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 HEARING OFFICE
2011 MAY -6 AM 9:30
OSSE

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

Petitioner,

v

DISTRCIT OF COLUMBIA PUBLIC SCHOOLS,

Respondent

SHO Case No:
Erin H. Leff, Hearing Officer

HEARING OFFICER DETERMINATION

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
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ORDER

STATEMENT OF THE CASE

On February 7, 2011 Parents, on behalf of their child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement of 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; Respondent's Exhibits will be referred to as "R" followed by the exhibit number; and Joint Exhibits will be referred to as "J" 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 February 22, 2011. A resolution meeting was held on February 14, 2011. The parties were not able to reach an agreement. *See* Petitioner's Counsel's email of February 14, 2011 (HO 15).

At all times relevant to these proceedings Petitioner was represented by Paula Rosenstock, Esq. and Michael J. Eig, Esq, and Daniel McCall, Assistant Attorney General, represented DCPS. As agreed by the parties, I held a telephone prehearing conference on February 23, 2011. HO 6 & 7. This was the first available date following the resolution meeting[3].

The hearing dates requested by the parties fell at the end of the 45 day statutory timeline in the federal regulations, which is the date my decision is due. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2009). I offered dates within the 45 day statutory timeline, but Petitioners' primary witness was not available. Petitioners initially filed a Motion to Extend Timeline Decision which I denied because providing the hearing officer time to write a decision is not a valid basis for a continuance. I then listed the hearing for March 15 and March 18, 2011. Subsequently Petitioners filed a Motion for Continuance based on the witness' lack of availability. I granted this Motion, and the hearing was rescheduled for March 29 and March 30, 2011. The hearing was held as scheduled. My Hearing Officer Determination, as a result of the continuance, was due on April 8, 2011.

[3] The parties and I exchanged numerous emails attempting to schedule the prehearing conference at an earlier date. Establishing a mutually available date was difficult. I scheduled the hearing on February 23, 2011 despite Respondent's counsel needing to provide alternative representation at the conference due to a conflict. Prior to the date of the Prehearing Conference, Respondent's Counsel's schedule cleared, and he was able to participate in the prehearing conference.

Several of Petitioners' witnesses were DCPS employees. Petitioners' Counsel provided eight Notices to Appear to assure their presence at the due process hearing. Respondent filed a Motion to Withdraw or Quash these Notices on March 16, 2011. I held a telephone conference on the Notices to Appear and the Motion to Withdraw or Quash on March 21, 2011. At that time Respondent's Counsel stated three of the witnesses who had been named in the Notices to Appear were not available due to extended medical or maternity leave and limited the Motion to these three witnesses. The hearing established these three witnesses' testimony would be cumulative, and I granted the Motion to Quash as to these three witnesses. Notices to Appear were issued for the remaining five witnesses by the Chief Hearing Officer on March 23, 2011.

I requested and received a post-hearing list of citations referenced during closing statements[4] from both Petitioners' Counsel and Respondent's Counsel. Petitioners' Counsel also provided copies of the cases cited.

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 the student a FAPE by failing to propose an appropriate program for the student in the June 2010 individualized education program ("IEP") in that the IEP did not include sufficient hours of special instruction, included 60 minutes rather than 90 minutes of speech/language therapy per week, and provided for direct behavior support services rather than indirect, consultative behavior support services;

[4] Petitioners' counsel also provided many case not specifically cited during closing statements.

2) Whether DCPS denied the student a FAPE by failing to propose an appropriate placement, at the June 2010 IEP meeting, in a full-time, small, supportive special education setting;

3) Whether DCPS denied the student a FAPE by failing to propose an appropriate program in the January 10, 2011 IEP by including 60 minutes rather than 90 minutes of speech/language therapy per week on the IEP. Petitioner further questions whether the January 10, 2011 IEP constitutes a full time IEP. To the extent this IEP is not a full time IEP, Petitioner alleges it is not appropriate;

4) Whether the DCPS IEP team agreed at the January 10, 2011 meeting that the student should be placed at the Lab School;

5) Whether DCPS denied the student a FAPE by acting unilaterally, without parent participation, when proposing to place the student at the and

6) Whether the is an appropriate and/or proper placement for the student?

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are found in Appendix B.[6]

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

Exhibits admitted as Joint Exhibits are found in Appendix D.

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

B. Testimony

Petitioner (Student's mother) testified and Petitioners presented the following witnesses:

[5] Respondent's counsel objected to issue #5, indicating he did not think this issue was included in Petitioners' complaint. I overruled his objection. I found this issue was included within the context of the complaint as the issue of placement was a core issue and agreed to hear this issue over Respondent's continuing objection.

[6] Respondent objected to the admission of Petitioners' exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 24, 26, 32, 40, 41 and 42. Petitioners withdrew exhibits 33 and 35. Respondent objected to exhibits 40, 41, and 42 only if the vitae in these exhibits were not vitae of witnesses who testified at the hearing. The three individuals whose vitae were in evidence did testify at the due process hearing so this objection was mooted. All other exhibits were admitted over Respondent's objections. I ruled they were admitted because the rules of evidence are not strictly applied in an administrative hearing, and each exhibit could be given the weight it was due in reaching my determination.

- Ph.D., Curriculum Coordinator of the Elementary Program, The admitted as an expert in special education instruction and evaluation with a focus on learning disabilities.[7]

- Eden A. Springer, Speech-Language Pathologist, The admitted as an expert in speech-language pathology.

- , Assistant Principal, DCPS.

- Corrine Rubin, Occupational Therapist (contractual), DCPS.

- Special Education Supervisor, DCPS.

- Laura Judith Solomon, Ed.D., Educational Consultant, admitted as an expert in special education.[8]

DCPS presented the following witnesses:

- Special Education Coordinator, DCPS

- Special Education Teacher, DCPS

- Benjamin Persett, DCPS Compliance Specialist.[9]

- Nicole Pitre, Speech-Language pathologist, DCPS

- Principal, DCPS admitted an in expert in special education programming, placemen and IEP development.

FINDINGS OF FACT

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

[7] Respondent objected to the recognition of each of Petitioners' expert witnesses as experts. As an expert witness is simply an individual whose education, training, experience or skill results in him/her having specialized knowledge in a particular field which supports reliance on his/her opinion in that area and Petitioners' witnesses met this standard, I overruled these objections.

[8] Respondent's Counsel invoked the Rule of Witnesses asking that Dr. Solomon not be allowed to stay in the hearing room during other witnesses' testimony. I allowed Dr. Solomon to stay, noting that I would consider her testimony in the light of having heard other witnesses' testimony. She was in the room for all of the testimony on March 29, 2011.

[9] Mr. Persett served as Party Representative for the first day of hearing on March 29, 2011. He was present in the hearing room for most of the testimony on that date.

1. Student is a year old boy who has never attended a DCPS public school. He has attended The a nonpublic school for students with learning disabilities, at parent expense, since November 2009. Prior to The he attended a private school for students who do not have disabilities and prior to that he attended a Montessori school. Testimony of Petitioner. He is in the third grade. Respondent's 15.

2. Petitioners began to have concerns regarding Student's school performance when he was attending the Montessori School. He demonstrated fine motor problems and had strong reactions to change. An occupational therapy evaluation performed at that time revealed significant deficiencies in fine motor skills and perceptual awareness of his body. He attended the Montessori School for two years. Testimony of Petitioner.

3. When Student enrolled in the private school following the Montessori school, he evidenced difficulty with the transition and had some initial social difficulties. A speech evaluation was completed. By the middle of his first grade year Student began to show difficulty with his school work. Testimony of Petitioner. His first grade teacher worked with him on a one on one basis. In the September of of his second grade year Student received a Comprehensive Neuropsychological Evaluation ("Neuropsych") from Elliot Blumenstein, Psy.D. P 5. Dr. Blumenstein issued his report on September 29, 2009. He diagnosed Student with having learning disabilities and attention deficit hyperactivity disorder ("ADHD"). Petitioners applied to The Lab School. Student was accepted and entered the school in November 2009. Testimony of Petitioner.

4. The Neuropsych revealed Student has great strengths and significant weaknesses. He earned a score of 136 in the Very Superior range on the Verbal Comprehension Index and a score of 84 in the Low Average range on the Perceptual Reasoning Index on the WISC-IV.

Student's Full Scale IQ was " not at all meaningful" (P 5, p.6) because it averaged scores ranging from the 9th percentile to the 99.6th percentile. Student's scores on academic testing measures also were quite variable, with, for example, high sound awareness skills on the WJ-III NU at the 94th percentile and low math scores in calculation and fluency at the 6th and 7th percentiles. Student was determined to have a Cognitive Disorder NOS related to executive functioning, an Adjustment Disorder NOS, ADHD, a Reading Disorder, a Mathematics Disorder, a Disorder of Written Language, an Expressive Language Disorder, and a Developmental Coordination Disorder. As a result Student required placement in a self-contained program for gifted students with learning disabilities. P 5.

5. Student has made progress at The though he continues to have learning difficulties. Testimony of Petitioner; Testimony of He is in a class of thirteen students with three adults, a certified special education teacher, a provisionally certified teacher and an assistant. Students in the classroom often work in small groups. He is a contextual reader so he struggles with unknown words and with spelling. In math he demonstrates good thinking but his skills are somewhat limited and this affects his math fluency. Student often requires redirection. He sometimes perseverates. Student receives instructional services, speech language therapy and occupational therapy. Student exhibits anxiety with changes in routine or when frustrated by his disabilities. He is distractible. Testimony of Testimony of Testimony of Springer; P 14; P 15; P 16; P 22; P 38.

6. Evidence of Student's progress at The can be seen by comparing his educational program that was developed by The in November 2009 to the educational program developed in May 2010.[10] Student's executive functions have improved; his

[10] DCPS argues that only a public school can develop an Individualized Education Program under IDEA. The refers to the programs they develop for students as IEPs. As the issue of whether The Lab School document

expressive language has improved; and there has been progress as reflected in the scores Student earned on the Woodcock Johnson. While Student's scores have not gone up in all areas assessed by the Woodcock Johnson, he has shown progress in Broad Reading and related subtests and Broad Math and related subtests. His scores on Broad Written Language and related subtests are consistently lower other than writing fluency which shows a small improvement. These lower written language scores, however, fall within the standard error of measurement and are unlikely to reflect an actual loss in skills. Rather if a student's standard scores are consistent from one administration to the next within the standard error of measurement, the student is showing age related progress in that he is performing at a comparable rate with his peers. Testimony of ; P 5; P 12; P 14; P 15; P 16; P 22.

7. On March 2, 2011, Petitioner's Counsel wrote to DCPS to initiate Student's enrollment as a non attending student at P 11. An Individualized Education Program ("IEP") multidisciplinary team ("MDT") meeting was held on March 16, 2010 at . The team agreed to review documentation, observe Student and reconvene to determine eligibility. While DCPS was prepared to determine eligibility and propose an IEP at a meeting on May 12, 2011 final determinations were delayed to May 26, 2011 at Petitioners' request. J 15; J16. The staff were not able to participate in the May 26, 2011 meeting so it was agreed the team would reconvene on June 3, 2011. At the June meeting the team found Student eligible and proposed he receive three hours of self contained special education instruction per day, forty five minutes of occupational therapy ("OT") per week, 30 minutes of group therapy/behavior support per week, sixty minutes of speech language therapy per week, and sixty minutes per month of OT consultative services.

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is, in fact, an IEP under the IDEA is not before me and not necessary for me to reach my determination, I am referring to The Lab School documents as educational programs to avoid any confusion.

These services were to be provided at , Student's neighborhood school. Testimony of Petitioner; J 18. Speech therapy was included in this IEP despite the DCPS speech language pathologist initially concluding Student did not meet the criteria for speech language services in DCPS. J 8. However, input by The staff supported the need for speech language services, and the MDT agreed Student would benefit from this related service. The MDT further noted the proposed IEP could be adapted to include more time in special education if needed. J 20.

8. Petitioners rejected this proposed IEP and indicated they would seek public funding of Student's placement at The To this end, Petitioner's counsel wrote a letter dated August 12, 2011 confirming Petitioners' intent to seek public funding of Student's placement at the P 17. Petitioners hired who evaluated Student and observed him in his summer school and regular school year program. Testimony of Petitioner; Testimony of P 23. She, like Dr. Blumenstein, who had completed the neuropsych found Student to be a gifted child with multiple learning disabilities and processing problems. P 23; Testimony of Solomon; P 23.

9. Following receipt of report a new MDT meeting was scheduled for January 10, 2011.[11] Based on report, the IEP team at this January meeting agreed to increase Student's service hours to a full time program. The team initially indicated they could implement this new, full time IEP at but reconsidered the decision when it became apparent that Student would be the only student in the school receiving self contained social studies and science instruction. They erroneously concluded this would require Student to be in a class of one for this instruction. There also was some discussion of Student's anxiety and

[11] There was some delay in scheduling this meeting due to the need to coordinate schedules with the Petitioners and staff.

concern that moving him in the middle of the year might increase his anxiety. The DCPS speech language pathologist attending the January meeting suggested Student remain at The for the remainder of the 2010-2011 school year to limit Student's anxiety. The DCPS OT at the meeting supported this suggestion and added that, under these circumstances, The should be held accountable for Student's progress for the remainder of this academic year. Testimony of Petitioner; Testimony of Young; Testimony of Rubin. No school placement decision was made. The Special Education Coordinator indicated that the actual DCPS School selected to implement the IEP would be made by DCPS outside the team meeting. Testimony of Young; Testimony of Rubin. Petitioners did not understand what this school selection process involved or how it would affect Student's placement. Petitioners believed he would be assigned to The for the remainder of the school year. Testimony of Petitioner; Testimony of Solomon.

10. The administrator representing DCPS at the January 10 meeting was a new assistant Principal with less than one year of experience at He was not aware that Students' self contained instruction in social studies and science would occur in the resource room and that other students would be in the room during this instruction. is able to implement Student's full time IEP. Testimony of Young; Testimony of Main.

11. By letter dated February 3, 2011, Petitioners' Counsel was informed the LRE[12] Support Team had selected as the school where Student would receive his IEP program and services. This letter offered dates for a meeting to discuss the school selection with the team, the special education coordinator from and a member of the LRE Support Team. Petitioners also were invited to tour the school. P 31. An MDT meeting to discuss this proposed school was held on March 9, 2011. No staff from were present. The

[12] LRE is a term of art under IDEA meaning Least Restrictive Environment.

LRE Support Team member who was present did not answer Petitioners' questions other than to provide an overview of the school. Instead Petitioners were encouraged to look at the WEB site and visit the school. Testimony of Petitioner; Testimony of Solomon; P 37. Petitioners expressed concern regarding the school selection process. Testimony of Young. Petitioners indicated they would like to visit PLC with their educational advisor, Dr. Solomon. P 37. Petitioners visited on March 15, 2011, but DCPS would not allow their educational advisor to accompany them. Testimony of Petitioner; Testimony of Solomon.

12. is the only separate, public special education school for students with learning disabilities in elementary grades in DCPS. Testimony of Persett. It has 87 students in grades 1 through 8. Each classroom has a full time aide in addition to a teacher. Sometimes there are additional adults in the room. The school follows DCPS curricula. can implement the goals on Student's IEP. Testimony of Burnette; Testimony of Winters; Testimony of Pitre. is a Title 1 choice school. It has not made AYP. [13] Less than 5% of the students in the school are deemed proficient in reading. The ATP reading target is 73.69%. has achieved higher proficiency scores in math. In 2010, the percentage of students achieving proficiency in math increased almost 25 percentage points to a math proficiency level of 28.13%. The math target, however, is 70.14%. P 39. If a Title 1 choice school has not made AYP, parents must be given the opportunity to choose to enroll their student is a school that has met the proficiency standards. One of the DCPS schools that has met these standards is Testimony of

13. DCPS defines placement as the number of hours of service on a student's IEP. DCPS considers all school selection to be site selection rather than a placement determination. As such,

[13] I take judicial notice that AYP means Adequate Yearly Progress, a requirement under the No Child Left Behind.Act.

parents' involvement in school selection comes only from their being able to accept or reject the school identified by DCPS at the MDT meeting called for the purpose of discussing the proposed school. If a more restrictive placement is to be made for a student this decision is referred to the LRE Support Team in central office. Sometimes school recommendations are made by staff in the central office rather other than the LRE Support Team. IEP teams are not involved in the school selection process. The LRE Support team is able to recommend non public schools. Usually it recommends DCPS schools. It has never recommended The Testimony of Persett.

14. There is no disagreement as to the goals on Student's January 2011 IEP. There is no disagreement as to Student's need for a fulltime special education program.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. I find all witness testimony presented in this matter to be credible. Where the persuasiveness of witness testimony was a factor in my decision it is noted below. For clarity, I have grouped issues for discussion where similar areas of law are at issue.

I. IEP Program and Placement

A. Program

Under the IDEA each local education agency is required to provide a free appropriate public education ("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).

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 questions are whether the IEPs at issue are calculated to enable the student to receive educational benefit.

Whether DCPS denied the student a FAPE by failing to propose an appropriate program for the student in the June 2010 IEP in that the IEP did not include sufficient hours of special instruction, included 60 minutes rather than 90 minutes of speech/language therapy per week, and provided for direct behavior support services rather than indirect, consultative behavior support services.

Until March 2, 2011, Student was not enrolled in DCPS. On that date Petitioners' Counsel contacted the district to begin the process of enrolling Student as a non-attending[14] student at Parentally placed private school children must be evaluated for eligibility for special education and related services under IDEA by the local education agency if the LEA has reason to believe the student is potentially eligible for services. *See* 34 C.F.R. § 3000.131. On March 16, 2011, the MDT met and agreed to evaluate Student. Following several meetings Student was found eligible for special education and related services, and an IEP was developed on June 3, 2011. The program proposed in the June 3, 2011 IEP was a combination program. That is, it included time in general education classes and time in separate special education classes. The IEP specifically included three hours of self contained special education instruction per day. It also included only 60 minutes of speech language therapy per week and 30 minutes of group therapy/behavior support per week.[15] The remainder of Student's time in school was to occur in the general education environment. These services were to be

[14] A non-attending student is a school age resident of the district who is not attending its public schools.
[15] The IEP also included occupational therapy services which are not at issue in the instant matter.

provided at Student's neighborhood school. Petitioners rejected this proposal indicating they believed Student needed a full time program and 90 minutes rather than 60 minutes of speech language services per week. They further indicated that the discrete behavior intervention services would not be necessary if he were provided an appropriate full time program. Staff from The participated in the development of this IEP.

In raising the issue of denial of FAPE under this IEP, Petitioners point to the neuropsychological evaluation of Student from September 2009, reports and assessments from The and Student's success at The The neuropsychological evaluation determined Student met the diagnostic criteria for having a Cognitive Disorder NOS, an Adjustment Disorder NOS, ADHD, a Reading Disorder, a Disorder of Written Expression, a Mathematics Disorder and a Developmental Coordination Disorder. Dr. Blumenstein specifically noted Student was verbally gifted and simultaneously displayed numerous learning related difficulties including struggles to retrieve information and organize what he wanted to say, problems holding information in working memory, a very slow rate of processing information, marked difficulty sustaining attention and controlling his impulses, executive dysfunction, learning disabilities, and emotional vulnerability as a result of his learning struggles. Dr. Blumenstein recommended placement in a self-contained program for gifted students with learning disabilities that would allow Student to be intellectually challenged while providing the intensity of special education and support Student was found to need. The assessments completed in November and December of 2009 following Student's enrollment provide similar findings. In June 2010 The having educated Student for approximately six months issued final reports for the school year. These reports showed Student

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has an open space design. General education classes do not have full walls. The special education classroom does have full walls.

was making progress in the program at The and identified his on-going educational needs.

Student's program at The provided full time special education instruction and services in a self-contained program with small class size. Student also received 90 minutes of speech language services per week and occupational therapy services. The DCPS MDT team when meeting with Petitioners in June 2010 did not agree Student required the number of hours of service nor the intensity of services provided by The Instead of a full time program, the DCPS MDT developed an IEP that provided 15 hours of self contained special education instruction per week,[17] 60 minutes of speech language services per week, 45 minutes of occupational therapy per week and 30 minutes of behavior support per week. The MDT relied on the independent reports provided by Petitioners to find Student eligible for special education and related services but then developed an IEP that did not reflect the content of the reports. For example, the DCPS speech language pathologist who reviewed The speech language evaluation and observed Student in class initially indicated Student did not meet DCPS criteria for eligibility for speech language services. Ultimately she was persuaded by The staff that Student would benefit from speech language services, and speech services were included on Student's IEP but at a lower rate of service than he had been receiving. Student, who has ADHD and difficulty maintaining his focus, was to spend a large part of each school day in a large class within an open space school design, a highly distraction laden environment, and the IEP did not provide methods to reduce the inherent distractions in this environment despite noting Student's need for reduced distractions. The IEP included discrete behavior support services rather than embedding them within the student's on-going daily activities.

[17] Self contained instruction at occurs in the resource room.

DCPS argues the IEP reflects the information available to the MDT at the time it was developed, and in some senses this is correct. The IEP indicates Student was not spending any portion of his day in a general education setting at the time the DCPS IEP was developed. Yet the IEP does not address the inherent difficulty in Student's proposed transition from a full time separate special education school with small classes to an open space neighborhood school. Student who had been receiving behavior support enmeshed within his program throughout the school day at The was to receive, instead, 30 minutes of behavior support per week. Rather than 90 minutes of speech, service time was cut to 60 minutes of speech per week without explanation. Most significantly, despite recognizing Student's enrollment in a full time, separate special education program for gifted students with learning disabilities,[18] as recommended by the neuropsychological report, the IEP drafted in July 2020 provides only 15 hours of special education instruction outside the general education environment per week. To argue this IEP reflects the information available to the team at the time it was developed is not supported by the evidence. The June 2010 IEP does not reflect the evaluations and reports available to the MDT at the time of its drafting. *See, District of Columbia v. Bryant-James,* 675 F.Supp.2d 115 (D.D.C. 2009)

I find the Student was denied a FAPE under the June 2010 IEP. It was not reasonably calculated to provide Student some educational benefit in that it did not reflect the information available to the MDT at the time of its drafting. While acknowledging the points made in the neuropsychological report and The reports and assessments, the IEP failed to provide

[18] DCPS notes that giftedness is not a disability category under the IDEA, and in this they are correct. However, in reviewing the IEP and assessing whether it provides some educational benefit it is essential that the complexity of Student's educational profile be recognized and addressed. Public schools are able, for example, to provide enrichment activities for gifted students. To draft an IEP for a Student who has been enrolled in a program providing opportunities for such enrichment without recognition that this aspect of Student's profile also merits recognition reflects a lack of individualization.

accommodations, modifications, frequency of service or intensity of service contained in the documentation provided to them.

Whether DCPS denied the student a FAPE by failing to propose an appropriate program in the January 10, 2011 IEP by including 60 minutes rather than 90 minutes of speech/language therapy per week on the IEP. Petitioner further questions whether the January 10, 2011 IEP constitutes a full time IEP. To the extent this IEP is not a full time IEP, Petitioner alleges it is not appropriate.[19]

Following Petitioners' rejection of the June 2010 IEP, Petitioners hired to evaluate Student. Diagnostic Evaluation dated October 16, 2010 again identifies Student as a gifted child with multiple learning disabilities and processing problems. She indicates he must be served in a "highly specialized environment" noting that even a class of twenty, based on her observations, is too large. Moreover, if instruction is occurring in an area of significant academic weakness he has difficulty sustaining attention in a group as small as three. With the addition of report in January 2011, the MDT revised Student's IEP to provide a full time program. Witnesses stated the additional information provided by was the basis for the expansion of the hours provided to Student under the January IEP. At hearing, was a most persuasive witness thoroughly explaining how various data were connected as well as the bases for the conclusions and recommendations in her report.

Petitioners agreed with the goals on this January IEP and with it being a full time IEP. However, the dispute regarding whether Student requires 60 minutes or 90 minutes of Speech Language services continued. The January 2011 IEP again provided 60 minutes of speech services per week, and Petitioners asserted the need for 90 minutes of speech per week, the amount Student was continuing to receive at The This disagreement as to the

[19] The IEP developed in January 2011 is a full time IEP. Therefore, there is no need to address the alleged failure to provide FAPE due to its possibly being less than a full time IEP. It is a moot issue.

necessary amount of speech services is not well developed. Petitioner presented Student's current speech language therapist, Eden Springer, who testified as an expert[20] in Speech Language Pathology. She provided an explanation of the content of her report that includes a recommendation for one individual session of speech language therapy per week and one group session of speech language therapy per week. Each of these sessions is to be 40 to 45 minutes in length.[21] Other than stating the length of each therapy session no basis for the length was placed into evidence. It is therefore, not possible to determine whether there would be a significant loss of educational benefit resulting from providing Student 60 rather than 90 minutes of speech services per week.

With 30 minutes of speech services being the only issue as to the January 2011 IEP, I find there is no basis for finding the January 20 IEP was not designed to provide some educational benefit. *Rowley*, 458 U.S. 176, 203-204 (1982). There is no basis for finding a denial of FAPE.

B. Placement

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. *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

[20] Respondent objected to Ms. Springer testifying as an expert in speech language pathology because she was employed by The Lab School and because it was asserted, speech language pathology was too broad an area of expertise. I overruled both objections noting I would consider Ms. Springer's employment when giving weight to her testimony and her experience supported her expertise in speech language pathology.

[21] Ms. Springer's March 2011 report was entered into evidence two times. P43 is a signed copy of P38. The content of the reports is identical. Respondent objected to the introduction of P43 because of some legibility issues. I overruled the objection because I could read P 43 despite the legibility issues and because P38 contained the identical content.

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 .

Whether DCPS denied the student a FAPE by failing to propose an appropriate placement, at the June 2010 IEP meeting, in a full-time, small, supportive special education setting.

As indicated above, the June 2010 IEP did not provide Student a FAPE. The program included 15 hours of special education instruction as well as speech language therapy, occupational therapy and behavior/counseling services. The MDT determined Student's neighborhood school was able to provide these services in a combination inclusion/special education class structure. Because the IEP did not provide a FAPE, it is not possible for the placement to have provided a FAPE as the placement would be implanting an IEP that did not provide FAPE .

I, therefore, find the DCPS denied Student a FAPE at the June 2010 IEP meeting by failing to propose a placement that would provide Student a FAPE.[22] *Id.*

Whether the DCPS IEP team agreed at the January 10, 2011 meeting that the student should be placed at the

Following the January 2011 IEP meeting Petitioners were convinced Student would be placed at The The MDT, in response to the additional information provided by report had agreed Student required a full time special education program. The MDT had indicated they could not implement Student's IEP at Lafayette, his neighborhood school, because he would be the only student who had self contained social studies and science and he would, therefore be in a class by himself.[23] In addition, one member of the MDT had acknowledged Student's tendency to become anxious in school and suggested he be allowed to remain at The for the remainder of the 2010-2011 school year. A second member of the team had suggested The be held accountable for Student's progress if he remained at The It is not surprising that under these circumstances Petitioners were surprised to receive a letter, approximately one month after the January MDT meeting, requesting they attend a meeting to discuss Student's proposed placement at

It is equally clear that DCPS staff had not agreed Student would remain at The

DCPS has a process for proposing placements for students in more restrictive environments. This process includes referring the placement issue to the LRE Support Team at

[22] Because I found the June 2010 IEP did not provide a FAPE and, therefore the related placement could not provide Student a FAPE, there is no need to discuss the placement factor identified here. The June 2010 placement recommendation of the MDT was to implement an IEP that did not provide FAPE. I do not need to resolve whether Student required the placement described in this issue. The described placement would not have been an appropriate setting to implement the IEP that was developed in June.

[23] In this the team was mistaken. See discussion, *infra* at pp. 31 & 32.

central office.[24] The School Special Education Coordinator stated the team would get back to Petitioners with school site information in the future. DCPS witness, Mr. Perrett, provided clear and convincing testimony regarding this more restrictive placement process, and the DCPS staff who testified at hearing were consistent in their testimony that the school DCPS would propose to implement the January IEP had not been selected at the meeting.

I find the MDT did not agree Student would be placed at The at the January 2011 IEP meeting. Only the LRE Support Team or other central office staff could make this decision.

Whether DCPS denied the student a FAPE by acting unilaterally, without parent participation, when proposing to place the student at the Prospect Learning Center. [25]

It is without doubt the IDEA provides for parent participation in the placement process. The regulations, cited *supra* at p. 20, explicitly provide for such participation. In the instant matter Respondent involved Student's parents in the classification and IEP development process as required. Respondent also engaged them in discussions of placement. However, when the actual placement decision was made it was made by DCPS staff without any parental involvement. Petitioners were then notified of the proposed placement and asked to attend a meeting to discuss the placement.

Again Mr. Perrett's testimony is both clear and instructive. He indicated that the placement decision is the determination of the number of hours of special education services a

[24] It should be noted that generally teams that are expecting to refer students to more restrictive placements notify the LRE Support Team in advance. This did not occur in this case because the team had not realized the more restrictive placement would become an issue. The difficulty of establishing IDEA compliance through this process is well illustrated by this case. A placement is, under IDEA, to be determined after an IEP program has been developed. Establishing a policy that is implemented by having the team predetermine where they think they will be placing a student at an upcoming IEP meeting confuses that process.

[25] Respondent's counsel objected to issue #5, indicating he did not think this issue was included in Petitioner's complaint. I overruled his objection. I found this issue was included within the context of the complaint as the complaint clearly involved placement, and I agreed to hear this issue over Respondent's continuing objection.

student will receive as reflected on the student's IEP. Parents participate in this part of the decision at the IEP team meeting. He also indicated that school site selection is a location issue that is always determined at central office. Often this determination is made by the LRE Support Team, but other central office staff also may make this decision. Once the school selection is made parents are notified, a meeting is called to discuss the proposed school and parents have the option of refusing the proposed school selection. Repeatedly, Respondent and Respondent's witnesses stated this is a location issue not a placement issue.

This argument confuses LRE, location and placement. Local education agencies are to assure that students are educated in the least restrictive environment in which his/her IEP can be implemented. To the maximum extent appropriate children with disabilities are to be educated with those who are nondisabled. Removal of children with disabilities from the regular education environment is to occur only if the nature or severity of the student's 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. Thus the enumeration of hours of service provided to a student as reflected on his/her IEP and the identification of where those services will be provided is, in part, an LRE determination. It is noteworthy in this regard that this enumeration of service hours appears in two sections of the DCPS IEP. One of sections is entitled Special Education and Related Services. This first enumeration also includes space for designating the setting in which these services are to be provided. The second section with the hours is entitled Least Restrictive Environment. It is noteworthy that this section does not include the setting for the services despite IDEA specifying any removal from general education as effecting LRE. These two sections of the IEP provide all the information necessary for determining a student's LRE, and, as indicated above, LRE is part of the placement decision. Location of service, on the other hand,

is where the services are provided (referred to as setting in the enumeration of services on the page entitled Special Education and Related Services). A student's IEP, for example, may include thirty five hours of special education services outside the general education classroom. This program determination does not establish where those services are to be provided. Thirty five hours of special education services outside general education could be provided in a self contained classroom in a general education school, or thirty five hours of special education services outside general education could be provided in a special school, through home instruction, or in a hospital or institution. Each of these options constitutes a different placement on the continuum of placements identified in 34 C.F.R. §300.115.

The Court in *A.W. ex rel Wilson v. Fairfax County School Board*, 372 F.3d 674 (4th Cir 2004) is instructive.

> Because the IDEA does not define "educational placement" and, as a term of art, the term lacks an ordinary meaning, we must examine the IDEA to distill a definition that "can most fairly be said to be in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested." *Comm'r v. Engle*, 464 U.S. 206, 217, 104 S.Ct. 597, 78 L.Ed.2d 420 (1984) (internal quotation marks omitted). Toward that end, we note that the IDEA rests on two primary premises: that all disabled students receive a FAPE and that each disabled student receive instruction in the "least restrictive environment" ("LRE") possible. *See, e.g., Bd. of Educ. v. Rowley*, 458 U.S. 176, 180-82, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (discussing precursor to the IDEA); *Bd. of Educ. v. Ill. State Bd. of Educ.*, 184 F.3d 912, 915 (7th Cir.1999) (discussing 34 C.F.R. § 300.550 (2003)).
>
> As noted above, the FAPE requirement addresses the substantive content of the educational services the disabled student is entitled to receive under the IDEA. The LRE requirement reflects the IDEA's preference that "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled." *See* 20 U.S.C. § 1412(a)(5) (2000); 34 C.F.R. § 300.550(b)(1). However, this preference for "mainstreaming" disabled students is not absolute; § 1412(a)(5) permits the delivery of educational services to disabled students in less integrated settings as necessitated by the student's disability. *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir.2004).

> Although the foregoing indicates that the definition of "educational placement" should reflect the "mainstreaming" ideal of the LRE requirement, it does not appear that the term also includes the precise physical location where a disabled student is educated. The LRE requirement directs that the disabled student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. *See* Rowley, 458 U.S. at 202-03 & n. 24, 102 S.Ct. 3034. The IDEA's concern with location thus focuses on the degree to which any particular assignment segregates a disabled student from non-disabled students, rather than on the precise location of the assignment itself.
>
> *Id.* at 681. (Internal citations are to the regulations existing at the date of this opinion. The content of these regulations remains consistent with those currently in effect.)

In summation, LRE is based on the number of hours of service a student receives special education and related services within or without the general education classroom. Location involves the type of environment in which the service is to be delivered. *See, T.Y. v. New York City Department of Education, Region 4*, 584 F.3d 412, 420 (Ct. of App. 2d Cir 2009). That could be the general education classroom or it could be the resource room in a general education school. Finally placement refers to a selection among the continuum of alternative placements identified in 34 C.F.R. §300.115. In general, as DCPS has argued, placement does not generally refer to the selection of a particular school. In most instances the selection of one general education school as opposed to a different general education school is a location determination in which the parents are not entitled under IDEA to participate. Placement involves a determination of the type of school or environment in which the student's program will occur.[26]

The placement decision in this matter, therefore, was not only the determination to provide Student a full time special education program, it included the decision to propose as the school in which the IEP would be implemented. In particular, the selection of was a

[26] Clearly IDEA contemplates more than hours of service as constituting a placement. Not only do the regulations provide the identification of placement options along the continuum. The regulations, 34 C.F.R. §300.325, also reference private school placements by public agencies, and 34 C.F.R. § §300.130 through 300.144 discuss parentally placed private school students. In all these instances placement involves more than the configuration of hours and services DCPS argues is the placement.

placement decision because it involved proposing to remove Student from his neighborhood school, another component of the LRE determination that is part of the placement decision, and to assign him to a separate public school for students with learning disabilities. Moreover "a change in the location at which special education services are provided causes a change in 'educational placement' if the location 'results is a dilution of the quality of a student's education . . ." *A.K. v. Alexandria City School Board* (U.S.Dist. Ct. E.D. Va. 2005) citing *Id.* at 682. As discussed *Infra* at 29, Student's program, when compared to his program at The School, would in fact be diluted at The decision to place Student at was as much a placement decision as it would have been had DCPS chosen to place Student at The

I therefore find DCPS failed to provide Student a FAPE when it determined to place Student at without parental involvement.

Whether the is an appropriate and/or proper placement for the student.

I cannot address whether The is an appropriate placement for Student in isolation. I must address this issue in relation to whether the placements proposed by DCPS either were appropriate or are appropriate. As I have all ready concluded the proposal to place Student at his neighborhood school to implement the IEP drafted in June 2010 that question is readily resolved. The June IEP and placement did not provide Student a FAPE and, therefore, at least until the meeting called to discuss Student's proposed placement at Student's placement at The was appropriate. Respondent had not offered to provide Student an appropriate IEP nor placement. The DCPS had not offered an appropriate placement because, as discussed above, an appropriate placement cannot be offered when the IEP underlying the placement decision does not provide FAPE. Student had to attend school. The option available to him following the June meeting was to attend The Petitioners, furthermore, placed

DCPS on notice at the June meeting that their determination was that the proposed IEP did not provide Student a FAPE and they were going to seek reimbursement for placement at The The was able to provide Student the programs and services determined to be necessary by the Dr. Blumenstein, and Student was showing progress.

I, therefore, find The was an appropriate placement following the June 2010 IEP meeting through March 15, 2011 when Petitioners visited and determined it was not an appropriate placement for Student. I have all ready found the January 2011 IEP provided Student a FAPE. The question before me then is whether DCPS proposed placement to the is an appropriate placement and if not, whether The is an appropriate placement.

is the only DCPS separate school that provides services to learning disabled students in the elementary grades. The 87 students who attend] are in small classes that have a teacher, an aide and sometimes additional staff. The class to which Student would be assigned is a combined second/third grade with a total of 7 students. The majority of the students attending test below average in ability. One student in the classroom to which Student would be assigned tests in the average range in contrast to Student's Very Superior Verbal Comprehension Index score. While the staff from estified they would be able to implement Student's IEP, they were unaware of any of the complexities of Student's disabilities as found by or the staff at The They had not reviewed assessments of Student nor seen the reports on his progress and continued areas of concern. Thus, while their testimony is credible in that it is clear they believe they can implement Student's IEP, the persuasiveness of this testimony is limited. They lack the knowledge to have developed a gestalt of Student.

It is also relevant that is a Title 1 choice school that has not achieved adequate yearly progress ("AYP").[27] Less than 5.0% (in contrast to the target of 73.69%) of the students at PLC are reading at a proficient level, and approximately 28.0% (in contrast to the target of 70.14%) of the students are proficient in math. Any student enrolled in the school is eligible to apply for a transfer to a school that meets proficiency requirements. One of the DCPS schools that meets the proficiency standards is Student's neighborhood school,

The notification of the meeting regarding the proposed placement at indicated that the special education coordinator from would be at the meeting. She was not there. Ms. Gwendolyn Brown, a member of the LRE Support Team from central office was present, but the special duration coordinator from was not. The notification of the meeting indicated the LRE Support Team had selected as Student's proposed placement. Ms. Brown indicated she had not made the selection and did not know who had. While Mr. Perrett's subsequent testimony revealed that sometimes other central office staff make such placements, he did not identify who had made the placement decision. As is the only separate school in DCPS that provides services to learning disabled students in the elementary grades, the issue of who made the selection is not significant. The selection was a given once it was agreed Student needed a full time separate placement and his neighborhood school could not implement the full time IEP as written. The only alternative would have required Respondent place Student at a nonpublic site such as The and Respondent was not willing to do this. Petitioner testified she thought she would b able to ask questions at the meeting regarding the proposed placement at and learn about but no one had specific information about the school. Instead the team

[27] AYP standards and the process allowing students to apply for transfers from schools not meeting AYP in specified circumstances are mandated by

including Ms. Brown encouraged Petitioner to visit the school and look at its web site. Following the meeting Petitioners visited

Petitioner cites *Devries v. Fairfax County*, 882 F.2d 876 (4th Cir. 1989) as a basis to find the proposed placement at does not provide Student a FAPE. In that case the Court, referring to the lower court's decision, recognized the lack of a peer group either academically or socially as a factor to be considered in the determination of the appropriateness of placement. Id. at 879. The Court further recognized that the student at issue there would have difficulty bridging the disparity in cognitive levels between him and the other students at the school site. While it is true that the student in *Devries* was intellectually limited, and the Court was concerned about his ability to interact and benefit from the educational program at issue, similar issues arise in the matter herein. Student, here, would be the only verbally gifted student at Student would be in a school where the majority of his peers would not be reading at close to his level thus limiting his ability to profit from the classroom environment. His classmates, for the most part, are functioning and assessed as having abilities well below Student's, and Student's ability to "bridge the gap" due to his pragmatic language limitations would be very limited. It is therefore likely that rather than being engaged in a learning environment that would support his continued progress, he would be isolated. His educational program would be diluted.

DCPS argued that the only question relevant to my determination of appropriateness of is whether the school can implement the IEP. While, at the most basic level, this may be true, I reject this position as overly simplistic. The core concept of IDEA is the individualized nature of the educational programs and services that are to be developed and provided to students with disabilities. It is clear that when the staff at stated they could implement the goals on Student's IEP, this was almost a ritualistic response. Rather than indicating knowledge of

[28] DCPS would not allow Petitioners' educational advocate to accompany them on the visit.

Student's needs as reflected in the goals and on his assessments, their responses were more akin to saying I have the ability, skills and knowledge to implement these goals. In this I am sure they were truthful. I find, however, that while may be able to implement the specific goals on Student's IEP, it cannot provide Student with the environment necessary to support his educational development while implementing these goals. The staff did not understand the complexity of Student's disability and the environment cannot provide the complexity of supports both academically and socially required.

I find is not an appropriate placement. The remaining question before me, then, is whether The is the appropriate placement for Student.

The is a private school that provides special education and related services to students with learning disabilities. The 79 students who attend The are in six classrooms. Student is in a class of 13 students with a teacher, an intern with provisional certification, and an assistant. The students have average to above average intelligence with weaknesses in one or more areas of academics. Student has shown progress at the school but continues to demonstrate difficulties due to his slow processing speed, a rigidity in thought processes, his distractibility and related need for redirection and his language based problems. The testimony and exhibits make clear the benefit Student has obtained through his attendance at He is happier, more successful academically and more able to socialize with his peers. His dysfunctional behaviors have decreased.

Yet while demonstrating the benefits of The this panoply of success does not mean that DCPS should be held financially responsible for student's continued placement there. The IDEA requires a student's IEP and placement provide him/her with some educational benefit. This is not a guarantee that every student will have the program and placement that will

best meet their needs. Rather it is intended to guarantee that every student receives a program and placement that is appropriate. It is the difference between providing a Cadillac and a Chevrolet. Parents on the other hand desire their children to have the best whenever possible. Thus the IDEA itself creates a tension between the desires of the parent and the obligation of the school district.

The Petitioners in the instant matter have demonstrated their concern and intent to provide Student the opportunities he requires to be a successful and confident child and adult. They have taken every possible step to assure his success. This is their prerogative. It is not, however, a requirement that DCPS do the same. At the January IEP meeting, the conflict before me was sealed. Petitioners wanted and believed they had obtained placement at The through DCPS, and DCPS was not willing to place Student there. The proposed placement at was inevitable. The MDT had determined they could not provide Student's IEP at his neighborhood school. The only placement option within district was While DCPS does make some placements in non public schools, it attempts to find public school placements whenever possible. Mr. Perrett testified that "Everyone knew The was not in the cards."[29]

The MDT decision that Student's IEP could not be implemented at was based on erroneous information. The team determined that only Student would have a self contained social studies and science class. They decided that since he would be the only student in these classes he would become a class of one alone in the classroom for this instruction. principal, Gail Main, testified that this was incorrect.[30] She indicated that Student would receive social studies and science instruction in the resource room and that other students would be

[29] He also testified that while the LRE Support Team has made placements at nonpublic schools it has never placed a student at The

[30] Miss Main had not attended the January IEP meeting.

present when this occurred. Whether this configuration of services, that would have Student receiving all his academic instruction is resource room, and included with his nondisabled peers from his neighborhood for non academic instruction provides Student the needed support, structure and small class environment he needs is my last required determination. While it is difficult to resolve this dilemma, I turn to the burden of proof. Petitioners have presented a strong case for Student's placement at the They have provided substantial evidence both testamentary and documentary of Student's complex needs. They have also showed The is helping Student make noteworthy gains. They have met the burden of proof. Respondent, on the other hand, has not persuaded me regarding the appropriateness of its proposed placement at perhaps because Respondent chose to rely on the argument that was not a placement decision but rather a location decision. DCPS witnesses regarding had extremely limited knowledge of Student and his needs. The school environment does not provide an environment designed to address the complexity of student's learning disabilities.

I therefore find the appropriate placement for student is The Lab School.

II. Relief

Petitioners have requested reimbursement for Student's placement at The for the 2010-2011 school year and for placement at The for the 2011- 2012 school year.

Under IDEA parents who place their children at private schools may be reimbursed only if (1) the school official's public placement violated IDEA and (2) the private school placement was proper under IDEA . *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed2d 284 (1993). In analyzing the first factor of whether the public placement violates IDEA,[I must undertake] a two-step sub-inquiry, asking (a) whether the school officials complied with the procedures set forth in IDEA, and (b) whether the IEP developed through

IDEA procedures was reasonably calculated to enable the child to receive educational benefits." *Alfonso v. District of Columbia*, 422 F.Supp.2d 1, 5 (D.D.C. 2006)

I have all ready found Respondent's proposed public placements violated the IDEA both as to the June 2010 IEP and the January 2011 IEP, and I have found that Student's placement at The was appropriate. While the June 2011 IEP was developed following IDEA IEP procedures the IEP could not, I found, be deemed reasonably calculated to provide educational benefit and thus the placement also must fail. In the second instance, the January 2011 IEP was reasonably calculated to provide educational benefit. However, the placement was determined in violation of IDEA procedures and, further, could not be deemed a placement in which Student could obtain some educational benefit. I also have found that Student's placement at The was appropriate.

Petitioners therefore are entitled to reimbursement for The tuition for the 2010-2011 school year. I further grant Petitioners' request that DCPS provide tuition for placement at the for the 2011 – 2012 school year. Respondent has asked I consider reducing the amount of tuition reimbursement for the 2010-2011 school year to Petitioners arguing they had no intention of ever placing Student in a DCPS school. Respondent notes Petitioner signed a contract and paid The a nonrefundable tuition deposit prior to beginning the DCPS enrollment process. Respondent suggests Petitioners were, therefore, acting in bad faith. I reject this position. Petitioners were required to make a tuition deposit in order to assure Student had a school placement at the start of the 2010 -2011 school year. There is no way to determine whether they would have been willing to lose this deposit if the program and placement proposed by Respondent in June 2010 would have been appropriate. I note Petitioner testified they had moved to the neighborhood they live in so Student could attend This

occurred, of course, before they became aware of Student's educational disabilities. Petitioners by their actions assured Student had an appropriate placement in the 2010-2011 school year. I add I have no more basis for determining Petitioners' actions reflected bad faith than I do for determining Respondent's actions constituted bad faith in that they knew in advance they had never placed a student at The and it was not a genuine placement consideration.

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 propose an appropriate program for the student in the June 2010 individualized education program ("IEP");

2) DCPS denied the student a FAPE by failing to propose an appropriate placement, at the June 2010 IEP meeting, in a full-time, small, supportive special education setting;

3) DCPS proposed an appropriate program in the January 10, 2011 IEP;

4) The DCPS IEP team did not agree at the January 10, 2011 meeting that Student should be placed at The

5) DCPS denied Student a FAPE by acting unilaterally, without parent participation, when proposing to place the student at the and

6) The is an appropriate and/or proper placement for Student.

ORDER

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

1. DCPS is to reimburse Petitioners full tuition and all related costs, including related services, transportation and extended school year costs for Student's enrollment at The for the 2010 – 2011 school year. Petitioners are to provide

1. Respondent with receipts or other reasonable documentary evidence of these costs. All this documentation is to be provided to Respondent at one time. Once these documents are received Respondent is to reimburse Petitioner within 90 days.
2. Within 10 business days, DCPS shall provide Student a prior notice of placement to The Student shall attend The at DCPS expense for the 2011-2012 school year.
3. DCPS shall provide funding for all related costs required for Student to attend The including related services and transportation to and from The as required, for educational and IEP program purposes; and
4. DCPS is to convene an MDT meeting, to include relevant staff from The and Petitioners and their educational advocate, to make any IEP changes required by this determination including identifying The as the school Student will be attending.

IT IS SO ORDERED:

April 8, 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