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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

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through

Petitioner,

v

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

Date Issued: July 9, 2010

Hearing Officer: Kimm Massey, Esq.

Case No:

Hearing Date: June 22 and 29, 2010
Rooms: 4A and 5A, respectively

HEARING OFFICER DETERMINATION

BACKGROUND

Student is an year-old female, who is in the grade and has an IEP that entitles her to receive 7 hours per week of specialized instruction outside general education and 7 hours per week of specialized instruction in general education.

On March 31, 2010, Petitioner filed a Complaint against Respondent DCPS, alleging 12 separate claims against DCPS and seeking as relief, *inter alia*, an immediate appropriate placement, that DCPS conduct "necessary evaluations," and a meeting to review the evaluations, review and revise Student's IEP, and discuss and determine an appropriate placement.

On April 13, 2010, DCPS filed its Response to the Complaint. In its Response, DCPS asserted that Student's IEP is appropriate and included a transition plan based upon a transition assessment that was conducted with Student, that Student's school can implement the IEP and has implemented multiple interventions, including an attendance intervention plan, that Student is enrolled in Career Exploration classes and scored well on standardized testing, and that Parent does not attend IEP meetings and is unreachable and non-responsive.

On May 13, 2010, the hearing officer convened a prehearing conference and led the parties through a discussion of the issues, defenses, relief sought, and related matters. During the conference, Petitioner voluntarily withdrew a few of its claims, leaving the following 8 claims for determination: alleged failure to evaluate, alleged failure to perform a vocational assessment, alleged failure to develop and implement a transition plan, alleged failure to perform an FBA and develop and implement a BIP, alleged failure to provide an appropriate placement, alleged failure to develop and implement an appropriate IEP, alleged failure to provide special education services, and alleged failure to invite Parent and child to the IEP meeting for the current IEP. The hearing officer issued the Prehearing Order on May 18, 2010.

On May 27, 2010, Petitioner filed a Letter Motion for Continuance on grounds of Petitioner's counsel's extended illness and hospitalization.[1] On June 3, 2010, the hearing officer issued an Interim Order on Continuance Order that contained the Chief Hearing Officer's signature and reset the due process hearings for this case to June 22 and 29, 2010.

By their respective cover letters dated May 24, 2010, Petitioner disclosed 10 documents (Petitioner's Exhibits 1 through 10), while DCPS disclosed 14 documents in its initial disclosure (DCPS-1 through DCPS-14) and an additional 3 documents in its supplemental disclosure (DCPS-15 through DCPS-17).

On June 15, 2010, Petitioner filed another Five-Day Disclosure that contained the same documents as its May 24,2010, but also included additional witnesses that were not listed in its previous disclosure.

On June 22, 2010, the hearing officer convened the due process hearing for this case.[2] Petitioner's disclosed documents and DCPS-1 through DCPS-16 were admitted into the record without objection. However, Petitioner objected to DCPS-17 on the ground that it did not concern Student, and DCPS withdrew the document on the same ground. Thereafter, Petitioner's counsel advised that Petitioner was not prepared to seek a private school remedy and was, therefore, requesting a meeting to discuss and determine a placement for Student. DCPS promptly moved for dismissal with prejudice on Petitioner's placement claim. The hearing officer denied the motion on the ground that the claim and the requested remedy were two separate matters. Hence, the fact that Petitioner was unprepared to move forward on the requested relief did not mean that Petitioner was unable to meet its burden of proof on the claim itself.

During the course of the hearing, DCPS objected to the testimony of one of Petitioner's witnesses because although the witness was disclosed in Petitioner's June 15, 2010, which Petitioner did not have leave to file, the witness was not disclosed in Petitioner's May 24, 2010 disclosure. The hearing officer ruled that Petitioner would be limited to its May 24, 2010 disclosure. However, the hearing officer nevertheless allowed the witness to testify because the witness at issue was Student's grandmother and her name was listed on Student's most recent IEP, which the hearing officer determined reduced any prejudice to DCPS because DCPS was

[1] Petitioner's initial Letter Motion for Continuance was unsigned; however, upon the hearing officer's request, Petitioner's counsel filed a signed Letter Motion for Continuance with the SHO on June 7, 2010.
[2] Counsel for each party and the witnesses for each party are listed in the Appendix that accompanies this decision.

aware of the grandmother's involvement in Student's education. After Petitioner presented its three witnesses and rested its case, the hearing officer adjourned the hearing.

On June 29, 2010, the hearing officer reconvened the due process hearing to allow DCPS an opportunity to present its case. Once DCPS presented the testimony of its sole witness, the hearing officer received oral closing statements and brought the hearing to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 U.S.C. §§ 1400 et. seq.,, the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

ISSUES

The issues to be determined are as follows:[3]

1. Alleged failure to evaluate;
2. Alleged failure to perform a vocational assessment;
3. Alleged failure to develop and implement a transition plan;
4. Alleged failure to perform an FBA and develop and implement a BIP;
5. Alleged failure to provide an appropriate placement;
6. Alleged failure to develop and implement an appropriate IEP;
7. Alleged failure to provide special education services; and
8. Alleged failure to invite Parent and child to the IEP meeting for the current IEP.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is years old. During the 2009/10 school year, she repeated the grade for the second time.[4] Based on Student's academic performance and excessive absences during the 2009/10 school year, it appears she will have to repeat the grade for the third time during the 2010/11 school year.

[3] To the extent appropriate, separate issues will be grouped together for purposes of analysis and Conclusions of Law.

[4] Testimony of Student; testimony of Parent; testimony of SEC.

2. Student's current IEP is dated March 9, 2010. The IEP indicates that Student's primary disability is specific learning disability ("SLD"), and the IEP entitles Student to receive 7 hours per week of specialized instruction outside general education and 7 hours per week of specialized instruction in general education. The IEP also contains a Post-Secondary Transition Plan, which states that it is based on a Self-Directed search (Form R) SDS 4th Edition transition assessment, and requires Student to accomplish the following two annual transition goals: (i) use the internet, counselor, and other resources to explore at least 3 post-secondary institutions including their application requirements and process; and (ii) use the internet and other resources to explore at least 5 of the careers related to "her career code and similar career code," including job requirements. However, the transition plan states that Student has not currently chosen a career. The transition plan also indicates requires Student to use core classes and learning labs to support her transition goals. The IEP is signed by the SEC of Student's DCPS school, one of Student's regular education teachers, and Student's special education teacher. Although Student and Student's grandmother's names are listed on the IEP, neither of them signed the IEP.[5]

3. Student's previous IEP, dated March 18, 2008, classified Student as learning disabled ("LD") required Student to receive 7.5 hours per week of specialized instruction in special education and 7.5 hours per week of specialized instruction in general education. The IEP was signed by Parent and Student's grandmother, as well as various DCPS team members.[6]

4. During Student's most recent educational evaluation, dated January 6, 2010, the Woodcock Johnson III Tests of Achievement were administered to Student. The evaluator noted that Student's fluency with academic tasks was within the low average range, her performance in broad reading was low average, and her performance in mathematics and math calculation skills was very low. Student's performance on the assessment yielded the following grade equivalencies ("GE"): Broad Reading – 6.4 GE; Broad Math – 3.9 GE; Math Calculation Skills – 4.0 GE; and Academic Fluency – 5.9 GE.[7]

5. During the 2009/10 school year, DCPS administered an SDS Self-Directed Search, Form R 4th Edition, transition assessment to Student. The assessment was administered by Student's case manager. Although Student did not recognize the completed assessment booklet contained in the administrative record for this case, Student recalled answering questions about different careers back in February and the questions contained in the assessment booklet in the record sounded to Student like the type of questions she was asked in February.[8]

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[5] DCPS-1; Petitioner's Exhibit 7.
[6] Petitioner's Exhibit 8.
[7] DCPS-2.
[8] DCPS-14; testimony of Student; testimony of SEC.

6. As of March 25, 2010, Student's DCPS transcript revealed that Student was in the grade during the 2007/08, 2008/09 and 2009/10 school years, and that during those three school years she primarily earned grades of F in the classes she took, with the exception of two Ds and three Cs.[9]

7. Student's March 26, 2010 third advisory Progress Report for the 2009/10 school year indicates that Student received final grades of F in the World History/Geography 2, Learning Lab 3/Career Exploration 1, and Principles of Botany classes she took during the first semester, a final grade of D in the physical education class she took during the first semester, third advisory grades of F for the World History/Geography 1, Learning Lab 4: Career Exploration 2, and Geometry classes she was taking second semester, and a third advisory grade of D for the Biology I class she was taking second semester. The comments on the Progress Report indicate, *inter alia*, that Student had excessive absences, lacked initiative, did not complete class assignments, and did not participate.[10]

8. On March 31, 2010, Petitioner filed the Complaint that initiated this action.

9. On May 11, 2010, three of Student's teachers completed Progress Report forms for Student. All three forms indicate that Student was not attending class regularly, was coming to class late, was not brining materials to class when she came, and was not submitting/completing her homework. Moreover, Student's Learning Lab teacher indicated that Student was coming to her class "maybe once a week or less," Student's World History/Geography teacher indicated that Student has the potential to do better but was exhibiting "low motivation/effort [and] low self-esteem" in class, and Student's Geometry teacher stated her belief that "it's time to explore other avenues for [Student]."[11]

10. Problem Behavior Questionnaire forms completed by Student's teachers on May 7, 2010 and/or May 11, 2010 indicate that excessive absences are a major problem with Student. Although one teacher indicated that Student exhibited no behavioral problems when she attended class, another teacher indicated that Student had a habit of walking out of class when she did attend, and a third teacher indicated that Student sought attention from peers, had self-esteem problems and was susceptible to negative peer influences. A DCPS social worker provided these forms to Student's teachers in an attempt to prepare an FBA for Student. However, on the three occasions the social worker attempted to observe Student, she was absent from class. Thereafter, at a May 13, 2010 meeting, Petitioner's advocate informed the social worker that they were not ready to agree to an FBA and asked the social worker not to move forward until a decision had been made.[12]

11. Student goes to school every day, except when she is sick, but Student does not go to class when she's at school. However, Student feels that she could do better with her class attendance if she put her mind to it. Student has experienced difficulty maintaining focus

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[9] Petitioner's Exhibit 4; *see also*, DCPS-5.
[10] DCPS-6.
[11] DCPS-8.
[12] DCPS-9, DCPS-12 and DCPS-13; Petitioner's Exhibit 1.

on the work in her classes, even when she's trying. All it takes is for one classmate to do one small thing to break her concentration, and sometimes her concentration on class work has been broken as a result of many of her classmates doing many different things in class. When this happens, Student gets up and leaves class. Student is of the opinion that she could use more help in class. She acknowledges that she plays a part in the problem, but feels the teachers will not help her. Even when she has her head down on the desk, the teachers just keep teaching as if she is not there. Student's history teacher tries to help her, but there are too many other students in the class. At this point, Student is embarrassed that she is still in the grade.[13]

12. Student often shuts down in her math class and either looks at her phone or puts her head on the desk. Student is of the opinion that she is below basic in math, but the other students seem to understand the work in that class. There is a second teacher in the class who is supposed to help Student, but he does not help her. Student does not know the second teacher's name, and he has never introduced himself to her although he has been in the class since the start of the school year. Student did not realize the teacher was supposed to help her until she attended a meeting at the end of May 2010 and it was explained to her that the second teacher was in that class to help her. This math class is 90 minutes per day, 5 days per week.[14]

13. Student has one special education class, which has a total of 7 special education students in it. The class is for 84 minutes for 5 days each week, and the students work on all subjects in the class. For the first semester of the 2009/10 school year, Student's special education class was Learning Lab 3: Career Exploration; for the second semester, her special education class was Learning Lab 4: Career Exploration. Student was also assigned to Learning Lab 3: Career Exploration and Learning Lab 4: Career Exploration classes for the 2008/09 school year.[15]

14. Student also has a second teacher in her history class. This teacher tries to help Student and Student tries her best to do the work in that class because she has a good teacher. This class is 90 minutes per day, 5 days per week.

15. Student was suspended approximately 3 to 4 times during the 2009/10 school year, with each suspension lasting about 2 days. Three of the suspensions were for being out of class and the other suspension was for not having on a uniform shirt. On March 24, 2010, Student was suspended for 3 days for using her cell phone during class and refusing to give the phone to an administrator. On April 8, 2010, Student was suspended for 2 days for disrupting the learning environment.[16]

16. Student was invited to attend her March 2010 IEP meeting by her case manager. Moreover, the SEC at Student's school urged Student to encourage her mother to attend the IEP meeting. Student's grandmother was invited to attend the meeting by Student's

[13] Testimony of Student.
[14] Testimony of Student.
[15] Testimony of Student; testimony of SEC; *see* DCPS-5.
[16] Testimony of Student; Petitioner's Exhibit 6; DCPS-11.

case manager via a phone call. The case manager was supposed to call the grandmother back, but the grandmother did not hear back from him.[17]

17. Student's March 9, 2010 Letter of Understanding, which indicates that as of March 9th Student had earned only 4 of the 24 Carnegie units she needs to graduate high school, contains Student's and Parent's current address.[18]

18. On March 1, 2010, Student's case manager sent a Letter of Invitation ("LOI") inviting Parent to attend Student's March 9, 2010 meeting to Student's address of record. However, Parent does not recall receiving the LOI.[19]

19. DCPS attempted to address Student's attendance problems by using daily progress reports, talking repeatedly to student and attempting to have parental conferences, and discussing the attendance issue extensively with Parent on one occasion. Indeed, the SEC spoke with Student about her attendance approximately weekly. However, none of these interventions worked for Student.[20]

20. After realizing in approximately April of 2010 that that some of her peers would be graduating at the end of the school year, including some of her friends, Student felt really bad about her own lack of progress and did not return to the school for the remainder of the school year.[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:

1. Vocational Assessment and Transition Plan

Under IDEIA, the IEP of a disabled child 16 years of age or older must contain a transition plan consisting of appropriate measurable postsecondary goals based upon age appropriate transition assessments, as well as the transition services needed to assist the child in reaching those goals. 34 C.F.R. § 300.320(b).

In this case, Petitioner asserts that DCPS failed to perform a vocational evaluation for Student and failed to develop and implement a transitional plan based on an appropriate vocational assessment. However, the evidence in this case demonstrates that in approximately February of 2010, Student's case manager administered a transition assessment to Student. The completed assessment is included in the administrative record for this case, and Student acknowledges that she took an assessment about careers that included the kinds of questions included in the

[17] Testimony of Student; testimony of grandmother.
[18] *See* DCPS-4.
[19] DCPS-16; testimony of Parent.
[20] Testimony of SEC.
[21] Testimony of SEC.

assessment in the record. Moreover, Student's current IEP contains a transition plan, which recites that it is based on the same type of vocational assessment that is in the record, and Student's course load included learning lab/career exploration classes. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving that DCPS failed to perform a vocational evaluation for Student and failed to develop and implement a transitional plan based on an appropriate vocational assessment.

2. Placement and IEP

IDEIA provides that a public agency must provide an appropriate educational placement for each child with a disability, so that the child's needs for special education and related services can be met. *See* 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. Moreover, if a disabled child is being educated in the regular education classrooms of the public education system, the child's' IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).

In this case, Petitioner challenges the appropriateness of Student's IEP and placement because Student has failed to make academic progress with her current IEP and placement. With respect to Student's IEP, the evidence in this case shows that Student's March 18, 2008 IEP provided for Student to receive 15 hours of specialized instruction, half in special education and half in general education. Under this IEP, Student ultimately received six Fs, one C and one D at the end of the 2008/09 school year, with the result that she had to repeat the 9th grade for the second time during the 2009/10 school year. During the 2009/10 school year, Student once again performed very poorly academically and will have to repeat the 9th grade for the third time in the coming 2010/11 school year. Student also exhibited an extreme truancy problem during the 2009/10 school year. Nevertheless, Student's March 9, 2010, which was developed near the end of the 2009/10 school year, provides Student with 14 hours per week of specialized instruction and does not contain any elements designed to address her truancy problem. Based on this undisputed evidence, the hearing officer concludes that Petitioner has met its burden of proving the inappropriateness of Student's March 18, 2008 and March 9, 2010 IEPs.[22]

With respect to Student's current placement, Petitioner failed to present any evidence at all regarding Student's performance at her DCPS school during the 2008/09 school year, other than evidence indicating that Student failed at the end of the year. As for the 2009/10 school year, although the evidence tends to indicate that Student had difficulty maintaining focus in her general education classes during the 2009/10 school year, it is unclear whether Student merely required more special education classes at her current placement or another placement altogether. The record is wholly devoid of evidence, such as evaluation data or expert testimony, which proves that Student requires a different type or category of placement than her current DCPS school. Moreover, although the hearing officer has determined herein that Student's 2008 and 2010 IEPs were inappropriate, Petitioner failed to present any evidence proving what an appropriate IEP would contain and whether or not Student's current placement could implement

[22] Although Student's current March 9, 2010 IEP indicates that Student's previous IEP was issued on March 18, 2009, the March 18, 2009 IEP was not submitted by the parties for inclusion in the administrative record for this case and has not been considered by the hearing officer in connection with this HOD.

such an IEP. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving its inappropriate placement claim. Nevertheless, as the hearing officer intends to order DCPS to convene an IEP meeting so that Student's IEP team can develop an appropriate IEP for Student, the hearing officer will also order DCPS to discuss and determine an appropriate placement to implement the new/revised IEP.

3. Provision of Services/Implementation of IEP

IDEIA requires DCPS to provide each disabled child with the special education and related services required pursuant to the child's IEP. *See* 34 C.F.R. § 300.17.

In this case, Petitioner has alleged that DCPS failed to provide special education services to Student. However, the evidence in this case proves that DCPS placed Student in Learning Lab classes during the 2009/10 school year for 7 hours per week each semester, and DCPS also provided Student with inclusion services in her math and history classes during the 2009/10 school year.[23] Although the evidence demonstrates that the math inclusion teacher did not provide Student with any specialized instruction, the evidence also demonstrates that the history inclusion teacher was available to provide specialized instruction to Student 7 hours per week. While the evidence of Student's excessive truancy makes clear that Student failed to take advantage of the services offered, the record is also clear that DCPS made the services available during the 2009/10 school year. As for the 2008/09 school year, Petitioner failed to present any evidence tending to prove that DCPS failed to implement Student's IEP, and the only relevant evidence of record indicates that DCPS provided Student with Learning Lab classes during the 2008/09 school year as well. Whether or not DCPS provided Student with inclusion services during the 2008/09 school year was not addressed by any of the documentary or testimonial evidence of record. Under these circumstances, the hearing officer concludes that Petitioner failed to meet its burden of proving this claim.

4. Alleged Failure to Evaluate, Perform an FBA, and Develop and Implement a BIP

Under IDEIA, DCPS must ensure that each disabled child is assessed in all areas related to the suspected disability. 34 C.F.R. § 300.304. If the disabled child's behavior impedes the child's learning or the learning of others, DCPS must consider the use of positive behavioral interventions and support, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2)(i). Moreover, where a disabled child's placement has been changed because of a violation of a code of student conduct, and it has been determined that the conduct in question was a manifestation of the child's disability, DCPS must either conduct an FBA and implement a BIP for the child or review and revise the existing BIP. 34 C.F.R. § 300.530. However, in this context, a change of placement has occurred only where the disabled child has been removed from school for more than 10 consecutive school days or has been subjected to a series of removals that total more than 10 school days in a given school year. 34 C.F.R. § 300.536.

In the instant case, Petitioner has asserted that the two suspensions of Student proven by documentary evidence in this case, as well as Student's truancy issues consisting of her going to school but not going to class, indicate the need for a clinical psychological evaluation or a

[23] *See* footnote 22, *supra*.

comprehensive psychological evaluation,[24] as well as an FBA. Petitioner also alleged in its Complaint that Student's negative behavior in school warrants an FBA and implementation of a BIP to address the behavior problem.

As an initial matter, the hearing officer notes that the IDEIA's provisions specifically relating to FBAs and BIPs are not applicable to this case because there is no evidence that Student has been subjected to a change in placement. On the other hand, the evidence in this case proves that Student's consistent failure to attend class has impeded her learning, and that DCPS has provided Student with several behavioral interventions and support to address her excessive truancy problem but those interventions have proven ineffective. As a result, the hearing officer is persuaded that additional evaluation data should be collected in an attempt to determine whether there are other strategies that may appropriately be used to address Student's excessive truancy problem. Moreover, as the hearing officer has determined above that Student's recent IEPs were inappropriate, a new/revised IEP must be developed for Student and it stands to reason that additional evaluation data will help the IEP team to develop an appropriate IEP for Student. Therefore, the hearing officer will order DCPS to administer all components of a comprehensive psychological evaluation except an educational evaluation to Student, as well as any additional assessments indicated by the evaluation results, and to discuss and determine at Student's IEP meeting whether an FBA and BIP are warranted. The hearing officer declines to order an educational reevaluation for Student because the evidence in this case proves that DCPS conducted an educational evaluation of Student on January 6, 2010.

5. Inclusion of Parent and Student in IEP Meeting

IDEIA provides that a disabled child's IEP team must include the child's parents and, whenever appropriate, the child with a disability. Hence, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate in the meeting. Moreover, when transition goals and services will be considered at the IEP meeting, the public agency must also invite the child to the meeting. *See* 34 C.F.R. §§ 300.321 – 300.322.

In the instant case, Petitioner has alleged that DCPS failed to invite Parent and Student to attend the IEP team meeting for Student's March 9, 2010 IEP. However, the evidence in this case proves that Student was invited to attend the meeting and that Student's grandmother, who attended Student's March 18, 2008 IEP team meeting, was at least preliminarily invited to the meeting. There is also documentary evidence tending to prove that a Letter of Invitation to the meeting was sent to Parent's and Student's current address on March 1, 2010. Although Parent denied receiving the LOI and blamed DCPS's failure to update its computer system to reflect her current address for the problem, there is documentary evidence in this case indicating that as of March 9, 2010, DCPS's computer system contained Parent's and Student's current address. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving this claim.

[24] Petitioner wavered at the due process hearing between requesting a clinical psychological evaluation and a comprehensive psychological evaluation, but it seemed by the end of the hearing that Petitioner was requesting a comprehensive psychological evaluation.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. Within 21 calendar days of the issuance of this Order, DCPS shall conduct all components of a comprehensive psychological evaluation, except an educational assessment, for Student, as well as any additional evaluations indicated by the evaluation results. In lieu of conducting the evaluation itself, DCPS may authorize Petitioner to obtain an independent evaluation by or before July 31, 2010.

2. Within 14 calendar days of DCPS's issuance of the evaluation report(s) or DCPS's receipt of Student's independent evaluation report(s), DCPS shall convene an IEP team meeting for Student to review Student's evaluation report(s), develop an appropriate IEP for Student for the 2010/11 school year, discuss and determine an appropriate placement for the implementation of said IEP during the 2010/11 school year, and discuss and determine whether an FBA and/or a BIP are warranted.

3. DCPS shall invite both Parent and Student to attend the IEP team meeting ordered in paragraph 2, above, by sending a Letter of Invitation addressed to Parent and Student to their current address and by also sending said LOI to the current or any newly-designated Petitioner's counsel.

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 USC §1415(i).

Date: 7/9/2010

/s/ *Kimm Massey*
Kimm Massey, Esq.
Hearing Officer