DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

STUDENT, a minor, by and through
his Parents[1]

Petitioner,

v

Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS ("DCPS"),

Respondent.

OSSE
STUDENT HEARING OFFICE
2011 NOV -7 AM 8:34

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On July 25, 2011 Parents, on behalf of their child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education ("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A) (Supp. 2010). Respondent filed a Response to Parent's Administrative Due Process Complaint Notice (HO 4) on August 5, 2011. A resolution meeting was held on August 10, 2011. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on

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[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

August 10, 2011 so indicating. HO 6. As a result, the 45 day timeline began to run on August 25, 2011.

I held a telephone prehearing conference on August 30, 2011. HO 7. By agreement of the parties, the hearing was scheduled for October 3, 2011. The 5-day disclosures were due on September 26, 2011. On that date Respondent's counsel informed me and Petitioner's counsel by email (See Exhibit 8) that he had computer problems and asked for a delay in filing the disclosures to the following day. I responded that Respondent's counsel was to provide the disclosures as early as possible the following day and asked Petitioner's counsel to determine what, if any, accommodations she needed as a result of the late filing. On September 27, 2011 (See Exhibit 8), Petitioner's counsel requested Respondent be prohibited from putting on evidence and testimony or, in the alternative, I continue the hearing to allow Petitioners additional time to prepare their case and order DCPS to fund Student at his private placement from the date of the filing of the complaint until the date of the rescheduled hearing. I responded by email dated September 29, 2011 (See Exhibit 8) stating I had reviewed the IDEA regulations and determined I had no discretion under 34 C.F.R. Section 300.512(a)(3) which provides that any party has the right to prohibit the introduction of evidence that has not been disclosed to the party at least 5 days before the hearing. I, therefore, barred the introduction of Respondent's proposed exhibits, but I did not bar Respondent's witnesses from testifying. The hearing commenced as agreed on October 3, 2011 in Room 2006 of the Student Hearing Office. However, due to significant delay as a result of preliminary matters, Petitioners' first witness, the expert upon whom they were relying was at that point unavailable to testify. Therefore, Petitioners' filed a Motion for

Continuance which Respondent did not oppose. The parties had agreed during the prehearing conference that October 21, 2011 was the next mutually available date should a second date for hearing be required. Petitioners also indicated that no prejudice resulted from the delay as Student was attending the private school that Petitioners' have asked me to review as to whether it constitutes the appropriate placement for Student. A second hearing date of October 25, 2011 and additional time to allow for writing the hearing officer determination were included in the Motion for Continuance. The Motion was granted by the Chief Hearing Officer on October 4, 2011. The Hearing Officer Determination is now due on November 4, 2011.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUE(S)

The issues are:

1) DCPS denied Student a free, appropriate public education ("FAPE ") by failing to propose an appropriate level of special education services in the June 2011 individualized education program ("IEP"). The number of hours of special instruction is insufficient and the configuration of the instruction in a combination of inclusion and self-contained class rooms is not appropriate. The Petitioner does not contest the goals contained in the IEP;

2) DCPS denied Student a FAPE by failing to propose a placement or location of service. The student requires full time, self-contained, special education services. DCPS did not issue a prior notice of placement to School or any other school for the 2011- 2012 school year;

3) The multidisciplinary team's ("MDT") failure to appropriately consider Dr. Solomon's, Petitioner's expert, recommendations denied Student a FAPE;

4) DCPS denied Student a FAPE by denying Student's parents meaningful participation in the IEP and decision making process by failing to provide information regarding how and where the MDT proposed the IEP would be implemented in the 2011- 2012 school year and by failing to provide

information regarding School.[3] The MDT further denied Student's parents meaningful participation in the decision making process when it was unable to provide the definition of critical life skills the team had used in determining the student was not eligible for extended school year services; and

5) DCPS denied Student a FAPE by failing to provide the notice required by 34 C.F.R. § 300.503(a)(2) when a public agency refuses to initiate or change the educational placement or provision of FAPE to a child. The notice should have been provided both as to the provision of FAPE and the placement as provided on the June 2011 IEP and questioned by the parents.[4]

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner found in Appendix B are:

P-1. Due Process Complaint Notice, 7-25-11;
P-2. Psychological Evaluation, First Step Assessments, 12-10-2005;
P-3. DCPS Psycho-educational Evaluation Review, 5-04-2006;
P-4. Occupational Therapy Evaluation, Dr. Lynn Balzer-Martin,10-13-2006;
P-5. Woodcock Johnson III Test of Achievement, 10-26-2009;
P-6. DCPS IEP, 1-05-2010;
P-7. Peabody Picture Vocabulary Test, 3-20-2010;
P-8. Diagnostic Educational Evaluation, Dr. Laura Solomon, 3-20-2010;
P-9. Letter to Dr. Robert Shearin from Dr. Charles J. Conlon, 6-05-2010;
P-10. Intellectual Evaluation, Dr. Elliot Blumenstein, 10-06-2010;
P-11. DCPS IEP, 12-07-2010;
P-12. Parent Teacher Conferences Report, 2-18-2011;
P-13. The Lab School Comprehensive Speech and Language Assessment, 4-07-2011;
P-14. The Lab School Teacher Evaluation of Student Strengths and Needs, 4-20-2011;
P-15. Diagnostic Educational Evaluation, Dr. Laura Solomon, 4-25-2011;
P-16. Letter to Mr. Samuel Biwott from Paula A. Rosenstock, Esq., 5-10-2011;
P-17. Letter to Paula A. Rosenstock, Esq. from Ms. Kara D. Mitchell, 5-13-2011;
P-18. Letter to Mr. Samuel Biwott from Paula A. Rosenstock, Esq., 5-25-2011;
P-19. Emails between Ms. Monique Hunter and Paula A. Rosenstock, Esq., 6-01-2011;
P-20. DCPS Letter of Invitation to a Meeting, 6-08-2011;
P-21. DCPS Review of Independent Speech and Language Evaluation, 6-10-2011;
P-22. DCPS Review of Independent Educational Evaluation, 6-10-2011;

[3] At closing, Respondent objected to the inclusion of this issue in the complaint arguing there was no legal basis for it. I noted I would include DCPS' objection in the instant HOD and then overruled the objection stating there was a legal basis for the claim. My discussion of this issue, *Infra*, addresses the legal basis for the claim.
[4] Petitioner's counsel withdrew issues 6 and 7 of the original due process complaint.

P-23. DCPS IEP, 6-14-2011;
P-24. Lab School Occupational Therapy Evaluation, 6-30-2011;
P-25. Letter to Ms. Sharon Courm from Paula A. Rosenstock, Esq., 7-25-2011;
P-26. Letter to Ms. Monique Hunter from Paula A. Rosenstock, Esq., 8-08-2011;
P-27. Resolution Session Disposition Form and Meeting Notes, 8-10-2011;
P-28. Resume of Dr. Laura J. Solomon;
P-29. Resume of Ms. Karen F. Duncan; and
P-30. Resume of Ms. Kathryn Riverso.
P-31. Occupational Therapy Test Scores, 6/29/11
P-32. Woodcock-Johnson Score Report, 9/6/22[5]

Exhibits admitted on behalf of Respondent found in Appendix C are:

D-1 Report card 2010-2011
D-2 Email 5/27/11
D-3 IEP 6/13/11
D-4 IEP notes 6/13/11
D-5 IEP Draft 6/14/11
D-6 IEP 6/20/11
D-7 IEP Notes 6/20/11
D-7A Supplemental pages for D-7[6]
D-8 Emails May-June
D-9 CV Monique Hunter
D-10 CV Lynn Barganier[7]

Exhibits admitted on behalf of Hearing Officer found in Appendix D are:

1 Administrative Due Process Complaint Notice dated July 25, 2011
2 Notice of Hearing Officer Appointment dated July 27, 2011
3 Prehearing Conference Scheduling Letter and Timeline Order of August 1, 2011
4 DCPS Response dated August 5, 2011 to Administrative Due Process Complaint
5 Prehearing Conference Notice of August 8, 2011
6 Due Process Complaint Disposition Form executed August 10, 2011
7 Prehearing Conference Order dated August 31, 2011
8 Miscellaneous emails
9 Proposed Hearing Officer Exhibits
10 District of Columbia Public Schools' Response to Petitioner' s [sic] Email Complaining about Disclosures dated 9/28/11
11 Parents' Reply to DCPS Response to Petitioner's [sic] Email Complaining about Disclosure of 10/3/11
12 Parents' Motion for Continuance 10/3/11 with incorrectly dated Certificate of Service

[5] These exhibits were disclosed on October 14, 2011 and entered into evidence on October 21, 2011.
[6] This exhibit was disclosed on October 14, 2011 and entered into evidence on October 25, 2011.
[7] This exhibit was disclosed on October 18, 2011 and entered into evidence on October 25, 2011.

13 Interim Order on Continuance Motion dated October 4, 2011[8]

B. Testimony

Petitioner Kennedy testified, and Petitioners presented the following witnesses:

- Laura Judith Solomon, Ed.D., admitted as an expert in special education;
- Kathryn Riverso, M.A., CCC-SLP, speech language pathologist, The and
- Academic Director, The admitted as an expert in special education administration.

DCPS presented the following witnesses:

- Lynn Bargainier, School Psychologist, DCPS, admitted as an expert in school psychology, evaluation, programming and placement;
- Special Education Coordinator, School, DCPS;
- Shilonda Coutee, admitted as an expert in Speech Language Pathologist, DCPS;
- Special Education Coordinator, School, DCPS;
- General Education Teacher, 5th grade, School; and
- Special Education Teacher, School, DCPS.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. Student is years old. He is in the intermediate program (5th and 6th grade) at The His homeroom has twelve students, a certified special education teacher and two assistants. The program is designed to address the needs of students with learning disabilities, as well as needs in the areas of executive functioning and

[8] Hearing Officer exhibits 10 – 13 became part of the record after the filing of the proposed Hearing Officer Exhibit List and have been added here for completeness.

language. The is a private school for students in special education. It has recently received a certificate of approval from the Office of the State Superintendent of Education. Testimony of Testimony of

2. This is Student's first year at The He is doing well and has shown progress both academically and emotionally. Testimony of Testimony of

3. Student was adopted when he was 13 months old. He had physical struggles as an infant, including pneumonia and failure to thrive. He was delayed in both walking and talking. When he entered school he was behind his peers developmentally. His parents began to develop concerns about his education when he entered pre-kindergarten. Testimony of

4. Student was retained in the second grade at his parents' insistence. Student also was first found eligible for special education and related services in the second grade. His first IEP is dated 5/5/06. Testimony of

5. Student attended for the first through fifth grades, except for his third grade year when his family moved out of the District of Columbia ("District") for one year. Petitioners wanted Student to return to when they returned to the District. Student has two siblings who attend DCPS schools. Testimony of

6. Petitioners hired Dr. Solomon in the spring of 2010 due to their on-going concerns about Student who was in the grade at the time. He was falling further behind in school. He knew he was not keeping up. He was being bullied, and his confidence and self-esteem were negatively affected. Dr. Solomon issued a report on her evaluation of Student on June 5, 2010. There was no IEP meeting to discuss this report during the 2010 – 2011 school year. Testimony of

7. Student has multiple learning disabilities in math, written expression and reading. Student's skills show significant variability. He has high cognitive functioning as well as good reasoning, background knowledge and vocabulary. Student also has attention deficit hyperactivity disorder. He has sensory processing issues as well as issues with executive functioning, auditory comprehension and motor response. He also has emotional needs that impact his education. Testimony of Solomon; P 2; P 8; P 10; P 13; P 15; P 22; P 24; P 31.

8. On the Wechsler Intelligence Scale for Children – Fourth Edition, administered on October 6, 2010, Student earned a Verbal Comprehension Index score in the superior range, a Perceptual Reasoning Index score in the average range, a Working Memory Index score in the low average range and a Processing Speed Index score in the borderline range. The variability in these scores is statistically significant. He has above average cognitive ability. Testimony of Solomon.

9. Student has strengths and weaknesses in speech/language. He is able to articulate clearly, and discriminate between sounds. He has social pragmatic skills in that he can initiate and maintain conversations. Receptively, he is able to draw inferences. On the other hand, he has difficulties in motor planning in speech that appear in relation to multisyllabic words and certain sounds. This impacts him in the classroom. He also has difficulty with working auditory memory and in retaining details which impact his ability to follow multi-step directions. Student has difficulty with reading fluency. However his comprehension is average although testing reveals weakness regarding fluency in this area as well. He has difficulties in written language that are similar to those he has in spoken language. Testimony of Riverso; P 13.

10. In March 2010 Student's mathematics standard scores on the Woodcock-Johnson ranged from a low of 83 in Math Calculation Skills to a high of 87 in Broad Math with one exception, a

scaled score of 92 in Applied Problems. Student's reading standard scores on the GORT-4 ranged from a low of 1 to a high of 3 in Rate and in Accuracy with one exception, a score of 8 in Comprehension. All of these scores were at the first percentile or less, except comprehension which was at the 25th percentile. On re-evaluation in April 2011 Students mathematics standard scores on the Woodcock-Johnson 3 showed some changes both positively and negatively. Student's lowest score was a 72 in Math Fluency and his highest score was a 91 in Applied Problems. The GORT was not readministered. P 8; P 15.

11. Student made progress at in that he continued to learn in the 2010- 2011 school year. Dr. Solomon's testing indicates Student was learning but not progressing in relation to his classmates; DCPS testing reveals progress in spelling, reading fluency, reading grade level and writing constructed responses. Testimony of Solomon; P 5; P 15; P 22; P 23.

12. Petitioners applied to The at Dr. Solomon's suggestion. Student was accepted for the 2010 – 2011 school year but no space was available. Space became available for the 2011- 2012 school year. Testimony of

13. Student attended for his fifth grade year in 2010 -2011. On May 10, 2011, Petitioners' counsel notified Student's case manager at Key that Student's family intended to enroll him in The and sought public funding. This letter also stated Student was not making meaningful educational progress at The Program Manager at responded by letter dated May 13, 2011 stating DCPS would not fund Student's placement at The and further was able to meet Student's needs. On May 25, 2011, Petitioners' counsel sent Student's case manager a letter forwarding Dr. Solomon's second (2011) evaluation report of Student requesting the IEP team review the report and consider placement at The Lab School

based on Dr. Solomon's recommendations. In response, the IEP team met on June 13 and June 20, 2011. Testimony of P 16; P17; P 18.

14. An IEP for Student was finalized at the June 20, 2011 meeting.[9] Dr. Solomon and the DCPS team worked together between the June 13 and June 20 meetings to create the final June 20, 2011 IEP. The parties agree that the goals and objectives in the June 20, 2011 IEP are appropriate. The parties do not agree that the hours of service and the location of these services are appropriate. Testimony of Solomon; Testimony of Testimony of Testimony of Testimony of Testimony of P 23

15. Student's IEPs have shown a steady, though minimal, increase in the hours of service since January 2010. The January 5, 2010 IEP provided 4 hours of specialized instruction, 3 inside general education and 1 hour outside general education. It also provided 1 hour of occupational therapy per week with .5 hours inside general education and .5 hours outside general education. The 12/15/10 IEP increased the hours of special instruction to by 1.25 hours per week, to 5.25 per week, including 2.5 hours outside general education with one hour each in reading and mathematics and .5 hours per week in written language. This December IEP required 1 hour of instruction in math and 1.5 hours in reading per week inside general education. It also required 1hour per month of instruction in written language inside general education. The June 20, 2011 IEP written in cooperation with Dr. Solomon provides a total of 8.5 hours of special instruction per week, an increase 3.25 hours of instruction per week over the December 2010 IEP, with a total of three hours per week outside general education, composed of one hour each in reading, mathematics and written language. In addition, under this IEP Student is to receive 30 minutes per week of occupational therapy inside general education and 60 minutes per week of

[9] This IEP was initially begun at the meeting on June 13, 2011.

speech language services outside general education. He also is to receive 30 minutes per week of speech language services inside general education. P 6; P 11; P23.

16. Student requires remediation and support in all academic areas on a daily basis with speech language services infused into his classroom instruction. He needs a small class with a low teacher – student ratio. P 8; P 15; P 13; Testimony of Testimony of

17. The IEP team at did not want to discuss Student's proposed placement at School for the 2011 -2012 school year during the June 20, 2011 IEP. The team indicated Student would move to his neighborhood middle school. Petitioners knew this was School, but the Multidisciplinary Team members from would not identify it by name. No one was available to answer Petitioners' questions regarding the program at School. When Petitioners asked whether would be able to implement the IEP, the special education coordinator indicated would have to implement the IEP or there would be a meeting to change the IEP. Testimony of Solomon; Testimony of

18. During the June 20, 2011 meeting Petitioners requested a full time placement for Student. Petitioners have not received notice from DCPS regarding its refusal to provide the requested full time placement. Petitioners never received a prior notice of placement to any school for the 2011- 2012 school year. Testimony of

19. Petitioners learned a space was available for Student at The for the 20011-2012 school year in March 2011. They accepted the spot in April or May 2011. Petitioners received the contract from The on or about June 15, 2011, and they signed the contract and made their first tuition payment on or about June 20, 2011. Petitioners did not inform DCPS that they had enrolled Student in The for the 2011-2012 school year until Petitioners' attorney sent DCPS a letter so stating on August 8, 2011. Prior to that date

Petitioners had stated their interest in Student attending The their desire he receive a full time program, their disagreement with his attending School and their desire to obtain public funding for Student's placement at The for the 2011- 2012 school year. Testimony of P 16; P 18; P 26; R 7.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Where these differences in persuasiveness are relevant to my determination, I so indicate.

Under the IDEA each local education agency is required to provide a FAPE to each student found eligible for special education and related services. A FAPE is:

> Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . .[a]re provided in conformity with an . . .IEP that meets the requirements of [the IDEA regulations].

34 C.F.R. § 300.17. See also, D.C. Code § 30.3001.1.

1) DCPS denied Student a FAPE by failing to propose an appropriate level of special education services in the June 2011 IEP. The number of hours of special instruction is insufficient and the configuration of the instruction in a combination of inclusion and self-contained class rooms is not appropriate. The Petitioner does not contest the goals contained in the IEP.

2) DCPS denied Student a FAPE by failing to propose a placement or location of service. The student requires full time, self-contained, special education services. DCPS did not issue a prior notice of placement to Hardy Middle School or any other school for the 2011- 2012 school year.[10]

[10] Issue 1 and 2 are grouped for discussion as they involve similar areas of IDEA.

An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the effect of the student's disability on his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. See also, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982). To determine whether an IEP provides a student a FAPE, a hearing officer must make two inquiries: 1) Did the district procedurally comply with the IDEA and its implementing regulations; 2) Is the IEP reasonably calculated to provide educational benefit to the student? *Id.*

In the instant matter, Student has been classified as a student with Specific Learning Disability. He has disabilities in reading, math, and written language. He has a well-documented history of academic issues stemming from at least the second grade when he repeated the grade and received his first IEP in May 2006. In the academic arena his test scores show he is functioning more than two years behind age level peers in many areas. Student also has attention

deficit hyperactivity disorder. In addition, he has sensory processing issues as well as issues with executive functioning, auditory comprehension and motor response. He has above average cognitive ability. Student is aware of his learning struggles. It, therefore, is not surprising that Student's academic struggles have impacted his self-esteem and created insecurity.

Student attended School for all of the elementary grades except for the one year he lived out of state. Initially, his parents were satisfied with and wanted him to attend there. They became more concerned as Student aged, he showed limited progress and became insecure and unhappy at school. They sought outside assistance and eventually became convinced Student needed to attend a private, special education school with a program designed to address Student's complex needs. They, therefore, applied to The when Student was in the fourth grade. He was accepted but no space was available to him until sixth grade. He is now a sixth grader at The and the evidence is that the school is providing Student a program and services that are beneficial. He is making notable progress. However, this is not the issue before me. The issue is whether the IEP and ultimately the placement offered by DCPS for the 2011-1012 school year were designed to provide Student some educational benefit and thus constituted a FAPE.

It is clear that Petitioners' desire was for Student to attend The as his IDEA placement. On May 10, 2011, Petitioners' counsel notified Student's case manager at that Student's family intended to enroll him in The and seek public funding. This letter also stated Student was not making meaningful educational progress at The Program Manager at responded by letter dated May 13, 2011 stating DCPS would not fund Student's placement at The and further was able to meet Student's needs. Shortly thereafter Dr. Laura Solomon's second evaluation report regarding Student was forwarded to

with a request that the team consider placement at The In response to this evaluation report and request IEP meetings were held on June 13 and June 20, 2011. A final IEP, dated June 20, 2011, was developed. The parents, their educational expert and the DCPS participants agreed on the goals and objectives. They did not agree, however, on the hours of service to be provided or the location these services were to be provided. The parents were clear they wanted a full time, self-contained, separate special education environment for Student. Dr. Solomon's testimony makes clear that Petitioners were committed to their son attending The and the parties' disagreement, therefore, focused, and continues to focus, on the number of hours of service included in the IEP and the location in which these services were to be provided to Student.

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. See also, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction is regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. The placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform with the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2).

Reviewing these regulations it is clear that placement involves more than the determination of the number of hours of service a student is to receive under his/her IEP. That is, the number of hours of service does not address where along the continuum of services, as identified under IDEA, a student's program will be implemented. See 34 C.F.R. § 300.115. Here, DCPS has proposed a program combining general education classroom placement with a small amount of pull out services in a separate special education classroom. Student's June 20, 2011 IEP requires he receive a total of 8.5 hours of special instruction, with a total of three hours per week outside general education, composed of one hour each in reading, mathematics and written language. In addition, under this IEP Student is to receive 30 minutes per week of occupational therapy inside general education and 60 minutes per week of speech language services outside general education and 30 minutes per week of speech language services inside general education. While this IEP provides an increase in service hours compared to his previous IEP, the configuration of services does not appear to be designed to address the complex needs identified for this particular student as required by the IDEA. The most recent and comprehensive evaluations reveal Student requires intensive interventions in all academic areas on a daily basis with speech/language services infused into the classroom instruction. It appears that his underlying cognitive strengths may be masking the intensity of his specific needs.

Petitioners were committed to their son's attending The and DCPS appears to have been equally committed that attending The would not be an option considered. Petitioner's expert testified the number of hours of service on the IEP were not sufficient because the hours were not the number of hours in The week. She recommended, according to her testimony, either 30 or 32 hours per week, whatever the number of hours The has. Thus the matter that brings this case before me is, for the most

part, a question of whether DCPS has proposed an appropriate placement involving primarily inclusion at the neighborhood middle school and, if not, is The a proper placement.

Petitioners argue that *Alfonso v. District of Columbia*, 422 F. Supp. 2d 1 (D.D.C. 2006) provides a parent has the right to know how his/her child will spend the school day, and I agree. However, the Court in *Alfonso* is addressing the parents' right to know the goals on the IEP. It addresses the substantive aspects of the IEP not the placement. Here Petitioners did know the goals and agreed with them. *Alfonso*, then, is inapposite to the matter before me.[11] Petitioners also knew the placement intended by the IEP team was . Petitioner testified that she understood was the placement at the IEP meeting. This is the neighborhood middle school. She stated she thought it was strange the team would not identify it by name, and, further, she was concerned about this proposed placement at

It is ironic that the IEP process, including the placement discussion, in the instant matter is both an exemplar of cooperation and an exemplar of obfuscation. DCPS and Petitioners' expert worked cooperatively to develop an IEP with goals and objectives that both could agree upon. Yet when it came to placement, they both appear to have avoided meeting the issue head on and discussing their opposing views of where Student should be placed for the 2011-2012 school year. While it is true that Petitioners notified DCPS they wanted their son to attend The in May 2011, and while it is true they asked DCPS to consider placing their son at The Petitioners did not specifically notify DCPS that they were rejecting the proposed DCPS placement and enrolling Student in The for the 2011 – 2012 school year until August 8, 2011. The letter providing this notification indicates it is additional notice, and in the context of the multiple communications regarding The it can be so

[11] I note Petitioners also knew the hours of service to be provided Student and the location in which the services were to be provided. Petitioners consistently expressed their disagreement with the limited number of hours and the location for the provision of services.

construed. However, the reality is that Petitioners knew at the time of the IEP meetings in June 2011 that Student would be going to The for the 2011-2012 school year and did not inform DCPS that they were rejecting the placement proposed by DCPS on that date. I cannot speculate as to the reasons and can only wonder if the spirit of cooperation that had infused the development of the IEP could have been carried into the discussion of appropriate placement for Student at that meeting. I know it was not.

Not only did Petitioners fail to directly inform DCPS that they were rejecting DCPS' proposed placement and placing their son at The during the June 20, 2011 meeting, DCPS refused to discuss the proposed placement at School, at one point stating they would not do so because they were not involved in a placement meeting. This cannot be seen as anything other than an effort to avoid the discussion of placement. The team had agreed on the goals and objectives of the IEP. The next step is to discuss placement. The parents asked where DCPS proposed to implement the IEP, and DCPS noted that Student would continue in the natural progression to his neighborhood middle school but would not name the school. Petitioner stated she thought this was odd, and I agree. Petitioners knew the neighborhood middle school was because they had an older child who had attended and they had questions about the school's ability to implement the IEP. DCPS made no effort to address Petitioners' questions about Hardy. Instead, the parents were told the "unnamed" middle school had to implement the IEP, and, if it could not, the middle school would call another IEP meeting to revise the IEP. Rather than addressing the parents' concerns it is clear this response only aggravated a difficult situation. There was no assurance that the IEP the parents' expert and team had worked on cooperatively for weeks would be implemented.

There was only an assurance that if it was not, there would be another IEP process. This is far from the IDEA view of parents as partners in the IEP/placement process.

DCPS argues that Hardy is merely a location. It is not the placement, and location is the responsibility of DCPS. In DCPS' view placement is the hours of service and whether the hours are provided inside or outside general education. If this were all there is to placement the continuum of alternative placements each school district is required to have available under the IDEA would be vastly abbreviated. Once a student was determined to need full time hours outside of general education, there would be no distinction, for example, among placements that were full time in a separate class in a general education school and full time in a private separate day school. Both have the same number of hours outside of general education. Yet they are not the same on the continuum. 34 C.F.R. § 300.115. The question before me is whether Petitioners' have shown Student needs a full time special education program outside the general education environment, and, if so, is The an appropriate placement.

Student's IEPs have shown a steady increase in the hours of service since January 2010. Since that date each IEP has provided two or three more hours of service until the current IEP. The current June 20, 2011 IEP written in cooperation with Dr. Solomon provides a total of 8.5 hours of special instruction with a total of three hours per week outside general education, composed of one hour each in reading, mathematics and written language. In addition, under this IEP Student is to receive 30 minutes per week of occupational therapy inside general education and 60 minutes per week of speech language services outside general education. And 30 minutes per week of speech language services inside general education.[12]

[12] The IEP actually refers to the speech services inside general education as consultation. The DCPS speech language pathologist testified that the designation of consultation actually means the provision of speech services to Student in the general education classroom. I find her testimony in this regard to be credible.

What is notable in this progression of increased services, is the small, incremental steps of additional services added to Student's IEP over approximately 18 months. Hours of special instruction increased from 4 to 8.5 with most of the addition being in written language. Speech language services were added in the latest iteration of the IEP, and occupational therapy services location of delivery was redesigned. It is unlikely that these relatively small changes would have a significant impact on Student's progress. Petitioner argues that Student is not closing the gap as he moves ahead with his education. This argument is that while he is progressing in that his test scores show him in the same relative position *vis a vis* his peers thus demonstrating increased knowledge, he is not progressing at a rate that will make the gap in knowledge and academic skills between him and his peers smaller. Petitioners further argue this failure to close the gap has had emotional impacts on Student that also need to be addressed. I do not disagree with these assessments and find Petitioners and their experts credible in this regard. Under *Rowley*, a FAPE is provided when a student's IEP is designed to provide some educational benefit. Here, the IEP as agreed by the parties recognizes Student's needs in reading, written language and mathematics as well as providing services in speech and occupational therapy, and it provides more hours of service than the IEPs Student has had in the past. As he has shown some minimal progress under the prior IEPs, it follows he will continue to show some minimal progress with this minimal increase in hours. That said, I find the hours included on the current IEP combined with the emphasis on inclusion in general education are not designed to provide Student educational benefit as contemplated by *Rowley*. Student has above average cognitive capacity, and he is at best staying two to three years behind his nondisabled peers academically. In some areas he is losing ground. This relative stasis in Student's academic performance, combined with his newly

identified needs for intensive speech/language intervention demonstrate a need for more extensive services than those provided in the DCPS IEP.

Student's multiple disabilities (in reading, mathematics and written language) combined with overlapping needs in language, executive functioning, auditory processing, attention and emotional support cannot, in my view, be addressed in a program of 8.5 hours of special instruction and 2 hours of related services per week. Moreover, the MDT's statement that if Hardy could not provide the program on this IEP they would meet to revise the IEP does not provide verifiable support for the implementation of this limited IEP as written. The testimony of the Special Education Coordinator at was not persuasive in countering this impression. She stated she had only briefly reviewed the IEP. Her testimony primarily provided information about the special education program, itself, at Hardy. She was not familiar with Student and was not able to establish the school's ability to serve the Student as required by this IEP. Her statement was that the school could provide the hours. She had not looked at nor reviewed the goals. As I have already stated I find the hours to be inadequate, this does not provide evidence of DCPS' ability to meet the needs of this student in this proposed placement. A FAPE for Student involves delivery of the goals as written and a placement that provides more direct special instruction and integrated services than identified in Student's IEP.

Finally, DCPS never provided a notice of placement to any school for the 2011-2012 school year. This appears to have resulted from their refusal to identify specifically as the proposed placement. By so doing they failed to provide a proposed placement at any site or location.

In light of the fact that the school at which special education services are expected to be provided can determine the appropriateness of an education plan, it stands to reason that it can be a critical element for the IEP to address. *See* Paolo Annino, *The 1997 Amendments to the IDEA: Improving the Quality of Special Education for Children with*

Disabilities, 23 Mental & Physical Disability L. Rep. 125, 126 (Jan./Feb.1999) (noting that requirement that IEP identify location at which special education is expected to be provided reflects the fact that "[a]ll schools and classes are not uniform"). *But see* White *ex rel. White v. Ascension Parish* **Sch. Bd.**, 343 **F.3d** 373, 379 (5th **Cir.**2003) (holding that "[t]he provision that requires the IEP to specify the location is primarily administrative"). The identification of a particular school in the IEP indicates to the parents that the school district has carefully considered and selected a school that will meet the unique needs of the student. *See Glendale Unified* **Sch.** *Dist. v. Almasi,* 122 F.Supp.2d 1093, 1107 (C.D.Cal.2000). Conversely, an offer that fails to identify the school at which special educational services are expected to be provided may not be sufficiently specific for the parents to effectively evaluate. *See Union* **Sch.** *Dist. v. Smith,* 15 **F.3d** 1519, 1526 (9th **Cir.**1994) (explaining that despite district's contentions that its school for autistic children would have been an appropriate placement for the child, district did not offer that school when it did not make a formal, written offer to provide the child services at that school); *Knable ex* 681*681 *rel. Knable v. Bexley City* **Sch.** *Dist.,* 238 **F.3d** 755, 768 (6th **Cir.**2001) (similar).

A.K. v. Alexandria Sch. Bd., 484 F.3d 672, 680-681 (4th Cir. 2007)

The failure to identify the proposed placement, then, and to answer Petitioners' questions regarding the proposed placement was in this matter critical to establishing whether Respondent had proposed an IEP offering a FAPE to Student.

The IEP developed in this matter falls as to both prongs of the Rowley test. DCPS did not procedurally comply with the IDEA and its implementing regulations, and the IEP is not reasonably calculated to provide educational benefit to the student. I, therefore, find by a preponderance of the evidence DCPS denied Student a FAPE by failing to propose an appropriate level of special education services in the June 2011 IEP. The number of hours of special instruction is insufficient and the configuration of the instruction in a combination of inclusion and self-contained class rooms is not appropriate as written in the IEP. I further find by a preponderance of the evidence that DCPS did not issue a prior notice of placement to

or any other school for the 2011- 2012 school year, and this failure to issue a prior notice of placement constitutes a denial of FAPE.

3) The multidisciplinary team's ("MDT") failure to appropriately consider Dr. Solomon's, Petitioner's expert, recommendations denied Student a FAPE.

Petitioners' issue is that the MDT in developing Student's IEP for the 2011 -2012 school year did not appropriately consider Dr. Solomon's recommendations. In this Petitioners' confuse consideration of Dr. Solomon's recommendations with agreement with her recommendations and inclusion of these recommendations in the IEP. Here, the testimony is clear that Dr. Solomon's report was presented to the MDT and reviewed by DCPS school psychologist, Lynn Bargainier, who agreed with much of Dr. Solomon's report. The goals and objectives on the IEP were developed through on-going collaboration between Dr. Solomon and the staff at Between the first IEP meeting on June 13, 2011 and the second on June 20, 2011 Dr. Solomon and the Key staff worked together to continue to revise the goals and objectives. The effectiveness of this collaboration is clear. Petitioners and Respondent are in agreement regarding these aspects of the IEP. The only issue here is Dr. Solomon's recommendation that student attend a full-time, separate private placement. The MDT did not agree with this recommendation. The meeting notes from the June 20, 2011 meeting make clear this option was discussed, and the team rejected it. The notes explicitly state the special education coordinator stated DCPS cannot offer to pay for Student to attend The

Dr. Solomon's recommendation was considered and rejected. This is far from a failure to appropriately consider Dr. Solomon's recommendation. It is, rather, a disagreement between Petitioners and DCPS regarding Student's educational placement which, under the IDEA, can be addressed through filing a due process complaint as Petitioners have done here. *See*, 34 C.F.R. § 300.507(a). I, therefore, find, by a preponderance of the evidence that DCPS did not fail to consider Dr. Solomon's expert recommendation and thereby deny Student a FAPE.

4) DCPS denied Student a FAPE by denying Student's parents meaningful participation in the IEP and decision making process by failing to provide information regarding how and where the MDT proposed the IEP would be implemented in the 2011- 2012 school year and by failing to provide information regarding Hardy Middle School. The MDT further denied Student's parents meaningful participation in the decision making process when it was unable to provide the definition of critical life skills the team had used in determining Student was not eligible for extended school year services.

In the discussion of issues 1 and 2 above I identified DCPS' failure to address DCPS proposed placement with Petitioners. Here, the issue is not the actual failure to address the placement at Hardy, it is rather the denial of meaningful parental participation that Petitioners raise. Parental participation is a key element of IDEA. Parents are to be full and active members of teams making program and placement decisions. In the instant matter, there is no doubt that Petitioners participated in IEP meetings and were involved in the decisions made regarding their son. Their involvement is notable.

Petitioner testimony demonstrated awareness, involvement and concern for her son and his educational and emotional growth. Her testimony also revealed knowledge of the school Student had been attending and knowledge of the school Student would attend if he remained in DCPS, and it revealed reasonable parental concerns about how Student's IEP would be implemented. DCPS response was to figuratively exclude her from the decision making process by refusing to discuss her concerns about the proposed school or how the IEP would be implemented. Moreover, as noted above, the MDT indicated the June meetings were not about placement and further, that if Hardy could not implement the IEP the Hardy staff would hold a meeting to revise the IEP. I find this is not a process that provided meaningful participation as any significant discussion of the proposed program was precluded. DCPS' argument that site is up to the LEA is not persuasive. While it is true that the particular location of a program is an LEA option, this does not mean parents are precluded from asking questions and receiving

answers to those questions. The IEP must be specific enough to allow parents to understand what services will be provided and make a determination about whether the proposed placement is adequate. *N.S. v. District of Columbia*, 709 F.Supp.2d 57, 70 (D.D.C. 2010). Here the proposed placement was not identified and no information was provided in response to Petitioners questions. This stonewalling approach did not allow Petitioners to assess whether the placement was adequate.

DCPS argues that *T.Y. v. N.Y. City Board of Education, Region 4* (2d Cir. 2009) supports its position that the particular school is not a matter of parental choice, that this is a choice of location that is at the discretion of the school district. I acknowledge that this case does take this position.[13] However, the facts in *T.Y* are distinguishable from the instant matter. In *T.Y*, the school district provided the parents an opportunity to see the school it proposed as the placement for the student. When the parents objected to that school, the school district offered a different school placement which the parents rejected without visiting the school. The parents then enrolled their child in a private school. In the instant matter, the school district refused to name the school they were proposing as the school location for the proposed IEP, would not provide answers regarding the proposed site and stated they would not discuss the school because the meeting was not a placement meeting. Rather than attempting to work with the parents, as they had in developing the goals and objectives, and as the school district did in *T.Y., supra*, DCPS closed off the conversation and excluded the parent from participation in the school placement decision. I find *T.Y.* is not persuasive on the facts before me.

I, therefore, find by a preponderance of the evidence that DCPS' failure to discuss how the IEP would be implemented at denied the parents meaningful participation in the process and, therefore, denied Student a FAPE.

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[13] In so doing *T.Y.* stands in opposition to *A.K. v. Alexandria* cited *supra*

Petitioners provided no evidence regarding the definition of critical life skills and Student's eligibility for extended school year services. They have not met the burden of proof and this issue, regarding critical life skills and extended school year services, is dismissed.

5) DCPS denied Student a FAPE by failing to provide the notice required by 34 C.F.R. § 300.503(a)(2) when a public agency refuses to initiate or change the educational placement or provision of FAPE to a child. The notice should have been provided both as to the provision of FAPE and the placement as provided on the June 2011 IEP and questioned by the parents.

IDEA requires written notice be provided when a school district proposes or refuses to initiate or change the placement or provision of FAPE to an eligible student. The notice must contain,

1) A description of the action refused;
2) An explanation of the reason for the refusal,
3) A description of each evaluation, procedure, assessment record, or report used as a basis for the refused action;
4) A statement of parents procedural safeguards protection and where to get a copy of the procedural safeguards;
5) Sources to contact for assistance in understanding IDEA;
6) A description of other options the IEP team considered and the reasons these options were rejected; and
7) A description of other factors relevant to the refusal.

See, 34. C.F.R. § 300.503(a) & (b).

Here Petitioners allege both a failure to provide required written notice regarding the proposed provision of a FAPE, the goals and objectives on the IEP, to Student and the failure to provide prior written notice regarding the refusal to place Student at The and the proposal to place him at . As discussed above, at Issues 1 and 2, Petitioners and Respondent were in agreement as to the goals and objectives in Student's June 20, 2011 IEP. The special education and related services identified on a student's IEP constitute FAPE for the student as long as the IEP is developed in conformity with IDEA. *See* 34 C.F.R. § 300.17; D.C.

Code § 30.3001.1. The prior written notice requirement provides both a record of the events that have occurred regarding the development of an IEP and the decisions made regarding the provision of services to a student. It also provides the parents, in this case the Petitioners, with information regarding the school district's decision making process in relation to their child.

In the instant matter there was agreement as to the goals and objectives provided in the June 20, 2011 IEP. The disagreement was regarding components of placement, the number of hours of service and the location(s) where these services should be provided. FAPE includes an appropriate elementary or secondary education. 34 C.F.R. § 300.17. See also, D.C. Code § 30.3001.1. An education that does not include sufficient hours or intensity of services cannot, therefore, be deemed to provide a FAPE, and a disagreement as to these factors would require prior written notice in compliance with 34. C.F.R. § 300.503(a) & (b). DCPS did not provide notice regarding its refusal to provide additional hours of service on the IEP, and, as discussed above, Respondent did not provide notice as to the placement. Petitioners disagreed with the number of hours on the IEP and with the location of these services. They asked for a full time placement at The Lab School. Respondent refused to authorize this placement, and the minutes from June 20, 2011 indicate they told Petitioners DCPS would not pay for Student's placement at The However, Respondent has not provided Petitioners a Prior Notice of Placement to nor has it provided prior written notice in compliance with 34. C.F.R. § 300.503 (a)(2) regarding its refusal to fund the proposed placement at The despite Petitioner's having made several requests for this placement. Each time DCPS indicated it would not fund the placement but it never provided the information required by IDEA. 34. C.F.R. § 300.503(b).

I, therefore, find by a preponderance of the evidence that Student was denied FAPE by DCPS failure to provide notice when it refused to initiate or change the placement of Student or when it refused to initiate or change the provision of FAPE to Student.

The Remedy

As a remedy, Petitioners are seeking placement and funding for placement, including the cost of all related services at The Lab School for the 2011- 2012 school year. Under IDEA, parents who unilaterally place their child at a private school without the consent of school officials do so at their own financial risk. *Florence County Sch. Dist. 4 v. Carter*, 510 U.S. 7, 15, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993) (citing *Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985)); *Schoenbach v. Dist. of Columbia*, 309 F.Supp.2d 71, 76-77 (D.D.C.2004). Such parents may be reimbursed only if (1) the school officials' public placement violated IDEA and (2) the private-school placement was proper under IDEA. *Florence County*, 510 U.S. at 15, 114 S.Ct. 361; *Holland v. Dist. of Columbia*, 71 F.3d 417, 420 n. 3 (D.C.Cir.1995); see also 20 U.S.C. § 1412(a)(10)(C)(ii).

I have found Respondent did not comply with the procedures set forth in IDEA, and the IEP developed through IDEA procedures was not reasonably calculated to enable Student to receive educational benefits. *Rowley*, 458 U.S. 176, 206-07 (1982). In these circumstances, the child's parent may remove the child to a private school and then seek tuition reimbursement." *A.B. ex rel. D.B. v. Lawson*, 354 **F.3d** 315, 320 (**4th Cir**.2004). "The parent may recover [reimbursement] if (1) the proposed IEP was inadequate to offer the child a FAPE and (2) the private education services obtained by the parents were appropriate to the child's needs." *Id.*

The IDEA compliance violations in this matter include a failure to include parents in the decision making process regarding placement and a failure to provide prior written notice

regarding placement for the 2011 – 2012 school year. These are not *de minimis* violations. It is axiomatic that IDEA intends parents to be full partners in the IDEA process. Where, as here, parents are denied this role through a refusal to discuss proposed placement and further denied the necessary information provided by written notice as to the reasons for rejecting parents proposed placement, the district has violated the procedures set forth in IDEA resulting in a harm to Student, the inability of his parents to directly participate in the IDEA process. In addition, the school district shut down the process when it came to discussing the extent of Student's needs. Petitioners' evidence establishes Students' needs for extensive and intensive special instruction and related services on a daily basis. It is not reasonable to assume his needs can be met through a few hours of inclusive services with a couple more hours of pull out services on a weekly basis. If four and five hours of service have not provided him the extensive help he needs three additional hours are unlikely to provide him educational benefit. I, therefore, must determine whether Petitioners' chosen placement, The is proper under these circumstances.

Reimbursement of parents' expenses can only occur if the unilateral placement is proper. DCPS attempted to demonstrate The was not appropriate which is a different requirement. DCPS argued The did not provide a curriculum that matches the DCPS standards of learning. I find this argument is not persuasive. The Office of the State Superintendent of Education has recently re-approved The as a private placement. There is no basis, in my view, then to argue that it is not an appropriate site. DCPS also argues The is not the least restrictive environment for Student because he will have no interaction with nondisabled peers. Again I find this to be non-persuasive. Respondent made no effort to respond to Petitioners' concerns about the limited hours and inclusive nature of the proposed IEP. The only option they provided parent was an IEP with Student spending the vast

majority of his time in general education classes despite evaluations showing Student had complex and extensive needs. Petitioners only alternative was private placement. It is important to note, in this regard that a parent's unilateral placement is not required to meet the same standards as a public placement. *See*, *Florence County Sch. Dist. 4 v. Carter.* I therefore find The is proper placement.

Under 34 C.F.R. § 300.148(d)(1)(i) tuition reimbursement may be reduced or denied if parents do not so inform the school district at the meeting prior to removal that they are rejecting the proposed placement and intending to enroll their child in a private school at public expense. While Petitioners did not make this notification they did meet the alternative requirement, by their letter of August 8, 2011, that parents so inform the school district 10 business days before removing the Student. 34 C.F.R. § 300.148(d)(1)(ii). Student, arguably, was not removed from DCPS prior to this date as Petitioners had continued with the IEP process, and the first day of school in the 2011 -2012 school year was August 24, 2011, ten business days after the date of the letter. Moreover, DCPS could not have been taken by surprise when it received the August 8, 2011 letter providing notification of placement at The There had been at least two prior communications indicating this placement would occur – the letter in May and the discussion at the June 20 IEP meeting. In both instances the DCPS had replied it would not fund The placement. Moreover, DCPS did not provide prior notice of placement to or any other DCPS school. For these reasons, I find Petitioners are entitled to reimbursement of costs for placement of Student at The l for the 2011- 2012 school year.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. DCPS denied Student a FAPE by failing to propose an appropriate level of special education services in the June 2011 IEP. The number of hours of special instruction is insufficient and the configuration of the instruction in a combination of inclusion and self-contained class rooms is not appropriate as written in the IEP.
2. DCPS did not issue a prior notice of placement to or any other school for the 2011- 2012 school year, and this failure to issue a prior notice of placement constituted a denial of FAPE.
3. DCPS did not fail to consider Dr. Solomon's expert recommendation and thereby deny Student a FAPE.
4. DCPS' failure to discuss how the IEP would be implemented at denied the parents meaningful participation in the process and, therefore, denied Student a FAPE.
5. Petitioners provided no evidence regarding the definition of critical life skills and Student's eligibility for extended school year services. They have not met the burden of proof and this issue, regarding critical life skills and extended school year services, is dismissed.
6. DCPS denied Student a FAPE by failing to provide notice when it refused to initiate or change the placement of Student or when it refused to initiate or change the provision of FAPE to Student.
7. The is a proper placement for Student.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

1. Within 10 business days of receipt of this Hearing Officer Determination, DCPS shall issue a prior notice of placement to The as Student's placement for the 2011 – 2012 school year. Student shall attend The at DCPS expense for the 2011 -2012 school year.

2. DCPS shall pay tuition and all IEP related costs including, but not limited to, related services and transportation for Student to attend The during the 2011 -2012 school year

3. DCPS is to convene an MDT meeting, to include relevant staff and Petitioners and their educational advocate, if Petitioners so choose, in cooperation with the , within 30 days of receipt of this Hearing Officer Determination. This MDT meeting, which shall occur at The is to review and revise Student's IEP, as appropriate. The educational plan developed by The for Student for the 2011 -2012 school year may be substituted for the revised IEP at the MDT meeting, if Petitioners so choose, after discussion of the IEP with DCPS representatives has occurred.

4. DCPS shall make arrangements within 30 business days of receipt of this Hearing Officer Determination to reimburse Petitioners for any costs and expenses they have incurred for tuition or other IEP related expenses for Student's placement at The during the 2011-

2012 school year.

IT IS SO ORDERED:

11/4/11
Date

Erin H. Loff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).