DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT, **By and through PARENTS,**[1] ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** ***Respondent.***	)))))))))))	**Case No.** **Bruce Ryan, Hearing Officer** **Issued: July 7, 2011**

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HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed April 1, 2011, on behalf of an eight-year old student (the "Student") who has been determined to be eligible for special education and related services as a child with a disability under the IDEA. The Student currently attends a non-public school for children with learning disabilities (the "Private School"), which is located in the District of Columbia. Petitioners are the Student's parents.

Petitioners claim that DCPS has denied the Student a free appropriate public education ("FAPE") by: (a) failing to develop an appropriate individualized education program ("IEP"); and (b) failing to propose an appropriate educational placement for the Student for the 2010-11 school year. Petitioners request that DCPS reimburse the parents for the cost of enrolling the Student at Private School from August 2010 to June 2011.

DCPS filed a late Response on April 25, 2011, after an unsuccessful resolution meeting. DCPS responds that it offered the Student a FAPE by developing an IEP reasonably calculated to

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

provide the Student with meaningful educational benefit, and by proposing an appropriate combination placement of 29.5 hours of services. DCPS also raises the affirmative defense that Petitioners failed to provide appropriate notice of their intent to privately place the Student and seek public funding, and have acted unreasonably, pursuant to 34 C.F.R. § 300.148 (c).

A resolution session was held on April 14, 2011, which did not resolve the Complaint, and the statutory 30-day resolution period ended as of May 1, 2011. A Prehearing Conference ("PHC") was held over the course of two days, on May 19 and 23, 2011; the parties filed five-day disclosures on June 13, 2011; and the Due Process Hearing ("DPH") was held in three sessions, on June 20, 23, and 27, 2011. Petitioner's unopposed motion for continuance was granted to extend the 45-day HOD timeline to July 7, 2011. Petitioner elected for the hearing to be closed.

At the DPH, the following Documentary Exhibits were admitted into evidence without objection:

Petitioners' Exhibits: P-1 through P-41.

Respondent's Exhibits: R-1 through R-3.

In addition, the following witnesses testified on behalf of each party:

Petitioners' Witnesses: (1) Parents; (2) Educational Advocate; and (3) Curriculum Specialist, Private School.

Respondent's Witnesses: (1) Social Worker; (2) Speech-Language Pathologist ("SLP"); (3) School Psychologist; (4) Special Education Coordinator ("SEC"); and (5) Principal.

Following the hearing, both parties submitted written closing statements.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. The statutory HOD deadline is July 7, 2011.

III. ISSUES AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioners resulted in the following issues being presented for determination at hearing:

(1) **Inappropriate IEP.** — Did DCPS deny the Student a FAPE by failing to develop an appropriate IEP (*i.e.,* one that is reasonably calculated to provide meaningful educational benefit) on or about November 17, 2010, based on the hours of services and the setting in which the services were to be provided? Petitioner's counsel stipulated at the PHC that there was no allegation that any IEP goals are inappropriate.

(2) **Inappropriate Placement.** — Did DCPS deny the Student a FAPE by failing to propose an appropriate placement for the Student for 2010- 11 SY?

(3) **Parental Private Placement.** — Is Private School a proper placement for the Student?

Petitioners request that DCPS reimburse them for the cost of enrolling the Student at Private School from August 2010 to June 2011. Petitioners are not requesting prospective placement at Private School, but the parties stipulated at the PHC that if reimbursement is granted, then this would be the Student's current educational placement for stay-put purposes.

IV. FINDINGS OF FACT

1. The Student is an year old student who has been determined to be eligible for special education and related services under the IDEA as a child with a disability. Her primary disability is Specific Learning Disability ("SLD"). *P-28; P-33.* She lives in the District of Columbia with Petitioners. *Parent Test.; P-1.*

2. For the 2009-10 school year, the Student attended a non-public school located in suburban Maryland ("Former School"), which is not a special education school but is taught by teachers with experience in teaching children with learning disabilities. *P-20.*

3. In November 2009, an independent psycho-educational evaluation of the Student was conducted at the request of her parents. *P-2.* The evaluation found, *inter alia*, that the Student was functioning in the Low Average to Average range of intelligence and that her academic skills were also within the same range, "indicating that she [was] functioning to her potential in the classroom with the very good supports she [was] receiving at the [Former] School." *Id., p. 10.* The Student was, however, diagnosed with a learning disability, NOS, "with weaknesses in language processing and verbal memory impacting language comprehension, reading comprehension and also affecting processing of math reasoning and written expression." *Id., p. 11.* She had additional weaknesses in visual processing, as well as Attention Deficit Disorder, primarily inattentive type with related executive function weaknesses. *Id.*

4. With respect to recommended educational interventions, the November 2009 evaluation noted (*inter alia*) that the Student "benefits from having instruction within smaller groups to allow opportunity for frequent feedback, verbal cueing, tasks analysis and repetition as well as supports for attention." *P-2, p. 11; see also id., pp. 10* ("In the classroom, she benefits from cueing, repetition of questions, repeated review of information, and breaking down complex tasks."), *12* ("careful cueing of her attention, support for processing of language, more active interaction and feedback from the teacher are all likely to be necessary to support her attention").

5. In January 2010, the Former School issued a progress report that noted areas of academic strengths and weaknesses similar to those observed in the November 2009 psycho-educational evaluation. *See P-3.*

6. Between February and April, 2010, the Student received additional evaluations covering her psychiatric/medication, speech/language, and occupational therapy needs. *See P-4; P-5; P-6.*

7. On or about June 16, 2010, the Student's mother submitted a student referral for special education services to the DCPS Private-Religious Office ("PRO"). *P-9.* The referral package included a detailed report from Former School regarding the Student's performance and reasons for referral. *Id., pp. 9-13.*

8. On or about July 13, 2010, Petitioners registered the Student as a non-attending student. *See P-12.* That same date, the Student's father wrote to the SEC at their neighborhood

DCPS elementary school ("E.S."), requesting that the multi-disciplinary team ("MDT") meet to evaluate the Student for special education services. *P-10.* Enclosed with the letter were the Student's prior evaluations and educational records, including the January 2010 mid-year progress report from Former School. *Id.* [2]

9. The Student began attending Private School in August 2010. *P-1, p. 6; Parent Test.*
10. On or about August 18, 2010, the SEC scheduled an MDT meeting for 09/21/2010 and requested an opportunity to observe the Student in her current educational setting. *P-13.* The SEC noted that "neither I nor anyone else on the MDT has had an opportunity to meet or observe [Student]." *Id.* Petitioners consented to such observations (*P-14; P-15*), but due to restrictions imposed by Private School, only the DCPS School Psychologist was able to observe the Student. *SEC Test.*
11. On or about August 20, 2010, the SEC informed Petitioners that the DCPS members of the MDT had reviewed the evaluations submitted and agreed with the conclusions and recommendations therein. *P-19.* Thus, she stated that "we can assume that eligibility will be confirmed at the September 21 meeting," and that DCPS would be prepared to proceed with developing an IEP if eligibility were confirmed. *Id.*
12. On September 21, 2010, DCPS convened a meeting of the Student's MDT for the purpose of completing eligibility review. *P-20.* A draft IEP was prepared (*P-21*), but Petitioners' attorney asked that the meeting be deferred to allow Former School to participate, and DCPS agreed to that request. *Id.* The MDT agreed that updated academic scores were also needed. *Id.; P-23; SEC Test.* The next meeting was scheduled for November 1.
13. On or about October 14, 2010, the SEC wrote Petitioners to follow up on the updated academic testing from Private School, which was still outstanding. *P-23.* The next day, Petitioners forwarded the Student's current Woodcock-Johnson (W-J III) scores along with a "draft IEP" from Private School. *P-24.* The "draft IEP" consisted of the written education plan developed by Private School on or about 10/05/2010. *See P-22.*
14. On or about October 25, 2010, the SEC sent Petitioners a revised draft of an IEP including the most recent information from the Private School IEP and W-J III scores.

[2] The 07/13/2010 letter does not appear to have included the June 2010 end-of-year progress report, although it was forwarded to DCPS directly by Former School. *See DCPS-3.*

P-25. The SEC noted missing baseline information on current performance. *Id.* The DCPS School Psychologist also issued her report reviewing the independent educational evaluation and her own observation of Student at Private School on 09/14/2010. *P-26.*

15. On or about October 29, 2010, Petitioners provided DCPS with a copy of the current Private School "IEP" approved by the parents and the school's instructional staff. *P-27.*
16. On November 1, 2010, DCPS reconvened a meeting of the Student's MDT to review all independent assessments and determine if the Student meets eligibility criteria for special education as specified by the IDEA. *P-30.* The MDT decided that the Student was eligible as a student with learning disabilities, "with primary impact in math and secondary impact in reading comprehension, written language, [and] speech/language." *Id., p. 1. See also P-28* (11/01/2010 *Prior Written Notice – Identification*); *P-29* (11/01/2010 *Final Eligibility Determination Report*). All parties agreed with the determination of learning disabilities, and Petitioners agreed to accept services and to move ahead with an IEP. *P-30, p. 1.* Petitioners' attorney then asked to reconvene the meeting on 11/17/2010 to develop the IEP "due to the fact that current educational staff is not available from [Private] School." *Id.*
17. On November 17, 2010, DCPS reconvened a meeting of the Student's MDT to develop the IEP for the Student. *P-34.* The IEP developed at the 11/17/2010 meeting provided for the following special education and related services: (a) 10 hours per week of specialized instruction in Reading, Math, and Written Expression in a "General Education" setting; (b) 10 hours per week of specialized instruction in Reading, Math, and Written Expression in an "Outside General Education" setting; (c) 30 minutes per week of speech/language services in a General Education setting; (d) 60 minutes per week of speech/language services in an Outside General Education setting; (e) 30 minutes per week of behavioral support services in a General Education setting; and (f) 60 minutes per week of OT services in an Outside General Education setting. *P-33, p.15.* In addition, the IEP provides for Consultation Services of (g) 30 minutes per week of speech-language pathology and (h) six hours per day of behavioral support services, through the support of a full-time dedicated aide. *Id., pp. 15, 20.* There was mutual agreement on all the IEP goals, which were adapted from the "IEP" document submitted by Private School. *P-34.*

18. Also on 11/17/2010, DCPS issued a Prior Written Notice ("PWN") offering and proposing placement at E.S., which was the Student's neighborhood school. *P-32.* The PWN states that "DCPS rejects the parent request for a full-time special education separate school setting" as inconsistent with the Least Restrictive Environment ("LRE") requirements of the IDEA. *Id.*
19. Petitioners objected to the IEP service hours and setting as well as the proposed placement. The 11/17/2010 MDT meeting notes indicate that Petitioners' attorney believed that the Student "requires a full time placement because her executive functioning and emotional needs are pervasive and impact her through the day." *P-34.* However, the SEC replied that "those needs can be met in a less restrictive environment." *Id.* She stated that "small group instruction can be provided in classroom setting in a variety of ways including dedicated aide who can provide instruction individually and to small 2 or 3 numbers of children." *Id.* The SEC summarized that "DCPS offers placement in least restrictive setting of [Student's] neighborhood school...with inclusions support, pullout for reading/writing/math, and the services of a dedicated aide to maximize the availability of small group instruction." *Id. See also P-32*
20. Petitioners decided not to enroll the Student at E.S. to receive the IEP services, and filed this due process complaint instead.
21. Based on the Student's unique needs that result from her disabilities, the 11/17/2010 IEP is reasonably calculated to provide meaningful educational benefit to the Student; and the proposed placement at E.S. is an appropriate educational placement for the Student.

V. DISCUSSION AND CONCLUSIONS OF LAW

A. Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; *see Schaffer* v. *Weast,* 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to develop an appropriate IEP or propose an appropriate placement. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-E3030.3. The recognized standard is preponderance of the

evidence. *See, e.g., N.G.* v. *District of Columbia,* 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw* v. *District of Columbia,* 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 20 U.S.C. §1415(i)(2)(C)(iii).

B. Issues/Alleged Denials of FAPE

The IDEA requires that all students be provided with a Free Appropriate Public Education ("FAPE"). FAPE means:

> [S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..." 20 U.S.C. § 1401(9); *see* 34 C.F.R. § 300.17; DCMR 5-E3001.1.

As noted, Petitioners claim that DCPS denied the Student a FAPE by: (1) failing to develop an appropriate IEP on or about November 17, 2010, based on the hours of services and the setting in which the services were to be provided; and (2) failing to propose an appropriate educational placement for the Student for the 2010-11 school year. For the reasons discussed below, the Hearing Officer concludes that Petitioners have failed to meet their burden of proof on these claims.

Applicable Law

The "primary vehicle" for implementing the goals of the IDEA is the IEP, which the statute "mandates for each child." *Harris v. District of Columbia,* 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (*citing Honig v. Doe,* 484 U.S. 305, 311-12 (1988)). To be sufficient to provide FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Anderson* v. *District of Columbia,* 109 LRP 18615 (D.D.C. 2009), slip op. at 6, *quoting Board of Education* v. *Rowley,* 458 U.S. 176,200,207 (1982).[3] The IDEA requires an IEP to confer a "meaningful educational benefit" gauged in relation to the potential of the child at issue. *Deal v. Hamilton County*, 392 F.3d at 862 (citing *T.R. ex rel. N.R. v. Kingwood Township Bd. of Educ.*, 205 F.3d 572, 578 (3d Cir. 2000); *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 247 (3d Cir. 1999)). The determination of

"meaningful benefit" requires "a student-by-student analysis that carefully considers the student's individual abilities." *Ridgewood*, 172 F.3d at 248. At a minimum, an IEP "must provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Educ. v. Rowley*, 458 U.S. at 204; *Branham v. District of Columbia*, 427 F.3d 7, 9 (D.C. Cir. 2005).

The issue of whether an IEP is appropriate under the foregoing standards is a question of fact for determination by a hearing officer. *See, e.g., S.H.* v. *State-Operated School Dist. of Newark,* 336 F. 3d 260, 271 (3d Cir. 2003). "Ultimately, the question ...is whether or not [the] defects in the ...IEP are so significant that [DCPS] failed to offer [the Student] a FAPE." *N.S. v. District of Columbia,* 709 F. Supp. 2d 57 (D.D.C. 2010), slip op. at 20.

In determining the educational placement of a child with a disability, DCPS must place a student with a disability in "an appropriate special education school or program" in accordance with the IDEA. D.C. Code 38-2561.02. *See also Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005) (affirming "placement based on match between a student's needs and the services offered at a particular school"); *T.T. v. District of Columbia,* 48 IDELR 127 (D.D.C. 2007) ("Once developed, the IEP is then implemented through an appropriate placement in an educational setting suited to the student's needs"). Among other things, DCPS must ensure (*inter alia*) that the placement decision is "based on the child's IEP," and that it is in conformity with LRE provisions. 34 C.F.R. § 300.116. [4] "If no suitable public school is available, the District must pay the costs of sending the child to an appropriate private school." *Jenkins v. Squillacote*, 935 F. 2d 303, 305 (D.C. Cir. 1991).

Analysis

In this case, the November 17, 2010 IEP provides extensive special education and related services in a combination setting that appears to reflect reasonable judgments by the educational professionals and other members of the Student's IEP team as to how to serve her unique

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[3] *See also Kerkam v. McKenzie,* 862 F. 2d 884 (D.C. Cir. 1988); *J G. v. Abington School,* 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit. ").

[4] *See, e.g., Deal v. Hamilton County*, 392 F.3d 840, 859 (6th Cir. 2004) ("placement may only be considered to have been based on the child's IEP when the individual characteristics, including demonstrated response to particular types of educational programs, are taken into account."); *Polk v. Central Susquehanna Intermediate Unit,16*, 853 F. 2d at 177-178.

educational needs in the least restrictive environment, based on the information available to the team as of that date. DCPS has also offered an educational placement that can implement the IEP and is otherwise appropriate to meet the Student's demonstrated needs. As such, this program and placement are reasonably calculated to provide meaningful educational benefit. No more is required of DCPS under the IDEA.

Petitioners advance a number of legal and factual arguments, but none of them serve to carry their burden of proof on the above claims. First, citing *N.G. v. District of Columbia,* 556 F. Supp. 2d 11, 35 (D.D.C. 2008), Petitioners argue that the "evidence of progress at [Former School] or [Private School] strongly suggests that [Student] requires self-contained special education." *Parents' Closing Argument,* p. 4. However, *N.G.* concerned the question whether DCPS had improperly limited the scope of its *eligibility* determination by examining only the student's performance in small, highly structured private schools to determine that her disabilities did not *adversely impact her educational performance*. Here, there is no dispute that the Student's disabilities adversely impact her education such that she qualifies for special education services; the question is simply what type of program is reasonably necessary to meet her unique needs. For IDEA purposes, a public school program that incorporates sufficient support mechanisms and services designed to meet the Student's special education needs may well be an adequate (and less restrictive) alternative to the separate private school environment in which she also performs well.

Second, Petitioner asserts that "DCPS failed in its obligation to review information on [Student]" because several DCPS witnesses (excluding the SEC) testified that they had not read all of the detailed, handwritten comments from the Former School instructional staff (*see P-9*), along with other documentation and information provided by Petitioners in their referral package. *Parents' Closing Argument,* pp. 5-6. Petitioners argue that this violates both State and federal regulations. *Id.,* p. 6. However, the Complaint never alleged such procedural errors (*see P-1; Prehearing Order, ¶6*), which ordinarily must be set forth and proved separately consistent with the first prong of the *Rowley* doctrine and *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). *See also* 34 C.F.R. 300.513 (a) (2). Petitioners may not raise issues at hearing that were not raised in the due process complaint. *See* 34 C.F.R. 300.511 (d).

Third, Petitioners argue that "DCPS also failed to consider the recommendations of professionals," as reflected in the Student's various evaluations, in developing the IEP. *Parents'*

Closing Argument, p. 7, *citing District of Columbia v. Bryant-James*, 675 F. Supp. 2d 115 (D.D.C. 2009). However, there is no substance to this argument. The record does not support the assertion that DCPS "elect[ed] to unilaterally ignore expert evaluations." *Id.* Unlike the situation in *Bryant-James* (involving a child with significant auditory processing deficits who required a strict noise-controlled environment), here DCPS specifically acknowledged and addressed the benefits of a more structured, "small group" setting to address the executive functioning and emotional issues raised by Petitioners. *See, e.g., Findings, ¶ 19; P-34; SEC Test.*

Finally, Petitioners' most prominent argument seems to be that the dedicated aide provision in the IEP "makes no sense" because it does nothing to create a more appropriate educational environment for the Student, and indeed may harm her. *Parents' Closing Argument,* pp. 7-10. Petitioners primarily complain that DCPS never justified the use of a full-time dedicated aide for a "child who is overly dependent on adult support." *Id., p. 8.* But the evidence does not support this argument. None of the evaluations submitted to DCPS at the time the IEP was developed appear to mention this concern about the Student; and Petitioners did not raise such concern at the IEP team meeting discussing this provision. The first time it seems to surface at all is in the educational advocate's program recommendations in March 2011 (*P-36, p. 4*), nearly four months after the IEP was developed.

In fact, the dedicated aide provision appears to be appropriately designed to address significant executive functioning and verbal processing deficits that were well documented in the Student's educational records at the time DCPS developed the IEP. [5] Moreover, the use of a one-to-one dedicated aide in these circumstances may properly help satisfy the IDEA's LRE mandate by enabling the Student to participate in a regular education setting. *See, e.g., Student*

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[5] *See, e.g., P-33, p. 20* (*Justification and Plan for Dedicated Aide*: "[Student] has extreme executive functioning deficits which leave her disorganized and confused for much of the day....She requires an adult to assist with organizing her environment and teaching/re-teaching information in a small group format."); *P-2, p. 10* (*Psycho-educational Evaluation:* "In the classroom, she benefits from cueing, repetition of questions, repeated review of information, and breaking down complex tasks."); *P-3, pp. 2-3, 13-14* (*Jan. 2010 Progress Summary:* "Benefits from cueing and repeated/broken-down directions"; "needs cueing and support to participate"; "she sometimes misses cues in the classroom regarding novel directions, and transitions"; Student "benefits from cues to 'tune in' to important information (e.g. directions, questions) and uses visual and verbal cues to recall and follow directions....She often requires adult support to keep conversational exchanges going and to organize her thoughts and ideas."); *P-9, pp. 5, 13* (*PRO Submission:* "needs supports and prompts" and "1 on 1 teacher-student ratio"); *DCPS-3, pp. 2-3, 5, 8* (*June 2010 Progress Summary:* "Benefits from adult support to stay focused and on topic"; "Adults consistently try to engage her, redirect her attention and provide support...."; "one-to-one teacher support" as a reading comprehension strategy; "She works best in small groups and benefits from sitting next to a teacher who can help her maintain her focus and reassure her about interfering concerns.").

With a Disability, 110 LRP 7507 (SEA Va. 10/21/2009) (aide needed to redirect student so that he could benefit from a general education classroom; self-contained special class without dedicated aide would have been unnecessarily restrictive); [6] 34 C.F.R. 300.114 (a) (2) (LEA required to ensure "to the maximum extent appropriate" that children with disabilities are educated with nondisabled children, and that special classes and separate schooling occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily"). Thus, DCPS appears to have acted appropriately in this instance in deciding that such service not only would respond to the Student's demonstrated educational needs, but also could help maintain the Student in a less restrictive environment.

"The IEP does not have to be drafted perfectly." *O.O. v. District of Columbia,* 573 F. supp. 2d 41, 51 IDELR 9 (D.D.C. 2008), slip op. at 13-14, *citing Rowley*, 458 U.S. at 200. "It must only be reasonably calculated to provide some benefit to the child." *Id.* The Hearing Officer concludes that Petitioners have not proved by a preponderance of the evidence that the November 17, 2010 IEP fails this test.

C. Requested Relief

The IDEA provides that "a court or a hearing officer may require the agency to reimburse the parents for the cost of [private school] enrollment if the court or hearing officer finds [1] that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and [2] that the private placement is appropriate." 34 C.F.R. § 300.148 (c). *See Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 12-13 (1993); *School Comm. of Burlington v. Department of Educ.,* 471 U.S. 359, 369-70 (1985); *Roark v. District of Columbia,* 460 F. Supp. 2d 32 (D.D.C. 2006). Moreover, "equitable considerations are relevant in fashioning relief," *Burlington,* 471 U.S. at 374, and courts and hearing officers have "broad discretion" in the matter. *Id.* at 369.

Because the Hearing Officer has concluded that DCPS did make FAPE available to the Student in a timely manner, as of November 17, 2010, the first prong of the *Carter/Burlington*

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[6] This case seems more on point than the *Kingsport City School System* case cited by Petitioners, where use of a dedicated aide effectively frustrated accomplishment of the BIP. *See Kingsport City School System v. J.R.,* 51 IDELR 77 (E.D. Tenn. 2008).

test is not satisfied, and there is no basis for awarding any reimbursement. "Parents who choose unilaterally to place their disabled child in a private school without the agreement of the school district do so at their own risk." *Roark v. District of Columbia,* 460 F. Supp. 2d 32, 45 (D.D.C. 2006). As the U.S. District Court for the District of Columbia has explained:

> "It is irrelevant that [Private School] may be better suited to serve [Student] than [DCPS school]. The IDEA 'does not necessarily guarantee the child [with a disability] the best available education.' Nor does it guarantee that the child will receive the education that the parent thinks is best. If the parent prefers a private institution to an appropriate placement determined by MDT, then she is free to pay for it at her own expense. DCPS is not required to reimburse a plaintiff for private school tuition if, as is the case here, a FAPE was made available but the plaintiff rejected it."

O.O. v. District of Columbia, 573 F. Supp. 2d 41, 51 IDELR 9 (D.D.C. 2008) (citations omitted), slip op. at 17.

VI. ORDER

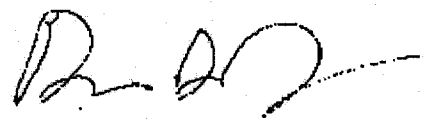
Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Petitioners' requests for relief in their Due Process Complaint filed April 1, 2011 are hereby **DENIED;**

2. The Complaint is **DISMISSED, With Prejudice;** and

3. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.



Dated: July 7, 2011

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).