

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

Student Hearing Office  
810 First Street, NE; 2<sup>nd</sup> Floor  
Washington, DC 20002

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Parent,<sup>1</sup>  
on behalf of

Date Issued: November 23, 2011

Petitioner,

Hearing Officer: Melanie Byrd Chisholm

v

District of Columbia Public Schools,

Respondent.

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND PROCEDURAL HISTORY**

The student is a \_\_\_\_\_ year old female, who is currently an \_\_\_\_\_ grade student attending School C.<sup>2</sup> The student's current individualized education program (IEP) lists Autism Spectrum Disorder as her primary disability and provides for her to receive twenty-six (26) hours per week of specialized instruction outside the general education setting, two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting and extended school year (ESY) services.

On September 9, 2011, Petitioner filed a Due Process Complaint against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by: (1) failing to comply with the July 2, 2011 Hearing Officer Determination (HOD) issued by Hearing Officer Coles Ruff by failing to develop an

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<sup>1</sup> Personal identification information is provided in Appendix A.

<sup>2</sup> The July 2, 2011 HOD identified the student's previous schools as "School A" and "School B." The student's current school is identified as "School C" in order to distinguish the schools attended by the student when referring to the July 2, 2011 HOD.

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appropriate IEP; and (2) failing to provide the student with an appropriate placement. As relief for this alleged denial of FAPE, Petitioner requested, *inter alia*, placement of the student at Ivymount School.

On September 19, 2011, Respondent filed its Response to the Complaint. In its Response, Respondent asserted that it complied with the July 2, 2011 HOD by considering the parent's request to place the student at \_\_\_\_\_ and determined that the student should be placed at the self-contained autism program at School C. The Respondent also asserted that it is able to implement the student's IEP and that the student's current placement is an appropriate setting.

On September 29, 2011, Hearing Officer Ramona Justice convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer issued the Prehearing Order on September 29, 2011. The Prehearing Order clearly outlined the issues to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the hearing officer if the Order overlooked or misstated any item. Neither party disputed the issues as outlined in the Order.

On or about October 11, 2011, this matter was reassigned to Hearing Officer Melanie Byrd Chisholm.

On October 14, 2011, the Petitioner filed a Motion Requesting Issuance of Notice to Appear/Compel for Lawrencia Cole, former educational advocate for the parent and current employee of the Respondent. The hearing officer recommended to the Chief Hearing Officer that the Notice be signed because Ms. Cole's testimony was deemed relevant but she refused to appear at the hearing voluntarily. The Chief Hearing Officer signed the Notice to Appear on October 17, 2011 and forwarded the Notice to the Petitioner.

On October 20, 2011, this hearing officer convened a status conference to review the issues and discuss any outstanding matters. The parties confirmed the issues presented in the Prehearing Order, agreed that the due process hearing would require two (2) days and verified the need for a sign language interpreter for the second day of the hearing for the student's classroom teacher's testimony.

On October 26, 2011, Petitioner filed Disclosures including thirty-one (31) exhibits and six (6) witnesses.<sup>3</sup> On October 26, 2011, Respondent also filed Disclosures including two (2) witnesses.

On November 1, 2011, Respondent filed objections to Petitioner's documents and witnesses. Specifically, Respondent objected to Petitioner's Exhibits 1-2, 14-22 and 24-30 and four (4) of Petitioner's witnesses listed in the October 26, 2011 disclosure. On November 1, 2011, Respondent filed a Motion to Strike Respondent's Notice of Objections to Documents/Witnesses.

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<sup>3</sup> A list of exhibits is attached as Appendix B. A list of witnesses is included in Appendix A.

On November 1, 2011, the hearing officer was informed by the Student Hearing Office that the sign language interpreter scheduled for November 3, 2011 (the second scheduled day of the due process hearing) cancelled due to a death in her family.

The due process hearing commenced at approximately 9:00 a.m. on November 2, 2011 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2006. The Petitioner elected for the hearing to be closed. Based on the information provided by the Student Hearing Office in regard to the sign language interpreter, the parties agreed to reschedule the second day of the hearing for November 8, 2011.

Prior to opening statements, the hearing officer ruled upon the motions filed by the parties on November 1, 2011. The hearing officer denied the Respondent's Motion to Strike. The hearing officer did not admit Petitioner's Exhibit 1 because the exhibit was a duplication of the administrative record. The hearing officer admitted in part Petitioner's Exhibit 2 – the Notice to Appear contained in Petitioner's Exhibit 2 was not admitted because it was a duplication of the administrative record; documents related to the Respondent's attempt to have the witness voluntarily appear were admitted. The hearing officer did not admit Petitioner's Exhibit 14 because the exhibit was not relevant to the present issues. The hearing officer admitted Petitioner's Exhibit 15, over the objection of the Respondent, because the document provided the basis for the second issue identified in the Prehearing Order. The Petitioner withdrew Petitioner's Exhibit 16. The hearing officer did not admit Petitioner's Exhibit 17 because the exhibit was not relevant in deciding the present issues. The hearing officer admitted Petitioner's Exhibits 18-22 and 24-29, over the objection of the Respondent, because the documents were relevant to the student's current needs. The hearing officer also allowed all witnesses listed by Petitioner, cautioning Petitioner that testimony would be limited to the student's current needs and no testimony regarding issues litigated at the June 15, 2011 due process hearing would be allowed. Thus, the hearing officer also admitted Petitioner's Exhibit 30, over the objection of the Respondent, because all witnesses were allowed to testify.

Despite the October 17, 2011 Notice to Appear, Lawrencia Cole failed appear to offer testimony in this matter. The hearing officer granted the Petitioner considerable leniency during the student's mother's testimony, allowing the student's mother to testify regarding Ms. Cole's communications with DCPS and Ms. Cole's thoughts regarding the July 28, 2011 IEP Team meeting.

At conclusion of Petitioner's evidence on November 2, 2011, Respondent moved for a directed verdict based on the allegation that the Petitioner failed to prove that Respondent was not implementing the student's IEP. The hearing officer denied the motion.

On November 3, 2011, Respondent notified the hearing officer and the Petitioner that the student's teacher would be unavailable to appear on November 8, 2011. The parties agreed to reschedule the second day of the hearing to November 17, 2011.

## Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

## ISSUES

The issues to be determined are as follows:

1. Whether DCPS denied the student a free appropriate public education by failing to comply with the July 2, 2011 HOD which required that within thirty (30) calendar days of issuance of the July 2, 2011 Order, the Respondent shall convene an IEP/placement meeting and determine an appropriate placement/location of services for the student for the remainder of the 2010-2011 extended school year and the 2011-2012 school year?
2. Whether DCPS denied the student a free appropriate public education by failing to provide the student an appropriate placement from July 28, 2011 through the present because the location of services identified in the Prior Notice of Placement issued at the July 28, 2011 IEP/placement meeting is unable to implement the student's June 1, 2011 IEP, provide the student access to the general education curriculum and educational benefit?

## FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student is a child with disabilities as defined in 34 CFR §300.8. (Petitioner's Exhibits 7, 15, 23 and 27)
2. On July 2, 2011, Hearing Officer Coles Ruff issued an HOD which ordered, *inter alia*, that: Within thirty (30) calendar days of the issuance of the Order, DCPS shall convene an IEP/placement meeting and determine an appropriate placement/location of services for the student for the remainder of ESY and for the 2011-2012 school year. (Petitioner's Exhibit 13)
3. The July 2, 2011 HOD concluded that the student's placement at "School A" was inappropriate because the placement and location of services did not take into account the student's diagnosis of autism. The July 2, 2011 HOD further concluded that the student's

placement at "School A" was a denial of a FAPE in that the LEA did not effectively address the student's continued disruptive behaviors and wandering out of the classroom, along with the student being in a classroom where she was not with students of her own cognitive and academic levels. The hearing officer did not make a specific finding of fact of conclusion of law that placement in a self-contained class in regular public school is inappropriate for the student. (Petitioner's Exhibit 13)

4. The July 2, 2011 HOD included, within the Findings of Fact, evidence from Children's Medical Center, the parent's testimony, the student's March 2011 independent neuropsychological and a DCPS school psychologist indicating that the student needs to be educated in a small classroom setting and/or a setting with a small student-teacher ratio. (Petitioner's Exhibit 13)
5. On July 28, 2011, DCPS convened an IEP Team meeting for the student to discuss the student's placement. At the July 28, 2011 IEP Team meeting, the LEA proposed placement in a self-contained autism classroom at School C, a regular public school. The LEA described the program as a "full-service" program which includes mental health support, targeted lessons, an award-winning certified teacher, paraprofessionals, support from an autism coach, a student enrollment of five (5) students and access to the general education curriculum. School C has approximately one hundred ninety (190) students. The student's mother and the parent's advocate did not agree with the LEA's proposed placement and proposed placement in a private school. The student's mother and the mother's advocate objected to the LEA's proposed placement, in part, because they felt the student should not be in a school with nondisabled peers, has not functioned well in large environments and has difficulty with transitions. The student's mother specifically expressed concerns with her child in the cafeteria, on stairs and in any environment with a significant amount of noise. Ivymount School explained to the IEP Team that the school has two hundred fifteen (215) students and the Multiple Learning Needs Program at Ivymount School has eleven (11) students and four (4) teachers, lunch within the classroom and support from related service providers. (Mother's testimony; Petitioner's Exhibits 11 & 12)
6. The student lives in the northwest quadrant of the District of Columbia and School C is located in the northwest quadrant of the District of Columbia. (Petitioner's Exhibit 3)
7. The teacher of the self-contained autism class at School C has twelve (12) years of experience teaching students with special needs, has a Master's Degree in special education and received the Rubenstein Award for Highly Effective Teaching 2011. The teacher is legally deaf but is able to hear sounds with the assistance of a hearing aide. The teacher reads lips and speaks in order to communicate with others. (Petitioner's Exhibit 9 and Teacher testimony)
8. The teacher's speech is slightly slurred or lisp-like however is understandable. It is not clear from the teacher's speech that she is deaf. At times, the teacher may have difficulty understanding a person she is unfamiliar with if the person has an accent or "thin lips." (Advocate testimony, Mother testimony, Evaluator B testimony and Teacher testimony)

9. The IEP Team determined that the student should be placed in the self-contained autism class at School C, a regular public school. The IEP Team did revise the student's June 1, 2011 IEP at the July 28, 2011 IEP Team meeting. (Petitioner's Exhibit 12)
10. The student's June 1, 2011 IEP includes twenty-six (26) hours of week of specialized instruction outside the general education setting, two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting thirty (30) minutes per week of adaptive physical education, thirty (30) minutes per week of physical therapy (PT) and ESY services. The student's September 26, 2011 IEP includes twenty-six (26) hours of week of specialized instruction outside the general education setting, two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting and ESY services. (Petitioner's Exhibits 15 and 7)
11. The goals and objectives are identical on the June 1, 2011 and September 26, 2011 IEPs. The goals include four (4) Mathematics annual goals (add and subtract 3x3 digit numbers; appropriate operations in word problems; count change; produce and interpret graphs); three (3) Reading annual goals (analyze relevance of setting, mood and tone of text; analyze purpose, main idea and supporting ideas; determine meaning of unfamiliar words); two (2) Written Expression annual goals (use of capital letters; write simple narrative); and six (6) Communication/Speech-Language annual goals (observe turn-taking rules; relevant contributions during discussion; join or leave communicative interaction; appropriate strategies for getting attention; respond appropriately when asked to change actions; understanding of copular). The student's Communication/Speech-Language Present Level of Educational Performance identifies articulation as a strength and a weakness. ("[Student] is an engaging, personable student who articulates her thoughts and ideas clearly and distinctly." "[Student] makes frequent articulation errors that she corrects easily when the errors are brought to her attention.") (Petitioner's Exhibits 7 and 15)
12. The student's May 11, 2011 Adaptive Physical Education Evaluation summarizes that the student met all of her physical goals and objectives and did not demonstrate any apparent delays in gross motor skills and physical fitness. The evaluation concludes that the student does not demonstrate any deficits that warrant adaptive physical education services. (Petitioner's Exhibit 24)
13. The student's May 18, 2011 School-Based Physical Therapy (PT) Progress Report/Completion of Services includes data from the physical therapist, teacher, IEP quarterly progress reports and PT service trackers indicating that the student has mastered all of her PT goals and is able to navigate safely in the school environment including ambulation on stairs and in hallways. The report summarizes that the student has completed services by meeting goals or progressing and meeting all of her needs. The PT agreed with the proposal to dismiss the student from school-based PT services. (Petitioner's Exhibit 25)

14. The student's April 4, 2011 Neuropsychological Evaluation recommends: (1) That the student be classified as a student with autism, that consideration be given to her diagnosis of autism and how autism affects educational progress be considered in her IEP. (2) That the student be provided with services under the classification of learning disabled to address significant deficits in Reading, Writing and Mathematics. (3) That the student be assigned to a class with a small student-teacher ratio in a full-time special education class. (4) That the student receive counseling in the form of social skills training given her deficits with communication and social relatedness. (5) That the student be provided with the following accommodations – (a) breaking tasks into small, manageable bits; (b) oral repetition and clarification of information; (c) constant feedback to ensure that she understands instructions; (d) reinforcers in the form of verbal praise or tangible rewards (e.g., a five-minute break for a certain amount of work completed); (e) minimal punishment considering her concrete reasoning abilities; (f) extended time on classroom assignments and tests; (g) the use of visual-motor learning exercises that employ developing a code for matching geometric figures and number (Petitioner's Exhibit 27)
15. The student's September 5, 2011 Comprehensive Psychological Evaluation concludes that the student has a full scale IQ of 68, which classifies her intellectual functioning in the Extremely Low range. The student has a 3.1 grade equivalence in Broad Reading; a 3.5 grade equivalence in Broad Math; a 3.1 grade equivalence in Brief Reading; a 3.5 grade equivalence in Brief Math; a 3.2 grade equivalence in Math Calculation Skills; and a 3.4 grade equivalence in Academic Skills. (Petitioner's Exhibit 23)
16. The student's September 5, 2011 Comprehensive Psychological Evaluation recommends:  
(1) Student would continue to benefit from a highly structured academic setting with low student/teacher ratio where she can get the individual attention she requires to succeed academically. Student requires extensive specialized academic instruction and behavioral supports, thus she would likely benefit from a dedicated aide. (2) Student would benefit from specialized exercises aimed at developing her information processing and speed. For example, computerized based exercises and sequencing games including music should be made available to her to assist in bolstering her processing speed. (3) Student would likely benefit from a multi-sensory approach to learning and a classroom where there are opportunities to demonstrate her knowledge through a variety of media, which involves presenting information through as many senses as possible. The combinations of visual, auditory, kinesthetic and tactile input will help strengthen associations for student and enable her to retain material more effectively. This may involve the use of pictures, music and manipulatives. (4) Student's academic program should include goals in functional communication skills, adaptive behavior and social skills. Her academic instruction will need to be direct, specific and will need to incorporate review of material already mastered. (5) Given student's impoverished social skills, it is strongly recommended that she receive individual therapy at least once weekly. This therapy should be targeted at developing her social skills addressing appropriate peer interactions. (6) Student and her mother are strongly encouraged to participate in family counseling sessions to promote understanding of student's emotional issues and to learn effective ways to address her emotional needs at home. (7) It is strongly recommended that student be provided with opportunities to participate in musical activities including

singing and choral activities of her interest. This can help develop her self-efficacy/self-esteem and social skills. (Petitioner's Exhibit 23)

17. The displays behaviors typical of students with autism including echolalia and self-stimulating behaviors. She has a deficit in social-relatedness in that she withdraws from peers and isolates herself. Given the student's diagnosis of autism, she would benefit from a social skills therapy group of no more than four (4) students. The student presented with deficits in phonological awareness (hearing and understanding language) and rapid naming which are related to challenges in reading. Speech-language therapy is necessary for the student to help her distinguish word patterns and phonemes. In an ideal situation, the student's teacher would reinforce strategies being taught in speech-language therapy within the classroom. (Evaluator A testimony, Petitioner's Exhibit 27)
18. The student requires verbal redirection, especially when she is resistant in completing her work. Overall, the student is functioning at the 3<sup>rd</sup> grade level. The student struggles with concepts and has deficits in communication. The student avoids eye contact, echoes words, responds inappropriately and resists contact with others. These behaviors are behaviors typical of students with autism. The student is insecure and anxious around her peers and is aware that she is socially different. The major area of concern for the student is social skills. (Evaluator B testimony, Petitioner's Exhibit 23)
19. The student's mother allows the student opportunities to exercise a level of independence in the community, specifically the student's mother, at times, walks away from the student on the bus or the subway. The mother is concerned because she believes that the student "sticks out" in the general population and the student is becoming aware of the manner in which other children react to her. Several days before the hearing, the student was "picked on" by peers while traveling by subway. The mother believes that the student needs contact with non-disabled peers but does not yet have the skills for this interaction. (Mother's testimony)
20. At the beginning of the school year, the self-contained autism classroom at School C consisted of students with autism and students with intellectual disabilities (ID). Until one day before the first day of school, the autism classroom teacher was not aware of the fact that ID students had been placed in her class. On the first day of school, the class consisted of eight (8) students, one (1) teacher and two (2) paraprofessionals. The class included students with autism and ID students until the school was able to identify and hire a teacher for the ID students. Around the second week of September 2011, the school hired a teacher for the ID students and the ID students were removed from the classroom. After the class divided, the autism classroom consisted of five (5) students, one (1) teacher and one (1) paraprofessional. The students in the autism class and the student in the ID class are combined for physical education. (ABA Coordinator and Teacher testimony)
21. The students enrolled in the self-contained autism classroom at School C range from 6<sup>th</sup> through 8<sup>th</sup> grade and have a range of academic and social functioning. Approximately three (3) of the five (5) students are "higher" functioning and two (2) of the five (5) are

“lower” functioning. The student is in the “higher” functioning group in the classroom. Of the two (2) other students in the “higher” functioning group, one (1) student in the group is functioning at higher cognitive and academic levels as the student and the other student in the group is at the same cognitive and academic levels as the student. All five (5) students are verbal. The teacher reviews the students IEPs to determine what can be taught in a large group setting, differentiates small group instruction and modifies individual student assignments based on their academic levels. (Teacher testimony)

22. The teacher uses a token economy as a behavior management system. During the day, the student can earn time to spend on individually selected activities as a reward for meeting daily individual behavior goals. The favored activity for this time is the computer. The daily classroom schedule includes academic blocks in the morning, lunch, time for students to spend time earned from the token economy, social skills and an academic afternoon block. The social skills block typically consists of encouraging peer interaction with the computer and games. The teacher also uses group activities and pairing to develop student’s social skills. (Teacher testimony)
23. Although the teacher is deaf, there is no sign language interpreter in the classroom. The students understand that the teacher is deaf and raise their hands or look at the teacher in order to communicate. The teacher understands that students with autism have difficulty with communication and encourages students to look up and make eye contact when speaking. The student typically looks at the teacher when speaking however if she is not looking up, the teacher encourages her to look up and she complies. The student speaks clearly and loudly so the teacher does not have difficulty understanding the student. The teacher has been working on “wh” questions with the student as requested by the speech-language therapist. (Teacher testimony)
24. The parent’s advocate attempted three observations of the student at School C. The first attempted observation was on or about August 29, 2011. The student was absent during the time of the first observation. The teacher allowed the advocate to observe the class although the student was not present. The advocate spoke briefly with the teacher regarding the student’s performance. (Advocate testimony)
25. During the advocate’s second observation on or about September 2, 2011, the advocate observed the student in the cafeteria and in the classroom after the lunch period. Initially, the student was in the cafeteria with only special education peers and the cafeteria was quiet. The student sat by herself and did not talk to peers. After the student finished eating she talked to the aide. Toward the end of the student’s lunch period, the student’s non-disabled, 8<sup>th</sup> grade peers came into cafeteria. The non-disabled students were banging, singing and dancing causing the cafeteria to become very noisy. During this time, the student’s behavior did not change from time when the cafeteria only consisted of students from the self-contained class. The advocate allowed the class a “head start” before she followed to the classroom. The advocate did not observe the student’s transition and was not made aware of any difficulty with the student’s transition from the cafeteria to the classroom. The advocate expressed that after her lunch period, the student spent approximately thirty (30) minutes on the computer “playing games,” an

additional forty (40) minutes playing Connect Four with another student and ten (10) minutes independently putting together a puzzle. Following these activities, the classroom teacher readied the students to go to a pep rally. During the visit, the advocate reviewed work samples from the student's folder and noted that the work indicated that it was a 3<sup>rd</sup> grade level. On the advocate's attempted third visit, the advocate was not permitted to observe the classroom. (Advocate testimony and Petitioner's Exhibit 8)

26. The student's mother has been to School C seven (7) or eight (8) times this school year for the purpose of delivering items for the student, picking up the student for appointments and observing the student. At the beginning of the year, the student's mother observed her walking into the cafeteria during breakfast and walking to the wall. During her observation the third week of September, the mother observed the student participating in a forty-five (45) minute math lesson on line graphs. During the lesson, the student raised her hand to answer questions. At the beginning of the lesson the other students were talking to the teacher but did not answer any questions during the lesson. During the mother's observation, the student did not make eye contact with others however did not display other behaviors typical of students with autism. The student's mother has not observed or been made aware of the student experiencing behavior problems at School C. On October 21, 2011, the mother raised questions with the school regarding whether the student was receiving adaptive physical education and was told that the student is not receiving the related service. (Mother's testimony, Petitioner's Exhibit 6)
27. The student is able to do math homework independently but needs assistance with reading homework. The student enjoys going to school but this year does not frequently communicate with her mother about her school day. The student's echolalia has increased in the home environment this year but the mother has not observed an increase in echolalia in the school environment. The student's mother expressed that she is concerned about the student's school environment not the student's academic achievement. She believes that the student requires additional related services specifically in the area of social skills. The student's mother requested as the student's placement because is "the leading school in the area to deal with autism." (Mother's testimony)
28. The DCPS ABA Coordinator assigned to the self-contained autism class at School C has visited the class more than (10) but less than fifteen (15) times this school year. Each observation is one half (1/2) day. The ABA Coordinator has observed the student during instructional time, physical education and lunch. The observations during instructional time have included observations of multiple subjects, large group instruction and small group instruction. During large group instruction, the classroom teacher differentiates instruction for different student levels. Social skills are taught throughout the day including using the instructional aide to facilitate student conversation during the lunch period. The ABA Coordinator has observed the student talking with peers and with the teacher. During her first visit when the class was in physical education, the student required encouragement to participate in the activity. During her next two visits when the class was in physical education, the student was participating. The ABA Coordinator

has not observed the student behaving inappropriately or displaying behaviors typical of students with autism (e.g. humming, rocking). The ABA Coordinator had conversations with the teacher at the beginning of the school year in regards to the student not wanting to complete her work, not wanting to come into the building from the bus, not participating in physical education and not participating in lunch however the student has made tremendous progress with all of these issues and the ABA Coordinator has not needed to continue to work with the teacher in regard to these issues for the student. (ABA Coordinator testimony)

29. At the beginning of the school year, the student had difficulty with transitioning from the bus to the cafeteria, sitting in the cafeteria during breakfast, transitioning from the cafeteria to class, transitioning from the gymnasium to class. The teacher used strategies to improve these behaviors and the student no longer has problems with transitions or sitting in the cafeteria. Additionally, at the beginning of the year, the student displayed some "mean" behaviors toward other students but no longer displays those behaviors and apologizes appropriately. At the beginning of the year the student did not interact with her peer but now interacts with her peers during physical education, social skills, recess and computer time. The student is able to understand the teacher and responds well to reminders and encouragement. The student is able to decode words on a 4<sup>th</sup> grade level but typically reads with comprehension at the 3<sup>rd</sup> grade level. The teacher is challenging the student at a 5<sup>th</sup> grade decoding level. The teacher follows the student's IEP goals for math and is working with the student on regrouping, multiplication and graphing. Since some of the student's goals align with 8<sup>th</sup> grade standards, the teacher modifies the student's work to her functioning level. The student works well independently, has never wandered from the classroom, does not display disruptive behaviors and has requested to go to an inclusion class. (Teacher testimony)
30. During the school year, the student has had opportunities to interact with non-disabled peers during pep rallies and other group activities. If the students in her classroom experience difficulties with an activity or if she does not feel the activity has a benefit for the students, the teacher keep the class in the classroom during the school-wide activity. The class, including the student, attended a pep rally toward the beginning of the school year. During the pep rally, the student sat with staff members and frequently asked to leave however remained until the conclusion of the pep rally. (Teacher testimony)
31. The student's September 23, 2011 Progress Report stated that the student has "excellent initiative" in math, "excellent initiative and good participation" in English/Language Arts, and "does not participate" in physical education and adaptive physical education. (Petitioner's Exhibit 5)
32. \_\_\_\_\_ is a private full-time special education school for students with disabilities located in Rockville, Maryland. The school serves students with speech-language disabilities, autism, learning disabilities, intellectual disabilities, pervasive developmental delays and other health impairments. \_\_\_\_\_ teaches the Maryland State Standards. The student has been admitted to \_\_\_\_\_. If enrolled, the student would join the Multiple Learning Needs Program which includes

students with autism, learning disabilities, speech-language disabilities and developmental delays. The classroom identified for the student currently has ten (10) students. Ivymount School is an eleven (11) month program and does not implement ESY components of a student's IEP. If a student enters the school with ESY on his/her IEP, the school changes the student's IEP to align with the eleven (11) month program. (Ms. deSibour testimony)

### 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:

#### Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

#### Issue 1 - Implementation of July 2, 2011 HOD

The Petitioner alleges that the Respondent denied the student a FAPE by failing to comply with the July 2, 2011 HOD which requires that within thirty (30) calendar days of issuance of the July 2, 2011 Order, the Respondent shall convene an IEP/placement meeting and determine an appropriate placement/location of services for the student for the remainder of the 2010-2011 extended school year and the 2011-2012 school year.

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The Court in *Rowley* stated that the Act does not require that the special education services "be sufficient to maximize each child's potential 'commensurate with the opportunity provided other children.'" Instead, the Act requires no more than a "basic floor of opportunity" which is met with the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 200-203.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. *See Gregory K v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314. A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. *Id.* For a school district's offer of special education services to a disabled pupil to

constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. *Id.* Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

The Petitioner raised no objections to the proposed IEP goals and objectives contained in the June 1, 2011 or September 26, 2011 IEPs. Neither Petitioner nor Respondent argue that the student is ready for placement in a regular classroom setting however both parties express that the student needs to further develop social skills in order to eventually transition to a less restrictive environment. Therefore, the key considerations in this issue are whether the LEA's proposed placement of the student in a self-contained autism classroom within a regular school at the July 28, 2011 IEP Team meeting was appropriate in that the placement was designed to meet the student's unique needs, comported with the student's IEP and was reasonably calculated to enable the student to receive educational benefit in the least restrictive environment.

The July 2, 2011 HOD concluded that the student's prior placement was inappropriate because the placement did not take into account the student's autism, did not effectively address the student's continued disruptive behaviors and wandering out of the classroom and the student was not being educated with students at her own cognitive and academic levels. The July 2, 2011 HOD includes at least six (6) findings of fact which indicate that the student requires a small class size and/or classroom with a low student-teacher ratio. These elements collectively describe some of the student's unique needs which should have been considered when determining an appropriate placement for the student. While the July 2, 2011 HOD expressly identified elements of the student's prior placement that were inappropriate, the hearing officer did not conclude that the student's placement in a self-contained class at a regular school was an inappropriate placement.

At the July 28, 2011 IEP Team meeting, the LEA proposed placement in the self-contained autism classroom at School C, a regular public school. The parent proposed placement at a private school for students with special needs, in the school's Multiple Learning Needs Program. In this meeting, the LEA described the program at School C as a "full-service" program which includes mental health support, targeted lessons, an award-winning certified teacher, paraprofessionals, support from an autism coach, a low student enrollment and access to the general education curriculum.

On the first day of school for the 2011-2012 school year, the classroom had eight (8) students, one (1) teacher and two (2) paraprofessionals. After a classroom teacher was identified for the ID classroom at the school in mid-September, 2011, the autism classroom consisted of five (5) students, one (1) teacher and one (1) paraprofessional. The classroom's ABA Coordinator and the classroom teacher testified that the students in the classroom fall into a "higher" cognitive and academic functioning group and a "lower" cognitive and academic functioning group. The student is included with the "higher" functioning group which is comprised of students at her cognitive and academic levels. While the evidence presented by

both parties was strong that the student is in the "higher" functioning group, the evidence does not support the contention that the student is not being educated with students at or around her own cognitive and academic levels. The ABA Coordinator and the classroom teacher described that instruction in the classroom is differentiated based on student grade and academic levels and IEP goals. The ABA Coordinator and the classroom teacher stated that a token economy is used as a behavior management system within the classroom.

The student's June 1, 2011 IEP includes twenty-six (26) hours of week of specialized instruction outside the general education setting, two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting, thirty (30) minutes per week of adaptive physical education, thirty (30) minutes per week of PT and ESY services. While the IEP includes time and frequency for adaptive physical education and PT, the IEP does not contain goals or objectives for either of these services. It is uncontested that the LEA held an IEP Team meeting for the student on July 28, 2011 pursuant to the July 2, 2011 HOD, yet a the IEP Team did not revise the student's June 1, 2011 IEP at this meeting.

Both the ABA Coordinator and the student's teacher testified that the student attends physical education classes with her disabled peers. There was no evidence presented that the physical education teacher is not able to adapt the physical education curriculum for disabled students. Likewise, there was no evidence presented as to whether or not there is a physical therapist available to provide services at School C. The Petitioner bears the burden to prove by a preponderance of the evidence that School C was not able to provide these services on July 28, 2011. That burden was not met. The Petitioner did not contend that the student is not receiving specialized instruction and speech-language services outside of the general education setting as prescribed in her IEP. The student's mother, the ABA Coordinator and the teacher testified that, on a daily basis, the student's interaction with non-disabled peers is limited to the cafeteria in the morning before school begins. Therefore, the LEA's proposed placement of a self-contained classroom at School C comported with the student's IEP on July 28, 2011.

With the exception of the fact that the student was placed at School C for ESY, no evidence was presented by either party with regard to the student's educational experience during the Summer 2011 ESY period.

The LEA's placement of the student in the autism classroom at School C takes into consideration the student's diagnosis of autism, as ordered in the July 2, 2011 HOD. The placement also allows the student to be educated with students at her own cognitive and academic levels. The teacher assigned to the autism classroom at School C has twelve (12) years of teaching experience with students with special needs, is a highly-qualified teacher, understands the behaviors of students with autism and has developed a token economy as a behavior management system within the classroom. Additionally, the classroom has a small class size and low student-teacher ratio. On July 28, 2011, the date of the IEP Team meeting, the LEA's proposed placement at School C contained all of the elements outlined in the July 2, 2011 HOD as elements of an appropriate placement for the student. The hearing officer concludes that the student's placement in the autism class at School C on July 28, 2011 was designed to meet the student's unique needs, comported with the student's IEP and was reasonably calculated to

enable the student to receive educational benefit in the least restrictive environment and therefore was an appropriate placement.

The July 2, 2011 HOD ordered the LEA to convene an IEP/placement meeting and determine an appropriate placement/location of services for the student for the remainder of ESY and for the 2011-2012 school year within thirty (30) calendar days of the issuance of the Order. The LEA held the IEP/placement meeting on July 28, 2011, twenty-six (26) days after the issuance of the Order. The evidence presented in this case supports that the Respondent complied with the July 2, 2011 HOD by convening a meeting within thirty (30) calendar days of the Order and determining an appropriate placement of services for the student, consistent with the findings in the HOD, for the remainder of ESY and for the 2011-2012 school year. Petitioner has failed to meet its burden with regard to this issue.

### Issue 2 – Appropriate Location of Services

The Petitioner alleges that the Respondent has failed to provide the student a FAPE because the location of services identified in the Prior Notice of Placement issued at the July 28, 2011 IEP/placement meeting is unable to implement the student's June 1, 2011 IEP, provide the student access to the general education curriculum and educational benefit. As indicated in Issue 1, at the July 28, 2011 IEP Team meeting, the LEA proposed placement in the self-contained autism classroom at School C, a regular public school. The parent proposed placement at Ivymount School, a private school for students with special needs, in the Multiple Learning Needs Program.

To determine whether a school district substantively offered a FAPE to the student, the adequacy of the school district's proposed program must be determined. *Gregory K. v. Longview School Dis.* (9th Cir. 1987) 811 F.2d 1307, 1314. Under *Rowley*, the standard for determining whether a district's provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and, (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. *Id.* If the school district's program meets these criteria, then the school district provided a FAPE, even if the student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. *Id.* Whether the program set forth in the IEP constitutes a FAPE is to be determined from the perspective of what was objectively reasonable to the IEP team at the time of the IEP, and not in hindsight. *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.

#### I. Services Designed to Meet the Students Needs

The term "unique educational needs" is to be broadly construed and includes the student's academic, social, emotional, communicative, physical, and vocational needs. *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

The student's April 4, 2011 evaluation, September 5, 2011 evaluation and current IEP outline her unique needs. Further, the July 2, 2011 HOD offers specific conclusions as to the student's unique needs based on the inappropriate nature of the student's previous placement. The student's unique needs include a classroom with a small student-teacher ratio, social skills training, a teacher who understands behaviors typical of students with autism, a placement which effectively addresses the student's disruptive behaviors, and a classroom with students at her cognitive and academic levels. The student also needs specialized instruction in Reading, Written Expression, Mathematics and Communication/Speech-Language.

With regard to a classroom with a small student-teacher ratio, a teacher who understands behaviors typical of students with autism, a placement which effectively addresses the student's disruptive behaviors, and a classroom which contains other students at the student's cognitive and academic levels, the hearing officer determined in Issue 1 that the placement in the autism class at School C is an appropriate placement. In fact, the evidence shows that the student has made remarkable improvements in behavior during the 2011-2012 school year to the point that the student does not respond negatively to noise in large environments, does not wander from the classroom, does not display as many typical "autistic" behaviors and has requested to go to an inclusion classroom.

The Petitioner and Respondent agree that the student needs social skills training. The Petitioner contends that the student needs social skills taught in a small group setting however the Petitioner has agreed that the goals, objectives and related services listed on the student's IEP are not at issue. The student's IEP contains Communication/Speech-Language goals that address social skills but does not indicate that the student requires social skills training as a related service or in a small group setting. The ABA Coordinator and the classroom teacher testified that the daily classroom schedule includes time to work on individual student IEP goals and that there is daily classroom time dedicated to social skills. The evidence presented at the hearing indicates that the student's social skills have increased during the school year.

The Petitioner did not present evidence indicating that the student's placement in the autism classroom at School C is unable to meet the student's needs in regard to specialized instruction in Reading, Written Expression and Mathematics. The Petitioner however presented considerable evidence with regard to the student's placement and her speech-language unique needs.

The Petitioner contends that the student's speech skills have regressed since the beginning of the school year. The student's classroom teacher is deaf and communicates by reading lips and speaking. The teacher's speech is slightly slurred however understandable to the point where none of the witnesses who testified independently concluded that the teacher is deaf when initially speaking with the teacher. The Petitioner argued that the teacher is not able to work on articulation goals with the student. However, while the student's IEP indicates that the student has poor articulation during spontaneous conversation, her IEP does not contain articulation goals. The Petitioner also contends that since the student has difficulty with eye contact therefore cannot be easily understood by the teacher. The teacher testified that the student understands that the teacher reads lips and either independently looks up or looks up with

prompting. Finally, the Petitioner argued that the student echolalia has significantly increased since the beginning of the year. However, none of the witnesses who have observed the student testified that the student echoed words during their observations.

The hearing officer concludes that the student's placement in the self-contained autism class at School C is able to meet the student's unique needs.

## II. Services Designed to Provide Educational Benefit

Under *Rowley*, the factual showing required to establish that a student received some educational benefit is not demanding. A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. *Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d 119, 130; *E.S. v. Independent School Dist.*, No. 196 (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. School Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450.

The Petitioner argued that the student's placement in the autism class at School C is inappropriate, in part, because the classroom teacher allows the students to engage in nonacademic activities during instructional time and the child is not being academically challenged. During the parent advocate's sole observation of the student, she observed the student engaged in nonacademic activities. The advocate's observation was conducted during and after the student's lunch period. The teacher testified that immediately following lunch, the classroom schedule is for student to select an activity earned through the behavioral management system token economy. Following the scheduled time for rewards, time is scheduled for social skills. The student's mother and the ABA Coordinator both testified that they conducted observations of the student during instructional time.

The Petitioner did not present evidence indicating that the student is not progress toward her IEP goals and objectives. The student is able to work independently on the third grade level but is able to be challenged up to the sixth grade level. Despite the Petitioner's argument that the student is not being academically challenged, the student's mother stated that her concern is not with the student's academic program, but with the student's environment. The student's mother also testified that the student is able to independently complete her math homework but is challenged by her reading homework. The student's September 23, 2011 progress report which encompass the time period at issue, states that the student has excellent initiative in math and excellent initiative and good participation in English/Language Arts.

The Petitioner did not meet its burden of proving by a preponderance of the evidence that the student is not receiving educational benefit in her current placement.

### III. Services Conform to the IEP

The student's IEP requires twenty-six (26) hours of week of specialized instruction outside the general education setting, two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting and extended school year (ESY) services. The student's IEP contains goals in Mathematics, Reading, Written Expression and Communication/Speech-Language. The student's "Communication/Speech-Language" goals include goals that address communication, social skills and classroom participation.

The Petitioner has not contended that the student is not receiving the time and frequency of specialized instruction and speech-language therapy prescribed on her IEP. The student's mother testified that during the third week of September, she observed a forty-five (45) minute math session in the student's classroom. The ABA Coordinator testified that she has observed the classroom teacher teaching multiple subjects, including the incorporation of Science into English and Mathematics lessons. She testified that social skills are taught throughout the day.

The classroom teacher has twelve (12) years of experience teaching students with special needs and is a highly qualified teacher. She explained that she reviews student IEPs to determine which skills can be taught in a large group and which skills are to be taught in pairs. The classroom teacher testified that the student has progressed with her communication goal of talking with peers and her. The student's mother, the ABA Coordinator and the student's teacher testified that they observed the student appropriately raising her hand to ask a question, evidence of her progression of one of her Communication/Speech-Language goals.

The student's June 1, 2011 IEP required thirty (30) minutes per week of adaptive physical education and thirty (30) minutes per week of PT however contains no goals or objectives for either of these services. The student's September 26, 2011 IEP does not contain adaptive physical education or PT. The record does not contain any evidence as to whether the July 28, 2011 IEP Team determined that adaptive physical education and PT were no longer necessary for the child or whether the LEA provided a Prior Written Notice to the parents of the child when it proposed to change the provision of FAPE to the student by removing adaptive physical education and PT from the child's IEP.<sup>4</sup> The Prehearing Order however does not list this potential procedural violation as an issue to be decided in this case. The Prehearing Order does include the issue of whether the student's current placement is able to implement the student's IEP.

As discussed in Issue 1, there was no evidence presented that the physical education teacher is not able to adapt the physical education curriculum for disabled students. Likewise, there was no evidence presented as to whether or not there is a physical therapist available to provide services at School C. Further, no evidence was provided indicating that the student has not received PT. The student's mother however testified that she was informed that while the student attends physical education with her disabled peers, the student is not receiving adaptive physical education services. While the student's mother expressed concern regarding the

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<sup>4</sup> 34 CFR §300.503(a)(1) requires written notice to be given to parents of a child with a disability a reasonable time before a public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

student's ability to navigate stairs, the ABA Coordinator and the student's teacher provided testimony that the student has no difficulty navigating the stairs. The mother's advocate also reported that the student had no issues with transitioning from the cafeteria back to the classroom on a different floor.

The student's May 11, 2011 Adaptive Physical Education Evaluation summarizes that the student met all of her physical goals and objectives and did not demonstrate any apparent delays in gross motor skills and physical fitness. The evaluation concludes that the student does not demonstrate any deficits that warrant adaptive physical education services. The student's May 18, 2011 School-Based Physical Therapy (PT) Progress Report/Completion of Services includes data from the physical therapist, teacher, IEP quarterly progress reports and PT service trackers indicating that the student has mastered all of her PT goals and is able to navigate safely in the school environment including ambulation on stairs and in hallways. The report summarizes that the student has completed services by meeting goals or progressing and meeting all of her needs.

The hearing officer finds that the LEA failed to implement the student's IEP with regard to adaptive physical education from the first day of school until September 26, 2011. The hearing officer also concludes that, based on the information contained in the student's May 11, 2011 Adaptive Physical Education Evaluation and testimony provided at the hearing, the LEA's failure to implement the student's IEP caused no harm to the student and therefore was not a denial of a FAPE.

#### IV. Least Restrictive Environment

The IDEA at 34 CFR §300.115 requires public agencies to ensure that a continuum of alternative placements is available, and specifies that this continuum includes instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. The Comments to the Federal Regulations note that "placement" refers to points along the continuum of placement options available for a child with a disability and "location" refers to the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. 71 Federal Register 46540:46588 (14 August 2006).

On July 28, 2011, the IEP Team agreed that the student would be provided with twenty-six (26) hours of week of specialized instruction outside the general education setting, as well as two hundred forty (240) minutes per month of speech-language pathology services outside of the general education setting. The IEP Team further determined that the specialized instruction and related services for the student could be delivered in a self-contained class at School C. Thus, the student's *placement* is a special class in a regular public school and the *location* of the child's services is the autism class at School C.

The IDEA requires school districts to place disabled children in the least restrictive environment possible. *Roark ex rel. Roark v. District of Columbia*, 460 Supp. 2d 32, 43 (D.D.C. 2006) (citing 20 U.S.C. §1412(a)(5)); 5 DCMR §3011 (2006). In determining the least restrictive environment, consideration is given to the types of services that the child required." *Id.* In determining the placement of a child with a disability, each public agency must ensure

that the placement decision is made in conformity with least restrictive environment provisions and that the placement is as close as possible to the child's home. 34 C.F.R. § 300.116(b). Mainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with nonhandicapped children is not only a laudable goal but is also a requirement of the Act. *DeVries by DeBlaay v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4<sup>th</sup> Cir. 1989). In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs. 34 CFR §300.116(d).

At the July 28, 2011 IEP Team meeting, the LEA proposed a placement in a separate class at School C, located in Washington, DC. The Petitioner proposed a placement in a special school located in Rockville, Maryland. Fundamentally, a separate class in a regular school is a less restrictive environment than a special school. Additionally, the school located with the District of Columbia is closer to the child's home than the school located outside of the boundaries of the District of Columbia. However, consideration must be given as to any potential harmful effect on the child or on the quality of services that he or she needs and whether the LEA denied the student a FAPE.

Four witnesses testified that they have had the opportunity to observe the student interact with non-disabled peers. The parent's advocate testified that she observed the student on September 2, 2011 in the cafeteria and in the student's classroom following the lunch period. The parent's advocate explained that at the beginning of her observation the student's class entered the cafeteria and the cafeteria was quiet. The student sat by herself and communicated only with the classroom aide. At some point, the regular education 8<sup>th</sup> grade students entered the cafeteria. The parent's advocate stated that the regular education students were "banging, singing and dancing" and that the cafeteria became very noisy. During this time, the student's behavior did not change. Following the lunch period, the advocate left the cafeteria after the student's classroom. The advocate testified that the student had no issues transitioning from the cafeteria back to the classroom.

The parent testified that during one of her trips to the school, she observed the student walking into the cafeteria during breakfast, where all students were assembled, and the student walked in the cafeteria and stood against the wall. The student's mother believes that the student "sticks out" in the general population and she is concerned because the student has now become aware of her peers. The parent indicated that the student was "picked on" on the subway several days before the hearing. The student's parent has provided opportunities for the student to function independently in the community by walking behind/away from the student on the bus or the subway. The student's mother also testified that the student needs contact with non-disabled peers but she believes that the student does not yet have the skills for this interaction.

The ABA Coordinator testified that she has observed the student's classroom between ten (10) and fourteen (14) times this year. She testified that the student has no trouble with transitions within the school.

The student's teacher testified that the student has opportunities to interact with non-disabled peers during pep rallies and other group activities. The teacher explained that if the

students in her classroom experience difficulties with the activity or if she does not feel the activity has a benefit for the students, the class remains in the classroom during the school-wide activity. The teacher testified that the student attended a pep rally toward the beginning of the school year and while she sat with staff members and frequently asked to leave, she remained until the conclusion of the pep rally. The teacher testified that at the beginning of the school year the student had difficulty sitting in the cafeteria during breakfast and transitioning in the hallway, the student no longer has these difficulties and behaves appropriately in the regular school environment.

The student's September 5, 2011 Comprehensive Psychological Evaluation summarized that the student "is socially immature for her age, lacks meaningful and socially rewarding relationships, and has limited social skills, all of which significantly interfere with her social functioning." The report further concludes, "[Student] does not have a strong peer support system and it is likely that she is aware of her social awkwardness. Therefore, she attempts to divert her energies into solitary activities such as eating lunch alone." The evaluator recommended that the student receive individual therapy targeted at developing social skills addressing peer interactions.

While the parties agree that the student's specialized instruction and related services should be delivered outside of the general education setting, there is no evidence that the student's placement in a self-contained classroom in a regular public school has a harmful effect on the student. In fact, the student has demonstrated that she is able to behave appropriately when interacting with her nondisabled peers and has requested to go to an inclusion classroom. While social skills training has been recommended as is likely to enhance the student's interaction with non-disabled peers, there is no evidence that that this cannot be delivered in a regular public school environment.

This hearing officer concludes that: (1) a self-contained classroom in a regular public school is the least restrictive environment for the student; and (2) School C is an appropriate location to implement the student's IEP.

Based on the information above, the hearing officer concludes that: (1) The services offered by the LEA are designed to meet the student's unique needs; (2) The services offered by the LEA are reasonably designed to provide some educational benefit to the student; (3) The services offered by the LEA do not conform to the student's IEP in that the LEA failed to provide the student with adaptive physical education from August 2011 – September 26, 2011. However the LEA's failure to provide adaptive physical education to the student caused no harm to the student and therefore did not deny the student a FAPE; and (4) The program offered by the LEA is designed to provide the student with the foregoing in the least restrictive environment. Therefore, the LEA has provided the student a FAPE, and did so at the time of the July 28, 2011 IEP Team meeting. The evidence presented in this case supports that the Respondent provided the student an appropriate placement and location of services at the July 28, 2011 IEP Team meeting. Petitioner has failed to meet its burden with regard to this issue.

**ORDER**

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

The due process complaint in this matter is **dismissed** with prejudice. All relief sought by Petitioner herein is **denied**.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: November 23, 2011

  
Hearing Officer