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 parent,	)	
Petitioner,	)	Date Issued: April 9, 2012
v.	)	Hearing Officer: Virginia A. Dietrich
District of Columbia Public Schools	)	
Respondent.	)	

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HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of -year old Student, filed a due process complaint notice on January 27, 2012 alleging that the District of Columbia Public Schools ("DCPS") had denied Student a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Act ("IDEA").

Petitioner alleged that DCPS had failed to provide Student with a school placement from October 2010 through the end of the 2010-2011 school year and during the 2011-2012 school year; that DCPS had failed to annually update Student's Individualized Education Program ("IEP") in April 2011; that DCPS had failed to have an IEP in place for the 2011-2012 school year; that DCPS had failed to review a psychiatric assessment provided to DCPS in January 2012; and that DCPS had failed to provide Petitioner with access to Student's records upon Petitioner's request in January 2012. Petitioner sought placement of Student in a nonpublic day school.

DCPS asserted that if Petitioner had taken Student to where all students had been instructed to register when Center closed at the end of the 2010-2011 school year, DCPS could have provided Student with an updated IEP and school placement. DCPS also asserted that currently it has a public school placement available

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

that could meet Student's educational needs and provide Student with a FAPE; therefore, placement at a nonpublic school is not warranted.

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.").

Procedural History

The due process complaint was filed on 01/27/12. This case was reassigned to this Hearing Officer on 02/23/12.

Petitioner waived the resolution meeting, but DCPS did not. A resolution meeting took place on 02/09/12, at which time both parties agreed to let the 30-day resolution period expire prior to proceeding to a due process hearing. The 30-day resolution period ended on 02/26/12, the 45-day timeline to issue a final decision began on 02/27/12 and the final decision was due by 04/11/12.

Petitioner presented two witnesses: Petitioner; and the Vice Principal and Education Director at The School. DCPS presented one witness: Special Education Coordinator ("SEC") at

Petitioner's disclosures dated 03/14/12, containing a witness list and Exhibits P-1, P-1A, and P-2 through P-19, were admitted into evidence without objection.

DCPS' disclosures dated 03/14/12, containing a witness list only, was admitted into evidence over objection.

The six issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS denied Student a FAPE by failing to provide Student with an annual school placement from October 2010 through the end of the 2010-2011 school year; specifically, Student was expelled from Johnson Junior High School in October 2010, Student could not return to Center as was recommended by DCPS due to safety concerns, and Student was sent home in October 2010 with a work packet and was never contacted again by DCPS so that an appropriate school placement could be identified.

Whether DCPS denied Student a FAPE by failing to annually update Student's IEP; specifically, Student's IEP expired in April 2011 and Petitioner was not contacted by DCPS about convening a meeting to update it.

Whether DCPS denied Student a FAPE by failing to have an IEP in place at the beginning of the 2011-2012 school year; specifically, Student's IEP had expired in April 2011.

Whether DCPS denied Student a FAPE by failing to provide Student with an annual school placement for the 2011-2012 school year; specifically, (a) DCPS did not offer Student a school placement at the beginning of the 2011-2012 school year, and (b) DCPS refused to allow Student to enroll at School (Student's neighborhood school) in January 2012 because Petitioner was unable to provide proof that Student had completed the 8th grade.

Whether DCPS denied Student a FAPE by failing to review evaluation data; specifically, in January 2012, Petitioner provided DCPS with an independent psychiatric assessment dated December 2011 and requested that an IEP Team be convened to review the assessment.

Whether DCPS denied Student a FAPE by failing to provide Petitioner with access to Student's records, thereby denying Petitioner the right to participate in educational decision-making regarding her child; specifically, in January 2012, Petitioner made a written request to DCPS for Student's records and DCPS refused to provide a copy of or access to the records.

For relief,[2] Petitioner requested a finding that Student was denied a FAPE on each of the issues presented; DCPS to place and fund Student at The School; DCPS to convene a Multidisciplinary Team ("MDT") meeting within 10 days after placement at The School to develop an appropriate IEP for Student and review the independent psychiatric assessment; and DCPS to provide Petitioner with a copy of Student's school records through Petitioner's Attorney within five days.

Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

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, age is a resident of the District of Columbia and has received special education services since the first grade.[3] Student has a long history of behaviors that interfere with learning. Dating back to June 2008 when Student was years old, Student had been

[2] Petitioner withdrew her claim for compensatory education without prejudice, preferring to wait until Student was attending school so that her needs could be properly assessed.
[3] Petitioner.

referred to a special program due to her highly disruptive behaviors and inability to follow school rules.[4]

#2. In the Spring of 2010, Student was transferred from School (her neighborhood school) to Center by DCPS due to her behavior. Student stayed at Center, a school program that serviced students with an Emotional Disturbance, until the end of the 2009-2010 school year, at which time Student was expelled from Center. At the beginning of the 2010-2011 school year, Petitioner reenrolled Student at School.[5] In early September 2010, when Student attended School, Student exhibited oppositional/defiant behavior, verbal and physical aggression, and Student had physically assaulted other students. At that time, the IEP Team was considering placement at another school so that Student could receive different services.[6]

#3. In October 2010, staff at School told Petitioner that the school did not have anyone qualified to help Student and Student was sent home with a work packet and instructions not to return to school. Petitioner was told that the school would contact her. Petitioner took the completed work packet back to School, but the work packet wasn't accepted by the school and Petitioner did not receive any additional work packets for Student. After that, DCPS never contacted Petitioner about Student's IEP or school placement. Petitioner has lived at the same home address for the past 20 years and has had the same telephone number for the past six years.[7]

#4. Student's last IEP, dated 04/07/10, was developed when Student was nearing the end of her 7th grade year at Center. The IEP classified Student as a child with an Emotional Disturbance and prescribed 30.5 hours/week of specialized instruction and 90 minutes/week of behavioral support services, with all services to be provided outside of general education. At the time the IEP was developed, Student's behavior in school was marked by emotional outbursts, verbal aggression/inappropriate remarks and walking out of class; all of which impacted her academic performance in all areas and her ability to function in the classroom.[8]

#5. On a standardized academic achievement test administered in February 2010, Student's Broad Reading was at a 3.2 grade equivalent "GE," Math Calculation was at a 4.6 GE, and Written Expression was at a 4.1 GE, although Student's Full Scale Intelligence was in the Low Average range. At that time, Student was diagnosed with Reading Disorder and Disorder of Written Expression.[9] When tested again in March 2010 with the same standardized achievement test, Student's total achievement level was at a 3.2 GE, Broad Reading was at a 2.2 GE, Broad Math was at a 4.4 GE, and Broad Written Language was at a 4.6 GE.[10]

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[4] P-9.
[5] Petitioner.
[6] P-1A.
[7] Petitioner.
[8] P-1.
[9] P-8-8.
[10] P-6-3.

#6. During the 2011-2012 school year, no one from DCPS contacted Petitioner about revising Student's IEP or about a school placement.[11]

#7. In January 2012, Petitioner attempted to enroll Student at School (a school) and was told that Student, age was too old to enroll there.[12] When Petitioner went to the neighborhood high school to enroll Student, as she was instructed to do by the staff at School, Petitioner was unable to enroll Student until she returned with proof that Student had completed the eighth grade and a copy of Student's IEP. Petitioner went back to School to get the necessary documentation, but was unable to do so because Student had not completed the 8th grade and School didn't have any of Student's school records, including Student's IEP.[13]

#8. On 01/17/12, prior to the initiation of litigation, Petitioner provided DCPS with a copy of an independent psychiatric evaluation dated 12/30/11, along with a request that DCPS convene a meeting to review the evaluation, update Student's IEP and determine an appropriate placement for Student who had not attended school since the Fall of 2010.[14] DCPS never contacted Petitioner about convening a meeting for the requested purpose.[15] The independent psychiatric evaluation diagnosed Student with a Mood Disorder, Disorder of Written Expression and a Reading Disorder, and indicated that Student needed an IEP to provide assistance with her learning disorders and emotional support in order for her to be emotionally available to benefit from her educational placement. The independent psychiatric evaluation also indicated that Student needed psychological and psychiatric support at any school placement to deal with peer conflict, frustration from academic difficulties, and to provide intervention in a crisis situation.[16]

#9. By letter dated 01/20/12, Petitioner requested a complete copy of Student's educational records from DCPS.[17] When Petitioner went to School in January 2012 to enroll Student, Petitioner asked for a copy of Student's school records, but was not given a copy of the records or access to the records. Petitioner was informed that the records were locked up and inaccessible to DCPS at that time.[18]

#10. At the resolution meeting on 02/09/12, DCPS conditioned the convening of an IEP Team to review the independent psychiatric evaluation upon Student's enrollment at a public middle school or high school.[19]

#11. The is a nonpublic school that only services special education students with Emotional Disturbances and Learning Disabilities. The school has an academic, vocational and therapeutic component, with self-contained classrooms

[11] Petitioner.
[12] P-15-2, Petitioner.
[13] Petitioner.
[14] P-19.
[15] Petitioner.
[16] P-2.
[17] P-16.
[18] P-16, Petitioner.
[19] P-17-2.

of 7-8 students with one teacher and a teacher's assistant in each class. Each student has an assigned therapist and receives both group and individual therapy once a week. offers Carnegie units for graduation credits. also has a behavior management system that consists of a point system. Based on a review of Student's 04/07/10 IEP, can implement the IEP goals and provide the services prescribed. Based on a review of Student's records, notably the independent psychiatric evaluation dated 12/30/11, can address Student's aggressive behaviors and teach Student skills to deal with her aggression. Based on a review of Student's records and Student's interview at can address Student's social/emotional and academic needs and Student can be enrolled as soon as funding is approved.[20]

#12. Since October 2010, DCPS has not offered Student a public school placement that can meet Student's educational needs. Although the at currently services students classified with an Emotional Disturbance, none of Student's academic records were reviewed by anyone at nor has Student or Petitioner been interviewed by anyone at offers up to an 8th grade curriculum for students; therefore, Carnegie credits for graduation cannot be earned there.[21]

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:

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

"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).

The first issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an annual school placement from October 2010 through the end of the

[20] Vice Principal at
[21] SEC at

2010-2011 school year; specifically, Student was expelled from School in October 2010, Student could not return to Center as was recommended by DCPS due to safety concerns, and Student was sent home in October 2010 with a work packet and was never contacted again by DCPS so that an appropriate school placement could be identified.

Free appropriate public education or FAPE means special education and related services that are provided at public expense; meet the standards of the State Education Agency; include an appropriate school; and are provided in conformity with an IEP. 34 C.F.R. 300.17.

Petitioner met her burden of proof on this issue. Student, with an existing IEP, was sent home from school in October 2010 while attending School, with instructions not to return. Petitioner came back to School with completed work packets and attempted to get more work packets, but DCPS did not provide any more work packets or any other educational services to Student from that time forward. And, that was the end of contact from DCPS. Petitioner's residence and telephone number never changed. DCPS should have contacted Petitioner and provided Student with the same or an alternate school placement, but didn't. DCPS has an affirmative duty to locate, identify and evaluate all students residing in the District of Columbia and ensure that a FAPE is available to any child between the ages of 3 and 22, who reside in the District of Columbia. 34 C.F.R. 300.101, 34 C.F.R. 300.111, 5 D.C.M.R. E-3002.1 DCPS violated the IDEA by failing to provide Student with a school placement from October 2010 through the end of the 2010-2011 school year. The harm is evident. Student was denied a FAPE; she lost the educational benefit of going to school and receiving all of her full-time special education services from October 2010 through the end of the 2010-2011 school year.

The second issue to be determined is whether DCPS denied Student a FAPE by failing to annually update Student's IEP; specifically, Student's IEP expired in April 2011 and Petitioner was not contacted by DCPS about convening a meeting to update it.

Petitioner met her burden of proof on this issue. Pursuant to 34 C.F.R. 300.324(b)(1)(i), a review of the IEP must occur annually. Student's last IEP was dated 04/07/10. Student's IEP should have been annually updated in April 2011, but DCPS never contacted Petitioner to update it. The inference is that Student's IEP was never updated and there was no evidence in the record to the contrary. The harm is that (a) Petitioner was unable to participate in decision-making regarding the education of her child with respect to providing Student a FAPE through the development of a current IEP, and (b) Student was deprived of a current IEP and the services that a current IEP would have given her. Student was denied a FAPE; she was deprived of the educational benefit of having an IEP that prescribed appropriate educational services.

The third issue to be determined is whether DCPS denied Student a FAPE by failing to have an IEP in place at the beginning of the 2011-2012 school year; specifically, Student's IEP had expired in April 2011.

Petitioner met her burden of proof on this issue. Pursuant to 34 C.F.R. 300.323(a), an IEP must be in effect at the start of the school year. Student's last IEP was dated 04/07/10 and there was no evidence in the record that Student's IEP had been updated since. The inference is

that the IEP was never updated. Student's IEP should have been revised on or about 04/07/11 and been in effect at the start of the 2011-2012 school year. It was not. The Hearing Officer concludes that DCPS failed to have an IEP in place at the beginning of the 2011-2012 school year. The harm is that Student was deprived of a current IEP and the services that a current IEP would have provided for her for the 2011-2012 school year. Student was denied a FAPE through deprivation of an educational benefit.

The fourth issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an annual school placement for the 2011-2012 school year; specifically, (a) DCPS did not offer Student a school placement at the beginning of the 2011-2012 school year, and (b) DCPS refused to allow Student to enroll at School (Student's neighborhood school) in January 2012 because Petitioner was unable to provide proof that Student had completed the 8th grade.

The "educational placement" consists of: (1) the education program set out in the student's IEP, (2) the option on the continuum in which the student's IEP is to be implemented, and (3) the school or facility selected to implement the student's IEP. *Letter to Fisher,* 21 IDELR 992 (1994).

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision (1) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (2) is made in conformity with the Least Restrictive Environment ("LRE") provisions of the IDEA that mandate that to the maximum extent possible, disabled children are to be educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs 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; (3) is determined annually; (4) is based on the child's IEP; and (5) is as close as possible to the child's home. 34 C.F.R. 300.114, 34 C.F.R. 300.116.

Petitioner met her burden of proof on this issue. Student has not attended school since October 2010, when DCPS sent her home from school with work packets and instructions not to return to school, and DCPS never followed up to ensure that Student had an appropriate school placement. When Petitioner tried to enroll Student in school in January 2012, she met various roadblocks imposed by DCPS that made it impossible for her to reenroll Student. The neighborhood middle school informed Petitioner that Student was too old to attend middle school and the high school told Petitioner that Student could not enroll in high school without documentation that Student had completed middle school. As a result, Petitioner was stymied in all of her efforts to enroll Student in school.

Although DCPS proffered testimony that the currently can meet Student's educational needs, the evidence in the record was insufficient for the Hearing Officer to conclude that the was an appropriate school placement. Although the SEC at testified that provides services to students through the 8th grade and currently can provide the educational services that Student needs, the SEC's testimony was not given any weight because no one at Ron Brown had even reviewed Student's

records, including the IEP, or conducted an interview with Student and/or Petitioner. Therefore, there was no credible evidence in the record that could *actually* implement Student's 04/07/10 IEP, which was Student's most current IEP. Moreover, there was credible testimony in the record by Petitioner that Student had already been denied enrollment at a public middle school in January 2012, i.e., School, because she was too old to attend middle school. is a middle school; it services students through the 8th grade.

The Hearing Officer determines that Student was denied a FAPE due to DCPS' failure to provide Student with a school placement for the 2011-2012 school year. Student was deprived of the educational benefit of going to a school where she could receive the full-time special education services she needed.

The fifth issue to be determined is whether DCPS denied Student a FAPE by failing to review evaluation data; specifically, in January 2012, Petitioner provided DCPS with an independent psychiatric assessment dated December 2011 and requested that an IEP Team be convened to review the assessment.

If the parent shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. 300.502(c)(1).

Petitioner met her burden of proof on this issue. The independent psychological evaluation that Petitioner provided to DCPS on 01/17/12 contained current critical information about Student; i.e., that Student needed an IEP and psychiatric and psychological interventions in the school setting to address Student's academic and social/emotional needs. Petitioner's request for DCPS to review the evaluation also indicated that Student had not been attending school since October 2010 due to DCPS' failure to provide Student with an appropriate school placement. Petitioner credibly testified that no one from DCPS contacted her with respect to convening a meeting to review the evaluation. At the resolution meeting on 02/09/12, DCPS indicated that it would only convene a meeting to review the independent psychiatric evaluation if Student enrolled in school; a condition that Student could not fulfill despite Petitioner's best efforts to enroll Student in school.

DCPS' premise that it cannot convene a meeting to review evaluations until Student enrolls in a DCPS school is erroneous. DCPS is required to make a FAPE available to each child with a disability, ages three to twenty-two, who resides in, or is a ward of, the District of Columbia. 34 C.F.R. 300.101(a), D.C.M.R. E-3002.1(a). The obligation to provide a FAPE, therefore, is triggered by a child's residency in the District -- not the child's enrollment in a public school in the District. Regardless of a child's enrollment status, DCPS is required to "ensure that procedures are implemented to identify, locate, and evaluate all children with disabilities residing in the District who are in need of special education and related services" (34 C.F.R. 300.111, D.C.M.R. E-3002.1(d)) and must make a FAPE available "to any child with a disability who needs special education and related services, including children who are suspended or expelled." 34 C.F.R. 300.101(a), D.C.M.R. E-3002.1(e). See *D.S. v. District of Columbia,* 54 IDELR 116 (D.D.C. 2010).

A reevaluation must be conducted if the child's parent requests it. In this case, a reevaluation had not occurred within the past year of Petitioner's request. As part of a reevaluation, the IEP Team, that includes Petitioner and the public agency, must review existing evaluation data on the child including evaluations and information provided by the parent. 34 C.F.R. 300.303, 34 C.F.R. 300.305. Student's last reevaluation occurred on 04/07/10 when the IEP was developed. Therefore, DCPS was required to convene a meeting to review the independent psychiatric evaluation provided by Petitioner. The IDEA does not give a finite period of time for reevaluations to be conducted. Reevaluations should be conducted in a "reasonable period of time," or "without undue delay," as determined in each individual case. The more current an evaluation and IEP determination, the less likely that a delay in responding to the reevaluation request will be prejudicial or injurious." *Herbin v. District of Columbia*, 43 IDELR 110 (D.D.C (2005).

Based on this record, DCPS non-response to Petitioner's request until the resolution meeting and then conditioning the convening of a meeting upon Student's enrollment in school, was an unreasonable amount of time despite it being only one month. But for this litigation, Petitioner would have been at a dead end with respect to securing educational services for Student because Petitioner was unable to enroll Student in school, and according to DCPS, enrollment was a prerequisite to DCPS convening a meeting to review the evaluation. In view of the circumstances on this record, i.e., that DCPS had been advised that Student had been out of school for over a year and that Petitioner was unable to enroll Student, DCPS was remiss in not offering to convene a meeting at the resolution meeting that occurred on 02/09/12, only one month after DCPS received the request to review the independent psychiatric evaluation. Student was denied a FAPE in that Petitioner was significantly impeded in her ability to participate in decision-making regarding the provision of a FAPE to Student.

The sixth issue to be determined is whether DCPS denied Student a FAPE by failing to provide Petitioner with access to Student's records, thereby denying Petitioner the right to participate in educational decision making regarding her child; specifically, in January 2012, Petitioner made a written request to DCPS for Student's records and DCPS refused to provide a copy of or access to the records.

DCPS must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by DCPS related to the identification, evaluation, and educational placement, and the provision of a FAPE. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, or resolution session, and in no case more than 45 days after the request has been made. 34 C.F.R. 300.613(a), 5 D.C.M.R. E-3021.1.

Petitioner failed to meet her burden of proof on this issue. Petitioner requested a copy of Student's records by letter on 01/20/12. Petitioner also asked for a copy of Student's school records when she went to School in January 2012 in an effort to reenroll Student there. In January 2012, Petitioner was told by DCPS that the records were unavailable because they were locked up and inaccessible at the time of Petitioner's request. Petitioner was not provided with any records as a result of either effort. Student last attended a DCPS school in

October 2010, and since that time, there have been no new educational records generated simply because Student has not been attending school.

DCPS had not violated the IDEA at the time the due process complaint was filed on January 27, 2012 because the time span was less than 45 days. DCPS did violate the IDEA by not providing Petitioner with a copy of the records prior to the resolution meeting on 02/09/12. At the time of the due process hearing on 03/21/12, which was more than 45 days, Petitioner still had not been provided with school records, which was also a violation of the IDEA. However, no harm was shown by Petitioner. Petitioner's disclosures contained the last IEP developed on 04/07/10, MDT notes dated 09/03/12, various evaluations from 2010 through 2012, and a suspension report dated 09/09/10. These were substantial records that were already in Petitioner's possession. No new school records were generated after October 2010, which was when Student stopped attending school. If school records existed other than what was already in Petitioner's possession at the time of the due process hearing, the impact of Petitioner not having them was minimal. The records in Petitioner's possession were sufficient for her to successfully litigate her case on all of the other issues presented. Student was not denied a FAPE by DCPS' failure to timely comply with a records request. Petitioner's ability to participate in the decision-making process of providing a FAPE to Student was not significantly impeded.

Relief

Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA: (1) DCPS schools, or District of Columbia public charter schools; (2) private or residential District of Columbia facilities; and (3) facilities outside of the District of Columbia. 38 D.C. Code 2561.02(c).

There was no credible evidence in the record that DCPS currently has a public school placement available that can meet Student's educational needs and where Student' IEP could be implemented. was the only school that DCPS offered as a location of services to implement Student's IEP. Testimony by the SEC at revealed that no one at had ever reviewed any of Student's academic records that included the most current IEP or the recent independent psychiatric evaluation that had been provided to DCPS, or had interviewed Student and/or Petitioner. Therefore, the generalized statement of the SEC that can meet Student's educational needs because Student "was coming from Center," carried no weight. Student's last school was School, not Center. A blanket assertion that a school can meet Student's educational needs without at least a review of educational records is meaningless and insufficient for the Hearing Officer to conclude that could provide Student with the special education services that could meet her needs. Moreover, Student just had been denied enrollment at her neighborhood public middle school in January 2012 due to her age. was also a middle school.

The school district is not required to maximize or provide the best program; 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):

DCPS has failed to provide Student with any school placement since October 2010 and the evidence in the record does not support a conclusion that the public school placement now offered by DCPS, i.e., School, can provide the educational services that Student needs. Therefore, Student is awarded funding at The School, where there is an opening for her that is contingent upon funding. Student has severe academic deficits evidenced by her academic achievement at the third and fourth grade levels, and Student has the need for a school that can employ the interventions necessary to address Student's psychiatric and psychological needs. Although there is no current IEP, the last IEP of April 2010 evidences the need for all special education services to be provided outside of general education, and that is still likely the case. Since 2008, Student has demonstrated behavior problems that interfere with learning that have required a special program to address Student's highly disruptive behaviors and inability to follow school rules. Student's needs may have changed, but that would be a determination to be made by the IEP team after current evaluations have been conducted. Meanwhile, The Pathways School can provide Student with services that will permit Student to benefit from instruction.

ORDER

(1) Within 30 calendar days, DCPS shall provide funding and transportation for Student to attend The School in Silver Spring, MD; and

(2) Within 30 school days of Student's enrollment at The School, DCPS shall convene a Multidisciplinary Team at The School to review the independent psychiatric evaluation, discuss whether additional assessments are needed in order to determine the educational needs of Student, and develop an appropriate IEP.

All other relief is denied.

IT IS 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: April 9, 2012

/s/ Virginia A. Dietrich
Hearing Officer