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

STUDENT,[1] through the Parents,	)	
	)	Date Issued: June 25, 2011
Petitioners,	)	
	)	Hearing Officer: Virginia A. Dietrich
v.	)	
	)	Case No:
District of Columbia Public Schools	)	
	)	Hearing Dates:
	)	05/16/11 Room: 2003
Respondent.	)	05/17/11 Room: 2003
	)	05/18/11 Room: 2003
	)	05/19/11 Room: 2006 & 2003
	)	06/15/11 Room: 2006

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HEARING OFFICER DETERMINATION

Background

Petitioners, the parents of -year old Student, filed a due process complaint notice on April 13, 2011 alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA"). Petitioners alleged that the District of Columbia Public Schools ("DCPS") had failed to evaluate Student and determine eligibility within 120 days and develop an Individualized Education Program ("IEP") within 30 days thereafter, that DCPS failed to provide Student with special education services from August 2010 through Feb 2011, that DCPS failed to convene Multidisciplinary Team ("MDT") meetings with all necessary personnel to timely draft and finalize the IEP, that DCPS failed to develop an IEP with sufficient specialized instruction outside of general education, that DCPS issued a Prior Written Notice to a neighborhood public school that could not implement the IEP that Student required, and that DCPS predetermined the neighborhood public school as the location where services would be provided and crafted an IEP that could be implemented at that school location. For relief, Petitioners requested reimbursement for tuition and related expenses for the 2010-2011 school year and private school placement for the 2011-2012 school year.

[1] Personal identification information is provided in Appendix A.

Hearing Officer Determination

Petitioners, long time residents of the District of Columbia and proponents of the public school system, utilized DCPS to educate Student through the grade. Student received special education services from DCPS from the first through fourth grades. From 5th grade onward, Petitioners educated Student at a private school at their own expense. In March 2010, Petitioners took steps to explore the possibility of returning Student to the public school system. They enrolled Student as a non-attending Student at DCPS and pursued the process of determining Student's eligibility for special education, development of an IEP and the identification of a location of services where services could be provided. The process started off slowly in terms of DCPS convening a meeting to assess existing data and determine eligibility, but once that finally happened in November 2010, IEP development was earnestly pursued by both Petitioners and DCPS until February 2011. At that time, Petitioners abruptly declined further participation in the IEP development process and announced their intention to keep Student at his private placement.

DCPS asserted that it endeavored to develop an IEP based on existing data that could be implemented in the least restrictive educational environment that could meet Student's educational needs. However, Petitioners did not agree with DCPS' perspective and were unwilling to settle for anything less than the IEP and the private placements that Petitioners wanted.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.02.

Procedural History

The due process complaint was filed on 04/13/11. This Hearing Officer was assigned to the case on 04/18/11. The resolution meeting took place on 04/25/11 at which time settlement was not reached and parties agreed to end the 30-day resolution period and proceed to a due process hearing. The 30-day resolution period ended on 04/25/11, the 45-day timeline to issue a final decision began on 04/26/11, and the final decision was initially due on 06/09/11. See 34 C.F.R. 300.510, 300.515.

The due process hearing was scheduled for four days, from 05/16/11 through 05/19/11. A DCPS employee who had agreed to appear as a witness for both sides became unavailable to testify on the eve of 05/16/11 due to a death in the immediate family. DCPS requested a continuance of the hearing for that reason although Petitioners did not. The Hearing Officer considered this witness, the special education coordinator at to be a very relevant and essential witness for DCPS because he had participated in all of the IEP development meetings. Over Petitioners' objection to the length of the continuance but not necessarily to a continuance, DCPS was granted a continuance for good cause and the hearing resumed and was completed on 06/15/11. As a result, the due date for the final decision was extended to 06/25/11.

Hearing Officer Determination

The due process hearing was a closed hearing. Petitioners were represented by Margaret Kohn, Esq. and DCPS was represented by Tanya Chor, Esq.. Neither party objected to the testimony of witnesses by telephone. Petitioners participated in person throughout the hearing.

Petitioners presented seven witnesses: Petitioner, the mother of Student; Petitioner, the father of Student; Speech and Language Pathologist who qualified as an expert in speech and language pathology and as an expert in child language as defined as spoken language, reading, writing and social pragmatics for ages two to twenty-one; Head of Counseling at Coordinator at Director of High School at School; and special education teacher ("SET") at

DCPS presented five witnesses: DCPS Educational Audiologist; DCPS Compliance Case Manager; DCPS Speech and Language Pathologist ("SLP"); DCPS School Psychologist; and Special Education Coordinator ("SEC") at

No written objections to either party's disclosures were filed in the format prescribed by the Prehearing Order issued on 05/05/11 and the Amended Prehearing Order issued on 05/06/11.

Petitioners' disclosures dated 05/10/11, containing a witness list and Exhibits -1 through -57 (hereinafter referred to as P-1 through P-57), were timely filed and admitted into evidence without objection.

DCPS' disclosures dated 05/10/11, containing a witness list and Exhibits R-01 through R-14, were timely filed and admitted into evidence without objection. DCPS' Supplemental Disclosure dated 05/10/11, containing the name of a witness, was timely submitted via electronic mail and admitted into evidence without objection.

On 05/15/11, Parents Amendment to Motion for Sanctions for DCPS Failure to Timely File a Response to the Complaint was denied by the issuance of the Order on Parents Amendment to Motion for Sanctions for DCPS Failure to Timely File a Response to the Complaint.

On 05/19/11, the direct examination of the DCPS school psychologist was completed and Petitioners were in middle of cross-examination when testimony was aborted due to the limited availability of the witness. On the continued hearing date of 06/15/11, this witness was not available and cross-examination could not be concluded. Petitioners had the option of striking all of this witness' testimony since cross-examination could not be concluded; however, Petitioners chose to allow this witness' testimony to remain in the record.

Petitioners declined to offer any rebuttal evidence.

A summary of the issues to be determined in this Hearing Officer Determination are as follows, with a fuller recitation of each issue occurring in the Conclusions of Law section:

Hearing Officer Determination

Whether DCPS violated its Child Find responsibilities to evaluate Student and develop an IEP within the statutory timeframe, whether DCPS failed to provide Student with special education services from August 2010 until the IEP was developed in February 2011, whether DCPS failed to convene a MDT that included all necessary personnel on 12/13/10 and 01/13/11, whether DCPS failed to develop an appropriate IEP, whether DCPS identified a location of services and issued a Prior Written Notice to a school that could not implement Student's IEP, whether DCPS predetermined the placement and location of services prior to finalizing the IEP, and whether Petitioners are entitled to reimbursement for tuition, related services and expenses for the 2010-2011 school year and funding for private placement for the 2011-2012 school year.

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. Student is a year old resident of the District of Columbia who has been identified with a Specific Learning Disability (Speech and Language Disability)[2] Student received special education services at DCPS from 1st through 4th grades and at a private school from 5th through 8th grades.[3]

#2. On 03/29/10, Petitioners[4] enrolled Student at the DCPS Private-Religious Office ("DCPS-PRO") as a non-attending student and submitted a referral packet for DCPS to determine Student's eligibility for special education services and develop an IEP. Along with the referral, Petitioners submitted the following documents: teacher referral reports, a classroom observation report, and a speech and language screening summary that were all prepared by private school staff; an independent auditory processing evaluation dated March 2005; a neuropsychological evaluation dated April 2006; a psycho-educational report dated October 2009; Tests of Achievement scores dated May 2008; speech and language-literacy evaluation dated June 2008; language processing evaluation dated August 2005; Diagnostic-Prescriptive Goals ("DPG") from dated November 2008 and November 2009; report cards from the 2008-2009 and 2009-2010 school year from and reading testing for the 2008-2009 school year from The DPG is the private school equivalent of the IEP.[5]

#3. On 04/08/10, DCPS provided written acknowledgement of receipt of the referral packet and indicated that the referral would be forwarded to and Petitioners would be contacted by someone from is Student's neighborhood school. Petitioners, hearing nothing further from DCPS, contacted DCPS by telephone on 08/02/10 and 08/09/10 to inquire about the status of the IEP process. Petitioners were again informed that someone from DCPS would contact them. Still hearing nothing from DCPS, Petitioners informed DCPS in writing on 08/14/10 that they intended to enroll Student at for the 2010-2011 school no sooner than 10 business days, so that Student would have a school placement on 08/30/10, which was the first

[2] P-37.
[3] P-25; Testimony of Petitioners.
[4] For the Findings of Fact and Conclusion of Law, "Petitioners" refers either to one or both of Student's parents.
[5] P-20; Testimony of Petitioner, Coordinator.
[6] P-22.

day of school year. Again, on 08/16/10, Petitioners informed DCPS that they were enrolling Student at at public expense, but would welcome contact from DCPS about the next steps in the eligibility determination and IEP process.[7]

#4. On 09/30/10, DCPS convened its first MDT meeting at which time the team determined that no further evaluations were needed, that DCPS would conduct observations of Student at and that the team would reconvene to determine eligibility.[8]

#5. The MDT reconvened on 11/4/10, at which time eligibility was discussed, but not finalized because classroom observations by DCPS had not been completed. A draft IEP was not made available to Petitioners at the meeting even though Petitioners had previously requested that one be provided in advance of the meeting.[9]

#6. On 11/02/10, Student was observed by the DCPS speech and language pathologist in his social studies classroom at is a nonpublic special education school that services students with language based learning disabilities. Typical class composition is 6-10 students with one teacher and one teacher's assistant. Student's participation in his social studies class was minimal. He did not appear engaged in the learning process. In language arts class, Student could not understand the linguistics of a joke and his handwriting was not mature.[10]

#7. On 11/05/10, Student was observed by the DCPS school psychologist in his social studies and English language arts classes at In his social studies class, Student was observed to be on task, responding to questions posed by the teacher and giving correct responses. His handwriting was readable, but uneven and elementary in nature. During English arts class, Student participated in class, completed the class work without difficulty and gave assistance to another student. Student was observed to benefit from a multimodal approach to class work presentations and other modifications and accommodations. Student had been informed that he was being observed.[11]

#8. On 11/08/10, Student was observed by the same DCPS school psychologist in his science and mathematics classroom at In science class, Student was staring off and not focusing. In math class, Student was not on task and required one to one instruction to complete cut and paste; however, Student was reported to be suffering from a headache. The observer noted that Student did well due to accommodations received and that Student was reported to be usually more upbeat.[12]

#9. As reported by staff, Student requires everything to be broken down for him and it is very difficult for him to push his skills across all content curriculum areas. His skill level is not at grade level, especially in the writing area. Writing is a very challenging area and

[7] P-23, Testimony of Petitioners.
[8] P-25.
[9] P-27, Testimony of Petitioners.
[10] P-30; Testimony of DCPS SLP.
[11] P-30.
[12] P-30.

writing occurs across all content areas.[13] Student does not have the skill level to function in a general education content area class where there is no differentiation in instruction.[14]

#10. The speech and language data reviewed by the DCPS SLP and presented to the MDT on 11/15/10 consisted of review of an independent speech and language evaluation and a classroom observation at progress reports from and Student's work samples. The SLP determined that Student exhibited a significant reading impairment, a very significant written language/writing expression impairment, significant receptive-expressive spoken language impairment, and a significant reading impairment. On 11/15/10, this determination was accepted by the MDT and Student was found eligible for special education services with a disability classification of Specific Learning Disability (language based disability based on dyslexia).[15] The MDT agreed that Student's disability impacted his participation in the general education curriculum in mathematics, written expression, reading, and speech and language.[16] The MDT also determined that Student had made sufficient progress in the past with the application of specialized instruction and speech and language services as an intervention tool.[17]

#11. The existing data that the MDT used to make its determination of eligibility on 11/15/10 consisted of mathematics and written expression academic achievement scores (WJ-III) dated 10/22/09 and reading testing scores dated 05/01/10 from Student's cognitive testing on 10/22/09 indicated that Student's overall cognitive functioning was in the Average range with Verbal Comprehension in the high average range, Perceptual reasoning in the Superior range, Working Memory in the Average range, and Processing Speed in the Average range. Student's achievement testing on 10/22/09 indicated scores in the Low Average to Borderline range. Student's reading scores, as assessed in May 2010, were at the 7th, 8th and 9th grade levels, but Student continued to require specialized instruction and strategies in reading.[19]

#12. The meeting on 11/15/10 lasted approximately 3 hours.[20] DCPS did not provide Petitioners with a copy of the draft IEP in advance of the 11/15/10 meeting. At this meeting, Petitioners provided DCPS with a draft DPG from that they wanted synthesized into DCPS' IEP.[21]

#13. Petitioners did not have a copy of a draft IEP prior to the IEP meeting on 12/13/10.[22] The draft IEP presented at the 12/13/10 IEP meeting listed Deal as Student's attending school because the IEP document was a computer generated document that required all fields to be filled so that a paper copy could be produced. listed as the attending school, was simply a field place-holder and had no significance as to a final determination of where

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[13] Testimony of DCPS SLP, Coordinator.
[14] Testimony of DCPS SLP, Coordinator.
[15] P-31; Testimony of DCPS SLP.
[16] P-31; Testimony of DCPS SLP, Petitioners.
[17] P-31.
[18] P-31.
[19] P-18.
[20] Testimony of DCPS SLP.
[21] Testimony of Petitioners.
[22] P-36.

services would be provided because that determination was a team decision that had not yet been discussed by the IEP team.[23]

#14. A social worker was not present at the 12/13/10 IEP meeting.[24] At that meeting, the special education teacher solicited the specifics of the nature of Student's disability so that the IEP could be drafted to meet Student's goals in the classroom.[25] However, the information contained in the areas of concern on the 12/13/10 draft IEP was adopted almost verbatim from the DPG from and Petitioners were very, very particular about the precise wording of goals, baselines, needs, impact on student and present levels of educational performance and insisted that the wording be adopted from Student's DPG and meet their specifications. This process of writing the goals consumed all of the 90-minute meeting.[26] There was a debate and disagreement over the meaning of a "small structured classroom" and the inclusion of this phrase in the impact on student section of the IEP. DCPS did not want that part of Student's DPG translated directly to Student's IEP and Petitioners were insistent upon it.[27] This disagreement bogged down the IEP development process. At this meeting, there was no discussion about the number of hours of specialized instruction or the setting in which the specialized instruction would be provided, although there was some general discussion about the definition of a small structured setting and an inclusion setting.[28]

#15. On 01/07/11, Petitioners sent very specific requested revisions of IEP goals to DCPS.[29] At the 01/13/11 IEP meeting, the team still had not concluded the drafting of the goals. Petitioners were again discussing semantic changes to the goals that had already been written and Petitioners were very specific about the way the goals should be written.[30] Another meeting was scheduled for January so that the IEP could be finalized, but inclement weather required that the meeting be rescheduled to February 2011.[31]

#16. A DCPS speech and language pathologist did not attend the 01/13/11 IEP meeting;[32] however, speech-language goals had been completed at the previous 12/13/10 meeting and were nearly identical to the speech-language goals in the 01/13/11 draft IEP.[33] Only minor word edits to the speech-language goals occurred on 01/13/11.[34] One additional speech-language goal was added at the 02/17/11 IEP meeting when a DCPS speech and language pathologist was present.[35]

#17. By electronic mail correspondence dated 02/15/11, DCPS responded to an inquiry from Petitioners about the contents of the draft IEP with respect to it saying that specialized

[23] Testimony of SEC.
[24] P-35, P-36.
[25] Testimony of SEC.
[26] P-36; Testimony of SEC, DCPS SLP.
[27] P-36.
[28] P-36, Testimony of SEC, DCPS SLP.
[29] P-40.
[30] P-42, Testimony of Petitioners, Petitioners' SLP expert, SEC.
[31] P-47; Testimony of SEC.
[32] P-42.
[33] P-35, P-41.
[34] R-01.
[35] P-49.

instruction would take place in the general education setting. DCPS indicated to Petitioners that special education hours and placement, as well as related services, had not yet been discussed by the IEP team and would be discussed at the upcoming meeting on 02/17/11.[36]

#18. Since the 12/13/10 IEP meeting was three hours long and the 01/13/11 meeting was two hours long and the team had struggled to get to non-academic goals during these meetings because Petitioners kept wanting to start all over again with rewriting the goals in the IEP by making minor changes, the SEC reached out to Petitioners with a draft document and agenda so that they wouldn't have to start all over again with rewriting goals at the 02/17/11 meeting. The SEC forwarded a draft IEP to Petitioners prior to the 02/17/11 IEP meeting so that occupational therapy and behavioral support services could be discussed in advance because the SEC wanted to make sure the goals were written the way that Petitioners wanted and the team could move forward towards finalization of the IEP.[37]

#19. On 02/17/11, the IEP team convened. Petitioners had no dispute with the goals and objectives in reading, mathematics, written expression, and speech and language in the 02/17/11 IEP because the goals and objectives reflected the precise wording that Petitioners had insisted upon at the two previous IEP meetings on 12/13/10 and 01/13/11.[38] The areas of academic concern sections in both the 01/13/11 draft IEP and the 02/17/11 IEP indicate that Student required a small, structured classroom for math, reading, and written expression where he could receive specialized instruction in order to access the curriculum. Classroom accommodations included small group instruction.[39]

#20. At the IEP meeting on 02/17/11, the SEC and DCPS psychologist suggested 8 hours/week of inclusion services as the least restrictive environment with as much support as required to get Student to be successful without exceeding his required needs. They based this suggestion on Student's disability of dyslexia, observations done by DCPS, Student being able to advocate for himself, Student usually being on task in class (but had an off day on 11/08/10), Student being able to access the curriculum with accommodations and specialized instruction, their knowledge about her programming at and what they knew about the skill set of other students at [40]

#21. The 8 hours of specialized instruction in general education that was reflected in the 02/17/11 IEP did not represent a team decision because it had never been discussed by the team. Although DCPS suggested 8 hours/week of specialized instruction, Petitioners failed to participate in any discussion about the number of hours of specialized instruction or the setting for the specialized instruction or any other aspect of the amount and setting for the related services of occupational therapy and behavioral support or accommodations.[41] At the 02/17/11 IEP meeting, each of the services providers proposed an amount of time and Petitioners did not question or challenge it so DCPS moved forward based on lack of concern by Petitioners.

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[36] P-48.
[37] Testimony of SEC.
[38] Testimony of Petitioners, Petitioners' SLP expert, SET, SEC.
[39] P-41, P-49.
[40] Testimony of SEC, DCPS psychologist.
[41] Testimony of SEC, SET.

Petitioners withdrew their participation in the IEP development process and rather abruptly ended the IEP meeting by thanking DCPS for its efforts and announcing their intention to enroll Student at The IEP that was developed on 02/17/11 was never a final IEP because it was not the result of a team discussion and it did not represent a team decision, and it is not known whether or not the IEP accurately reflected the needs of Student since the IEP was never completed as a result of a team discussion and consensus.[43]

#22. Special education services at are provided in accordance with the specific requirements of each student's IEP. At the beginning of the 2010-2011 school year, there was a self-contained class for 6th graders, but it no longer exists because the needs of the students have changed. At there are special education students in the 8th grade and there are three special education teachers fully assigned for the grade students. There is no self-contained class for 8th graders at this time because none of the children in the 8th grade have an IEP that requires 27.5 hours/week. However, it is possible for a child to have an IEP with 27.5 hours/week of specialized instruction and have that IEP implemented at

#23. Petitioner paid for tuition and related expenses, including transportation, for Student's attendance at for the 2010-2011 school year.[45] The school has a Certificate of Approval from the D.C. Office of the State Superintendent. Student made progress at during the 2010-2011 school year as evidenced by quarterly report cards that reflect Student completing the expectation of work and learning the contents of specialized instruction.[46]

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:

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast,* 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

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[42] Testimony of SEC.
[43] Testimony of SET.
[44] Testimony of SEC, SET.
[45] P-19, Testimony of Petitioner.
[46] Testimony of Coordinator.

Hearing Officer Determination

The first issue to be addressed is whether DCPS denied Student a FAPE when DCPS failed to evaluate Student and determine eligibility within 120 days of the initial referral and develop an IEP 30 days thereafter.

Pursuant to 34 C.F.R. 300.111, 300.131, DCPS is responsible for identifying, locating and evaluating all children with disabilities who reside in the District of Columbia, including children with disabilities who are attending private schools, regardless of the severity of their disability, and who are in need of special education and related services.

Petitioners met their burden of proof on this issue. The special education referral with substantial educational documentation was submitted to DCPS on 03/29/10. Although DCPS acknowledged receipt of the referral on 04/08/10, DCPS did nothing to evaluate Student and determine eligibility within 120 days, pursuant to 34 C.F.R. 300.301 and 38 D.C. Code 2561.02, and then develop an IEP pursuant to 34 C.F.R. 300.323(c)(1), and then have it in place at the start of the 2010-2011 school year. 34 C.F.R. 300.323(a), 300.323(c)(2). The documents provided in the referral packet submitted to DCPS made clear that Student had been a child with a disability for many years. Petitioners, concerned that the evaluation and IEP process had not yielded an IEP for the upcoming 2010-2011 school year, informed DCPS on 08/14/10 that they were going to enroll Student at at public expense, and did so. Student attended for the 2010-2011 school year and received educational benefit from the services received at

The second issue to be addressed is whether DCPS denied Student a FAPE by failing to provide any special education and related services for Student from 08/28/10, i.e., 150 days from the day that Petitioners filed their paperwork at the DCPS-PRO, until 02/17/11 when the IEP was completed.

As discussed above, DCPS was slow getting out of the gate in its responsibility to evaluate Student, determine eligibility and develop an IEP. Petitioners contacted DCPS to get the evaluation and IEP process underway, responded to requests for information and meetings scheduled by DCPS, provided DCPS with all necessary documentation so that additional evaluations did not have to be conducted, facilitated classroom observations for DCPS personnel at and waited for a determination of eligibility that finally occurred on 11/15/10. The determination of eligibility and development of an IEP was behind schedule by approximately four months due to the inactions of DCPS. On 12/13/10, the IEP team met and development of the IEP began. Development of the IEP dragged on from December 2010 until February 2011, due to Petitioners' insistence that the IEP goals be crafted a certain way. Two lengthy IEP meetings were devoted exclusively to writing content area IEP goals to the precise specifications of Petitioners and this delayed finalization of the IEP. There was no action or inaction by DCPS that caused a delay from December 2010 to February 2011; rather, it was the actions of Petitioners that caused the delay in finalizing the IEP. Petitioners did meet their burden of proof that Student was denied a FAPE by DCPS failure to provide special education services to Student; however, it was for a period of approximately four months.

The third issue to be addressed is whether DCPS denied Student a FAPE by failing to convene IEP teams that included a social worker on 12/13/10 and a Speech and Language Pathologist on 01/13/11.

Petitioners alleged that Student was denied a FAPE because social emotional goals could not be written on 12/13/10 due to the absence of the social worker at the IEP meeting and this resulted in the denial of a FAPE. Despite the absence of the social worker, the DCPS psychologist was present and could have provided DCPS input about social emotional goals. The entire 12/13/10 IEP meeting was taken up by Petitioners painstakingly crafting IEP goals in academic content areas. Even if a social worker were present, it is unlikely that the team would have been able to discuss and finalize social emotional goals. The IEP development process continued on two other dates past 12/13/10 and the absence of the social worker did not prevent finalization of the IEP on 12/13/10. There was no harm as a result of the delay. Petitioners did not meet their burden of proof on this aspect of the issue.

Petitioners also alleged that the absence of the speech and language pathologist at the 01/13/11 meeting resulted in the denial of a FAPE. The evidence showed that the speech and language goals were developed at the 12/13/10 IEP meeting and the IEP developed on 02/17/11 contained only one additional speech and language goal. The IEP development process continued over three separate IEP meetings and the absence of the speech and language pathologist from the 01/13/11 IEP meeting did not prevent finalization of the IEP on that date. Petitioners did not meet their burden of proof on this issue. There was no harm done by the delay in finalizing speech and language goals until 02/17/11.

The fourth issue to be addressed is whether DCPS denied student a FAPE by developing an IEP on 02/17/11 that was inappropriate for Student for the following reasons:

(a) The IEP provided only 8 hours of specialized instruction which was insufficient to address Student's full time special instruction needs in math, reading and written language;
(b) The IEP provided for all 8 hours of specialized instruction to be provided in general education classes/setting when services should have been provided in the out of general education setting; and
(c) The IEP provides no specialized instruction and goals in social studies, science and remedial classes.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch .Dist. of the City of Newark,* 336 F.3d 260, 264 (3d Cir. 2003). At a minimum, the IEP must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Chambers v. Philadelphia Bd. of Educ.,* 587 F.3d 176, 182 (3d Cir. 2009).

The Hearing Officer determines that the IEP developed on 02/17/11 was not a final IEP in that it was not developed as a result of a discussion and consensus of the team and it is unknown whether or not the IEP accurately reflected the needs of Student because team discussions did not take place as mandated by 34 C.F.R. 300.320, 300.324. On 02/17/11, Petitioners willingly declined discussion on the hours and setting for specialized instruction and

occupational therapy and behavioral support services, and abruptly ended their involvement in the IEP development process. Although DCPS proffered both hours and setting, it is not clear that the final result was a function of a discussion and a consensus of the IEP team. The evidence doesn't even suggest that DCPS engaged in discussions about the nature and extent of services. Rather, the evidence indicated that DCPS offered possibilities and absent objections from Petitioners, DCPS moved forward.

The Hearing Officer determines that the IEP development process did not properly conclude in this case and a finalized IEP was never developed. It is disingenuous for Petitioners to claim that DCPS failed to develop an appropriate IEP when Petitioners failed to participate in the formulation of specialized instruction hours and the determination of setting and then abruptly ended all discussions that would lead to a final IEP that included them as team members. Although Petitioners did meet their burden of proof that the IEP was inappropriate, Petitioners do not have clean hands because they failed to meaningfully participate in the process. DCPS is required to include Petitioners in the IEP development process. 34 C.F.R. 300. 321.

The fifth issue to be addressed is whether DCPS denied Student a FAPE by issuing a Prior Written Notice to on 02/17/11, a school that could not implement Student's IEP for the following reasons:

(a) Student requires small structured classes for academic instruction as required on his IEP and Deal cannot provide this;

(b) Special education staff cannot provide Student with the out of general education instruction he requires; rather, can only implement Student's IEP within the general education setting:

(c) Any class offering remediation as an elective will not be taught by a teacher with special education certification;

(d) Student will have no classmates when/if he receives specialized instruction out of general education for reading, math and writing (pull-out instruction by himself is inappropriate); and

(e) Student will have no specialized instruction for social studies and science classes.

Petitioners did not meet their burden of proof on this issue. There was no evidence in the record that DCPS issued a Prior Written Notice to on 02/17/11 or at any time thereafter. Moreover, even if there was evidence in the record that DCPS issued a Prior Written Notice to there was no evidence in the record that Deal could not implement the 02/17/11 IEP as written.

The sixth issue to be addressed is whether DCPS predetermined the program placement and/or site location at before the IEP was completed on 02/17/11.

Petitioners' claim lacks merit. Petitioners approached the IEP process with DCPS with a view of crafting an IEP totally to their specifications; this included a verbatim adoption of very, very specific goals that were found in Student's DPG at and the desire to walk away with an IEP that prescribed 100% specialized instruction outside of general education in a setting that could implement the carefully and meticulously crafted goals. If anyone approached the IEP

development process with a predetermination of the program placement or site location, it was Petitioners. DCPS was open to discussions about appropriate programming for Student and offered their opinion of what the least restrictive setting would be for Student in the public school system, based on the data available to them at the time.

The supposition that Deal was a predetermined location of services because the each draft IEP indicated that Deal was Student's attending school was not borne out by the evidence. The SEC credibly explained that the IEP was a computer-generated document that required data entry in the field and that everything was subject to change until the IEP was finalized. Moreover, DCPS did not provide Petitioners with a draft IEP prior to each IEP meeting, except the last one and that was only so that the IEP could reflect the wording or goals to the satisfaction of Petitioners and the upcoming meeting would not be utilized to continually tweak the same finely tuned goals.

Moreover, the SEC credibly testified that that placement was a team decision that could not be predetermined prior to a team discussion and that the placement could not be determined until the goals were finalized because the goals drive placement. Petitioners failed to meet their burden of proof on the sixth issue.

Petitioner cited 34 C.F.R. 300.327 that states that DCPS must ensure that the parents are members of any group that makes decisions on the educational placement of the child. In this case, the evidence was clear that Petitioners were insistent, overbearing and successful in crafting all of the goals to their satisfaction. Perplexing was that after all the time and effort spent on meticulously crafting goals, Petitioners just shut down and walked away without even one iota of discussion about the amount and setting for specialized instruction and without even discussing goals, hours, and the setting for related services.

The last issue to be addressed is whether Petitioners are entitled to reimbursement for the expenses they incurred for tuition and related services, including their share of a car pool arrangement for transportation home from daily from 08/30/10 (the first day of school for school year 2010-2011) through the date of the Hearing Officer Determination.

Tuition reimbursement is allowed pursuant to 34 C.F.R. 300.148 for parental placement of a child in a private school without consent of the public agency when the public agency has not made FAPE available to a child in a timely manner prior to the private school enrollment, and the private placement is appropriate.

Petitioner is entitled to reimbursement for private special-education services when DCPS fails to provide a FAPE and the private-school placement is appropriate, regardless of whether the child previously received special education services through the public school. *Forest Grove School District v. T.A.*, 52 IDELR 151 (2009).

Pursuant to 34 C.F.R. 300.148, Petitioners gave written notice to DCPS on 08/14/10 that they were enrolling Student in a private school because DCPS had failed to timely complete the evaluation process and develop an IEP prior to the start of the 2010-2011 school year.

Hearing Officer Determination

DCPS' failure to complete the evaluation process in a timely manner and have an IEP in place prior to the start of the 2010-2011 school year caused Petitioners to announce their intention in August to privately place Student at public expense so that Student would have a school placement for the upcoming school year. Petitioners' actions were justified under the facts as presented. Although the delay in developing an IEP until 02/17/11 was not entirely the fault of DCPS, DCPS was responsible for four months of delay. The Hearing Officer determined that DCPS failed to finalize an IEP on 02/17/11 that was the result of a group discussion and consenus, and it is not clear that the 02/17/11 IEP accurately reflects the needs of Student. The SET and SEC were both very credible in their testimony that there was no discussion about occupational therapy services and behavioral support services and no meaningful discussion about the number of hours and setting for specialized instruction. The IEP development process did not proceed in accordance with 34 C.F.R. 300.324(a) that requires the team to consider the academic, developmental, and functional needs of the child or in accordance with 34 C.F.R. 300.116 that mandates that the educational placement decision be made by a group of persons, including the parents, and others knowledgeable about the data and placement options, and is made in conformity with the least restrictive provisions and is based on the child's IEP. The evidence in the record is not convincing that the IEP was appropriately finalized and there is no evidence in the record that DCPS formally selected a location of services for the 02/17/11 IEP to be implemented.

The Hearing Officer determines that Petitioners are entitled to reimbursement for tuition and related costs and expenses, including transportation home from for the entire 2010-2011 school year. The evidence in the record was that Student's educational needs were being met at and he was receiving educational benefit. was an appropriate placement for Student for the 2010-2011 school year.

All other requests for relief are denied. Petitioners frustrated the IEP development process by abruptly ending their participation in the development of the IEP on 02/17/11, and the IEP is incomplete partially due to their actions. Prospective placement at a private school based on the facts of this case is not warranted. There was credible testimony in the record that could implement an IEP for a student with 27.5 hours/week of specialized instruction outside of general education, which is essentially the equivalent to what Student was receiving at his private school. If the IEP development process had proceeded to fruition, it is conceivable that DCPS could have identified an appropriate public placement for Student.

DCPS is not required to maximize or provide the best program for Student; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982). In this case, the educational placement decision for a FAPE must be made by the IEP team; however, the IEP must first be finalized according to the mandates of the IDEA.

ORDER

(1) DCPS shall reimburse Petitioners for tuition and related service expenditures made to for the 2010-2011 school year, including transportation expenses, subject to Petitioners' production of proper documentation and receipts;

(2) DCPS shall convene a meeting(s), with proper notice to Petitioners, so that prior to the beginning of the 2011-2012 school year, Student's IEP is finalized, placement has been discussed and determined, and a location of services has been identified where the finalized IEP is to be implemented; and

(3) DCPS shall carefully document its efforts in achieving (2) above.

SO ORDERED.

NOTICE OF RIGHT TO APPEAL

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

Date: June 25, 2011

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioners' Attorney: Margaret Kohn, Esq.
DCPS' Attorney: Tanya Chor, Esq.
DCPS
SHO