

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

STUDENT,<sup>1</sup>

*Petitioner,*

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

*Respondent.*

Case No.

Bruce Ryan, Hearing Officer

Issued: November 29, 2010

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STUDENT HEARING OFFICE  
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**HEARING OFFICER DETERMINATION**

**I. PROCEDURAL BACKGROUND AND RECORD**

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public School (“DCPS”). Petitioner is an     year old student (the “Student”) who resides in the District of Columbia, currently attends her neighborhood DCPS high school (the “High School”), and has been determined to be eligible for special education and related services as a child with a disability under the IDEA. She has an individualized education program (“IEP”) that provides 16 hours per week of specialized instruction in a setting outside general education, plus speech-language pathology and behavioral support services.

The Complaint, filed September 15, 2010, alleges that DCPS has denied the Student a free appropriate public education (“FAPE”) by (a) failing to develop an appropriate IEP; (b) failing to implement the Student’s IEP; and (c) failing to provide an appropriate educational placement, as discussed in greater detail below. Petitioner seeks a full-time private placement for the 2010-11 School Year at a non-public, special-education day school located in suburban Maryland (the “Private School”).

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<sup>1</sup> Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

DCPS responded on September 29, 2010, that the Student has not been denied a FAPE. DCPS asserts that: (a) the Student's Multi-Disciplinary Team ("MDT") met on June 23, 2010, and adopted an appropriate IEP; (b) DCPS has fully implemented the IEP; and (c) DCPS has issued a notice of placement for the High School for the 2010-11 School Year because it concluded that the IEP can be implemented there.

The 30-day resolution period ended without agreement on October 15, 2010. A Prehearing Conference ("PHC") was then held on October 18, 2010, at which the parties discussed and clarified the issues and requested relief. *See* ¶ 4 (Prehearing Order, issued Oct. 20, 2010), ¶ 5. Following the PHC, a further MDT/IEP Team meeting was held on October 19, 2010, to review an independent vocational evaluation and to review and revise the IEP, as appropriate. *See* ¶ 10.

Disclosures were filed by both parties, as directed, on November 10, 2010, and the Due Process Hearing was held in Room 2006 on November 17, 2010. Petitioner elected for the hearing to be closed. During the hearing, the following Documentary Exhibits were admitted into evidence:

**Petitioner Exhibits:** -1 through -15.

**DCPS Exhibits:** DCPS-1 through DCPS-7.

In addition, the following Witnesses testified on behalf of each party:

**Petitioner's Witnesses:** (1) Student; (2) Parent; (3) Educational Advocate; and (4) Administrative Head, Private School.

**DCPS' Witnesses:** (1) Special Education Teacher; (2) DCPS School Psychologist; and (3) DCPS Compliance Case Manager (A. Lozano).

This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office/Due Process Hearing Standard Operating Procedures* ("SOP").

## II. ISSUES AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioner resulted in the following issues being presented for determination at hearing:

- (1) **Inappropriate IEP — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP at the 06/23/2010 MDT/IEP team meeting?**  
Petitioner claims that the 16 hours per week of specialized instruction in a setting outside general education is not a sufficient level of services to meet her unique needs, including for one-on-one instruction, and to provide her with meaningful educational benefit. (The parties stipulated at the PHC that Petitioner does not challenge the appropriateness of any of the goals stated in the IEP. *See* 4. )
- (2) **IEP Implementation — Did DCPS deny the Student a FAPE by failing to implement her IEP for the 2010-11 SY?** Petitioner claims that DCPS has not provided the Student with the services required by her IEP, as updated on 06/23/2010, since she enrolled at the High School at the start of the current school year.
- (3) **Failure to Provide Appropriate Placement — Did DCPS deny the Student a FAPE by failing to provide an appropriate educational placement this SY?**  
Petitioner claims that the High School is not an appropriate placement for her because it is either unwilling or unable to implement the existing IEP and cannot implement an appropriate IEP.

As relief for the alleged denials of FAPE, Petitioner requests: (a) immediate placement and funding of the Student at the Private School for the 2010-11 School Year; and (b) an order requiring DCPS to convene an MDT meeting within 30 days of her enrollment at the Private School to review and revise her IEP as appropriate. Petitioner also requests that DCPS “discuss and determine appropriate compensatory education to account for the denials of FAPE” at such MDT meeting 2, p. 3), but did not request the grant of any compensatory education relief in this proceeding.

## III. FINDINGS OF FACT

1. The Student is an     year old student who resides in the District of Columbia. She has been determined to be eligible for special education and related services under the IDEA as a child with Multiple Disabilities (“MD”), consisting of Specific Learning Disability (“SLD”) and Other Health Impairment (“OHI”). *See* 9; *Student Testimony; Parent Testimony.*

2. Through the end of the 2009-10 School Year, the Student attended a D.C. public charter school (“Charter School”), where she remained in     grade for three years. Since the start of the 2010-11 School Year, the Student has been enrolled at the High School. *See, e.g., Father’s Testimony; Petitioner’s Testimony.*
3. During both the 2009-10 SY at the Charter School and the 2010-11 SY at the High School, the Student has missed a number of school days due to illness and hospitalizations. *See Petitioner’s Testimony; Father’s Testimony.* The Student suffers from Sickle Cell Anemia, an inherited blood disorder that affects red blood cells and is accompanied by chronic physical pain and reduced stamina. The disease can have significant emotional, physical and cognitive effects on an individual. In Petitioner’s case, she has endured a number of hospitalizations which required blood transfusions and other treatments. *See     15, p. 2; Father’s Testimony.*
4. The Student also has severe cognitive deficiencies that adversely affect her educational performance. The most recent independent comprehensive psychological evaluation found that her overall cognitive ability was in the extremely low range, with a Full-Scale IQ measured at 66. *See     -1, p. 3;     -15, pp. 4-7.* And the Student’s academic skills have been assessed at the extremely low range in Reading, Math, Oral Language and Written Language. *1, p. 3;     -15, pp. 7-8.* Moreover, a comparison between her cognitive and academic achievement performance has indicated significant differences between her actual and predicted scores that are significant and highly unusual, and which suggest that she may benefit from specialized instruction in these areas. *-1, pp. 3-4;     -15, pp. 9-10.*
5. On April 14, 2010, the Student’s MDT/IEP Team developed an IEP that provided: (a) 10 hours per week of specialized instruction in a setting outside general education; (b) six hours per week of specialized instruction in a general education setting; (c) one hour per week of speech-language pathology services; and (d) 45 minutes per week of behavioral support services (counseling). *AG-5.*
6. On June 5, 2010, a Hearing Officer Determination issued by Hearing Officer Seymour DuBow (the “June HOD”) found, *inter alia*, that the April 2010 IEP was not reasonably calculated to provide educational benefits to the Student because it did not provide her with sufficient hours of specialized instruction outside of the general education setting, and thus

DCPS had denied the Student a FAPE in this regard. *See* [redacted] 1, pp. 12-15. The June HOD ordered DCPS to (a) revise the IEP to require that all hours of specialized instruction be provided outside of general education, and (b) determine if more hours than the current 16 hours of specialized instruction were necessary to meet the Student's needs. *Id.*, p. 15.

7. On June 23, 2010, the Student's MDT/IEP Team met pursuant to the June HOD. At this meeting, the Team agreed to provide the Student with 16 hours per week of specialized instruction, all in a setting outside of general education. The Team declined Petitioner's request to revise the IEP to provide full-time specialized instruction or to increase the number of hours above the current 16 hours per week. *See* [redacted] -6; [redacted] -7. All team members except the Student's Educational Advocate believed that the current data (including the Student's attendance record) did not support an increase in hours. [redacted] -7, p. 1; *see also DCPS-1; Advocate Testimony*. The meeting notes state: "Today, 06/23/10, [Student's] IEP will be revised to include all 16 hours of specialized instruction outside of general education. IEP revised via Easy IEP." *DCPS-1, p. 000003*. However, the evidence shows that DCPS did not actually create and distribute a revised IEP document to update the 04/14/2010 IEP until the subsequent MDT/IEP Team meeting held October 19, 2010; and the current IEP document dated 10/19/2010 appears to be still in draft form. *See DCPS-5*.<sup>2</sup>
8. The 06/23/2010 MDT/IEP Team also discussed the Student's educational placement and/or location of services for the 2010-11 School Year. A special education teacher at the High School participated and described the program available there, and all team members except the Student's Educational Advocate found that the program was appropriate for the Student. *See DCPS-1; [redacted] -7; Advocate Testimony*. The Educational Advocate requested a placement at Private School, but the team disagreed. *Id.* DCPS then issued a Prior Written Notice formally proposing that the Student's educational placement/location of services be changed from the Charter School to the High School. [redacted] -8. The Notice states, *inter alia*, that the Student "has been unsuccessful at [Charter School] due to excessive absences, behavior concerns and her not being able to receive educational benefit"; and that "[t]he current IEP can be implemented at [High School]." *Id.*

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<sup>2</sup> Petitioner does not raise any issue in this case as to DCPS' compliance with the June HOD or with any procedural requirements relating to the updated IEP.

9. The 06/23/2010 MDT/IEP Team additionally discussed that DCPS had authorized an independent vocational assessment, but had not yet received a completed evaluation from Petitioner for purposes of updating her transition plan. *DCPS-1, p. 000003*. On July 27, 2010, DCPS followed up with Petitioner's counsel regarding the vocational assessment and the need for a further MDT meeting to review that assessment. *See DCPS-3*. On September 1, 2010, the independent vocational evaluation report was completed. *See DCPS-6, p. 000030* (10/19/10 meeting notes).
10. The Student was enrolled at the High School for the 2010-11 School Year, which began on August 23, 2010. The evidence shows that the High School was initially uncertain as to the appropriate grade and class schedule for the Student due to an approximately three-week delay in obtaining necessary records from the Charter School. *See Father's Testimony; Special Ed. Teacher Testimony*.
11. On September 15, 2010, Petitioner filed her Complaint in this case, alleging that High School had not provided any of the services prescribed by her IEP since the start of the 2010-11 SY. -2, p. 2.<sup>3</sup>
12. On October 19, 2010, subsequent to the filing of the Complaint, DCPS convened a meeting of the Student's MDT/IEP Team to review the vocational evaluation and to review and revise the IEP as necessary based on a 30-day review of the new placement. *DCPS-6; 10*. Among other things, the team discussed the need to address functional life skills development within the Student's post-secondary goals and transition plan. *DCPS-6, p. 000030-31*.<sup>4</sup> The team continued to recommend that the Student receive 16 hours of specialized instruction in an out-of-general-education setting, and the team determined that the High School could implement the IEP and continued to be an appropriate placement/location of services for the Student. *Id., p. 000032*. Certain goals, as well as accommodations and modifications, were revised. *Id.*

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<sup>3</sup> At the due process hearing, however, Petitioner's counsel conceded that 7.5 hours per week of specialized instruction were being provided to the Student in her English class, and thus that at least this much of the IEP was being implemented by DCPS.

<sup>4</sup> Petitioner agreed that DCPS' review of the vocational evaluation and development of transition goals in the IEP is not at issue in this case.

13. Additionally, concerns were raised at the 10/19/2010 meeting regarding the Student's continuing attendance problems. DCPS indicated that the Student needed to be in school and would benefit from the High School program if her attendance would improve. *DCPS-6, p. 000032; -10, p. 5. See also Advocate Testimony; Lozano Testimony.* To address this problem, the draft IEP distributed at the 10/19/2010 meeting provides that when Petitioner notifies her case manager and documents that she will be out for an extended period of time due to her illness, her case manager "will then gather the work from her teachers and send via certified mail to her house." *DCPS-5, p. 000021.*
14. On October 25, 2010, a further meeting was held at the request of Petitioner and her father. Petitioner expressed an interest in the medical field and cosmetology, and she agreed to move from diploma track to certificate track to help access vocational options and enable her to achieve her life goals. *See DCPS-7, p. 000034; -11.* DCPS agreed to revise the IEP accordingly and forward the revised IEP to Petitioner's counsel. *Id.* As of the hearing date, DCPS had not yet done so or scheduled any further team meeting for that purpose.
15. The evidence shows that the IEP developed at the June 23, 2010, MDT/IEP Team meeting was reasonably calculated to provide her with meaningful educational benefit, and that 16 hours of specialized instruction outside of a general education setting was appropriate at that time to meet the Student's unique special education needs.
16. The evidence shows that, as of June 23, 2010, DCPS offered an appropriate secondary school program that could implement the goals and services in the Student's IEP and that is reasonably calculated to provide her with meaningful educational benefit. Since that time, both the Student's attendance and school work have improved at the High School, compared with the 2009-10 SY at the Charter School. *See, e.g., Father's Testimony; Petitioner's Testimony.*
17. The evidence shows that DCPS has implemented the 06/23/2010 IEP during the 2010-11 School Year to the extent that it has generally offered and provided at least 16 hours per week of specialized instruction, plus speech-language and counseling services, to the Student in a setting outside general education when the Student attends school and is available for services. However, DCPS failed to implement the IEP to the extent that, as it appears from the available evidence, DCPS: (a) did not provide all required specialized instruction for

approximately a three-week period from August 23, 2010 to the September 15, 2010 filing of the Complaint; and (b) did not provide all related services for approximately an eight-week period from August 23, 2010, to the October 19, 2010 MDT/IEP Team meeting.

#### IV. DISCUSSION AND CONCLUSIONS OF LAW

##### A. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to provide an appropriate IEP and/or placement, as well as failures to implement an IEP. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-E3030.3. The standard generally is preponderance of the evidence.<sup>5</sup>

##### B. Issues/Alleged Denials of FAPE

For the reasons discussed below, the Hearing Officer concludes that Petitioner has failed to meet her burden of proof on Issues 1 and 3, but has met her burden, in part, on Issue 2.

##### 1. Inappropriate IEP

The IDEA requires that all students be provided with a Free Appropriate Public Education (“FAPE”). FAPE means:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)...”

20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; DCMR 5-E3001.1.

To be sufficient to provide FAPE under the IDEA, an “IEP must be ‘reasonably calculated’ to confer educational benefits on the child, but it need not ‘maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped

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<sup>5</sup> *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

children.”<sup>6</sup> Judicial and hearing officer review of IEPs is “meant to be largely prospective and to focus on a child’s needs looking forward; courts thus ask whether, at the time an IEP was created, it was ‘reasonably calculated to enable the child to receive educational benefits.’”<sup>7</sup> The issue of whether an IEP is appropriate is a question of fact for hearing. *See, e.g., S.H. v. State-Operated School Dist. of Newark*, 336 F. 3d 260, 271 (3d Cir. 2003). “Ultimately, the question ...is whether or not [any] defects in the ...IEP are so significant that [DCPS] failed to offer [the Student] a FAPE.” *N.S. v. District of Columbia*, 2010 WL 1767214, Civ. Action No. 09-621 (CKK) (D.D.C. May 4, 2010), p. 20).

In this case, Petitioner claims that 16 hours per week of specialized instruction in a setting outside general education is not a sufficient level of services to meet her unique needs (including for one-on-one instruction) and to provide her with meaningful educational benefit. But Petitioner never demonstrated to the MDT/IEP Team or at hearing what specific additional specialized instruction she needed in which academic areas or how the instruction provided in the IEP is inadequate to meet her needs. *See, e.g., Advocate Testimony* (cross examination). At the same time, the evidence shows that the Student receives educational benefit in her general education health class, and that she enjoys interacting with non-disabled peers during lunch and other school activities. *See, e.g., Petitioner’s Testimony* (cross examination). Petitioner also stipulated that she does not challenge the appropriateness of the goals stated in the IEP or any other aspect of the comprehensive written program.

Accordingly, the Hearing Officer concludes that DCPS prevails on this Issue. Petitioner has not met her burden of proving that the IEP developed for her, as of June 23, 2010, should have included more than 16 hours of specialized instruction in a setting outside general education.

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<sup>6</sup> *Anderson v. District of Columbia*, 109 LRP 18615 (D.D.C. 2009), slip op. at 6, quoting *Board of Education v. Rowley*, 458 U.S. 176,200,207 (1982). *See also Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988); *J.G. v. Abington School*, 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 (“while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit. “).

<sup>7</sup> *Schaffer v. Weast*, 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley*, 458 U.S. at 207); *see also Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1040 (3d Cir. 1993) (whether an IEP is appropriate “can only be determined as of the time it is offered for the student, and not at some later date”).

## 2. Failure to Implement IEP

The failure to provide services in conformity with a Student's IEP may constitute a denial of FAPE to the Student. *See* 34 C.F.R. §300.17(d). To constitute a denial of FAPE, the aspects of an IEP not followed generally must be "substantial or significant," and "more than a *de minimus* failure"; in other words, the deviation from the IEP's stated requirements must be "material." *Catalan v. District of Columbia*, 478 F. Supp. 2d 73 (D.D.C. 2007), *quoting Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341,349 (5th Cir. 2000). *See also* 34 C.F.R. §300.513 (a) (2) (hearing officer may find denial of FAPE where procedural inadequacy caused deprivation of educational benefit).

In this case, the Hearing Officer concludes on the basis of the record evidence that it is more likely than not that DCPS has failed to fully implement the Student's IEP (as updated on 06/23/2010) during the current school year. First, DCPS appears to acknowledge a delay in transferring the Student's educational records from Charter School to High School and finalizing her class schedule for approximately three weeks at the beginning of the 2010-11 SY (08/23-09/15/2010), which likely led to an interruption in services. *See, e.g., Special Ed. Teacher Testimony* (cross-examination). Because the Charter School elects to use DCPS as its LEA for special education services, DCPS was responsible for maintaining the Student's educational records at both schools. DCPS also was required to have the updated IEP in effect for the Student at the beginning of the school year, *see* 34 C.F.R. 300.323 (a), and there is no evidence that it issued and distributed any updated IEP prior to the 10/19/2010 MDT meeting.

Second, the available evidence supports Petitioner's allegation that she failed to receive all required speech-language therapy and counseling services from approximately 8/23 to 10/19/2010, even on days that she attended school. Petitioner testified that these related services were not listed on her schedule and that she was not regularly called out of class to receive these services. *See Petitioner's Testimony*. The 10/19/2010 meeting notes also state that the social worker had only met with the Student twice this school year up to that point. 10, p. 5. While DCPS witnesses attempted to rebut this evidence with contradicting hearsay testimony (*see, e.g., Special Ed. Teacher Testimony*), DCPS did not present any direct testimony from the related service providers or any documentation (*e.g., service logs/tracking forms*) that these services were in fact provided.

Under the circumstances, the Hearing Officer concludes that Petitioner has prevailed on Issue 2, in part. The Hearing Officer believes Petitioner has met her burden of proving a failure to implement her 06/23/2010 IEP with respect to at least some portion of: (a) specialized instruction for an approximately three-week period from August 23 to September 15, 2010 (the filing date of the Complaint); and (b) related services of speech-language therapy and counseling from August 23 to October 19, 2010 (the date of the succeeding MDT meeting). Although the testimonial evidence is somewhat sketchy, Petitioner's showing has not been effectively refuted by DCPS, which should have access to relevant records and witnesses. Moreover, the deviation from the IEP appears to be material and to have deprived the Student of educational benefit. Hence, it constitutes a denial of FAPE.

### 3. Inappropriate Placement

Under the IDEA, FAPE includes "an appropriate preschool, elementary school, or secondary school education ... provided in conformity with the [IEP]." 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; DCMR 5-E3001.1. "If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school; however, if there is an 'appropriate' public school program available, *i.e.*, one 'reasonably calculated to enable the child to receive educational benefits,' the District need not consider private placement, even though a private school might be *more* appropriate or better able to serve the child." *Jenkins v. Squillacote*, 935 F. 2d 303, 305 (D.C. Cir. 1991) (emphasis in original).<sup>8</sup>

In this case, the evidence shows that DCPS offered an educational placement reasonably calculated to meet the Student's unique special education needs and provide her with meaningful educational benefit. *See Findings*, ¶¶ 7-8, 15-16. In fact, Petitioner's witnesses conceded that the IEP goals, as well as its modifications and accommodations, can be implemented at the High School. They also appeared to concede that the Student's attendance problems were primarily due to health reasons, which would likely continue regardless of where she is enrolled. *See, e.g.*,

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<sup>8</sup> *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005) (affirming "placement based on *match between a student's needs and the services offered at a particular school*" (emphasis added); *Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988) (quoting *Board of Education of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 200, 207 (1982); D.C. Code 38-2561.02 ("DCPS shall place a student with a disability in *an appropriate special education school or program* in accordance with this chapter and the IDEA") (emphasis added).

*Advocate Testimony* (cross examination). And the Student testified that she believes she is learning in her English class this semester. *Petitioner's Testimony*. Moreover, the Student's attendance record (including tardies) appears to have improved at the High School, in part because it is closer than the Charter School to her home. *Id.* See also *Father's Testimony* (acknowledging that the Student "hasn't been there long enough" to judge whether the school placement is appropriate for her).

In addition, the evidence shows that instruction in special classes within the general education High School is currently the least restrictive environment ("LRE") on a continuum of alternative placements available to meet the needs of the Student. 34 C.F.R. 300.114 – 300.115. The Student benefits from being educated with non-disabled students, including with respect to her socialization skills, interactions with peers, access to the general education curriculum, and involvement in various other school activities. See, e.g., *Psychologist Testimony*. The Student also appears to benefit from a 90-minute/day "career exploration" class, which provides an opportunity to explore her vocational interests and implement her post-secondary transition plan in this setting. See *Special Ed. Teacher Testimony*.

Accordingly, the Hearing Officer concludes that Petitioner has failed to meet her burden of proof on Issue 3. Petitioner has not shown that DCPS denied her a FAPE by failing to provide an appropriate educational placement for the 2010-11 School Year. The evidence shows that the High School can and does provide an appropriate program reasonably "tailored to meet the child's specific needs." *Branham v. District of Columbia, supra*, 427 F.3d at 11-12. Moreover, the placement is as close as possible to the Student's home, 34 C.F.R. §300.116 (b) (3), and ensures to the maximum extent appropriate that the Student is educated with children who are not disabled. *Id.*, §300.115 (a) (2) (i); DCMR §5-E3013. Finally, since an appropriate special education school or program is available within the D.C. public school system, that placement option is properly given priority by DCPS, even assuming *arguendo* that Private School might be *more* appropriate or better able to serve the Student's needs. See D.C. Code §38-2561.02; *Roark v. District of Columbia*, 460 F. Supp. 2d 32, n. 11 (D.D.C. 2006).<sup>9</sup>

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<sup>9</sup> In any event, Petitioner did not prove that the Private School would be more appropriate or better able to serve the Student's needs at this time. The Hearing Officer notes that the Private School's acceptance decision was based on an April 2010 application and a now outdated 04/14/2010 IEP. The Private School representative testified that she reviewed no information concerning the Student subsequent to 06/22/2010, including the 06/23/2010 changes to her IEP goals. *Private School Testimony*

**C. Appropriate Relief**

Having found a denial of FAPE as discussed above, the IDEA authorizes the Hearing Officer to fashion “appropriate” relief, *e.g.*, 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails “broad discretion” and implicates “equitable considerations,” *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The Hearing Officer exercises his discretion to grant appropriate equitable relief as set forth in the accompanying Order.

Both parties appear to agree that further review and likely revision of the IEP is required now that the Student has moved to certificate track, as of 10/25/2010. *See DCPS-7, p. 000033*. The revised IEP goals developed at the 10/19/2010 meeting were based on a diploma-track program. *DCPS-6, p. 000031*. And DCPS’ witnesses testified that a certificate track provides “more flexibility” in terms of providing specialized instruction outside the general education setting. *Special Ed. Teacher Testimony*. DCPS’ witnesses also stated that the High School was currently delivering 20 hours per week of specialized instruction to the Student, which may suggest needs going forward exceeding the 16-hour/week level specified in her current IEP.

As of the November 17 hearing, DCPS had not scheduled or convened an MDT meeting for this purpose (although the Hearing Officer notes that less than 30 days had passed by then since the decision to change to certificate track). Moreover, DCPS does not appear to have ever issued an updated IEP incorporating either the June 23 or October 19, 2010 meeting changes other than in “Draft” form. *See DCPS-5*. In light of the Student’s age and relatively short time remaining in her secondary education, and DCPS’ continuing responsibilities to update the IEP as needed,<sup>10</sup> this subject deserves immediate attention. Therefore, an appropriate directive is included in the accompanying Order, to the extent such actions have not yet occurred.

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(cross examination). The representative also testified that she had never met the Student and had only spoken with her by telephone for the first time the morning of the hearing. *Id.*

<sup>10</sup> *E.g., Maynard v. District of Columbia*, 54 IDELR 158 (D.D.C. 2010), *slip op. at p. 6* (“Because the IEP must be ‘tailored to the unique needs’ of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), it must be regularly revised in response to new information regarding the child’s performance, behavior, and disabilities, and must be amended if its objectives are not met. See 20 U.S.C. 1414 (b)-(d).”).

As noted above (*see* Part II, *supra*), Petitioner did not request an award of compensatory education in this proceeding, and did not present any evidence that would allow the Hearing Officer to craft such relief in accordance with *Reid v. District of Columbia*, 401 F.3d 516, 521-24 (D.C. Cir. 2005). Nor, for the reasons stated in the discussion under Issue 3 above, has Petitioner shown any adequate ground for issuing the requested private placement award.

V. **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Within **21 calendar days** of this Order (*i.e.*, by **December 20, 2010**), DCPS shall convene a meeting of the Student's MDT/IEP Team, with all necessary members including Petitioner participating. The purposes of the meeting shall include: (a) to review all updated information concerning the Student's performance and progress during the 2010-11 School Year; (b) to review and revise, as appropriate, the Student's Individualized Education Program (IEP) in light of all updated information including the Student's change to a certificate-track program; and (c) to discuss and determine whether any additional services are needed to make up for any missed services found herein and/or by the MDT/IEP Team during the 2010-11 School Year, and to otherwise meet the unique needs of the Student that result from her disability.
2. At or immediately following the MDT/IEP Team meeting convened pursuant to Paragraph 1 above, DCPS shall issue the Student's IEP in final (not draft) form, incorporating all agreed changes through the date of such meeting.
3. All other requests for relief in Petitioner's September 15, 2010 Due Process Complaint, including prospective private placement, are **DENIED**.
4. This case shall be, and hereby is, **CLOSED**.



Dated: November 29, 2010

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Impartial Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).