

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

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

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STUDENT,<sup>1</sup> )  
through the Parents, )  
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Petitioners, )  
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v. )  
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District of Columbia Public Schools )  
 )  
and )  
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Office of the State Superintendent of )  
Education )  
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Respondents. )  
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Date Issued: April 6, 2012

Hearing Officer: Virginia A. Dietrich

2012 /

OSSE  
STUDENT HEARING OFFICE

**HEARING OFFICER DETERMINATION**

**Background**

Petitioners, the mother (“Mother”) and father (“Father”) of -year old Student, filed a due process complaint notice on December 8, 2011 alleging that the District of Columbia Public Schools (“DCPS”) and the Office of the State Superintendent of Education (“OSSE”) had denied Student a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

At the time of the alleged violations, Student was a child with a disability classification of Emotional Disturbance who required 100% specialized instruction and related services outside of general education. Student had received funding and placement at nonpublic schools by DCPS from Kindergarten until December 2010, at which time Petitioners withdrew Student from DCPS upon the recommendation of Student’s treating psychologist immediately after Student experienced a mental health crisis that was related to Student’s school environment. Responding to the emergency nature of the crisis, Petitioners placed Student at a private residential school at

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<sup>1</sup> Personal identification information is provided in Appendix A.

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their own expense, fully expecting to work with DCPS to develop an appropriate IEP and secure funding for residential placement.

Petitioners alleged that beginning in November 2010, Petitioners continually asked DCPS to provide Student with an appropriate school placement that was based on an IEP that accurately reflected Student's educational needs. Essentially, Petitioners alleged that DCPS had given them the run around and misinformation about the residential placement process and about DCPS' role in providing Student with an offer of a FAPE; that DCPS had not developed an IEP that reflected Student's current academic needs based on data Petitioners had previously provided to DCPS; and that DCPS had not provided Student with an appropriate placement based on an appropriate IEP. Petitioners kept Student at the private residential school for the 2011-2012 school year, and it is the tuition and related expenses for the 2011-2012 school year that Petitioners seek reimbursement for as well as continued funding at the private residential school for the rest of the current school year.

Petitioners also alleged that OSSE had denied Student a FAPE by failing to timely process and make a decision on the private residential school's application for a Certificate of Approval. By an Order dated 01/24/12, OSSE was dismissed as a party to the complaint, with prejudice, pursuant to a joint stipulation filed by the parties on 01/23/12.

DCPS asserted that since Student had been unilaterally placed at a private school by Petitioners, DCPS was not responsible for providing Student with a current IEP, a school placement or an offer of FAPE because Petitioners had voluntarily removed Student from DCPS' monitoring jurisdiction. DCPS asserted that it had not denied Student a FAPE.

### **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 12/08/11. This Hearing Officer was assigned to the case on 12/12/11. Neither Petitioners nor DCPS agreed to waive the resolution meeting. A resolution meeting took place on 12/21/11, at which time the parties did not agree to end the 30-day resolution period prior to proceeding to a due process hearing. With respect to the claims against DCPS, the resolution period ended on 01/07/12, the 45-day timeline to issue a decision began on 01/08/12 and the final decision was initially due by 02/21/12.

The due process hearing was a closed hearing that was scheduled for 01/25/12, 01/26/12, 01/27/12, 02/02/12 and 02/10/12.

Petitioners participated in the hearing in person. The hearing proceeded on 01/25/12, 01/26/12, 01/27/12 and 02/02/12, as planned. DCPS began

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its case on 02/02/12 and planned to conclude with additional witnesses on 02/10/12. However, on 02/08/12, Petitioners requested a continuance due to the unexpected unavailability of Petitioners for the last scheduled day of the hearing. Father was out of the country and Mother went to North Carolina to respond to the emergency psychiatric hospitalization of Student. On 02/10/12, DCPS was ready with its' witnesses and DCPS opposed the continuance, but the continuance was granted so as to preserve Petitioners' right to be present at the hearing in person. Parties agreed to the continuance dates of 03/05/12 and 03/20/12, with a deadline of 03/24/12 to submit written closing arguments. By agreement of the parties, the final decision due date was extended to 04/11/12. The hearing actually concluded on 03/05/12, at which time the parties agreed to submit closing arguments by 03/13/12. Petitioners filed a written closing argument, but DCPS did not. After the conclusion of the hearing, Petitioners filed Proposed Findings of Fact that were not solicited or agreed to by the Hearing Officer; therefore, they were not considered.

Petitioners presented nine witnesses: Mother; Father; DCPS progress monitor; DCPS nonpublic unit program manager; Student's community based treating psychologist who qualified as an expert in clinical psychology, child and adolescent psychology, and in the treatment of children and adolescents with Attention Deficit Disorders, Pervasive Development Disorders, Autistic Spectrum Disorders ("ASD"), Mood Disorders and Anxiety Disorders; Academic Director at Academy ("the private residential school"); Admissions Director at the private residential school; Clinical Director at the private residential school who qualified as an expert in clinical social work and the management of clinical services for youth; and a certified educational planner who qualified as an expert in educational planning for students with disabilities.

DCPS presented four witnesses: the same DCPS progress monitor called as a witness by Petitioners; the same DCPS nonpublic unit program manager called as a witness for Petitioners; Assistant Principal at School; and Program Director at School.

Petitioners' disclosures dated 01/18/12, contained a witness list and Exhibits P-1 through P-52. P-1 through P-52 were admitted into evidence without objection.

DCPS' disclosures dated 01/18/12, contained a witness list and Exhibits DCPS-1 through DCPS-14. DCPS-10, DCPS-11 and DCPS-12 were admitted into evidence over objection. The remainder of DCPS' exhibits were admitted into evidence without objection.

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

Whether DCPS denied Student a FAPE by failing to review and consider independent evaluation data; specifically, an independent psychological evaluation dated July 2010 from Dr. Holman that was provided to DCPS on or about March 2011 and a Diagnostic Statement and Treatment Summary from Dr. d'Alelio dated October 2011 that was provided to DCPS on 11/08/11.

Whether Student was denied a FAPE by DCPS failing to provide Student with an appropriate IEP on 05/24/11 (a) that accurately reflected Student's current levels of performance,

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(b) that had measurable social/emotional goals that could be achieved in one year, (c) that had a reading goal that was specific enough to be measured in terms of content and delivery of material, (d) in that DCPS failed to consider the potential harmful effects and quality of services that Student needed before deciding not to provide Student with a residential program as the least restrictive setting, (e) that had appropriate social/emotional goals to address social skill deficits, (f) that had measures to evaluate progress towards achieving social/emotional goals, (g) that considered the results of an independent psychological evaluation dated July 2010 that was received by DCPS in March 2011 and took this information into account when the current levels of performance, needs of Student and type of program for Student were developed, (h) in that DCPS failed to consider any progress reports from the private residential school, the school that Student had been attending since January 2011, and (i) that provided Student with a residential program as the least restrictive environment.

Whether DCPS denied Student a FAPE by failing to provide Student with a placement/school program for the 2011-2012 school year that could meet his social/emotional and educational needs; specifically, the school-wide behavior program at School negatively impacted Student's social/emotional deficits and placement at School for the 2011-2012 school year was based on an inappropriate IEP.

Whether Student was denied a FAPE when DCPS issued a Prior Written Notice on 05/24/11 (a) that was erroneous in stating that all of Student's records had been reviewed when reports and evaluations from Student's medical health providers and teachers had not been reviewed by DCPS or discussed at any Multidisciplinary Team ("MDT") meeting, (b) that failed to address Petitioners' request for a referral to the DC Department of Mental Health ("DMH") because Petitioners had requested a residential placement and were informed that the process included a referral to DMH, (c) that erroneously informed Petitioners that only DCPS evaluations and data would be considered as the basis for determining the need for a residential placement, and (d) that failed to provide Student with an appropriate nonpublic school program for the 2011-2012 school year.

Whether DCPS denied Student a FAPE by issuing a Prior Written Notice ("PWN") on 01/26/11 (a) that failed to describe all of DCPS' proposed and refused actions and the reasons for the proposed and refused actions, and failed to describe other options the team considered and rejected, and (b) that violated procedural safeguards by asking Petitioners to provide consent when Petitioners had not been provided the necessary information to make informed consent.

Whether DCPS denied Student a FAPE by failing to allow Petitioners to have meaningful participation in MDT meetings since January 1, 2011; specifically, (a) by failing to provide Petitioners with sufficient or accurate information about the Least Restrictive Environment ("LRE") process and the residential placement process, and (b) by failing to consider the concerns of the parent for enhancing the education of the child and failing to consider the results of the most recent evaluation of Student.

For relief, Petitioners requested a finding that Student was denied a FAPE on each of the issues presented, that DCPS reimburse Petitioners for tuition and related expenses paid for Student at the private residential school since the beginning of the 2011-2012 school year, DCPS

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to place and fund Student at the private residential school for the remainder of the 2011-2012 school year, and the private residential school to be designated as Student's current educational program.

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 [redacted] is a resident of the District of Columbia. Since Kindergarten, Student has attended nonpublic schools through placement and funding by DCPS.<sup>2</sup>

#2. At the start of the 2010-2011 school year, Student attended [redacted] a nonpublic special education day school, having been placed and funded there by DCPS. At that time, Student had an IEP that classified him with an Emotional Disturbance and prescribed full-time specialized instruction and various related services, with all services to be provided outside of general education.<sup>3</sup>

#3. In the Fall of the 2010-2011 school year, Student began exhibiting heightened anxiety in response to the demands of the school-wide behavior management program utilized at [redacted]. The programming at [redacted] is built on a group consequence model and the premise that students can control their behavior. Specifically, [redacted] used a program designed to curtail negative behaviors by imposing individual and group consequences for negative behaviors, a program commonly used to treat students with off-task behaviors commonly associated with children with an Emotional Disturbance. Student, due to the unique nature of his disability, was unable to understand the negative consequences he incurred as a result of his own behavior and the behavior of others. Student's inability to understand the consequences of behavior manifested itself in very heightened anxiety, rocking behavior and an expression of dislike and fear of going to school.<sup>4</sup> Petitioners were aware of the adjustment problems Student was experiencing at [redacted] and began making non-hurried efforts to find another school program for Student, believing that he could last there for the entire 2010-2011 school year.<sup>5</sup>

#4. In late October or early November 2010, Student witnessed a fellow classmate at [redacted] run through a glass door/window during an episode of misbehavior. Student was traumatized by the event and became obsessed with the visual images of bodily harm and blood. Student couldn't put these images in perspective or out of his mind despite counseling efforts by his community based clinical psychologist who had been providing counseling services to Student on a regular basis since 2008.<sup>6</sup>

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<sup>2</sup> Mother.

<sup>3</sup> P-33.

<sup>4</sup> Student's treating psychologist.

<sup>5</sup> Mother.

<sup>6</sup> Student's treating psychologist.

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#5. On November 18, 2010, the effects of the trauma culminated in Student answering every question in a classroom assignment with either "I need help, I can't sleep, bad places, red blood on the floor, death, and he's going to kill me."<sup>7</sup> School personnel immediately contacted Petitioners and Petitioners immediately scheduled an emergency consultation with Student's community based clinical psychologist.<sup>8</sup> Student's psychologist determined that Student was experiencing visual hallucinations and auditory hallucinations that were telling him to do bad things, and that he was a danger to himself. Student was psychiatrically hospitalized for four days. The hospital staff determined that Student had an extreme anxiety reaction to school and they surmised that Student was on the Asperger's Disorder side of the autism spectrum.<sup>9</sup>

#6. After this course of events, Student's community based psychologist, who qualified as an expert in the treatment of children and adolescents with Autism Spectrum Disorders, hypothesized that Student had Asperger's Disorder, a neurologically based disorder, due to Student's inability to understand cause and effect relationships, his problem with handling group consequences and due to the onset of self-injurious behaviors. This hypothesis was based on clinical observation and a course of treatment from 2008-2010.<sup>10</sup>

#7. Student returned to \_\_\_\_\_ after the hospitalization and within several days, Student's anxiety level heightened, Student de-compensated and he began hearing voices that were telling him to do bad things. At that point in time and forward, \_\_\_\_\_ became an inappropriate school placement for Student. Student was unable to understand the cause and effect of behaviors, he had an inability to read other's emotions and he was unable to benefit from the behavioral model at \_\_\_\_\_. Student's mental health problems that arose in response to the school environment at \_\_\_\_\_ required his immediate removal from \_\_\_\_\_.

#8. Beginning on 11/03/10, Mother contacted DCPS to let them know that Student's recent psychiatric crisis, stress and anxiety were all related to the behavioral approach used at \_\_\_\_\_ and that Student needed to get out of \_\_\_\_\_. Due to the emergency nature of Student's school situation, Mother didn't wait around for DCPS to give her school placement options. She researched several schools and identified "the private residential school" as the school placement that could best meet Student's then current educational needs. Petitioners, upon the recommendation of Student's community based psychologist and fearful that Student would decompensate to the point of no return if he returned to Frost, responded to what they perceived to be exigent circumstances, and decided to unilaterally place Student at the private residential school at their own expense.<sup>13</sup>

#9. Beginning on 11/10/10, Petitioners initiated communications with DCPS and asked DCPS for assistance and meetings to revise Student's IEP and discuss and determine a residential placement for Student. Meetings occurred in November and December 2011, and during that time, DCPS verbally offered Petitioners three residential schools to choose from \_\_\_\_\_.

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<sup>7</sup> P-18F, Mother.

<sup>8</sup> P-18F, Mother.

<sup>9</sup> Mother, Student's treating psychologist.

<sup>10</sup> Student's treating psychologist.

<sup>11</sup> P-18A, Mother, Student's treating psychologist.

<sup>12</sup> P-9, Mother.

<sup>13</sup> Mother.

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outside of the context of an IEP meeting; however, it was unlikely that DCPS would have funded the residential placements at that time because Student had not been referred through the Least Restrictive Environment (“LRE”) Committee process for a determination of whether DCPS would fund a residential placement.<sup>14</sup> In December 2010, DCPS offered Petitioners day school programs for autism and Asperger’s Disorder that were located within the School campus, but Petitioners declined because of Student’s anxiety response to School in general and their opinion that Student needed a residential setting, at least as a stop gap measure.<sup>15</sup> In December 2010, DCPS advised Petitioners that residential placement was a team decision; however, Petitioners were not advised of the LRE referral process through the Department of Mental Health (“DMH”) as the process to secure a residential placement through DCPS.<sup>16</sup> At no time before or after December 2010 were Petitioners fully or accurately informed by DCPS about the process for securing a residential placement for Student.

#10. As far back as the 11/30/10 meeting with DCPS, Petitioners told DCPS that they, along with Student’s treating clinical psychologist, suspected that Student had a disorder along the autism spectrum, i.e., Asperger’s Disorder.<sup>17</sup>

#11. On 12/16/10, Petitioners gave written notice to DCPS that they were unilaterally placing Student at the private residential school, with the full understanding that DCPS would not fund the private residential placement because the school lacked a Certificate of Approval from OSSE.<sup>18</sup> Student was withdrawn from DCPS on 12/23/10 and began attending the private residential school in January 2011.<sup>19</sup> Petitioners intended to keep Student at the private residential school at their own expense while the private residential school applied for a Certificate of Approval from OSSE, and if approved, Petitioners intended to seek funding from DCPS.<sup>20</sup> In spite of Petitioners unilaterally placing Student at the private residential school, at all times before and after the unilateral placement, Petitioners actively sought DCPS’ assistance in developing an appropriate IEP and securing an appropriate school placement for Student while he attended the private residential school. Petitioners sought to change Student’s IEP from a therapeutic day program to a therapeutic residential program.<sup>21</sup> On 01/09/11, Mother met with two representatives of DCPS and asked for the IEP to be amended to reflect a residential placement, and DCPS refused. At all times, Petitioners were not opposed to a therapeutic day program, if DCPS could identify an appropriate day school program that could meet Student’s educational needs.<sup>22</sup>

#12. On 01/26/11, DCPS issued a Prior Written Notice (“PWN”) in response to Petitioners’ removal of Student from DCPS and unilateral placement of him at a private residential school.<sup>23</sup> The PWN indicated that Student had been removed from his school

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<sup>14</sup> Mother, DCPS progress monitor.

<sup>15</sup> Mother, DCPS progress monitor.

<sup>16</sup> DCPS progress monitor.

<sup>17</sup> Mother.

<sup>18</sup> P-14, Mother.

<sup>19</sup> P-15-2, Mother.

<sup>20</sup> P-14-1.

<sup>21</sup> P-14-2, Mother.

<sup>22</sup> Mother.

<sup>23</sup> P-15, DCPS progress monitor.

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placement at \_\_\_\_\_ that DCPS would not fund the private residential school because it was not a DCPS approved residential program; that Student was removed from DCPS by Petitioners in response to Student's recent hospitalization; that no evaluations or procedures were used to determine the placement of Student at the private residential school; that a meeting had been held to discuss if Student warranted residential placement; and that DCPS believed that Student's educational needs could be met at \_\_\_\_\_. The Completion of Services Form that accompanied the PWN indicated that services had been terminated by DCPS because Petitioners had placed Student at a non-funded residential program. Petitioners didn't sign the form because they had not been informed of their procedural safeguards, and Petitioners did not agree to the termination of services and their relationship with DCPS.<sup>24</sup>

#13. Following a meeting with DCPS in February 2011 where Petitioners were advised of the Least Restrictive Environment ("LRE") process and their right to submit documentation to the LRE committee for a LRE determination, Petitioners compiled various documents in support of their continuing efforts to secure a residential placement for Student. On 03/11/11, Petitioners provided DCPS with a packet of the following documents accompanied by a letter that listed the documents and gave a brief description of the contents of the documents. The documents were as follows: (1) a Diagnostic and Treatment Summary from Dr. d'Alelio, Student's community based psychologist, dated 02/17/11, that described Student's deterioration, the clinician's professional observations of Student, the negative impact of \_\_\_\_\_ behavioral model on Student, and Student's need for residential placement; (2) Petitioners' account of Student's disturbing behaviors at home and in the community; (3) a letter from Dr. Ernst, Student's treating psychiatrist for the past seven years, stating Student's history of medication management; (4) the psychiatric hospital discharge summary from November 2010 when Student was hospitalized as a result of anxiety associated with school at \_\_\_\_\_ (5) psychological test results dated July 2010; and (6) the class work produced by Student that precipitated his hospitalization in November 2010.<sup>25</sup>

#14. On 05/24/11, DCPS convened a meeting to conduct an annual review of Student's IEP that was due to expire on 05/25/11.<sup>26</sup> In attendance were Petitioners, two representatives from DCPS, and the IEP and Testing Coordinator at \_\_\_\_\_. No representatives from the private residential school attended the meeting because up until the time of the meeting, Petitioners were not informed that a new IEP would be developed for Student on that date.<sup>27</sup> At the meeting, Petitioners again informed DCPS of Student's suspected disability of Asperger's Disorder.<sup>28</sup> Petitioners requested that Student be reevaluated<sup>29</sup> and DCPS informed Petitioners that an evaluation or reevaluation was not necessary.<sup>30</sup> Petitioners again sought help and guidance from DCPS on how to obtain public funding for the private residential school that Student was attending, or in the alternative, an appropriate therapeutic day program or residential school that could meet Student's educational needs, and for the first time were advised by DCPS that

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<sup>24</sup> Mother.

<sup>25</sup> P-18, Mother.

<sup>26</sup> P-33, P-34, DCPS nonpublic unit program manager.

<sup>27</sup> Mother, DCPS progress monitor.

<sup>28</sup> Mother.

<sup>29</sup> Mother.

<sup>30</sup> DCPS nonpublic unit program manager.

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applications for residential placement had to go through the Department of Mental Health.<sup>31</sup> At the 05/24/11 IEP meeting, Petitioners indicated their intent to keep Student at the private residential school until DCPS could provide Student with an appropriate educational placement.<sup>32</sup>

#15. On 05/24/11, DCPS issued a Prior Written Notice ("PWN") that stated that residential placement would not be considered without formal assessments, evaluations or reports conducted by DCPS; that residential placement was not approved; that DCPS would submit referrals for day programs that could better service Student's needs; and that the IEP Team had reviewed Student's outside evaluations, report cards, progress reports and teacher and parent reports.<sup>33</sup>

#16. At the annual IEP meeting on 05/24/11, DCPS failed to develop an IEP that reflected Student's needs based on current school information and assessments previously provided to DCPS by Petitioners; DCPS adopted a prior IEP without any discussion or assessment of Student's educational needs, i.e., DCPS merely rubberstamped Student's prior IEP and affixed a new date to it; DCPS failed to determine if additional assessments were needed or set up an evaluation schedule or conduct its own evaluations, even though Student was available for testing over the summer of 2011;<sup>34</sup> DCPS failed to consider whether or not was the appropriate site location and placement; DCPS failed to consider Dr. D'Alelio's letter and Dr. Holman's report when DCPS represented that could meet Student's needs;<sup>35</sup> and DCPS failed to provide Petitioners with proper notice of why Petitioners' request for residential placement at public expense as the Least Restrictive Environment was rejected since the PWN did not mention the Department of Mental Health's role in the residential placement process. DCPS unilaterally determined that residential placement was not warranted and that a day program would better suit Student's needs without soliciting the input of relevant personnel with knowledge of Student's academic and functional performance.

#17. Following the 05/24/11 meeting, DCPS sent referrals to two local day schools accompanied by a copy of Student's 05/24/11 IEP. One of the two day schools did not accept Student for placement<sup>36</sup> and the other day school was not appropriate for Student because it was not based on an IEP that accurately reflected Student's current needs and because of the mixed population of students with acting out, mood and conduct disorders and because the therapeutic milieu was similar to with group consequences.<sup>37</sup> At that time, it was necessary for Student not to have punitive consequences for his or other's behaviors.<sup>38</sup>

#18. On 11/08/11, Petitioners provided DCPS with a copy of a Diagnostic Statement and Treatment Summary authored by Student's community based treating psychologist, with a

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<sup>31</sup> P-16-3, DCPS progress monitor.

<sup>32</sup> Mother.

<sup>33</sup> P-23.

<sup>34</sup> Mother.

<sup>35</sup> DCPS non-public unit program manager.

<sup>36</sup> Mother, DCPS non-public unit program manager.

<sup>37</sup> Student's treating psychologist.

<sup>38</sup> Student's treating psychologist.

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request that DCPS review the document.<sup>39</sup> The document documented Student's history with the clinician, explained each diagnosis, informed of Student's progress at the private residential school, emphasized the importance of a treatment milieu that specializes in Autism Spectrum Disorders and made a recommendation for continued residential placement.

#19. At the resolution meeting on 12/21/11, DCPS agreed to conduct evaluations of Student in response to Petitioners' allegation that DCPS had failed to review the Diagnostic Statement and Treatment Summary that had been provided to DCPS on 11/08/11. DCPS also offered to convene an IEP review meeting to review the IEP and all relevant data, but Petitioners declined the invitation, refusing to resolve the complaint in a piecemeal manner.<sup>40</sup>

#20. At the current time, it is necessary for Student to receive intensive social skills training after school as well as during school hours due to Student's inability to transfer skills from one environment to another.<sup>41</sup> It is also necessary for Student to be in an educational program specifically geared for children, such as Student, who exhibit traits in the autism spectrum. A punitive behavioral management model will not meet Student's educational needs.<sup>42</sup>

#21. The private residential school that Student has been attending since January 2011 is an appropriate educational placement for Student for the 2011-2012 school year. Student fits the profile of children attending the private residential school, i.e., Asperger's Disorder, non-verbal Learning Disability or Pervasive Developmental Disorder, with behaviors stemming from the inability to regulate emotion, anxiety and frustration.<sup>43</sup> Student experiences anxiety on a daily basis, from nervous energy to total distress; he hears voices; he misses social cues 50% of the time and his social skills are impaired by his anxiety. The programming at the private residential school is individualized for Student and social skills constitutes a core class and is integrated into the curriculum throughout the day and is taught in the academic and non-academic environment.<sup>44</sup> The strategies used include positive interventions and no consequences for failing to do something that is required. The programming at the private residential school meets Student's current educational needs and Student is making some progress there in terms of social skills development both inside and outside of the classroom despite Student still experiencing heightened anxiety and episodes of attention seeking and running away behavior.<sup>45</sup>

#22. Student has been able to translate his progress at the private residential school into the community in that he is better able to cue on things and see the effects of social skills training, but only if he was not under stress. Although Student is stable, happier and more confident as a result of his residential placement,<sup>46</sup> he still de-compensated at summer camp in 2011 to the point of rocking and punching himself when presented with group consequences.<sup>47</sup>

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<sup>39</sup> P-29.

<sup>40</sup> DCPS-10.

<sup>41</sup> Clinical director at the private residential school.

<sup>42</sup> Clinical director at the private residential school, Student's treating psychologist.

<sup>43</sup> Admissions Director at the private residential school.

<sup>44</sup> Academic Director, and Clinical Director at the private residential school.

<sup>45</sup> Academic Director at the private residential school.

<sup>46</sup> Mother.

<sup>47</sup> Student's treating psychologist.

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#23. Petitioners made tuition payments to the private residential school for the 2011-2012 school year. For the first semester of the 2011-2012 school year, Petitioners paid \_\_\_\_\_ in tuition, \_\_\_\_\_ in airfare and \_\_\_\_\_ for roundtrip car trips to the private residential school. For the second semester, Petitioners paid \_\_\_\_\_ in tuition expenses at the private residential school.<sup>48</sup>

### 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 review and consider independent evaluation data; specifically, an independent psychological evaluation dated July 2010 from Dr. Holman that was provided to DCPS on or about March 2011 and a Diagnostic Statement and Treatment Summary from Dr. d'Alelio dated October 2011 that was provided to DCPS on 11/08/11.

In a commentary to regulations implementing the 2006 IDEA Amendments, the Office of Special Education and Rehabilitative Services ("OSERS") within the United States Department of Education, stated that unless parents express a clear intention of keeping their child enrolled in a private school or a school located within another district, the school district of residence is responsible for making a FAPE available to that child. See *Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46540-01, 46593 (Aug. 14, 2006), Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private School, (January 1, 2007), 47 IDELR 197.

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<sup>48</sup> Father.

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Petitioners always expressed a clear intention of maintaining a collaborative working relationship with DCPS in order to secure an appropriate IEP and school placement for Student. From Kindergarten through December 2010, Student had been placed and funded by DCPS in nonpublic schools. In November 2010, after Student was hospitalized subsequent to an incident that happened at school, Petitioners contacted DCPS and indicated that Student's then current school, School, was an inappropriate school placement for Student. In December 2010, Petitioners removed Student from DCPS and unilaterally placed him at a private residential school at their own expense; however, the unilateral placement was on a temporary basis in response to a crisis situation precipitated by the punitive programming model at Student's school. The Hearing Officer concludes that from December 2010 forward, DCPS was at all times responsible for making a FAPE available to Student.

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. 300.502(c)(1). And, as part of any reevaluation of the child, the IEP Team must review existing evaluation data on the child, including evaluations and information provided by the parents of the child in order to determine the educational needs of the child. 34 C.F.R. 305(a)(1), 300.305(a)(2)(i)(B). Additionally, the IEP Team must meet annually to review and revise Student's IEP as appropriate to address information about the child provided by the parents. 34 C.F.R. 300.324(b).

Petitioners met their burden of proof with respect to the independent psychological evaluation dated July 2010. Petitioners did not divorce themselves from DCPS when they withdrew Student from DCPS in late December 2010. The unilateral placement occurred so that Student could be stabilized following a mental health crisis precipitated by events that occurred in school. The evidence was overwhelming that Petitioners intended to continue working with DCPS to secure an IEP that reflected Student's current educational needs and a school placement that could implement an appropriate IEP. To that end, Petitioners maintained constant contact with DCPS, asked for meetings, evaluations, an appropriate IEP, and an appropriate school placement that included residential placement.

In March 2011, Petitioners provided DCPS with a copy of an independent psychological evaluation dated July 2010. That evaluation included behavioral observations, intellectual test results, academic achievement test results, personality/emotional test results, and recommendations for programming at home and in school. That evaluation should have been reviewed by DCPS and discussed at the IEP Team meeting on 05/24/11. It was not and DCPS' failure to do so was a violation of the IDEA. The harm was that the IEP was not developed based on current and relevant data that should have been considered in order to determine Student's educational needs. Student was denied a FAPE because Petitioners were significantly impeded in their ability to develop an appropriate IEP for Student and secure a school placement for him.

Petitioners did not meet their burden of proof with respect to the Diagnostic Statement and Treatment Summary dated October 2011 that was authored by Student's treating

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psychologist and provided to DCPS in November 2011 with a request that DCPS review the information. At the resolution meeting in late December 2011, in response to the specific allegation that DCPS had failed to review data, DCPS agreed to conduct evaluations of Student in order to collect more current data and appropriately place Student, and Petitioners refused. Student was not denied a FAPE considering that only four weeks of time had elapsed between the time the data was received by DCPS and the time the complaint was filed, which is not an unreasonable amount of time to convene a meeting, factoring in the Thanksgiving holiday vacation schedule. Once litigation began, Petitioners refused to engage in any meetings with DCPS where a review of the data could take place.

The second issue to be determined is whether Student was denied a FAPE by DCPS failing to provide Student with an appropriate Individualized Education Program ("IEP") on 05/24/11 (a) that accurately reflected Student's current levels of performance, (b) that had measurable social/emotional goals that could be achieved in one year, (c) that had a reading goal that was specific enough to be measured in terms of content and delivery of material, (d) in that DCPS failed to consider the potential harmful effects and quality of services that Student needed before deciding not to provide Student with a residential program as the least restrictive setting, (e) that had appropriate social/emotional goals to address social skill deficits, (f) that had measures to evaluate progress towards achieving social/emotional goals, (g) that considered the results of an independent psychological evaluation dated July 2010 that was received by DCPS in March 2011 and took this information into account when the current levels of performance, needs of Student and type of program for Student were developed, (h) in that DCPS failed to consider any progress reports from the private residential school that Student had been attending since January 2011, and (i) that provided Student with a residential program as the least restrictive environment.

"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).

The IEP is a written statement that is developed, reviewed, and revised by a properly convened IEP Team and includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability; and a statement of the special education and related services and supplementary aids and services and program modifications. 34 C.F.R. 300.320.

A properly convened IEP Team consists of the parents of the child; not less than one special education teacher of the child; a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction; a representative of the public agency who is knowledgeable about the general education curriculum; a representative of the public agency who is knowledgeable about the availability of resources in the public agency;

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and an individual who can interpret the instructional implications of evaluation results. 34 C.F.R. 300.321(a).

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental and functional needs of the child. And, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. 300.324(a).

Petitioners met their burden of proof on this issue. Petitioners had the statutory right to have evaluations and reports reviewed, discussed and considered in the development of the IEP. The IEP that was developed on 05/24/11 was but a rubber stamp of the previous IEP. There was no discussion of Student's needs or review of current data or evaluations. Development of the IEP did not take into account the input of Petitioners or teachers, Student's progress at his current private residential school or any of the reports and evaluations sent by Petitioners to DCPS in March 2011; all of which were relevant to the development of the IEP.

At the meeting on 05/24/11, Petitioners requested residential placement and DCPS denied Petitioners' request for residential placement without any discussion or determination of the potential harmful effects and quality of services Student needed before deciding not to provide Student with a residential program as the least restrictive setting. See 34 C.F.R.300.116(d) which states that the team must consider the potential harmful effects and quality of services that a child needs when the educational placement is being determined. DCPS' failure to revise Student's IEP on the basis of current data and observations was a violation of the IDEA. Since November 2010, Petitioners had been working cooperatively with DCPS to develop an appropriate IEP for Student in the manner mandated by the IDEA, i.e., a properly convened team that reviews and discusses all relevant data. This never occurred. The Hearing Officer concludes that the IEP that was developed on 05/24/11 was 100% inappropriate. DCPS violated the IDEA and the harm was that Petitioners were significantly impeded in their ability to participate in decision-making process regarding the provision of a FAPE to their child. Student's right to a FAPE was also impeded.

The third issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with a placement/school program for the 2011-2012 school year that could meet his social/emotional and educational needs; specifically, the school-wide behavior program at

School negatively impacted Student's social/emotional deficits and placement at Frost School for the 2011-2012 school year was based on an inappropriate IEP.

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 education and are provided in conformity with an IEP. 34 C.F.R. 300.17.

"Educational placement" has three components: (1) the educational services 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*

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*Fisher*, 21 IDELR 992 (1994). The educational placement is where the IEP is implemented. 34 C.F.R. 300.116.

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 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.

Petitioners met their burden of proof that DCPS failed to provide Student with an appropriate educational placement for the 2011-2012 school year. The Hearing Officer has already determined that the last IEP developed on 05/24/11 was 100% inappropriate because it was not based on current and relevant data, it was not developed by an IEP Team of relevant and necessary personnel, it was developed without discussion of Student’s functional and academic needs, and it was but a rubberstamped copy of the previous IEP. Failure to develop an appropriate IEP for Student necessarily resulted in a failure to provide an appropriate school because the educational placement is based on the IEP. Student was denied a FAPE; his right to a FAPE was impeded. It is impossible for the Hearing Officer to determine whether or not Frost was an inappropriate placement because the IEP in existence was not appropriate.

The fourth issue to be determined is whether Student was denied a FAPE when DCPS issued a Prior Written Notice on 05/24/11 (a) that was erroneous in stating that all of Student’s records had been reviewed when reports and evaluations from Student’s medical health providers and teachers had not been reviewed by DCPS or discussed at any Multidisciplinary Team (“MDT”) meeting, (b) that failed to address Petitioners’ request for a referral to the DC Department of Mental Health (“DMH”) because Petitioners had requested a residential placement and were informed that the process included a referral to DMH, (c) that erroneously informed Petitioners that only DCPS evaluations and data would be considered as the basis for determining the need for a residential placement, and (d) that failed to provide Student with an appropriate nonpublic school program for the 2011-2012 school year.

Written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The notice must include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency’s proposal or refusal. 34 C.F.R. 300.503.

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The Least Restrictive Environment (“LRE”) determination is part of the educational placement decision and is based on the child’s IEP. 34 C.F.R. 300.116. As part of any reevaluation of the child or development of the IEP, the IEP Team must review existing evaluation data on the child, including evaluations and information provided by the parents. 34 C.F.R. 300.305, 34 C.F.R. 300.324. Therefore, the IEP and LRE determination must be based on all relevant data, including evaluations and information provided by the parents.

The Prior Written Notice (“PWN”) issued by DCPS on 05/24/11 was erroneous in stating that all evaluations, reports and records had been reviewed. At the IEP meeting on 05/24/11, the IEP Team did not review any records, reports or evaluations. The PWN also erroneously informed parents that only DCPS data would be considered as a basis for the LRE determination of a residential placement. This misinformation caused harm to Petitioners because they relied and trusted in DCPS to correctly guide them through the residential placement process, a goal they had been trying to achieve since November 2010. As well, the PWN failed to state that residential placement had been rejected by DCPS because a referral had not been made to the Department of Mental Health. All of this misinformation provided by DCPS in the PWN significantly impeded Petitioners’ ability to participate in the decision-making process regarding the provision of a FAPE to Student.

The PWN issued on 05/24/11 was not per se defective by not indicating a school placement/location of services. At the meeting on 05/24/11, DCPS indicated that it would send out referrals for a therapeutic day placement for Student, and DCPS followed through with that. On 05/24/11, there was still time for DCPS to identify a school placement/location of services prior to the start of the 2011-2012 school year. Although there was no subsequent PWN indicating a school placement/location for Student, the failure to subsequently issue a PWN with that information does not render the 05/24/11 PWN defective or insufficient in that respect.

Petitioners met their burden of proof on three of the four elements of this allegation. Student was denied a FAPE due to DCPS’ misinformation and failure to comply with the IDEA.

The fifth issue to be determined is whether DCPS denied Student a FAPE by issuing a Prior Written Notice (“PWN”) on 01/26/11 (a) that failed to describe all of DCPS’ proposed and refused actions and the reasons for the proposed and refused actions, and failed to describe other options the team considered and rejected, and (b) that violated procedural safeguards by asking Petitioners to provide consent when Petitioners had not been provided the necessary information to make informed consent.

Procedural safeguards notice must include a full explanation of all the procedural safeguards available under the IDEA relating to...prior written notice; parental consent...and the opportunity to present and resolve complaints through the due process complaint and State complaint procedures. 34 C.F.R. 300.504(c). Under the IDEA, consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought and the parent understands and agrees in writing to the carrying out of the activity for which the consent is sought. 34 C.F.R. 300.9

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Petitioner failed to meet her burden of proof that Student was denied a FAPE by DCPS issuing a PWN on 01/26/11 that failed to describe all of DCPS' proposed and refused actions, the reasons for the proposed and refused actions, and the other options the team considered and rejected. The PWN was issued by DCPS in response to Petitioners withdrawing Student from DCPS and unilaterally placing him in a private residential school. It recapped what had happened at prior meetings and it accurately stated what had taken place with respect to the unilateral placement of Student. At a meeting in December 2010, Petitioners were advised by DCPS that there were programs available at the School that could meet Student's educational needs, but Petitioner declined them and unilaterally placed Student at the private residential school at their own expense.

The Completion of Services form that accompanied the PWN asked for Petitioners' signature to consent to the termination of educational services by DCPS. At the meeting preceding receipt of the PWN, Petitioners were not informed that they would receive this notice. There was no information given to Petitioners with the Completion of Services form about the purpose of the PWN and the significance of signing it. DCPS violated the IDEA by sending Petitioners the Completion of Services that asked for Petitioners' consent when Petitioners had not been provided with their procedural safeguards. However, Petitioners did not sign the form as they were savvy enough to surmise that their signatures would be an agreement to the termination of services by DCPS, and that was not their intent. Petitioners failed to prove harm by this violation and did not meet their burden of proof that Student had been denied a FAPE as a result of DCPS' actions or inactions.

The sixth issue to be determined is whether DCPS denied Student a FAPE by failing to allow Petitioners to have meaningful participation in MDT meetings since January 1, 2011; specifically, (a) by failing to provide Petitioners with sufficient or accurate information about the Least Restrictive Environment ("LRE") process and the residential placement process, and (b) by failing to consider the concerns of the parent for enhancing the education of the child and failing to consider the results of the most recent evaluation of Student.

In developing the IEP, the IEP Team must consider the concerns of the parents for enhancing the education of their child; and the results of the initial or most recent evaluation of the child. 34 C.F.R. 300.324(a).

Petitioners met their burden of proof. Petitioners met with DCPS on many occasions, beginning in November 2010 and ending on 05/24/11. At each of the meetings, Petitioners made clear that they wanted to work with DCPS to develop an IEP that was appropriate for Student and an IEP that reflected his need for a residential placement. At each of the meetings, Petitioners were presented with confused and/or inaccurate information about the criteria necessary for development of an IEP for Student; about the steps that had to be taken to determine the LRE for Student; and about the impact of the unilateral placement on DCPS' responsibility to reevaluate Student, develop an appropriate IEP and make an offer of FAPE available to Student. At all times, DCPS did consider the concerns of Petitioners about enhancing the education of their child; however, the misinformation and lack of guidance that Petitioners continually received from DCPS beginning in November 2010 significantly impeded

## Hearing Officer Determination

Petitioners' ability to participate in the decision-making process regarding the provision of FAPE to Student.

From January 2011 forward, Petitioners were misinformed and given the run around by DCPS about whether Student could be funded by DCPS for a residential placement. Despite Petitioners' repeated requests to DCPS since October/November 2010 for an IEP that more accurately reflected Student's needs and an appropriate school placement, either a day or residential program, DCPS failed to convene a meeting where Student's educational needs were assessed by an appropriate IEP Team based on current educational performance, current teacher reports, and current evaluations. Petitioners fully cooperated with DCPS at all times, regularly initiated contact with DCPS and looked to DCPS for guidance on how to obtain an appropriate IEP and school placement for Student. At each step and juncture, Petitioners were given insufficient and incomplete information about what was required for Student to be evaluated and placed residentially. Student was denied a FAPE because Petitioner's right to participate in the decision-making process of a FAPE was significantly impeded by DCPS' actions and inactions.

### Relief

Pursuant to 34 C.F.R. 300.148(c), if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State Education Agency and Local Education Agency.

The cost of reimbursement may be reduced or denied if at the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or at least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of their rejection of the placement proposed by the public school, their reasons for it and their intent to enroll their child in a private school at public expense. 34 C.F.R. 300.148(d).

Petitioners complied with the notice requirements at the 05/24/11 IEP Team meeting by making it clear to DCPS that they were dissatisfied with DCPS' conduct in the development of an appropriate IEP and the determination of an appropriate school placement that included residential school as the Least Restrictive Environment that could meet Student's educational needs. At that meeting, Petitioners indicated their intent to keep Student at the private residential placement. DCPS indicated that residential placement was not warranted and would not be funded by DCPS and that a day school program would better serve Student's needs. DCPS issued a Prior Written Notice to that effect.

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Parents are entitled to reimbursement for private special-education services when the school district fails to provide a FAPE and the private-school placement is appropriate. *Forest Grove School District v. T.A.*, 557 U.S. 230, 52 IDELR 151 (2009). In order to be entitled to reimbursement, parents need only to demonstrate that the public school placement was improper under the IDEA and that the private school placement complied with the IDEA's minimum standard of appropriateness, namely that it was reasonably calculated to provide an educational benefit. Moreover, the Court held that, in cases where reimbursement is claimed, the private school placement does not need to meet all of the specific IDEA requirements applicable to educational placements made by public agencies. *Florence County School District Four v. Carter*, 501 U.S. 7, 20 IDELR 532 (U.S. 1993).

Since 05/24/11, DCPS has failed to provide Student with an appropriate IEP and a school placement based on an appropriate IEP. The day school placements offered by DCPS during the summer of 2011 were not appropriate because they were not based on a properly updated IEP. Moreover, one day school placement rejected Student and the other day school placement was inappropriate because it used the same punitive behavioral model that caused problems for Student while at Frost School. Therefore, DCPS did not make an offer of FAPE available to Student prior to the start of the 2011-2012 school year, thus impeding Student's right to a FAPE for the entire 2011-2012 school year. It is unlikely that appropriate formal and informal evaluative assessments can be conducted and used as the basis for development of an appropriate IEP prior to the end of this school year.

The private residential school is appropriate for the 2011-2012 school year, even though it is not approved by the OSSE for the District of Columbia. Student's educational needs are being met there and he is making progress. Student fits the profile of the students attending the private residential school and treatment is individualized for him. The school focuses on social skills and there are no punitive consequences for Student failing to do something. By all accounts of Petitioners and the staff at the private residential school, Student is receiving educational benefit even though Student still experiences heightened anxiety and acting out behavior. Student's educational progress has translated into the home and community environment as well.

Due to the lack of an appropriate IEP that is based on current evaluative data (Student's last IEP was updated in accordance with the IDEA in May 2010), the Hearing Officer specifically declines to determine the private residential school as Student's current educational placement, as was requested by Petitioners. That conclusion would necessarily impart Student's current need for continued residential placement, and there is insufficient objective evaluation data in the record for the Hearing Officer to draw that conclusion. A Multidisciplinary Team should convene to determine which evaluations are necessary to make a comprehensive assessment of Student's educational needs and the IEP Team should use all current evaluative data to determine a proper program, setting and location of services for Student. Without an IEP based on current evaluative data, the Hearing Officer cannot conclude that Student continues to require residential placement as the least restrictive environment where his needs can be met or that the private residential school is appropriate and the east restrictive environment that can meet Student's educational needs for the upcoming 2012-2013 school year.

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Petitioners have made tuition and related expense payments for Student to attend the private residential school during the 2011-2012 school year and the Hearing Officer determines that Petitioners are entitled to reimbursement for tuition and related expenditures at the private residential school for the 2011-2012 school year.

### **ORDER**

(1) Within 30 calendar days of Petitioners providing appropriate documentation to DCPS for tuition and related expenses paid by Petitioners to \_\_\_\_\_ Academy for the 2011-2012 school year, DCPS shall reimburse Petitioners for all of the following tuition and related costs as substantiated by documentation: \_\_\_\_\_ for tuition for the first semester of the 2011-2012 school year; \_\_\_\_\_ for tuition for the second semester of the 2011-2012 school year; \_\_\_\_\_ for airfare and \_\_\_\_\_ for roundtrip car trips to the private residential school; and DCPS shall reimburse Petitioners for any other substantiated expenditures for tuition and related expenses incurred, including transportation, paid for Student to attend \_\_\_\_\_ Academy for the 2011-2012 school year; and

(2) DCPS shall fund Student at \_\_\_\_\_ Academy for the remainder of the 2011-2012 school year, to include any outstanding tuition and related expense costs, as well as transportation, if all tuition and related expenses have not already been paid by Petitioners; and

(3) Within 10 school days of the date of this Order, DCPS shall initiate the scheduling of a Multidisciplinary Team meeting, in writing, for the purpose of (a) determining whether a Student Evaluation Plan is necessary, and (b) reviewing and revising Student's IEP as necessary; and

(4) No later than July 31, 2012, DCPS shall have convened an IEP Team that includes DCPS, Petitioners and all other relevant IEP Team members, and shall have developed an IEP that is based on current evaluative assessments, and shall have discussed and determined a location of services where the IEP can be implemented; and

(5) Any delay by Petitioners or Petitioners' representatives shall extend any deadline for DCPS, day for day.

**IT IS SO ORDERED.**

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**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 6, 2012

*/s/ Virginia A. Dietrich*  
Hearing Officer