrance at the DCPS middle school. DCPS also offered Petitioner the option of having Student attend summer school at the middle school for Summer 2010 to help with his transition to the school.¹⁷
16. On June 28, 2010, DCPS issued a Prior Written Notice concerning a proposed change in location of services from the private school Student was attending to the DCPS middle school. The Notice explained that Student had progressed academically and behaviorally to an LRE, needing an IEP of 10 hours, and that DCPS had relied upon the following as a basis for the proposed action: report card, attendance, behavioral log, classroom observations, behavioral management systems, evaluations and IEP. The Notice also lists other options considered by the team and the reason for rejecting same, as well as other factors taken into account in deciding on the proposed action.¹⁸
17. Parent visited the DCPS middle school prior to Student's May 27th MDT meeting. In Parent's opinion the school will not work for Student because it is a normal school setting with classes of approximately 20 students, but Student is disturbed and needs something other than a regular school setting. Student gets angry and does whatever he feels he needs to do at the time, then he comes back later after he has calmed down and apologizes. Although Parent does not recall receiving any correspondence from DCPS regarding the MDT meetings for Student at the private school or the need for her to visit the DCPS middle school, Petitioner's counsel told Parent about the May 24th meeting concerning ESY and the May 27th meeting concerning location of services. Parent

¹⁶ Petitioner's Exhibits 2 and 4.

¹⁷ Testimony of DCPS psychologist; see Petitioner's Exhibit 2.

¹⁸ DCPS-19.

wanted Student to attend ESY during Summer 2010 because he needed something to do, but Student's social worker ultimately placed him in a regular camp.¹⁹

18. The proposed DCPS middle school will likely serve more than 900 students during the 2010/11 school year. The 7th grade will have approximately 300 students divided into 3 separate grade-level teams of 98 to 100 students. A special education teacher will be assigned to two of the teams, but there will be one team that does not have an assigned special education teacher. The school uses a modification behavior management system, under which students receive one modification mark for each infraction, and they are only referred to the grade-level assistant principal after receiving 10 modification marks within an advisory. The following individuals will be available to provide support to Student: the grade-level administrator, the guidance department, which assigns a counselor to each grade level, the Dean of Students, a school-based psychologist, a DCPS psychologist and other itinerant service providers who are assigned to the school, including a social worker, the classroom teachers, and the special education department and coordinator. The guidance department will also contact outside services, such as church-based and other community services, as needed.

There are other students with IEPs, negative behavior issues and/or speech and language needs at the school. The transitional support to be provided to Student would include a dedicated aide. The school offers a peer mediation program and new students are teamed up with another student in the same homeroom, as well as a case manager. The average class size at the school ranges from 8 to 25 students, but elective classes tend to have 23 – 26 students and homerooms have 24 – 25 students. There is no ED program at the school, but Student's dedicated aide would accompany him from class to class and teachers are stationed in the hallways between classes.²⁰

19. Student's final Report Card for SY 2009/10 reveals that he received only As and Bs throughout the school year at the private school. Indeed, his grades ranged from a high of A+ to a low of B. The teacher comments on the Report Card reflect that Student made average to excellent progress throughout the year, although he experienced some struggles with respect to his Science class.²¹
20. Student's 4th Quarter Therapist Comments for SY 2009/10 reveal that Student made appropriate progress and exhibited appropriate behavior in individual counseling, group counseling, and art therapy, although his art therapist felt that at times Student was almost pressured in his speech along with highly animated and fantastical stories.²²
21. Student's June 21, 2010 Final Progress Report – Academics reveals that, overall, Student continued to make great progress behaviorally and academically throughout the year, and continued to demonstrate increased maturity and responsibility, but had some difficulty

¹⁹ Testimony of Parent; stipulations of Petitioner's counsel.

²⁰ Testimony of DCPS middle school assistant principal.

²¹ DCPS-3.

²² DCPS-4.

maintaining focus and managing frustration in regards to increasingly challenging academic tasks.²³

22. At the private school he has been attending, Student has had the same primary teacher for the 2008/09 and 2009/10 school years. Student was in this teacher's class all day during SY 2009/10, except for social studies class, which another teacher came in to teach, and specials consisting of PE and Computer Lab. There were 5 students in Student's classes, except for Social Studies which only had 4 students, and PE which had 11 students. All students in the classes had IEPs. However, during the 2008/09 school year, there were 7 to 8 students, which would have been fine for 2009/10 as well had the extra students been available. The students at the school are grouped by academic functioning. The classrooms at the school are self-contained because the students tend to have problems with transitioning and settling down.

The teacher provided Student with extra modeling, 1-to-1 assistance as necessary, repetition of instructions, lots of review and assistance as needed to avoid/defuse frustration, techniques to prevent conflict between Student and his peers, and various instructional strategies and techniques, especially for reading comprehension. The teacher found that Student has a problem with becoming frustrated and shutting down, especially when presented with new concepts or when unable to remember knowledge/skills that were previously learned. Student tends to exhibit frustration by clenching fists, refusing to continue with the work, ripping his paper, writing things on his paper, and similar behavior. Moreover, because of Student's deficits in reading comprehension, the teacher used instructional strategies across the curriculum and throughout the day to help him succeed. In the teacher's opinion, Student would not be able to succeed if his teacher simply put information on the board and told Student to do the work because Student needs verbal feedback and prompting about what exactly he needs to do.

Student performed very well behaviorally during SY 2009/10, with very few visits to the behavioral control center ("BCC"). He also made very visits to the BCC during SY 2008/09. Student consistently stayed on the top level of the school's behavior management program (level 5) during SY 2009, and he was at or near the top for most of SY 2008/09 as well. During the 2009/10 school year, Student was allowed to see his psychologist as often as he liked, and he asked frequently – at least once per week or more – after February or March of 2010.

Student's teacher is of the opinion that Student experiences more frustration than normal after he has been out of school for more than one week, and he also tends to have problems recalling strategies, skills and processes and applying same. However, the primary problem is increased frustration. Nevertheless, Student remained on level 5 behaviorally even after school breaks. In the teacher's opinion, it takes 1 to 2 weeks for Student to catch up after having been out of school for a week or two.²⁴

23. The clinical psychologist who served as Student's individual school-based therapist for SY 2009/10 has worked with Student since Summer 2008. Although Student's IEP provided for 1 hour per week of services, the therapist also checked in with Student

²³ DCPS-6.

²⁴ Testimony of private school teacher.

frequently and on average saw him 1 or 2 times per week in addition to his regular therapy session. The teachers would call the therapist to come work with Student when they saw him beginning to shut down. Student would also ask to see the therapist outside of his regular session when something upset him, which was usually following the weekend. Although Student previously experienced peer-related difficulties, he had become more insightful about those issues during SY 2009/10 and would have the teacher call his therapist to come talk to him. The transitions in Student's personal life, such as frequent moves, contribute to his frustration. Student also becomes frustrated with his academics and shuts down and becomes angry, which is not an appropriate response. Student has exhibited a tendency to tell untrue stories, and he has issues with truth versus fantasy in that he resorts to fantasy as a coping mechanism pretty regularly when under stress. Given Student's prior history of auditory hallucinations, as well as his history of reality testing problems, he is fragile in that respect. Student was not on an individual behavior program at the private school.

Student's therapist is of the opinion that a public school environment with 20 to 22 students per classroom and a different class for every subject would be very challenging for Student because he presents as jovial and helpful but has problems even when in a small class and he requires constant support to maintain his current level of functioning. On the other hand, a public school environment that offers emotional supports, people who are trained and ready to respond to Student, small class sizes and all subjects in one room might not present a problem for Student.

Student's therapist is of the opinion that after Student has been away from school on a break for a weekend or more, especially when he's experienced problems during the break, he sometimes becomes less regulated and needs multiple redirections to remember that he is in school and needs to focus.²⁵

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. ESY

Extended school year services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106.

In this case, Petitioner has alleged that DCPS denied Student a FAPE by denying ESY services (and funding for same) during Summer 2010. However, the evidence in this case proves that DCPS held at least two MDT meetings to review Student's ESY needs prior to determining that Student did not require ESY services during Summer 2010. Although Petitioner insists that the evidence proves Student will suffer from significant regression as a result of not receiving ESY services during Summer 2010, the evidence in this case is not definitive on the issue of

²⁵ Testimony of private school clinical psychologist.

regression, especially since the evidence demonstrates (1) that all students experience regression to some extent, and (2) that even though Petitioner's witnesses testified that Student primarily experiences regression in the area of frustration/behavior, the evidence also proves that Student remained on level 5 of his school's behavior system throughout SY 2009/10, even after school breaks. Under these circumstances, the hearing officer concludes that Petitioner failed to meet its burden of proof on this claim.

2. 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. In assigning a placement for a student, DCPS must ensure to the maximum extent possible that children with disabilities are educated with children who are nondisabled and that 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. 34 C.F.R. § 300.114. However, in selecting the LRE, consideration must be given to any potential harmful effect on the child or on the quality of the services that he or she needs. 34 C.F.R. § 300.116.

In this case, Petitioner has alleged that DCPS is attempting to inappropriately remove Student from his private school placement and place him at a DCPS middle school that is inappropriate and cannot implement his IEP. However, the evidence in this case shows that DCPS undertook an extensive review of Student's educational records, held numerous MDT meetings concerning Student, and observed Student in his private school setting in connection with its determination that the proposed DCPS middle school is the LRE for Student for SY 2010/11. Moreover, to facilitate Student's transition to the proposed DCPS middle school, DCPS has proposed reducing his IEP hours, DCPS has developed a reintegration plan, and DCPS has offered to provide Student with a dedicated aide for as long as needed. The evidence in this case further reveals that Student has a history of significant emotional disturbance and academic deficits, but over the course of his attendance at the private school over the past four years, he has made significant improvements both behaviorally and academically, with the result that he likely no longer requires the intensive level of services he has been receiving at the private school. Under these circumstances, and based on the detailed evidence in this case as reflected in the Findings of Fact, above, the hearing officer concludes that Petitioner has failed to meet its burden of proving that DCPS is attempting to inappropriately remove Student from his private placement and place him at a DCPS middle school that is inappropriate and cannot implement his IEP. However, to ensure that Student does not regress from his current level of emotional functioning at the DCPS middle school, the hearing officer will order DCPS to provide the offered dedicated aide and to conduct 30-day, 60-day and 90-day reviews to review Student's behavioral and academic progress.

3. Alleged Procedural Violations

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly

impeded the parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

In this case, Petitioner has alleged that DCPS committed a series of procedural violations that, all together, resulted in a denial of FAPE to Student. However, the evidence in this case demonstrates that DCPS held numerous meetings for Student, made sure Parent and Petitioner's counsel participated in all meetings, notified Parent, via Petitioner's counsel, of its chosen location of services and invited Parent to visit same, issued Letters of Invitation to Parent, considered Parent's placement requests although the same were ultimately rejected, issued a PNOP to the assigned DCPS middle school, and generally ensured that Parent was involved in every step of the placement decision in this case. As a result, the hearing office finds that any procedural violations that may have occurred in this case did not rise to the level of a denial of FAPE under the standard set forth in 34 C.F.R. § 300.513(a)(2). Therefore, Parent has failed to meet its burden of proof on this claim.

ORDER

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

1. Beginning on Student's first day of attendance at the assigned DCPS middle school for SY 2010/11, DCPS shall provide Student with a dedicated aide and shall ensure that Student retains the dedicated aide as long he requires same to adequately function at his newly assigned location of services.
2. DCPS shall conduct 30-day, 60-day and 90-day reviews of Student during SY 2010/11 to ensure that Student does not regress from his current level of academic and behavioral functioning.
3. To the extent that they are not addressed in items 1 and 2, above, all requests for relief in Petitioner's May 26, 2010 Complaint are **DENIED**, and the Complaint is **DISMISSED**.

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: 8/7/2010

/s/ Kimm Massey

Kimm Massey, Esq.
Hearing Officer