

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

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

STUDENT,¹
through the Parent Surrogate,

Petitioner,

v.

District of Columbia Public Schools,

Respondent.

Date Issued: October 7, 2010

Hearing Officer: Virginia A. Dietrich

Case No:

Hearing Date: 09/29/10 Room: 2006

HEARING OFFICER DETERMINATION

BACKGROUND

Petitioner, the parent surrogate for Student, filed a due process complaint notice on 08/17/10, alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), when on 05/28/10, District of Columbia Public Schools ("DCPS") unilaterally issued a Prior Written Notice for Student to attend a public school for the upcoming 2010-2011 school year; a school that was deemed by Petitioner to be an inappropriate placement for Student. In the complaint, Petitioner also alleged that Student was entitled to compensatory education as a result of DCPS' failure to place Student at a private school for the 2010-2011 school year.

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the IDEIA, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEIA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

This Hearing Officer was assigned to the case on 08/19/10. A prehearing conference was held on 09/07/10, and a Prehearing Order that memorialized the substance of the prehearing conference was issued on 09/08/10.

¹ Personal identification information is provided in Appendix A.

Hearing Officer Determination

The due process hearing was a closed hearing that took place on 09/29/10. Petitioner was represented by Pamela Roth, Esq. and DCPS was represented by Laura George, Esq. Petitioner presented the following three witnesses: Petitioner; _____ program supervisor of _____ Programs; and Dr. Charles David Missar, clinical psychologist who qualified as an expert in child and adolescent psychology. DCPS presented one witness: _____ grade Coordinator at _____

Petitioner's Exhibits P-1 through P-11 as well as DCPS' Exhibits R-1 and R-2, were all admitted into evidence without objection.

Parties were offered the opportunity for settlement discussions, but both sides declined.

At the time the complaint was filed on 08/17/10, Student, a _____-year old boy who was a ward of the District of Columbia, had just completed _____ grade at _____ PG. At an Individualized Education Program ("IEP") Team meeting approximately three months prior to the filing of the complaint, DCPS issued a Prior Written Notice² that stated that Student would receive services at _____ a full-time special education public school located in the District of Columbia. There was no evidence in the record as to why the change of schools was necessary. At the IEP Team meeting on 05/28/10, Petitioner's educational advocate objected to placement at _____ but did not offer any alternatives to placement. In June 2010, Student was accepted for admission at _____ School in Annandale, VA. Subsequently, Petitioner filed a due process complaint alleging that DCPS had failed to provide Student with an appropriate placement when it issued a Prior Written Notice to _____ a school that Petitioner contends is an inappropriate placement for Student.

DCPS took the position that DCPS' transfer of Student to _____ a full-time special education public school for students with a primary disability of Emotional Disturbance ("ED") comports with D.C. Code 38-2561.02 that regulates the priority of placement to a DCPS school that is appropriate for Student. DCPS contends that _____ is a full-time therapeutic school with content-area and special education certified teachers, behavior technicians, teacher's aides, a short-term and a long-term de-escalation room, a Master's Degree level psychologist on staff, a class size of not more than 10 students per two staff members, and provides related services that are either integrated into the curriculum or offered as pull out services; and that _____ can meet Student's educational needs as specified in his 04/06/10 IEP that prescribes 28 hours/week of specialized instruction, 60 minutes/week of behavioral support services, and 60 minutes/week of speech and language services for Student who has an Emotional Disturbance ("ED") disability classification.

The only issue to be determined in this Hearing Officer Determination is as follows:

Whether DCPS failed to provide Student with an appropriate placement when it unilaterally issued a Prior Written Notice to _____ for the 2010-2011 school year?

² Pursuant to D.C.M.R. 5-3024, DCPS must provide written notice to the parent of a child with a disability before it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. See also 34 C.F.R. 300.503.

Hearing Officer Determination

Petitioner's request for relief was that the Hearing Officer determine that Student had been denied a FAPE as a result of DCPS' failure to provide Student with an appropriate placement at _____ and that DCPS place and fund Student at _____ School in Annandale, VA for the 2010-2011 school year, with transportation.

At the due process hearing, Petitioner withdrew the issue of compensatory education as well as her request for relief for compensatory education.

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 ward of the District of Columbia, having been committed to the Child and Family Services Agency in 2006. Petitioner is the parent surrogate for Student, having been appointed by Judge Nooter. (Testimony of Petitioner).

#2. When Student underwent a psychoeducational evaluation in February 2008, he was diagnosed with Disruptive Behavior Disorder NOS; Attention Deficit Hyperactivity Disorder ("ADHD"), Combined Type; Reading Disorder; Mathematics Disorder; Disorder of Written Expression; Neglect of a Child, Victim; R/O Mixed Receptive-Expressive Language Disorder; and R/O Phonological Disorder. At the time of the psychoeducational evaluation, Student was taking Concerta medication, was receiving special education services under the classification of Other Health Impaired and Specific Learning Disability, and his behavior problems in school while attending the _____ grade were described as hitting other children, using profanity, and difficulty with attention/concentration. Results of social, emotional, and behavioral testing revealed that Student continued to struggle with symptoms of ADHD, as well as aggression and conduct problems. Student was both physically and verbally aggressive at times, argumentative and easily annoyed. Educationally, the psychoeducational evaluation recommended a small classroom setting with a low student to teacher ratio, a behavior plan and counseling to assist in managing Student's ADHD and other behavioral problems, as well as speech and language therapy. (P-8).

#3. At the time the complaint was filed on 08/17/10, Student was a _____-year old special education student with a primary disability classification of Emotional Disturbance ("ED") and with an IEP dated 04/06/10 that prescribed 28 hours/week of specialized instruction, 60 minutes/week of behavioral support services, and 60 minutes/week of speech and language pathology services, with all services to be provided outside of general education. The justification for this program, as indicated in the IEP, was that Student needed a small classroom setting and individualized instruction, crisis intervention, and speech and language therapy to address his receptive and expressive vocabulary and language delays. Classroom accommodations included reading of test questions, use of calculators, location with minimal distractions, small group testing, extended time on subtests and breaks during a subtest. (P-2).

Hearing Officer Determination

#4. In the Fall of 2009, while attending school at PG, Student was having significant challenges with remaining in the classroom, staying on task and getting along with others. When it was discovered that Student was not swallowing the medication administered to him in the mornings before he left home, the school nurse began administering Student's medication to him beginning on 01/13/10 and an immediate change in his behaviors was observed such that he was remaining in class and in his seat, and completing class assignments in a reasonable amount of time. (P-2).

#5. At a Multidisciplinary Team ("MDT") review of Student's academic progress that occurred on 10/06/09 at PG, and was attended by Student, Student's foster parent, and Petitioner's educational attorney, it was noted by the MDT that Student's disability of ED in the areas of sustaining emotional control, sustaining attention in order to learn new skills, strategies, or information, and his interpersonal skills and social judgment caused him to have difficulty with utilizing reading comprehension, decoding, expressive writing tasks, mathematics computation and mathematics application skills. The MDT indicated that Student might need time out in order to compose himself sufficiently to benefit from instruction because his behavior would interfere with his performance in reading, math, and written language. (P-6). The same behaviors and problems were observed by the MDT in April 2010. (P-2).

#6. Student attended PG during the 2009-2010 school year and made significant progress in specialized education and counseling with an IEP that provided for 28 hours/week of specialized instruction, 60 minutes/week of behavioral support services and 60 minutes/week of speech and language therapy services. The speech and language services were added to Student's IEP on 04/06/10. (P-1; P-2; P-4; P-6). At PG, Student received academic instruction in a small group setting, and received mathematics instruction in a one to one student to teacher ratio and reading instruction in a two to one student to teacher ratio. (P-2; P-4).

#7. At an IEP Team meeting at PG on 04/06/10, the IEP Team determined that Student, who had been receiving 28 hours/week of specialized instruction and 60 minutes/week of behavioral support services since 12/15/09, and who would begin receiving 60 minutes/week of speech and language services on 04/06/10, was not in need of a more restrictive placement due to his academic and social emotional progress. Petitioner's educational attorney participated as a member of that IEP Team. (P-2).

#8. At an IEP Team meeting on 05/28/10, DCPS issue a Prior Written Notice indicating that DCPS would change Student's placement/location to in the District of Columbia. Petitioner's educational attorney who participated in the meeting, disagreed with as the placement/location where services were to be provided, but did not offer any alternatives for the placement/location for services. (R-1).

#9. On 09/16/10, Dr. Missar observed Student at over a 90-minute period while Student participated in an art class and a reading class. The art class, with a total student body of 6 students, consisted of only Student and one other student on the day that Dr. Missar conducted his observation, and during that time, Student essentially received one-to-one instruction. Despite the small number of children in the class, Student was easily distracted by

Hearing Officer Determination

the other student in the class who was very quiet, and by anyone that Student could observe in the hallway through the glass pane in the classroom door. In art class, Student was able to copy things from the board onto his paper, but got 90% of it wrong if Student was required to write in a different order than was presented on the board. When the art teacher was sitting and working with Student, his concentration improved dramatically. Student's art teacher indicated that Student was not a behavior problem, was easy to work with, but struggled mightily. The reading class that Dr. Missar observed was comprised of 7-11 children who were generally boisterous and using profanity. On the day that Dr. Missar observed Student in the reading class, Student was not exhibiting the behavior problems of some of the other students, such as aggression, cursing and boisterous talking. When the reading teacher was able to sit with Student and work with him one-to-one, Student was active and participating in class; however, when unassisted, Student was easily distracted and not focused on his work and there was limited redirection of Student by the teacher in the class. When Dr. Missar observed classroom transitioning, he didn't hear cursing in the hallways but did hear a large amount of noise and the typical chaos of a school of students moving from one place to another. Student could generally get himself from one class to another while transitioning from class to class at (Testimony of Dr. Missar).

#10. Approximately two weeks prior to the due process hearing, between the hours of 1:30 p.m. and 2:00 p.m., Petitioner observed Student in one of Student's classrooms at but Petitioner did not know what class it was. The class appeared to be a social hour because students were sitting on desks or near the door that was blockaded by an aide, with students talking to each other and no instruction being provided by the teacher. The teacher was trying to get Student to do his worksheets although none of the other students had worksheets to complete, but Student was refusing to do them. (Testimony of Petitioner).

#11. Student requires a full-time special education placement where there is a small teacher to student ratio and where he can receive one-to-one assistance to help him focus, and that has a therapeutic component. (P-2; Testimony of Dr. Missar).

#12. is a full-time special education public school located in the District of Columbia, where all students have a disability classification and all students are on the diploma track and receive Carnegie units necessary for graduation. The grade class size is 9-11 students in each class with a teaching staff of either a teacher who is special education and content-area certified plus a teacher's aide, or a special education teacher, a content-certified teacher and a teacher's aide in every class. The content-area teachers are necessary for students to receive Carnegie unit credits for a diploma. has six social workers who provide counseling as required by each student's IEP; a Masters Degree level school psychologist whose primary role is to conduct assessments; a school nurse and two other staff members who are qualified to administer medications in the absence of the nurse; and a speech and language therapist on staff. The school's behavior management program includes security guards, and 8-9 behavior technicians who have a minimum qualification of a B.A. in a related field, and both behavior technicians and security guards are equipped with radios. Behavior technicians are stationed throughout the school on various floors, with at least 2 behavior technicians on each floor. Students transition by themselves from class to class, and during transition, the behavior technicians are located in the hallways and teachers stand at their doors.

Hearing Officer Determination

The school has a behavior management program based on a token economy point system and a school store where points can be redeemed. Behavior interventions consist of counseling or following the guidelines on the discipline plan such as calling a student's parents. The school has a short-term de-escalation room where staff can talk with the student or the student can get brief time outs, and a long-term de-escalation room known as the Therapeutic Intervention Center that is staffed by a trained behavior intervention specialist. A security guard is posted at the front door so that there is never a problem with students running out of the school. (Testimony of R-1).

#13. Student has been attending since the beginning of the 2010-2011 school year, and although Student has exhibited the typical immaturity of a grader, he has not exhibited any behavior problems that stand out. There have been no reports to the grade Coordinator at with respect to any glaring deficiencies or behavior problems, although it was noted that Student was having difficulty with reading. can and is providing the specialized instruction, behavioral support services and speech and language services specified in Student's current IEP. (Testimony of

#14. On 06/23/10, Student was accepted at in Annandale, VA. (P-10). Phillips School is a full-time special education school with no disabled peers, that offers a teacher to student ratio of 9 students to every one teacher and teacher's assistant, in a self-contained classroom, with group counseling provided to each class once a week and individual counseling as required by each child's IEP, and with an individual behavior program based on a point system as well as a school behavior wide behavior management program consisting of trained behavioral technicians and crisis intervention rooms. The typical behaviors of students who would be in Student's class would be non-compliance with following directions, elopement from class without permission, and some physical aggression. The typical disabilities at the School are ED and Learning Disabled. The school does not have a psychologist or a school nurse on staff. The teachers are special education certified, but are not content-area certified. (Testimony of

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:

"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. 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).

The stated issue in this case is whether DCPS failed to provide Student with an appropriate placement when it unilaterally issued a Prior Written Notice to for the 2010-2011 school year? Petitioner offered no evidence or argument that the decision to

Hearing Officer Determination

place student at _____ was a unilateral decision that denied her participation in the placement process. The evidence presented by DCPS was that Petitioner's educational advocate participated in the meeting where the IEP Team decided to provide services at _____

and where the Prior Written Notice was issued, and Petitioner's educational advocate offered input regarding the placement decision. (Finding #8). Therefore, the Hearing Officer concludes that Petitioner was afforded the opportunity to meaningfully participate in the meeting where the IEP Team determined placement, in accordance with the requirements of 34 C.F.R. 300.116, 300.322. There was no denial of a FAPE with respect to this procedural requirement of IDEIA.

If Petitioner means that the decision to place Student at _____ was unilateral because Petitioner did not agree with the decision, then Petitioner's claim is without merit. Petitioner's disagreement with the IEP Team that Transition Academy was an appropriate placement/location for the provision of services, in and of itself, does not result in the denial of a FAPE.

In Red Clay School District, 54 IDELR 270 (2010), the fact that a Delaware district's IEP team declined to select a parent's preferred school did not mean the parent was denied meaningful participation in the IEP process. In *Red Clay School District*, a hearing panel found no evidence that the parent was not permitted to contribute to the team's decision-making process. The parent in that case, wanted the IEP Team to name a specific school in the IEP. When the team chose another school, the parent filed a due process complaint, contending that the district failed to make him an "equal partner" in the process. As stated in *Red Clay School District*, "educational placement" refers only to the general type of educational program in which the child is placed. "Educational placement refers to the general educational program, such as classes and services a child will receive, not the particular school." *T.Y. and K.Y. v. New York City Dep't of Educ., Region 4*, 53 IDELR 69 (2nd Cir. 2009). In *T.Y. and K.Y.*, the team was not required to accept the parent's preferred placement because the parent offered no evidence that it was the only location that could provide the Student a FAPE. "Parent misconstrues the effect of the "equal partners language in the preamble to IDEA 2004," the panel wrote. The language does not afford parents veto power. Educational placement refers to the general education program – such as the classes, individualized attention and additional services a child will receive – rather than the "bricks and mortar" of the specific school."

There was no allegation in the complaint that Student's IEP was inappropriate. The allegation in the complaint was that Student's placement at _____ was inappropriate. Therefore, was Student's "placement" at _____ an "appropriate placement" under IDEIA?

Once the IEP team develops the IEP, the school system must provide an appropriate educational placement that comports with the IEP. *Spilsbury v. Dist of Columbia*, 307 F. Supp. 2d 22, 25 (D.D.C. 2004), 40 IDELR 259 (2004); *Laster v. District of Columbia*, 394 F. Supp. 2d 60 (2005), 44 IDELR 124 (2005). The record in this case showed that the IEP that was implemented at Children's Guild PG beginning on 04/06/10 was the IEP that Student made significant progress under (Finding #7), and is the same IEP that currently is being implemented at _____ (Finding #13). Therefore, the Hearing Officer concludes that Student's

Hearing Officer Determination

“placement” had not changed since Student’s educational program, as defined by the IEP, had not changed.

In *St. Paul Indep. School. Dist #625*, 110 LRP 44949 (2010), a district did not have to hold an MD review or provide other procedural protections merely because it transferred a student with an emotional disturbance to a different magnet school. In that case, because the transfer did not alter the student's special education program, it was merely a change in location, not a change in placement. That -grader attended a French immersion program at a district magnet school. After the student pushed a staff member, the district assigned him to another magnet school through its administrative transfer process. It did not convene an IEP team meeting or conduct a manifestation determination. The principal believed the change would give the student, frustrated at his current school, a fresh start. The parent filed a due process complaint, alleging that the district violated the IDEA by changing the student's placement without determining whether his behavior was related to his disability. As pointed out in the decision, educational placement is not a matter of location, but of the setting as delineated in the continuum of services regulation. In that case, the district merely moved the physical location of the student's program. See also *Hale v. Poplar Bluff*, 36 IDELR 61 (8th Cir. 2002). A transfer to a different school building for fiscal or other reasons unrelated to the disabled child has generally not been deemed a change in placement, whereas an expulsion from school or some other change in location made on account of the disabled child or his behavior has usually been deemed a change in educational placement. See *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 548-549 (7th Cir. 1996).

The Comments to the Federal Register, Vol. 71, No. 156, page 46588-46589 make clear that “placement” refers to points along the continuum of placement options available for a child with a disability and “location” as the physical surrounding, such as the classroom in which a child with a disability receives special education and related services. And, the Comments go on further to say, “While public agencies have an obligation under the Act to notify parents regarding placement decisions, there is nothing in the Act that requires a detailed explanation in children’s IEPs of why their educational needs or educational placements cannot be met in the location the parents’ request. We believe including such a provision would be overly burdensome for school administrators and diminish their flexibility to appropriately assign a child to a particular school or classroom, provided that the assignment is made consistent with the child’s IEP and the decision of the group determining placement...It is the Department’s longstanding position that maintaining a child’s placement in an educational program that is substantially and materially similar to the former placement is not a change in placement.” Therefore, the Hearing Officer concludes that the transfer to was not a change in educational placement, it was merely a change in location, and DCPS has the discretion to choose the location for the provision of services.

D.C. Code 38-2561.02 establishes the priority of placement in schools for special education students. Pursuant to DC Code 38-2561.02(c), special education placements shall be made in the following order or priority, provided that the placement is appropriate for the student:

(1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;

Hearing Officer Determination

- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.

Is _____ a public school located in the District of Columbia, an appropriate location where Student's IEP can be implemented? Petitioner's evidence that _____ was an inappropriate placement consisted of the testimony of Petitioner who had observed Student in his classroom at _____ on one occasion for a period of approximately 25 minutes, and the testimony of Dr. Missar, a clinical psychologist, who observed Student in two different classrooms at _____ for approximately 90 minutes on one occasion. (Findings #9, #10).

Petitioner argued that based on the observations of Petitioner and Dr. Missar, Student was not making progress at _____. Student could not possibly make any future progress there, Student needed a more highly structured environment, and that an appropriate highly structured environment could be provided at _____ School in Annandale, VA where Student had been accepted for admission. The testimonial evidence presented by Petitioner was insufficient for the Hearing Officer to conclude that overall, Student was not receiving *any* benefit from instruction and services at _____. In one of the classes observed by Dr. Missar, Student was receiving one to one instruction in a classroom with only two students, and that setting as well as the reading class setting of 7-11 students is consistent with Student's IEP that requires a small group setting and low student to teacher ratio. The educational setting at _____ is also consistent with the educational setting provided at _____ PG, where with the same IEP, Student was able to make significant academic progress. (Finding #6).

DCPS offered credible testimonial evidence to show that _____ could and was implementing Student's IEP, and was providing the following services to Student: a small student to teacher ratio, an individual and school wide behavior management program, a school nurse or personnel who could administer medication to Student if the need arose, counseling services by social workers, and speech and language pathology services. (Findings #12, #13). And, all of the services being provided at _____ comport with the requirements of the IEP, the opinion of Dr. Missar, and conclusion of the Hearing Officer that Student requires a full-time special education placement where there is a small teacher to student ratio and where he can receive one-to-one assistance to help him focus, and a placement that has a therapeutic component. (Finding #11).

All of the services being provided at _____ are consistent with the terms of the IEP that was designed, with Petitioner's participation (Finding #7), to address Student's academic and socio-emotional difficulties that were noted in a February 2008 psychoeducational evaluation (Finding #2) and at MDT/IEP Team meetings on 10/09/09 and 04/06/10 (Findings #3, #4, #5); all of which indicated that Student's behaviors that are symptomatic of ADHD interfered with his performance in reading, mathematics and written language, and that to address these behavior problems, Student required a small classroom setting and individualized instruction, crisis intervention that could provide time out and counseling, and speech and language therapy services.

Hearing Officer Determination

Petitioner, with the burden of proof, did not make a showing that Student was not receiving *any* educational benefit or making *any* academic progress at [redacted]. Neither Petitioner nor Respondent introduced into the record any documentary evidence such as progress reports or report cards that could provide any objective measure of Student's overall progress at [redacted] since the beginning of the 2010-2011 school year. Nor was there any testimonial evidence from any of Student's teachers at [redacted] about Student's adjustment for the one month that he has been attending. There was no evidence of any current educational evaluation that contained testing scores that would enable this Hearing Officer to conclude that Student was not receiving *any* educational benefit at [redacted] or that Student had regressed in academics or behavior. In summary, Petitioner, with the burden of proof, produced insufficient evidence for this Hearing Officer to conclude that Student was not receiving *any* educational benefit at [redacted].

And, that is all that is required by *Board of Education of Hendrick Hudson Central School District, Westchester County, et. al. vs. Rowley*, 458 U.S. 176 (1982), i.e., that DCPS "provide the "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child. The school district is not required to maximize or provide the best program; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit the child to benefit from the instruction. The Act's requirement of a "free appropriate public education" is satisfied when the State provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate grade levels used in the State's regular education, and must comport with the child's IEP, as formulated in accordance with Act's requirements." See 34 C.F.R. 300.17.

A free appropriate public education or FAPE, which is what Petitioner alleges that Student did not receive in this case, means special education and related services that are provided at public expense, meet the standards of the state education agency, include an appropriate school in the State involved, and are provided in conformity with an IEP that meets the requirements of the IDEIA. 34 C.F.R. 300.17. There was no allegation in this complaint that the IEP was inappropriate or deficient. There was no evidence in the record that the services provided at [redacted] did not match the services required by Student's IEP or weren't being provided to Student. Again, there was insufficient evidence in the record for the Hearing Officer to conclude, by a preponderance of the evidence, that Student was not receiving *any* educational benefit at [redacted].

Therefore, based on the record in this case, the Hearing Officer concludes that DCPS did not deny Student a FAPE when it issued the Prior Written Notice to [redacted] is a public school located in the District of Columbia that is an appropriate location because it can and does provide the special education services specified in Student's IEP, and DCPS has the "unilateral" discretion to select an appropriate location for the provision of services. Thus, Petitioner failed to meet her burden of proof on the sole issue in the complaint.

Hearing Officer Determination

Petitioner's request for relief that Student be placed at _____ School in Annandale, VA is without merit because (1) DCPS can choose the locations for services as long as it is appropriate to meet Student's educational needs as specified in the IEP; (2) _____ is an appropriate location for the provision of services; (3) _____ School provides less services than the public placement offered by DCPS in the District of Columbia, i.e., the class proposed for Student at _____ School does not have a content-certified teacher; the students there are not on a diploma track; and there is no school nurse to administer medicine; (4) the student to teacher ratio is approximately the same as for _____ (5) both schools service students with disabilities; and (6) _____ School is located outside of the District of Columbia.

School actually offers less services and a lesser therapeutic environment than does _____

Mere speculation by Petitioner that Student couldn't learn anything at _____ based on a cumulative 2 hour period of observation where Student was exhibiting the inattentiveness and lack of focus attendant to his diagnosis of ADHD (Findings #9, #10) and where students were boisterous, aggressive and using profanity (Finding #9) was insufficient evidence for this Hearing Officer to conclude that Student was not receiving *any* educational benefit and was therefore being denied a FAPE due to an inappropriate placement, as was alleged by Petitioner. The behaviors that Student and the other students exhibited were all behaviors that were consistent with Student's behavior profile and with past behaviors that Student exhibited when he was able to make academic progress in spite of those behaviors. (Findings #2, #4, #5). DCPS followed the letter of the law by issuing a Prior Written Notice to _____ the transfer represented a change of location to a public school located in the District of Columbia that could and did provide the services prescribed by Student's IEP. Therefore, _____ was an appropriate location for services. Student was not denied a FAPE.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, this complaint is **DISMISSED** with prejudice.

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: October 7, 2010

/s/ Virginia A. Dietrich
Hearing Officer

Hearing Officer Determination

Copies to:

Petitioner (electronically)

Petitioner's Attorney: Pamela Roth, Esq. (electronically)

DCPS' Attorney: Laura George, Esq. (electronically)

DCPS (electronically)

SHO (electronically)