

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

OSSE
Student Hearing Office
September 30, 2013

PARENT on behalf of
STUDENT,¹

Petitioner,
v

SHO Case No: [REDACTED]
Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On July 15, 2013 parent, Petitioner herein, on behalf of the student (“Student”) filed an Administrative Due Process Complaint Notice (“Complaint”), HO 1,² requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education (“FAPE”) to Student by District of Columbia Public Schools (“DCPS”) under the Individuals with Disabilities Education Act, as amended (“IDEA”). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a Response to Petitioner’s Administrative Due Process Complaint Notice (HO 5) on July 21, 2013. This was within the 10 day timeline for filing a response established in 34 C.F.R. § 300.508(e)(1). A resolution meeting was held July 25, 2013. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on the same date so indicating. HO 6. The 45 day timeline began to run on August 15, 2013, the

¹ Student has reached the age of majority and brings this action on his own behalf. Personal identifying information is provided in Appendix A, attached hereto.

² Hearing Officer Exhibits will be referred to as “HO” followed by the exhibit number; Petitioner’s Exhibits will be referred to as “P” followed by the exhibit number; and Respondent’s Exhibits will be referred to as “R” followed by the exhibit number.

day after the 30 day resolution period ended. Following the Prehearing Conference held on August 26, 2013, I issued a Prehearing Conference Order on August 27, 2013. HO 7. My Hearing Officer Determination is due on September 28, 2013.

At all times relevant to these proceedings Petitioner was represented by [REDACTED], [REDACTED] and [REDACTED], Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled September 20, 2013. The hearing was held as scheduled in Room 2004 of the Student Hearing Office.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C. §§ 1400, *et seq*; District of Columbia Code, §§ 38-2561.01, *et seq.*; federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

ISSUE

The issue is:

Whether DCPS denied Student a free, appropriate public education (“FAPE”) by failing to develop appropriate IEPs and placements, on the IEPs of January 10, 2013 and May 10, 2013. Student has school phobia/anxiety. [REDACTED] requires a placement that includes home based instruction on a full time or half time basis. There is no issue as to the goals or services included on the IEP.

RELIEF REQUESTED

Petitioner requested:

- 1) A meeting to review and revise the student’s IEP to include either full time, home based services or part time home based services and part time attendance at High Roads Academy, the student’s current school of attendance; and
- 2) Compensatory Education.³

SUMMARY OF THE EVIDENCE

A. Exhibits

³ Petitioner did not provide a compensatory education plan with [REDACTED] 5 day disclosures as required by my August 27, 2013 Order, nor did Petitioner offer any testimony regarding compensatory education.

Exhibits admitted on behalf of Petitioner are:

P-1	Due Process Complaint Notice 7-15-13
P-2	Individualized Education Program 5-10-13
P-3	Individualized Education Program 1-10-13
P-4	Individualized Education Program 2-29-12
P-5	Advocate Notes Review of independent evaluation 9-11-13
P-6	District of Columbia Meeting notes 6-25-12
P-7	Prior Written Notice 3-12-12
P-8	Non-Public Unit Student Attendance Intervention Plan 6-25-12
P-9	Non-Public Unit Student Attendance Intervention Plan 10-11-12
P-10	District of Columbia Superior Court Truancy Referral Form 12-11-12
P-11	Psychiatric Evaluation 7-31-13
P-12	Woodcock Reading Mastery Test 9-26-12
P-13	Key Math-3 Diagnostic Assessment 9-10-12
P-14	Clinical-Psychological Evaluation 4-24-09
P-15	Educational Evaluation 1-14-10
P-16	Report Card from High Road Academy for the school year of 2012 - 2013
P-17	Student Attendance Details
P-18	Student Attendance Details
P-19	Correspondence from Dr. Whiteman
P-20	Student Speech and Language Progress Report 10-22-12
P-21	Correspondence from High Road Academy to Parent 6-17-13
P-22	Correspondence from High Road Academy to Parent 3-25-13
P-23	Correspondence from High Road Academy to Parent 11-13-12
P-24	Correspondence from High Road Academy to Parent 10-12-12
P-25	Correspondence from High Road Academy to Parent 10-1-12
P-26	Correspondence from High Road Academy to Parent 9-28-12
P-27	Serene Peterson Curriculum Vita

Exhibits admitted on behalf of Respondent are:

R-01	Attendance Intervention Plan	10/11/2012
R-02	MDT Notes	10/11/2012
R-03	IEP	01/10/2013
R-04	Attendance Intervention Plan	01/10/2013
R-05	Meeting Notes	01/10/2013
R-06	IEP Team Meeting Notes	01/10/2013
R-07	Prior Written Notice	01/10/2013
R-08	Contact Log Entry	01/11/2013
R-09	Contact Log Entry	01/15/2013
R-10	School Advice Slip	01/18/2013
R-11	MDT Notes	09/11/2013
R-12	Dr. Audrey Lucas CV	Undated
R-13	Terriekki Kinnell CV	Undated

Exhibits admitted by the Hearing Officer are:⁴

HO 1 Administrative Due Process Complaint Notice of July 15, 2013

HO 2 Notice of Hearing Officer Appointment of July 16, 2013

HO 3 Prehearing Conference Scheduling Letter of July 16, 2013

HO 4 Prehearing Notice of July 18, 2013

HO 5 District of Columbia Public Schools' Response to Parent's Administrative Due Process Complaint Notice of July 24, 2013

HO 6 Resolution Period Disposition Form of July 25, 2013

HO 7 Prehearing Conference Order of August 27, 2013

HO 8 Petitioner's Unopposed Motion to Add Co-Petitioner of September 6, 2013

HO 9 Miscellaneous Order of September 19, 2013 granting Petitioner's Motion of September 6, 2013

HO 10 Miscellaneous Emails

- 7/16/13 informing me and opposing counsel that AAG Rubenstein was assigned counsel in this matter
- Chain of 7/16 -7/17/13 regarding scheduling
- Chain of 8/12/13 regarding rescheduling prehearing conference
- Chain of 8/12 – 8/13/13 also regarding rescheduling prehearing conference

The hearing officer exhibits were individually identified on the record. After I had identified the exhibits and moved them into evidence, Respondent's counsel asked to be allowed to provide a copy of the Resolution Period Disposition Form⁵ as an additional hearing officer exhibit. Petitioner did not object, and I granted the request. It is included here, in consecutive order according to the date on the form, and the exhibits have been renumbered accordingly.

B. Testimony

Petitioner testified and presented the following witnesses:

- Student
- Student's father ("Father")
- Community Support Worker ("CSW")
- Educational Advocate ("Advocate")

DCPS presented the following witness:

- Progress Monitor

⁴ Emails forwarding the documents of record to opposing counsel and the hearing officer are filed with the documents of record unless otherwise noted.

⁵ The form had not been provided to me, despite two Orders so requiring.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:⁶

1. Student is 17 years old. ■■■ is a special education student at Attending School, a separate, full time, non-public special education school. ■■■ has been enrolled at Attending School for the last two and one half years. Prior to that time Student was enrolled in Nonpublic School, another full time, nonpublic, separate, special education school. DCPS moved Student from Nonpublic School to Attending School because Attending School is closer to Student's home and to the hospital.⁷ Testimony of Petitioner; P 2; P 3; P 4
2. Student is classified as having multiple disabilities. ■■■ also has emotional difficulties for which ■■■ takes medication. Student has depression and anxiety. ■■■ was diagnosed as having dysthymic disorder and anxiety as early as April 2009. The school administers Student medication during the school day. Student sees a community based therapist as well as a psychiatrist. Testimony of Petitioner; Testimony of Student; Testimony of Father; Testimony of CSW; P 2; P 3; P 4; P 5; P 11; P 14; P 19; R 5; R 11.
3. Student's February 29, 2012 IEP, developed when ■■■ was enrolled in Nonpublic School required ■■■ receive 29 hours of special instruction and 1 hour of behavior support services outside the general education environment each week. ■■■ also was to receive 30 hours of Occupational therapy outside the general education environment each year. The IEP indicates ■■■ was a 10th grade student. P 4.
4. Student's January 10, 2013 IEP, developed when Student was enrolled at Attending School, required ■■■ receive 29 hours of special instruction and 1 hour of behavior support

⁶ In the findings that follow I cite exhibit numbers and/or testimony as bases for the findings. Some exhibits were introduced by both Petitioner and Respondent. In addition P-1 is the same as HO 1. The citations to exhibits reference only one exhibit in those instances where the exhibit has been introduced under two exhibit numbers.

⁷ Student had one psychiatric hospitalization in 2011.

services outside the general education environment each week. In addition ■■■ was to receive 60 minutes per week of speech language services inside general education each week,⁸ and 30 hours of occupational therapy per year outside the general education environment. The IEP indicates ■■■ was an 11th grade student. P 3

5. Student's most recent IEP developed at Attending School, dated May 10, 2013, requires ■■■ receive 24.5 hours of specialized instruction, 1.5 hours of behavior support services, 1 hour of occupational therapy and 1 hour of speech-language services outside the general education environment each week. The IEP indicates Student is a 9th grade student. P 2.

6. Student did not earn credits toward graduation in the 2012-2013 school year. P 16.

7. Student has a long history of attendance problems going back to ■■■ enrollment at Nonpublic School. ■■■ has had three Attendance Interventions Plans ("AIPs"). None of these efforts have improved Student's attendance. Testimony of Petitioner; Testimony of Progress Monitor; P 6; P 8; P 9; P 10; P 16; P 17; P 18; P 19; P 20; P 21; P 22; P 23; P 24; P 25; P 26; R 2; R 4; R 5; R 6

a. The first AIP was developed on June 6, 2012. It indicates the Student had 36 unexcused absences.⁹ The AIP is incomplete. The Root Cause for Truancy checklist was not been completed. In text, however, the AIP indicates Student's voice causes ■■■ anxiety,¹⁰ ■■■ has been picked on at Nonpublic School, ■■■ has low self-esteem and ■■■ is afraid to attend school. Actions to be taken by the parent were to enroll Student in speech therapy outside the school setting, continue seeing psychiatrist and explaining to Student that school attendance is required. The school was to talk to parents about strategies to get Student to school and to develop an incentive program. The DCPS case manager was

⁸ This service could not have been provided in the general education setting as Student was enrolled in a full time separate special education school.

⁹ Student had not enrolled in Attending School until the middle of the second semester of the 2011-2012 school year.

¹⁰ Student speaks with a soft, high pitched tone that does not sound like most individuals of ■■■ age.

to monitor Student's attendance for 10 days. Neither Petitioner (who attended this meeting by telephone) nor Student signed this AIP. The AIP indicates Student may not miss more than 2 out of the next 10 days and missing more days would put ■■■ current placement in jeopardy. P 8.

b. The second AIP was developed on October 11, 2012. As of that date Student had 13 unexcused absences. The AIP identified the causes of Student's absenteeism as lack of reliable means to get to school¹¹ and medication side effects. The actions to be taken by parent were to put in place a community service worker and contact psychiatrist regarding lowering Student's medication. The school was to call Student's cell phone in the morning if ■■■ was running late. The DCPS case manager was to contact DCPS about the transportation problems and monitor Student for 20 days. Both Petitioner and Student signed this AIP. The AIP indicated Student may not miss more than 4 out of the next 20 days and missing more days would put ■■■ current placement in jeopardy. P 9.

c. The third AIP was developed on January 10, 2013. As of that date Student had 38 unexcused absences. It incorrectly indicates it is the first AIP developed in that school year. The AIP indicated the causes of Student's absenteeism as being poor academic performance, noting Student had missed too many days of school to pass, and mental health needs, stating Student "suffers from anxiety." The actions to be taken by parent were to have an identified person take Student to school in the morning and "assign a routine for ■■■ the night before school." The school was to come up with out of school activities for Student. The DCPS case manager was to assign a First Home Care support worker and monitor Student for 10 days. The AIP indicated Student may not miss more than 2 out of the next 10 days and missing more days would put ■■■ current placement in jeopardy. Petitioner signed the AIP. R 4.

¹¹ The school bus is reported to have been inconsistent in arrival. Testimony of Petitioner; R 2.

8. Student is not able to go to school independently. When ■■■ takes the Metro on ■■■ own ■■■ tends to go to the library and then return home. ■■■ parents take ■■■ to school some of the time. They are not able to do this every day. Testimony of Petitioner; Testimony of Father; Testimony of Student; Testimony of CSW.

9. Student was referred to Superior Court for truancy in December 2012. No action has occurred as a result of this referral. Testimony of Petitioner; P 10.

10. Student consistently indicates ■■■ willingness to cooperate in the efforts to get ■■■ to attend school. ■■■ also states ■■■ wants to attend school. However, Student has anxiety regarding attending school. ■■■ stomach gets tight, and ■■■ becomes nauseous and gets a headache when ■■■ enters the school building. If ■■■ stays in school for the day ■■■ feels better in the afternoon. When in school, if Student is having trouble attending class, staff will sometimes allow ■■■ time in their offices to relax and discuss ■■■ concerns for a few minutes. This is helpful to Student. On average, Student attends school two days per week. Testimony of Petitioner; Testimony of Student; Testimony of CSW; P 3; R 4.

11. Student is able to do the work when ■■■ is in school. ■■■ is well received by ■■■ age peers. ■■■ had little interaction with ■■■ classmates as they were 9th graders and ■■■ age peers were in 11th grade. Testimony of CSW; Testimony of Progress Monitor; P 16.

12. At the multidisciplinary team (“MDT”) meeting held in January 2013, the MDT recognized Student’s anxiety interfered with ■■■ school attendance although it did not interfere with ■■■ performance when in school. Petitioner requested Student be evaluated. This evaluation has not occurred. Respondent considers student attendance in making referrals for evaluation. Testimony of Petitioner; Testimony of Progress Monitor; P 3; R 6.

13. At the January 2013 MDT meeting, the team spoke briefly about Student’s least restrictive environment for placement. They did not consider an alternative to placement at Attending School. Testimony of Progress Monitor; R 7.

14. At a meeting held on September 11, 2013, after the instant Complaint was filed, Respondent offered to place Student on Home Visiting Instruction if Student qualified. Home Visiting Instruction was not made part of Student's IEP. The MDT is currently drafting a new AIP that will include an incentive program. It will be ready for a meeting to discuss its content and implementation in 1 to 4 weeks from the date of the hearing. The document labeled Psychiatric Evaluation provided by Petitioner at this meeting has limited information. It includes only chief complaint (poor school attendance – severe school phobia and anxiety), presenting problem and medications. It does not include information regarding the evaluation nor a stated diagnosis. The team requested Petitioner provide evidence Student has school phobia before determining what assessments, if any, should be ordered. Testimony of Advocate; Testimony of Progress Monitor; P 5.

15. Home instruction does not address Student's anxiety. Home instruction will allow Student to receive educational services. A successful home instruction program would taper off over time, and Student would be reintegrated in the school setting. Testimony of Advocate; Testimony of CSW.

DISCUSSION

The following discussion is based on my review of the exhibits¹² introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, Petitioner offered many unsubstantiated statements. These statements do not call into question ■■■ credibility. However, ■■■ testimony was not consistent, and in some instances accurate, as to recalled details. Therefore, I have not relied on ■■■

¹² Several of the exhibits introduced by Petitioner and Respondent post-date the Complaint. They are cited herein only when they support other evidence. I have not used them in reaching my determination in this matter. Evidence of events occurring after the filing of the complaint cannot be determinative of the issue as it existed at the time of the filing of the Complaint. I do recognize, however, that the post-Complaint evidence indicates on-going efforts and/or stasis regarding the issue before me. Therefore, I have made one exception to excluding post-Complaint evidence as it relates to home instruction. I have made a limited number of findings on home instruction based on post-Complaint evidence as it is the core issue in this matter and , in my opinion, must be considered in establishing a remedy.

unsubstantiated statements in reaching my determination. That said, the additional details ■ offered that I did not rely upon would not have affected the outcome in this matter.

Whether DCPS denied Student a free, appropriate public education (“FAPE”) by failing to develop appropriate IEPs and placements, on the IEPs of January 10, 2013 and May 10, 2013. Student has school phobia/anxiety. ■ requires a placement that includes home based instruction on a full time or half time basis. There is no issue as to the goals or services included on the IEP.

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

In the instant matter Petitioner argues that DCPS knew at least as early as the January 10, 2013 IEP meeting that Student’s anxiety interfered with ■ school attendance and that as a result ■ requires at least part time placement in home instruction. The IEP developed at that meeting, in the goals section under Communication/Speech and Language, states Student’s anxiety affects ■ access to and progress in the general education curriculum because ■ anxiety results in, among other actions, Student avoiding school. Moreover, prior to this January 2013 date, the school had developed two AIPs in an effort to assure Student’s attendance, and a third AIP was

developed on this date. The first of these AIPs, dated June 6, 2012, identifies anxiety as one of the bases for Student's truancy. Yet despite Student's identified anxiety related chronic truancy no discussion of possible alternative placement to provide Student access to education occurred, and none has occurred since then. Student continues not to attend school, and as a result does not have access to educational services on a regular, on-going basis due to a documented and recognized disability. As a result, although Student should be in 12th grade during the 2013 -2014 school year, ■■■ will again be required to take 9th grade classes because ■■■ did not attend school a sufficient number of days to pass classes and earn credits despite showing an ability to do the work when ■■■ is in school.

Respondent argues that the MDT has made on-going, repeated efforts to address Student's attendance issues and cites the three AIPs developed for Student. Yet a review of these AIPs reveals little if any effort on the part of the school to address Student's anxiety's effect on ■■■ school attendance. Moreover, these AIPs were not successful. Student did not attend school regularly when they were developed and still does not do so. Yet as recently as September 11, 2013 Respondent's efforts to address Student's attendance issues consist of the development of a fourth AIP. This fourth AIP is to include an incentive plan which was part of the first, unsuccessful AIP. I note, despite Student's continued nonattendance due to ■■■ anxiety, DCPS appears to recognize no sense of urgency in providing Student a placement that will provide Student education. As of the date of the hearing, Student continued to have chronic, severe attendance issues, attending school only 2 days per week on average, and the fourth had not been completed. Thus, even if I had accepted this fourth AIP as a viable solution to Student's on-going attendance issues, it was not in place at the beginning of the third school year in which Student has demonstrated severe attendance issues.

The AIPs are unsuccessful, it appears, because they do not come to grips with Student's anxiety. The first AIP of June 6, 2012 documents Student's anxiety but does little to address it.

Noting that Student's anxiety is based on ■■■ voice, the AIP placed significant responsibility on Student's parent. Petitioner was to enroll Student in speech therapy outside school.¹³ Petitioner also was to assure Student continue seeing ■■■ psychiatrist and explain to Student that school attendance is required. The school was to talk to Student's parents about strategies to get Student to school and to develop an incentive program. DCPS' only responsibility was to monitor Student's attendance. It is worth noting that while Petitioner participated in the development of this AIP, there is no evidence suggesting Student agreed to its terms. Moreover, there is no evidence that any of these actions, other than Petitioner's efforts to get Student to attend school, occurred. It is clear, however, that the AIP was not effective because a new AIP was developed in October 2012.

The second AIP does not recognize Student's anxiety as a cause of ■■■ absenteeism, although it does recognize ■■■ is on medication (which ■■■ took for anxiety and depression) that appeared to make ■■■ tired in the morning. The actions to be taken under this AIP were for parent to put in place a community service worker and contact Student's psychiatrist regarding lowering Student's medication.¹⁴ The school was to call Student's cell phone in the morning if ■■■ was running late,¹⁵ and the DCPS case manager was to contact DCPS about the transportation problems and monitor Student. Again there is no indication whether any of these actions, other than obtaining a community service worker occurred, and again it is clear that this AIP was not effective. By January 10, 2013 Student had 38 unexcused absences, and a third AIP was developed. The third AIP indicated the causes of Student's absenteeism as being poor

¹³ There is no indication why this requirement was placed on Student's parent rather than the school. Under IDEA, the local education agency is responsible for assuring a student receive a program and services that address all of his/■■■ educationally related needs. Yet DCPS took no responsibility for this service at this time. I note that speech/language services were subsequently added to Student's IEP.

¹⁴ I note that Student was not attending school due to anxiety, as well as some other reasons, and if ■■■ medication which ■■■ took for depression and anxiety were decreased, it seems likely Student's anxiety level would increase resulting in even more school avoidance.

¹⁵ It is not clear how this action could take place or how it would improve Student's attendance. There is no indication how the school would know Student was running late, and, if ■■■ absenteeism was based in part on the lack of a school bus arriving at ■■■ residence, calling Student would not improve ■■■ attendance.

academic performance and mental health needs, specifically anxiety. The actions to be taken by parent were to have an identified person take Student to school in the morning and “assign a routine for ■■■ the night before school.” The school was to come up with out of school activities for Student, and the DCPS case manager was to assign a new community support worker to Student and monitor ■■■. Once again the AIP had little impact.

Thus DCPS has repeated a modified version of the same intervention over and over for over one year. DCPS has not addressed in any substantive manner Student’s anxiety’s impact on ■■■ school avoidance, although there are goals on Students’ IEPs related, at least indirectly, to anxiety.¹⁶ There has been no discussion of an alternative placement, home instruction, for Student. DCPS argues that Petitioner has not provided the documentation necessary for Home Visiting Services and with that I agree.¹⁷ However, in making this argument Respondent fails to distinguish between Home Visiting Services, which provides educational services to both general and special education students who qualify based on documented medical need and home instruction as a placement on the continuum of alternative placements available under IDEA. 34 C.F.R. § 300.115.

Respondent’s cites *Wilkins ex rel. D.W. v. District of Columbia*, 571 F. Supp. 2d 163, 50 IDELR 276 (D.D.C. 2008) as supporting its position that Student is appropriately placed, and Petitioner has not provided adequate medical documentation to the contrary. Yet *Wilkins* is distinguishable from the instant matter. *Wilkins* addresses the failure of a parent to provide medical documentation as directed throughout the course of an attenuated due process hearing process. The parent did not provide the required documentation. In the instant matter, despite Petitioner’s assertions that Student has school phobia, I am not reaching my determination based upon medical diagnosis or need. As can be seen in the discussion that follows, my determination

¹⁶ I note Student’s IEP services are not at issue in the instant matter. This is a case involving only placement.

¹⁷ Although I note Home Visiting Services were not discussed as an option until after the filing of the instant Complaint.

in the instant proceeding rests on Petitioner's having established that Student has anxiety that interferes with ■■■ school attendance, that DCPS has been aware of the effect of Student's anxiety on ■■■ school attendance at least since January 2013 (and probably earlier as the AIP of June 25, 2012 documents the anxiety) and that DCPS has not considered an alternative placement to allow Student to access ■■■ education despite the awareness of the effect of Student's anxiety on ■■■ school attendance. Moreover, DCPS has allowed this situation to continue for over a year without considering alternative placement.

Rather than addressing the need for a possible change in placement, DCPS has "blamed the victim." Student cannot choose not to have anxiety, but DCPS has focused on addressing Student's failure to attend school as willful rather than the result of ■■■ anxiety. DCPS has asked Petitioner to take responsibility for Student's lack of school attendance by, among other directives, arranging for community based speech therapy, explaining to Student that ■■■ must attend school, and taking Student to school. The Attending School has been required to discuss strategies for gaining school attendance and setting up incentive programs. These efforts have not worked, and Student has continued to avoid school due to ■■■ anxiety. Despite Petitioner's requests for evaluation and placement on home instruction, DCPS has not acted to assure Student receive ■■■ educational program despite ■■■ well-documented anxiety.¹⁸ Instead, DCPS has threatened Student with a loss of placement for failure to comply with the AIPs and referred ■■■ to court for truancy. The efforts documented do not appear to be efforts directed at addressing Student's anxiety and allowing ■■■ to receive ■■■ IEP program and services. Rather they appear to be the standard approach one takes with a recalcitrant student who is not attending school. They are not the individualized efforts based on identified student need as required by IDEA.

¹⁸ I do recognize that on the occasions Student attends school the staff have made efforts to address ■■■ anxiety by allowing ■■■ time to relax and discuss ■■■ concerns in the offices of staff with whom ■■■ has bonded. This is not an approach incorporated in the IEP and demonstrates the school's commitment to working with the Student.

The placement of a student is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. It is clear Student's IEP cannot be implemented in a full time, school based program as ■ anxiety results in Student being unable to attend school in a school building on a regular basis. IDEA requires each local education agency to have a continuum of alternative placements, including home instruction. *See*, 34 C.F.R. § 300.115. In selecting the placement from among those on the continuum of alternative placements, consideration is to be given to any potential harmful effect on the child or on the quality of services s/he needs. 34 C.F.R. § 300.116(d). Here, placement in a full time, separate, special education school results in Student having anxiety such that ■ frequently is unable to attend school. Clearly this is harmful to ■ inability to attend school also negatively affects the quality of services ■ receives. Student has missed so many days of school due to ■ anxiety that ■ has not received the programs and services that would provide ■ a FAPE on a consistent basis. Student remains a 9th grade student because ■ cannot attend school with sufficient frequency to allow ■ to earn credits and pass ■ courses. ■ is not receiving ■ education. The IEP is not being implemented.

Petitioner, Student's father, Petitioner's advocate and Student's CSW all testified to Student's need for home instruction. Advocate and CSW did not agree as to the number of hours of service Student required. There was general agreement, however, that home instruction was not the end to be achieved but rather an interim step to be taken to allow Student to be educated while ■ anxiety was addressed and ameliorated. The home instruction is to be tapered off over time, and Student is to be progressively reintegrated into the school setting.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, by a preponderance of the evidence that Student has been denied a FAPE because the IEPs of January

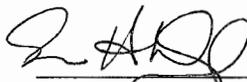
10, 2013 and May 10, 2013 do not provide [REDACTED] an appropriate placement. Student requires a placement that includes home based instruction.

ORDER :

1. Within 10 school days of the date of this Hearing Officer Determination, DCPS is to convene an MDT meeting including Petitioner, and [REDACTED] advocate and/or attorney if [REDACTED] so chooses, as well as Student, if [REDACTED] chooses to attend and Petitioner agrees, to revise Student's placement. The new placement shall include three days of home instruction each week school is in session. Each day of home instruction shall be of at least three hours duration. Home instruction is to include both special instruction and the delivery of related services as required by Student's IEP.
2. DCPS is to provide independent comprehensive psychological and psychiatric assessments focused on determining how to address Student's anxiety in relation to school and the approach needed to taper off the home instruction and reintegrate Student into the school environment. DCPS also is to provide an independent functional behavior assessment with the same focus. These assessments are to be completed within 30 work days of the date of this Hearing Officer Determination.
3. Within 10 school days of DCPS' receipt of the last of the three assessments DCPS is to convene an MDT meeting including Petitioner, and [REDACTED] advocate and/or attorney if [REDACTED] so chooses, and Student to develop a plan based on the assessments to taper off the home instruction and reintegrate the Student into the school environment.

IT IS SO ORDERED:

Sept 28, 2013
Date



Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).