DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

RECEIVED

Parent, on behalf of the Student,[1]

Petitioner,

v.

The District of Columbia Public Schools ("DCPS"),

Respondent.

Date Issued: December 23, 2010

Hearing Officer: Ramona M. Justice

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-E of the District of Columbia Municipal Regulations ("DCMR").

II. PROCEDURAL HISTORY

On October 29, 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), because:

1) determine the student's eligibility for special education services; and place the student in a special education school or program, within 120 days from April 6, 2010, the date the parent referred the student for evaluation;

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

2) it failed to ensure that at the beginning of the 2010/2011 school year, the student had an Individualized Education Program (IEP) in effect;
3) it failed to ensure that at the time that the student was determined eligible for special education services, as a student with a specific learning disability, the student was observed in his learning environment to document his academic performance and behavior in the areas of difficulty;
4) it failed to ensure that the IEP team that convened on October 19, 2010, included the student's special education teacher;
5) the ***level of services*** as recommended in the October 19, 2010 IEP, is insufficient to enable him to receive a free appropriate public education;
6) the nature and severity of his disability is such that education in a combination general/special ***education setting***, as recommended in the October 19, 2010 IEP, cannot be accomplished satisfactorily, even with the use of supplementary aids and services;
7) the ***location of services*** identified in the student's October 19, 2010 IEP, is unable to implement the student's IEP; and
8) the ***academic goals*** in math, reading, writing, and study skills, as recommended in the October 19, 2010 IEP, are not specifically designed to meet the student's unique needs.

The Petitioner seeks relief in the form of an Order requiring that the Respondent reimburse the parent for tuition and transportation costs for the student's attendance at the Chelsea School, for the 2010/2011 school year.

The due process complaint was assigned to this Hearing Officer on November 2, 2010; and on November 4, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for November 15, 2010 at 3:00 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.

The prehearing conference convened on November 19, 2010, at the convenience of the parties; and on November 22, 2010, the Hearing Officer issued a "Prehearing Order", summarizing the issues in the complaint, matters discussed, and confirming the due process hearing for December 16, 2010, at 9:30 a. m... On November 23, 2010, the Hearing Officer issued an amended prehearing order; clarifying the issues in the complaint.

The due process hearing convened on December 16, 2010, at 9:30 a.m., at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the parents' request; and each party was represented by counsel. Both parties provided an opening statement. There were no preliminary matters for discussion or for the hearing officer to decide.

The parties stipulated to the following facts:

- On July 20, 2010, the parent provided the DCPS consent, authorizing the student's neighborhood school to complete initial evaluations of the student.

- The District of Columbia Public Schools completed initial evaluations on August 28, 2010.

- On September 20, 2010, the parent forwarded an email to the District of Columbia Public Schools, cancelling the eligibility determination meeting scheduled for September 21, 2010.

- On October 19, 2010, the D.C. Public Schools convened an eligibility determination meeting for the student; and an Individualized Education Program (IEP) was developed for the student. The parent disagreed with the IEP, and requested the student's placement at the private school.

- The D.C. Public Schools failed to complete the eligibility process by August 23, 2010, the beginning of the 2010/2011 school year.

The Petitioner offered into evidence Petitioner's Exhibits 1-12; and the Respondent offered into evidence Respondent's Exhibits 1-13. There were no objections to the disclosures submitted by the parties, although there was some discussion regarding Petitioner's Exhibits 6 and 8. Each party submitted witness lists. Receiving no objections, the Hearing Officer admitted into the record as evidence, Petitioners' Exhibits 1-12; and the Respondent's Exhibits 1-13.

Petitioner's witnesses included the parent; and the Admissions Director and Director of Education, at the student's private school. Respondent's witness included the Special Education Coordinator at the student's neighborhood public high school.

III. BACKGROUND

The student is of age; and a resident of the District of Columbia. On April 6, 2010, the parent visited the District of Columbia Public Schools, Early Stages Office, to request evaluation of the student to determine his eligibility for special education services. The parent also requested placement of the student at a private school, located in Silver Spring, Maryland; for the 2010/2011 school year.

The 2010/2011 school year began on August 23, 2010; and the DCPS had not completed the eligibility determination process. The parent enrolled the student at the private school, in Silver Spring, Maryland. On October 22, 2010, the parent, on behalf of the student, filed this due process complaint.

IV. ISSUES

The issues before the Hearing Officer are as follows:

(1) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to determine the student's eligibility for special education services; and place the student in a special education school or program, within 120 days from April 6, 2010, the date the parent referred the student for evaluation; in violation of the D.C. Code of Municipal Regulations, §38-2561.02 (a) and (b)?

(2) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to ensure that at the beginning of the 2010/2011 school year, the student had an Individualized Education Program (IEP) in effect; in violation of the IDEA, at 34 C.F.R. §300.323(a)?

(3) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to ensure that at the time that the student was determined eligible for special education services, as a student with a specific learning disability, the student was observed in his learning environment to document his academic performance and behavior in the areas of difficulty; in violation of the IDEA, at 34 C.F.R. §300.310?

(4) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to ensure that the IEP team that convened on October 19, 2010, included the student's special education teacher, in violation of the IDEA, at 34 C.F.R. §300.321(a)?

(5) Whether the student was denied a free appropriate public education, because the ***level of services,*** as recommended in the October 19, 2010 IEP, is insufficient to enable him to receive a free appropriate public education, in violation of the IDEA, at 34 C.F.R. §300.320?

(6) Whether the student was denied a free appropriate public education, because the nature and severity of his disability is such that education in a combination general/special ***education setting***, as recommended in the October 19, 2010 IEP, cannot be accomplished satisfactorily, even with the use of supplementary aids and services; in violation of the IDEA, at 34 C.F.R. §300.320?

(7) Whether the student was denied a free appropriate public education, because the ***location of services*** identified in the student's October 19, 2010 IEP, is unable to implement the student's IEP, in violation of the IDEA, at 34 C.F.R. §300.320?

(8) Whether the student was denied a free appropriate public education, because the ***academic goals*** in math, reading, writing, and study skills, as recommended in the October 19, 2010 IEP, are not specifically designed to meet the student's unique needs, in violation of the IDEA, at 34 C.F.R. §300.320?

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 resides in the District of Columbia.[2]

[2] Testimony of parent.

2. During the 6th, 7th, and 8th grades, the student attended a Catholic middle school, located in Washington, D.C..[3] The school did not offer a special education program, however offered the student accommodations. [4] While attending the school, the student received grades of Cs, Bs, A's and a few failing grades.[5] The student completed the 8th grade; and graduated in June, 2010.[6]

3. In February or March, 2010, the parent began considering private high schools for the student to attend for the 2010/2011 school year.[7] During this period, the parent completed an application for the student to attend a private high school, The parent and student visited the school in April, 2010.[9] The parent did not visit or consider the student's neighborhood high school; as a potential placement for the student.[10]

4. On April 6, 2010, after submitting an application for the student to attend the private high school in Silver Spring, Maryland, the parent visited the District of Columbia Public Schools, Early Stages Office, to request evaluation of the student to determine his eligibility for special education services.[11] The parent completed an application, and provided the Early States Office a copy of the student's August 10, 2007 Neuropsychological; and October 24, 2008 Speech and Language evaluations.[12]

   The parent also requested the student's placement at the private high school, located in Silver Spring, Maryland, for the 2010/2011 school year.[13] The Early Stages Office did not request or obtain the parent's informed written consent for evaluation, during parents' visit.[14]

5. On April 28, 2010, the Early Stages Office forwarded a letter to the parent informing the parent that the student's information was forwarded to the Special Education Coordinator at the student's neighborhood school; and that the school would contact her to complete the evaluation and eligibility process.[15] The date that the Early Stages Office referred the student to his neighborhood school for initial evaluations, is not in the record.

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[3] Testimony of parent.
[4] Id.
[5] Id.
[6] Id.
[7] Id.
[8] Testimony of Director of Admissions, at the private high school.
[9] Id.
[10] Testimony of parent and Special Education Coordinator at neighborhood school.
[11] Id.
[12] Id.
[13] Id.
[14] Id.
[15] Id.

6. On July 20, 2010, the Respondent convened a Multidisciplinary Development Team (MDT) meeting with the parent, at the student's neighborhood school.[16] The team discussed the student's placement, evaluations, and development of the student's IEP. [17] The school also requested, and the parent provided written informed consent authorizing the school to conduct initial evaluations; for the purpose of determining the student's eligibility for special education services.[18]

   Upon the parent's inquiry regarding the availability and completion of the consent form, the Special Education Coordinator (SEC), advised the parent that the consent form should have been included with the application submitted to the Early Stages Office in April, 2010.[19] After the July 20, 2010 meeting, the parent contacted the student's neighborhood school, to inquire regarding the status of the eligibility process, to no avail.[20]

7. On July 28, 2010, the student received a Confidential Psychological Evaluation; although the report was not completed until August 28, 2010.[21]

8. On August 20, 2010, within one (1) month after completion of the initial evaluation, the DCPS invited the parent to an eligibility determination meeting the Respondent issued to the parent a Letter of Invitation inviting the parent to attend an eligibility determination meeting on August 31, 2010, at 10:00 a.m., to review the initial evaluations, and determine the student's eligibility for special education services.[22] Although the parent was available for the August 31, 2010 eligibility meeting, she did not attend. The meeting was rescheduled to September 21, 2010.[23]

9. As of August 23, 2010, the beginning of the 2010/2011 school year, the DCPS had obtained the parent's informed written consent, completed the initial evaluations, and had issued to the parent a letter, inviting the parent to a meeting to discuss and determine the student's eligibility for special education services.[24] The parent unilaterally placed the student at the private high school, located in Silver Spring, Maryland, for the 2010/2011 school year; [25]; because the school had accepted the student for placement for the 2010/2011 school year, and offered the parent a financial aid package for the student.[26]

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[16] Respondent's Exhibit 1.
[17] Id.
[18] Id.
[19] Testimony of parent.
[20] Id.
[21] Petitioner's Exhibit 3 and Respondent's Exhibit 4.
[22] Respondent's Exhibit 5.
[23] Testimony of parent.
[24] Testimony of parent and Respondent's Exhibit 5.
[25] Id.
[26] Id.

10. The parent provided the DCPS, no prior written notice of its intent to place the student at the private high school. Instead, on September 9, 2010, the parent filed a due process complaint alleging that the Respondent failed to complete initial evaluations, develop an IEP, and provide the student an appropriate placement.

11. On September 20, 2010, the parent forwarded an email to the Respondent cancelling the meeting; due to her Attorney's unavailability.[27]

12. On September 29, 2010, a resolution meeting was held to discuss the due process complaint filed on September 9, 2010, the allegations in the complaint; and to propose a settlement.[28] The team agreed to convene a MDT eligibility meeting to determine the student's eligibility, develop an IEP, and if necessary discuss compensatory education services; and identified October 19, 2010, and October 21, 2010, as potential dates for the meeting.[29]

13. On October 6, 2010, the Respondent convened an Individualized Education Program (IEP) team meeting with the parent and her Attorney. The team drafted an IEP for the student, recommending 21 hours of specialized instruction services, in the general education setting.[30] The IEP was signed by the parent.[31]

14. On October 19, 2010, the Respondent convened an eligibility determination meeting with the parent and parent's Attorney.[32] The student was determined disabled and eligible to receive special education and related services, under the disability classification of multiple disabilities (MD), including Other Health Impaired (OHI), specifically identified as Attention Deficit Hyperactivity Disorder (ADHD), and Specific Learning Disabled (SLD).[33]

    The IEP team recommended 21 hours of specialized instruction, in the general education inclusion setting; at the student's neighborhood school.[34] The parent disagreed with the inclusion setting and level of services; and requested a full time special education program; and the student's placement at the private high school, she attends.[35] The IEP team also issued a Prior Written Notice placing in the general education inclusion setting, at the student's neighborhood school.[36]

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[27] Id.
[28] Respondent's Exhibit 7.
[29] Id.
[30] Respondent's Exhibit 8.
[31] Hearing Officers' Exhibit 1.
[32] Petitioner's Exhibit 8.
[33] Petitioner's Exhibit 9.
[34] Petitioner's Exhibit 1 and Petitioner's Exhibit 9.
[35] Id.
[36] Petitioner's Exhibit 7 and Respondent's Exhibit 11.

The Petitioner's representation that it signed the cover page of the student's IEP, and that the cover page of the IEP recommends 21 hours of specialized instruction, outside the general education setting, is accurate. However, suggesting that the IEP was subsequently changed to reflect that the student would receive 21 hours of specialized instruction, outside the general education setting; is disingenuous.

The MDT meeting notes, Prior Written Notice, and the Petitioner's due process complaint[37], clearly reflect that the IEP team recommended 21 hours of specialized instruction, in the inclusion setting; and that the parent rejected the proposed placement at the student's neighborhood school, in the general education inclusion setting; and requested the student's full-time placement at the private high school, currently attended by the student.[38]

In addition, according to the Respondent, the handwritten cover page of the student's IEP, reflecting 21 hours of specialized instruction, outside the general education setting, was an error; and not the agreement of the team at the October 19, 2010 IEP team meeting.[39]

15. The private high school is a full-time special education, college preparatory high school, serving students with learning disabilities, attention deficit disorder, and attention deficit hyperactivity disorder; from grades 5-12. The school has approximately 80 special education students; and has a certificate of approval from the District of Columbia.[40] All of the student's teachers are certified in a subject matter area, and/or have a conditional certification in special education; and only the student's Math teacher is certified in special education.

    At the school, the student is in a class of six (6) students, attended by one special education teacher.[41] The student is reported as less focused and shuts down in his class of six students; and is more focused and participates more in smaller group settings.[42] The student receives classroom accommodations and supports.[43]

    The student's curriculum includes: English, Reading Lab, Math, Algebraic Concepts, Science, Computer Graphics, and Ceramics. Since attending the school the student received grades of A's and B's. The student has no interaction with non-disabled peers. The school is unable to implement the IEP developed by the Respondent on October 19, 2010 IEP.

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[37] Petitioner's Exhibit 1,page 4.
[38] Respondent's Exhibits 9 and Testimony of SEC at student's neighborhood school.
[39] Testimony of SEC at student's neighborhood school.
[40] Id.
[41] Testimony of Education Director, at private high school.
[42] Id.
[43] Id.

At the student's neighborhood school, the student would be in a general education inclusion setting; in a class of 9 (nine) students, with a Special Education Teacher and two (2) aides.[44]

16. **Failure to Determine the Student's Eligibility for Special Education Services and Place the Student within 120 days from Date the Student Was Referred for Evaluation**

The DCPS obtained the parent's informed written consent and completed the initial evaluation, within 120 days from the date the student was referred for evaluation. The date the student was referred by the Early Stages Office to the student's neighborhood school for evaluation, is unknown. However, the parent referred the student for initial evaluation, on April 6, 2010[45]. Therefore, the DCPS was required to obtain the parent's informed written consent and evaluate the student, no later than August 4, 2010.

The DCPS obtained the parent's informed written consent on July 20, 2010[46], and although the evaluation report was not completed until August 28, 2010[47], the DCPS completed the student's initial evaluation on July 28, 2010;[48] within 120 days from the date the student was referred for evaluation.

The DCPS attempted to convene an eligibility determination meeting with the parent on two (2) occasions; however, the parent failed to attend, or cancelled the meetings. Therefore, it is disingenuous for the parent to file this complaint alleging that the DCPS failed to render the eligibility determination in a timely manner.

The Hearing Officer finds that the DCPS convened the eligibility meeting and rendered a decision regarding the student's eligibility for special education services, within a reasonable period of time, upon completion of the initial evaluations.

17. **Failure to Ensure that the Student Had an IEP at the Beginning of the 2010/2011 School Year**

There is no requirement that the LEA develop an IEP for a student, prior to a determination that the student is disabled and eligible to receive special education services, under the IDEA. This requirement applies to students already determined disabled and eligible to receive special education services under the IDEA[49]; and this student was not determined disabled and eligible to receive services under the IDEA, until after the beginning of the 2010/2011 school year.

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[44] Testimony of SEC at student's neighborhood school.
[45] Testimony of parent.
[46] Respondent's Exhibit 2.
[47] Petitioner's Exhibit 3 and Respondent's Exhibit 4.
[48] Id.
[49] IDEA, at 34 C.F.R. §300.323(c)(1)

Once determined disabled and eligible to receive services under the IDEA, the DCPS must convene a meeting within 30 days of the eligibility determination, to develop an IEP for the student.[50] Here, the eligibility determination was made on October 19, 2010;[51] therefore, the DCPS was required to convene a meeting to develop the student's IEP, no later than November 18, 2010. The DCPS convened the meeting and developed the student's IEP on October 19, 2010,[52] in a timely manner.

The Hearing Officer finds that the DCPS was not obligated to ensure that an IEP was in effect for the student, at the beginning of the 2010/2011 school year.

18. **Failure to Conduct a Classroom Observation**

On October 19, 2010, the eligibility team relied upon the student's evaluations and input from the team members, in determining that the student is a student with a specific learning disability.[53]

The Hearing Officer finds that the eligibility team failed to use information from an observation in routine classroom instruction and monitoring of the child's performance completed before the child was referred for evaluation; or ensured that at least one member of the team conducted an observation of the child's academic performance in the regular classroom, documenting the child's academic performance and behavior in the areas of difficulty, after the child was referred for an evaluation and parental consent was obtained; prior to determining that the student has a specific learning disability.[54]

19. **Failure to Ensure that the October 19, 2010 IEP Team Included the Student's Special Education Teacher**

The Hearing Officer finds that on October 19, 2010, the DCPS failed to properly convene an IEP team, by ensuring that the team included not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the child.[55]

Although the IEP team included two (2) special education teachers from the student's neighborhood school, the team failed to include not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the child, from the student's attending private high school.[56]

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[50] Id.
[51] Petitioner's Exhibit 9 and Respondent's Exhibits 9 and 10.
[52] Id.
[53] Petitioner's Exhibit 9 and Respondent's Exhibit 10.
[54] Petitioner's Exhibit 9 and Respondent's Exhibit 10.
[55] Petitioner's Exhibits 8, 9, and 10; and Testimony of SEC at student's neighborhood school.
[56] Petitioner's Exhibits 8, 9, and 10, and Respondent's Exhibit 10, and Testimony of SEC at student's neighborhood school.

20. **Failure to Develop an Appropriate IEP (Level of Services)**

The Hearing Officer finds that the October 19, 2010 IEP is appropriate because the 21 hours of specialized instruction, as recommended in the student's IEP is sufficient to enable the student to access the general education curriculum, and receive educational benefit.[57]

The Petitioner presented evidence that the student would benefit from classroom and testing accommodations and modifications, however, presented no evidence that the level of services in the student's IEP is inappropriate; that the student requires more than 21 hours of specialized instruction, as recommended in his October 19, 2010-IEP; or evidence regarding the level of services it opines is necessary for the student to access the general education curriculum and receive educational benefit.

Furthermore, the fact that the student attends a full-time special education program and is progressing academically[58], does not mean that a full-time special education program is necessary, for the student to access the general education curriculum and receive educational benefit.

21. **Appropriateness of IEP (Educational Setting)**

The Hearing Officer finds that the nature of the student's disabilities are such that education in a general education inclusion setting cannot be accomplished satisfactorily, even with the use of supplementary aids and services.[59]

The fact that the student attends a full-time special education program *outside the general education setting*; and is progressing academically[60], does not mean that this setting is the least restrictive environment for the student. In fact, the evaluator stated in the initial evaluation completed on July 28, 2010, that although the student should be allowed to complete his work both at school and at home in an area that has decreased distractibility; this should not be misunderstood as meaning that the student should be isolated from his peers.[61]

22. **Appropriateness of IEP (Location of Services)**

The Hearing Officer finds that the location of services identified in the October 19, 2010 IEP is appropriate, because it can implement the student's IEP; and provide the student educational benefit.[62]

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[57] Respondent's Exhibit 4 and Petitioner's Exhibit 3.
[58] Testimony of parent, Admissions Director and Director of Education at student's private high school.
[59] Respondent's Exhibit 4 and Petitioner's Exhibit 3, and Testimony of Admissions Director and Director of Education at student's private high school, and parent.
[60] Testimony of parent, Admissions Director and Director of Education at student's private high school.
[61] Respondent's Exhibit 4 and Petitioner's Exhibit.
[62] Testimony of SEC at neighborhood school.

The record reflects that the parent completed the application for the student to attend the private high school, located in Silver Spring, Maryland, as early as February and March of 2010; prior to visiting the Early Stages Office to request that the DCPS evaluate the student to determine his eligibility for special education services.[63] In February and March, of 2010, while interviewing and considering schools for the student to attend for the 2010/2011 school year, the parent did not visit or consider any DCPS school; and in fact, only visited private schools.[64]

The parent also remains consistent in her request and desire that the DCPS place and fund the student's placement at the private high school, which she currently attends. The parent expresses no interest in the student attending a DCPS school, or the educational program at the student neighborhood school.[65] This is supported by the parent's testimony that she has not visited the student's neighborhood school to discuss its special education program; and did not consider the school as a potential placement for the student, for the 2010/2011 school year.

The parent also testified that she was not familiar with the special education program or services available to the student at his neighborhood school; and did not consider the school because she attended the school in 1986, and the school is too large for the student because he is easily distracted. The parent also testified that she learned through the television that DCPS schools were merging schools, and class sizes were increasing; and because the student is easily distracted, opined that the large class sizes were not appropriate for the student.

It was never the parent's intent or desire that the student attend the student's neighborhood school; or any DCPS school.[66] In fact, the parent visited the Early Stages Office on April 6, 2010, with the desire and intent that the DCPS merely evaluate and determine the student's eligibility for special education services; and reimburse the parent for tuition and transportation costs for the student to attend the private high school in Silver Spring, Maryland[67]. The Petitioner presented no evidence to the contrary.

23. **Appropriateness of IEP (Academic Goals)**

The Petitioner presented no evidence that the student's academic goals in math, reading, writing, and study skills, as recommended in the October 19, 2010 IEP, are not specifically tailored to meet the student's unique educational needs.

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[63] Testimony of parent and Admissions Director at student's private high school.
[64] Testimony of parent.
[65] Id.
[66] Id.
[67] Id.

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.[68] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[69]

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)*.

   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 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.[70]

4. 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).[71]

   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.

5. 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; and 2) educational benefit.

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[68] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.
[69] 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)
[70] IDEA, 34 C.F.R. §300.17(d).
[71] Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982).

In this matter, the parent challenges the appropriateness of the student's October 21, 2010 IEP, and placement.

(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.

6. **Failure to Determine the Student's Eligibility for Special Education Services and Place the Student Within 120 days from Date the Student Was Referred for Evaluation**

Consistent with the consent requirements at the IDEA, at 34 C.F.R. §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.[72] In this case, the parent initiated a request for initial evaluations.

[72] IDEA, at 34 C.F.R.§300.301(b).

According to the D.C. Code of Municipal Regulations, Chapter 25B, §38-2561.02 (a) the District of Columbia Public Schools must ***assess or evaluate*** a student who may have a disability, and who may require special education services, within ***120 days*** from the date that the student is referred for an evaluation or assessment. *See, Dorros v. District of Columbia, 510 F.Supp.2d 97 (2007); Integrated Design and Electronics Academy Public Charter School v. McKinley, 570 F.Supp.2d 28 (2008); Jones ex rel. A.J. v. District of Columbia, 109 LRP 52722 (2009).*

Additionally, the IDEA, at 34 C.F.R. §300.300 provides that the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8, must, after providing notice consistent with §300.503 and 300.504, ***must obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation.***

It is the Hearing Officers' decision that the Petitioner failed to satisfy its burden of proof by presenting evidence that the DCPS failed to evaluate the student within 120 days from the date the student was referred for initial evaluations; in violation of the D.C. Code of Municipal Regulations, Chapter 25B, §38-2561.02 (a); and the IDEA, at 34 C.F.R. §300.300.

It is also the Hearing Officers' decision that the Petitioner failed to prove that the IDEA not only requires the local education agency (LEA) to conduct initial evaluations, however, also requires the LEA to determine the student's eligibility and placement, within 120 days of the student's referral for evaluation.

According to the IDEA, upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child must meet to determine whether the child is a child with a disability, and the educational needs of the child.[73] The IDEA establishes no time limit for convening the eligibility determination meeting; therefore, the reasonableness standard applies.

It is the Hearing Officer's decision that in applying the reasonableness standard, the eligibility determination was made within a reasonable period of time; upon completion of the initial evaluations.

7. **Failure to Ensure that the Student Had an IEP at the Beginning of the 2010/2011 School Year**

According to the IDEA, at 34 C.F.R. §300.323, at the beginning of each school year, each public agency must have in effect, *for each child with a disability* within its jurisdiction, an IEP, as defined in §300.320.

[73] IDEA, at 34 C.F.R. §300.306, and Comments to 34 C.F.R. §300.301(c).

At the beginning of the 2010/2011 school year, the student was not determined disabled or eligible to receive special education services, under the IDEA. Therefore, the DCPS was not obligated to ensure that at the beginning of the 2010/2011 school year, it had an IEP in effect for this student.

According to the IDEA, at 34 C.F.R. §300.323 (c)(1) once a student is determined disabled and eligible to receive special education services, the DCPS is obligated to have an IEP in effect for the student within 30 days of the eligibility determination. The eligibility determination for this student was made on October 19, 2010, after the beginning of the 2010/2011 school year; and on this date the DCPS developed an IEP for the student; within the 30 day timeline.

It is the Hearing Officers' decision that the Petitioner failed to satisfy its burden of proof, by failing to present evidence that the DCPS failed to ensure that the student had an IEP in effect at the beginning of the 2010/2011 school year; in violation of the IDEA, at 34 C.F.R. §300.323.

8. **Failure to Conduct a Classroom Observation**

According to the IDEA, at 34 C.F.R. §300.309, the eligibility determination team ***may*** determine that the student has a specific learning disability, if the child does not achieve adequately for the child's age or to meet State approved grade level standards in certain areas; or the child does not make sufficient progress to meet age or State-approved grade-level standards in certain areas.

According to the IDEA, at 34 C.F.R. §300.310, the public agency ***must*** ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

It is the Hearing Officers' decision that prior to determining the student is a student with a specific learning disability; the DCPS failed to consider information from an observation conducted before the student was referred for evaluation; and/or failed to conduct an observation of the student in the classroom, after referral and parental consent; in violation of the IDEA, at 34 C.F.R. §300.309 and 300.310.

9. **Failure to Ensure that the October 19, 2010 IEP Team Included the Student's Special Education Teacher**

It is the Hearing Officers' decision that the Petitioner failed to satisfy its burden by proving that the DCPS failed to comply with the IDEIA, 34 C.F.R. Section 300.321(a), by failing to ensure that the October 19, 2010, IEP team not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child.

10. **Appropriateness of the Student's IEP and Placement**

First, it is the Hearing Officers' decision that the Petitioner satisfied its burden of proof by presenting evidence that the Respondent failed to comply with the ***procedural requirements*** of the IDEA, in developing the student's IEP, because on October 19, 2010, because it failed to ensure that the team included not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; from his attending school.

However, the Petitioner failed to establish that the student was denied a FAPE, because the procedural violation impeded the child's right to a free and appropriate public education; 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 caused a deprivation of educational benefit to the student.

Second, it is the Hearing Officers' decision that the Petitioner failed to prove that the student's October 19, 2010 IEP is inappropriate because the ***level of services*** is insufficient to meet the needs of the student; the ***location of services*** is inappropriate because it is unable to implement the student's IEP, or provide the student educational benefit; or the ***academic goals*** in math, reading, writing, and study skills are inappropriate because they are not specifically designed to meet the student's unique needs. However, the Petitioner proved that in developing the student's October 19, 2010 IEP, the Respondent failed to comply with the ***substantive requirements*** of the IDEA, by failing to develop an IEP for the student that is reasonably calculated to enable the student to receive educational benefit; because the ***educational setting*** is inappropriate.

Although the October 19, 2010 IEP is ***appropriately designed,*** emphasizing special education and related services specifically designed to meet the student's unique needs; and supported by such services, as are necessary to provide the student 'meaningful', benefit; it is not reasonably calculated to enable the student to receive educational benefit, because the nature of the student's disability is such that education in the general education curriculum, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. The student requires special education services, outside the general education setting.

It is also the Hearing Officers' decision that although the Petitioner established that in developing the student's October 19, 2010 IEP, the Respondent failed to comply with the substantive requirements of the IDEA; it failed to establish that the violation impacted the student or parent's substantive rights. During the 2010/2011 school year the student received a full-time special education program, outside the general education setting, at a private high school; selected by the parent. There is also no evidence that the student failed to receive special education services he was entitled to receive under the IDEA, or that the student suffered academically,[74] therefore, there can be no finding of denial of a FAPE.

[74] Petitioner's Exhibit 12.

VII. ORDER

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

1. **ORDERED**, that the relief requested by the Petitioner is denied; and it is further

2. **ORDERED**, that the student's October 19, 2010 IEP is revised to reflect that the student shall receive 21 hours of specialized instruction, *outside* the general education setting; and it is further

3. **ORDERED**, that within fifteen (15) school days from the date of this decision and order, the Respondent shall convene an IEP team meeting with the parent, and individuals from the students attending school, consistent with this decision and order and the requirements of the IDEA, at 34 C.F.R. §300.321, for the purpose revising the student's October 19, 2010 IEP to reflect that the student will receive 21 hours of specialized instruction, *outside* general education; and it is further

4. **ORDERED**, that this decision and order are effective immediately.

IIX. 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: *December 23, 2010*

Ramona M. Justice

Attorney Ramona M. Justice, Hearing Officer