OSSE
Student Hearing Office
June 06, 2013

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, D.C. 20002

Adult Student,[1]
Petitioner,

Date Issued: June 5, 2013

Hearing Officer: Melanie Byrd Chisholm

v.

District of Columbia Public Schools,
Respondent.

HEARING OFFICER DETERMINATION

BACKGROUND AND PROCEDURAL HISTORY

The student is a twenty year old female, attending School A. The student's current individualized education program (IEP) lists specific learning disability (SLD) as her primary disability and provides for her to receive twenty-six (26) hours per week of specialized instruction outside of the general education setting, one half (.5) hour per week of behavioral support services outside of the general education environment and one (1) hour per week of speech-language pathology outside of the general education environment.

On March 25, 2013, Petitioner filed a Due Process Complaint (Complaint) against Respondent District of Columbia Public Schools (DCPS), alleging that DCPS denied the student a free appropriate public education (FAPE) by failing to implement the student's IEP "as part of stay-put" by failing to "consistently provide the student with transportation that she requires to attend school." As relief for this alleged denial of FAPE, Petitioner requested that DCPS reimburse the Petitioner for the transportation expenses incurred; begin transportation for the student within one school day; and compensatory education.

On April 3, 2013, Respondent filed a timely Response to the Complaint. In its Response, Respondent asserted that a November 3, 2012 Hearing Officer Determination (HOD) determined that DCPS changed the student's location of services not the student's placement; the student has unilaterally decided to remain in the previous school thereby waiving a right to transportation; transportation is the responsibility of the Office of the State Superintendent for Education

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

(OSSE); DCPS/OSSE has transportation in place for the student to her assigned school; and there is no issue upon which relief can be granted by the Hearing Officer.

On April 15, 2013, the parties participated in a Resolution Meeting. The parties concluded the Resolution Meeting process by failing to reach an agreement however the parties agreed to continue to attempt to resolve the matter during the 30-day resolution period. Accordingly, the parties agreed that the 45-day timeline started to run on April 25, 2013, following the conclusion of the 30-day resolution period, and ends on June 8, 2013. Therefore, the HOD is due on June 8, 2013.

On May 6, 2013, Hearing Officer Melanie Chisholm convened a prehearing conference and led the parties through a discussion of the issues, relief sought and related matters. The Hearing Officer issued the Prehearing Order on May 7, 2013. The Prehearing Order clearly outlined the issue to be decided in this matter. Both parties were given three (3) business days to review the Order to advise the Hearing Officer if the Order overlooked or misstated any item. Neither party disputed the issue as outlined in the Order.

On May 23, 2013, Petitioner filed Disclosures including fifty (50) exhibits and seven (7) witnesses.[2] On May 23, 2013, Respondent filed Disclosures including three (3) exhibits and three (3) witnesses.

During the prehearing conference, the Hearing Officer requested that both parties submit a prehearing brief regarding the stay-put provision during an appeal and the Hearing Officer's authority to determine the issue. The Hearing Officer requested that both parties provide the case law both supporting and contradicting the parties' position. The Prehearing Order stated that prehearing briefs were to be submitted by 11:59 p.m. on May 28, 2013. On May 28, 2013, the Petitioner submitted a brief however did not provide case law contradicting the Petitioner's position. The Respondent did not submit the requested brief.

The due process hearing commenced at approximately 9:42 a.m.[3] on May 31, 2013 at the OSSE Student Hearing Office, 810 First Street, NE, Washington, DC 20002, in Hearing Room 2004. The Petitioner elected for the hearing to be closed.

Petitioner's Exhibit 47 was admitted without objection. The Hearing Officer did not admit Petitioner's Exhibit 1 because it was duplicative of the administrative record. Respondent objected, based on relevance, to the remaining exhibits proposed by Petitioner. Petitioner's counsel stated that Exhibits 2, 3, 5, 27, 29, 34, 40-44, 46, 48 and 50 were necessary to meet his burden. The Hearing Officer requested that the parties stipulate to facts that would address Petitioner's Exhibits 27, 29, 40-44, 46 and 48. The parties agreed. Respondent's Exhibits 2, 3, 34 and 50 were admitted over Respondent's objection. Respondent withdrew Respondent's Exhibits 1 and 3. Respondent's Exhibit 2 was admitted without objection.

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[2] A list of exhibits is attached as Appendix B. A list of witnesses who testified is included in Appendix A.

[3] At the scheduled time to begin the hearing, the Hearing Officer and counsels for Petitioner and Respondent were present however the Petitioner was not present. The Petitioner arrived at approximately 9:34 a.m. and counsel for Petitioner requested a few minutes to confer with the Petitioner prior to commencing the hearing.

At the close of Petitioner's case-in-chief, Respondent moved for a Directed Verdict arguing that the student's request to commute to school via public transportation rather than a school bus would require a change in the student's IEP which was not appropriate for the Hearing Officer to decide; Hearing Officer Coles Ruff's finding that that there was no change in placement is dispositive in this case; any challenge to that determination lies in the U.S. District Court; that the Petitioner did not prove that a debt has incurred; and the case law provided by Petitioner is negated by other case law. The Petitioner argued that the Respondent's argument related to case law should have minimal weight because DCPS did not submit the prehearing brief requested by the Hearing Officer; that the facts in the present matter exactly mirror the facts in *Spilsbury v. District of Columbia*, 307 F. Supp. 2d 22 (2004), therefore School A is the student's stay-put placement; School A was the last agreed upon school for stay-put purposes; that the student's request to continue to commute to school via public transportation was a technicality; and the family provided creditable regarding the debt incurred. The Hearing Officer deferred ruling on the motion.

The hearing concluded at approximately 10:57 a.m. on May 31, 2013, following arguments by both parties related to Respondent's Motion for a Directed Verdict.

Jurisdiction

The hearing was conducted and this decision was written pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E-30.

ISSUE

The issue to be determined is as follows:

1. Whether DCPS failed to provide transportation for the student to the student's stay-put placement, and if so, whether this failure constitutes a denial of a FAPE?

FINDINGS OF FACT

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

1. The student is a student with disabilities as defined by 34 CFR §300.8. (Stipulated Fact)
2. The student is attending School A as a result of a December, 2010 Settlement Agreement. (Petitioner's Exhibit 47)
3. Since December 2010, the student's IEP has been revised at least twice and the student's academic achievement has improved dramatically. (Petitioner's Exhibits 2, 34 and 47)

4. The student's December 5, 2011 IEP lists transportation on a school bus as a related service for the student. (Petitioner's Exhibit 2)
5. On December 5, 2011, DCPS issued a Prior Written Notice to relocate the student from School A to a special education program in a DCPS public high school. (Petitioner's Exhibits 3 and 47)
6. Based on the December 5, 2011 proposal to relocate the student from School A to a special education program in a DCPS public high school, the Petitioner filed a Complaint which resulted in a March 6, 2012 HOD. (Petitioner's Exhibit 47)
7. On May 14, 2012, DCPS convened a meeting and changed the student's location of services from School A to School B. (Petitioner's Exhibit 47)
8. On August 20, 2012 Petitioner filed a Complaint challenging DCPS' proposal to transfer the student from School A to School B. (Petitioner's Exhibit 47)
9. In a November 3, 2012 HOD, Hearing Officer Coles Ruff determined that the student's transfer from School A to School B was a change in location of services rather than a change in placement. (Stipulated Fact)
10. In the November 3, 2012 HOD, Hearing Officer Coles Ruff determined that the student's IEP services and least restrictive environment remained unchanged from School A to School B. (Petitioner's Exhibit 47)
11. In the November 3, 2012 HOD, Hearing Officer Coles Ruff determined that School B is an appropriate location of services for the student. (Petitioner's Exhibit 47)
12. The Petitioner appealed the November 3, 2012 HOD. (Respondent's Exhibit 2)
13. Following the November 3, 2012 HOD, DCPS provided for the student to receive transportation to School B. (Parent's Testimony)
14. Although Hearing Officer Coles Ruff determined that School B is an appropriate location of services for the student, the student has continued to attend School A. (Petitioner's Exhibit 50; Parent's Testimony)
15. The student's current IEP lists transportation on a school bus as a related service for the student. (Stipulated Fact)
16. The student is not being provided transportation to School A by DCPS or OSSE. (Stipulated Fact)
17. Prior to the due process hearing, Petitioner has expressed the belief that the student has a maintenance of placement right to transportation to School A. (Stipulated Fact)
18. The student is able to commute to and from school via public transportation. (Parent's Testimony; Student's Testimony)
19. The student does not desire to commute to and from school via a school bus. (Student's Testimony)
20. A student fare card for public transportation is $30.00 per month. (Parent's Testimony)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof in a special education due process hearing is on the party seeking relief. 5 DCMR §E-3030.3; *see Schaffer v. Weast*, 546 U.S. 49 (2005). 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. 5 DCMR §E-3030.3. The recognized standard is the preponderance of the evidence. *See 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).

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), the Supreme Court of the United States held that the term "free appropriate public education" means "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped." The United States Supreme Court has established a two-part test for determining whether a school district has provided a FAPE to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the IDEA, 20 U.S.C. §§1400 et seg., and an analysis of whether the IEP is reasonably calculated to enable a child to receive some educational benefit. *Id.*; *Kerkam v. Superintendent D.C. Public Schools*, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

If the parent of a child receiving services pursuant to the IDEA believes his or her child's IEP or school placement is inadequate, the parent may file a "due process complaint." 20 U.S.C. § 1415(b)(7)(A); § 1415(k)(3). The IDEA regulations further provide that except as provided for placement during disciplinary appeals, during the pendency of a proceeding regarding a due process complaint, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement. *See* 34 CFR §300.518(a).

During the prehearing conference, the Hearing Officer raised the concern that the Hearing Officer may not be the appropriate person to decide this matter. The Hearing Officer believes that the judge assigned to the appealed case in the U.S. District Court may be a more appropriate person. While the Hearing Officer requested that the parties consider this issue, neither party adequately addressed the Hearing Officer's concern, either in a prehearing brief or during the hearing. Therefore, although welcomed, neither party challenged the Hearing Officer's authority to decide this matter. Additionally, during the hearing, it became clear that although transportation on a school bus was included in the student's December 5, 2011 and December 3, 2012 IEPs, the student is not only able but also desires to utilize public transportation to travel to and from school. While this is clearly a concern, the appropriateness of the student's IEP is not an issue for the Hearing Officer to determine.

The background and the basic facts of the present matter are uncontested. The student was placed in School A as a result of a December, 2010 Settlement Agreement. In December 2011, DCPS issued a Prior Written Notice to relocate the student from School A to a special education program in a DCPS public high school. Based on this proposal, the Petitioner filed a Complaint which resulted in a March 6, 2012 HOD. On May 14, 2012, DCPS convened a meeting and changed the student's location of services from School A to School B. On August 20, 2012 Petitioner filed a Complaint challenging DCPS' proposal to transfer the student from School A to School B. On November 3, 2012, a Hearing Officer determined that DCPS' transfer

of the student from School A to School B was a change in location rather than a change in placement and the School B was an appropriate location of services for the student. Following the Hearing Officer's Determination, the student continued to attend School A. DCPS continued to make transportation available to the student however the transportation was made available to School B. The Petitioner appealed the Hearing Officer's decision.

The issue in this case is whether DCPS failed to provide transportation for the student to the student's stay-put placement, and if so, whether this failure constitutes a denial of a FAPE? There is no dispute as to whether DCPS provided transportation to the student following the November 3, 2012 HOD. DCPS did not provide for the student's transportation to School A following the November 3, 2012 HOD. DCPS did, however, make transportation available for the student to School B. Therefore, the essential question is whether School A or School B is the student's stay-put placement during pendency of the Petitioner's appeal to the U.S. District Court.

The "stay put provision" has been interpreted as imposing an automatic statutory injunction, like the automatic stay in bankruptcy. *Casey K. ex rel. Norman K. v. St. Anne Cmty High Sch. Dist.*, 400 F.3d 508, 511 (7th Cir. 2005) (citations omitted). Once a due process complaint has been filed, a parent can invoke the stay-put provision when the school district proposes a change in the child's "then-current educational placement." 20 U.S.C. § 1415(j). The parent seeking the stay-put injunction "must identify, at a minimum, a fundamental change in, or elimination of a basic element of the education program in order for the change to qualify as a change in educational placement." *Lunceford v. D.C. Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C. Cir. 1984). The IDEA does not define the term "then-current educational placement," but the courts have explained that a child's educational placement "falls somewhere between the physical school attended by a child and the abstract goals of a child's IEP." *Bd. of Educ. of Cmty High Sch. Dist. No. 218, Cook Cnty., Ill. v. Ill. State Bd. of Educ.*, 103 F.3d 545, 548 (7th Cir. 1996).

During the prehearing conference, the Hearing Officer requested that both parties submit a prehearing brief regarding the stay-put provision during an appeal. The Petitioner's brief focused primarily on *Spilsbury v. District of Columbia*, 307 F. Supp. 2d 22 (2004) and noted that the student's placement at School A was pursuant to a December 2010 Settlement Agreement which, according to *Greenwich v. Torok*, 03-cv-1407 WL 22429016 (D. Conn. 2003), was an agreement between the District and the parents for stay-put purposes. The Respondent did not submit the requested brief.

During arguments at the hearing, the Petitioner argued that the governing authority on stay-put is *Spilsbury*. The Petitioner further argued that any other cases related to stay-put should not be given considerable weight because *Spilsbury* included claims for four students while any other case would relate to just one student. The Hearing Officer is not persuaded by either of these arguments. First, there are numerous cases which address the issue of stay-put. Next, the fact that *Spilsbury* included four claimants does not minimize the authority of other cases which include fewer claimants. Finally, the facts of *Spilsbury* do not align with the facts of the current matter. Most importantly, the *Spilsbury* court noted that there were "fundamental changes in the Plaintiffs' educational programs" and the Court also had to consider services such

as tutoring services and psychological therapy. *Id.* Here, Hearing Officer Coles Ruff found that the student's IEP services and least restrictive environment remained unchanged from School A to School B and with the exception of Petitioner's current claim regarding transportation, there was no allegation that the student's services ceased.

It is generally accepted that if parents succeed in establishing the appropriateness of a placement or educational provision at due process and obtain a ruling in their favor, it then serves as the stay-put placement throughout the appeal process, and the educational agency must then maintain that placement, including the expenses associated with the placement. *See, e.g., Bd. of Educ. of Pine Plains Central School Dist. v. Engwiller,* 170 F. Supp. 2d 410, 414 (S.D.N.Y. 2001) ("the law treats an administrative decision favorable to the parents and against the District as creating a de jure agreement between the parents and the State ..."); *Murphy v. Arlington Cent. School Dist. Bd. of Educ.,* 86 F. Supp. 2d 354, 358 (S.D.N.Y. 2000) ("once the parents receive an administrative decision in their favor, the current educational placement changes in accordance with that decision"); *Ashland School District v. V.M.,* 494 F. Supp. 2d 1180, 1182 (D. Or. 2007) ("during the pendency of this action the School District must pay for V.M.'s placement at the facility described ... [in] the ALJ's decision ..."); *Escambia County Bd. of Educ. v. Benton,* 358 F. Supp. 2d 1112, 1123-24 (S.D. Ala. 2005) ("the Administrative Decision effectively constitutes an agreement between the State of Alabama and [the student's] parents as to [the student's] current placement for purposes of this litigation.").

In the above referred cases, the courts stated that the placement identified in the administrative decision becomes the stay-put placement for the pendency of the appeal if the Petitioner *obtained a ruling in their favor.* However, in this matter, the Petitioner did not obtain a ruling in her favor. Although the 9th Circuit has held that stay-put applies through the Circuit Court level (*See Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036 (9th Cir. 2009)), the 6th Circuit (*see Kari H. v. Franklin Special Sch. Dist.*, 125 F.3d 855 (6th Cir. 1997)) and, most importantly, the D.C. Circuit have held that stay-put does not extend beyond the district court's ruling.

In *Andersen v. District of Columbia*, 877 F.2d 1018 (D.C. Cir. 1989), which also included four claimants, the Hearing Officer found the students' placements appropriate, and the parents appealed to federal district court. The Court affirmed the Hearing Officer's decision and denied post-trial motions requesting tuition reimbursement for years following a prior HOD and stay-put injunctions permitting students to remain in private schools at district expense pending resolution of the appeal. The Plaintiffs argued that stay-put applied until all administrative or judicial reviews were completed, including an appeal to the U.S. District Court. The Court rejected that view as inconsistent with the statutory language and the case law. "We think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students . . . from school (emphasis in original)… Once a district court has rendered its decision approving a change in placement, that change is no longer the consequence of a unilateral decision by school authorities; the issuance of an automatic injunction perpetuating the prior placement would not serve the section's purpose." *Id.*

Likewise in *Johnson v. District of Columbia,* 839 F. Supp. 2d 173 (March 16, 2012), the Court found that there was no proposed change in the child's "then-current educational

placement" because the parent's only complaint was the adequacy of the location where the IEP would be implemented, not with the services the district offered.

In contrast, like the Court in *Spilsbury*, the court in *District of Columbia v. Vinyard*, 901 F. Supp. 2d 77 (November 2, 2012), ruled that stay-put requires districts to automatically maintain the current educational placements of students with disabilities through both administrative and judicial proceedings. The Court explained that the Hearing Officer's finding on the merits that the district denied the child FAPE and that his private placement was appropriate made the school the child's "current educational placement." *Id*. However, the facts in *Vinyard* are notably distinct than those in the current matter. In *Vinyard*, the Hearing Officer found a denial of a FAPE. In the present matter, Hearing Officer Coles Ruff concluded that DCPS did not deny the student a FAPE.

Where the school district has been found to be at fault in the placement process of a student with a disability and its shortcomings have resulted in some harm to the student, parents have a good chance of prevailing on their choice of preferred placement in a stay-put determination, including a unilateral private placement. *See Stockton v. Barbour County Bd. of Educ*., 25 IDELR 1076 (4th Cir. 1997); *Brad J. v. Commonwealth of Pennsylvania*, 22 IDELR 712 (E.D. Pa. 1995); *Cochran v. District of Columbia*, 660 F. Supp. 314 (D.D.C. 1987). In contrast, unilateral placements by parents generally will not be considered the proper stay-put placement when the district has made an appropriate placement available in the school district. *See Joshua B. v. New Trier Twp. High Sch. Dist*., 770 F. Supp. 431 (N.D. Ill. 1991). In the present matter, Hearing Officer Coles Ruff concluded that School B is an appropriate location of services for the student.

The Petitioner also argued that the December 2010 Settlement Agreement, which allowed the student to attend School A, rendered School A her stay-put placement. However where a student attends a school as a result of a series of settlement agreements between parents and the school district over a period of years, that facility is not necessarily the student's current placement for purposes of the stay-put provision. *See Mayo v. Baltimore City Public Schools*, 40 F. Supp. 2d 331 (D. Md. 1999) (where the student had attended the private school at public expense entirely as a result of single-year settlement agreements between the parents and the school district, and not as a result of an administrative or judicial determination that the private school was an appropriate placement, the student effectively had no current placement for stay-put purposes); *see also Stanley and Connie C. v. Metropolitan Sch. Dist. of Southwest Allen County Schs.*, 50 IDELR 163 (N.D. Ind. 2008) (because a stay-put agreement expressly stated that a district's liability for private services would end on December 4, 2006, the district was not responsible for services the student received in 2007 while her parents' FAPE claim was pending).

The Hearing Officer is not persuaded by the Petitioner's argument that the December 2010 Settlement Agreement governs stay-put in this case. Here, following the December 2010 Settlement Agreement, DCPS proposed a change in location for the student during at least two subsequent IEP Team meetings, both of which became the subject of due process hearings. DCPS has attempted multiple times to change the student's location of services since the execution of the December 2010 Settlement Agreement however the Petitioner has continued to

file Complaints to keep the student in School A since that time. More than two years have elapsed since December 2010, and since that time, the student's IEP has been revised at least twice and the student's academic achievement has improved dramatically.

Typically, the dispositive factor in deciding a child's "current educational placement" is the IEP actually functioning when stay put is invoked. *See Drinker ex rel. Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 867 (3d Cir. 1996) (citations omitted); *accord Mackey v. Bd. of Educ. for the Arlington Cent. Sch. Dist.*, 386 F.3d 158, 163-64 (2d Cir. 2004); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625 (6th Cir. 1990). In *Laster v. District of Columbia*, 394 F. Supp. 2d 60 (D.C. Cir. 2005), Judge Ricardo M. Urbina rejected the District's contention that placing the student at his prior school was impossible due to age restrictions, and granted the guardian's request for a stay-put injunction, ordering the District to place the student in a location providing services equivalent to the student's last agreed upon IEP. *Id.* at 65-66.

Although the IDEA requires a district to continue a student's "current educational placement" while a proceeding involving a due process complaint is pending, the statute does not define the term "educational placement." Courts and hearing officers have held that the term applies to the student's receipt of special education and related services as well as the student's placement. *See, e.g., DeLeon v. Susquehanna Community Sch. Dist.*, 747 F.2d 149 (3d Cir. 1984) (in determining whether a modification to a student's program is a "change in placement," the court must consider whether the modification "is likely to affect in some significant way the child's learning experience").

A change in the location of a student's services is not necessarily a violation of the stay-put provision. *See Sherri A.D. v. Kirby*, 975 F.2d 193 (5th Cir. 1992); *J.R. and K.R. v. Mars Area Sch. Dist.*, 318 F. App'x 113 (3d Cir. 2009, *unpublished*). A child with a disability need not remain in a specific class or grade if she would be eligible to proceed to the next grade and corresponding classroom within the grade. *See AW v. Fairfax County Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004); *G.B. v. New York City Dep't of Educ.*, 58 IDELR 100 (S.D.N.Y. 2012). Federal courts consistently have held that the term "educational placement" encompasses more than the location of the student's services; it also includes the services the student is currently receiving under his IEP. Districts can make minor changes to a student's program, so long as those changes are not likely to have a significant effect on the student's learning experience. *See, e.g., J.R. and K.R. v. Mars Area Sch. Dist.*, 318 F. App'x 113 (3d Cir. 2009) (holding that a Pennsylvania district could provide a student's special education services in an inclusion setting even though his last agreed-upon IEP called for him to receive those services in the resource room).

In the present matter, this Hearing Officer made it clear to the parties that the determination by Hearing Officer Coles Ruff that the student's transfer from School A to School B was a change in location of services rather than a change in placement would not be reviewed, litigated or contradicted in any manner in the present case. Therefore, for this analysis, this Hearing Officer relied on Hearing Officer Coles Ruff's determination that School A was not the student's "placement" but the student's location of services and that School B is an appropriate location of services. While the student unilaterally decided to remain in School A, the student

did so at her own risk. *See A.C. & M.C. ex rel. M.C. v. Bd. of Educ.,* 553 F.3d 165 (2d Cir. 2009).

The Hearing Officer concludes that the facts in this case more closely mirror the facts in *Andersen* and *Johnson* rather than the facts in *Spilsbury* and *Vinyard.* Therefore, the student's stay-put placement was determined by the November 3, 2012 HOD; the student's "current educational placement" is not School A; DCPS did make transportation available to the student's stay-put placement; and thus, DCPS did not deny the student a FAPE.

ORDER

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

The due process complaint in this matter is **dismissed** with prejudice. All relief sought by Petitioner herein is **denied**.

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: June 5, 2013

Melanie Byrd Chisholm
Hearing Officer