

District of Columbia
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Office of Review and Compliance
Student Hearing Office
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STUDENT HEARING OFFICE
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Confidential

STUDENT, through the legal guardian¹)
)
 Petitioner,)
)
 v.)
)
 THE DISTRICT OF COLUMBIA)
 PUBLIC SCHOOLS,)
)
 Respondent.)
)

Hearing Date: August 26, 2009

HEARING OFFICER DETERMINATION

Counsel for Petitioner: Donovan Anderson, Attorney at Law
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¹ Personal identification information is provided in Attachment A.

I. JURISDICTION

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 (“IDEIA”), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia (“District” or “D.C.”) Municipal Regulations (“DCMR”), re-promulgated on February 19, 2003; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. BACKGROUND

Petitioner is the parent of a -year-old, special education student (“Student”) who attends a District of Columbia middle school. Both Petitioner and the Student reside in the District of Columbia.

On July 17, 2009, Petitioner filed a Due Process Complaint Notice (“Complaint”) alleging that the District of Columbia Public Schools (“DCPS”) failed to (1) provide the Student an appropriate educational “program” because the Student’s current placement, a DCPS middle school, is unable to implement the Student’s individualized educational program (“IEP”).²

² At the due process hearing, counsel and this Hearing Officer engaged in a discussion of semantics over whether the site at which the Student receives educational instruction should be referred to as the “setting” or a “placement.” Counsel for DCPS, including counsel in this case, repeatedly insist that a placement is synonymous with the student’s IEP, and does not refer the physical location of instruction, i.e., a particular school. Hearing officers regularly refer to “placement” as the physical location of instruction, i.e., a DCPS school, a non-public school, or a residential facility. Counsel for petitioners regularly allege that a student’s “placement” is inappropriate, i.e., the physical location where the student receives instruction does not meet the student’s educational needs.

This Hearing Officer finds that the word “placement” refers to the physical location of instruction and is not synonymous with the Student’s IEP (although the IEP must specify the location for the provision of instruction). *See, e.g.*, 34 C.F.R. § 300.104 (entitled “Residential placement”); 34 C.F.R. § 300.115 (entitled “Continuum of alternative placements” and discussing alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, all of which are physical locations for instruction); 34 C.F.R. § 300.116 (stating placement is determined by the child’s IEP but must be the least restrictive environment the use of the word “environment” is synonymous with “location” in part because this section states that the placement “must be as close as possible to the child’s home”); 34 C.F.R. § 300.328 (entitled “Alternative means of meeting participation” and referring to “placement” meetings as distinct from “IEP” meetings). The word “setting” appears to refer to a temporary or transitory location for instruction. *See* 34 C.F.R. § 300.530 (entitled “Authority of school personnel” and referring to discipline procedures in stating “[s]chool personnel . . . may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting or suspension, for not more than 10 consecutive school days.”). *See also*

Petitioner further alleged that the Student's IEP requires that the Student receive 27 hours of specialized instruction out of the general education environment, that the Student's current placement offers only an inclusion setting, and thus the Student's current placement cannot provide the Student with the level of structure and support she requires. Petitioner requested that this Hearing Officer place the Student in a school setting that can meet her needs.

Counsel for Respondent filed a timely Response to Petitioner's Due Process Complaint ("Response") on July 22, 2009. The Response did not meet the requirements of IDEIA, specifically 34 C.F.R. § 300.508, which states:

If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes--

- (i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
- (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
- (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- (iv) A description of the other factors that are relevant to the agency's proposed or refused action.

The Response simply asserted that the Student's placement is appropriate. It provided no rationale for why DCPS placed the Student at her current school or why it refused to place the Student in a school that could place the Student only in special education classes. Thus, the Response did not meet the requirements of 34 C.F.R. § 300.508.

Counsel for Petitioner, counsel for DCPS, and this Hearing Officer participated in a prehearing conference on July 21, 2009. On August 6, 2009, this Hearing Office issued a prehearing conference order memorializing the prehearing conference.

The due process hearing convened on August 26, 2009. Testifying at the hearing were Petitioner, the Student's elementary school teacher, the Special Education Coordinator, and a

D.C. Code § 38-2561.02 (c) (Entitled "Assessment and placement of students with a disability" and stating "[s]pecial education placements shall be made in the following order or priority . . .

(1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia."). Thus, in this Hearing Officer Determination, the word "placement" refers to the physical location where the Student receives academic instruction.

representative of the non-public school at which Petitioner requested this Hearing Officer place the Student. The parties' Five-Day Disclosures were admitted into evidence at the inception of the hearing. Petitioner carried both the burden of production and the burden of proof. The hearing concluded after three hours of testimony.

III. RECORD

Due Process Complaint Notice, filed July 17, 2009;
DCPS Response to Petitioner's Due Process Complaint, filed July 22, 2009;
Petitioner's Five-Day Disclosure, listing seven witnesses and including six proposed exhibit, filed August 19, 2009;
DCPS Five-Day Disclosure, listing nine witnesses and including three proposed exhibits, filed August 19, 2009;³
DCPS Waiver of Resolution Meeting dated July 16, 2009, but filed on July 23, 2009; and
Prehearing Conference Order, issued August 6, 2009.

IV. ISSUE PRESENTED

Whether DCPS denied the Student FAPE by failing to provide her an appropriate educational placement.

V. FINDINGS OF FACT

1. The Student is _____ year-old, ninth-grade, speech and language impaired student who attends a District of Columbia public school.⁴ The Student previously was enrolled in the communication-impaired program at a DCPS school for children with disabilities.⁵ The Student made significant educational progress at her prior school.⁶

2. The Student's general cognitive ability is within the low average range of intellectual functioning, as measured by her full scale IQ.⁷ Her overall thinking and reasoning abilities exceed those of about 19 percent of children her age (FSIQ = 87; 95 percent confidence interval=82-92).⁸ Academically, the Student is functioning below her age/grade expectancy in all academic areas.⁹

³ This disclosure was filed after the Student Hearing Office had closed for the day and thus is date-stamped August 20, 2009.

⁴ Petitioner Exhibit 2 (January 30, 2009, IEP). This IEP was developed at the Student's previous school. *See also* Petitioner Exhibit 6 (August 6, 2009, Multidisciplinary Team Meeting Notes).

⁵ Petitioner Exhibit 4 (November 13, 2008, Confidential Report of Psychological Evaluation).

⁶ Testimony of Petitioner.

⁷ Petitioner Exhibit 4.

⁸ *Id.*

⁹ *Id.*

3. The Student has the potential to function intellectually in the average range as evidenced by her strong scores in verbal comprehension and perceptual reasoning.¹⁰ The Student's ability to think with words is comparable to her ability to reason without words. Her verbal and non-verbal reasoning abilities are in the average range.¹¹

4. The Student's ability to sustain attention, concentrate, and exert mental control is in the low average range.¹² She performed better than about 21 percent of her peers of the same age in this area.¹³

5. The Student's ability in processing simple or routine visual material without making errors is in the low average range when compared to her peers.¹⁴ She performed better than about 9 percent of her peers on processing speed tasks.¹⁵ She performs much better on coding, which demands fine motor skills, short-term memory, and learning ability, than on symbol search, which demands attention to detail and mental control.¹⁶

6. The Student performs poorly on processing visual material quickly as compared to her non-verbal reasoning ability.¹⁷ Processing speed is an indication of the speed with which the Student can mentally process simple or routine information without making errors.¹⁸ Her weakness in processing speed makes comprehending novel information time consuming and difficult.¹⁹ As a result, the Student may have considerable difficulty structuring her own work without assistance, especially on tasks that require rapid scanning of visual information.²⁰ This weakness is typically seen in students with attentional difficulties.²¹

7. The Student's weakest performance is on verbal reasoning tasks for vocabulary tests that require her to explain the meaning of words presented in isolation.²² Her performance in this area was below most of her peers.²³

8. The Student demonstrates adequate gross and fine motor skills.²⁴

9. The Student exhibits some mild impulsivity and mild concerns with coping skills due to a low frustration tolerance.²⁵ Her episodes of impulsivity include verbal comments and

¹⁰ *Id.*
¹¹ *Id.*
¹² *Id.*
¹³ *Id.*
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.*
²⁰ *Id.*
²¹ *Id.*
²² *Id.*
²³ *Id.*
²⁴ *Id.*

moving away from her desk and around the room.²⁶ She is easily redirected and is responsive to adult support and redirection.²⁷ On occasion, she demands a lot of teacher attention in her drive to stay responsibly occupied and challenged.²⁸

10. The Student's needs require her continued placement in a small, well structured, and supportive learning environment that can address her needs for intensive, individualized instruction.²⁹ She would also benefit from psychological counseling to address coping and self-regulation concerns.³⁰

11. The Student has average performance in math calculation skills and low average performance in mathematics.³¹ She requires small group (five or fewer students), face-to-face instruction with constant prompting to keep her focused and regular checks to ensure she comprehends the instruction.³² She has great difficulty comprehending written language because of her severe problems with decoding and word problems must be read to her.³³

12. The Student has extreme difficulty discriminating between the letters in the set p,b,d, and q, and in the set r, n, and u.³⁴ She is beginning to confuse w and m.³⁵ She also has great difficulty blending sounds into words.³⁶ As reading assignments become more taxing in high school, she will need audio texts.³⁷

13. The Student has a classic dyslexic disability.³⁸ Her dyslexia is reflected in her reading and writing but has not affected her math other than word problems.³⁹ In her writing, the Student also has difficulty using pronouns that have similar meanings such as her and she, mine and me, they and them.⁴⁰ These are textbook signs of dyslexia.⁴¹

14. The Student needs audio books and will require dually certified teachers to graduate with a diploma.⁴² In order to read a sentence, she must figure out what the figures represent before she can even begin to decode them, and as a result her fluency drops

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Petitioner Exhibit 2, testimony of Petitioner.

³² Petitioner Exhibit 2.

³³ *Id.*

³⁴ *Id.*; testimony of Student's teacher.

³⁵ *Id.*

³⁶ Petitioner Exhibit 2.

³⁷ *Id.*

³⁸ Testimony of Student's teacher.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

dramatically.⁴³ The Student needs an audio accompaniment to the written material to visually process the written material and discern its meaning.⁴⁴ As a result, the Student's learning process requires an inordinate amount of time.⁴⁵

15. The Student's IEP identifies the Student as speech-language impaired. It requires that DCPS provide her 25.5 hours per week of specialized instruction to address deficits in reading, math, and written expression.⁴⁶ DCPS must provide the Student's instruction outside of the general education classroom.⁴⁷ The IEP requires that DCPS provide her one hour per week of speech-language therapy.⁴⁸

16. The Student requires extended school year ("ESY") services to prevent regression in critical academic skills.⁴⁹ During the summer 2009, the Student was to receive ESY in the form of 25.5 hours per week of specialized instruction, 1.5 hours per week of speech-language therapy, thirty minutes per week of behavioral support services, all of which were to be provided outside the general education classroom.⁵⁰

17. Throughout the 2008-2009 school year, the Student exhibited behavioral difficulties.⁵¹ She frequently got in trouble, both inside and outside of the classroom, and engaged in violent behavior and bullying.⁵²

18. On August 6, 2009, DCPS convened a meeting of the multidisciplinary team ("MDT") to discuss the Student's placement for the 2009-2010 school year.⁵³ The team decided to place the Student in a DCPS academy for ninth-grade students who require special education services.⁵⁴ The MDT specified that the Student will receive instruction in a self-contained classroom for learning disabled students, and her class will have as many as twelve students.⁵⁵ If the Student opts to receive a high school diploma, the MDT provided that she must take algebra I and four years of English, which are taught by a general education teacher in an inclusion classroom.⁵⁶ The student also will receive two hours of tutoring and Linda-Mood Bell.⁵⁷

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Petitioner Exhibit 3 (DCPS Report Card).

⁵² *Id.*

⁵³ Petitioner Exhibit 6 (August 6, 2009, MDT Meeting Notes).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Petitioner Exhibit 6.

19. At the meeting, Petitioner expressed her opposition to this placement because she believed it could not offer the Student the same program as she had at her prior school.⁵⁸ She objected that the classes at the new school would be too large to meet the Student's needs.⁵⁹ Through counsel, Petitioner rejected the Student's placement at the DCPS academy.⁶⁰ Nonetheless, the MDT placed the Student at the DCPS academy and issued a written prior notice of placement to Petitioner.⁶¹

20. The program at the DCPS academy is designed for students with learning disabilities, mental retardation, autism, and emotional disturbance.⁶² The Student would be placed in a classroom for learning-disabled students in which she would be the fourth student.⁶³

21. The Special Education Coordinator for the DCPS academy placed the Student in this class despite having no knowledge of the Student's disabilities.⁶⁴ The SEC reviewed the Student's IEP but has never seen her evaluations.⁶⁵

22. No DCPS program would be able to meet the Student's educational needs.⁶⁶ The Student needs very small group instruction with no distractions.⁶⁷ She does not need many repetitions but needs more than the ordinary classroom teacher would be able to provide.⁶⁸ The Student's teacher must determine that that she has mastered the material before moving on.⁶⁹ If the pace of instruction is slow enough for the Student to build a good foundation, she will retain her skills.⁷⁰ In the regular education classroom, the pace will be too swift for the Student to build the necessary academic foundation.⁷¹

23. The Student has been accepted at a non-public school in the District of Columbia that services children with the Student's disability.⁷² A reading intervention specialist would be in charge of the Student's educational program and may work with her individually.⁷³ The school also may assign the Student to a reading therapist.⁷⁴ The school provides assistive technology that would assist the Student her with writing.⁷⁵ A reading intervention team would

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*; DCPS Exhibit 3 (August 6, 2008, Prior Notice Letter).

⁶² Testimony of DCPS SEC.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Testimony of Student's teacher.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Testimony of Petitioner, representative of non-public school.

⁷³ Testimony of representative of non-public school.

⁷⁴ *Id.*

⁷⁵ *Id.*

assist the Student in the classroom, and provide tutoring, either during school or after school, that would complement the Student's classroom instruction.⁷⁶ The school also provides assistive technology such as books on iPod, and the Kurzweil text to speech program enables the Student to scan her books into a computer that will then read them to her.⁷⁷ If the Student has difficulty in a particular subject, such as earth science, she would receive a one-to-one tutor during that class.⁷⁸

24. Students at the non-public school have transition classes during all four years in high school.⁷⁹ The first class is personal awareness that helps students discuss their disabilities, their IEPs, and develop self-advocacy skills for use in school and in the community.⁸⁰ The second-year class is career awareness that helps students decide what they want to do after high school.⁸¹ The third year is an internship program with George Washington University where the students intern with various departments at the university.⁸² If the Student's do well in this program, they receive paid internships for the summer.⁸³ The school also offers college preparation, SAT preparation, and other classes to prepare students to continue their education.⁸⁴ If a student is not heading to college, the school provides a vocational transition program. In their last year of high school, the students review colleges, and develop an understanding of the college and job application process. As part of this program, the students learn how to ask for accommodations in filling out applications and preparing for job/educational interviews.

25. The non-public school can meet the Student's academic needs.⁸⁵ The Student will be in 100 percent special education classes with no more than eight students.⁸⁶ The Student will be able to earn a diploma even if all of her classes are outside the general education classroom.⁸⁷

VI. CREDIBILITY DETERMINATIONS

All of the witnesses were credible. The Student's teacher was particularly persuasive, and showed unusual dedication to the Student's academic success. The SEC honestly admitted that she lacked important information about the Student and accurately described the program at the proposed DCPS placement.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

VII. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005). Under IDEA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence. 20 U.S.C. § 1415 (i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

IDEA requires DCPS to assure a "free appropriate public education" ("FAPE") for all disabled children. 20 U.S.C. § 1412(1). A free, appropriate public education "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Bd. of Education v. Rowley*, 458 U.S. 176, 188-89, 73 L. Ed. 2d 690, 102 S. Ct. 3034 (1982) (citation omitted). DCPS is obligated to provide a FAPE "for all children residing in the state between the ages of 3 and 21, inclusive." 34 C.F.R. § 300.101.

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. 20 U.S.C. § 1415 (f)(3)(E)(ii). In other words, an IDEA claim is viable only if those procedural violations affected the student's substantive rights. *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia*, 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").⁸⁸

⁸⁸ See also, *C.M. v. Bd. of Educ.*, 128 Fed. Appx. 876, 881 (3d Cir. 2005) (per curiam) ("[O]nly those procedural violations of the IDEA which result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable."); *M.M. ex rel. D.M. v. Sch. Dist.*, 303 F.3d 523, 533-34 (4th Cir. 2002) ("If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations."); *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990) (en banc) ("[P]rocedural flaws do not automatically render an IEP legally defective") (citations omitted); *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992) (rejecting the proposition that procedural flaws "automatically require a finding of a denial of a FAPE"); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990) (rejecting an IDEA claim for technical noncompliance with procedural requirements because the alleged violations did not result in a "substantive deprivation" of student's rights); *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990) (refusing to award compensatory education because procedural faults committed by Board did not cause the child to lose any educational opportunity).

VIII. DECISION

Petitioner Established by a Preponderance of the Evidence that the DCPS Placement Denies the Student a Free, Appropriate, Public Education.

To the maximum extent possible children with disabilities should be educated with children who are non-disabled.⁸⁹ 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.⁹⁰

IDEA requires that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.⁹¹ In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.⁹² A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.⁹³

Here, the Student's IEP requires her to receive all academic instruction outside the general education classroom. Placement decisions must be made in conformity with the child's IEP.⁹⁴ Thus, it is the IEP that determines whether a placement is appropriate, not the other way around.⁹⁵ DCPS presented no evidence to show that its own IEP was somehow defective, and thus this Hearing Officer will not second-guess the judgment of the IEP team.⁹⁶ A court should not "disturb an IEP simply because [it] disagree[s] with its content."⁹⁷ The court is obliged to "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides."⁹⁸

Although the DCPS placement offers a program for special education students, it is confined to students with autism, learning disabilities, mental retardation, and emotional disturbance. Not only did the SEC, the DCPS person in charge of implementing the Student's IEP, place the Student in a program not suited to her needs because it is not targeted to students with speech or language impairments, the Student would have been forced to take classes in an

⁸⁹ 34 C.F.R. § 300.114 (a)(2)(i).

⁹⁰ *Id.* at 114 (a)(2)(ii).

⁹¹ 34 C.F.R. § 300.116 (c).

⁹² 34 C.F.R. § 300.116 (d).

⁹³ *Id.* at (e).

⁹⁴ 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Regs. Tit. 5 § 3013 (2006).

⁹⁵ *See Rourke v. District of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006).

⁹⁶ *See Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals).

⁹⁷ *Id.*

⁹⁸ *Id.*

inclusion classroom in order to graduate with a diploma.⁹⁹ Placing the Student in inclusion classes would be counter to her IEP.

Perhaps more egregious is that the SEC did not have access to the Student's evaluations. The SEC admitted that, as a result of not having reviewed the evaluations, she lacked sufficient information about the Student's needs to determine whether her proposed classroom would be appropriate.¹⁰⁰ Nonetheless, the DCPS placement does not have a program for speech-language impaired students. Thus, it was inappropriate for the Student.

Petitioner established by a preponderance of the evidence that DCPS failed to provide an appropriate placement for the Student.¹⁰¹ Moreover, DCPS presented no alternative placement that would have met the Student's needs.¹⁰² As a result, this Hearing Officer has no alternative but to place the Student in the non-public school that Petitioner requested.

⁹⁹ If the Student opts to receive a high school diploma, she will have to receive algebra I, and four years of English in inclusion classes.

¹⁰⁰ It is clear from the face of the Student's IEP that she speech-language impaired and not autistic, learning disabled, mentally retarded, or emotionally disturbed.

¹⁰¹ From all accounts at the due process hearing, the Student's previous school provided excellent instruction to the Student and met all of her educational needs. The placement provided by the MDT team starkly contrasted with her previous school in that the academy would not meet even the bare minimum of the Student's academic needs. *Cf. Kerkam v. McKenzie*, 882 F.2d 884, 886 (D.C. Cir. 1988) (citing *Rowley*, 458 U.S. at 195).

¹⁰² In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEA: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia. D.C. Code § 38-2561.02. Although this Hearing Officer was presented with only one alternative placement, and thus was unable to consider a hierarchy of placements, this placement is appropriate for the Student.

ORDER

Upon consideration of Petitioner's requests for a due process hearing, the parties' Five-Day Disclosures, and the testimony at the hearing, it is this 5th day of September 2009 hereby:

ORDERED that the Student shall be placed the non-public school at DCPS expense for the 2009-2010 and 2010-2011 school years;

IT IS FURTHER ORDERED that DCPS shall provide the Student transportation to the non-public school for the 2009-2010 and 2010-2011 school years at no expense to Petitioner; and

IT IS FURTHER ORDERED that this Order is effective immediately.

/s/ Frances Raskin

Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).

Distributed to:

Donovan Anderson, Attorney at Law
Kendra Berner, Attorney at Law
Hearing Office

APPENDIX A