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

Parent, on behalf of STUDENT, [1]	)	**Case Number: 2010-1164**
Petitioner,	)	***On Remand from the United States District Court for the District of Columbia***
v.	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	**Hearing Officer: Frances Raskin**

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND

Petitioner is the parent of a [redacted] ("Student") with a disability. On August 24, 2012, the United States District Court for the District of Columbia issued a decision that found that Respondent had denied the Student a free, appropriate, public

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

education by failing to develop an individualized educational program (IEP") for the Student prior to the start of the 2010-2011 school year, by failing to identify a school placement for the Student prior to October 7, 2010, and by excluding Petitioner from the decisionmaking process regarding the Student's placement for the 2010-2011 school year.[2] The Court did not disturb the original hearing officer's finding that the Nonpublic School was appropriate.[3] The Court found that Petitioner's actions, including unilaterally enrolling the Student in the Nonpublic School on September 6, 2010, were not unreasonable.[4] The Court remanded this case with instructions that a hearing officer determine whether the $2850 Petitioner sought in reimbursement for her unilateral placement of the Student in the Nonpublic School is appropriate.[5]

On September 10, 2012, the Student Hearing Office assigned this Hearing Officer to preside over this case. On October 4, 2012, this Hearing Officer held a prehearing conference on the record in which counsel for Petitioner and counsel for Respondent participated. During the prehearing conference, the parties agreed to proceed to a due process hearing on November 1, 2012. This Hearing Officer issued a prehearing order memorializing the prehearing conference on October 15, 2012. On October 17, 2012, the parties agreed to reschedule the due process hearing for November 20, 2012.

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[2] District Court Memorandum and Order, 11-CA-11-309, at 5, 12, 14, 15 (August 24, 2012).
[3] District Court Memorandum and Order.
[4] *Id.* at 18.
[5] District Court Memorandum and Order at 18 (citing *Florence County. Sch. Dist. Four v. Carter,* 510 U.S. 7, 16 (1993)). The District Court ordered that this Hearing Officer determine whether Petitioner's request for reimbursement in the amount of $2850 is "appropriate and reasonable." However, the District Court did not distinguish between or otherwise explain the difference between the terms "appropriate" and "reasonable." For the reasons explained herein, this Hearing Officer will decide only whether the $2850 that Petitioner is seeking as reimbursement is reasonable.

The due process hearing commenced on November 20, 2012 at 9:30 a.m. in room 2009. At the outset of the hearing, this Hearing Officer entered into evidence Respondent's proposed exhibits 2-4.[6] The parties waived opening statements. After Petitioner testified, the parties presented closing arguments. The due process hearing concluded at 11:30 a.m. on November 20, 2012.

III. ISSUE PRESENTED.

Whether Petitioner's request for $2850 in reimbursement for her unilateral placement of the Student in the Nonpublic School is reasonable.

IV. FINDINGS OF FACT

1. Petitioner is the parent of a [redacted] with a disability.[7] In 2010, the Student was eligible for special education services as a student with multiple disabilities.[8]

2. The Student attended the Nonpublic School on sixteen school days between September 7, 2010, and October 31, 2010.[9] The Nonpublic School provided a program that was reasonably calculated to provide educational benefit.[10] The Student made academic progress during the time he was at the Nonpublic School.[11]

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[6] Petitioner did not disclose or offer any exhibits. Respondent withdrew its Exhibit 1.
[7] Respondent Exhibit 2 at 1 (October 4 2010, Prior to Action Notice).
[8] *Id.*; District Court Memorandum and Order at 3.
[9] Testimony of Petitioner.
[10] Respondent Exhibit 3 (November 10, 2010, Hearing Officer Determination ("HOD")). The District Court did not disturb this finding in overruling other portions of the November 10, 2010, HOD.
[11] *Id.* at 10. The District Court did not disturb this finding in overruling other portions of the November 10, 2010, HOD.

3. The Office of State Superintendent of Education ("OSSE"), the state education agency for the District of Columbia, has published its approved rates for nonpublic school tuition for students in the District of Columbia.[12] The OSSE-approved, maximum per diem rate for nonpublic school tuition is $212.20 per day for 180 school days per academic year.[13] This per diem rate is based on a maximum annual tuition rate of $38,196.00.[14]

V. CONCLUSIONS OF LAW

The burden of proof is properly placed upon the party seeking relief.[15] As a result, Petitioner must prove the reasonableness of her request for reimbursement by a preponderance of the evidence.[16]

The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.[17] In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[18] Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,[19]

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[12] *See* D. C. Mun. Reg. tit. 5-A § 2848.1 (August 1, 2011).
[13] Stipulation of parties.
[14] *Id.*
[15] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[16] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[17] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[18] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 246 (1994).
[19] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).

except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[20]

VI. DISCUSSION

Petitioner Proved by a Preponderance of the Evidence that Her Request for Reimbursement is Reasonable.

The Supreme Court has repeatedly held that, if an LEA fails in its obligation to provide a disabled child a FAPE, the IDEA permits the child's parents to seek reimbursement from the local education agency ("LEA") or a hearing officer for the private placement of the child.[21] A hearing officer may order the LEA to reimburse parents for their expenditures on private special education for a child if the hearing officer ultimately determines that such placement is proper under the Act.[22] Requiring the LEA to reimburse parents for their expenditures on private special education merely requires the LEA to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it offered the student a FAPE.[23]

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[20] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).

[21] 20 U.S.C. § 1415(i)(2)(C)(ii); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Florence County. Sch. Dist. Four v Carter*, 510 U.S. 7, 12 (1993); *Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985). *See also Burlington*, 471 U.S. at 363, 370 (finding that the IDEA, at 20 U.S.C. § 1415(i)(2)(C)(iii), grants hearing officers authority to grant such relief as the hearing officer determines is appropriate); *Forest Grove*, 557 U.S. at 243-44 (finding that 20 U.S.C. § 1415(i)(2)(C) (iii) should be interpreted to authorize hearing officers as well as courts to award tuition reimbursement notwithstanding the provision's silence with regard to hearing officers).

[22] *Burlington.*, 471 U.S. at 369. Reimbursement is not necessarily barred by a private school's failure to meet state education standards. *Carter,* 510 U.S. at 14.

[23] *Burlington,* 471 U.S. at 370-71; 20 U.S.C. § 1412 (a)(10)(C)(ii); 34 C.F.R. § 300.148.

Parents who unilaterally change their child's placement, without the consent of the LEA, do so at their own financial risk.[24] They are entitled to reimbursement only if the LEA denied the Student a FAPE and the private school placement was proper under the Act.[25]

In fashioning discretionary equitable relief under IDEA, a hearing officer must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.[26] Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.[27]

Here, the District Court found that Respondent had denied the Student a FAPE by failing to review his IEP before the start of the 2010-2011 school year, failing to inform Petitioner of the Student's educational placement for the 2010-2011 school year, and excluding Petitioner from the decisionmaking process regarding the Student's placement. The Court did not disturb the original hearing officer's determination that the Nonpublic School was proper under the IDEA and that the Student made academic progress while attending this school.

As the Court found, the sole remaining question is whether Petitioner's request for reimbursement in the amount of $2850 for the costs of her unilateral placement of the Student in the Nonpublic School is reasonable. Although the District Court ordered this Hearing Officer to determine whether Petitioner's reimbursement request was "appropriate and reasonable,"[28] pursuant to U.S. Supreme Court precedent, and the federal

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[24] *Burlington,* 471 U.S. at 373-374.
[25] *Carter,* 510 U.S. at 15.
[26] *Id.*
[27] *Id.*
[28] District Court Memorandum and Order at 2.

cases in the District of Columbia that adopt this precedent, the only inquiry that is required is whether the reimbursement request is reasonable.[29]

At the due process hearing, Petitioner established that the Student attended the Nonpublic School for sixteen days between September 7, 2010, and October 31, 2010. For these sixteen days that the Student attended the Nonpublic School, Petitioner seeks $2850 in reimbursement. This amounts to $178.13 for each day the Student attended the Nonpublic School.

OSSE is responsible for establishing and publishing maximum rates to be paid for tuition and related services to nonpublic special education schools and programs providing special education and related services to students funded by the District of Columbia.[30] Here, the parties stipulated that the OSSE-approved, maximum daily rate for nonpublic school tuition is $212.20. Because the reimbursement Petitioner seeks is less than the OSSE-approved rate, this Hearing Officer finds that Petitioner's request for $2850 is reasonable.[31]

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[29] *See Carter,* 510 U.S. at 15 (hearing officer must consider the appropriate and reasonable level of reimbursement that should be required); *Branham v. District of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005) (courts must consider factors "relevant" to determining whether a particular placement is appropriate for a particular student, including the placement's cost); *Holland v. District of Columbia*, 71 F.3d 41,7 425 (D.C. Cir. 1995) (If court determines that the LEA denied the Student a FAPE, the court must enter judgment for petitioners to the extent that the court finds that the nonpublic school is an appropriate placement, and that the costs of that placement are reasonable) (citing *Carter*, 510 U.S. at 15).
[30] D.C. Mun. Reg. tit. 5-A § 2845.1.
[31] Although the District Court ordered this Hearing Officer to determine whether Petitioner's reimbursement request was reasonable and appropriate, this Hearing Officer finds that the inquiry is the same. Thus, this Hearing Officer finds that the only inquiry that is required is whether the reimbursement request is reasonable.

VII. DECISION

Petitioner proved by a preponderance of the evidence that she is entitled to $2850 in reimbursement for her unilateral placement of the Student at the Nonpublic School between September 7, 2010, and October 31, 2010. Thus, by December 14, 2012, Respondent shall reimburse Petitioner in the amount of $2850.

SO ORDERED.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

Date: November 21, 2012

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is a final determination on the merits. 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).

Distributed to:

Counsel for Petitioner
Counsel for Respondent
Student Hearing Office