

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

Student Hearing Office  
810 First Street, NE, Second Floor  
Washington, DC 20002

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on behalf of

Petitioner,

Hearing Officer: Kimm Massey, Esq.

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND  
PROCEDURAL HISTORY**

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STUDENT HEARING OFFICE  
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Student is an \_\_\_\_\_ year-old male, who attends a full-time private school located outside of the District of Columbia.

On August 3, 2011, Petitioner filed a Complaint against Respondent DCPS, alleging that DCPS denied Student a FAPE by failing to evaluate him during SY 2010/11 and prior to making a significant change in his education; violated Parent's right to participate in the IEP process by predetermining Student's educational placement and location of services; denied Student a FAPE by proposing a change in placement to a DCPS school without sufficient evaluative data and against the recommendations of the staff at the current private school; and denied Student a FAPE by failing to propose an appropriate placement/location of services. Petitioner also questioned whether the current private school is a proper educational placement for Student. As relief for the alleged violation and denials of FAPE, Petitioner requested continued placement and costs. Petitioner also invoked the stay-put protection of 20 U.S.C. §1415(j).

The parties concluded the resolution process by participating in a resolution session on August 17, 2011 that did not result in agreement and did not alter the 75-day timeline.

On or about August 21, 2011, DCPS filed its Response to the Complaint, asserting therein that DCPS issued a proper prior written notice in June 2011, Student's IEP did not change and the IEP is the placement, and location of services is an administrative determination and not an MDT decision.

On September 9, 2011, Petitioner filed an Amended Complaint, which included an additional claim asserting that DCPS denied Student a FAPE by failing to hold a legal and proper resolution session. All remaining claims and the requested relief from the initial Complaint were included in the Amended Complaint.

The parties concluded the Resolution Meeting process for the Amended Complaint by failing to reach agreement on September 30, 2011, but elected not to shorten the resolution period. Hence, the 45-day timeline for this case started on October 10, 2011 and will end on November 23, 2011, which is the HOD due date.

On October 7, 2011, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. The hearing officer issued the Prehearing Order on October 11, 2011.

On October 12, 2011, Petitioner filed a Motion for Continuance seeking an 11-day continuance to permit the rescheduling of the due process hearing in this case from November 3, 2011 to November 14, 2011 to accommodate the unavailability of Petitioner's witness(es). As the requested continuance was for more than 10 days, it required the approval of the chief hearing officer. After discussion with the chief hearing officer, the hearing officer agreed to issue the HOD for this matter a mere 9 days after the date of the rescheduled due process hearing, and pursuant to the chief hearing officer's instructions, the hearing officer denied Petitioner's Motion for Continuance.

On October 13, 2011, Petitioner filed a Motion for Enforcement of "Stay Put" Rights. DCPS declined to respond to the Motion. On October 19, 2011, the hearing officer issued an Order Granting the Motion.

By their respective disclosure letters dated November 7, 2011, Petitioner disclosed forty-three documents (Petitioner's Exhibits 1 - 43) and DCPS disclosed 13 documents (Respondent's Exhibits 1 - 13).

The hearing officer convened the due process hearing on November 14, 2011.<sup>1</sup> DCPS's disclosed documents were admitted without objection. Petitioner's Exhibits 1, 14-17, 23-25, 28, 30-32, 37-39, and 41-43 were admitted without objection. Petitioner's Exhibits 2-13, 18-21, 26-27, 29, 33-36, and 40 were admitted over DCPS's objections that the documents were outdated and not relevant, otherwise irrelevant, and/or communications prepared by counsel and lacking a witness for cross-examination.

Thereafter, the hearing officer received opening statements, Petitioner presented testimonial evidence from its two witnesses, DCPS presented testimonial evidence from its witnesses, and the hearing officer received closing statements prior to concluding the hearing.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C.

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

§§ 1400 et seq., 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.”).

### **ISSUE(S)**

The issues to be determined are as follows:

1. Did DCPS deny Student a FAPE by failing to evaluate during SY 2010/11 and prior to making a significant change in his education by changing his location of services/placement?
2. Did DCPS violate Parent’s right to participate in the IEP process by predetermining Student’s educational placement and location of services?
3. Did DCPS deny student a FAPE by proposing a change in placement to the neighborhood DCPS school without sufficient evaluation data and against the recommendations of his current educational staff at the full-time private school?
4. Did DCPS deny Student a FAPE by failing to propose an appropriate placement/location of services?
5. Does Student’s current private school remain a proper educational placement for Student?
6. Did DCPS deny Student a FAPE by failing to hold a legal and proper resolution session?

### **FINDINGS OF FACT**<sup>2</sup>

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 is an eight year-old male, who has attended a private school located outside of the District of Columbia since 2008. Parent initially placed Student at the school, and DCPS began funding his tuition at the school several years ago pursuant to an HOD.<sup>3</sup>
2. Student’s current IEP is dated June 6, 2011 and identifies Student’s primary disability as Other Health Impairment (“OHI”). The IEP requires Student to receive 24 hours per week of specialized instruction in general education, 3 hours per week of occupational therapy in general education, 4 hours per week of speech and language services in

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<sup>2</sup> To the extent that the hearing officer has declined to base a finding of fact on a witness’s testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer’s determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>3</sup> Testimony of Parent.

general education, 45 minutes per week of behavioral support services outside general education, and 1 hour per week of speech and language services outside general education.<sup>4</sup>

3. Student's initial evaluations were independent evaluations obtained by Parent. The evaluations were conducted in 2007-2008. DCPS has never conducted evaluations for Student.<sup>5</sup>
4. The results of Student's November 6, 2007 independent occupational therapy evaluation suggested that Student had difficulties in the realm of sensory processing, sensory modulation, and developmental hand skills.<sup>6</sup>
5. At the time of Student's February – March 2008 independent psychological and educational evaluation, Student was functioning at age level or well above in every area assessed, except within the verbal domain, where his skills tended to be in the low average range. The evaluator recommended placement in a day school program for students with learning disabilities, noting that it was unlikely Student could benefit from and experience success within a regular classroom setting in light of his weaknesses.<sup>7</sup>
6. At the time of Student's March 14, 2008 independent comprehensive speech and language evaluation, he presented with a mild-moderate articulation, receptive and expressive language delay and mild pragmatic impairment.<sup>8</sup>
7. On December 26, 2008, an independent hearing officer determined that Petitioner sufficiently proved in a due process hearing proceeding that Student has ADHD and is a child with a disability of OHI.<sup>9</sup>
8. Student's IEP team conducted a complete review of Student's independent evaluations on September 12, 2008, and the team determined at Student's January 22, 2009 eligibility meeting that the assessments were sufficient.<sup>10</sup>
9. Student received an outside audiometric evaluation on May 9, 2011. Student exhibited borderline reduced auditory processing test performance on linguistically loaded tests involving degraded speech signal (filtered words) or speech signals presented within background noise. As a result, the evaluator opined that significant reduced performance may be expected in any environment where degradation of speech is noted, or significant competing noise (including competing/background speech) is present, such as that often presented in school-based settings. The evaluator also noted that Student required a significant prolongation in response time for all test measures.<sup>11</sup>

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<sup>4</sup> Petitioner's Exhibit 24; Respondent's Exhibit 6.

<sup>5</sup> Testimony of Parent.

<sup>6</sup> Petitioner's Exhibit 3.

<sup>7</sup> Petitioner's Exhibit 4.

<sup>8</sup> Petitioner's Exhibit 5.

<sup>9</sup> Petitioner's Exhibit 6 at 11.

<sup>10</sup> Petitioner's Exhibit 9.

<sup>11</sup> Petitioner's Exhibit 22.

10. In the spring of 2011, the DCPS Placement Monitor for Student's current private school contacted Parent and stated that Student would not be able to return to the private school, so they needed to look at other possible locations of services for Student. A meeting in DCPS's offices was scheduled for May 11, but the Placement Monitor cancelled the meeting and told Parent that he had visited Student's DCPS neighborhood school and was excited because he thought the neighborhood school was the place for Student to attend. The Placement Monitor asked Parent to go visit the DCPS neighborhood school.<sup>12</sup>

11. On June 6, 2011, DCPS held an MDT meeting for Student at his current private school. The DCPS Placement Monitor attended with an education specialist from Student's DCPS neighborhood school. The Director, Coordinator and a teacher from Student's current private school also attended the meeting, in addition to Parent and Petitioner's counsel.

During the meeting, the team reviewed aspects of the program at Student's current private school, as well as his level of performance, weaknesses and needs in various areas. Although DCPS indicated from the start that Student would be moved to his neighborhood school and never changed its mind, Parent, Petitioner's counsel and the staff members from Student's private school expressed their disagreement with DCPS's determination and were vocal in expressing their opinion that Student should remain at the current private school. No other schools besides the DCPS neighborhood school and the current private school were discussed.

Petitioner's counsel requested re-evaluations for Student on Parent's behalf, and DCPS offered to order assessments for Student but advised that the assessments would have no major bearing on Student's placement. At the end of the meeting, Parent agreed to go tour Student's neighborhood school.<sup>13</sup>

12. Also on June 6, 2011, DCPS issued a Prior Written Notice changing Student's location of services from his current private school to his DCPS neighborhood school.<sup>14</sup>

13. Parent went to visit the DCPS neighborhood school on or about the last day of SY 2010/11. The staff member Parent spoke with at the neighborhood school informed Parent that the school provides pull-out speech and language services and cannot provide integrated services for 3-4 hours per week as the current private school does. Parent also noticed that the neighborhood school has approximately 20 students and 1 teacher per class, which concerned Parent in light of student's attention and social/pragmatic language issues. Parent is concerned that Student would not receive enough support at the neighborhood school, which would affect his ability to grasp concepts in class as well as his self-esteem.<sup>15</sup>

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<sup>12</sup> Testimony of Parent; *see* Petitioner's Exhibits 18-20.

<sup>13</sup> Testimony of Parent; testimony of Director of private school; Respondent's Exhibit 7.

<sup>14</sup> Respondent's Exhibit 11; Petitioner's Exhibit 25.

<sup>15</sup> Testimony of Parent.

14. Petitioner's consultant visited Student's DCPS neighborhood on October 11, 2011 and spoke to the SEC at the school, who indicated that the school could not provide Student with the amount of integrated related services Student's IEP calls for him to receive in the general education setting. Moreover, because of the larger class sizes at the neighborhood school, which appeared to range from approximately 18 to 22 students, the consultant was concerned that the classes would place too many language and self-regulatory demands on Student and would provide too many distractions for Student.<sup>16</sup>
15. Student's DCPS neighborhood school actually has three 2<sup>nd</sup> grade classrooms with approximately 24-25 students in each class. The school "may" be able to implement Student's IEP, which calls for 24 hours per week of specialized instruction in a general education setting, but that cannot be determined with certainty until the staff reviews the IEP as a team to determine how many hours of specialized instruction Student needs and whether the school provide the required amount of hours.<sup>17</sup>
16. The resolution session for the initial Complaint filed in this case was held on August 17, 2011. DCPS's Compliance Case Manager ("CCM"), Parent, and Petitioner's counsel were the only individuals present at the session. The CCM did not know Student and said he had no authority to make any decisions regarding Student's location of service. The CCM stated that evaluations could be done but they would have no impact on Student's school. The CCM said no to Parent's request to have evaluations conducted first and then have a location of services meeting.<sup>18</sup>
17. The resolution session for the amended Complaint in this action was held on September 30, 2011. The only individuals present at that session were a different CCM who had no familiarity with Student, Parent and Petitioner's counsel.<sup>19</sup>
18. On October 5, 2011, DCPS issued an Independent Educational Evaluation Authorizing Letter, which authorized Parent to obtain independent psychological, speech-language and occupational therapy assessments for Student.<sup>20</sup>
19. Student is doing very well this year at his current private school.<sup>21</sup>
20. Student's current school is providing him with numerous supports, including multisensory teaching, lots of help with executive functioning and organization, small group instruction, and integrated related services, which requires the related services providers to come into the classroom and work with the teachers to provide plug-in support.<sup>22</sup>

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<sup>16</sup> Testimony of Petitioner's consultant.

<sup>17</sup> Testimony of SEC.

<sup>18</sup> Testimony of Parent; see Exhibit 32, Respondent's Exhibit 8.

<sup>19</sup> Testimony of Parent; see Exhibit 39.

<sup>20</sup> Petitioner's Exhibit 41; Respondent's Exhibit 9.

<sup>21</sup> Testimony of Parent.

<sup>22</sup> Testimony of Petitioner's consultant.

21. Student's current private school provides him with a student-teacher ratio of 13 students to 2 adults consisting of a head teacher, who has a Master's degree in special education, and an associate teacher, who has a Bachelor's degree and is a former head teacher. Student receives academic instruction in small groups of 3 to 5 children. In addition to receiving integrated speech-language and occupational therapy services in class, Student is also exposed to a multi-sensory approach which includes lots of visuals, and his day is externally structured to reduce attention issues. The current annual cost of tuition at the private school is \_\_\_\_\_ which includes speech/language and occupational therapy services.<sup>23</sup>

### 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. Alleged Denial of FAPE by Failing to Evaluate

A reevaluation must be conducted if the child's parent or teacher requests a reevaluation. 34 C.F.R. § 300.303(a)(2). Moreover, a reevaluation must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). As part of any reevaluation, the IEP team must review existing evaluation data on the child, and on the basis of that review and input from the child's parents, identify what additional data, if any, are needed. 34 C.F.R. § 300.305(a)(1)-(2). If the IEP team determines that no additional data are needed, the public agency must notify the child's parents of (i) the determination and the reasons for it, and (ii) the parents' right to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs. 34 C.F.R. § 300.305(d)(1).

"The failure to complete all necessary evaluations results in a substantive denial of FAPE which results in harm to the disabled child. In the absence of necessary and appropriate evaluations the district cannot develop a program that is tailored to the student's unique needs and reasonably calculated to enable him to receive educational benefits. . . . As such, an evaluation's primary role is to contribute to the development of a sound IEP." *Long v. District of Columbia*, 780 F.Supp.2d 49, 60-61 (D.D.C. 2005) (internal quotations and citations omitted).

In the instant case, Petitioner points out that Student's most recent evaluations are more than three years old, and Petitioner contends that DCPS denied Student a FAPE by failing to evaluate during SY 2010/11 and by failing to evaluate prior to making a significant change in Student's education by changing his location of services/placement. On the other hand, DCPS argues that the evaluations Student needs are current, and that Student has been constantly reevaluated through items such as the private school's issuance of progress reports and DCPS's initial eligibility determination. DCPS further asserts that there has been no change to Student's IEP or "placement" because the parties agree that the current IEP is appropriate.

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<sup>23</sup> Testimony of Director of private school.

Upon review of the evidence and applicable law, the hearing officer concludes that DCPS's failure to conduct a reevaluation of Student at least once every three years and pursuant to Parent's request constituted a substantive denial of FAPE. See 34 C.F.R. § 300.303. The hearing officer is not persuaded by DCPS's argument that constant reevaluations have been conducted and notes that DCPS is unable to point to any evidence demonstrating that (1) a team determination was made that no additional data was required in connection with any such claimed reevaluation, and (2) Parent was notified of such a determination and of her right to request an assessment despite the determination.<sup>24</sup> Nor is the hearing officer persuaded that DCPS was required to evaluate Student prior to changing his location of services, independent of any other obligation to reevaluate, because there is no contention by Petitioner that Student's IEP is inappropriate, and the primary role of evaluations is to contribute to the development of a sound IEP. See *Long v. District of Columbia, supra*.<sup>25</sup> Nevertheless, as noted above, Petitioner has met its burden of proving a denial of FAPE due to DCPS's failure to reevaluate every three years and pursuant to Parent's request. However, as DCPS has already awarded Student independent evaluations, Petitioner is not requesting such evaluations and none will be awarded herein.

## **2. Alleged Violation of Parent's Right to Participate in the IEP Process**

"LEAs must make proper placement decisions involving parental participation to ensure that a disabled child has access to a FAPE. The parent must have a full, meaningful opportunity to participate in the placement decision." *Long v. District of Columbia*, 780 F.Supp.2d at 59 (internal citations omitted).

In the instant case, Petitioner contends that DCPS violated Parent's right to participate in the IEP process by predetermining Student's educational placement and location of services. DCPS disagrees, maintaining that Student's program was not changed and the only change was in the location of services, which is an administrative decision.

As an initial matter, the hearing officer agrees with DCPS that "placement" refers to a student's educational program, not the location of services, and there is no evidence in this case that Student's overall educational program was changed. See FN 26, *supra*. The hearing officer further agrees with DCPS that, as a general rule, location of services is an administrative determination to be made by the LEA and a parent has no right to compel an LEA to place a child at a particular school. See *White v. Ascension*, 343 F.3d 373. Moreover, as the evidence in this case proves that Parent and her representative were vocal in their opposition to DCPS's proposed location of services but DCPS ultimately disagreed with the position of Parent and her representative, the hearing officer concludes that Parent was not precluded from meaningfully participating in the location of services decision in this case. Compare *H.B. v. Las Virgenes*

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<sup>24</sup> Although DCPS determined in connection with Student's January 22, 2009 eligibility determination that no new assessments were needed for Student in light of the September 2008 review of his evaluations, said determination was part of the initial eligibility determination process and cannot reasonably be considered a reevaluation.

<sup>25</sup> With respect to Petitioner's contention that the proposed change in location of services constituted a change in placement, see *White v. Ascension Parish School Board*, 343 F.3d 373, 379 (5<sup>th</sup> Cir. 2003) (citations omitted) ("[e]ducational placement," as used in the IDEA, means educational program-not the particular institution where the program is implemented).

*Unified School District*, 2007 WL 1989594, \*2 (9<sup>th</sup> Cir. 2007) (It was unclear whether school district violated parents' right to meaningfully participate in meetings concerning the child's location of services where school district determined to move Student from a private school to a public school program and presented only the one public school option, and parents did not suggest alternatives for the school district to consider.)<sup>26</sup>

**3. Alleged Denial of FAPE by Proposing a Change to the DCPS Neighborhood School Without Sufficient Evaluation Data and Against Private School Staff's Recommendation**

The hearing officer has already determined above that DCPS did not deny Student a FAPE by failing to evaluate Student prior to changing his location of services to his DCPS neighborhood school. See section 1, above.

Moreover, as the evidence in this case proves that DCPS disagreed with the recommendations of the staff at the private school but did not foreclose said staff from voicing their opinion at Student's June 2011 MDT meeting, Petitioner has failed to present any citations in support of its position that DCPS was obligated to adopt the recommendation of the staff at the current private school, and the hearing officer is unaware of any case law or regulatory/statutory citations in support of this position, the hearing officer concludes that Petitioner has failed to meet its burden of proof on this claim.

**4. Alleged Failure to Propose an Appropriate Placement/Location of Services**

IDEA provides that a FAPE consists of special education and related services that, *inter alia*, are provided at an appropriate elementary school in conformity with an IEP. See 34 C.F.R. § 300.17. Hence, the determination of whether the proposed location of services is appropriate turns on whether the school selected by DCPS can implement Student's IEP. See *T.T. v. District of Columbia*, 2007 U.S. District Lexis (D.D.C. July 23, 2007) (plaintiffs' challenge to public schools selected by DCPS was rejected where plaintiffs could not prove public schools were unable to implement the student's IEP). As the evidence in this case proves that the DCPS neighborhood school cannot provide the amount of integrated related services required under Student's IEP, and that it is unclear whether the neighborhood school can even provide Student with the 24 hours of specialized instruction required under his IEP, the hearing officer concludes that Petitioner has met its burden of proving that DCPS selected an inappropriate location of services for Student. See *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) (a State satisfies its obligation to provide a FAPE by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction).

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<sup>26</sup> The hearing officer notes that the remaining cases cited by Petitioner in support of this claim, specifically *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6<sup>th</sup> Cir. 2004), *Spielberg v. Henrico County Public School*, 853 F.2d 256 (4<sup>th</sup> Cir. 1998), and *M.C.E. v. Board of Education of Frederick County*, 2011 WL 2709196 (D.Md. 2011), concern factual circumstances involving the predetermination of a student's location of services prior to the development of the IEP, which differs from the factual circumstances in this case.

**5. Does the Current Private School Remain a Proper Educational Placement for Student?**

“Where a public school system has defaulted on its obligations under the IDEA, a private school placement is proper under the Act if the education by said school is ‘reasonably calculated to enable the child to receive educational benefits.’” *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 37 (D.D.C. 2008) (quoting *Wirta v. District of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994) (quoting *Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley*, 456 U.S. 176, 207)). In the instant case, where the undisputed evidence proves that Student is performing very well at his current private school, which is providing him with, *inter alia*, numerous supports, a low student-teacher ratio, and academic instruction in small groups, the hearing officer concludes that Student’s current private school remains a proper location of services for him. As a result, the hearing officer will order DCPS to maintain Student at his current private school for the remainder of SY 2011/12, and to fund the annual tuition at the private school for the current school year.

**6. Alleged Failure to Hold a Legal and Proper Resolution Session**

IDEA provides that within 15 days of receiving notice of a parent’s due process complaint, an LEA must convene a resolution meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that, *inter alia*, includes a representative of the public agency who has decision-making authority on behalf of the agency. 34 C.F.R. § 300.510(a)(1)(i). The purpose of the meeting is for the parties to discuss the complaint and underlying facts, and to allow the LEA an opportunity to resolve the complaint. 34 C.F.R. § 300.510(a)(2). The parent and the LEA determine the relevant members of the IEP team to attend the meeting. 34 C.F.R. § 300.510(a)(4).

In the instant case, Petitioner alleges that DCPS violated IDEA by convening two resolution sessions that did not include the relevant IEP team members with specific knowledge of Student and the facts alleged in the complaint, while DCPS contends that its sole obligation was to have a person with decision-making authority present and it was not required to have IEP team members present at the meeting. As an initial matter, the hearing officer notes that DCPS’s position clearly contradicts the governing regulatory provisions cited above. Moreover, the evidence in this case demonstrates that DCPS failed to confer with Parent to determine the relevant IEP team members to participate in the resolution sessions, failed to have any IEP team members at all at the resolution sessions, and at the August 17, 2011 resolution session, failed to secure the participation of an LEA representative with decision-making authority. Under these circumstances, the hearing officer concludes that Petitioner has met its burden of proof on this claim. However, as the full relief requested by Petitioner will be granted in connection with other claims, and said relief eliminates the effectiveness of any relief that could be granted in connection with this claim, the hearing officer declines to grant any relief for this violation of IDEA.

**ORDER**

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

1. DCPS shall maintain Student's placement/location of services at his current private school for the remainder of SY 2011/12, and DCPS shall provide funding for the annual tuition costs at Student's current's private school in the amount of \_\_\_\_\_ less any amounts DCPS has already paid during the current school year towards Student's annual tuition.

**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 U.S.C. § 1415(i).

Date: 11/23/2011

/s/ Kimm Massey

Kimm Massey, Esq.  
Hearing Officer