District of Columbia
Office of the State Superintendent of Education

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STUDENT HEARING OFFICE
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Confidential

Parents on behalf of the Student[1], Petitioners, v. District of Columbia Public Schools ("DCPS") Respondent. Case # 2012-0688	HEARING OFFICER'S DETERMINATION Hearing Dates: December 6, 2012 December 12, 2012 <u>Representatives:</u> Counsel for Petitioner: Paula Rosenstock, Esq. Michael J. Eig, & Associates 5454 Wisconsin Ave. #760 Bethesda, Md. 20815 Counsel for DCPS: Assistant Attorney General Daniel McCall, Esq. 1200 First Street, NW Washington, DC 20002 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

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

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on December 6, 2012, and concluded on December 12, 2012, at the District of Columbia Office of the State Superintendent of Education ("OSSE") Student Hearing Office 810 First Street, NE, Washington, D.C. 20003, in Hearing Room 2009, on December 6, 2012, and in Hearing Room 2006 on December 12, 2012.

BACKGROUND AND PROCEDURAL HISTORY:

The student is age [redacted] in ninth grade, and resides in the District of Columbia with his parents. The student is eligible for special education services with a disability classification of multiple disabilities ("MD"), including speech language impairment ("SLI"), and other health impairment ("OHI") for Attention Deficit Hyperactivity Disorder ("ADHD"), and emotional disability ("ED"). The student has been assessed as having above average intellectual abilities but his disabilities impact his academic and social functioning.

The student has attended a private general education school, located in Montgomery County Maryland, ("School A"), since third grade during the school year ("SY") 2006-2007. The student's parents (alternatively "Petitioners") unilaterally placed the student at School A and DCPS was later ordered to fund the student's placement at School A pursuant to a Hearing Officer's Determination ("HOD") issued May 9, 2007. In accord with the HOD, DCPS issued a prior notice of placement on June 1, 2007, for the student to attend School A.

Petitioners alleged that DCPS did not monitor the student at School A from June 1, 2007, until DCPS contacted the Petitioners in May 2010 stating that the student's individualized educational program ("IEP") had expired and asking to convene a meeting to review and update the student's IEP and to review his educational placement.

The requested meeting was convened at School A in November 2010. At the meeting DCPS determined that triennial evaluations for the student needed to be conducted to include a comprehensive psychological evaluation and a speech language evaluation. The student's parents had begun an independent neuropsychological evaluation and agreed to forward the results to DCPS, which they did in February 2011. From February 2011 to August 2011 no apparent action was taken by DCPS regarding the student's IEP or the student's evaluations.

On November 9, 2011, DCPS convened a meeting at School A and issued a prior written notice to conduct evaluations. In December 2011 DCPS conducted a comprehensive psychological evaluation and a speech evaluation. On March 1, 2012, DCPS convened an eligibility meeting without the parents present and determined the student's continued eligibility for special education with a classification of MD including SLI, OHI and ED.

DCPS scheduled another meeting for March 15, 2012, to develop the student's IEP. The student's parents attended the March 15, 2012, meeting, and expressed opposition to the student's MD disability classification including ED. A draft IEP was developed. DCPS informed the student's parents that because School A had not been certified by OSSE and School A did not hold an OSSE certificate of approval ("COA"), DCPS could continue the student's placement at School A.

DCPS sent referral packages to at least two OSSE approved private special education schools for the student to be considered for admission. The student's parents expressed their opinion to DCPS that neither of the schools DCPS had proposed was appropriate for the student. Nonetheless, the student and his parents visited the proposed schools during the summer of 2012.

The student was ultimately accepted to the Kingsbury Day School ("Kingsbury") and on August 15, 2012, DCPS convened a meeting to finalize the student's IEP and determine his educational placement and location of services. DCPS issued a prior notice to Kingsbury. The student's parents expressed their disagreement with the placement decision and requested that the student be maintained at School A.

On October 2, 2012, Petitioner filed the current complaint[2] alleging DCPS denied the student a free and appropriate public education ("FAPE") by failing to provide the student an appropriate IEP[3] and placement. Petitioners alleged that Kingsbury is an inappropriate placement and/or location of service for the student because it is more restrictive than School A, has inappropriate peer groups for the student and the academic programming is less rigorous than the student requires. Petitioner also asserted the student has made academic and social and emotional progress at School A and would be harmed if he was forced to change schools during the school year. Petitioners requested that the Hearing Officer order DCPS to fund the student's continued placement at School A through the end of SY 2012-2013, and asserted stay-put protections at School A. The student remained at School A during the pendency of this proceeding.

DCPS filed its response to the complaint on October 15, 2012. DCPS asserted that all procedural and substantive requirements were met in determining the student's eligibility, developing his IEP and determining his educational placement. DCPS asserted that there is a distinction between educational placement and the student's location of services. DCPS asserted that the student's educational placement in "full-time" special education was not in dispute, but the location where the services are provided is a determination to be made solely by DCPS as the

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[2] On August 28, 2012, Petitioner filed a complaint that was subsequently withdrawn and dismissed without prejudice. Petitioner then filed the current complaint that contained additional facts and allegations that had not been included in the August 28, 2012, complaint.

[3] The student's finalized IEP prescribes that the student be provided 27.5 hours per week of specialized instruction outside general education and 1 hour per week of speech/language services outside general education and 1 hour per week and behavior support outside general education. Petitioners were in agreement with the student's finalized IEP goals and services including the number of hours of specialized instruction and the related services. However, Petitioner asserted that the hours of specialized instruction should be delivered in general education in highly structured classes of less than 12 students, as Petitioner asserts is being delivered at School A.

local educational agency ("LEA"). DCPS asserted that Kingsbury is an appropriate placement that can implement the student's IEP and is the location of services the LEA has chosen.

DCPS asserted that School A is a private general education school that has either failed to or refused to implement the student's IEP and is thus an inappropriate placement and DCPS is prohibited (by D.C. Code § 38-2561.03 (Supp. 2010) and 5A of the DCMR §2844) from placing the student at School A because it lacks a COA.

A resolution meeting was held October 17, 2012, and was unsuccessful in resolving the issues. The parties expressed no desire to proceed directly to hearing but chose to allow the full 30-day resolution period to expire before the 45-day timeline began. Thus, the 45-day period began on November 2, 2012, and ended (and the HOD was due) on December 16, 2012.

A pre-hearing conference was held on Thursday, November 8, 2012.[4] On November 14, 2012, the Hearing Officer issued a pre-hearing order ("PHO") stating the issue to be adjudicated and setting hearing dates.

The hearing was convened on December 6, 2012, and was due to conclude on December 12, 2012. On December 6, 2012, one of the Petitioners (the student's father) was ill and unable to testify and requested that Petitioners be allowed to conclude their case on December 12, 2012, which had been reserved for Respondent's case. Consequently, Petitioner submitted a written motion for continuance that was opposed by DCPS. The continuance was granted allowing Petitioner to conclude its case on December 12, 2012, and extending the HOD due date to December 22, 2012.

On December 5, 2012, one day prior to the hearing, Petitioners' counsel sent an email stating that Petitioners desired to withdraw two of the five issues that were to be adjudicated as listed in the PHO. As a result of the withdrawal of these issues DCPS submitted a motion to dismiss on December 5, 2012. Petitioners objected to the motion as untimely. The parties were allowed to make arguments on the motion at the outset of the hearing. The Hearing Officer denied the motion to dismiss and the hearing proceeded.

ISSUES: [5]

The issues to be adjudicated are:

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[4] The pre-hearing conference was convened on the first date that both counsel were available following the resolution meeting.

[5] The alleged violations and/or issues listed in the complaint do not directly correspond to the issues outlined here. The Hearing Officer restated the issues in the pre-hearing order. Two days prior to the hearing Petitioner's counsel withdrew two of the issues: (1) Whether DCPS denied the student and his parents participation in the March 1, 2012, eligibility meeting in violation of 34 C.F.R. §300.322, and §300.501(b) and §300.513(2)(ii), and if so did DCPS' actions in conducting that meeting without the student's parents present deny the student a FAPE, and (2) Whether DCPS inappropriately determined the student to be a child with an emotional disability and if so, did DCPS' actions in doing so deny the student a FAPE. DCPS did not object to withdrawal of the issues and the Hearing Officer approved the withdrawal of the issues.

1. Whether DCPS developed an inappropriate IEP by prescribing that the student's specialized instruction be provided outside general education in violation of the least restrictive environment ("LRE") requirements of 34 C.F.R. §300.114, and if so whether DCPS' actions denied the student a FAPE.

2. Whether DCPS' proposal to place the student at Kingsbury constitutes an inappropriate program and placement[6] in violation of 34 C.F.R. §300.116, and §300.324, and results in a denial of a FAPE to the student.

3. Whether School A is an appropriate placement for the student and should DCPS be required to maintain the student's placement at School A through the end of SY 2012-2013.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-64 and DCPS Exhibit 1-12[7]) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

FINDINGS OF FACT: [8]

1. The student is age [redacted] in ninth grade, and resides in the District of Columbia with his parents. The student is eligible for special education services with a disability classification of MD including SLI, OHI for ADHD, and ED. (Father's testimony, Petitioner's Exhibits 29-3, 30-3, 48-1)

2. The student was first determined eligible for special education services when he was in first grade and attending his neighborhood DCPS elementary school. The student was initially only classified with the SLI disability. (Petitioner's Exhibits 2-1)

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[6] Petitioners assert Kingsbury is an inappropriate program and placement and/or location for the student because it is a more restrictive setting for the student in violation of the LRE requirements, and is a "self-contained" "full-time" special education program that cannot meet the unique needs of this student for a highly structured academically rigorous educational setting with small classes of less than 12 students where the student has contact with non-disabled peers.

[7] DCPS counsel objected to the admission of two of Petitioners' disclosed documents #s? 57 and 58. These were declarations of two individuals who were not scheduled to testify. Because the objections were not raised two days prior to the hearing as the PHO required, the Hearing Officer admitted the documents but did not allow the documents to be used to prove the truth asserted in the declarations.

[8] The evidence that is the source of the Finding of Fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. DCPS counsel submitted 12 exhibits - a total of 147 single pages. In citing DCPS exhibits in the Findings of Fact the exhibit number is cited first then the page number in the sequence from 1 to 147 to identify a particular page. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

3. During February and March 2006, when the student was age eight and in second grade the student's parents engaged [redacted] to conduct an independent neuropsychological evaluation. [redacted] assessed the student's cognitive, academic and social/emotional functioning. He diagnosed the student with several conditions including a mixed receptive and expressive language disorder, learning disorder, written expression disorder and ADHD. The student was assessed as having above average intellectual abilities but his disabilities affected his academic and social functioning. (Petitioner's Exhibit 2-1, 2-14, 2-15)

4. Dr. Stixrud concluded that although student had significant cognitive and intellectual strengths, the compounding effects of the student's disabilities including his sensitivity to stress significantly limited his ability to meet ordinary classroom demands and performance expectations. As a result, [redacted] recommended an educational placement for the student with a low student to teacher ratio and teachers experienced in educating gifted students with multiple learning disabilities. (Petitioner's Exhibit 2-1, 2-14, 2-15)

5. For SY 2006-207 the student's parents removed the student from his neighborhood school and unilaterally placed him at School A, a private general education school, to start third grade. (DCPS Exhibit 1- pgs. 3, 4, Petitioner's Exhibit 5-1)

6. On May 9, 2007, Hearing Officer [redacted], Esq. issued a HOD[9] that ordered DCPS to place and fund the student at School A for SY 2006-2007. (Stipulation, DCPS Exhibit 1)

7. In accord with the May 9, 2007, HOD, on June 1, 2007, DCPS issued a prior notice of placement for the student to attend School A. The prior notice stated that the student's placement setting was "out of general education." (DCPS Exhibit 2 – p.12)

8. The student's parents did not object to the prior notice. (Stipulation)

9. Since SY 2006-2007 DCPS has funded the student at School A continuously by reimbursing the student's parents monthly for tuition and fees. The tuition for School A is approximately $33,000.00 annually and $130 per hour for speech services which the student has twice per week. DCPS recently stopped paying for the second day of speech and language services and stopped paying for transportation services for the student to travel to and from School A. (Father's testimony)

10. For years DCPS did not express concern about the student attending School A. However, in May 2010 DCPS contacted the student's parents informing them that the student's IEP had expired and expressing a desire to convene a meeting to review and update the student's IEP and review his educational placement. (Father's testimony, Petitioner's Exhibit 13-2)

[9] The HOD described School A as a "non-public school that provides full-time special education in a modified general education environment." (DPCS Exhibit 1 – pg. 4)

11. At the request of the student's parent's [redacted] reassessed the student in September and October 2010, when the student was nearly age thirteen and in seventh grade at School A. This updated neuropsychological evaluation reassessed the student's cognitive, academic and social/emotional functioning. [redacted] confirmed the student's previous diagnoses of ADHD, learning disorder and language disorder. Because of the student's persistent social deficits [redacted] gave the student a new diagnosis of Autism Spectrum Disorder, specifically Pervasive Developmental Disorder ("PDD") along with Anxiety Disorder. The student's intellectual functioning was assessed to be in the superior range and his academic scores were well above average, generally above the 70th percentile. However, the student displayed low-average processing speed and weaknesses in visual processing, written output speed and executive functioning along with an intense sensitivity to sound and vocal and motor ticks. ([redacted] testimony, Petitioner's Exhibit 5-1, 5-6, 5-11, 5-12, 5-13, 5-14)

12. The student's academic scores placed him well above grade level in all academic areas assessed except academic fluency. The student had the following scores on the Woodcock Johnson III [redacted] administered in October 2010:

(Petitioner's Exhibits 5-21)

	Standard Score	Percentile Rank	Grade Equivalency
Broad Reading	110	74	9.3
Broad Mathematics	113	80	11.1
Broad Written language	114	83	11.7
Academic Skills	123	94	13.0
Academic fluency	96	40	6.9
Academic Applications	114	82	13.0

13. [redacted] concluded that the student has an extremely complicated set of educational concerns that required a demanding academic curriculum in all subject areas and exposure to other bright students with whom the student could engage intellectually. On the other hand, [redacted] concluded the student required a very small class size and a highly structured classroom environment in order to feel safe and secure. Based on his own experience in working with School A [redacted] concluded School A continued to be an appropriate educational placement for the student. However, if the student were to change schools at any time [redacted] recommended a long transition period to account for the student's propensity for anxiety and rigidity. ([redacted] testimony[10], Petitioner's Exhibit 5-1, 5-6, 5-11, 5-12, 5-13, 5-14)

[10] The witness was designated as an expert in neuropsychology.

14. On November 17, 2010, DCPS convened an IEP meeting at School A and the team determined the student was in need of triennial evaluations (comprehensive psychological and speech-language). (Petitioner's Exhibit 7-1, 7-2, 7-3)

15. The student's parents informed DCPS of [redacted] pending reevaluation report and agreed to forward the evaluation report when it was complete. (Father's testimony, Petitioner's Exhibit 13-2)

16. Petitioner's counsel provided [redacted] neuropsychological reevaluation report to DCPS on February 22, 2011. (Petitioner's Exhibit 8-1)

17. From February 2011 to August 2011 DCPS took no apparent action regarding the student's IEP update or triennial evaluations. (Petitioner's Exhibit 13-2)

18. In September 2011 Petitioners submitted proposed IEP goals, accommodations and modifications to DCPS that had been developed by the Petitioners' educational consultant. (Petitioner's Exhibit 14)

19. On November 9, 2011, DCPS convened another meeting at School A and issued a prior written notice to conduct the comprehensive psychological and speech-language evaluations. (Petitioner's Exhibits 18, 20-1)

20. In December 2011 a DCPS psychologist conducted a comprehensive psychological evaluation of the student. The student was age fourteen at the time. The psychologist interviewed the student and the members of the School A staff, including one of the student's teachers. She also interviewed [redacted] and reviewed his most recent evaluation. The psychologist conducted her own cognitive, academic and behavioral assessments of the student that confirmed the student's superior intellectual abilities and his superior performance on the academic assessments. She also confirmed the student's symptoms of anxiety and social discomfort, social skill deficits and hyperactivity. She concluded the student fell under the disability classifications of ED, OHI and SLI. The psychologist concluded that student benefited from a highly structured classroom with a small class size that included opportunities for individual attention; all of which, she stated in her report, was offered at School A. (Petitioner's Exhibit 21-1, 12-7, 12-8, 12-9, 21-11, 21-13)

21. In December 2011 a DCPS speech-language pathologist conducted a speech evaluation of the student and later completed an addendum to the evaluation report in March 2012. The DCPS speech-language pathologist reviewed the student's records, spoke with the student's speech/language provider at School A and administered assessments to the student. The student's teachers confirmed the student was allowed several accommodations at School A, including the use of headphones/earplugs, independent work vs. group work and removal to quiet areas. (Petitioner's Exhibit 22, 33)

22. The DCPS speech-language pathologist determined that the student possessed sufficient foundational language skills but displayed linguistic vulnerability for high level language

tasks, continued to struggle with verbal fluency, exhibited difficulty formulating and expressing his thoughts in a clear and concise manner and used awkward speech patterns. She concluded the student had an educational need for speech-language as a related service in order to access the educational curriculum. She also concluded that the student should receive behavior support along with speech language services to address the correlation between the student's verbal fluency and communications weaknesses and his anxiety and frustration over his inability to formulate and express his thoughts with ease. She stated an opinion that SLI was not the student's primary disabling condition. (Petitioner's Exhibits 22, 33)

23. January 2012, the DCPS psychologist prepared an addendum to the psychological evaluation incorporating an interview with the student's father and results from a behavior rating scale. (Petitioner's Exhibit 23)

24. DCPS moved forward with an eligibility meeting for the student on March 1, 2012, without the parents present and determined the student's continued eligibility for special education services with a classification of MD including SLI, OHI and ED. (Petitioner's Exhibits 29-1, 29-2, 29-3, 30-3, 30-5)

25. DCPS scheduled another meeting for March 15, 2012, to develop the student's IEP. The student's parents attended the March 15, 2012, meeting, and expressed opposition to the student's disability classification including ED. The ED classification was maintained despite the parents' objection and DCPS moved forward and developed a draft IEP for the student and for the student's special education services to be provided outside general education. (Petitioner's Exhibit 31-1, 32-7)

26. School A staff members participated in some of the meetings with DCPS providing input regarding the student's needs and services. (Father's testimony)

27. By May 29, 2012, DCPS had informed the student's parents that DCPS could not continue to fund the student at School A because School A lacked a COA. DCPS sent referrals to proposed schools that it believed could implement the student's IEP and meet his needs. (Petitioner's Exhibit 35, 38)

28. School A does not have a certificate of approval from OSSE. (Stipulation)

29. The parents agreed to the student's visit to the schools DCPS proposed but waited until after the 2011-2012 school year ended so the student would miss no time from his classes at School A. (Petitioner's Exhibit 40-1, 40-2)

30. The student visited Kingsbury during summer 2012 for two consecutive half days. His father accompanied him for portions of his visits. The student participated in classes and assisted in a project sorting books on the school library. On the first day when the student and his father arrived a Kingsbury student was screaming outside the school building. This caused the student concern from the start of his visit. The student expressed to his father concern about the noise level in the school including

several students cursing. At one point the student became disturbed by some of the explicit language used during a class discussion. (Father's testimony)

31. The student's father was concerned with a number of things he believed would be problematic for the student if he were to attend Kingsbury: Kingsbury uses an off campus gymnasium and the student's father is concerned that transitioning or being transported routinely to a separate building would be difficult for the student. The father observed some of the classes and noticed varying degrees of attention being paid to the teacher by the students in the classrooms. Some students were playing with their cell phones and being inattentive. The father is concerned that such behaviors by other students and the language sometimes used by students in the classrooms would upset the student and create significant anxiety for him. (Father's testimony)

32. The father is also concerned that Kingsbury lacks the academic rigor available to the student at School A. During the visit the father inquired of the Kingsbury staff whether the student would have access to honors and advanced placement ("AP") classes at Kingsbury. He was informed that there were not yet AP classes but for students who displayed higher academic placement the school differentiated their instruction by giving them independent work. (Father's testimony)

33. The student was markedly stressed after his visit to Kingsbury and in discussing his visit with his parents and comparing Kingsbury with School A during their discussions. Based on his observations and the student's feedback to him, the student's father does not believe Kingsbury is an appropriate placement for the student because he is worried about the student possibly backsliding and consequently being left behind academically and socially at Kingsbury. (Father's testimony)

34. The father believes the student is doing well both academically and emotionally at School A. The student receives academic and emotional supports that allow him to be successful and for his educational needs to be met. The student is also provided speech and language services twice per week at School A. DCPS now pays for one of the two hours of speech language service and has recently stopped paying for the student's transportation to and from School A. The father believes the student has been working steadily on social skills at School A and everyone at the school has acknowledged the student is doing fine there. In addition to the services provided at School A, the student also receives two hours per week of counseling services outside of school to assist him in coping with anxiety and social skills development. The student's father is aware of no transition plan that has been devised for the student to move from School A to Kingsbury; however, he believes any relocation of the student from School A is inappropriate. (Father's testimony)

35. [redacted] is the student's current out of school therapist. [redacted] sees the student twice weekly and confers with one of his parents at least once weekly as to what is going on with the student. [redacted] has communication with School A and had weekly contact with the student's school counselor and set common goals with the school staff for the

student ([redacted] testimony[11])

36. [redacted] has surmised that the student has fluctuating anxiety principally related to his auditory sensing and processing. External sound in everyday life can cause him concern and affect him in ways that are not typical. [redacted] currently works with the student to give him coping strategies when the student becomes anxious. [redacted] works with him on social appropriateness and how to respond in a variety of situations at school, in the community and at home. ([redacted] testimony)

37. Since the student has moved to the ninth grade (upper school) at School A [redacted] has tried to give the student space and not continued his weekly contact with school as he did in the previous school year. Over the past year the student has made progress in responding to irritants – he is now working on social engagement. The student has begun use texting and social media – and begun to have telephone contact and personal contact with his peers. ([redacted] testimony)

38. [redacted] expressed concern that if the student is moved from School A to Kingsbury the student might be overwhelmed by loss. [redacted] believes any move from School A would be unfortunate for the student because the student feels comfortable there and has developed coping mechanisms and supportive relationships with the faculty. Having to start over in building relationships at a new school would be a "steep hill" for the student. The student expressed to [redacted] that he is fearful of leaving the people he is connected with at School A and is concerned with the noise level he experienced when he visited Kingsbury. ([redacted] testimony)

39. School A maintains a document for the student entitled a "Student Learning Profile" for SY 2012-2013. The document includes a list of the student's scores from his 2006 neuropsychological evaluation and a list of the student's diagnoses from that evaluation, a list of general accommodations for the student and a general list of his strengths and weaknesses. The document does not include goals or measures for special education service delivery. The student's current class schedule includes the following courses: Latin II, Foundations in Literature, Honors Geometry, English 9, Study Hall, Honors Biology and US History. Each class is approximately 55 minutes. During the 1 hour lunch period on various days the student has tutorials, assemblies, class meetings and/or clubs. (Petitioner's Exhibit 59)

40. During seventh grade (SY 2010-2011) the student has scored average to above average on reading and math assessments and received a grade of A in every subject in which letter grades were provided that school year. He received glowing written reports from his teachers that year and made significant progress with the speech language services outcomes. The student's School A speech/language provider acknowledged that the student experienced a remarkable year developing greater skill in advocating for himself to meet academic and social challenges. He "became more effective in self-monitoring or self-regulating upon his actions and comments" "For example when exposed to a loud

[11] This witness was designated an expert in counseling.

and or chaotic classroom, [the student] was able to politely remove himself from the classroom to step out in the hallway for a few moments, get a drink of water or take a restroom break. He generally re-entered the classroom feeling more calm and in control of the situation." (Petitioner's Exhibits 9, 10, 11-2)

41. [redacted] of ABC's For Life Success, is the educational consultant the student's parents hired to assist them in meetings with DCPS and developing the student's IEP and determining his educational placement. [redacted] participated with the parents in the student's IEP meeting and helped develop goals and accommodations that were ultimately incorporated into the student's finalized IEP. ([redacted] testimony)

42. [redacted] observed the student twice at School A spoke with his teachers and the school's learning specialist who provides the teachers support as to what specialized instruction a student needs. The teachers reported that the student is well mannered and enjoys adult interaction. He needs someone constantly checking in on him to ensure he is on task because of his attention and organizational issues. The student has problems drawing inferences in reading. He needs directions to be broken down verbally and visually in small chunks. The student's processing - written output is slow. The student requires that directions be broken down verbally and in writing, check-in guidance along the way, any criticism to be in a measured way to reduce his resulting anxiety. ([redacted] testimony)

43. At School A the student is receiving accommodations and modifications within the general education classes including adult support on interaction with peers and ability to leave the room when needed to take breaks because of anxiety and assistance with re-entering the classroom and making up any work. The student's work is modified for him while providing the academic rigor. There are typically ten students in the class with one teacher. The teachers indicated to [redacted] that they were never concerned about his academic progress but he has now begun to progress socially. ([redacted] testimony)

44. By July 27, 2012, the student had completed the admission process for both the schools DCPS had proposed and had been accepted by Kingsbury. However, the student's parents expressed to DCPS their opinion that neither school was appropriate for the student and informed DCPS they intended to keep the student at School A for SY 2012-2013 and seek funding for the placement. (Petitioner's Exhibit 42-2)

45. Another meeting was scheduled on August 15, 2012, to finalize the student's IEP and determine the student's placement and location of services. The team met and reviewed the parents' proposed changes to the IEP goals. The student's parents also reiterated their desire that the student remain at School A. DCPS reiterated that it could not continue the placement because School A lacked a COA. The student's father did not recall a discussion at this meeting of the student's LRE only the discussion of whether the student would attend School A or Kingsbury. (Father's testimony, Petitioner's Exhibit 46-1, 46-2, 46-3)

46. DPCS ultimately chose to place the student at Kingsbury for SY 2012-2013 and issued a prior notice of placement on August 15, 2012, for the student to attend Kingsbury. (Petitioner's Exhibit 47)

47. On August 23, 2012, the student's parents, through counsel, rejected DCPS' proposal to place the student at Kingsbury and expressed the intention to file a due process complaint and invoke stay-put protections at School A. (Petitioner's Exhibit 49-3)

48. August 28, 2012, the student's parents approved the proposed amendments to the student's IEP goals and accommodations and the student's IEP was finalized by agreement with DCPS. DCPS received the signed IEP amendment form from the student's parents on October 9, 2012. (Petitioner's Exhibits 45, 48, 55)

49. The student's finalized IEP prescribes that the student be provided 27.5 hours per week of specialized instruction outside general education and 1 hour per week of speech/language services outside general education and 1 hour per week and behavior support outside general education. The LRE section of the student's IEP states that all services including specialized instruction and related services are to be provided outside general education. Petitioners' are in agreement with all portions of the student's finalized IEP except specialized instruction being provided outside general education. (Petitioner's Exhibit 48-8, 48-9)

50. [redacted] is the current DCPS placement monitor assigned to monitor DCPS funded students at School A, including this student. [redacted] began working on this student's case in July 2012. At that time [redacted] contacted School A in an attempt to find out more about the services that were being provided to the student and whether the school was implementing the IEP that had been drafted at the previous IEP meetings. [redacted] found that School A was slow to respond and slow to provide information to him. [redacted] later found that there are two special educators at School A but he is still uncertain about the certification of any of the teachers who are teaching the student. When [redacted] recently attempted to visit the school and speak with administrators and observe the student he was refused entry to the school. Currently DCPS funds one other student other than this student at School A. The student is not taught by a special education teacher and [redacted] is unsure what, if any, certification the teachers teaching the student hold. [redacted] has not received progress reports from School A and it doesn't appear the IEP has been implemented since it was developed in August 2012. ([redacted] testimony)

51. [redacted] supervises DCPS placement monitors for all non-public schools where DCPS funds students. [redacted] participated in two meetings for the student, one at School A and the August 2012, meeting at which the student's IEP was finalized and this placement was discussed and determined. After taking on his current supervisor duties, [redacted] investigated to see if School A was providing the proper instruction to the student. School A did not provide [redacted] substantive information about the credentials of its teachers and DCPS staff

members were prevented from observing students at School A who are funded by DCPS. They have not provided the certifications regarding the teachers that are providing instruction to the student. ([redacted] testimony)

52. [redacted] visited School A and met with School A's academic support specialist who explained to [redacted] that School A is not a special education day school and does not implement students' IEPs or ensure compliance with the IEP process for any particular jurisdiction. School A was described to him as a small private coeducational facility institution. [redacted] found that there was no IEP being implemented. He had been under the impression prior to his visit that the school was implementing an IEP and providing the student specialized instruction in the out of general education setting. One of the obligations of any non-public school to whom DCPS provides funding is the implementation of the student's IEP and that the school possess a valid COA. ([redacted] testimony)

53. As a result of the information gleaned by [redacted] he concluded that School A could not implement the student's IEP and be selected for continued funding. DCPS considered the student's high cognitive abilities and his classification as gifted and talented and decided on a school that was tailored to meet his unique ne and chose Kingsbury. DCPS executed its authority as the LEA and assigned the student to Kingsbury, which DCPS believes can meet the student's needs. ([redacted] testimony)

54. The student was interviewed and visited and was accepted. Kingsbury is an out of general education special education program that serves students with special needs including students with learning disabilities, students on the autistic spectrum, students with emotional disturbance, students with minimal traumatic brain injury and students with compromised hearing and or vision who fit the school's mission profile. ([redacted] testimony)

55. Kingsbury has a total of 205 students. There are 100 students in the upper school (high school program), 55 students in the middle school program and 55 students in the lower school program. All teachers are content certified and or certified special education teachers - a co-teaching process is used where teachers are paired with certified special education teachers. Specialty teachers (e.g. Physical Education) do not have to be certified in special education but are certified teachers. Class size is usually 6 to 10 students with one teacher and one teacher aide in the classroom. During part of the class time related services providers "push-in" to the classroom to assist student with related services. ([redacted] testimony)

56. Tuition at Kingsbury is $38,148 annual and the school charges the OSSE generated rates for related services. There are some students who pay privately and have an individual learning plan ("ILP") designed to address the areas of learning weakness. All of the students have special need accommodations as a part of the ILP and or IEP process. Kingsbury works with the jurisdictions to comply with the IEP process and requirements. There are some parents who choose not to go through the

special education process and use the ILP to monitor the student's programming and progress. ([redacted] testimony)

57. Kingsbury can implement the student's current IEP and has a COA from OSSE as of November 2012. In addition, Kingsbury can provide the student the academic rigor that his education profile indicates he can handle. Kingsbury has a program in its upper school for students who are cognitively and academically gifted, "Twice Exceptional", and who have other exceptionalities and warrant the need for special education services. This program is a key factor as to why the Kingsbury admission staff believe the school can provide an appropriate program for the student. The program originated in middle school and traveled to the upper school and there are six students currently in this accelerated program. The program adds rigor and deeper levels of learning through elective courses. Students in this program have academic assessment scores similar to the student. The program has also begun adding AP classes - for instance a psychology and an economics class will soon be added as well as individually designed research and writing projects. ([redacted] testimony)

58. To assist students who are on the autistic spectrum at all levels Kingsbury uses various methodologies including assistive technology and accommodations and extended time to deal with fluency and processing issues, scaffolding for inferential thinking to assist thinking in the abstract and making predictions, and focusing on the use of pragmatic language and how it impacts social groups. The staff helps such students focus on organizing themselves as to space and time and to develop strategies both in class and in advisory work to assist students in regulating attention and emotion and these strategies are usually included in a student's IEP. Any student who has sound sensitivity and anxiety associated with sound sensitivity are provided accommodation and allowed to use headsets or earplugs, given access to quiet spaces within the school; strategies are incorporated into a student's program that best fit the particular student. In addressing a student with high anxiety issues the school staff first analyzes what conditions triggers the student's anxiety, for instance a student being very exacting can produce anxiety – increased self awareness – and then selects a strategy to address these concerns. ([redacted] testimony)

59. In transitioning the student from School A to Kingsbury if he were to come, Kingsbury staff would work with the School A staff and schedule a set of meetings to coordinate the transition over a reasonable period suitable for the student and have the student articulate his concerns and work with the parents and student to address concerns. Kingsbury would also identify compatible peers for the student to work with closely to assist him in becoming acclimated. Kingsbury would start by allowing the student to first move into classes that are areas of strength for him to help build his confidence and footing at Kingsbury. ([redacted] testimony)

CONCLUSIONS OF LAW:

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

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

34 C.F.R. § 300.17 provides:

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

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. [12] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

ISSUE 1: Whether DCPS developed an inappropriate IEP by prescribing that the student's specialized instruction be provided outside general education in violation of LRE requirements of 34 C.F.R. §300.114, and if so whether DCPS' actions denied the student a FAPE.

Conclusion: The evidence was insufficient to demonstrate that the student's current IEP, that prescribes specialized instruction out of general education, is inappropriate. Petitioners did not sustain the burden of proof by a preponderance of the evidence.

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

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

appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

20 U.S.C. 1414(a)(i) defines IEP as a "written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes a statement of the child's present levels of academic achievement and functional performance." It includes measurable goals, statements of related services, assistive technology and other appropriate accommodations. It is developed by the IEP team which consists of the child's parent, general education teachers, LEA special education teachers and anyone deemed as a necessary participant by reason of the services provided to the student. The IEP is the centerpiece or main ingredient of special education services.

The IDEA ensures that "all children with disabilities have available to them a free appropriate pubic education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. §1400(d)(1)(A). The IDEA guarantees children with disabilities the right to a FAPE. Id. In seeking an appropriate education for students with disabilities, the child's parents, teachers, school officials, and other professionals collaborate to develop an IEP to meet the child's unique needs. See 20 U.S.C. §1414(d)(1)(B). "The IEP must, at a minimum,' provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C. Cir.2005) (quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458U.S. 176, 203 (1982)). Local school officials utilize the IEP to assess the student's needs and assign a commensurate environment. See 20 U.S.C. § 1414(d)(1)(A).

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; 34 C.F.R. §300.114 see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

The evidence in the case demonstrates that the student has been attending School A since SY 2006-2007 and for the majority of that time there has been no DCPS IEP in place for the student until an IEP was drafted and finalized between March 15, 2012, and October 10, 2012.[13] During the bulk of time the student attended School A he apparently has been provided instruction based upon and learning plan that School A used to outline the type and levels of accommodations the student is provided in the classroom. This learning plan contains no goals or measures by which the special education services to be delivered can be guided and measured as an IEP is designed to do.[14]

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[13] FOF #s 25, 45, 48

[14] FOF # 34

As of March 2012, the student at least had a draft IEP, developed jointly by DCPS, members of the School A staff and the student's parents with their educational consultant's assistance. This IEP prescribed that the student's special education services would be delivered outside general education.[15] Although the evidence indicates that during development of the IEP there was no specific discussion whether the student's services would be provided inside or outside general education the evidence demonstrates there was actually no disagreement about the setting but a disagreement over the particular school the student would attend.[16]

After the draft IEP had been developed and DCPS communicated to the student's parents that it could not support the student's continued placement at School A it appears that the focus remained on the choice of schools rather any distinction of whether the student would be in a general education or special education setting. DCPS clearly proposed schools that were full-time special education schools and could not propose School A because it lacked a COA, a necessary requirement DCPS and OSSE uses to help ensure that a school is complying with requirements under IDEA.[17]

Although there seems to be some degree of specialized accommodations being provided at School A that have allowed the student to access the general education curriculum[18] and have allowed him to remain there all these years successfully, this is not because his progress has been consistently monitored and measured by an IEP as DCPS is required to ensure is done.[19] It appears from the facts of this case that DCPS has been unable of late to fulfill this responsibility as to School A or even gain access to the student, his academic records and the staff and personnel that are being funded by DCPS to provide services to the student.[20]

In addition, although the evidence demonstrates that the student is being provided significant accommodations in a small classroom setting with a low student to teacher ratio at School A, there is no evidence as to the disability status of any of the other students with whom the student has classes. Although there was testimony that School A is a general education school, there was no evidence presented by petitioner as to the school's specific student population, and no testimony that the teachers who are providing the student instruction are certified in special education or whether they are certified at all. [21] There was scant evidence presented from which the Hearing Officer could reasonably conclude that the student is in deed functioning in a general education environment except for the single fact that not all the students in School A have disabilities.

If the student's specialized instruction could legitimately be delivered in a general education

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[15] FOF #25
[16] FOF s# 34, 45
[17] FOF #s 27, 28, 29, 52
[18] FOF #43
[19] FOF #52
[20] FOF #s 50, 51, 52
[21] FOF # 50

setting perhaps the student could be educated in his neighborhood high school with sufficient supports and accommodations to allow him to access the general education curriculum. But the evidence clearly demonstrates that the student has specific needs that would make that inappropriate at least at present.

The student would clearly be unable to be educated in a general education classroom with non-disabled peers if the number of students in the classroom were not limited in number to a level to which he has become accustomed and if he did not have the significant accommodations he evidently needs. The evidence indicates the student's LRE is clearly not a general education classroom.[22]

Consequently, the Hearing Officer concludes that the evidence presented is insufficient to prove that the student's specialized instruction can delivered outside general education and meet his specific and unique needs. The Hearing Officer concludes that Petitioners did not sustain their burden of demonstrating that the student's current IEP is inappropriate because it does not prescribe that the student's specialized instruction is to be delivered outside general education.

ISSUE 2: Whether DCPS' proposal to place the student at Kingsbury constitutes an inappropriate program and placement in violation of 34 C.F.R. §300.116, and §300.324, and results in a denial of a FAPE to the student.

Conclusion: DCPS' change in the student's school from School A to Kingsbury was not a change in placement or a change to an inappropriate program. Petitioner did not sustain the burden of proof that Kingsbury is inappropriate.

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and is made in conformity with the Least Restrictive Environment provisions of the IDEA; and the public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. See 34 C.F.R. § 300.116.

34 C.F.R. § 300.324(a) provides that In developing each child's IEP, the IEP team must consider— (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child.

The evidence demonstrates that the student's parents fully participated in the development of the student's IEP - the goals, and accommodations and the services that would be provided to the student.[23] And the evidence demonstrates that the student's parent had input into the student's

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[22] FOF # 13

[23] FOF #s 41, 45, 48

locations of services by visiting the schools DCPS proposed.[24]

Petitioners assert that DCPS inappropriately placed the student at a more restrictive setting by proposing to place the student at Kingsbury. However, as was discussed in the issue above Petitioners' challenge to the student's IEP was solely on the location in which those services are being provided. Petitioner did not meet the burden of demonstrating that the student's IEP with all instruction to be provided out of general education was inappropriate.

There is insufficient evidence in the record that the student's LRE was changed. Petitioners alluded that the way that School A was described in the original HOD[25] that required DCPS to fund the student's placement indicates that School A is either a special education setting or a general education setting in which specialized instruction can be delivered. Irrespective of what terminology is used to describe School A, the facts of the case reveal that the student's appropriate educational setting is not in general education. [26]

To the contrary, the evidence indicates that the student is in need of intensive services in order to function effectively in a classroom and although School A has non-disabled peers in the school there was insufficient evidence to determine the level at which the student interacts with these students and whether his classes are taken with all special education students, mostly special education students or otherwise. [27] The student's IEP correctly prescribed out of general education specialized instruction, behavioral support and services and speech language services.

The evidence demonstrates that at Kingsbury the student can receive services in an out of general education setting, with small classes and individualized instruction and receive his prescribed related services. There was sufficient evidence Kingsbury can implement the student's IEP and that the school and its staff have capabilities to address the student's unique needs both academically and socially including his need for attention, his sensitivity to sound and his propensity to anxiety, and it can be an effective educational setting for him.[28]

Petitioners alleged Kingsbury is an inappropriate placement and/or location because the academic programming is less rigorous than the student requires. Although there was no indication that at Kingsbury the student would have access to non-disabled students it was evident based upon Ms. Gustafson's credible testimony[29] that there are students with a level of intellectual and academic prowess to allow the student to have interaction with students at his intellectual level while meeting his academic and social needs. [30]

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[24] FOF # 29
[25] FOF # 6
[26] FOF #s 13, 42
[27] FOF #13
[28] FOF #s 57, 58, 59

[29] The witness was clear, unhesitant and forthright in her testimony. She was knowledgeable about the student's profile and evaluative data and clearly articulated how his needs could be met at Kingsbury.

[30] FOF # 57

Petitioners also assert the student has made academic and social and emotional progress at School A and would be harmed if he is forced to change schools during the school year. Although Petitioner presented a number of witnesses including the parent who testified as to the student's success at School A[31] and their opinion of the difficulties[32] that the student might endure if her were to change schools, there was evidence that the student has begun to demonstrate self advocacy skill and an ability to self-regulate that may fair him well if he is ultimately relocated to another school. [33]

In addition, the Hearing Officer was convinced by [redacted] testimony that the staff at Kingsbury would take appropriate steps to ensure that the student's transition to Kingsbury would be done in a reasonable time and method to assist the student in making a successful transition. [34]

Based upon the evidence in this case, the Hearing Officer concludes that Petitioners did not present sufficient evidence to sustain the burden of proof that that the student's placement at Kingsbury is a change of placement or that Kingsbury is an inappropriate educational placement and/or location of services for the student.

The decision to place the student at Kingsbury was a location of services decision that was within the discretion of DCPS. Courts hold that school district may designate schools for students as long as the District assigns a school that may appropriately implement a student's IEP. *T.Y. v. New York City Department of Education*, 584 3d 412 (2d Cr. 2009)

ISSUE 3: Whether School A is an appropriate placement for the student and should DCPS be required to maintain the student's placement at School A through the end of SY 2012-2013.

Conclusion: School A has apparently not implemented the student's IEP, cannot ensure that it will be implemented and does not hold a current COA. Thus, the Hearing Officer concludes based upon DCPS' valid change of location to Kingsbury the student will no longer attend School A.

DCPS asserted School A is a general education school that has either failed or refused to implement the student's IEP and DCPS has correctly asserted that it is prohibited (by D.C. Code § 38-2561.03 (Supp. 2010) and 5A of the DCMR §2844)[35] from placing the student at School A because School A lacks an OSSE certificate of approval.

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[31] FOF # 34

[32] FOF #38

[33] FOF # 40

[34] FOF # 59

[35] Consistent with section 3 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.03(Supp. 2010)), unless the placement of a student has been ordered by a District of Columbia Court, federal court, or hearing officer pursuant to IDEA and after the required findings have been made, no student whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that: ...(b) Has not received and maintained a Certificate of Approval in accordance with D.C. Official Code § 38-2561.03(Supp. 2010) and its implementing regulations.

As pointed out above, it appears from the facts of this case that DCPS has been unable to fulfill its responsibility to the student as to School A and has not been able to gain access to the student, his academic records and the staff and personnel that are being funded by DCPS to provide services.[36] There was also no evidence presented that the teachers that are providing the student instruction at School A are certified in special education or whether they are certified at all. [37]

And although the student's IEP had not yet been finalized it has been available to School A and it does not appear that the IEP has been implemented since it was finalized or that School A is willing to ensure the IEP is implemented. [38]

Petitioners believe School A to be the most appropriate setting for their child. And while the parents have a right for their child to be educated in the school that they deem best, there is no obligation for a school district to fund the parents' school of choice if the school district has offered an appropriate placement that the parent has declined.

The standard set out by the United States Supreme Court in determining whether a child is receiving a FAPE, or the "basic floor of opportunity" is whether the child has access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley* 458 U.S. at 201. The IDEA, according to *Rowley* imposes "no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children." Id at 198 A.I ex rel. *Iapalucci v. District of Columbia* 402 F. Supp. 2d 152, 167 (D.D.C. 2005)

In addition, a school district is not required to implement a program that will maximize the handicapped child's potential. *Rowley, 458 U.S. at 198-99.* Rather, a handicapped child has a right to "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley, 458 U.S. at 203.* Rowley explained that implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.. . .We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley, 458 U.S. at 200-02.*

DCPS has clearly now proposed a school for the student that can implement the student's IEP and that meets the requirements for a COA. [39] Accordingly, the Hearing Officer concludes that DCPS has no obligation to maintain the student's placement at School A.

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[36] FOF #s 50, 51, 52
[37] FOF # 50
[38] FOF #s 50, 51, 52
[39] FOF # 57

ORDER:

1. The complaint is hereby DISMISSED with prejudice.

2. Petitioners' requested remedy for the student's continued placement at School A with DCPS funding is hereby denied.

3. If Petitioner chooses to accept DCPS' proposed placement of the student at Kingsbury for the remainder of SY 2012-2013 the parties shall meet to develop a thirty-day transition period for the student from School A to Kingsbury in which the DCPS and Kingsbury staff work collaboratively with the student, his parents and the School A staff to help ensure the student's transition from School A to the Kingsbury is as smooth and as comfortable for the student as can reasonably be expected.

APPEAL PROCESS:

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

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Hearing Officer
Date: December 22, 2012