



## Hearing Officer Determination & Order

### **JURISDICTION**

The due process hearing was convened and this Hearing Officer Determination ("HOD") and Order written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Section 1400 et. seq., the implementing regulations for IDEIA; 34 Code of Federal Regulation ("C.F.R.") Part 300; and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

### **INTRODUCTION**

On 07/16/09, a Due Process Complaint Notice ("Complaint") was filed by the parent ("Parent" or "Petitioner") on behalf of the year old student ("Student"), alleging that District of Columbia Public Schools ("DCPS") denied Student a free appropriate public education ("FAPE") in violation of IDEIA when DCPS failed to provide an Individualized Education Program ("IEP") reasonably calculated to provide a FAPE; when DCPS failed to provide an appropriate placement; and if DCPS provided a placement for Student, when DCPS failed to follow proper procedures in determining an appropriate placement and failed to include Petitioner in determining an appropriate placement. Petitioner asserts that Student is entitled to compensatory education due to the denials of a FAPE.

The parties did not engage in mediation or the resolution process.

### **THE DUE PROCESS HEARING**

The due process hearing convened on 08/24/09 at the Van Ness Elementary School located at 1150 5<sup>th</sup> Street, S.E., 1<sup>st</sup> Floor, Washington, D.C. 20003, but did not conclude due to an insufficient amount of time allotted for the hearing. Petitioner requested and was granted a continuance, and the hearing reconvened and concluded on 08/31/09.

Petitioner was represented by Domiento Hill, Esq. ("Petitioner's Attorney") and DCPS was represented by Kendra Berner, Esq. ("DCPS' Attorney"). Petitioner participated in the due process hearing in person.

The parties engaged in settlement discussions prior to the commencement of the due process hearing, but settlement was not reached.

### **Disclosures:**

Petitioner's Five-Day Disclosure letter dated 08/17/09 contained Petitioner's Exhibits #1-31. Petitioner's Exhibits #1-31 were admitted into evidence without objection. Petitioner's Supplemental Disclosure Statement dated 08/18/09 contained Petitioner's Exhibit #32. Petitioner's Exhibit #32 was admitted into evidence without objection.

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DCPS' Disclosure Statement dated 08/17/09 contained DCPS' Exhibits #1-2. DCPS' Exhibits #1-2 were admitted into evidence without objection.

### Witnesses:

Witnesses for Petitioner included: (1) Petitioner, (2) [REDACTED] educational advocate, (3) Dr. [REDACTED] Head of [REDACTED] and (4) Dr. [REDACTED] pediatric psychologist.

Witnesses for DCPS included: (1) [REDACTED] Special Education Coordinator ("SEC") at [REDACTED] (via telephone).

Neither party objected to telephone testimony.

### Issues for Litigation:

All issues stated in the Introduction section of this HOD remained active for litigation with the exception of compensatory education, which was withdrawn by Petitioner as an issue and as a requested relief.

### Relief requested by Petitioner:

- (1) A finding of a denial of a FAPE on Issues #1 - #3 of the Complaint;
- (2) DCPS to place and fund Student at Commonwealth Academy or other appropriate program, with transportation services;
- (3) DCPS to convene a Multidisciplinary Team ("MDT")/IEP team meeting within 10 school days of Student's enrollment at the new placement, to develop an IEP that encompasses the recommendations of the 01/30/09 psychological evaluation, including, but not limited to 26.5 hours/week of specialized instruction in an out of general education setting and 1 hour/week of psychological counseling outside of general education; and
- (4) Any other relief deemed just and proper.

## FINDINGS OF FACT

#1. Student began a full time special education program in the [REDACTED] grade at [REDACTED] Petitioner, on Petitioner's own initiative, transferred Student from [REDACTED] to [REDACTED] because even though the class size at [REDACTED] was small, Petitioner felt that Student wasn't getting enough structure and Student was not making enough progress with Student's disability. (*Testimony of Petitioner*).

#2. Student began the [REDACTED] grade at [REDACTED] at the beginning of the 2006-2007 school year with a full time special education program (*Testimony of Petitioner; Testimony of [REDACTED]* that consisted of 26.5 hours/week of specialized instruction and 1 hour/week of psychosocial counseling. Student's disability

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classification at that time was Other Health Impairment ("OHI"). (*Petitioner's Exhibit #11, Educational Evaluation dated 10/14/06*). While Student received special education at \_\_\_\_\_ and at \_\_\_\_\_ Student's grades were all right. (*Testimony of Petitioner*).

#3. At a MDT meeting on 09/27/06, Petitioner indicated the intent to mainstream Student. (*Testimony of \_\_\_\_\_ Testimony of Petitioner; Petitioner's Exhibit #12, MDT ReEval Prep Meeting Notes dated 09/27/06*). At the time of the 09/27/06 MDT meeting, \_\_\_\_\_ was implementing Student's full time special education program where Student took all of Student's main courses with one Learning Disabled ("LD") teacher and took all elective courses in the general education setting with follow up by the special education teacher. (*Testimony of \_\_\_\_\_*).

#4. After about 2-3 months of Student attending \_\_\_\_\_ grade at \_\_\_\_\_ during the 2006-2007 school year, Petitioner exited Student from special education against the advise of the MDT. (*Testimony of \_\_\_\_\_ Testimony of Petitioner*).

#5. While Student was in the \_\_\_\_\_ grade at \_\_\_\_\_ during the 2007-2008 school year, Petitioner requested and the school provided Student with a 504 plan that consisted of modifications and accommodations in the mainstream designed to enable Student to work with extra help. (*Testimony of \_\_\_\_\_ Testimony of Petitioner*). Student passed the \_\_\_\_\_ grade. (*Testimony of Petitioner*).

#6. On 01/30/09, while Student was in the \_\_\_\_\_ grade at \_\_\_\_\_ and while \_\_\_\_\_ Student was without special education services, Student was evaluated by Dr. \_\_\_\_\_ at the request of Petitioner for an assessment of Student's current level of cognitive, academic, and social emotional functioning. The psychological assessment revealed that Student had a Full Scale IQ in the Low Average range with overall performance on the Reading subtests in the Borderline range, overall performance on the Written Language subtests in the Average range, and overall performance on the Mathematics subtests in the Low Average range. Student had particular academic difficulties in phonics and reading comprehension, and Student displayed significant issues with executive functioning. Executive functioning, with respect to behavioral regulation, was clinically significant for Student, with behavior descriptions including but not limited to, impulsivity, trouble getting started on homework, short attention span, needs help from an adult to stay on task, lacks follow through, does not check work for mistakes, and leaves work incomplete. The evaluator recommended a highly structured school setting with low teacher to student ratio, and a lot of individualized and specialized instruction in order for Student to perform at potential; intervention services through an IEP; and a Functional Behavior Analysis to determine whether or not a behavioral intervention plan was warranted. (*Petitioner's Exhibit #7, Psychological Evaluation dated 01/30/09*).

#7. At the MDT meeting on 05/08/09, the 01/30/09 Psychological Evaluation was reviewed and Student was determined eligible for special education services with a disability classification of Other Health Impairment ("OHI"). (*Testimony of Petitioner: Testimony of Dr. Scott*). At that meeting, Petitioner requested that Student be given a full

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time special education program with placement at \_\_\_\_\_ a non-public full time special education placement. (*Testimony of Petitioner; Testimony of \_\_\_\_\_ Testimony of \_\_\_\_\_*) Due to the length of the meeting, all parties agreed to reconvene at a later date to develop an IEP for Student. (*Testimony of \_\_\_\_\_*)

#8. On 05/22/09, a detailed Functional Behavior Analysis consisting of a Functional Behavior Assessment and Behavior Intervention Plan were developed by DCPS to address Student's increasingly more frequent inappropriate behaviors that included but were not limited to talking back to adults; running the halls, touching others inappropriately; and using inappropriate language with adults and peers. (*Petitioner's Exhibit #24, Functional Behavior Analysis dated 05/22/09*).

#9. Subsequent to the 05/08/09 MDT meeting, two meeting appointments to develop the IEP were scheduled but cancelled, both times due to the sickness of Petitioner. Finally, on 06/03/09, the IEP team developed the IEP with Petitioner participating by telephone. At the 06/03/09 IEP team meeting, the 01/30/09 Psychological Evaluation and the Functional Behavior Analysis were reviewed, as well as Student's problem areas in math, reading, written language, and social behavior skills. The IEP team decided that since Student's scores were average in written language, Student should be given support in the mainstream in that area and receive specialized instruction outside of general education in math, reading and decoding. The MDT felt that the LD teacher could work with Student to bring up Student's weak skills. (*Testimony of \_\_\_\_\_*)

#10. At the 06/03/09 IEP team meeting, an IEP was developed for Student that prescribed 10 hours/week of specialized instruction outside of general education, 5 hours/week of specialized instruction in the general education setting, and 1 hour/week of behavioral support services outside of general education. Student did not require Extended School Year ("ESY") services. (*Petitioner's Exhibit #10, IEP dated 06/03/09*). The DCPS representatives of the IEP team agreed that this level of special education services with the addition of a behavior intervention plan was sufficient for Student to show academic progress. (*Testimony of \_\_\_\_\_*) Petitioner disagreed with the level of services specified in the 06/03/09 IEP and requested that Student be given a full time special education IEP with placement at \_\_\_\_\_, a non-public placement. (*Testimony of \_\_\_\_\_ Testimony of Petitioner*). The 06/03/09 IEP team meeting focused only on the amount of hours of specialized instruction that Student should receive. (*Testimony of \_\_\_\_\_*)

#11. 06/06/09 was the last day of school for the eighth graders at \_\_\_\_\_ and for several days prior to 06/06/09, the 8<sup>th</sup> grade students participated in promotion exercises. Therefore, Student's 06/03/09 IEP was not implemented at \_\_\_\_\_ during the 2008-2009 school year. (*Testimony of \_\_\_\_\_*)

#12. On 06/08/09, Petitioner's Attorney sent a letter to DCPS requesting that DCPS conduct a series of reevaluations of Student. (*Petitioner's Exhibit #22, Letter from \_\_\_\_\_*)

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*James E. Brown & Associates, PLLC dated 06/08/09*). The SEC at convened a meeting on 06/29/09 to discuss the requested reevaluations. The SEC did not convene a full MDT or full IEP team on 06/29/09 because the purpose of the meeting was to discuss evaluations only. At the 06/29/09 meeting, Petitioner and Petitioner's advocate again requested an increase in the number of special education hours and requested that Student's placement be addressed. The SEC sent a package to the DCPS Site Review Committee for an evaluation on placement simply because Petitioner requested it, but not because the MDT determined that Student's 06/03/09 IEP was inappropriate. (*Testimony of*

#13. During the 2008-2009 school year and while Student was in the grade at Student received the following grades:

	<u>Adv. 1</u>	<u>Adv. 2</u>	<u>Adv. 3</u>	<u>Adv. 4</u>	<u>Final</u>
Pre-Algebra	C-	F	F	F	F
English 8	D	D	F	F	F
Science 8	F	F	D	C+	D
Spanish 1B	D	F	F	F	F
US History	C-	C	C	C-	C-
Band	F	F	F	F	F
Health/Phys.Ed	B	P	C	C	C
Art 8	C	C-	B+	F	F
Computer Appl.	C-	P			P

(*Petitioner's Exhibit #21, #31, Report of Parents on Student Progress dated 06/15/09*).

#14. During the summer of 2009, Student participated in an intensive LindaMood Bell reading program and Student is now reading almost on grade level. (*Testimony of Petitioner*).

### **DISCUSSION AND CONCLUSIONS OF LAW**

"The burden of proof in an administrative hearing...is properly placed upon the party seeking relief." *Schaffer v. Weast, 44 IDELR 150 (2005)*. "Based solely upon 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 that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." *5 D.C.M.R. 3030.3*

Free appropriate public education or FAPE means special education and related services that (1) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA; (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 34 C.F.R. 300.320 through 300.324. 34 C.F.R. 300.17.

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**Issue #1 – Whether DCPS failed to provide Student with an IEP that was reasonably calculated to provide a FAPE?** Petitioner alleges that on 06/29/09, the MDT determined that Student's 05/08/09 IEP was inappropriate, that Student's continued placement at \_\_\_\_\_ was inappropriate, and that Student's placement packet would be sent to the DCPS Site Review Committee for placement determination. Petitioner further alleges that on 06/29/09, Petitioner requested that Student's IEP be revised to reflect an increase in special education services as well as a separate, full time special education program, and at the time of the filing of the Complaint, DCPS had not complied with Petitioner's requests.

The evidence in the record does not support Petitioner's allegations. The SEC at \_\_\_\_\_ testified credibly that the 06/29/09 meeting was convened to discuss the reevaluations that Petitioner had requested, and that a full MDT/IEP team was not convened because DCPS did not anticipate a discussion of placement. (*Finding of Fact #12*). \_\_\_\_\_ testified repeatedly that the DCPS members of the MDT felt that the level of services prescribed in the 06/03/09 IEP was appropriate based on the evaluation data on hand that included the 01/30/09 Psychological Evaluation and an analysis of Student's strengths and weaknesses and academic performance (*Finding of Fact #9, #10*), but it was Petitioner and Petitioner's representatives who wanted a higher level of special education services (*Finding of Fact #7, #10*). Therefore, contrary to what Petitioner asserts, the Hearing Officer concludes that the MDT as a group never agreed that Student's 06/03/09 IEP was inappropriate.

In developing each child's IEP, the IEP team must consider (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial or most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child. 34 C.F.R. 300.324(a); 5 D.C.M.R. 3007.2. If a child's behavior impedes the child's learning or the learning of others, the IEP team shall consider strategies, including positive behavioral interventions, strategies, and supports, to address that behavior. 34 C.F.R. 300.324(2)(i); 5 D.C.M.R. 3007.3. An individual behavior plan shall be developed and incorporated into the IEP... 5 D.C.M.R. 3007.3.

When the 06/03/09 IEP was developed, the IEP team relied on (1) the only current evaluation on hand which was the 01/30/09 Psychological Evaluation, and (2) Student's observed behaviors and Student's strengths and weaknesses. The IEP team felt that with the necessary academic supports and a behavior intervention plan, Student could make progress with the IEP developed on 06/03/09. (*Finding of Fact #10*). In fact, the 06/03/09 IEP incorporated the recommendations of the 01/30/09 Psychological Evaluation, in that an IEP was developed and it incorporated a newly designed behavior intervention plan. (*Finding of Fact #6, #8, #10*). And, the IEP was based on the results of the 01/30/09 Psychological Evaluation that indicated that Student had average written language skills, but below average skills in reading, mathematics and decoding. (*Finding of Fact #6*). The 06/03/09 IEP reflects consideration of these testing results. (*Finding of Fact #9*). Moreover, Student's academic performance in the \_\_\_\_\_ grade reflected final passing grades in 3 subjects and passing advisory grades in several subjects (*Finding of*

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*Fact #13*), thereby indicating Student's capacity for satisfactory academic performance without special education services. Therefore, the Hearing Officer concludes that on 06/03/09 the MDT/IEP team appropriately determined the special education services that Student needed based on the data available at that time.

From the time that Student began receiving full time special education services in the 4<sup>th</sup> grade until the beginning of the grade at which time Petitioner exited Student from special education against the advise of the MDT, Student experienced a good academic adjustment in school evidenced by good or passing grades. (*Finding of Fact #1, #2, #3, #4*). For the next three years, until Student was determined eligible for special education services on 05/08/09 (*Finding of Fact #7*) and prescribed an IEP on 06/03/09 (*Finding of Fact #10*), Student was without special education services. There is no evidence in the record regarding Student's academic performance in the grade. The evidence in the record is that during the grade, Student received special accommodations through a 504 plan and passed the grade. (*Finding of Fact #5*). At the end of the grade, Student had many final failing grades; however, in all but one subject, Student had passing grades in some of the advisories, and Student had passing final grades in four subjects that included U.S. History, Computer Applications, Science and Health/Physical Education (*Finding of Fact #13*). Therefore, Student's academic record indicated that Student could be successful in the general education setting with the appropriate services and supports.

DCPS must ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when 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. 5 D.C.M.R. 3011.1; 34 C.F.R. 300.114(a)(2). And, DCPS shall ensure that the educational placement decision for a child with a disability is (a) 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; (b) is made in conformity with the Least Restrictive Environment ("LRE") provision of IDEIA and 5 D.C.M.R. Section 3011; ... (e) is based on the child's IEP; and (f) is as close as possible to the child's home. 5 D.C.M.R. 3013.1. Unless the IEP of a child requires some other arrangement the child shall be educated in the school that the child would attend if not disabled. 5 D.C.M.R. 3013.2. And, a child with a disability shall not be removed from education in age-appropriate regular classroom solely because of needed modifications in the general curriculum. 5 D.C.M.R. 3013.4.

First, the Hearing Officer must determine whether the procedural requirements of the Act have been followed. Second, it must determine whether the IEP developed under those procedures is "reasonably calculated to enable the child to receive educational benefits." *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982). If the Hearing Officer finds that both

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requirements are satisfied, then the government “has complied with the obligations imposed by Congress and the courts can require no more.”

Applying the previously stated mandates of IDEIA, the Hearing Officer concludes that the 06/03/09 IEP provided a program for Student that allowed Student to be educated in the least restrictive environment with Student’s non-disabled peers. The Hearing Officer concludes that there were no procedural violations of IDEIA with respect to the determination of the level of services that Student needed. The Hearing Officer concludes that the 06/03/09 IEP was appropriate and was “reasonably calculated to enable the child to receive educational benefits.” *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982). “The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child’s unique needs, supported by services that will permit the child to benefit from the instruction.” *Id.* It was not unreasonable for the IEP team to conclude that Student could be successful in the general education curriculum without a full time special education program. Moreover, Student’s reading level is now almost on par as a result of Student participating in an intensive reading program over the summer. (*Finding of Fact #14*), and this academic progress should readily assist Student with success in the general education setting.

Furthermore, in order for the Hearing Officer to conclude that the level of services prescribed by the 06/03/09 IEP was inappropriate, there would have to be evidence in the record showing that Student did not progress academically under the 06/03/09 IEP, and that is impossible to conclude on this record because the 06/03/09 IEP was not implemented due to it being developed just three days prior to the end of the 2008-2009 school year (*Finding of Fact #11*) and Student did not warrant ESY services (*Finding of Fact #10*).

As discussed under Issue #3, DCPS never convened a full MDT on 06/29/09 to discuss placement. There were only 3 days between the time of the development of the 06/03/09 IEP and the end of the school year in which the IEP could be implemented, and Student’s IEP was not implemented during that time because of promotion exercises that involved all 8<sup>th</sup> graders. (*Finding of Fact #11*). The record contained no official documentation or testimony that Student’s IEP *would be* implemented at \_\_\_\_\_ for the 2009-2010 school year and DCPS was not required to provide special education services to Student over the 2009 summer recess. The Complaint was filed and the due process hearing convened over the 2009 summer recess when Student was not required to be in school. There was also no evidence in the record that Student’s 06/03/09 IEP will be implemented at \_\_\_\_\_ during the 2009-2010 school year. Petitioner failed to meet its burden of proof that Student’s continued placement at \_\_\_\_\_ was inappropriate, as there is no evidence in the record regarding Student’s placement for the 2009-2010 school year.

The Hearing Officer concludes that Student’s 06/03/09 IEP was appropriate and reasonably designed to provide Student with a FAPE. In this case, placement in a full

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time special education non-public school, as advocated by Petitioner, was not appropriate based on Student's demonstrated record of academic performance without special education services, Student's academic levels of functioning as measured by the 01/30/09 Psychological Evaluation, on Student's academic needs, on Student's IEP, and the LRE mandate of IDEIA.

Petitioner failed to meet its burden of proof on Issue #1.

**Issue #2 – Whether DCPS failed to provide Student with an appropriate placement on 05/08/09 and on 06/29/09, thereby denying Student a FAPE?** Petitioner alleges that the 01/30/09 Psychological Evaluation, the recommendations of the 06/29/09 IEP team, Student's academic shortcomings (Student failed all classes in the 2008-2009 school year and was retained in the grade), Student's behavioral shortcomings (verbally inappropriate behaviors, leaving the classroom without permission, and touching others), were all indicators that Student required placement in a small, highly structured, special education setting, with a low student to teacher ratio; and that as of the date of the filing of the Complaint, DCPS had not yet placed Student in such a program.

The 05/08/09 MDT meeting was simply a meeting to determine Student's eligibility for special education services. Due to the length of the meeting, all parties including Petitioner, agreed to reconvene to develop the IEP. (*Finding of Fact #7*). Therefore, Petitioner did not meet its burden of proof that DCPS failed to provide Student with an appropriate placement on 05/08/09.

The 06/29/09 MDT meeting was convened by DCPS to discuss requested reevaluations only, and was not convened with the necessary members of an MDT to discuss and determine placement (*Finding of Fact #12*), as is required by 34 C.F.R. 300.116. And, on 06/29/09, a placement decision was not made by the MDT as a group. A placement packet for sent to the DCPS Site Review Committee because Petitioner was still seeking an increase in the number of hours of special education that Student was to receive and Petitioner was still seeking a specific placement at a non-public full time special education program. (*Finding of Fact #7, #12*).

Student's academic and behavior shortcomings were all indicators that Student needed some special education services, but not necessarily that Student needed an IEP with full time special education services. Indeed, the 01/30/09 psychological evaluation specifically recommended an IEP, which was developed on 06/03/09. The 01/30/09 Psychological Evaluation also recommended a highly structured school setting with a low teacher to student ratio in order for Student to maximize Student's potential. (*Finding of Fact #6*). *Rowley* holds that Student is not entitled to the maximum educational benefit, which is presumably the educational opportunity that Petitioner was seeking through a non-public placement at

There is no evidence in the record that placement was discussed at the IEP team meeting on 06/03/09. The record revealed that the 06/03/09 IEP team focused solely on the issue of the appropriate number of special education hours. (*Finding of Fact #10*).

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The credible evidence in the record was that the 06/29/09 meeting was not convened as a placement determination meeting, but as a meeting to discuss reevaluations requested by Petitioner. The 06/29/09 MDT did not agree as a group that the number of special education hours prescribed by the 06/03/09 IEP was inappropriate. Rather, DCPS forwarded a placement packet to the DCPS Site Review Committee for placement determination simply because it was requested by Petitioner and for no other reason. (*Finding of Fact #12*). Therefore, the Hearing Officer concludes that the fact that DCPS sent a placement packet to the DCPS Site Review Committee does not substantiate an allegation that the 06/03/09 IEP was inappropriate.

In the discussion of Issue #1, the Hearing Officer concluded that Student's 06/03/09 IEP was appropriate. The Hearing Officer concludes that at no time, and especially not at the 06/29/09 MDT meeting convened by DCPS, did DCPS recommend or sanction a full time special education program for Student. The Hearing Officer also concludes that the evidence in the record is insufficient to conclude that Student needed a full time special education program.

Petitioner failed to meet its burden of proof on Issue #2.

**Issue #3 – Whether, if DCPS determined a placement for Student, DCPS failed to follow proper procedures in determining Student's placement and failed to provide Petitioner with meaningful participation in determining placement, thereby denying Student a FAPE?** Petitioner alleges that if DCPS has determined placement for Student, DCPS did so without proper notification to Petitioner of a meeting to determine placement, and without including Petitioner in the meeting when the placement decision was made.

In determining the educational placement of a child with a disability..., each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, that meaning of the evaluation data, and the placement options; and is made in conformity with the LRE provisions of IDEIA. 34 C.F.R. 300.116.

There is no evidence in the record that DCPS actually determined an educational placement for Student following the development of the 06/03/09 IEP. There is no evidence in the record that Student's placement was officially determined by a Prior Notice of Placement issued by DCPS specifying that Student's 06/03/09 IEP would be implemented at \_\_\_\_\_ or at any other school. The evidence in the record revealed that Student's IEP, developed just three days before the end of the 2008-2009 school year, could be implemented at \_\_\_\_\_ (*Testimony of \_\_\_\_\_*) but was not implemented because it was developed at the very end of the school year. (*Finding of Fact #11*). There was no evidence in the record that placement was actually determined by DCPS in accordance with 34 C.F.R. 300.116. From the outset, Petitioner wanted a full time special education non-public placement for Student (*Finding of Fact #7*), and DCPS did not agree with this. The record is clear that at the 06/03/09 IEP team meeting that Petitioner participated in by telephone, the number of hours of specialized instruction

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was discussed only. (*Finding of Fact #10*). At the 06/29/09 meeting convened by the SEC at to discuss reevaluations requested by Petitioner, Petitioner brought up the subject of placement and requested that a placement packet be forwarded to the DCPS Site Review Committee for consideration of a full time special education placement. However, the SEC made clear that a full MDT/IEP team was not present because it was not anticipated that placement would be discussed at the 06/29/09 MDT meeting. (*Finding of Fact #12*). As such, the meeting required by 34 C.F.R. 300.116, to discuss and determine placement never occurred and the educational placement of Student had not been determined.

Petitioner failed to meet its burden of proof that DCPS actually determined placement, that DCPS failed to follow proper procedures in determining placement, and that DCPS failed to provide Petitioner with meaningful participation in the placement decision.

Petitioner failed to meet its burden of proof on Issue #3.

**ORDER**

**WHEREFORE**, this Complaint having been fully litigated and there being no basis in fact and law to support Petitioner's allegations that Student was denied a FAPE, it is

**ORDERED** that this Complaint be and hereby is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

**This is the FINAL ADMINISTRATIVE DECISION in this matter. Any party aggrieved by the findings and decision may APPEAL to a state court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. Section 1415(i)(2).**

Virginia A. Dietrich /s/

Virginia A. Dietrich, Esq.  
Impartial Due Process Hearing Officer

09/07/09

Date

Issued: September 7, 2009