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

STUDENT, a minor, by and through
her Parent[1]

Petitioner,

v

DISTRCIT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

SHO Case No:
Erin H. Leff, Hearing Officer

2011 MAY 11 AM 11:39
OSSE
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

DECISION

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STATEMENT OF THE CASE

On March 1, 2011 Parent, on behalf of her child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education

[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A) (Supp. 2010). Respondent filed a Response to Parent's Administrative Due Process Complaint Notice (HO 4) on March 10, 2011. A resolution meeting was held on March 18, 2011. The parties were not able to reach an agreement. HO 6. As a result, the 45 day timeline began to run on March 19, 2011. On March 28, 2011 Petitioner filed, and I granted, a Motion for a Continuance of 10 days to address witness unavailability due to DCPS school closures for Emancipation Day and Spring Vacation. My Hearing Officer Determination, therefore, is due on May 12, 2011.

At all times relevant to these proceedings Petitioner was represented by Domiento Hill, Esq. Linda Smalls, Assistant Attorney General, represented DCPS throughout the proceedings other than at the due process hearing when Respondent was represented by Daniel McCall, Assistant Attorney General. I held a telephone prehearing conference on March 28, 2011. HO 7. By agreement of the parties, the hearing was scheduled for April 29, 2011. The hearing was held as scheduled.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (Supp. 2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUE(S)

The issues are:

1) Whether DCPS denied Student a free, appropriate public education ("FAPE") by failing to provide Student an individualized education program ("IEP") that is reasonably calculated to provide him educational benefit. The current IEP is not appropriate because it does not provide a full time program. It provides instead for approximately twelve hours of services per week; and.

2) Whether DCPS denied Student a FAPE by failing to propose an appropriate placement/location of services in a full-time, small, highly structured special education setting.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are found in Appendix A.

Exhibits admitted on behalf of Respondent are found in Appendix B.

Exhibits admitted on behalf of Hearing Officer are found in Appendix C.

B. Testimony

Petitioner testified and presented the following witnesses:

- Kevin Carter, Educational Advocate, Brown & Associates
- Director,
- Pius O. Ojevwe, Psy.D., Clinical Psychologist

DCPS presented the following witnesses:[3]

- General Education Teacher,
- Special Education Teacher,

[3] Both Petitioner's counsel and Respondent's counsel had some difficulty with witness availability. Several witnesses were called out of order. Both counsel were extremely flexible and cooperative in accommodating witness' scheduling limitations.

[4] Respondent's counsel presented this witness and completed her direct examination. She testified by telephone. In the middle of Petitioner's cross examination of this witness she stated she had to leave because she had to attend a meeting. I asked her to stay indicating it was essential that she complete her testimony. DCPS' attorney also asked her to complete her testimony. The witness refused to do so. I then informed counsel I would strike all of her testimony as cross examination had not been completed. I reviewed my ruling regarding this testimony at the close of the hearing. Respondent's counsel asked that I consider allowing her direct testimony to stand. I stated I was not likely to do so as cross examination had not been completed and, I added, I also had several questions to ask regarding her direct testimony that remained unanswered. After reviewing this witness' testimony, I find that the inability to completely cross examine her and to complete the record is a significant problem. I note the witness' responses and demeanor during her testimony raised concerns about her credibility. Therefore, the need to cross examine her was essential. Her testimony is stricken in its entirety and will not be used in reaching my determination.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. Student is an year old boy who is a grade student at in the District of Columbia Public Schools. He was found eligible for special education and related services at a different DCPS school in 2006. At that time he was classified as developmentally delayed. He received special instruction, adaptive physical education, speech language therapy and occupational therapy. In 2008 his classification was changed to specific learning disability. P 12; P 13; P 16.

2. Student is in an open space classroom that is separated from other spaces in the school by partitions rather than walls. Sounds from other locations in the building intrude into the classroom. P 29. Testimony of

3. Student has received many evaluations throughout his school enrollment including psychological evaluations, P 7, P 8, P 13; a psychiatric evaluation, P 12; a neurological evaluation, P 11; a speech language evaluation, P 15; an occupational therapy evaluation, P 14; and an adaptive physical education evaluation, P 10. These evaluations show Student has multiple disabilities including disabilities in the cognitive, physical, communication, attentional and emotional areas.

4. As of January 14, 2011 Student earned an overall score of basic in mathematics on the DC-BAS. His subtest scores ranged from below basic in Geometry to proficient in Patterns. Student scored at the 2.8 grade equivalent level ("G.E.") in calculation skills on the Brigance

Inventory of Comprehensive Skills in Math administered on March 1, 2011, and on The Informal Math Assessment administered on March 2, 2011, Student scored at the 2.5 G.E. level. P 22.

5. Student earned an overall score of below basic in reading on the DC-BAS administered on January 14, 2011. Of the three subsets composing this score Student received two scores below basic and one at the basic level. Other tests scores include a 4.2 G.E. level on the Brigance Inventory of Basic Reading Skill administered on March 1, 2001, a 4.8 G.E. level on the Slossen Oral Reading Inventory administered the same day, and 3.4 G.E. level on the Morrison McCall Spelling Scale also administered on March 1, 2011. On the DIEBELS he is on level S (3.9 G.E. level) for text reading. P 22; Testimony of Butler.

6. In written language Student scored at 3.2 G.E. level on the Brigance Inventory of Writing Skills on March 1, 2011. P 22.

7. Student has shown marked improvement in his reading fluency and word recognition skills in recent months as reflected on the DIEBELS. His reading comprehension, however, remains low. Testimony of

8. The disparity in scores on the DC-BAS and the DIEBELS is directly attributable to the structure of these assessments. The DC- BAS is a standardized assessment. It assesses students in comparison to their peers. The DIEBELS is an assessment based on a reading program used by DCPS. The DC-BAS requires students to read large amounts of material to themselves and then respond to questions on an answer sheet. The DIEBELS is a classroom based assessment in which the teacher reads the relevant material to the student and then fills in answers based on the student's responses. Student shows increased difficulty with reading comprehension when he is asked to read longer, more complex passages independently. Testimony of Butler.

9. During an observation of Student in his general education class on April 4, 2011, he was unable to actively participate in the classroom discussion. Not only did he not volunteer to answer questions the other students were answering, he was unable to appropriately respond when directly engaged by his teacher. Testimony of

10. Observation of Student's in his computer class on April 4, 2011 revealed the class is rather unstructured. Student is not passing. He would benefit from one on one assistance in the class. P 29.

11. Student is not able to perform academic tasks at home at the level he is reported to perform them at school. Testimony of Petitioner.

12. Student is a friendly, engaging child who gets along well with peers and adults. P 7: P 11; P 12; P 13; P 22; Testimony of Petitioner; Testimony of However, Student is aware of his academic limitations and has difficulty with some classmates who refer to him in derogatory terms due to these limitations. Testimony of Petitioner.

13. Student is atypical in that he exhibits characteristics of mental retardation, autism spectrum disorder, depression, attention deficit hyperactivity disorder, expressive and receptive language problems and specific learning disabilities. He also has identifiable coordination difficulties. He has received various diagnoses including cognitive disorder, pervasive developmental delay (atypical autism) and dysthymic disorder among others. P 10; P 11; P 12; P 13; P 14; P 15; Testimony of Ojevwe.

14. Student has a full scale IQ of 64. P 8.

15. Student's March 23, 2011 IEP includes the following service configuration:

- Specialized Instruction 10 hours/week Inside general education
- Adaptive Physical Education 2 hours/month Outside general education

- Occupational Therapy 4 hours/month Outside general education
- Speech/Language Therapy 2 hours/month Inside general education

Student also is to receive extended school year services including specialized instruction, occupational therapy and speech/language therapy. P 22.

16. Student's April 20, 2010 IEP included 11 hours of specialized instruction in regular education. P 20. His October 2008 and November 2008 IEPs included 15 hours of specialized instruction to be provided in general education. P 17. His March 2008 IEP included 25 hours of specialized instruction to be provided by a special education teacher.[5] P 16

17. Moten provides special education in general education classrooms. It does not provide special instructional services in a pull-out or self contained settings or resource room. Testimony of Butler.

18. The March 23, 2011 IEP Least Restrictive Environment statement includes a description of the supplemental supports and services that were previously attempted in a general education setting. This description duplicates the description found on the Least Restrictive Environment statement on the April 13, 2010 IEP. P 20; P 21.

19. Student needs a small, well-structured classroom environment with a small student to teacher ratio. He needs a multi-modality instructional approach with minimal distractions and a highly individualized approach. Instruction should be adapted to his communication level. P13

20. Student has been accepted at the a non-public school that provides special education programs for students with emotional disabilities ages 5 to 12.5. The school is licensed to serve students with learning disabilities, autism spectrum disorders as well as those who are multi-handicapped. It has a psycho-educational environment geared to address

[5] The only IEP at issue in the instant matter is the IEP of March 23, 2011. Reference to earlier IEPs is intended to provide context in which to view the March 23, 2011 IEP.

students with psychological needs. The program provides academic services and therapeutic services including art therapy, music therapy, adaptive PE, psychological and social work services as well as crisis intervention. Students generally stay in the program for two years. Each child in the school carries a goal sheet, and parents meet with the psychologist or social worker weekly. The primary curriculum is based on the DCPS standards of learning. However, rather than art or music classes, as noted above, the school provides art therapy and music therapy. All students attend anger management groups. Testimony of Korz.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, some witnesses were more persuasive than others. Where these differences in persuasiveness are relevant to my determination, I so indicate.

1) *Whether DCPS denied Student a free, appropriate public education ("FAPE ") by failing to provide Student an individualized education program ("IEP") that is reasonably calculated to provide him educational benefit. The current IEP is not appropriate because it does not provide a full time program. It provides instead approximately twelve hours of services per week*

Under the IDEA each local education agency is required to provide a FAPE to each student found eligible for special education and related services. A FAPE is:

> Special education and related services that . . . are provided at public expense, under public supervision and direction, and without charge; . . . [m]eet the standards of the [state educational agency] . . . [i]nclude an appropriate preschool, elementary school, or secondary school education . . . ; and . . .[a]re provided in conformity with an . . .IEP that meets the requirements of [the IDEA regulations].

34 C.F.R. § 300.17. *See also*, D.C. Code § 30.3001.1.

An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the effect of the student's disability on

his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. *See also*, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. If a student's behavior impedes the student's learning or that of other students, the team is to consider interventions and strategies to address the behavior. *Id.* An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

While the content of an IEP is a team decision 34 C.F.R. §§ 300.320 – 300.323. *See also*, D.C. Code §§ 30.3007.1 & 3008.1, teams are required to consider all the relevant information before them. *Id.* In reviewing whether an IEP provides a student a FAPE as required by IDEA, a hearing officer must consider whether the district complied with IDEA's procedural requirements and determine whether the program was reasonably calculated to enable the student to receive educational benefit. *Rowley,* 458 U.S. at 207. Here, there is no question raised regarding the district's compliance with IDEA procedural requirements. The only question

is whether the March 23, 2011 IEP includes sufficient hours to enable Student to receive educational benefit.[6]

Petitioner and DCPS have been involved in on-going meetings and discussions regarding Student's needs under IDEA. At least since the IEP meeting of April 13, 2010,[7] Petitioner has been requesting a full time IEP and placement for Student. The discussions around this request have focused on Student's identified disabilities as well as the specific hours and services he requires.[8] DCPS' initial response to this request was to recommend and provide for additional testing including a neurological, a psychiatric and additional psychological assessments to determine whether Student has a seizure disorder, mental retardation and/or autism. The results of these additional assessments were not conclusive in terms of determining Student's disability. The evaluators found he exhibited characteristics of many disorders but could not be conclusively diagnosed as having mental retardation or autism.[9] All agreed Student functioned well below age expectations, and all agreed he needed significant intervention.[10]

The multiple evaluations of Student reveal he is an individual with complex educational and emotional needs. He has a cognitive disorder as reflected by his full scale IQ of 64 as well as

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[6] Petitioner agreed at the March 28, 2011 Prehearing Conference that there was no disagreement as to the goals or subject matter contained in the March 23, 2011 IEP.

[7] I note that issues raised by Petitioner prior to the instant complaint are not before me. To the extent these issues or the facts related to these issues are referenced herein, they are intended to provide historical context as an aid in understanding the instant issue of whether the hours of special education and related services included in the March 23, 2011 IEP provide Student a FAPE.

[8] There is some suggestion in documentation reflecting these on-going discussions that Student's disability classification under IDEA may be viewed, by staff, as a determinative factor in establishing the services and extent of services required by Student. To the extent this perception is accurate I note disability based determination of services is counter to IDEA's requirement for individualized determination of a student's service needs. Each student under IDEA is to receive an individualized program tailored to address his/her specific educational needs. Disability classification should not impact this determination. To the extent DCPS was attempting to develop a complete and accurate understanding of Student's disabilities and educational needs it is to be recognized for its thoroughness. In either case it is clear that the time taken to resolve the question of an appropriate array of services and then placement for Student has been long and tortured.

[9] The neurologist found no evidence of a seizure disorder through his personal examination of Student. He did note, however, that further testing such as an EEG or MRI should be considered. There is no evidence that this further testing has occurred.

[10] The neurologist did no reach these conclusions as he was assessing Student's neurological functioning. He did find that Student's overall neurological assessment was "mildly abnormal."

his language based issues and academic difficulties. While he does not meet the criteria for classification as intellectually deficient because his adaptive skills are not low enough for such a classification. However, he has not developed all the adaptive skills that would be expected of a child of 11. In addition he demonstrates odd behaviors suggestive of autism, some behaviors suggesting attention deficit hyperactivity disorder, delays in motor skills and has been determined to be depressed. It is clear he is not a child who is easily categorized, and it is clear he requires intense and significant intervention. This is not to say Student is a child without noteworthy strengths. He is personable and engaging. Both his peers and adults respond to him positively. Student is sensitive and intuitive. He is aware of his limitations and has developed mechanisms, albeit dysfunctional mechanisms such as leaving his homework at school when he is unable to perform the assigned tasks, to avoid revealing them. Student willingly attempts educational tasks and, as a result, has made some academic progress, and it is to this progress that Respondent points in arguing the IEP provides Student educational benefit. Therefore, Student's current achievement and academic ability as well as observations of and reports on his academic performance are key to reaching a determination as to whether the twelve hours of services in his current IEP provide him a FAPE.

Student is in fourth grade. He was assessed in mathematics, reading and written language on March 1 and March 2, 2011. On the Brigance Inventory of Comprehensive Skills in Math and on The Informal Math Assessment, Student earned scores at the mid second grade level. His reading scores were at the 4.2 G.E. level on the Brigance Inventory of Basic Reading Skill, at the 4.8 G.E. level on the Slossen Oral Reading Inventory and at the 3.4 G.E. level on the Morrison McCall Spelling Scale. On the DIEBELS, Student is on level S (3.9 G.E. level) for text reading. Finally in written language Student scored at 3.2 G.E. level on the Brigance Inventory of Writing

Skills. These results are variable and conflict with Student's results on the DC-BAS from January 2011 when he earned an overall score of basic in mathematics and below basic in reading.

The testimony of the educational advocate and Petitioner suggest Student is lost in his classes. The educational advocate's observations of Student in his classroom settings on April 4, 2011 revealed Student was not engaged in instruction in a meaningful way. He, for example, was not able to participate in a classroom discussion in his general education class, and his computer teacher stated he was not sure Student was actually learning the material in the computer class, that it was possible he was guessing at answers. His computer teacher told the advocate Student would benefit from having a special education teacher in the class to explain concepts. Petitioner's testimony supports the notion that Student is academically adrift. Petitioner noted Student has great difficulty with his homework. It was her view that Student was doing kindergarten level work and that he often waited for her to provide the answer when she was helping him with his homework. According to Petitioner, Student, despite liking school, is aware of and embarrassed by his academic limitations. It is her view that he tries to conceal these limitations by leaving his homework at school to avoid having to attempt tasks he cannot perform. Petitioner was clear that her experience of Student's abilities is different than the performance described by school personnel.

Student's special education teacher describes a different student. While she acknowledges he is behind his classmates academically, she states he is making progress. For example, while he continues to need significant instructional support, the special education teacher testified Student is able to complete some academic tasks with little support. She states he has developed his skills in reading fluency and word recognition, uses capitol letters to start

sentences and when referring to himself as "I" when writing and finishes sentences with a period. The special educator indicated Student is working on multiplication facts, knows the times tables for 1, 2, 3 and 5 and is starting to work on simple division. She added he uses a calculator.

When asked about the difference in Student's tested ability levels, the special education teacher noted that the more information given to Student, the less able he is to perform. She noted in particular that the DC-BAS required him to read large amounts of material and then answer related questions independently. In contrast the classroom based DIEBBELS is read to him. The special education teacher further noted the amount of material presented on the DIEBELS is smaller than on the DC-BAS. Moreover, and perhaps most significantly, Student has problems with comprehension as distinct from word recognition and fluency.

Given the variability in Student's assessments and performance, it is not surprising there is a disagreement regarding Student's abilities and whether he is receiving educational benefit from his current program. It is clear the staff at Moten are working with Student and have helped him achieve some success. His growth in word recognition and reading fluency are noteworthy, but it is this growth in the mechanical aspects of reading that distort the view of Student as successful. It is an accomplishment that Student can read fluently on or about grade level, but reading is about content, not word recognition and word calling, and Student does not comprehend what he reads at grade level.[11] His struggles to comprehend are what Petitioner identifies as demonstrating his academic struggles, and it is his difficulty in comprehension that accounts for the disparity in his assessments. The special educator's explanation that he struggles when he is given large amounts of information to read and then answer independently reflects

[11] Of course, word recognition is a prerequisite to comprehension if one is reading as opposed to obtaining information through other modalities.

Student's limited comprehension. The computer teacher's comments that he thinks Student may be guessing at answers reflects his limited comprehension as well.

Student's current IEP requires 10 hours per week of specialized instruction in the general education setting. He also is to receive 2 hours per month of speech language therapy in the general education setting. This provides a total of 10.5 hours per week of service in the general education setting.[12] In addition he receives 4 hours of occupational therapy and 2 hours of adaptive physical education outside the general education environment each month. Thus, each week Student receives 12 hours of service, and with this limited amount of service he has demonstrated some gains. However, while it is well established that the *Rowley* standard, See, supra at p. 14, does not require a student receive IEP services that maximize his/her potential, it is required that the benefit the child receives be meaningful. *See, for example, D.S., Individually and as Guardian ad litem of D.S., A.S., Individually and as Guardian ad litem of D. S. v. Bayonnne Bd. Of Ed.*, 602 F.3d 553 (3d Cir. 2010).

In the instant matter, a series of evaluations of Student have documented his significant and complex array of disabilities. Recommendations included in the Comprehensive Psychological Report of 1/4/2010, the Clinical Psychological (CARS)[13] Evaluation report of 12/16/10 and the Adaptive Functioning (Vineland) Assessment Report of 12/16/10 specify detailed, intensive academic interventions and approaches necessary to address Student's array of disabilities. DCPS review of the Comprehensive Psychological Report of 1/4/2010 recommended Student also be evaluated with the CARS and a Vineland.[14] The review of the

[12] It is relevant to note Student is in an open space classroom that is separated from other spaces in the school building by partitions rather than walls. Sounds from other spaces intrude on his classroom increasing the possibility for distraction in the learning environment. As Student exhibits some symptoms of ADHD this source of distraction may have a significant impact on his learning.
[13] Childhood Autism Rating Scale
[14] The DCPS psychologist recommended the Vineland include both parent and teacher versions but only the parent version was completed in the subsequent assessment.

1/4/2010 psychological focused on methodology, diagnosis and the need for additional assessments. While the DCPS review did not address the extensive recommendations for educational approaches to be used with Student, the DCPS psychologist, as part of the review, did observe Student in class and noted Student was not paying attention.[15]

Thus I am left with an array of evidence indicating Student is not achieving at grade level. He is struggling academically due to a wide range of needs and requires significant academic interventions. Student is receiving 10 hours of specialized instruction per week. I find that this amount of service is not sufficient to provide him meaningful educational benefit. In reaching this determination I am mindful that he has made some progress, notably in word recognition and reading fluency. I find, however, that this growth in these mechanical reading skills does not provide meaningful educational benefit. The clear purpose of reading is communication and, therefore, comprehension, an area in which Student has demonstrated on-going deficits, and comprehension is, therefore, essential to meaningful benefit. Therefore, I find DCPS denied Student a free, appropriate public education ("FAPE ") by failing to provide Student an individualized education program that is reasonably calculated to provide him educational benefit.

2) Whether DCPS denied Student a FAPE by failing to propose an appropriate placement/location of services in a full-time, small, highly structured special education setting

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118.

[15] The psychologist provided two possible explanations for Student's not paying attention, one being that he arrived late and the second being he could not see the board. If these were, in fact, the reasons, Student was not paying attention they could have been remedied but were not.

See also, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to 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." 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction is regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. The placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform with the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2).

Reviewing these regulations it is clear that placement involves more than the determination of the number of hours of service a student is to receive under his/her IEP. That is, the number of hours of service does not address where along the continuum of services as identified under IDEA a student's program will be implemented. *See* 34 C.F.R. § 300.115 . Petitioner has asked that I determine Student should be placed at the Episcopal Center for Children, a non public school providing a psycho-educational environment for students with emotional disabilities. The program provides academic services and therapeutic services including art therapy, music therapy, adaptive PE, psychological and social work services as well as crisis intervention. Students generally stay in the program for two years. DCPS has offered Student placement at Moten, his current school. The placement is almost exclusively based in a general education, inclusive setting in an open space classroom.

The assessments of Student indicate that he needs a small, well-structured classroom environment with a small student to teacher ratio. He needs a multi-modality instructional

approach with minimal distractions and a highly individualized approach. Instruction needs to be adapted to his communication level. It is unlikely that Moten can provide this learning environment. His classroom is an open space room without full walls. The special education teacher works within the general education classroom setting with over twenty students per day. This situation cannot provide the highly structured, small group, multiple modality, highly individualized instruction Student requires. On the other hand, Petitioner has not convinced me that it is necessary to remove Student from all contact with his non-disabled peers and place him in a school program designed primarily to meet the needs of students with emotional disabilities. While the psycho-educational environment provided by could provide the type of instruction recommended for Student, IDEA does require that students be educated in the least restrictive environment able to meet the IEP.[16] 34 C.F.R. § 300.114(a)(2)(ii).

I find DCPS denied Student a FAPE by failing to propose an appropriate placement for Student. I further find Student does not require removal from the general education setting for the entire school day. He is able to interact with his non-disabled peers and has been observed doing so during recess. Student's needs for a small, highly structured setting do not preclude his participation in the general education environment for nonacademic portions of the school day such as lunch and recess. In sum, I find that neither the placement proposed by Petitioner nor the placement proposed by Respondent are appropriate to address Student's needs.

[16] There was much testimony at hearing about the LRE statement contained in the March 23, 2011 IEP that included the need to remove Student from the general education class for reading. This testimony was offered to counter Respondent's position that Student had achieved several years' growth in reading in a very short period of time. Testimony ultimately revealed that this statement had been copied from the prior IEP. I add that based on my findings, herein, this statement is not needed to establish Student's needs for a broader, more comprehensive array of services.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. DCPS denied Student a FAPE by failing to provide him an IEP that was reasonably calculated to provide him educational benefit.
2. DCPS denied Student a FAPE by failing to provide him as appropriate placement.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

1) The MDT is to meet with Petitioner and her advocate within 15 school days of the receipt of this Hearing Officer Determination to review and redraft Student's IEP. The IEP is to provide special instruction in all academic classes and all classes requiring reading or mathematics such as computer classes. All of Student's academic, core-curriculum classes are to be taught by a special education teacher either in a separate classroom or as a co-teacher in a general education classroom. In classes that require reading or mathematics, such as computer classes, but are not core curriculum classes Student is to have direct special education support. The IEP shall specify instruction in multiple modalities and, further, shall specify that all classes involving special instruction are to have a low student teacher ratio. The special instruction described in this paragraph may be provided in a combination program involving both inclusion and pull-out services. The ESY services on Student's current IEP are to be included on the new IEP and are to be provided in a similar fashion to the instruction described in this paragraph for instruction during the school year. In addition to adaptive PE, speech and

occupational therapy, counseling to address Student's depression is to be included on the IEP. If Petitoiner chooses not to include counseling on Student's IEP, the MDT need not include this service on the IEP. This Order will be amended by Petitioner's express choice not to include counseling on the IEP in that instance. If Petitioner chooses not to have counseling included on the IEP, the meeting notes and the Prior Written Notice must state she has made this choice.

2) After developing the IEP, the MDT, parent and her advocate and the central office staff needed to propose a placement for Student shall review Student's IEP and determine the least restrictive environment in which the IEP can be implemented. This placement is to include the opportunity for Student to interact with his non-disabled peers as well as provide the extensive special instruction and related services identified herein. Within 10 business days, of the MDT meeting at which the new IEP is developed, DCPS shall provide Student a prior notice of placement to the selected placement. The new IEP and placement shall begin with the initiation of ESY services in the summer of 2011 and continue throughout the 2011 – 2012 school year.

IT IS SO ORDERED:

May 11, 2011
Date

Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision 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 Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).