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

[STUDENT],[1]
through the Parent/Guardian,*

Petitioner,

v

DCPS and OSSE,

Respondents.

Date Issued: 7/12/11

Hearing Officer: Seymour DuBow

Case No:

Hearing Date: 7/6/11 Room: 2006

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

The student is a -year old female student who was on April 6, 2011, committed to the as a result of three she committed in the community. (P-13) The student has not been found eligible for special education services. (R-4) On April 25, 2011, counsel for the petitioner filed a due process complaint alleging that District of Columbia Public Schools ("DCPS") in violation of IDEA and DCMR failed to locate, identify, or evaluate the student pursuant to its affirmative obligations under Child Find, failed to find the student eligible for special education and develop an IEP and failed to provide an appropriate educational placement. (P-1) On May 5, 2011, counsel for respondent DCPS filed a response denying a Child Find violation because DCPS did not previously suspect that the student was a child with a disability. The response also stated that

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

because the student has been committed to DYRS that the Office of the State Superintendent of Education ("OSSE"), not DCPS, is responsible for providing educational services and FAPE pursuant to *D.C. Code Section 38-2606 (b) (10)*. (R-6) On May 11, 2011, a prehearing conference was held with counsel for the petitioner Donna Wulkan and Sarah Tomkins and counsel for respondent DCPS Kendra Berner. Counsel for the parties discussed with the hearing officer whether OSSE was a necessary party since the student has been committed to DYRS and the above cited D.C. Code Section indicates OSSE responsibility for educational services at DYRS. Moreover, the relief requested is placement in a non-public special education placement. On May 12, 2011, counsel for petitioner filed a motion to amend the petitioner's due process complaint and an amended complaint to add OSSE as a necessary party. (P-4) On May 16, 2011 this hearing officer issued an Order granting the motion to amend to join OSSE as a necessary party and scheduling a second prehearing conference for May 31, 2011. (P-5) On May 31, 2011 a second prehearing conference was held with the above counsel for petitioner and counsel for respondent DCPS and counsel for OSSE Iris Barber. A prehearing Order was issued on June 3, 2011.

The due process hearing convened at 9 a.m. on July 6, 2011 in Room 2006 of the Student Hearing Office at 810 First Street, N.E., Washington, D.C. 20002. Donna Wulkan and Sarah Tomkins represented the petitioner, Kendra Berner represented respondent DCPS and Iris Barber represented OSSE. The hearing was closed. At the outset of the hearing, petitioner's documents P-1-P-29 were admitted into evidence without objection. There was no document P-23. Respondent DCPS's documents R-1-R-6 were admitted into evidence without objection. Respondent OSSE did not disclose any documents. All witnesses were sworn under oath prior to testifying. Counsel for petitioner called as witnesses the parent and Mr. Charles Holloway,

academic director of School, who both testified in person. program coordinator at and Dr. Michael Barnes, clinical psychologist, testified for the petitioner by telephone. Counsel for respondent called as witnesses special education coordinator at and special education coordinator at who both testified by telephone and Monique Bass, of the Office of Special Education who testified in person. Counsel for OSSE called as a witness Melanie Byrd Chisholm, the Director of Quality Assurance & Monitoring who testified in person.

JURISDICTION

The hearing was convened on July 6, 2011 pursuant to jurisdiction under *Public Law 108-446, The Individuals with Disabilities Improvement Act of 2004 (hereinafter referred to as IDEA), Title 34 of the Code of Federal Regulations, Part 300 (2006) and Title V-E of the District of Columbia Municipal Regulations.*

BACKGROUND

The student is a ·year old female student who was on April 6, 2011, committed to the as a result of three criminal charges she committed in the community. (P-13) The student has not been found eligible for special education services. (R-4) On April 25, 2011 counsel for the petitioner filed a due process complaint alleging that DCPS in violation of IDEA and DCMR failed to locate, identify, or evaluate the student pursuant to its affirmative obligations under Child Find, failed to find the student eligible for special education and develop an IEP and failed to provide an appropriate educational placement. (P-1) On May 5, 2011 counsel for respondent DCPS filed a response

denying a Child Find violation because DCPS did not previously suspect that the student was a child with a disability. The response also stated that because the student has been committed to DYRS, OSSE, not DCPS, is responsible for providing educational services and FAPE pursuant to *D.C. Code Section 38-2606 (b) (10)*. (R-6) This hearing officer granted counsel for petitioner's motion to add OSSE as a necessary party. (P-5) Counsel for OSSE argues that it did not as the SEA fail to monitor the student's LEA resulting in no special education placement for this student and a denial of FAPE. Counsel for OSSE further argues that because the student was not found eligible for special education there was no referral by an LEA for an alternative placement to trigger OSSE's responsibility to initiate its alternative site selection process.

ISSUES AND RELIEF SOUGHT

The issues to be determined are as follows:

1. Did DCPS deny a Free Appropriate Public Education (FAPE) by failing to locate, identify, or evaluate the student pursuant to its affirmative obligations under Child Find in violation of *IDEA at Section 300.111* and DCMR?
2. Did DCPS deny a FAPE by failing to find the student eligible for special education services and develop an appropriate IEP and provide her an appropriate educational placement?
3. Did OSSE as the SEA fail to monitor the student's LEA resulting in no special education placement for this student and a denial of FAPE?

Counsel for petitioner is seeking as relief placement at School and compensatory education.

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact on issue one whether there was a Child Find violation are as follows:

I.

1. On December 6, 2010, the mother met with the special education coordinator at the student's school, She requested that the student be considered for special education. A Standard Initial Referral Form to initiate the eligibility determination for a student to receive special education and related services was signed on that date by the special education coordinator (R-2, Testimony of Mother, The reasons for referral stated in the form was the student is " always into trouble, such as fighting, and staying out late, smoking weed and getting locked up." The form also checked as major areas of concern for reasons for referral communication, physical, learning and attention problems.(R-2)
2. DCPS did not conduct any evaluation of the student. (Testimony of Mother,
3. The student's report card for the seventh grade dated June 18, 2010 states the student failed Mathematics and English. The teachers' notes indicate poor behavior. (P-18)
4. The January 21, 2011 Report Card shows the student failing all her classes. (P-20)
5. The student has been suspended often for fighting, cursing and threatening others and truancy. (Testimony of Mother, P-17-5)
6. On December 14, 2010 the student was arrested at school for threatening statements to do bodily harm to another student. (P-17-3)

7. On February 3, 2011 the student was suspended for three days for cursing two teachers. (P-17-5)
8. The student was retained in the third grade for fighting. (Testimony of Mother)
9. The student was diagnosed with ADHD at age five and was on medication for ADHD from ages five to ten years old. (Testimony of Mother, P-17-4)
10. The student has had excessive unexcused absences. From August 16, 2010 to December 16, 2010 the student was present 54.5 days out of 72 days, but frequently did not go to class with 131 unexcused absences. (R-1)

After considering all the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact on issue two are as follows:

II.

1. On March 31, 2011, an MDT meeting convened at to determine the eligibility of the student for special education services. The MDT included the special education coordinator from the special education coordinator at and teachers from including a special education teacher. (Testimony of R-4) The MDT was aware that a court ordered psycho-educational evaluation and psychiatric evaluation were done at prior to the MDT meeting. The MDT did not review these evaluations. The MDT determined the student was not eligible for special education services. The Prior Written Notice states : "LEA refuses to conduct an initial or re-evaluation." (Testimony of R-4)

2. The Superior Court of the District of Columbia, Family Court-Social Services Division ordered a psycho-educational evaluation of the student. The student was tested while at YSC on February 8, 2011. The psycho-educational evaluation diagnosed the student with Attention-Deficit/Hyperactivity Disorder, Combined Type, Mood Disorder Not Otherwise Specified, Cannabis Dependence and a strong indication of BiPolar I Disorder that could not be confirmed without a family history. She has many symptoms of BiPolar I Disorder. The report stated: "Since 13 years of age, [student] has experience rapid mood swings that are displayed both at home and at school. Notably, [student] exhibits irritability, impulsive behavior, episodes of anger, fighting, and on at least one occasion has become physically aggressive with her mother and in her instant offense. (assaulting a police officer) Additionally, [student's] academic challenges also contribute to her mood swings. Her motivation for school has significantly diminished as demonstrated by her frequent school suspensions, truancy, and low academic performance." (P17-18) Dr. Barnes, who qualified as an expert in clinical psychology, found based on his evaluation that the student demonstrated an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances and a general pervasive mood of unhappiness or depression to a marked degree and over a long period of time that adversely affects the student's educational performance. Her mood disorder impacts her in the classroom making it difficult to acquire information and focus on academics. Her mood disorder exacerbates her ADHD. The student's fighting and cursing, very low frustration tolerance and poor coping skills are all manifestations of her mood

disorder. It is Dr. Barnes expert opinion that the student meets the criteria for Emotional Disturbance. The evaluation also found that the student has significant learning disabilities in reading, math and written expression. (P-17-14) The Woodcock-Johnson Tests of Achievement -3rd Edition (WJ-III) was administered to assess the student's academic functioning. The student was in the eighth grade and 14 years and 9 months at the time of the testing. On Writing Fluency, the student tested at grade equivalent of 3.9 and age equivalent of 9.3. On Math Fluency her grade equivalent was 5.7 and her age equivalent of 11.1. On Reading Fluency her grade equivalent was 6.2 and age equivalent of 11-7. (P-17-18) It is Dr. Barnes expert opinion that the student needs special education to remediate her mood swings and learning disabilities and should be placed in a small special education setting with therapeutic support. (Testimony of Dr. Barnes)

3. A psychiatric evaluation was also conducted pursuant to a court order. Dr. Carlos Astrada conducted this evaluation on January 22, 2011 at YSC and reached the same conclusions as in the psycho-educational evaluation. Dr. Astrada diagnosed the student with Mood Disorder Not Otherwise Specified, Attention-Deficit Hyperactivity Disorder, Cannabis abuse, and Rule/Out Bipolar Disorder. (P-16-7)
4. An Analysis of Existing Data presented to the MDT states the student failed her Pre-Algebra mathematics class. The report states on math: "Her ability to complete assignments is dictated by her mood. She seems to work well one-on-one, but is off task when asked to work independently." (R-3 at p.2) The report states on reading that the student received a failing grade F in her English 8 class. The report also states: "[Student] wants to work, but she has difficulty controlling her impulses when

in class…She requires major de-escalating strategies, which has included close proximity to teacher."(R-3 at p.3)

5. wrote a letter as one of the managers working with the student. The letter indicates that the student was committed to on April 6, 2011 as a result of three criminal charges in the community. The letter states: is not an LEA and does not have LEA authority. Based on a review of her court-ordered evaluation, and her history in school, it is position that [student] requires a full-time special education services in a therapeutic setting at a placement like the School, where [student] has been accepted. DYRS endorses the Parent's request for this school placement. However, if DCPS does not intervene, the student will be placed in her local school system (the Baltimore City Public School System) with no special education services, as is not [student's] LEA and does not have the resources to fund an alternate and appropriate placement." (P-13-1)

6. The student has been accepted at the School in Baltimore, Maryland. (P-25) School is a full-time day special education program for students with different disabilities- with the majority being students with the disability classification of Emotional Disturbance. All students have IEPs. The student would be placed in the 8th grade middle school program. There will be five to seven students in a class taught by a certified special education teacher and a teacher's assistant. The special education teachers are certified by the State of Maryland. The student would be in a self-contained class for all her academics and transition to art, gym and a vocational program she shows an interest in. The school

has been audited by the State of Maryland and passed certification for the next five years. There are 220 school days in a school year. The cost of the program is two hundred and twenty-six dollars ($226) a day including related services. The student will be provided with a therapist for weekly individual and group counseling. The school has a school-wide five level behavior intervention system with students receiving more privileges as they move up through the five levels. There is also a point sheet system that targets attendance, classroom behavior and academic progress and respect. Each student also has an individual behavior plan. If there are attendance issues, staff go out to the student's residence to encourage attendance. Participation in the vocational programs has proven a strong incentive to attend school. There is a certified team to resolve crisis situations. There are 36 students enrolled in the middle school and 54 students enrolled in the high school in a separate building across the street. Students receive individual tutoring on Friday afternoons. There is targeted remediation in reading and math during that time. The student's disability profile based on her records fits the profile of other students at A draft IEP has been developed for the student based on her records provided to and there will be a thirty day review with a representative of DCPS to review and revise the student's IEP. There are other DCPS students at The student can get a high school diploma from DCPS. (Testimony of School is an appropriate placement that can provided educational benefits to the student.

7. The student has been committed by to a residential treatment facility, in Baltimore, Maryland. The

student has been in study hall from April 25, 2011 on basic academic courses. To this date, the group home has been unsuccessful in finding an educational placement for the student. School is in close proximity to the (Testimony of P-3-4).

After considering all the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact on issue three are as follows:

III.

1. OSSE monitors LEAs for Child Find compliance with site visits and data reviews on information provided by LEAs. OSSE did a site visit to the OSSE did not do a site visit to OSSE only does a data base review of those students already identified for special education. (Testimony of OSSE does not begin a site selection process until a student has been found eligible for special education and the LEA has requested a placement site selection from OSSE. (Argument of counsel for OSSE)
2. OSSE did not initiate a site selection process for this student because she had not been found eligible for special education services. (Argument of Counsel for OSSE)

CREDIBILITY FINDING

A hearing officer is responsible for assessing the credibility of witnesses. *See Shore Regional High School Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3rd Cir. 2004) This hearing officer finds the testimony of Dr. Michael Barnes, the only qualified expert witness to testify, very credible. His many years of experience since 1996 as the chief psychologist of the Child Guidance Clinic for the Superior Court of the District of Columbia Family Court-Social Services

Division adds weight to his expert opinion that the student is eligible for special education services as a student with Emotional Disturbance and Learning Disabilities and needs special education in a small structured therapeutic setting. His detailed testimony and comprehensive evaluation fully support his expert opinions. This hearing officer also found the testimony of the mother credible based on my observation of her testimony in person about her requesting that her child be referred for special education on December 6, 2010 and that she wanted her child evaluated. Her testimony was also credible that the student's behavior problems were at school over a long period of time as manifested in her suspensions for fighting and cursing. This hearing officer did not find the testimony of the special education coordinator at

credible that the student's behavior problems occurred outside of school and only in the community. The school's own documents including report cards showed teachers noting behavior problems in the classroom. The special education coordinator's own analysis of existing data stated the student is "having difficulty controlling her impulses when in class." (R-3 at p.3) Finally, the fact that the student was arrested at school for threatening another student with bodily harm undercuts the special education coordinator's position that the student's behavior problems were occurring outside of school.

DISCUSSION/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 on issue one on whether there was a Child Find violation are as follows:

The "Child Find" requirements of *IDEA* at *20 U.S.C. 1412 (a); 34 C.F.R. Section 300.111* require every state to effectuate policies and procedures to ensure that all children with disabilities residing in the state including wards of the state who are in need of special education

and related services are "identified, located and evaluated." This Circuit in *Reid v. District of Columbia*, 401 F. 3d 516, 519 (D.C. Cir. 2005) held: "School districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction. Instead, school systems must ensure that 'all children with disabilities residing in the State...regardless of the severity of their disabilities and who are in need of special education and related services, are identified, located, and evaluated." *See also Branham v. District of Columbia,* 427 F. 3d 7, 8 (D.C. Cir. 2005) In *Scott v. District of Columbia*, 2006 U.S. Dist. LEXIS 14900, the Court citing the above cases held: "The Circuit's holdings require DCPS to identify and evaluate students in need of special education and related services, whether or not parents have made any request, written or oral." The "Child Find" requirement is an affirmative obligation on the school system. A parent is not required to request that a school district identify and evaluate a child. *See Robertson County School System v. King*, 24 IDELR 1036 (6th Cir. 1996) In *N.G., et al. v. District of Columbia*, 556 F. Supp. 2d 11, (U.S.D.C. 2008) the Court stated: "This Court has held on numerous occasions that as soon as a student is identified as a potential candidate for special education services, DCPS has a duty to locate that student and complete the evaluation process. *See, e.g., Hawkins,* 2008 WL 623588; *Abramson*, 493 F. Supp. 2d at 85 (explaining that once a child is identified, the local educational agency 'is then obligated to move forward with the requirement of [IDEA] Section 1414 (a) (1) and determine whether the student is in fact a child with a disability").

In this case, DCPS was on notice when the mother went to the school on December 6, 2010 and requested the student be referred for special education that the student was "identified as a potential candidate for special education services". DCPS should have moved forward on the evaluation process, but instead never did evaluations. An MDT meeting to determine

eligibility was not convened until March 31, 2011, four months after the mother's initial request. No evaluations were reviewed even though the MDT was aware of completed court ordered evaluations. Prior to the mother's direct request for a referral for special education in December 2010, the June 18, 2010 Report Card indicates that the student was failing in both English and math courses in seventh grade and the teachers were noting the student's poor behavior. (Findings of Fact I. 3) Those failing grades and poor behavior should have triggered DCPS's affirmative obligation that the student be "identified as a potential candidate for special education services". This hearing officer concludes that DCPS violated their "Child Find" obligation and denied a FAPE to the student.

Compensatory education is an equitable remedy for the denial of a FAPE. In *Reid v. District of Columbia*, 401 F. 3d 516 (D.C. Cir. 2005), this Circuit set out the standards for an award of compensatory education. "Under the theory of 'compensatory education,' courts and hearing officers may award educational services...to be provided prospectively to compensate for a past deficient program. *Id.* at 522 Designing a compensatory education remedy requires "a fact-specific exercise of discretion by either the district court or a hearing officer." *Id.* at 524 To assist the court or hearing officer's fact specific inquiry, " the parties must have some opportunity to present evidence regarding [the student's]specific education deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits." *Id.* at 526 DCPS may be required to "offer proof that the placement compensated for prior FAPE denials in addition to providing some benefit going forward." *Id.* at 525

In tailoring the ultimate compensatory education award, a hearing officer needs a sufficient record to provide "insight about the precise types of education services [the student] needs to progress." *Mary McLeod Bethune Day Acad. Pub. Charter Sch.* 555 F. Supp. 2d 130

(D.D.C. 2010) The parent has the burden of "propos[ing] a well-articulated plan that reflects [the student's] current educational abilities and needs and is supported by the record." *Phillips v. District of Columbia*, 2010 WL 3563068, at *6, *quoting Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt ("Nesbitt II"),* 583 F. Supp. 2d 169, 172 (D.D.C. 2008)

Counsel for petitioner presented an unsigned compensatory education plan. (P-29) The plan does state it was developed in consultation with Dr. Michael Barnes. The plan requests in addition to full-time non-public special education placement that the student receive funding for two hours a week of individual Cognitive Behavioral Therapy to be provided by the independent provider of the Parent's choice, for the 2011-2012 School Year. Dr. Barnes did testify that cognitive behavioral therapy could help remediate the student's mood disorder and allow her to build up her emotional skills to better cope with academic challenges and school interactions and help her address her truancy issues. (Testimony of Dr. Barnes, P-29) Because the student was not found eligible for special education services, she did not receive any therapeutic services from DCPS.

This hearing officer has found that DCPS failed to meet its affirmative obligations under "Child Find" from the June 18, 2010 Report Cart that indicated that the student was failing in both English and math courses in seventh grade and the teachers were noting the student's poor behavior. (Findings of Fact I. 3) If DCPS had completed the evaluation process and found the student eligible for special education services within the legally required 120 days from the end of the 2009-2010 School Year, the student would have begun to receive special education and related services including therapeutic supports by mid-October 2010.

Based on the testimony of Dr. Barnes and his psycho-educational evaluation detailing the nature and severity of the student's disability and the student's specialized education needs and

the link between those needs and the services requested, (See Findings of Fact II.2) and the compensatory education plan presented by petitioner, this hearing officer concludes that an ultimate award of compensatory education include individual therapeutic counseling support to address her mood disorder. In determining the amount of the award to make up for the educational deficits caused by DCPS denial of a FAPE and what "the school district should have supplied in the first place." *Reid*, 401 F. 3d at 524, this hearing officer considers that the student would have been receiving individual counseling services from mid-October 2010. Courts have recognized that in setting a compensatory education award, the conduct of the parties' may be considered and can reduce the amount of the award. *Reid at 524* This hearing officer notes that the student's criminal actions outside of school in the general community also made her unavailable for counseling services from DCPS. Based on the above, this hearing officer awards twenty hours of compensatory education to be provided in the form of individual counseling.

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 on issue two on whether DCPS failed to determine the student eligible for special education, develop and IEP and determine placement are as follows:

The parent had requested on December 6, 2010 that the student be referred for special education and understood that the student would be evaluated. DCPS failed to do any evaluations of the student. The Prior Written Notice states : "LEA refuses to conduct an initial or re-evaluation." (Testimony of R-4) DCPS convened an MDT meeting on March 31, 2011 at The MDT was aware that a court ordered psycho-educational and psychiatric evaluation had been done at but the MDT did not review these evaluations. Instead the MDT went on to find the student not eligible even though these evaluations would

support a determination that the student meets the criteria for emotional disturbance and learning disabilities. As cited above in *N.G., et al. v. District of Columbia*, 556 F. Supp. 2d 11, (U.S.D.C. 2008) the Court stated: "This Court has held on numerous occasions that as soon as a student is identified as a potential candidate for special education services, DCPS has a duty to locate that student and complete the evaluation process." *IDEA* mandates at *Section 300.301* that "each public agency must conduct a full and individual initial evaluation, in accordance with *Sections 300.305 and 300.306,* before the initial provision of special education and related services to a child with a disability under this part." DCPS failed in its legal obligation to complete the evaluation process by not doing any evaluations and to make matters worse then failed to consider court ordered evaluations done at Findings of Fact I. 3-5 and II.4 provided ample evidence to the school to suspect the student has a disability and to act on the parent's request to evaluate her child for eligibility for special education services rather than refuse to evaluate. DCPS denied a FAPE to the student in not determining her eligible for special education services.

Federal courts have held IDEA grants jurisdiction to administrative hearing officers to determine eligibility for special education services. In *Hacienda La Puente Unified School District of Los Angeles v. Honig*, 976 F. 2d 487 (9th Cir. 1992), the United States Court of Appeals for the Ninth Circuit held that a hearing officer has jurisdiction pursuant of IDEA over requests for determination of a student's eligibility for special education and related services. The Seventh Circuit reiterated that holding and stated: "The *Hacienda* decision comports with congressional intent because one of the statutory duties of a hearing officer is to 'identify' those children that are disabled and to resolve any disputes between parents and school districts as to whether a particular child is disabled or not." *Rodireiecus L v. Waukegan Sch. Dist., No. 60*, 90

F. 3d 249, 253 (7th Cir. 1996) In *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992) a federal district court recognized that hearing officers have authority to determine eligibility for special education services. This hearing officer finds based on Findings of Fact II. 2-4 that the student is eligible for special education services as a student with Emotional Disturbance and Learning Disabilities. Both the testimony of Dr. Barnes and his psycho-educational evaluation demonstrate that the student meets the criteria for Emotional disturbance as defined at *34 C.F.R. Section 300.8 (a) (4)* and a Specific learning disability at *Section 300.8 (10)*. (See Findings of Fact II. #2)

The expert opinion of Dr. Barnes and his psycho-educational evaluation (See Findings of Fact II. # 2) and the recommendation of the (See Findings of Fact II. #5) support the need for a full-time IEP and placement in a day non-public special education program that can implement that IEP.

The petitioner has met the first prong of the *Burlington School Committee v. Massachusetts Department of Education,* 471 U.S. 359 (1985) and *Florence County School District Four v. Carter,* 510 U.S. 7 (1993) test that DCPS has not provided a FAPE to the student. Once a court or hearing officer finds that the public school district has failed to offer a FAPE, the court or hearing officer is authorized to "grant such relief as the court determines is appropriate." *20 U.S.C. Section 1415 (i)(2)(C)(iii).* "Under this provision equitable considerations are relevant in fashioning relief, and the Court enjoys broad discretion is so doing." *Carter*, 510 U.S. at 16

The petitioner has requested as relief placement of the student at the

School in Baltimore, Maryland. The second prong of the *Burlington* and *Carter* test and the *IDEA Regulation* at *34 C.F.R. 300.148 (c)* is that the private placement must be

appropriate. Based on the description of the program by Academic Director,

School at the hearing, it is the conclusion of this hearing officer that the

School is an appropriate placement for the student that will meet her unique needs and provide educational benefit. (See Findings of Fact II.#6).

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 on issue three on whether OSSE as the SEA fail to monitor the student's LEA resulting in no special education placement for this student and a denial of FAPE are as follows:

Counsel for petitioner has failed to meet their burden of proof that OSSE as the SEA failed to monitor the student's LEA resulting in no special education placement for this student. OSSE could not begin the site selection process until an LEA requests an alternative placement. In this case, the student had not been found eligible for special education by DCPS and therefore there was no referral to OSSE for an alternative placement.

The student has been committed to the custody of the

since April 6, 2011. *D.C. Code Section 38-2602 (b) (10)* states: "The OSSE shall: (10) provide for the education of children in the custody of the Department of Youth Rehabilitation Services." Now that this hearing officer has found the student eligible for special education services, OSSE has responsibility under this code section to provide an education for this student and provide an appropriate placement. This hearing officer has found that NCIA Youth in Transition School in Baltimore, Maryland is an appropriate placement that can provide educational benefit to the student and is in close proximity to her committed placement by to the Way Home Group Home for Girls at Mountain, Manor.

ORDER

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

OSSE shall place and fund the student at School in Baltimore, Maryland including transportation costs within fifteen business days of the issuance of this Order for the 2011-2012 School Year. Once the commitment to terminates and/or the student returns to the District of Columbia, OSSE shall in coordination with DCPS and counsel for the petitioner convene an MDT placement meeting to determine another appropriate placement for the student.

DCPS violated their "Child Find" obligations and denied a FAPE to the student. The student is awarded twenty (20) hours of compensatory education in the form of independent individual counseling by a provider of the Parent's choice at prevailing market rates to be completed by December 31, 2011.

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: 7/12/11 _____Seymour DuBow /s/_____
Hearing Officer