District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office
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OSSE
STUDENT HEARING OFFICE
2011 DEC -1 PM 3:07

Confidential

STUDENT[1], by and through his Parent Petitioners, v. District of Columbia Public Schools ("DCPS") Respondent.	HEARING OFFICER'S DETERMINATION Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened November 23, 2011, at the OSSE Student Hearing Office 810 First Street, NE, Washington, DC 20003, in Hearing Room 2003.

BACKGROUND AND PROCEDURAL HISTORY:

The student is age fifteen in the grade and has been determined eligible as a child with a disability under IDEA in need of special education and related services with a disability classification of emotional disturbance ("ED"). During the 2010-2011 school year ("SY") the student was enrolled in a District of Columbia Public Schools ("DCPS") full time special education program, hereinafter referred to as "School A." At the end of school year SY 2010-2011 School A closed and the student was assigned by DCPS to attend a special education program located within a DCPS high school, hereinafter referred to as "School B."

On September 16, 2011, Petitioner filed the due process complaint alleging, *inter alia,* that the student's placement at School B was made unilaterally without the parent's participation and that School B was an inappropriate placement for the student. DCPS counsel filed a written response on October 3, 2011. DCPS asserted in response to the complaint that there had been no denial of a Free and Appropriate Public Education ("FAPE").[2] A resolution meeting was held October 6, 2011 and the matter was not resolved. The parties agreed to continue the resolution period and thus the 45-day timeline ended November 30, 2011. A pre-hearing conference was held October 7, 2011, during which the parties' positions regarding the complaint were addressed and the issues to be adjudicated were clarified. A pre-hearing order was issued October 12, 2012.

ISSUES: [3]

The issues adjudicated are:

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[2] Specifically with regard to each allegation DCPS asserted (1) the student's records are available at the school to inspect and Petitioner is required to go to the school to do so and not simply request the records be sent; (2) the April 1, 2011, meeting notes indicate a relative attended for the parent and participated in the meeting; (3) the site location is up to the LEA and DCPS informed the parent that School A was relocating to School B; (4) the FBA was completed following the parental request; the IEP programming need not address the disability classification and the IEP is appropriate despite intellectual disability not being mentioned in the classification; (5) the student has made progress and earned credits; (5) current placement at School B is full time special education program out of general education and is appropriate and can and is implementing the student's IEP and it was implemented at School A the previous year.

[3] The alleged violation(s) and/or issue(s) listed in the complaint may not directly correspond to the issue(s) outlined here. However, the parties agreed at the hearing that the issue(s) listed here and as stated in the pre-hearing order are the issue(s) to be adjudicated. Relief as to the failure to evaluate was granted by DCPS with the issuance of IEE authorization October 6, 2011.

1. Did DCPS deny the student a FAPE by failing to provide the parent access to student records?[4]
2. Did DCPS deny the student a FAPE by failing to include the parent in the decision-making process at the student's April 1, 2011, IEP meeting?[5]
3. Did DCPS deny the student a FAPE by failing to re-evaluate her upon parental request?[6]
4. Did DCPS deny the student a FAPE by failing to develop an appropriate IEP?[7]
5. Did DCPS deny the student a FAPE by failing to implement an appropriate IEP?[8]
6. Did DCPS deny the student a FAPE by failing to determine and provide an appropriate placement/location of services?[9]

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-25 and DCPS Exhibit 1-10) that were all admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

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[4] Petitioner asserts that on or about June 2, 2011, the student's parent, through counsel, requested a complete copy of the student's service trackers to date and on June 27, 2011, the parent, through counsel, requested a complete copy of the student's evaluations and suspension records to date. Petitioner alleges DCPS has failed to provide any records in response to the June 2, 2011 and June 27, 2011 requests.

[5] Petitioner asserts DCPS did not include the parent in the April 1, 2011, IEP team meeting, nor in the development of the April 1, 2011, IEP. In addition, as to the student's placement Petitioner asserts that neither prior to School A closing, nor after it closed, did the parent ever receive a Letter of Invitation to an IEP team meeting or receive a phone call or any communication to discuss the student's placement or possible placements for the 2011-2012 school year and failed to attempt to include the parent in the determination of the student's placement/location of services for the 2011-2012 school year.

[6] Petitioner asserts that on or about April 28, 2011, the parent through counsel, requested that the student be re-evaluated by conducting a comprehensive psychological evaluation, a functional behavior assessment, and a speech-language evaluation. Petitioner asserts that prior to the complaint DCPS has failed to re-evaluate the student.

[7] Petitioner's asserts that the student's April 1, 2011, IEP is inappropriate in that it prescribes no intellectual disability or mild intellectual disability as part of the student's disability classification, contains inappropriate impact statements; inappropriate baselines; inappropriate goals in written expression; an inappropriate/insufficient present level of performance, needs statement, impact statement, goal, and baseline in the emotional, social, and behavioral development area of concern; and inappropriate/insufficient goals and objectives, and related services, for ESY.

[8] Petitioner asserts that School B cannot provide the student 31 hours per week of specialized instruction in an out of general education setting and thus DCPS has failed to implement the student's April 1, 2011, IEP.

[9] Petitioner asserts that School A was a full-time special education school for students with emotional disturbance, and was closed in June 2011. Petitioner asserts the student got into a fight the second week of classes at School B and was suspended for three days, from August 31, 2011, until September 2, 2011, because of a fight that occurred the second week of classes. Petitioner asserts the student got into another fight the third week of classes at Petitioner alleges School B cannot implement the student's current IEP, is not a therapeutic placement and cannot meet the student's highly specialized needs.

FINDINGS OF FACT: [10]

1. The student is age in the grade and has been determined eligible as a child with a disability under IDEA in need of special education and related services with a disability classification of ED. During SY 2010-2011 school year the student was enrolled in School A, a DCPS full time special education program. (Petitioner's Exhibit 16)

2. On March 25, 2011, and on March 28, 2011, DCPS issued letters of invitation to the parent inviting her to an IEP meeting to update the student's IEP. Both letters proposed the meeting date of April 1, 2011. (DCPS Exhibit 1&2)

3. On April 1, 2011, DCPS convened the student's IEP meeting. The student and the student's maternal grandmother attended the meeting. The student's parent did not attend. The parent was not aware of the meeting and did not authorize her mother to participate in the meeting on her behalf. The team reviewed the student's progress and agreed evaluations would be conducted and requested the parent give consent. (Parent's testimony, Petitioner's Exhibit 16-1, DCPS Exhibit 3)

4. The student's April 2011 IEP progress report indicated the student was making progressing in all her IEP goals. (DCPS Exhibit 4)

5. The student's current IEP dated April 1, 2011, includes goals and objectives in the areas of concern labeled math, reading, written expression, emotional, social and behavior development, and motor skills/physical development; 31 hours per week of specialized instruction in an out of general education setting; 1 hour per week of behavior support services in an out of general education setting; and 30 minutes per week of occupational therapy in an out of general education setting. (Petitioner's Exhibit 16)

6. On April 28, 2011, Petitioner through counsel requested that DCPS conduct evaluations of the student including a comprehensive psychological, functional behavior assessment ("FBA") and speech and language evaluation. DCPS did not conduct the requested evaluations (Petitioner's Exhibit 15)

7. On June 2, 2011, Petitioner's counsel acknowledged to DCPS receipt of some of the student's educational records that had been provided. The letter also requested that the student's services tracker records be provided. (Petitioner's Exhibit 12)

8. On June 27, 2011, Petitioner through counsel requested copies of the student's FBA, triennial evaluations, suspension records and services tracker records. (Petitioner's Exhibit 11)

9. While the student was still attending School A DCPS conducted a FBA on May 27, 2011. The behavior of concern was the student being out of her seat, being defiant, bossy, verbally aggressive and off task, displayed poor motivation and distracting others. The

[10] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may perhaps only cite one party's exhibit.

FBA described the antecedents of the behavior, and her school performance anxiety and her avoidance of doing class work. The FBA also noted that the student's low level of functioning and mental retardation impacts her behavior. Her low level of functioning, poor coping skills, diminished capacity to process and connect behavior to consequences lead to poor judgment and disruptive behavior. (DPCS Exhibit 5-2,5-4)

10. At the end of school year SY 2010-2011 School A closed and the student was assigned by DCPS to attend a special education program located within a DCPS high school, School B. The student began attending School B at the start of SY 2011-2012. (Parent's testimony)

11. On October 6, 2011, DCPS provided Petitioner with authorization to obtain independent comprehensive psychological and occupational therapy evaluations. (Petitioner's Exhibit 5)

12. The student's progress report issued November 5, 2011, after she began attending School B indicates that all of her IEP academic goals were just introduced whereas the previous progress report at School B stated she was progressing relative to the same academic goals. (Petitioner's Exhibit 6, DCPS Exhibit 4)

13. On November 14, 2011, a comprehensive psychological evaluation was conducted of the student. The evaluator determined the student's cognitive functioning is in the in the extremely low range based on her verbal IQ Composite Score of 67 and full scale IQ Score of 63 on the WISC-IV. A TONI nonverbal IQ quotient of 75 placed her in the borderline range of functioning. The student's academic ability was determined to be in the very low range with composite standard scores averaging just below 50 reading near 3rd grade level. (Petitioner's Exhibit 20-5, 20-7, 20-13)

14. On November 11, 2011, an occupational therapy evaluation was conducted which concluded the student has age appropriate gross motor skills but below average visual perceptual skills and visual motor integration skills. The evaluator determined the student would benefit from extended writing time, near-point copies of work from adapted worksheets and graphic organizers and development of key boarding skills to assist in improving her functional performance. The evaluator recommended the student receive 30 minutes of direct OT services per week. The two evaluations conducted in November 2011 have not yet been reviewed by an IEP team. (Petitioner's Exhibit ,21-721-8

15. The student's educational advocate, Dr. Holman's toured School A prior to it closing and also observed the student at School B on September 22, 2011. Dr. Holman observed the student in her employability class. The student was given a survey to complete and a classroom aide was assisting her. Dr. Holman spoke with the student's reading teacher and reviewed the student's most recent IEP. In Dr. Holman's opinion the IEP's academic impact statements are general but it is accurate. The social/emotional impact statement is more specific. With regard to the IEP's baseline information, the baseline for a goal should tell where the student is relative to the goal so that at the end of the year her progress can be measured. The student's IEP baselines for math and reading are the same for all goals. In Ms. Holman's opinion the goals could have been more defined and specific. The written expression goals are not clear because they are not sufficiently

defined. The use of the word "strategies" leaves questions about what specific strategies are being used by the staff in implementing the IEP. There is no baseline for the goal in social/emotional/behavioral development. However, Dr. Holman believes the need statement is accurate. There is little information to measure the student's progress. In Dr. Holman's opinion the student's low level of abilities causes her to be embarrassed and cut classes. She needs more individualized instruction at her ability levels and should not be in class with students who are performing significantly above her level. Because the FBA indicated the intellectual deficiency the student's IEP and program should have been reassessed (Dr. Holman's testimony, Petitioner's Exhibit 16-6,16-7, 16-13)

16. The student experiencing the most difficulty in reading. She is better at math. Sometimes she walks out of class and sits in the hallway and the adults will direct her to her classroom and sometimes they say nothing and let her stay in the hall. She walks out of class because of distractions from there being too many students. At the time of the hearing the student was suspended for having her cell phone and was to return to school after the Thanksgiving break. When she walks out of class she goes to the principal's office or to her therapist. She has been suspended for fighting because a student threatened to stab her. Another student hit her first and then they both were suspended for fighting. The student skips her reading class because she doesn't want to be there. (Student's testimony)

17. The parent doesn't recall ever receiving the letters of invitation. At the time of the April 1, 2011, IEP the parent was not aware the meeting was happening and did not authorize her mother to participate in her stead. The parent was told at the end of SY 2010-2011that School A was moving to School B's location. There was no meeting prior to the program moving to discuss the student's new program. The parent visited at School B once when she registered the student. She communicates with the school only when the student has been suspended. She has been suspended three times. The staff will call and tell the parent the reason for the suspension and her return date. However, the parent has not received any paperwork about the suspensions. The parent has not seen a report card and does not know the student's schedule and the classes she is taking. The parent has received some calls from the teachers describing her academic performance and that her levels in English and History are low. There was no action recommended to the parent during the phone calls. To the parent School B seems chaotic because there are too many programs co-located in the same building. The parent believes the student is more rebellious since being in School B. (Parent's testimony)

18. The student has been admitted to a private full time special education program, is a therapeutic school that primarily serves students with emotional and behavioral difficulties. The school has a behavior modification model and behavioral specialists and social workers to closely address students' behavioral and emotional needs. has approximately 63 students and the student to teacher ratio is 1 to 8. The school provides specialized instruction and related services with certified special education teachers and certified related service providers. The school staff interviewed the student and she visited and toured the school.

The student will be able to receive credits toward her DC high school diploma. The school also provides transition services and also makes vocational skills training available to students. (Ms. Stith-Twine's testimony, Petitioner's Exhibit 2)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. [11] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

34 C.F.R. § 300.17 provides that a free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324.

Issue 1: Did DCPS deny the student a FAPE by failing to provide the parent access to student records?

Petitioner asserts that on or about June 2, 2011, the student's parent, through counsel, requested a complete copy of the student's service trackers to date and on June 27, 2011, the parent, through counsel, requested a complete copy of the student's evaluations and suspension records to date.

Conclusion: There was insufficient evidence that DCPS failed to provide the parent access to the student's records. Petitioner did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.501(a) provides:

(a) The parents of a child with a disability must be afforded, in accordance with the procedures of Sec. Sec. 300.613 through 300.621, an opportunity to inspect and review all education records

[11] The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

with respect to--
(1) The identification, evaluation, and educational placement of the child; and
(2) The provision of FAPE to the child.

Although there was evidence that Petitioner through counsel requested the student's educational records, Petitioner was apparently provided some of the student's records as many were disclosed for the hearing. However, there was no evidence presented that the parent or anyone representing the parent actually went to School A or School B to gain access to the student's records. Absent a showing that Petitioner made such an effort, the Hearing Officer does not conclude based on the evidence presented that DCPS failed to provide the student records and in anyway violated IDEA or denied the student a FAPE.

Issue 2: Did DCPS deny the student a FAPE by failing to include the parent in the decision-making process at the student's April 1, 2011, IEP meeting?

Petitioner asserts DCPS did not include the parent in the April 1, 2011, IEP team meeting, nor in the development of the April 1, 2011, IEP. In addition, as to the student's placement Petitioner asserts that neither prior to School A closing, nor after it closed, did the parent ever receive a Letter of Invitation to an IEP team meeting or receive a phone call or any communication to discuss the student's placement or possible placements for the 2011-2012 school year and DCPS failed to attempt to include the parent in the determination of the student's placement/location of services for the 2011-2012 school year.

Conclusion: The evidence demonstrates, based on the parent's testimony that DCPS conducted the student's IEP meeting without the participation of the parent.

34 C.F.R. § 300.501(b) provides:

> (b) Parent participation in meetings.
> (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
> (i) The identification, evaluation, and educational placement of the child; and
> (ii) The provision of FAPE to the child.
> (2) Each public agency must provide notice consistent with Sec. 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

34 CFR §300.321 provides: The public agency must ensure that the IEP Team for each child with a disability includes--

> (1) **The parents of the child**; (emphasis added)
> (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less then one special education provider of the child;
(4) A representative of the public agency who--
(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
(ii) Is knowledgeable about the general education curriculum; and
(iii) Is knowledgeable about the availability of resources of the public agency.
(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
(7) Whenever appropriate, the child with a disability.

34 C.F.R. § 300.322 provides:

(a) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--
(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
(2) Scheduling the meeting at a mutually agreed on time and place...[12]

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[12] (b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must--

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in Sec. 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and Sec. 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--

(i) Indicate--

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with Sec. 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with Sec. 300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as--
(1) Detailed records of telephone calls made or attempted and the results of those calls;
(2) Copies of correspondence sent to the parents and any responses received; and
(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 C.F.R. § 300.501(c) provides:

(c) Parent involvement in placement decisions.
(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in Sec. 300.322(a) through (b)(1).
(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

Although there is evidence that the student and the student's maternal grandmother were present for the IEP meeting on April 1, 2011, the parent credibly[13] testified she was not present and did not receive the letters of invitation that were sent. The parent also testified that she did not authorize her mother to participate in the meeting on her behalf and did not even know that the meeting had occurred. DCPS has an affirmative duty to ensure that the parent is present for the IEP meeting. DCPS did not present any evidence to refute the parent's testimony and no evidence that it made sufficient attempts as required by IDEA to secure the parent's presence at the meeting before proceeding with the meeting. The Hearing Officer thus concludes that the failure to ensure the parent's participation significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE to the student.

However, with regard to the student's move from School A to School B, the parent also testified

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[13] The Hearing Officer found the parent's testimony credible based on her demeanor.

that she was informed that School A was relocating to the school building at School B. Based on this testimony the Hearing Officer concludes that there was no change of placement that required the parent's participation: there was simply a relocation of the program that the student was attending at School A to the location at School B.

Issue 3: Did DCPS deny the student a FAPE by failing to re-evaluate a student upon parental request?

Petitioner asserts: On or about April 28, 2011, Ms. Wilson, through counsel, requested that the student be re-evaluated by conducting a comprehensive psychological evaluation, a functional behavior assessment, and a speech-language evaluation.

Conclusion: The evidence demonstrates that on October 6, 2011, DCPS authorized Petitioner to obtain independent evaluations and those evaluations have been obtained. In addition, there was evidence that DCPS conducted the FBA. There was no evidence presented that the student was in need of speech language evaluation. Based on the evidence that the evaluations have been provided the Hearing Office concludes there was no violation in this regard and no denial of FAPE and relief has been granted. The Hearing Officer will direct that a meeting be held for an IEP team to review the evaluations.

Issue 4: Did DCPS deny the student a FAPE by failing to develop an appropriate IEP?

Petitioner's asserts that the student's April 1, 2011, IEP is inappropriate in that it prescribes no intellectual disability or mild intellectual disability as part of the student's disability classification; inappropriate impact statements; inappropriate baselines; inappropriate goals in written expression; an inappropriate/insufficient present level of performance, needs statement, impact statement, goal, and baseline in the emotional, social, and behavioral development area of concern; and inappropriate/insufficient goals and objectives, and related services, for ESY.

The IEP is the central part of the special education process and the failure to develop an appropriate IEP is a substantive denial of a Free Appropriate Public Education ("FAPE"). 20 U.S.C. § 1401 (9) (FAPE consists of special education and related services that are provided in conformity with the student's IEP, which in turn is to be developed according to a student's unique educational needs); 34 C.F.R. § 300.17; D.C. Mun. Regs. Tit. 5 § 3000.1. See also Scott v. District of Columbia, (D.C. Cir.) 03-1672 DAR (March 31, 2006); and Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 276, 182 (1982) ("The free appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

34 C.F.R. § 300:320 provides:

> IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sec. Sec. 300.320 through 300.324, and that must include--
> (1) A statement of the child's present levels of academic achievement and functional

performance, including--
(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
(2)
(i) A statement of measurable annual goals, including academic and functional goals designed to--
(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
(B) Meet each of the child's other educational needs that result from the child's disability;

Conclusion: The student IEP contains insufficient goals and baselines. Petitioner sustained the burden of proof by a preponderance of the evidence.

There was credible testimony[14] from Dr. Holman that the student's IEP lacks specificity. Absent any testimony by DCPS to refute Dr. Holman's testimony the Hearing Officer concludes the student's IEP does not meet the standards set forth by IDEA in addressing the student's academic needs and should be reviewed and revised and DCPS should consider the findings in the student's most recent evaluations.

Issue 5: Did DCPS deny the student a FAPE by failing to implement an appropriate IEP?

Petitioner asserts that School B cannot provide the student 31 hours per week of specialized instruction in an out of general education setting and thus DCPS has failed to implement the student's April 1, 2011, IEP.

34 C.F.R. § 300:323(c) provides:

Each public agency must ensure that--
(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--
(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

[14] The Hearing Officer found the witness credible based on her demeanor, her experience and her familiarity with the student's educational records.

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of-
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(i) His or her specific responsibilities related to implementing the child's IEP; and
(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP in violation of 20 U.S.C. § 1414(d)(2); 34 C.F.R. § 300.323(c)(2).

Conclusion: There was insufficient evidence presented that the student's IEP is not being implemented at School B. Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Petitioner asserted that because the student's IEP prescribes 32 hours of specialized instruction and the school day at School B is not long enough to provide those hours, the student's IEP is not being implemented. However, the parent testified that she is unsure of the student's schedule and classes. Dr. Holman testified that she visited School B and observed the student; however, she did not testify with regard to whether the student is or is not being provided all the services in the IEP. Absent any evidence in this regard the Hearing Officer cannot conclude that the student's IEP has not been and is not being implemented at School B. However, based on other testimony from the student discussed below the Hearing Officer does conclude the student should be provided a different location of services.

Issue 6: Did DCPS deny the student a FAPE by failing to determine and provide an appropriate placement/location of services?

Petitioner asserts that School A was a full-time special education school for students with emotional disturbance and was closed in June 2011. Petitioner alleges School B cannot implement the student's current IEP and cannot meet the student's highly specialized needs and is not a therapeutic placement/location of services.

Conclusion: Petitioner sustained the burden of proof.

A student's placement is to be in the least restrictive environment and ***in a school that is capable of meeting the student's special education needs***. See Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C.§ 1402 (9) (D) ("FREE APPROPRIATE PUBLIC EDUCATION- The term 'free appropriate public education' means special education and related services that include an appropriate preschool, elementary school, or secondary school education in the state involved" [and] "are provided in conformity with the individualized education program"); § 1401 (29) (D) ("The term 'special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability [. . .]."); 34 C.F.R. § 300.17 & 39; 34 C.F.R. § 300.116 (placement is to be based on student's IEP as determined by team including the parents); 34 C.F.R. § 300.327 & 300.501 (c); D.C. Mun. Regs. Tit. 5E § 3013.1-7 (LEA to ensure that child's placement is based on the IEP); and D.C. Mun. Regs. Tit. 5E § 3000.

The evidence clearly demonstrates based on the student's testimony [15]that her needs are not being met at School B. She is allowed to walk out of class and is avoiding instruction and displaying constant disruptive behaviors. This testimony was not refuted by DCPS. Consequently, the Hearing Officer concludes the student's needs are not being met at School B and the student's placement there is inappropriate.

There was sufficient evidence presented that can meet the student's needs at least in the interim until the student's IEP is revised and her placement reviewed.

ORDER:

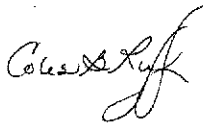
1. DCPS shall place and fund the student on an interim basis at School and provide transportation services.

2. DCPS shall within thirty (30) calendar days of date of this Order convene an IEP meeting to (1) review the student's recent evaluation(s), (2) determine if the student remains in need of a full-time special education therapeutic placement, (3) review and revise the student's IEP as appropriate, and (4) consider and determine the student's placement and location of services for the 2011-2012 school year.

3. DCPS shall ensure that the all efforts are made pursuant to 34 C.F.R. § 300.322 to include the parent in the IEP meeting.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: November 30, 2011

[15] The Hearing Officer found the student credible based on her demeanor.