

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

Student Hearing Office  
810 First Street, N.E.  
Washington, DC 20002

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Petitioner,  
v  
DCPS,  
Respondent.

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Date Issued: 12/6/11

Hearing Officer: Seymour DuBow

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STUDENT HEARING OFFICE  
2011 DEC - 6 PM 4:48

**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

A due process complaint was filed by counsel for petitioner on September 30, 2011. (P-1-24) On October 12, 2011 counsel for respondent filed her response to the complaint and a motion to dismiss arguing the due process complaint stated the petitioner was the parent, but the student had turned \_\_\_\_\_ years of age and the parent therefore did not have standing to bring the complaint. (P-1-29) On October 17, 2011 counsel for petitioner filed an opposition to the motion to dismiss and an amended complaint. Counsel for petitioner stated she had made a mistake in identifying the parent instead of the adult student as the petitioner and that the adult student had retained her as counsel. Counsel for petitioner's amended complaint changed the petitioner to the adult student. (P-1-8) On October 18, 2011 counsel for respondent filed her reply opposing the petitioner's motion to amend. A prehearing conference was held on October 19, 2011. On October 23, 2011 a Prehearing Order was issued. (P-1-1) The Order DENIED the

respondent's Motion to Dismiss and pursuant to *Section 303* of the *Standard Operating Procedures* GRANTED the petitioner's Motion to Amend with "the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint". The Order stated that the timeline in this case therefore starts on October 17, 2011, the filing of the amended due process complaint, with the resolution period ending on November 16, 2011 and the HOD being due December 31, 2011. On October 28, 2011 a resolution meeting was held and the parties failed to reach an agreement. (P-2)

The due process hearing convened at 9 a.m. on November 21, 2011 in the Student Hearing Office at 810 First Street, N.E., Washington, D.C. 20002.

The hearing was closed. At the outset of the hearing, counsel for respondent objected to petitioner's documents P-6, 8 & 9 on the grounds of relevance, but the objection was overruled and the documents were admitted. Counsel for respondent also objected to those documents in P-13 that involved other students and not this student and that objection was sustained as to P-13-4 through P-13-8. Petitioner's documents P-1-P-23 were admitted into evidence with the exception of the above named documents in P-13. Respondent's documents R-1-R-14 were admitted into evidence without objection. All witnesses were sworn under oath prior to testifying. Counsel for petitioner called as witnesses: the petitioner, the educational advocate, Chithalina Khanchalern, who both testified in person, the director of admissions at New Beginnings, Donte Davis, and the parent who testified by telephone. Counsel for respondent called as a witness the DCPS progress monitor, Nicole Garcia, who testified by telephone.

## JURISDICTION

The hearing was convened on November 21, 2011 pursuant to jurisdiction under *Public Law 108-446, The Individuals with Disabilities Improvement Act of 2004 (hereinafter referred to as IDEA), Title 34 of the Code of Federal Regulations, Part 300 (2006) and Title V-E of the District of Columbia Municipal Regulations.*

## BACKGROUND

The petitioner student is an 18 year old female who has been found eligible for special education services as a student with the disability classification of a Specific Learning Disability. The petitioner student had attended \_\_\_\_\_ Academy, a full-time non-public day special education program from fourth grade through the eleventh grade last school year. (P-17-4) The student's current IEP calls for 27.5 hours of specialized instruction and related services per week full time outside of the general education setting. (R-5) Counsel for petitioner filed this due process complaint alleging that DCPS denied a FAPE by failing to provide an appropriate placement for the petitioner student at the \_\_\_\_\_ Academy located in the \_\_\_\_\_ School because it is a program for students with behavioral issues and not an appropriate program for this student whose primary disability is a Specific Learning Disability and who does not have behavioral issues. Counsel for petitioner also alleges that DCPS denied a FAPE by failing to schedule an MDT meeting at a mutually agreeable time and place and then convening the MDT meeting on July 28, 2011 without the petitioner student or parent or members of the staff of \_\_\_\_\_ Academy who were knowledgeable about the student's needs and changing the student's placement to \_\_\_\_\_ Academy at \_\_\_\_\_ School. Counsel for petitioner is requesting as relief funding and placement of the petitioner student at

Program where the student was unilaterally placed at the beginning of this school year. Counsel for respondent denies the above allegations and maintains that the Spectrum Academy is an appropriate placement that can implement the student's IEP.

### **ISSUES AND RELIEF SOUGHT**

The issues to be determined are as follows:

1. Did DCPS deny a FAPE to the student by not providing an appropriate placement for the student by changing the student's placement from a full-time non-public day special education program at \_\_\_\_\_ to the Spectrum program- self-contained special education classrooms at \_\_\_\_\_ School, a general education public high school?
2. Did DCPS deny a Free Appropriate Public Education (FAPE) to the student by failing to hold a Multi-Disciplinary Team (MDT)/Placement meeting at a mutually agreeable time and place with the petitioner?
3. Did DCPS deny a FAPE to the student by proceeding with an MDT/Placement meeting without the petitioner after counsel for petitioner informed DCPS the petitioner was not in agreement with the date and place?
4. Did DCPS deny a FAPE to the student by proceeding with an MDT/Placement meeting without an appropriately constituted MDT by not including staff members from \_\_\_\_\_ and the petitioner and her parent?

The relief requested is reimbursement and placement and funding at

Program, a non-public day special education program including transportation costs for the 2011-2012 School Year.



student was reading at a 2<sup>nd</sup> grade level, her mathematics abilities were at the 4<sup>th</sup> grade level and her written language abilities were at a 3<sup>rd</sup> grade level placing her achievement level at 8 grades below her current grade level. (P-17-4) The student's twin brother was killed in December 2010 causing her to be depressed adversely affecting her attendance along with her pregnancy, but not causing her to be a behavioral problem. (P17-1)

4. On July 28, 2011, an MDT meeting was convened and determined that the student should remain in an out of general education setting. DCPS proposed changing the student's placement from \_\_\_\_\_ to the \_\_\_\_\_ at

\_\_\_\_\_ School. A Prior Written Notice was issued for Spectrum Academy for the 2011-2012 School Year. (R-9) No alternative sites were suggested at the MDT meeting. (Testimony of Ms. Garcia)

5. The \_\_\_\_\_ consists of two self-contained special education classrooms located at \_\_\_\_\_ School. There is one certified special education teacher in a classroom. There is no assistant in the classrooms. The students stay in the self-contained classroom they are assigned all day. One of the two classes is for lower functioning students. (Testimony of Ms. Khanchalern, Ms. Garcia) Core classes of math, English and reading are taught by the special education teacher. There is no evidence that the special education teacher is certified in content areas. There is no vocational program offered by Spectrum. There is no evidence that Spectrum can implement the student's Transition Service Plan in her IEP. Twelve of the thirteen students in the Spectrum program have behavioral issues. (Testimony of Ms. Garcia) There is a strong emphasis on behavior management in the program. Improvement in

behavior can result in students being transitioned to the School  
general education program. (Testimony of The  
main goal of the Spectrum program is to assist students with emotional/behavior  
problems to eventually transition to regular education classes at  
School. (Testimony of Meeting  
Notes at P7-8) At the 30 day review meeting on October 27, 2011, the petitioner  
student was told that the program is for students with behavior problems.  
The petitioner student does not want to go to because some of the  
students at who had behavioral issues would be there.  
(Testimony of petitioner student, ) The program at began this  
school year. (Testimony of

6. The student has been attending program, a non-public  
day 11 month special education program in the District of Columbia since the  
beginning of this school year. On August 24, 2011, counsel for petitioner sent a letter  
to DCPS notifying them that the student would be unilaterally placed at  
(P-11) The school is on the DCPS approved list. Students at  
are mostly classified with a learning disability and only a few have an  
emotional disturbance disability. The student's disability classification is a Specific  
Learning Disability. The student has had no behavioral issues at  
follows the DCPS curriculum. All students are from the District of  
Columbia. There are eight classes serving ninth through twelfth grades. Some of the  
special education teachers are dually certified in special education K-12 and subject  
areas. If they are not dually certified, a certified special education teacher co-teaches

with a teacher certified in the content area. offers both a diploma and certificate track. offers vocational training including barbering, cosmetology and auto mechanics in the building. is implementing the student's March 15, 2011 IEP. The student's attendance has improved since she has found child care for her infant. (Testimony of The student is making progress in her classes and is completing her class assignments. (P-4, Testimony of

The program costs two hundred and twelve dollars (\$212) a day on a rate scale set by OSSE. This rate is lower to other similar special education programs. All students are funded by DCPS either through a Prior Notice of Placement or Hearing Officer Determinations. The program has been in existence for five years. There is a bus stop in front of the school and students receive Metro fare cards. (Testimony of

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact on issue two, - the failure to hold an MDT/Placement meeting at a mutually agreeable time and place, issue three- proceeding with the MDT/Placement meeting without the petitioner after counsel for petitioner informed DCPS they were not in agreement with the time and place of the MDT meeting and issue four- proceeding with an MDT meeting on placement without a properly constituted team are as follows:

## II.

1. On July 7, 2011 respondent DCPS sent a Letter of Invitation (LOI) to an MDT meeting on July 28, 2011 to the parent. The Letter of Invitation indicates that on July 7, 2011 the respondent DCPS made three attempts to contact the parent by phone,

mail and certified mail. The Letter of Invitation stated the MDT meeting would be held at DCPS's central office (headquarters) at 1200 First Street, N.E. on the ninth floor. The LOI was signed by the DCPS LEA representative Jade Bryant. (R-8)

2. On July 22, 2011 counsel for petitioner sent e-mails to DCPS representatives Jade Bryant, Nicole Garcia and Paris Adon regarding the LOI's sent to her students that she does not agree to having MDT meetings at headquarters, but that the meetings should be at \_\_\_\_\_ where she expects the whole \_\_\_\_\_ team to participate. Counsel for petitioner also objected to the three attempts to contact parents by phone and sending two letters all on the same date as improper notification to her clients. (P-13-10)
3. On July 25, 2011 counsel for petitioner sent e-mails to DCPS representatives Jade Bryant, Nicole Garcia, and Paris Adon stating that the parent in this case contacted her that she received a Letter of Invitation for a meeting at headquarters. Counsel for the petitioner stated: "The parent and I agree that we will not be willing to attend this meeting unless it is at \_\_\_\_\_ with the team, as all 'LRE' meetings should be." Counsel requested a response as soon as possible from DCPS. (P-13-13) The e-mails were transmitted with a read receipt indicating they were opened by DCPS representatives and counsel for petitioner received confirmation that the e-mails were received by the intended recipients Ms. Bryant and Ms. Adon. (P-13-16) (P-13-18)
4. On July 28, 2011 counsel for petitioner sent an e-mail to DCPS representatives Nicole Garcia, Paris Adon and Jade Bryant stating she has not received a response to her e-mails and asking them to respond and when there can be a meeting at a mutually agreeable time and place. (P-13-19)

5. On July 28, 2011 an MDT meeting was convened at DCPS headquarters on this student. (R-9)
6. DCPS did not respond to counsel for petitioner's above e-mails and made no attempt to reschedule the MDT meeting at a different time or place.
7. DCPS's contact logs indicate they sent out to the parent on July 7, 2011 a letter, a certified letter and made a phone call to the parent noting the phone was disconnected. (R-7) The contact log indicates that on July 19, 2011 another letter was sent to the parent and another phone call made on July 26, 2011, but the parent could not be reached. (R-7) There is no indication in the contact logs that visits were made to the petitioner's home or the parent's home or place of employment. There is also no indication in the contact logs why a phone call was made by DCPS on July 26, 2011 when the July 7, 2011 contact log states the phone was disconnected. (R-7)
8. On July 28, 2011 an MDT meeting was convened on this student with the following members: DCPS LEA representatives, DCPS case manager, a representative of Academy, a DCPS social worker, special education teacher, speech and language pathologist and occupational therapist. The petitioner and the parent were not in attendance. There was no member from the staff at participating. (R-9) There was no special education teacher or school psychologist who worked with the student at the July 28, 2011 MDT meeting. (Testimony of  
No member of the MDT team had direct personal knowledge of the student's needs.

### CREDIBILITY FINDING

A hearing officer is responsible for assessing the credibility of witnesses. *See Shore Regional High School Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3<sup>rd</sup> Cir. 2003) This hearing officer observed the student petitioner who testified in person at the due process hearing. I found her testimony to be very credible based on her attentive demeanor and straightforward answers to both counsels' questions. If she did not know an answer to a question she would say so. I also observed her throughout the hearing to be very calm and not exhibiting any behavioral issues. I found the testimony of Ms. Khanchalern, who testified in person, to be credible based on my observations of her demeanor. She answered all questions in a comprehensive and responsive manner. I also found the testimony of \_\_\_\_\_ Director of Admissions at

\_\_\_\_\_ Program, to be credible based on his comprehensive description of the program at \_\_\_\_\_ and his in-depth review of the student's progress in their program. I did not find the testimony of DCPS's witness \_\_\_\_\_ credible. She was evasive on questions about the focus of the \_\_\_\_\_ and why the MDT/Placement meeting could not be held at \_\_\_\_\_. She also only observed the student briefly at \_\_\_\_\_ and was not aware of the student's deficits.

### DISCUSSION/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 on issue one-that DCPS failed to provide an appropriate placement at \_\_\_\_\_

Counsel for respondent argues that the change from \_\_\_\_\_ to the \_\_\_\_\_ is a change in location not in placement. The *Analysis and Comments to the Regulations, Federal Register*, Vol. 71, No. 156, Page 46588 (August 14, 2006) states that placement refers to points along the continuum of placement options available to a child with a disability, and location refers to the physical surrounding, such as the classroom where the child receives specialized instruction. *Section 300.115 Continuum of alternative placements* lists instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. In this case DCPS is attempting to move the student from

\_\_\_\_\_ a special school, to \_\_\_\_\_ two special classes in a public high school. Such a change is a change in points along the continuum and is a change in placement. A change in educational placement occurs when there is fundamental change in or elimination of a basic element of the education program. *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577 (D.C. Cir. 1984) The student has been in a 11 month program for students with learning disabilities and emotional disturbance at \_\_\_\_\_ with a transition service plan in her IEP including vocational services of training in cosmetology. DCPS is proposing moving the student to a 10 month program that's main focus is on assisting students with emotional/behavioral issues and transitioning those students when their behavior improves to the regular public high school at \_\_\_\_\_ School. There is no vocational training program at \_\_\_\_\_ These differences are a fundamental change or elimination of basic elements of the student's educational program.

The legal standard for educational placements was stated in the U.S. Department of Education interpretative guidelines that "educational placements under Part B must be individually determined in light of each child's unique abilities and needs, to reasonably promote

the child's educational success." *Appendix A to 34 C.F.R. Part 300 Question 1*. Following the development of an IEP, the public school system is required to provide an appropriate educational placement that meets the needs set forth in the IEP and allows for its implementation. *See Spilsbury v. District of Columbia*, 307 F. Supp. 2d 22, 25 (D.D.C. 2004) (citing *Petties v. District of Columbia*, 238 F. Supp. 2d 114, 116 (D.D.C. 2002) and *34 CFR 300.116*

The student's disability classification is a Specific Learning Disability. (See Findings of Fact I. #2) The student did experience depression after the killing of her twin brother in December 2010, but did not exhibit any behavioral problems at (See Findings of Fact I. #3) The student has also not had any behavioral issues at which serves mainly learning disabled students. (See Findings of Fact I. #6) DCPS is proposing to place the student at where 12 of the 13 students have behavioral issues. The program's main focus is on assisting students with emotional/behavioral issues and transitioning those students when their behavior improves to the regular public high school at School. (See Findings of Fact I. #5) The student does not want to go because she does not have behavioral issues and some of the students from who had behavioral issues would be there. (See Findings of Fact I. #5)

*Section 300.116* on Placements states: "In determining the educational placement of a child with a disability, each public agency must ensure that-... (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs..." To place this student who does not have behavioral issues and whose disability classification is a Specific Learning Disability in a program for students with emotional/behavioral issues would have a harmful effect on the student as the student herself

recognizes. The student has severe learning disabilities being academically eight grades below her grade level. (See Findings of Fact I. #3) Placing her in a program that is focused on behavioral issues and not learning disabilities would also have a harmful effect on the quality of services she needs. More class time would be devoted to behavioral management than providing direct services to address this student's severe learning disabilities. The DCPS proposed placement of Spectrum would not "reasonably promote the child's educational success." Counsel for petitioner has met her burden of proof that DCPS denied a FAPE to the student in not providing an appropriate placement.

Once a court or hearing officer finds that the public school district has failed to offer a FAPE, the court or hearing officer is authorized to "grant such relief as the court determines is appropriate." *20 U.S.C. Section 1415(i)(2)(C)(iii)*. "Under this provision, equitable considerations are relevant in fashioning relief, and the Court enjoys broad discretion in so doing." *Florence County School District Four v. Carter*, 510 U.S. 7 at 16 (1993) Counsel for the petitioner is requesting for relief placement of the student at New Beginnings Vocational Program. Such relief can be granted under the Supreme Court decisions in *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359 (1985) and *Carter* if the public school system failed to provide a FAPE and the private placement is appropriate. *See also IDEA 2004* and its *2006 Regulation at 20 U.S.C. 1412 (a)(10)(C)(ii) and 34 CFR 300.148 (c)*. In *Carter*, the Court held: "[c]ourts fashioning discretionary equitable relief under IDEA must consider all relevant factors." *Id.* In *Branham v. District of Columbia*, 427 F.3d 7, 13 (D.C. Cir. 2005) the Court stated: "Specifically, courts have identified a set of considerations "relevant" to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the



child; or (iii) Caused a deprivation of educational benefit.” *IDEA* requires at *Section 300.322* “Parent participation (a) Public agency responsibility- Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate including-(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place.” *Section 300.322 (d)* states:

Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as-(1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

This section in *IDEA* shows the importance *IDEA* places on parental participation.

In *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F. 3d 1072 (9<sup>th</sup> Cir. 2003), the United States Court of Appeals for the Ninth Circuit found a denial of a FAPE where the IEP meeting was held despite the parents request to reschedule. In *J.N v. District of Columbia*, 677 F. Supp. 2d 314, 323 (D.D.C., 2010), the Court held that DCPS denied a FAPE because:

DCPS’s failure to meet its obligation to coordinate with Norris to schedule J.N.’s IEP meeting eliminated her ability to participate in the formulation process. *See, e.g., A.I ex rel Iapalucci*, 402 F. Supp. 2d at 164 (noting that procedural violations that seriously infringe upon the parents opportunity to participate in the IEP formulation process clearly result in a denial of a FAPE); *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F. 3d 877, 892 (9<sup>th</sup> Cir. 2001) (“Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the *IDEA*. An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child’s needs are not involved or fully informed.”). Furthermore, “Congress placed every bit as much emphasis upon compliance with procedures giving parents... a large measure of participation at every stage of the administrative process... as it did upon the measurement of the resulting IEP against a substantive standard.” *Rowley*, 458 U.S. at 205-06.

In this case, DCPS sent out on July 7, 2011 a Letter of Invitation to the parent for an MDT/Placement meeting at DCPS headquarters on July 28, 2011. Counsel for petitioner e-mailed back to DCPS on July 22, 2011, July 25, 2011, after learning of the LOI from the parent, and July 28, 2011 that the place for the meeting was not acceptable because she wanted the meeting held at \_\_\_\_\_ so that \_\_\_\_\_ staff familiar with the student could participate. Counsel for petitioner requested a response, but DCPS did not respond to these three e-mails even though they received counsel for petitioner's e-mails. DCPS proceeded with the MDT meeting changing the student's placement to the \_\_\_\_\_ without the petitioner or parent's participation and without participation of staff at \_\_\_\_\_ who were knowledgeable about the student. (See Findings of Fact II. #1-#5) DCPS made no attempt to reschedule the MDT meeting to an alternative time and place. (See Findings of Fact II. #6)

As noted above, *IDEA* requires school districts to make a concerted effort to convince the parent to participate in MDT meetings before conducting an MDT meeting without the parent or petitioner in attendance including detailed record keeping of phone calls, correspondence and visits made to the parent's home or places of employment and the result of those visits. *Section 300.322 (d)(1)-(3)*. In this case there is no record of visits to the petitioner's or parent's home or places of employment. A phone call, letter and certified letter were sent on the same day July 7, 2011 and a subsequent phone call was made on July 26, 2011 even though the July 7, 2011 contact log states the phone was disconnected. (See Findings of Fact II. #7) This hearing officer concludes DCPS failed to make a concerted effort to convince the parent and petitioner to participate in the MDT meeting before conducting the meeting. Counsel for petitioner has met her burden of proof that DCPS has denied a FAPE to the petitioner on issues one and two in not scheduling the MDT meeting at a mutually agreed time and place and then proceeding with the

MDT meeting on July 28, 2011 without petitioner and parent participation and without participation of staff from Rock Creek Academy knowledgeable of the student's needs.

*IDEA* at *Section 300.116 (a)(1)* requires that placement decisions be made by "a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options". *IDEA* further requires at *Section 300.501 (c)(3)* "Each local educational agency or State education agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child."

In this case, DCPS conducted an MDT/Placement meeting and made a change in placement to \_\_\_\_\_ without the petitioner or parent and without persons knowledgeable about the student. The members of the MDT team at the July 28, 2011 meeting were not directly knowledgeable about the student and her needs. (See Findings of Fact II. # 1) In *Seattle School Dist. v. B.S.*, 82 F. 3d 1493 (9<sup>th</sup> Cir. 1996) the Court found a denial of a FAPE where the school district failed to include in the evaluation team professionals with knowledge of the student's disabilities and did not reconcile the student's private provider's opinions. In *Taylor v. Board of Educ.*, 558 IDELR 243, (N.D.N.Y 1986) the Court found a school district violated the procedural requirements of *IDEA* by failing to give sufficient consideration to the opinions of individuals who knew the child best where the school district did not bring the doctors and teachers from the child's then-current placement outside the school system into the IEP process and, as a result, the school district proposed a set of services that were totally inadequate for the needs of the child. In this case the failure to include the petitioner, parent and persons directly knowledgeable of the student and her needs has resulted in an inappropriate placement to a program focusing on students with emotional/behavioral issues which this student

does not have instead of an appropriate program to meet her severe learning disabilities. Counsel for petitioner has met her burden of proof that DCPS denied a FAPE in conducting an MDT/Placement meeting without a properly constituted team.

**ORDER**

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

**DCPS shall fund and place the student at \_\_\_\_\_ program at  
\_\_\_\_\_ for the 2011-2012 School Year  
including transportation costs in the form of a Metro fare card. The funding shall include  
retroactive payment to \_\_\_\_\_ from the beginning of this school year. DCPS  
shall issue a Prior Notice of Placement to \_\_\_\_\_ program within five  
school days of issuance of this Hearing Officer's Determination.**

**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: 12/6/11

Seymour DuBow /s/  
Hearing Officer