OSSE
Student Hearing Office
February 13, 2013

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

Parent, on behalf of Student[1],

Petitioner,

v.

District of Columbia Public Schools,
Respondent.

Hearing Officer: Gary L. Lieber

Hearing Date: February 6, 2013

HEARING OFFICER'S DETERMINATION

Appearances: *Miguel Hull, Esquire for Petitioner*

Maya Washington, Esquire for Respondent

Introduction and Procedural Background

This case was brought as a due process complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended 20 U.S.C. §1400 *et. seq.* and Title 5-E, Chapter 5-E-30 of the District of Columbia Municipal Regulations. Petitioner is the mother of Student, now [redacted] Petitioner is an 8th grade student classified as having a Specific Learning Disability. Petitioner is currently enrolled at a District of Columbia sponsored Charter School. He began attending that school in the 2012-2013 school year. Petitioner alleges that Student's current location of services was incapable of implementing the two Individualized Education Plans ("IEP") that were in effect

[1] Personal identification information is provided in Appendix A and Appendix A must be removed prior to distribution.

at different times during the current school year. Petitioner seeks an award of compensatory education to compensate for the time period in which the Student was allegedly denied a Free Appropriate Public Education ("FAPE"). Petitioner also asserts that a different location of services proposed by Respondent following the filing of the instant Due Process Complaint is also incapable of implementing his current IEP consistent with Respondent's obligation to provide FAPE to the Student. In this respect, Petitioner requests that an Order be issued permitting the Student to be placed at a particular private school selected by Petitioner and that Respondent be ordered to reimburse Petitioner for the cost of the Student's enrollment and matriculation at that school.

Respondent contends that it acted responsibly and reasonably at all relevant times and that specifically the evolution of its IEPs from one that was based upon specialized instruction within a general education environment to one that provided for specialized instruction exclusively outside the general education environment was both reasonable and undertaken without delay. Respondent also asserts that its current proposed location of services is appropriate and capable of implementing the most recent IEP. For these reasons, Respondent asserts that the Student was not denied FAPE and that the Due Process Complaint must be dismissed.

The Due Process Complaint was filed on December 7, 2012 (P. Exh. 1).[2] Respondent District of Columbia Schools ("DCPS") filed its Response to Parent's Administrative Due Process Complaint on December 17, 2012, in which it denied that it had failed to provide FAPE to the Student (H.O. Exh. B). The parties conducted a Resolution Meeting on December 19, 2012, but did not resolve the matter (R. Exh. 2). On January 4, 2013, the undersigned conducted a prehearing conference and on January 9, 2013, the undersigned issued a Prehearing Order setting February 6, 2013 as the hearing date (H.O. Exh. D). The five-day disclosures were timely filed on January 30, 2013.

The Due Process Hearing was conducted on February 6, 2013. The Hearing was closed to the public and was electronically recorded. Both parties were represented by counsel.

The Record of Evidence

The Petitioner called three witnesses: an Education Advocate, the Parent and the Director of Admissions at the school proposed by Petitioner as the appropriate location of services. The Respondent called three witnesses: the Special Education Coordinator ("SEC") at the Student's current public charter school, a special education teacher at that same school, and the Special Education Coordinator at the school which Respondent has proposed as the appropriate location of services pursuant to the Student's most recent IEP.

[2] The Hearing Officer's Exhibit shall be referred to as H.O. Exh. ___; Petitioner's Exhibits as P. Exh. ___; and Respondent's Exhibits as R. Exh. ___.

The following exhibits were admitted: Hearing Officer's Exhibit A through D; Joint. Exh. 1; Petitioner's Exhibits 1 through 13, 19 through 27, 29 and 30; and Respondent's Exhibits 1 through 4.

Jurisdiction

This Hearing Officer has jurisdiction pursuant to IDEA, 20 U.S.C. §1415, the statute's implementing regulations at 34 C.F.R. §300.511 and 300.513 and the District of Columbia Code of Municipal Regulations ("DCMR") at 5-E §3029 and 5-E §3030. This decision constitutes the Hearing Officer's Determination, the authority for which is set forth in 20 U.S.C. §1415 (f)(3)(E) and 34 C.F.R. §300.513.

Prior Hearing Officer Determinations and Executed Settlement Agreements

On January 26, 2012, Hearing Officer Jim Mortenson issued a Hearing Officer's Determination in Case No. 2011-1144. *See* P. Exh. 3. The facts relating to that case serve as some relevant background to the later events that gave rise to this case. Additionally, on May 30, 2012, the parties entered into a settlement agreement. *See* P. Exh. 26. Again, as in the case of the prior Hearing Officer's Determination, some of the provisions of this Settlement Agreement are relevant background to the facts of this case. These documents have been admitted as Exhibits and certain facts contained within that Hearing Officer Determination and the Settlement Agreement are referenced within the remainder of this decision.

Statement of the Issues and Relief Requested

As further defined at the Hearing, there are two issues:

1. Is the Public School proposed by Respondent as the location of service on or about January 23, 2013, capable of implementing Student's latest IEP dated December 5, 2012 or, if not, is the private school selected by Petitioner capable of implementing that IEP?

2. Did the Respondent fail to provide FAPE by failing to timely revise the Student's IEP for a program consisting of 27.5 hours of special education services outside of the general educational environment?

For the first issue, Petitioner requests that the Hearing Officer order Respondent to change the location of service to the private school selected by Petitioner as the school capable of implementing his IEP.

As a remedy for the second issue, Petitioner seeks a number of hours of compensatory education in the form of individualized tutoring by a person with experience as a special education teacher in the subjects of reading, writing and mathematics and with experience in ninth grade course material (P. Exh. 27).[3]

[3] The compensation plan originally proferred by Petitioner was for 72 hours based on a period of the start of the school year in August until mid-January when the all out of general educational environment IEP was offered. P. Exh. 27. By the close of the evidence, counsel for Petitioner had reduced the time period to beginning mid-October 2012 to the same end period mid-January 2013. *See* closing argument of Petitioner's counsel.

Findings of Fact

1. Student is [redacted] old and is currently attending _____Public Charter School. He is in the eighth grade (Testimony of Mother).

2. The Student has been receiving special education and related services since fourth grade when he was determined to be eligible under the disability category of Speech and Language Impairment. The Student ceased eligibility for such services by the end of the 2012 school year (P. Exh. 3, pp. 4-5; P. Exh. 11, pp. 4-5).

3. In his November 1, 2011, IEP, the IEP team recognized a learning disability with significant weaknesses in reading, writing, spelling and mathematics. His IEP provided for twelve hours per week of special education services within the general education setting (P. Exh. 11).

4. On January 26, 2012, Hearing Officer Mortenson issued a Hearing Officer Determination (Case No. 2011-1144) which, among other things, ordered that Student's November 2011 IEP be modified to include special education services outside of the general education setting in reading, writing, and mathematics and further instruction provided to the Student in class by a special education teacher (though not necessarily exclusively provided to only this Student). The Hearing Officer's Determination also provided for the availability of an Extended School Year (ESY), if so determined by the IEP team (P. Exh. 3-17).

5. Thereafter, on February 6, 2012, the Student's IEP was revised in accordance with the Hearing Officer's Determination. In that IEP, it was made

clear that the Student was well below grade level in his core subjects and that this undermined his ability to do grade level work. For example, the Student was reading at a third grade level while then in the seventh grade (P. Exh. 4-3). Similar findings were made with respect to writing (P. Exh. 4-4). As part of an enhanced special education plan, the Student was provided in this IEP with eighteen and a half hours of special education services, nine within the general education environment, nine outside his regular classroom and thirty minutes for counseling for Behavioral Support Services (P. Exh. 4-6).

6. For the 2011-2012 school year, the Student attended his neighborhood middle school (hereinafter "PS 1")(P. Exh. 5-1).

7. On May 30, 2012, in conjunction with a then pending due process complaint, the parties entered into a Settlement Agreement. Among other things, the parties agreed that the Student would attend a different Middle School (hereinafter "Public School 2" or "PS 2") with transportation provided for the 2012-2013 school year and that the Student's IEP would also be amended to include ESY for the Summer of 2012 (P. Exh. 26-2).

8. During the Summer of 2012, the Student attended ESY at a school identified by Respondent as an ESY location of services for disabled students (hereinafter "Public School 3" or "PS 3")(Testimony of Mother; Testimony of Public School 3 Director of Admissions).

9. Consistent with the aforementioned Settlement Agreement, Respondent issued a Prior Written Notice on June 15, 2012 ("PWN") for Student to attend PS 2 (R. Exh. 3).

10. Rather than have the Student enrolled at PS 2 as provided for in the Settlement Agreement and the PWN, Parent chose to enroll the Student in Public School 4, a District of Columbia Public Charter School. Parent made this decision based on information, obtained largely through her job as a bus attendant employed by the Office of the State Superintendant of Education, that PS 2 was insufficiently rigorous and that it would be a better learning environment if the Student enrolled in PS 4 (Testimony of Mother). PS 4 was a school with a more rigorous academic program where expectations for student learning were high and, where the grading scale was higher so that, for example, a passing grade required a higher score than at most other non-chartered District of Columbia schools (Testimony of PS 4, Special Education Teacher).

11. The school staff of PS 4 was aware of Student's learning disability and reviewed his February 2012 IEP and enrolled the Student in August 2012 (Testimony of Special Ed Coordinator and Special Education Teacher at PS 4).

12. The Student was not successful at PS 4 (Testimony of Mother; Testimony of PS 4 Special Education Teacher). On or about the middle of October 2012, the Special Education Teacher recognized that the Student was falling farther behind in his studies (Testimony of Special Education Teacher).

13. Following phone calls between PS 4 representatives and Parent, a thirty (30) day review meeting was held on November 7, 2012. In attendance were the Parent, her Education Advocate, the Special Education Coordinator, Special Education Teacher and several of Student's teachers. At the meeting, it

was noted that "Progress Reports" had been sent home with the Student, but were not given to the Parent by the Student. It was reported by the Mother that Student believes PS 4 is too difficult for him. PS 4 representatives stated that Student was progressing in English, but was not doing well in other classes, including pre-algebra and Latin in which he then currently had failing grades. His Special Education Teacher stated that Student was frequently lethargic and unfocused in class and did not follow through on homework assignments. There was a consensus developed at this meeting that the Student's special education hours should be increased, but a decision on the exact number of special education hours was not discussed. There was a reference to the idea of relocating him to a private school, but the emphasis of the meeting was the increase in hours of special education services at PS 4 and the only decision made at this meeting regarding a change in content of Student's IEP was to recommend to the IEP Team that his hours be increased. It was agreed to conduct an IEP meeting in late November or early December to modify his IEP consistent with the discussion at this meeting (P. Exh. 2; Testimony of Education Advocate; Testimony of PS 4 Special Education Coordinator).

14. An MDT-IEP Team meeting was held on December 5, 2012. Most of the same people who were at the November 7 meeting were in attendance at the December 5, 2012 meeting except that the School Psychologist also attended this meeting. It was noted that the Student's reading level was on a third grade level and in math he was at a 2.5 grade level. He was passing some

courses with the aid of the special education support he was receiving. After a smaller increase in hours of special education was raised, at the behest of the Mother and Education Advocate, the IEP Team agreed to raise his hours to 27.5 hours per week outside of the general educational environment. A representative of the School stated that that would cause a move back to his former neighborhood middle school, PS 1 which had a self-contained classroom setting for children with disabilities. School officials stated that his IEP would be revised following this meeting to reflect these changes and that his IEP could be implemented at PS 1 (Testimony of Special Education Teacher, Special Education Coordinator and Education Advocate; P. Exh. 30). The parties contemplated a further meeting where the specific school location would be finalized. As to the selection of PS 1 as the location of services, the Education Advocate's notes state "Advocates [sic] states this is not ideal, but that the issue will be handled later" (P. Exh. 30).

15. Following the meeting on December 5, 2012, Student's IEP was revised to reflect 27.5 hours of specialized instruction and that this instruction cannot be provided in a general education setting because "[t]he student requires intensive instruction outside of the general education setting with the assistance of the special [sic] education teacher" (Joint. Exh. 1, p. 8).

16. On December 7, 2012, Petitioner filed this Due Process Complaint. The Complaint alleged that the Student's location of services was inappropriate and that the Hearing Officer should order that Respondent relocate Student to one of several private schools or to "some other appropriate public or

non-public school" (P. Exh. 1-8). Following the filing of the Due Process Complaint, Petitioner identified to Respondent one of the above-mentioned private schools (hereinafter "Private School") that she wanted him to attend consistent with his revised IEP (Testimony of Mother).

17. At the Resolution Meeting held on December 19, 2012, Respondent offered to the Parent PS 1 as the location of services for the Student (R. Exh. 2).

18. On or about January 23, 2013, the Respondent offered PS 3 where the Student had attended [redacted] during the Summer of 2012 as a location of services (Stipulation of Counsel).

19. PS 3 is a public school (Grades 1 through 8) exclusively devoted to providing educational services to disabled children. Students with emotional disabilities have classrooms isolated from the other students. Maximum class size is ten students. Each class has a special education certified teacher and an educational therapy assistant to assist the teacher. The school also has specialized staff including a speech and language pathologist and part-time occupational and physical therapists, as well as a full and part-time social worker (Testimony of Special Education Coordinator for PS 3).

20. Private School is a grade 5 through 12 private school serving children with learning disabilities, ADHD and ADD and Other Health Impairments ("OHI"). It is accredited as a school able to receive referrals from Respondent as well as other suburban metropolitan Washington, D.C. Local Education Agencies. There are no more than eight students in any one class and students rotate during the day to different core subject classes with

different students within each grade depending upon their levels of ability in each of those courses (reading, writing and math). Tuition for one year at Private School is $36,060.20 (Testimony of Director of Admissions of Private School).

21. In accordance with the current "final" plan regarding school consolidation, PS 3 is scheduled to close at the end of the 2012-2013 school year. It is unknown whether ESY services will be provided at PS 3 or whether the closing entails ESY services for special education students to be provided at another location for the Summer of 2012-2013. It is expected that students attending PS 3 that are ninth graders and above in the 2012-2013 school year will attend a specific Senior High School in 2013-2014 in a self-contained special education environment (Testimony of PS 3 Special Education Coordinator and Education Advocate). According to a document entitled, "Better Schools for All Students: DCPS Consolidation and Reorganization Plan," dated January 2013 and found on DCPS' website, the following comment is noted under PS 3, "DCPS believes it is necessary to assign the students from [PS 3] to newly developed self-contained learning disabilities classrooms at _____ ES, _____MS, and _____ HS. The Office of Special Education will provide individual case management services to assure the proper placement of each and every student."[4]

[4] This document was not made available by either party. The undersigned has, however, reviewed it and takes judicial note of if for only the purpose of describing Respondent's current plans for PS 3 for the 2013-2014 school year only.

Analysis and Legal Conclusions

The Placement Issue

The issue here is whether PS 3 is an appropriate location of services for the Student consistent with his IEP. In this respect, Respondent asserts that the change in school location to PS 3 does not constitute a change in placement since PS 3 can effectively implement the Student's most current IEP. Petitioner asserts that PS 3 is inappropriate not because PS 3 is a bad school, but because it is scheduled to close at the end of the school year and that, in accordance with DCPS' published plans, the Student will thereafter be re-routed to a larger public senior high school, the same kind of school that he attended all through his schooling to date that has resulted in his being many years behind his grade level in his core level subjects. Thus, Petitioner's main contention as to why the placement is inappropriate is that this is simply too great a change as the Student handles transition poorly and a placement to PS 3 would result in two changes in the span of either four or seven months (depending upon where the ESY program is physically held during the Summer of 2013).

IDEA does not define the term "educational placement." The courts have defined it as a term that "falls somewhere between the physical school attended by a child and the abstract goals of a child's IEP." *Alston v. District of Columbia*, 439 F. Supp. 2d 86, 90 (D.D.C. 2006), quoting *Bd. of Ed. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 548 (7th Cir. 1996). This definition thus makes it plain that while the particular physical

school is significant, it is not necessarily controlling. As the Federal District Court in the District of Columbia stated, "the IDEA clearly intends 'current educational placement' to encompass the whole range of services that a child needs not just the 'physical school building a child attends.'" *Alston*, 439 F. Supp. at 93 quoting *Spilsbury v. District of Columbia*, 307 F. Supp. 2d 22, 26-27 (D.D.C. 2004)(other citations omitted).

Furthermore, in analyzing this issue, IDEA requires that the "unique needs of the child" and more specifically, "any potential harmful effect on the child or on the quality of services that he or she needs" be taken into account. 34 C.F.R. §300.114(b)(ii) and 34 C.F.R. §300.116(d). These principles must be harmonized with the overall limited goal of IDEA to which the Supreme Court stated would be satisfied ". . . by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Bd. of Educ. v. Rowley*, 458 U.S. 176, 203 (1982). Thus, the Act does not require that the placement be the most appropriate only that it be appropriate. As the Fourth Circuit stated, "[i]n essence, an appropriate education is one which allows the child to make educational progress." *Barnett v. Fairfax County Sch. Bd.*, 927 F.2d 146, 153 (4th Cir.), *cert. denied,* 502 U.S. 859 (1991).

Moreover, while a Parent must be allowed to participate in the child's educational placement, this relates to the formulation of the entire educational plan. Since "educational placement" refers to educational service and not location, parental involvement does not necessarily extend to the physical

location of those services. *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379-380 (5th Cir. 2003) and cases cited therein. The Fifth Circuit therein stated, "[t]he provision that requires the IEP to specify the location is primarily administrative." *Id.* at 379.

The burden of proof to demonstrate that the proposed transfer of the Student to PS 3 is an inappropriate placement that causes harm to the Student and prevents him from making some educational progress lies with the Petitioner. It must meet that burden by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); DCMR Title 5-E, Chapter 5-E §3030.14.

For several reasons, I conclude that Petitioner has failed to meet the burden. Significantly, Petitioner has no real quarrel with the program at PS 3. As noted in the Findings of Fact, PS 3 is a school that entirely serves special education students and, therefore, fits the profile required by the Student's revised IEP which calls for a full-time IEP containing special education services outside of a general education environment. Classes are taught by fully certified special education teachers. The classes are small and there is additional staff particularly suited to help implement the Student's IEP.

Petitioner's entire grounds for asserting that this is an inappropriate placement is that PS 3 is scheduled to close either in June or, at the latest, when the ESY program for the Summer of 2013 is completed. Petitioner asserts that the Student has trouble transitioning from school to school and that this transition is sufficiently harmful to the Student to warrant that the

location of services at PS 3 in an inappropriate educational placement. In advancing this position, Petitioner relies exclusively on the testimony of the Petitioner/Mother that the Student does not handle change very well, that he already has serious problems and that further changes in where the Student attends will set him back even more (Testimony of Mother). This testimony was credible, but very general. It was not accompanied, for example, by any expert testimony identifying specific significant problems that the Student would face if forced to make several moves to different schools over the next seven months.

Furthermore, in contrast to the Mother, the Special Education Teacher at PS 4 testified credibly that the Student had no acute behavioral problems and that, based upon his five months of teaching the Student, he would not have unusual difficulty in transitioning to a new school (Testimony of Special Education Teacher).

It is noteworthy that the transition issue is not even in relationship to the immediate change to PS 3 since the revised IEP calling for a full-time IEP outside of the general educational environment requires an immediate move upon the issuance of this decision. The Student cannot stay at PS 2 under his revised IEP. Accordingly, the Petitioner's argument relates to events occurring later in the year when PS 3 closes. Aside from the fact that Petitioner has failed to demonstrate that sufficient harm will result by changing the Student's location of service to PS 3, the possible and arguably even likely second move either as to the location of services of his ESY program in the Summer or his enrollment in a new school in September is too distant in time to warrant

addressing now. Furthermore, assuming *arguendo* that it should be addressed, the undersigned concludes, as above, that Petitioner failed to meet her burden that the Student will suffer in transition by moving from PS 3 to any other school whether that be the Senior High School currently proposed as the location of services[5] or any other school should Respondent modify its current school consolidation plan. In this respect, Petitioner proferred no evidence that the Senior High School could not implement the Student's revised IEP and, instead relied exclusively upon the contention that the Student will be harmed by a transition consisting of a move to two different schools in seven months. As noted above, I find that the case has not been made that the Student has such trouble with change or that the Student will be deprived of the opportunity to progress in his education. This finding is buttressed by the fact that PS 3 appears to be a school very much tailored to meet the goals of his revised IEP, thereby presumably further limiting the problems generally associated with a child's changing schools. *See Peter G. v. Chicago Public Sch. Dist. No. 299*, 2003 U.S. Dist. LEXIS 460 (N.D. Ill. Jan. 10, 2003)(court concluded that student, suffering from Down's Syndrome, had had little difficulty transitioning to existing school and that petitioner had therefore failed to meet his burden of proof that mid-year transfer would deny petitioner an educational benefit)[6].

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[5] See n. 4 and accompanying text.
[6] Because I have found that PS3 is capable of implementing his IEP, it is not necessary to reach the issue of whether Private School is capable of implementing that IEP.

For the above stated reasons, Petitioner's claim that the proposed change in location of services to PS 3 constitutes a denial of FAPE is rejected.

Compensatory Education Claim – Whether Respondent Unduly Delayed Revising Student's IEP

Under well-established precedent, a Hearing Officer has discretion to award compensatory education relief to remedy a denial of FAPE. Put more precisely, "compensatory education involves discretionary, prospective, injunctive relief crafted by a court [or a hearing officer] to remedy what might be termed an educational deficit created by an educational agency's failure over a given period of time to provide a FAPE to a student." *Reid v. District of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005) quoting *G ex rel. RG v. Fort Bragg Dependent Schs.*, 343 F.3d 295, 309 (4th Cir. 2003). "[C]ompensatory education is not a contractual remedy, but an equitable remedy, part of the court's resources in crafting 'appropriate relief'". Reid, 343 F.3d at 523, quoting *Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F.3d 1489,1497 (9th Cir. 1994).

Petitioner's claim is that Respondent unduly delayed in changing the Student's IEP from a part-time IEP providing nine hours each of specialized instruction in a general educational environment and in a specialized educational environment within P 4 to full-time IEP outside a generalized educational environment consisting of 27.5 hours specialized instruction.

Originally Petitioner sought compensatory education services amounting to seventy-two (72) hours of tutoring services. The seventy-two hours was based upon two hours of tutoring over a regular school year consisting of

thirty-six weeks. Neither in her testimony nor her "Compensatory Education Plan" did Petitioner explain the proximate relationship between the time of the alleged delay in revising the Student's IEP and implementing it and the seventy-two hours of requested relief. (See P. Exh. 27 and testimony of Education Advocate). Moreover, by the close of the evidence, Petitioner's counsel had conceded that the period of delay was not the beginning of the school year to the present but rather the middle of October to the present when the Special Education Teacher at PS 4 noticed that the Student was not making much, if any educational progress and was lethargic and unfocused in class (testimony of Special Education Teacher). Petitioner never mathematically revised the number of proposed hours it was now seeking except to say it was admittedly less that seventy-two. Based only upon a mathematical extrapolation of Petitioner's claim for compensatory relief, it would seem that Petitioner's claim is now in the thirty-six to forty hour range.

Quantifying Petitioner's proposal becomes academic because I find that the Petitioner failed to meet her burden that Respondent engaged in a delay constituting a violation of FAPE. To be sure, Respondent could have acted with greater dispatch. However, the facts do not constitute such a significant delay as to constitute a denial of FAPE. It is noted at the outset that PS 3 was not even the school the Student was scheduled to attend under the PWN arising out of the Settlement of the Due Process Complaint (R. Exh. 3; P. Exh. 26). While Petitioner's counsel is correct that PS 4 accepted the Student with his current IEP, it should not be surprising that the school officials gave the

Student some time to acclimate to the school and did not immediately reach the conclusion that the then present IEP implemented at PS 4 would not work. Petitioner knew the academic curriculum and grading system was more rigorous at PS 4. Indeed, that was the reason she ignored the PWN (R. Exh. 3) and enrolled the Student at PS 4. Additionally, in this regard, while the Special Education Teacher noticed that the Student was lethargic and unfocused, he stated that the Student had not regressed and that the Student had made marginal progress in a few areas (Testimony of Special Education Teacher).

Furthermore, although late – as were most if not all of the thirty-day meetings at PS 4 – the team at the thirty-day meeting directly addressed the Student's needs, including the wishes of the Parent and acted accordingly. An IEP meeting was held on December 5, 2012 – less than a month after the thirty-day review and without apparent objection from the Parent or her representative as to the date – and, at the urging of the Parent and her representative, that IEP Team agreed that day to revise the IEP to provide for a full-time IEP exclusively outside the general education environment. An original location of services back to his neighborhood middle school – PS 1 was changed to PS 3 in mid-January. In this respect, any delay is mitigated by the Winter break when school is not in session and DCPS is not effectively open and the fact that Petitioner filed this Due Process Complaint two days after the decision was made to revise the IEP. While Petitioner was clearly within its rights to file a Due Process Complaint, the filing did compel Respondent to act through more formal channels and through counsel. Recognizing that the

matter was now subject to a decision by a Hearing Officer, Respondent did not act unreasonably in then changing gears and dealing with the matter through the legal process. Given these factors, the undersigned concludes that the delay in modifying the Student's IEP and implementing it was neither unreasonable nor in bad faith as to constitute a denial of FAPE.

Accordingly, this contention of Petitioner's is denied.

ORDER

Based upon the Findings of Fact and Conclusions of Law, it is ORDERED that the Complaint in this matter is dismissed with prejudice.[7]

IT IS SO ORDERED.

Date: 2-13-13

Gary L Lieber
Impartial Hearing Officer

Copies to: All Counsel of Record
District of Columbia Public Schools
Student Hearing Office, OSSE
Chief Hearing Officer, OSSE

[7] Respondent is the Prevailing Party.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1451(i)(2)(B).