DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

Parent, on behalf of the Student,[1]*

Petitioner,

v.

The District of Columbia Public Schools,

Respondent.

Date Issued: November 5, 2010

Hearing Officer: Ramona M. Justice

Case No:

Hearing Room: Room 2008

STUDENT HEARING OFFICE
2010 NOV -5 PM 4:11
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HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5 of the District of Columbia Municipal Regulations ("DCMR").

II. PROCEDURAL HISTORY

On September 10, 2010, parent, through her Attorney, filed an "Administrative Due Process Complaint Notice", on behalf of the student, alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a free appropriate public education (FAPE), by failing to: 1) determine the student eligible to receive special education and related services, under the disability classifications of emotionally disturbed and other health impaired (OHI), specifically identified as attention deficit hyperactivity disorder (ADHD); 2) provide the student an appropriate placement for the 2010/2011 school years; and 3) provide the parent the opportunity for "meaningful" input in the September 8, 2010 placement decision.

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

The Petitioner seeks relief in the form of an Order finding that Respondent denied the student a free appropriate public education by failing to determine the student eligible to receive special education and related services under the disability classifications of emotionally disturbed and other health impaired, due to the student's ADHD; provide the student an appropriate placement for the 2010/2011 school year; and failing to provide the parent the opportunity for "meaningful" participation in the placement decision.

Petitioner also requests that the Hearing Officer find that the student is entitled to receive special education and related services based on a disability of emotionally disturbed and other health impaired, specifically, ADHD; fund the student's placement at the and transportation, retroactive to June 24, 2010; and find that the parent is the prevailing party in this action, entitling her to reasonable reimbursement of attorney's fees and related costs.

The due process complaint was assigned to this Hearing Officer on September 14, 2010; and on September 16, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for October 15, 2010 at 4:00 p.m... The Hearing Officer also issued an Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting. On September 23, 2010, Respondent filed a response to the complaint.

The prehearing conference was held on October 5, 2010, and on this date, the Hearing Officer issued a "Prehearing Order", summarizing the issues in the complaint, matters discussed, and confirming the due process hearings for October 26, 2010, and October 27, 2010, at 9:00 a. m...[2] On October 15, 2010, DCPS filed an amended response to the complaint, proposing an alternative placement for the student. The due process hearing convened on October 26, 2010, at 9:00 a.m., at 810 First Street, N.E., 2nd Floor, Washington, D.C.. The hearing was closed to the public; each party was represented by counsel; and each Attorney provided opening statements.

During discussion of preliminary matters, Petitioner's Attorney objected to Respondent's amended response as untimely; and because the response proposes an alternative placement for the student, which was not the subject of a prior written notice; and had not been presented to the parent or an IEP team for discussion or decision, prior to the hearing; citing *A.K. v. Alexandria Public Schools*. Respondent's Attorney stated that subsequent to issuance of the Prior Notice of Placement (PNOP) to the student's neighborhood senior high school, it was determined that the proposed placement could not implement the student's IEP; and it was necessary that DCPS identify alternative placement for the student to ensure a continuum of services. Respondent also reiterated its position that placement is not the school location where the IEP is implemented, however, the setting determined by the IEP; and that parent was involved in development of the IEP and decisions regarding the setting and services on the IEP.

After hearing arguments from both parties, the Hearing Officer held that according to its prehearing order both parties were required to attend the hearing prepared to present placement options, and evidence regarding the appropriateness of each placement proposed for the student. The Hearing Officer also held that Petitioner would not be unduly prejudiced by allowing Respondent's amended response and proposed placement; and because it is the Hearing Officer's primary responsibility to ensure that the student receives a FAPE; it will consider all placements proposed by the parties.

[2] The prehearing order also required the parties to attend the due process hearing prepared to present placement options, and evidence regarding the appropriateness of each placement proposed and/or identified for the student.

The Hearing Officer explained that it would allow the DCPS' to present evidence regarding proposed placements because such evidence is relevant, reliable and probative of the issue in the complaint pertaining to the student's placement. For these reasons, the Hearing Officer overruled Petitioner's objection and allowed DCPS' amended response and evidence regarding proposed placements.

After discussing and ruling on objections to disclosures, Petitioner's Exhibits 1, 6, 8-16, 20-33, and 35-37, were admitted into the record as evidence; and Petitioner's Exhibit 34 was withdrawn. Respondent's Exhibits 1-2; were admitted into the record as evidence.

Petitioner's witnesses included the parent; student's Education Advocate; and the Clinical/Neuropsychologist at the student's private school, admitted as an expert witness in the area of Psychology; Principal at private school; and Educational Consultant at the private school. Respondent's witnesses included the Coordinator at the DCPS permanent/transition high school, proposed by Respondent at the hearing, as an alternative placement for the student.

III. ISSUES

The issues before the Hearing Officer are as follows:

(1) Whether the D.C. Public Schools denied the student a free appropriate public education by failing to identify the student as a student eligible to receive special education and related services, under the disability classification of emotionally disturbed, as defined by the IDEA at 34 C.F.R. §300.8(c)(4)(i)?

(2) Whether the D.C. Public Schools denied the student a free appropriate public education by failing to identify the student as a student eligible to receive special education and related services, under the disability classification of other health impaired (OHI), identified as attention deficit hyperactivity disorder (ADHD); and as defined by the IDEA at 34 C.F.R. §300.8(c)(9)?

(3) Whether the D.C. Public Schools denied the student a free appropriate public education by failing to provide the student an appropriate placement for the 2010/2011 school years?

(4) Whether the D.C. Public Schools denied the student a free appropriate public education by failing to ensure that the parent received the opportunity to provide "meaningful" input in the placement decision made on September 8, 2010, in accordance with the IDEA, 34 C.F.R. §300.116(a)(1)?

IV. BACKGROUND

The student resides in the District of Columbia with his mother; and is identified as disabled and eligible to receive special education and related services, pursuant to the Individuals with Disabilities Act ("IDEA"); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA). According to the student's September 8, 2010 Individualized Education Program ("IEP"), based on the August 26, 2010 draft IEP, the student's disability classification is multiple disabilities, including, Specific Learning Disability (SLD) in mathematics, and Other Health Impairment (OHI), specifically identified as Attention Deficit Hyperactivity Disorder (ADHD).

The student is years of age; and in the grade at a private school, located in the District of Columbia. During the 2009/2010 school year, the student attended a DCPS public charter school, located in the District of Columbia. At the beginning of the 2010/2011 school years, the student attended a DCPS senior high school, also located in the District of Columbia. While attending both DCPS schools, the student regressed academically and behaviorally; and on May 26, 2010, the parent provided the DCPS a 10 day written notice of its intent to unilaterally place the student at the private school. On June 1, 2010, the parent removed the student from the DCPS senior high school; and placed the student at the private placement; and on September 10, 2010 filed the instant complaint.

V. 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. The student attended a DCPS public charter school during the 2009/2010 school year. Throughout the school year, the student remained truant, failed to complete homework and class assignments; and engaged in inappropriate conduct in class.

   The student's ***March 23, 2009*** report card reflects that the student received no grades during the first and second quarters of the 2009/2010 school years due to poor attendance; and during the third quarter received all failing grades ("Fs"), except a grade of D- in World History[3].

2. On ***December 4, 2009***, an IEP was developed for the student recommending 20 hours specialized instruction per week, in a general education setting; and 30 minutes per month behavioral support consultation services. The student's disability classification was identified as specific learning disability.[4]

3. The student attended a DCPS senior high school at the beginning of the 2010/2011 school year; where she continued to regress academically and behaviorally. The student also remained truant during this period; and was noted as lacking initiative.

   The student's ***March 26, 2010*** report card reflects that the student received all failing grades during the second and third advisories of the school year; incompletes; and a cumulative grade point average of 0.0 for the beginning of the 2010/2011 school year.

4. On ***May 26, 2010***, Petitioner, through her Attorney, forwarded a letter to the Office of Special Education Resolution Team, providing written notice that within ten (10) business days of receipt of the notice, the parent intended to remove the student from the DCPS and unilaterally place the student at the private school which she currently attends; for the remainder of the 2009/2010 school year, and the Summer Extended School Year Program; due to DCPS' failure to provide the student a free appropriate public education. The parent removed the student from the DCPS senior high school, and on ***June 1, 2010***, placed the student in a private school, located in the District of Columbia.

[3] Petitioner's Exhibit 23.
[4] Petitioner's Exhibit 15.

5. On ***July 1, 2010***, while at the private school, a ***Functional Behavioral Assessment*** (FBA) was completed for the student. The purpose of the FBA was to determine whether the student exhibits any behaviors that interfere with her academic and social interactions with both peers and adults, as well as, determine whether such behaviors directly impact her academic achievement; and if warranted, offer recommendations for managing problematic behaviors in school.[5]

6. On ***July 6, 2010***, a ***Comprehensive Psychological Evaluation*** was completed for the student, to determine whether cognitive and/or social/emotional factors may be interfering with the student's academic performance; and assist in educational planning.[6]

7. On ***August 26, 2010***, an IEP team meeting convened at the student's private school, to review and revise the IEP developed for the student on December 4, 2009, while attending the DCPS senior high school. The team developed a draft IEP for the student, recommending 26 hours of specialized instruction outside general education, and 1.5 hours of behavioral support services. The IEP also includes an Intervention Behavior Plan for the student. The student's disability classification was identified as multiple disabilities (MD), including, specific learning disability (SLD), other health impaired (OHI), and emotionally disturbed (ED).

   The student's IEP was not finalized; and the team agreed to reconvene on September 8, 2010, to review the student's evaluations; finalize the student's IEP; discuss and determine placement; and if warranted, discuss and determine compensatory education services.

8. On ***September 8, 2010***, the IEP team reconvened to review the student's evaluations; finalize the student's August 26, 2010 draft IEP; discuss and determine placement; and if warranted, discuss and determine compensatory education services. The team discussed, among others, the student's evaluations, IEP drafted for the student on August 26, 2010, and the student's placement. Team members from the student's current placement, and the student's Education Advocate agreed to the disability classification and designation of multiple disabled (LD, OHI, and ED), however, the DCPS Case Compliance Manager and DCPS Clinical Social Worker disagreed with the ED classification, recommending additional information regarding the student's medical, family, and a social history, prior to a determination regarding the ED classification.[7]

   The Education Advocate relented regarding the disability classification of ED for 45 days, pending completion of a Social History, and an opportunity for the student's current placement to monitor and implement different services for the student.[8] The parties agreed to disagree, with no decision regarding the ED disability classification or the student's IEP. As of the date of this decision, DCPS failed to complete a Social History Assessment; or obtain information regarding the student's medical, family, and a social history.

[5] Petitioner's Exhibit 29.
[6] Petitioner's Exhibit 28.
[7] Respondent's Exhibit 1 and Petitioner's Exhibit 22.
[8] Petitioner's Exhibit 22.

VI. 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. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.[9] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[10]

2. The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq., reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), is the federal statute governing the education of students with disabilities; and the Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.

3. The IDEIA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. *See, 20 U.S.C. §1400(d)(I)(A)*.

4. The IDEIA defines a FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program required under section 1414(d) of this title.

5. According to the IDEIA, States receiving federal assistance are obligated to: (1) provide a "free appropriate public education" to each disabled child within its boundaries, and (2) ensure that such education is in the "least restrictive environment" possible.[11]

   The IDEIA also provides that a "free appropriate public education" must be made available to all disabled children residing in a State, between the ages of 3 and 21; and that the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.[12]

   In the District of Columbia, the LEA must ensure that all children with disabilities, between the ages of 3 and 21, have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.[13] This student is a child with disabilities entitled to receive special education and related services, pursuant to the IDEIA.

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[9] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C. M.R. §3030.3.
[10] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)
[11] 34 C.F.R. §300.116.
[12] IDEA, 34 C.F.R. §300.17(d).
[13] 20 U.S.C. §1400(d)(1)(A) and §1412(a)(1).

6. Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA consists of an educational program specifically tailored to address the unique needs of the student by means of an 'individualized education program' (IEP).[14]

   According to *Rowley*, in order for FAPE to be offered a student, the school district must show it complied with the statutory elements of an IEP, and the goals and objectives in the IEP are reasonable, realistic and attainable. The special education and related services must be reasonably calculated to enable the child to receive educational benefit, and must be likely to produce progression, not regression.

7. When parents challenge the appropriateness of a program or placement offered to their disabled child by a school district under the IDEA, a Hearing Officers must undertake the following two-fold inquiry:

   (1) Procedural Compliance (Procedural FAPE).

   First, the Hearing Officer must determine whether the State complied with the *procedural requirements* of the IDEIA, in creating and implementing the student's IEP, or rendering the placement decision.

   However, the 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child did not receive FAPE due to procedural violations, unless it can be determined that the inadequacies:

   (I) impeded the child's right to a free and appropriate public education;
   (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
   (III) caused a deprivation of educational benefit to the student.

   (2) Conferral of Some Educational Benefit (Substantive FAPE).

   Second, once the Hearing Officer addresses the first criteria, it must determine whether the State complied with the *substantive requirements* of the IDEA, by developing an IEP for the student that is reasonably calculated to enable the student to receive educational benefit.

   While a student's IEP must be reasonably calculated to provide a student educational benefit, school districts are required to provide only a "basic floor of opportunity." Rowley, 458 U.S. at 200-01. Thus, an "appropriate' public education does not mean the absolutely best or potential-maximizing education for the individual child. *Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1314 (1987)*. However, the benefit cannot be trivial, *Rowley*, 458 U.S. 176, at 177 206-207. The IEP ***must be appropriately designed and implemented***, emphasizing special education and related services specifically designed to meet the student's unique needs, supported by such services, as are necessary to provide the student 'meaningful', benefit. If these two (2) requirements are satisfied, the State has complied with the obligation imposed by Congress, and the courts can require no more.

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[14] Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982).

VII. DECISION

1. Failure to Determine the Student Eligible for Special Education Services Under the Disability Classification of Emotionally Disturbed.

Petitioner asserts that according to recent evaluations; and the definition of emotionally disturbed as set forth at the IDEA, 34 C.F.R. §300.8 (c)(4)(i), the student qualifies and is entitled to receive special education and related services under the disability classification of emotionally disturbed. Petitioner further asserts that although the IDEIA only requires meeting one of the five (5) eligibility criteria, according to the Comprehensive Psychological Evaluation, the student meets more than one of the eligibility criteria because she exhibits an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, and displays inappropriate types of behaviors or feelings under normal circumstances.

Petitioner concludes that despite the evaluations and recommendations of individuals having personal knowledge of the student, at the September 8, 2010 IEP team meeting, Respondent disagreed with the diagnosis and disability classification of emotionally disturbed; and at the September 8, 2010 IEP team meeting, DCPS determined that a Social History Assessment was necessary to determine whether the student qualified for special education services, under the disability classification of emotionally disturbed.

Respondent agrees that the student has multiple disabilities, and requires services; however, asserts that the DCPS determined the student eligible to receive special education and related services, as a student with a qualifying disability; and once determined eligible, the LEA must provide special education and related services to allow her to receive educational benefit, *regardless* of her disability classification.

At the September 8, 2010 IEP team meeting, DCPS determined that a Social History Assessment was necessary to determine whether the student qualified for special education services, under the disability classification of emotionally disturbed. A Social History Assessment consists of the collection of background information regarding the student, and is an important part of an evaluation because it provides critical details to assist in diagnosis. A Social History Assessment also provides information on any developmental delays, health and psychological issues, behavioral concerns, and family and cultural factors that may contribute to the child's learning problems; and information regarding a student's strengths.

The DCPS presented no evidence that a Social History Assessment would alter the student's diagnoses of emotionally disturbed provided in the July 6, 2010 Comprehensive Psychological Evaluation; the findings and recommendations included in the July 4, 2010 Functional Behavioral Assessment; or the student's social/emotional needs.[15] However, in this matter, a social history was completed for the student, is included in the students' evaluations, and was available to the team at the time of its decision on September 8, 2010.

[15] Testimony of Clinical/Neuropsychologist.

The July 6, 2010 Comprehensive Psychological Evaluation includes information regarding the student's social history, consisting of information regarding student's background, family, developmental, and medical history. The July 1, 2010 Functional Behavioral Assessment also includes information regarding the student's social history, consisting of the student's developmental and academic history, and prior evaluation history. Any additional information DCPS required regarding the student's social history, also could have been obtained from the parent, who attended the September 8, 2010 IEP team meeting.

A more comprehensive Social History Assessment is not a prerequisite to determining a student's eligibility for special education services under the disability classification of emotionally disturbed;[16] albeit such information, along with other assessment data, can assist in confirming or ruling-out disabilities and suggest intervention strategies to assist a child. The criteria for determining the student's eligibility for special education services under this disability classification is clearly established by the IDEA, at 34 C.F.R. §300.8 (c)(4)(i); which this student satisfies.

On September 8, 2010, the IEP team had the information necessary to determine the student's eligibility for special education services, under the disability classification of emotionally disturbed. According to a ***Functional Behavior Assessment*** completed on July 1, 2010, the student exhibits ***significant behaviors impacting her availability for learning*; inattention, *mild/moderate aggression, poor social skills***, learning problems, and slow motivational tendencies. Additional data suggests the student's off task or inappropriate behaviors (lack of focus, *odd behavior*, truancy, and/or slow rate of work). Based on test results from the students' special education teachers, the student presents with remarkable social/emotional/behavioral concerns, which are disruptive adversely affecting other children in the classroom.

The evaluator notes that it is evident that the student's ***significant emotional discord*** has ***deleteriously impacted her capacity for self-modulation and control.*** Within the externalizing index the student showed ***at risk scores*** within the hyperactivity, ***aggression, and conduct problem domain; often engaging in a high number of behaviors that are adversely affecting other children in the classroom.*** These ***behaviors are reported to be disruptive*** and indicate the student is having a problem maintaining self-control (hyperactivity); sometimes displays ***aggressive behaviors*** and may be reported as ***being argumentative, defiant, and/or threatening to others (aggression)***; and at times ***engages in rule-breaking behavior, such as cheating, deception, and/or stealing (conduct problems)***.

Within the internalizing index the student domain scores fell within the ***at-risk range*** (anxiety and ***somatization***) and within the ***clinically significant range (depression)***. More specifically, the student's responses indicate that she is ***withdrawn, pessimistic, and/or sad (depression)***; sometimes, ***displays behaviors stemming from worry, nervousness, and/or fear (anxiety)***; and displays several health related concerns.

[16] Testimony of Clinical/Neuropsychologist.

According to a ***Comprehensive Psychological Evaluation*** completed on July 6, 2010, the student is diagnosed with Attention Deficit Hyperactivity Disorder, predominantly inattentive type; ***Oppositional Defiant Disorder***; a rule out of Separation Anxiety Disorder, and a Specific Learning Disability (by history); and ***emotional disturbance***.[17] The behavior rating data suggest the presence of ***significant emotional disturbance, with both internalizing and externalizing features***; and the presence of ***significant*** emotional disturbance, particularly in externalizing or disruptive behavior disorder, such as ***Oppositional defiant Disorder***.

On the Adolescent Psychopathology Scale (APS), and Conners-Wells' Adolescent Self-Report Scales, objective personality inventories, ***the student obtained significantly or mildly elevated scores*** on eight of twenty clinical scales, all five personality disorder scales, five of eleven psychosocial problem content scales, and two of three factor scales.

Findings in the personality tests indicate that the student admits to a ***significant degree of subjected distress and signs and symptoms of overt psychopathology.*** The profile of scale elevations on two objective personality tests indicates that the student reports ***significant levels of symptoms associated with Avoidant Personality Disorder, with borderline, schizotypal, and obsessive-compulsive traits, Separation Anxiety Disorder***, and ADHD.

The evaluator recommended academic accommodations and special education services; ***consideration be given to the student's designation as emotionally disturbed***, learning disabled, and other health impaired; and a small class with a high teacher to student ratio and considerable individual attention. The evaluator recommended referral to a Psychiatrist for determination of the appropriateness of psychopharmacological treatment for her ADHD; ***participation in individual and group psychotherapy with a focus on enhancing self-esteem, affect modulation skills (including anger management), distress tolerance skills, and interpersonal effectiveness skills (e.g., social skills, interpersonal communication and problem solving skills)***; recommendations for aiding attention and concentration; and a variety of interventions which may assist in improving the student's executive functioning impairments.

The student meets the eligibility criteria under the IDEA, as a student with multiple disabilities (MD), including learning disabled (LD), and other health impaired (OHI), specifically identified as attention deficit hyperactivity disorder (ADHD). The student has a history of struggling in the school setting, academically and behaviorally; which has had an adverse impact on her learning and that of others.[18]

The student also meets the eligibility criteria under the IDEA, as an emotionally disturbed student; which is supported by the student's behavioral history and prior hospitalization; and the impact the ED has had on the student's learning is evidenced by her history of truancy, two (2) grade retentions, and nearly two school years of failing grades.[19]

[17] Petitioner's Exhibit 27, Petitioner's Exhibit 22, and Testimony of Clinical/Neuropsychologist.
[18] Petitioner's Exhibit 29.
[19] Petitioner's Exhibit 28.

The IDEA defines emotional disturbance as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (A) an inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) inappropriate types of behavior or feelings under normal circumstances; (D) a general pervasive mood of unhappiness or depression; and (E) a tendency to develop fears associated with personal or school problems.[1]

The Hearing Officer finds that in applying the eligibility criteria established by the IDEA, this student satisfies at least four (4) of the five (5) eligibility criteria for emotionally disturbed, specifically: 1) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; 2) displaying inappropriate types of behavior or feelings under normal circumstances; 3) a tendency to develop fears associated with personal or school problems; and 4) a general pervasive mood of unhappiness or depression.[20]

The Hearing Officer also finds that in determining the student's educational needs, the DCPS failed to interpret the evaluation data for the purpose of determining if the student has a disability as defined at §300.8, and the educational needs of the child. The DCPS also failed to draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and failed to ensure that the information obtained from all of these sources is documented and carefully considered[1].

It is also the Hearing Officer's decision that the Petitioner satisfied its burden of proof by presenting evidence that the DCPS denied the student a FAPE, by failing to determine the student eligible for special education and related services under the disability classification of emotionally disturbed, as defined by the IDEIA at 34 C.F.R. §300.8 (c)(4)(i).

2. Failure to Determine the Student Eligible for Special Education Services Under the Disability Classification of other health impaired (OHI).[21]

Petitioner asserts that according to 34 C.F.R. §300.8 (c)(9) other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as ...attention deficit hyperactivity disorder...that adversely impacts a child's educational performance.

Petitioner also asserts that according to the Comprehensive Psychological Evaluation, the student meets the criteria as a student suffering from OHI as a result of her ADHD, for the following reasons: 1) the student's parent and teachers noted that the student displays severe characteristics of a child with ADHD; 2) the student has working memory impairments which are suggestive of ADHD; 3) the student's performance on two (2) vigilance tasks which are highly discriminative of ADHD, and represent the current state of the art in the psychometric-

[20] Comprehensive Psychological Evaluation, Petitioner's Exhibit 28; and Functional Behavior Assessment, Petitioner's Exhibit 29.

[21] During closing arguments, Petitioner asserted that he was withdrawing this issue, albeit untimely; because evidence was accepted on this issue and the case is near conclusion, Petitioner is not allowed to withdraw this issue at this stage of the proceedings; and the Hearing Officer will decide the issue based on the evidence presented by the parties.

detection of attention deficits, was in the impaired range, providing evidence in support of ADHD; and 4) the student also performed in the impaired range on a cancellations test at which assesses attention focusing and execution.

Petitioner concludes that at the September 8, 2010 MDT meeting DCPS determined that absent a Social History Assessment, it was unable to determine the student eligible for special education services, under the disability classification of OHI, specifically identified as ADHD.

Respondent asserts that the DCPS determined the student eligible to receive special education and related services, as a student with a qualifying disability; and once determined eligible, the LEA must provide special education and related services to allow her to receive educational benefit, *regardless* of her disability classification.

Other health impairment is defined as having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as …attention deficit hyperactivity disorder…that adversely impacts a child's educational performance.[22]

According to a ***Functional Behavioral Assessment (FBA)***, completed on July 1, 2010, the student is performing some years below grade level, and ***exhibits off task behaviors*** which may be attributed to her difficulties understanding the information presented and a possible desire to avoid these tasks. Based on interviews with the parent and student's teachers, the student demonstrates ***elevated concerns in the area of inattention***; and items related to ***inattention problems include mild to severe problems with poor retention rates, low motivation***, perceived ***low self-esteem***, etc.. The ***student may also find certain environments or situations to be over-stimulating which could cause her to shut down or seek ways to avoid the environment or task (sensory)***.[23]

Additional data suggests that the student exhibits off task or inappropriate behaviors (***lack of focus,*** odd behavior, truancy, and/or slow rate of work). Based on prior documentation and teacher report, ***these behaviors are relatively severe in intensity, occur frequently, and are major in duration*** and therefore, appear to warrant formal behavioral intervention.[24] ***Within the school problems index, the student's score was within the at-risk range (attention problems)***; and according to the student's special education teacher, the ***student has some difficulty maintaining necessary levels of attention at school***; has difficulty adapting to changing situations, and takes much longer to recover from difficult situations than most others her age (adaptability).[25]

On July 6, 2010, a ***Comprehensive Psychological Evaluation*** was completed. The ***student received a diagnosis of ADHD (combined type)***, Oppositional Defiant Disorder (ODD); a rule out for Separation Anxiety Disorder and Learning Disorder (LD); and Avoidant Personality Disorder.[26]

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[22] 34 C.F.R. §300.8 (c)(9).
[23] Functional Behavioral Assessment, Petitioner's Exhibit 29.
[24] *Id.*
[25] *Id.*
[26] At the September 8, 2010 IEP team placement meeting, and during testimony the evaluator stated that the student's primary disability for education purposes, is specific learning disabled.

According to the evaluation, the ***student exhibits limited alertness, including a heightened alertness to environmental stimuli, that result in limited alertness with respect to the educational environment, that is due to her diagnosis of attention deficit hyperactivity disorder; adversely impacting her learning and that of others.***[27]

Recent evaluations, parent and teacher input, and the student's educational history support a diagnosis of ADHD. The student satisfies the eligibility criteria for ADHD, as established by the IDEIA. Additionally, according to the 2010 IEP team meeting notes; and meeting notes of the Education Advocate, there was no disagreement that the student qualifies as a student eligible to receive special education and related services under the disability classification of OHI, specifically identified as ADHD; and on September 8, 2010 the team agreed to finalize the August 26, 2010 IEP, which includes the disability classification of other health impaired, because of the student's ADHD.[28]

It is the Hearing Officer's decision that the Petitioner failed to satisfy its burden of proof by presenting evidence that the D.C. Public Schools failed to identify the student as a student eligible to receive special education and related services, under the disability classification of other health impaired (OHI), specifically identified as attention deficit hyperactivity disorder (ADHD); and as defined by the IDEA at 34 C.F.R. §300.8(c)(9).

3. **Failure to Provide the Student an Appropriate Placement During the 2010/2011 school years.**

Petitioner asserts that according to the D.C. Municipal Regulations, Title 5, §3010.2 (2003) DCPS shall implement an IEP as soon as possible after the meeting where the IEP is developed; and according to the IDEA, at 34 C.F.R. §300.115(a) the DCPS must ensure the availability of a continuum of alternative placements, to meet the needs of children with disabilities for special education and related services. Petitioner also asserts that the local education agency must make certain that the educational placement for each child with a disability within its jurisdiction is able to implement the student's Individualized Education Program; and provide the student special education and related services in conformity with the student's IEP.

Petitioner asserts that according to numerous evaluations, current teachers and service providers the student requires special education instruction in a small, highly structured classroom setting, where she can continue to receive her 27.5 hours a week of specialized instruction, 1 hour a week of psychological counseling, and thirty (30) minutes a week of substance abuse counseling. Petitioner asserts that, moreover, the student's IEP recommends services in an out of general education setting; and at the student's September 8, 2010 MDT meeting, DCPS advised the parent that the student was being placed at her neighborhood school, which is not a full-time, special education program and cannot implement the student's IEP.

Petitioner concludes that the student's neighborhood school is unable to provide the student a full-time, special education program, outside general education; and cannot implement the student's IEP. There is no dispute that after issuing the PNOP to the student's neighborhood-

[27] *Id.*
[28] Petitioner's Exhibit 22.

senior high school, DCPS determined that that the student's neighborhood school is unable to implement the student's September 8, 2010 IEP. In its amended response to the complaint, the-DCPS proposed a permanent/transition senior high school, as an alternative placement for the student. Therefore, the only issue for the Hearing Officer is the appropriateness of the proposed by the DCPS at the time the complaint was filed; and the placement proposed in its amended response.

Respondent asserts that placement is not the school location where the IEP is implemented, but rather the setting determined by the IEP, which Petitioner does not challenge. Respondent also asserts that the parent was involved in development of the September 8, 2010 IEP and decisions regarding the setting and services on the IEP.

The IDEIA and its implementing regulations provide that when determining the educational placement of a child with a disability, the decision is made by a group of persons, including the parents. It also requires that the placement decision must be based on the child's IEP. Thus, the placement should not dictate the IEP, but rather, the IEP determines whether a placement is appropriate.[29]

Once the IEP is developed for a student, the school district must implement the IEP by identifying an appropriate placement for the student, in an educational setting specifically tailored to the student's needs; and the placement decision must be made based on the child's IEP; which failed to occur in this matter.[30]

The IDEA also seeks to educate disabled children with non-disabled children "to the maximum extent possible." §1412(a)(5)(A). "Special classes, separate schooling, or other removal...occurs only when the *nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;*" as in this matter. Id.

"The proper inquiry" in every mainstreaming case is "whether a proposed placement is appropriate under the Act." *See, Doe v. Arlington County Sch. Bd.., 41 F. Supp. 2d 599, 604 (E.D. VA. 1999)*. However, assessment of whether the child is placed in the least restrictive environment is [**94] "ultimately a goal subordinate to the requirement that disabled children receive educational benefit." *Hartmann by Hartmann v. Loudoun County Bd. Of Educ., 118 F.3rd 996, 1002 (4th Cir. 1997).* However, the educational benefit to be provided a child must be "meaningful" and it "must be assessed based on the educational capacity of each individual student." *J.P. v. County Sch. Bd. Of Hanover County, 447 F.Supp. 2d 553, 584 (E.D. VA-. 2006)*. In selecting the least restrictive environment, consideration must also be given to any potential harmful effect on the child or on the quality of the services that he or she requires.[31]

The IDEIA also provides that each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services; which also failed to occur in this matter.[32]

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[29] See, Rourke v. District of Columbia, 460 F.Supp. 2d 32, 44 (D.D.C. 2006).
[30] 34 C.F.R. §300.116(a)(2)(b). D.C. Mun. Regs, Tit. 5 §3013 (2006.
[31] 34 C.F.R. §300.116(d).
[32] IDEA, 34 C.F.R. §300.115.

Here, prior to attending the private school, the student attended two (2) DCPS schools, where she was twice retained, would not attend school, received failing grades; and continued to regress academically and behaviorally[33]. On May 26, 2010, the parent notified the DCPS that it intended to place the student at a private school, within ten (10) business days of receipt of the notice; due to its failure to provide the student a FAPE.

On September 8, 2010, nearly four (4) months later, the DCPS convened an IEP team placement meeting with the parent. The team determined that the nature and severity of the student's disabilities are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and that the student requires a more restrictive environment, to access the general education curriculum and receive educational benefit. The team recommended a full-time special education program, outside general education.

Near conclusion of the meeting held on September 8, 2010, the DCPS informed the parent that it intended to issue a Prior Notice of Placement (PNOP), placing the student at her neighborhood senior high school; which the Education Advocate and parent objected stating that the services at the student's current placement could not be continued at the neighborhood-school; and the neighborhood school does not provide the substance abuse counseling recommended in the student's IEP.[34] There was no further discussion regarding the placement proposed by DCPS, and the DCPS proceeded with issuing the PNOP, placing the student at her neighborhood senior high school.

The DCPS subsequently determined that the placement proposed in the PNOP issued on September 8, 2010 could not implement the student's IEP; and on October 15, 2010, nearly five (5) months after the parent provided notice of its intent to place the student at the private school, DCPS filed an amended response to this complaint, proposing an alternative permanent/transition placement for the student.

First, it is the Hearing Officers' decision that on September 8, 2010, the DCPS failed to comply with the ***procedural requirements*** of the IDEA, in implementing the student's IEP and determining the student's placement.

On September 8, 2010, the placement decision was not made by a group of persons, including the parents, and other persons knowledgeable about the child, and placement options, however, was a unilateral decision made by the DCPS. The DCPS also failed to ensure that the IEP team at the September 8, 2010 IEP team meeting included individuals having knowledge and information regarding placement options; including the placement proposed by the DCPS. As a result, the team lacked the information necessary to render a placement decision; and the parent was denied the opportunity to provide "meaningful" input in the placement decisions, and decisions regarding the provision of a FAPE to the student.

In its amended response to the complaint and at the hearing, the DCPS proposed an alternative placement, for the student. However, once again, the Hearing Officer must find that the DCPS failed to comply with the procedural requirements of the IDEA, in implementing the September 8, 2010 IEP, and determining the student's placement, for the same reasons.

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[33] Testimony of Parent and Petitioner's Exhibits 23 and 24.
[34] *Id.*

The procedural violations results in denial of a FAPE, because the procedural violations impede the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the student; and as a result, caused a deprivation of education benefit to the student.

Second, it is the Hearing Officers' decision that in determining the educational placement of the student, the DCPS failed to comply with the ***Least Restrictive Environment (LRE)*** requirements of the IDEIA, because it failed to implement the September 8, 2010 IEP by identifying an appropriate placement for the student, specifically tailored to address the child's unique needs; and therefore, are not based on the student's IEP. The student's neighborhood school, as later determined by the DCPS, is unable to implement the student's IEP; because it is unable to provide the student the full-time special education program, outside general education, or the a related services (i.e. substance abuse counseling); as recommended in her IEP. The placement proposed in DCPS' amended response to the complaint and at the hearing, also fails for the same reasons. *See, Roark ex rel. Roark v. District of Columbia, 460 F.Supp. 2d, 32-35, (D.D.C. 2006).*

On September 8, 2010, the IEP team determined that the nature and severity of the student's disabilities are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; and that the student requires a more restrictive environment, to access the general education curriculum and receive educational benefit.

The team also determined that for educational purposes, the student's primary disability is learning disabled; and although the evaluations support a finding that the student qualifies for services under the disability classification of emotionally disturbed, the DCPS determined that absent a Social History Assessment, it could not find that the student qualified for special education services as an emotionally disturbed student. However, in its amended response, the DCPS proposes to place the student in a school with students whose primary disability is emotionally disturbed[35]; and not learning disabled. The student's IEP also recommends substance abuse counseling; and a full-time special education program, over an 11 month period, which is not available at the school.

The placements proposed by the DCPS are not based on the student's September 8, 2010 IEP; because the placements are unable to offer the student an educational program specifically tailored to address her unique needs, as a student presenting with a primary disability of learning disabled; and which is necessary for the student to access the general education curriculum, and receive "meaningful" educational benefit.

The Hearing Officer has the same concern with regard to the student's current private school placement, where 80% of the students attending the school have a primary disability of emotionally disturbed (ED)[36]; and not learning disabled. This is further supported by the fact that at the September 8, 2010 IEP team meeting, the student expressed concern that she is unable to concentrate in classes at her current placement, due to the behavior of other students.

[35] Testimony of Coordinator at DCPS permanent/transition school.
[36] Testimony of Principal at student's current placement.

This is also supported by statements of the student's teachers at her current school, that the student continues to have difficulty with distractibility, which are likely attributed to her diagnosis of Specific Learning Disability, and the ADHD; difficulty ignoring peer provocation; volatility including occasional aggression; and substance abuse issues.[37] For these reasons, it is the Hearing Officers' decision that student's current private school placement, is not an appropriate placement for the student, because the program offered at the school is not specifically tailored to address the student's primary disability of learning disabled; or that the student can receive "meaningful" educational benefit.

The location of services proposed by the DCPS and Petitioner may provide the student some educational benefit; however, the benefit would be trivial and not "meaningful".[38] The student requires a full-time special education program, outside general education; with students whose *primary* disability is learning disabled; with a high teacher to student ratio. The location of services must consist of a small, heavily structured, academic environment that allows for a considerable amount of individualized attention and instruction; behavioral support services; problem solving techniques; and a behavior intervention plan that includes incentives for remaining in class, as well as positive reinforcements; sight and sound supervision; and consequences for behavior.[39]

The student also requires a low stimulus environment (e.g. areas free from distraction such as radio, television, people engaged in conversations, other disruptive students) to enhance the student's productivity and learning; and the possible use of ear plugs to block out excess noise, windows, doors, and other possible distractions; organize the work or learning environment to eliminate distractions. The location of services identified by the DCPS is not the LRE for the student.[40]

The Coordinator at the placement proposed by the DCPS at the hearing testified that the school has 115 students; each class size is up to 10 students, with two (2) adults in each class; students have a school-wide behavior plan; and there are more boys to girls attending the school. The Coordinator testified that teachers will modify the student's program to address her ADHD. The Coordinator testified that a certified substance abuse specialist is not available at the school; however, the student's substance abuse can be a focus of counseling. The Coordinator testified that the school is unable to provide the student the 11 month program recommended in the September 8, 2010 IEP; including of 27.5 hours of services during the Summer.[41]

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[37] *Id.*

[38] In accordance with the October 5, 2010 prehearing order, each party attended the hearing prepared to present placement options, and evidence regarding the placements it deemed appropriate. Petitioner argued that the student's current private school placement is appropriate, and provided evidence in support of its position. The Respondent proposed an alternate DCPS placement for the student; and presented evidence in support of its position. Although the disability classifications, without any other information, do not determine the services the student receives; they are instrumental in guiding how States define disabilities; assist in determining who is eligible for a free appropriate public education under special education law; and in developing an appropriate IEP for a student. Each party complied with the Hearing Officers' order by presenting placement options, however, the placements proposed by the parties fail because the September 8, 2010 IEP was not appropriately implemented, by identifying an appropriate placement for the student in an educational setting, emphasizing special education and related services specifically tailored to the student's unique needs, supported by such services, as are necessary to provide the student "meaningful" benefit; and the placement proposed, are not based on the student's IEP.

[39] Functional Behavioral Assessment, Petitioner's Exhibit 29.

[40] Comprehensive Psychological Evaluation. Petitioners Exhibit 28.

[41] Testimony of Coordinator at placement proposed by the DCPS.

The DCPS placement offers a 10 month program; and half day extended school year services, during the Summer; and not the 11 month, full-time special education program recommended in the student's September 8, 2010 IEP.

According to the testimony of the Coordinator at the placement proposed by the DCPS at the hearing, the school is appropriate for the student, however, it is evident that the Coordinator is not familiar with the student or her particular needs; was unable to state with any reasonable certainty whether the school has accepted the student at the school, or if a 9th or 10th grade space is available for the student if placed at the school.

The Coordinator also testified that the school has not identified a classroom for the student; however, if ordered by the Hearing Officer it would identify a space for the student. Of particular concern is the student's safety at the school proposed by the DCPS. According to the Coordinator, each day, a police officer is stationed at the school; the presence of court involved students at the school; and the high incidence of student disturbances at the school, necessitating daily police presence at the school.

Although the appropriateness of the IEP is not an issue in this complaint; its implementation is an issue in this complaint. According to the IDEA, the IEP must not only be reasonably calculated to enable the student to receive educational benefit, however, it must also be appropriately implemented, by identifying an appropriate placement for the student in an educational setting, emphasizing special education and related services specifically tailored to the student's unique needs, supported by such services, as are necessary to provide the student "meaningful" benefit; which failed to occur in this matter.[42]

On September 8, 2010, the DCPS failed to comply with the ***substantive requirements*** of the IDEA, by failing to develop *and implement* an IEP for the student specifically designed to address her unique needs; and provide the student 'meaningful' benefit.

It is the Hearing Officers' decision that the DCPS failed to provide the student an appropriate placement, in violation of the IDEA, at 34 C.F.R. §300.116; and failed to ensure the availability of a continuum of alternative placements for the student, during the 2010/2011 school year; in violation of the IDEA, at 34 C.F.R. §300.115(a). As a result, the parent sought self help; removed the student from the DCPS, and enrolled the student in a private school.

It is also the Hearing Officers' decision that the Petitioner satisfied its burden of proof by presenting evidence that the DCPS failed to provide the student an appropriate placement from the beginning of the 2010/2011 school year, through the date of this decision.

4. DCPS Denied Parent the Opportunity to Participate in Decisions Regarding the Student's Placement.

Petitioner asserts that DCPS failed to issue the Prior to Action Notice prior to convening the September 8, 2010 MDT meeting; failed to provide an appropriate disability classification for the student; failed to provide a description of other placement options considered and reasons for the rejection of each placement option; and failed to describe reasons for rejecting the placement proposed by the parent.

[42] *Gregory K. v. Longview Sch. Dist., 811 F.2d 1307, 1314 (1987).*

Respondent asserts that Petitioner received notice of the decision made by the team and the reasons for those decisions in the form of meeting notes. Respondent also asserts that placement is not the school location where the IEP is implemented, but the setting determined by the IEP.

Respondent also asserts that the parent was involved in development of the IEP and decisions regarding the setting and services on the IEP. The school where the IEP will be implemented is an administrative decision in which the IDEA does not require parental participation, citing *A.W. v. Fairfax County School Board, 372 F.3d 674 (4th Cir. 2004); White v. Ascension Parish-School Board, 343 F.3d 373 (5th Cir. 2003); Lunceford v. District of Columbia Board of Education, 745 F.2d 1577 (D.C. Cir. 1984); Roher v. District of Columbia, 1989 WL 330800 (D.D.C. Oct. 11, 1989)*.

The IDEA guarantees parents of disabled children the opportunity to participate in the placement process.[43] Thus, the DCPS must ensure that a parent of each child with a disability is a member of any group that makes decisions regarding the educational placement of the parent's child.[44] In determining the educational placement of a child with a disability, the public agency must also ensure that:

(a) The placement decision—
(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
(2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;
The IEP team for each child with a disability must include:
(b) The child's placement—
i. Is determined at least annually;
ii. Is based on the child's IEP; and
iii. Is as close as possible to the child's home…

On September 8, 2010, although the parent was a member of the IEP team, the placement decision was not made by a group of persons, including the parents, and other persons having knowledge regarding the child, the meaning of the evaluation data, and placement options. At the conclusion of the meeting, the DCPS advised the parent that it was issuing a Prior Notice of Placement, placing the student at her neighborhood school; and was finalizing the August 26, 2010 IEP to include 1.5 hours of behavior support services (1.0 hours of clinical counseling and 0.5 hours of substance abuse counseling); and 26 hours of specialized instruction, per week, for a total of 27.5 hours of services each week. This is when the parent first learned of DCPS' intent to place the student at her neighborhood school.[45]

[43] See, 20 U.S.C. §1414(f), §1415(b).
[44] 34 C.F.R. §300.501(c)(1).
[45] Parent first learned of DCPS' subsequent proposal to place the student at another school, during the hearing.

The DCPS issued the PNOP to the parent on this date, without any prior written notice, discussion with the parent, or members of the team. The DCPS unilaterally changed the student's placement from the DCPS senior high school, to the student's neighborhood senior high school; denying the parent the opportunity for "meaningful" input in the placement decision, in violation of the IDEA, at 34 C.F.R. §300.116(a)(1).

The DCPS also failed to ensure that the IEP team included individuals knowledgeable and prepared to discuss placement options with the parent and team; particularly the placement proposed by the DCPS. As a result, the DCPS, parent, and the team members did not have the information necessary to provide "meaningful" input in the placement decision.

DCPS failed to comply with the procedural requirements of the IDEA, 34 C.F.R. Section 300.503(a) (1) and (b), which provides that whenever the public agency *proposes to initiate or change*, or refuses to initiate or change the identification, evaluation, or educational placement of the child (i.e. rejecting the placement proposed by the parent); *or the provision of FAPE to the child*; *written notice* that meets the requirements of paragraph (b) of this section must be given by the public agency to the parents of a child with a disability within a reasonable time before the proposed action.[46]

Petitioner satisfied its burden of proof by presenting evidence that on September 8, 2010, the D.C. Public Schools failed to ensure that the parent received the opportunity to provide "meaningful" input in the placement decision, in violation of the IDEA, 34 C.F.R. §300.116(a)(1). The procedural inadequacies in this matter significantly impeded the parents' opportunity to participate in the placement process and decisions regarding the student's placement, resulting in the denial of a free appropriate public education.

5. It is the decision of this Hearing Officer that Petitioner established by a preponderance of the evidence that the DCPS denied the student a FAPE, by failing to comply with the procedural requirements of the IDEA, in developing and implementing the student's September 8, 2010 IEP; and determining the educational placement of the student. The procedural violations impede the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to the child; causing a deprivation of educational benefit to the student.

   The violations also result in substantive harm to the student because the student is deprived a placement where her IEP can be implemented and she can receive "meaningful" educational benefit; resulting in the loss of educational opportunity; and the parent is denied the opportunity to provide "meaningful" input in the placement decision; resulting in a substantive denial of a FAPE to the student, under the IDEA. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

   Based on a finding of denial of a FAPE, the student is entitled to compensatory education services from September 8, 2010 through the date of the complaint; however, the Petitioner failed to satisfy its burden by presenting evidence regarding the nature and amount of compensatory education services the student is entitled to receive, consistent with the standard established in *Reid v. District of Columbia*.

[46] 34 C.F.R. §300.503.

VIII. ORDER

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

1. **ORDERED**, that within thirty (30) calendar days from the date of this decision, the DCPS shall convene an IEP team placement meeting at the student's current placement. The purpose of the meeting shall be to:

   a) review and revise the student's September 8, 2010 IEP, to ensure that it includes 26 hours of specialized instruction, outside general education, 1.0 hours of clinical counseling, and .5 hours of substance abuse counseling, for a total of 27.5 hours of specialized instruction and related services, outside general education;

   b) revise the IEP to include the disability classifications of specific learning disability in mathematics, emotional disability, and other health impaired, specifically identified as attention deficit hyperactivity disorder;

   c) the goals and objectives in the IEP shall be reviewed and revised to ensure that they address the student's disabilities of specific learning disability in mathematics, emotional disability, and other health impaired, specifically identified as attention deficit hyperactivity disorder;

   d) ensure that the IEP is, not only reasonably calculated to enable the student to receive educational benefit, however, it must also be ***appropriately implemented***, by identifying an appropriate placement for the student in an educational setting, emphasizing special education and related services specifically tailored to the student's unique needs as a student with a primary disability of learning disabled; and that is supported by such services, as are necessary to provide the student "meaningful" benefit; and

2. **ORDERED**, that within twenty (20) calendar days from the date of this decision the parent shall identify placement options for the student, where the student's IEP can be implemented, and the student can receive 'meaningful' educational benefit. The placement options shall off offer the student a full-time special education program, outside general education; for students whose primary disability is learning disabled; and that offers substance abuse counseling for students; and it is further

3. **ORDERED**, that within five (5) school days prior to the IEP team placement meeting, the parent shall provide the DCPS written notice of the placements identified and to be proposed at the IEP team meeting, to be convened by the DCPS within thirty (30) calendar days from the date of this decision; and it is further

4. **ORDERED**, that the IEP placement team shall include a placement specialist, and other individuals, as defined at 34 C.F.R. §300.116, to discuss placement options proposed by the parent and the DCPS, and document the discussion and basis for accepting or rejecting each placement proposed; and it is further

5. **ORDERED**, that at the IEP team meeting to be held within thirty (30) calendar days from the date of this decision and order, the IEP team, including the parent, shall reach a consensus regarding the placement for the student; and it is further

6. **ORDERED**, that the IEP team must ensure that the parent is provided the opportunity for 'meaningful' input in the placement decision and all decisions regarding the provision of a FAPE to the student; and it is further

7. **ORDERED**, that the DCPS shall issue a Prior Notice of Placement to the parent, within five (5) school days, if the placement identified and agreed upon by the team is a public school, and thirty (30) calendar days, if the placement is a non-public or private school, with tuition and transportation costs to be paid by the DCPS for the remainder of the 2010/2011 school year; and it is further;

8. **ORDERED**, that the DCPS shall reimburse the parent for the students' tuition and transportation at her current placement, from August 23, 2010 until such time as the DCPS issues to the parent a Prior Notice of Placement, consistent with this decision and order; and it is further

9. **ORDERED**, that all meetings shall be schedule through the parent's counsel, Attorney Domiento Hill, in writing, via facsimile at (202) 742-2000; and it is further

10. **ORDERED**, that in the event of the DCPS failure to comply with this Decision and Order, Petitioner's Counsel shall contact the Office of Special Education, Resolution Team; in an effort to obtain compliance with this decision, prior to filing a complaint; and it is further

11. **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. The DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

IX. 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: *November 5, 2010*

Ramona M. Justice
Attorney Ramona M. Justice
Hearing Officer