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

2012 NOV 28 AM 8:58
OSSE
STUDENT HEARING OFFICE

STUDENT, [1]	)	**Case Number: 2012-064**
	)	
Petitioner,	)	**Due Process Hearing:**
	)	**November 15, 2012**
v.	)	**Room 2004**
	)	
THE DISTRICT OF COLUMBIA	)	**Hearing Officer Determination Deadline:**
PUBLIC SCHOOLS,	)	**November 28, 2012**
	)	
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 a [redacted] student with a disability who attends a non-public school ("Nonpublic School 1") in the District of Columbia. On September 14, 2012, Petitioner filed a due process compliant ("Complaint") against Respondent, the District of Columbia Public Schools ("DCPS"), alleging violations of the IDEA.

On September 17, 2012, this Hearing Officer was assigned to preside over this case. On September 20, 2012, Respondent filed a timely response to the Complaint.[2]

On October 2, 2012, Petitioner filed a Motion for Stay Put. On October 4, 2012, Respondent filed an Opposition to Compel Compliance with Stay Put Provisions.

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[1] Personal identification information is provided in Attachment A.
[2] Respondent did not challenge the sufficiency of the Complaint.

On October 5, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. The parties did not agree to start the forty-five day, due process hearing period on that date. Thus, the resolution period ended on October 13, 2012.

On October 17, 2012, this Hearing Officer held a prehearing conference in which Donovan Anderson, counsel for Petitioner, and Lynette Collins, counsel for Respondent, participated. This Hearing Officer informed counsel that the end of the forty-five-day timeline, i.e., the deadline for the hearing officer determination, is November 28, 2012. Counsel agreed that the due process hearing would take place on November 15, 2012. On October 17, 2012, this Hearing Officer issued a prehearing order memorializing the prehearing conference.

On October 19, 2012, this Hearing Officer issued an interim order granting Petitioner's motion for stay put. This Hearing Officer ordered Respondent to continue to implement Petitioner's individualized educational program ("IEP") and ensure that he continues to receive an educational program comparable to the program he has received at Nonpublic School 1 throughout the pendency of this case.[3]

The due process hearing commenced at [redacted] on [redacted] in room [redacted]. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits[4] and Respondent's proposed exhibits.[5] Petitioner testified and presented three witnesses on his behalf, his aunt ("Aunt"), the community relations director ("Director") of Nonpublic School 1, and the special education coordinator ("SEC") of Nonpublic School 1.

Respondent presented two witnesses, the admissions director (Admissions Director) of Nonpublic School 3 and a DCPS progress monitor ("Monitor"). After the parties presented oral closing arguments, the due process hearing concluded at 5:15 p.m. on November 15, 2012.

III. ISSUE PRESENTED.

This Hearing Officer certified the following issue for adjudication at the due process hearing:

Whether Respondent denied Petitioner a free, appropriate, public education ("FAPE") at the outset of the 2012-2013 school year by changing his educational placement from Nonpublic School 1, a full-time, out of general education program that focuses on

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[3] This Hearing Officer stated that, as long as Respondent provides Petitioner a program comparable to the program he has received at Nonpublic School 1, including its intensive focus on functional academics geared toward preparing Petitioner for post-secondary employment, Respondent would be allowed to implement Petitioner's IEP at another location. To date, Petitioner has remained at Nonpublic School 1.

[4] This Hearing Officer admitted into evidence Petitioner's exhibits 1-12, inclusive. Neither party objected to the admission of the other party's exhibits.

[5] This Hearing Officer admitted into evidence Respondent's exhibits 1-15, inclusive.

academics as well as transition services, i.e., the acquisition of vocational skills, job training, and post-secondary employment, to Nonpublic School 2, which Petitioner asserts cannot implement Petitioner's IEP and would focus on his attainment of a high school diploma even though he cannot attain a diploma in the nine months remaining in his high school tenure.

Petitioner requests relief in the form of an order that would require Respondent to place him in Nonpublic School 1 at public expense for the remainder of the 2012-2013 school year.[6]

IV. FINDINGS OF FACT

1. Petitioner is a [redacted] who is eligible for specialized instruction and related services as a student with a specific learning disability.[7] His full-scale IQ is 65, which places his intellectual functioning in the extremely low range and above that of approximately one percent of his peers.[8]

2. Petitioner's verbal reasoning abilities are much better developed than his nonverbal reasoning abilities.[9] Making sense of complex verbal information and using verbal abilities to solve novel problems are relative strengths for Petitioner.[10] Processing complex visual information by forming spatial images of part-whole relationships or by manipulating the parts to solve novel problems without using words is a weakness.[11]

3. Petitioner's working memory, i.e., ability to attend to verbally presented information, process information in memory, and then formulate a response, is at the second percentile of his same-age peers.[12] Petitioner experiences significant difficulty in holding information to perform a specific task.[13] Due to his difficulties with working memory, Petitioner requires more time to process complex information.[14] His mental

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[6] During the prehearing conference, counsel for Petitioner informed this Hearing Officer that Petitioner also seeks an order that would require Respondent to provide him compensatory education. Counsel for Petitioner withdrew this request at the outset of the due process hearing.

[7] Petitioner Exhibit 1 at 1 (October 25, 2011, individualized education program).

[8] Petitioner Exhibit 2 at 3 (August 1, 2008, report of Comprehensive Psychological Evaluation). There is a 95 percent probability that Petitioner's true IQ falls in the range of 62-70. *Id.*

[9] *Id.* at 5.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

energy drains more quickly than other adults his age, which results in more frequent errors on a variety of learning tasks.[15]

4. Petitioner's processing speed, i.e., ability to process simple or routine visual information quickly and efficiently and to quickly perform tasks based on that information, is in the second percentile.[16] His skill in processing visual material without making errors is well below his peers.[17]

5. In 2008, when Petitioner was seventeen years old and in his junior year in high school, his performance in reading was equivalent to a child in the ninth month of fifth grade and in the fourth percentile of his same-age peers.[18] His performance in mathematics was equivalent to a child in the ninth month of second grade and below the first percentile of his same-age peers.[19] His performance in listening comprehension was equivalent to a student in the second month of fourth grade and within the first percentile of his same-age peers.[20]

6. In 2008, Petitioner's visual motor integration, i.e., the extent to which he can integrate his visual and motor abilities, was equivalent to a nine-year-old child, in the second percentile of his same-age peers, and in the borderline range.[21] This was consistent with his extremely low processing speed and indicates that he has difficulty processing complex visual information or forming spatial images without making errors.[22]

7. In 2008, Petitioner was diagnosed with dysthymic disorder.[23] He exhibited a cluster of symptoms in which feelings of uselessness, dejection, pessimism, and discouragement are intrinsic components.[24] He was preoccupied with concerns about his social adequacy and self-worth.[25] He had pervasive self-doubts.[26]

Petitioner's Current IEP and Placement

8. On October 25, 2011, Respondent convened a meeting of Petitioner's individualized education program ("IEP") team.[27] Petitioner and his [redacted] attended this

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[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 6, 9. The most recent assessment of the Student's educational performance was in 2008.
[19] *Id.* at 6.
[20] *Id.*
[21] *Id.* at 6-7.
[22] *Id.* at 7.
[23] *Id.* at 11. The Student's most recent psychological evaluation was in 2008.
[24] *Id.* at 10.
[25] *Id.*
[26] *Id.*
[27] Petitioner Exhibit 1 at 1.

meeting in person.[28] Petitioner's special education teacher, a speech-language pathologist, a special education coordinator, the Monitor, and the Director also attended the meeting.[29]

9. At the October 25, 2011, meeting, the IEP team developed an IEP for Petitioner.[30] The IEP team developed annual goals in mathematics,[31] reading,[32] and written expression.[33] The IEP team also developed annual goals in the area of speech and language[34] and emotional, social, and behavioral development.[35]

10. At the October 25, 2011, meeting, the IEP team determined that Petitioner required 28.50 hours per week of specialized instruction outside the general education setting.[36] The IEP team also determined that Petitioner should receive thirty minutes per week of speech-language pathology and one hour per week of behavioral support services.[37]

11. At the October 25, 2011, meeting, the IEP team developed a transition plan for Petitioner.[38] Petitioner would like to attend college after graduating high school.[39] He would like to have his own apartment and support himself financially.[40] He also is interested in becoming a fashion designer or stylist.[41]

12. At the October 25, 2011, meeting, the IEP team developed one short-term goal in the area of post-secondary education and training as part of Petitioner's transition plan.[42] This short-term goal anticipates that Petitioner would identify the entrance and graduation requirements for at least three colleges and universities.[43] The transition plan provided that, to accomplish this goal, Petitioner would receive sixty minutes per month of assistance with researching these requirements.[44] The IEP team anticipated that Petitioner would graduate high school with a high school diploma on June 15, 2012.[45]

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[28] *Id.*
[29] *Id.* at 1-2.
[30] Petitioner Exhibit 1.
[31] *Id.* at 3-5.
[32] *Id.* at 5-7.
[33] *Id.* at 7-8.
[34] *Id.* at 8-9.
[35] *Id.* at 9-10.
[36] *Id.* at 11.
[37] *Id.*
[38] *Id.* at 15.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 16.
[43] *Id.*
[44] *Id.*
[45] *Id.* at 19.

13. At the October 25, 2011, meeting, the IEP team developed four short-term goals designed to assist Petitioner in reaching his long-term employment goals of becoming a fashion designer or stylist.[46] The first of the four short-term goals anticipates that, after research, Petitioner would apply to at least two vocational schools that offer training in sewing and or fashion.[47] The second short-term goal anticipates that Petitioner would research the salary of an entry-level fashion designer and determine what education and experience would be required to advance in this career.[48] The third goal anticipates that Petitioner would articulate the nature of his disability and advocate for the accommodations he would require in school and the workplace.[49] The fourth short-term goal anticipates that Petitioner would apply for three part-time, retail positions.[50]

14. At the October 25, 2011, meeting, the IEP team determined that Petitioner would receive transition services for employment.[51] The IEP team determined that, over the following year, Petitioner should receive thirty minutes per week of job opening awareness training, thirty hours per year of job coaching, three hours per month of job placement services, thirty hours per year of job shadowing, and ten hours per year of mock interview training.[52] The IEP team determined that Petitioner would attend an employability class for sixty minutes per week, job fairs for ten hours per year, and career lectures for five hours per year.[53] The IEP team determined that Petitioner's course of study would include employability, life skills, English/language arts, and math classes.[54]

15. In the area of independent living, the IEP team on October 25, 2011, determined that Petitioner's long-range goal would be to reside with family members as he pursues the goal of living independently in his own apartment.[55] The IEP team developed three short-term measurable goals. The first short-term goal anticipates that Petitioner would create his own personal monthly budget and utilize it with eighty percent accuracy.[56] The second short-term goal anticipates that Petitioner would read and interpret

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[46] *Id.* at 17. Even though the transition plan reflects that Petitioner is interested in becoming a fashion designer and/or stylist, the sole long-term goal in the area of post-secondary employment anticipates that he would seek full-time employment in a barbershop. *Id.* at 16. Yet, none of the short-term goals are designed to prepare Petitioner for a job as in a barbershop. *Id.* at 17. This Hearing Officer finds that the statement that Petitioner planned to seek employment in a barbershop was erroneous.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.* at 17.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.* at 17-18.
[56] *Id.* at 18.

memos, reports, and manuals in the workplace in four out of five trials.[57] The third short-term goal anticipates that Petitioner would study for and take his written and road tests to obtain a driver's license.[58]

16. At the October 25, 2011, meeting, the IEP team determined that Petitioner would receive transition services for independent living.[59] The IEP team determined that, over the following year, Petitioner would attend a life skills class for sixty minutes per day.[60]

17. At the October 25, 2011, meeting, the IEP team determined that Petitioner would attend Nonpublic School 1 for the 2011-2012 school year.[61] Nonpublic School 1 is a special education school for students between the ages of seventeen and twenty-two with low academic achievement.[62] Nonpublic School 1 is close to Petitioner's home.[63] Petitioner has attended Nonpublic School 1 since the 2009-2010 school year.[64]

The 2011-2012 School Year

18. Nonpublic School 1 has four main instructional components.[65] In the academic component, Nonpublic School 1 provides students remedial instruction to prepare them to obtain a national external diploma.[66] Once the students have developed the necessary academic skills, they begin building an academic portfolio that would allow them to enter a national external diploma program.[67] The students receive specialized instruction in reading, mathematics, and writing.[68] As students progress through the program, they must complete workbooks to demonstrate that they have mastered high school level skills, i.e., their competency, in each of these three subject areas.[69] Each student must earn seventy-nine competencies to be eligible for the national external diploma program.[70] Nonpublic School 1 then administers tests in the competency areas to ensure the students are prepared for the national external diploma program.[71]

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[57] *Id.* It appears that this is a short-term goal that would assist Petitioner in achieving his long-term, post-secondary employment goals rather than his independent living goal.
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] Petitioner Exhibit 1 at 1.
[62] Testimony of Director; testimony of Monitor.
[63] Testimony of Aunt.
[64] Testimony of Aunt.
[65] Testimony of Director.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*

19. During the 2011-2012 school year, Nonpublic School 1 had a partnership with a small, community-based organization ("CBO"), which administered the national external diploma program.[72] Once Nonpublic School 1 students completed the seventy-nine competencies, they transitioned to the CBO. At the CBO, volunteers tested the students to ascertain whether they had mastered the competencies. After the students demonstrated mastery of each of the competencies, they were awarded regular high school diplomas through DCPS.[73]

20. During the 2011-2012 school year, Nonpublic School 1 sent fourteen students to the CBO for the national external diploma program.[74] This exceeded the capacity of the CBO, which is an all-volunteer organization.[75] As a result, Respondent informed Nonpublic School 1 that its students could no longer earn DCPS diplomas through the CBO.[76]

21. The second instructional component at Nonpublic School 1 is vocational training.[77] Nonpublic School 1 has four vocational training programs certified by the Office of State Superintendent of Education ("OSSE").[78] These programs train students for post-secondary jobs as a tire maintenance technician, aviation maintenance technician, home health aide, and cosmetologist or barber.[79] Nonpublic School 1 also partners with community organizations to provide career opportunities for students who aren't interested in any of these four vocations.[80]

22. The third instructional component at Nonpublic School 1 is life skills and transition planning.[81] The life skills program is a classroom-based instructional program aimed at workplace readiness.[82] In this program, students learn to search for jobs openings, write resumes, fill out job applications, participate in mock interviews, and are taught the general rules and expectations of a work environment.[83] This program also teaches students how to register to vote, obtain a driver's license, and prepare and adhere to a household budget.[84] The program also focuses on financial literacy.[85]

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[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] Testimony of Director.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] Testimony of Director.
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*

23. The fourth instructional component at Nonpublic School 1 is a credit-based, career exploration class.[86] During this class, students attend job fairs and meet with their job coaches to focus on their long-term career goals. Nonpublic School 1 brings in members of the community to inform the students about vocational schools and job opportunities.[87] Students also participate in job shadowing and, once they are prepared, receive work internships.[88] Some students also receive job offers through this program.[89]

24. During the 2011-2012 school year, thirty-seven students attended Nonpublic School 1.[90] Only eight students, including Petitioner, currently attend the Nonpublic School 1.[91] The reduced enrollment is the result of students entering external diploma programs, losing their eligibility for specialized education services due to their age, or being removed from school rolls for truancy.[92] Other students were dropped from the rolls after they were incarcerated.[93] Respondent also removed students from the Nonpublic School and placed them in DCPS external diploma programs.[94]

25. During the 2011-2012 school year at Nonpublic School 1, each classroom had no more than ten students.[95] During the 2012-2013 school year, the Nonpublic School 1 has maintained these class sizes despite the drop in enrollment.[96] During both of these school years, Petitioner has received academic instruction at Nonpublic School 1 from teachers who are certified to teach special education.[97]

26. At Nonpublic School 1, Petitioner is enrolled in reading, history, math, and career exploration classes through a credit-recovery program.[98] Credit recovery classes provide students to retake classes they had previously failed and to earn high school credits for these classes.[99] Students take these credit recovery classes to prepare to transition into the pre-external diploma program at Nonpublic School 1.[100] This credit recovery program has been approved by DCPS.[101]

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[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] Testimony of Director.
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] Testimony of Director.
[96] *Id.*
[97] *Id.*
[98] Testimony of Director.
[99] Testimony of Monitor.
[100] *Id.*
[101] *Id.*

27. During the 2011-2012 school year, Petitioner made progress at Nonpublic School 1.[102] In the three years he has been enrolled in Nonpublic School 1, Petitioner's performance in math increased from the third-grade level to the seventh-grade or eighth-grade level.[103] He made similar gains in reading.[104]

Decision to Remove Petitioner from Nonpublic School 1

28. On July 5, 2012, Respondent convened a meeting to discuss the school Petitioner would attend for the 2012-2013 school year.[105] At the meeting, the Monitor stated that it would no longer place students at Nonpublic School 1 at public expense.[106] The Monitor explained that, because Nonpublic School 1 did not have a certificate of approval ("COA") from OSSE, it was ineligible to serve DCPS students.[107]

29. The Monitor then announced that Respondent planned to remove Petitioner from Nonpublic School 1.[108] The Monitor proposed that, if Petitioner were to be found eligible for an external diploma program, he could attend an external diploma program at a DCPS public school.[109] The Monitor explained that, at the external diploma program, Petitioner would have a special education teacher, a paraprofessional, and a counselor.[110] She explained that Petitioner would have to attend a DCPS external diploma program between the hours of 2:00 p.m. and 8:00 p.m.[111] She added that Petitioner had the option to attend another DCPS external diploma program between the hours of 9:00 a.m. and 3:00 p.m., although Respondent had not yet developed this program.[112]

30. At the July 5, 2012, meeting, the Monitor explained that, if Petitioner was not eligible for an external diploma program, he could attend either Nonpublic School 3 or another nonpublic school.[113] The Monitor asserted that, at these nonpublic schools, Petitioner would have the option of earning credits toward a high school diploma or preparing for an external diploma program.[114]

31. At the July 5, 2012, meeting, the Monitor expressed no concerns about the quality of the academic, vocational, career, and independent living instruction at Nonpublic

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[102] Testimony of Petitioner, Aunt.
[103] Testimony of Director.
[104] *Id.*
[105] Petitioner Exhibit 4 at 1 (July 5, 2012, meeting notes).
[106] *Id.*
[107] Testimony of Director.
[108] Testimony of Director, Monitor.
[109] Petitioner Exhibit 4 at 1.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*

School 1.[115] The meeting participants made no decision on a particular program for Petitioner for the 2012-2013 school year.[116] Instead, they agreed to reconvene at a later date to make a final decision.[117]

32. On July 31, 2012, the Monitor issued a prior written notice ("PWN") informing Petitioner that it had changed his location of services from Nonpublic School 1 to Nonpublic School 3.[118] In the PWN, the Monitor explained that Respondent decided to change Petitioner's location of services because Nonpublic School 1 did not have an OSSE certificate of approval ("COA") and Nonpublic School 3 could meet his needs.[119]

33. The Monitor also considered other information, including Petitioner's assessments, progress reports, input from his teachers and therapist, and his attendance in deciding to change his location of services.[120] The Monitor was concerned by the dramatic reduction in staff at Nonpublic School 1.[121] The Monitor was concerned that Nonpublic School 1 did not have a reading specialist or a vocational specialist on staff in August 2012.[122]

34. The Monitor was concerned about the pacing of the instruction as it appeared to her that students at Nonpublic School 1 were not progressing as quickly as she thought they should.[123] The Monitor acknowledged that some students at Nonpublic School 1 made academic progress.[124]

35. The Monitor also was concerned that, because it could no longer send students to the CBO to earn national external diplomas, Nonpublic School 1 would be unable to provide Petitioner a high school diploma.[125] Thus, she believed that Nonpublic School 1 was unable to implement the portion of Petitioner's October 25, 2011, IEP that provides he is to receive a high school diploma.[126] Petitioner still hopes to obtain a high school diploma.[127]

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[115] Testimony of SEC.
[116] *Id.*
[117] *Id.*
[118] Petitioner Exhibit 4 at 2-3 (July 31, 2012, Prior Written Notice).
[119] *Id.* at 2.
[120] *Id.*; testimony of Monitor.
[121] Testimony of Monitor.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*; testimony of Petitioner; testimony of Aunt.

Nonpublic School 1 Provisional Certificate of Approval

36. On August 3, 2012, OSSE issued Nonpublic School 1 a provisional COA.[128] The provisional COA is valid for six months from August 4, 2012.[129] On August 17, 2012, OSSE informed Nonpublic School 1 that it may not enroll any additional students from the District of Columbia while its COA is on provisional status.[130]

37. On August 17, 2012, OSSE provided Nonpublic School 1 a "Provisional Exit Plan."[131] OSSE informed Nonpublic School 1 that it must satisfy the requirements of the provisional exit plan before OSSE would grant approval for Nonpublic School 1 to enroll District of Columbia students.[132]

38. In the provisional exit plan, OSSE informed Nonpublic School 1 that, by August 24, 2012, it must submit a signed statement that indicates the total number of services for which it is able to provide educational services based on its current staffing.[133] OSSE informed Nonpublic School 1 that, by August 31, 2012, it must provide a detailed description of the measures used to assess student growth and provide baseline and subsequent assessment results for all students.[134] OSSE required Nonpublic School 1 to provide by August 31, 2012, a detailed description of how its curriculum would be delivered to students, all methods of instructional delivery that will be used, how it will meet the specialized instruction hour for students, and how the program would ensure that accommodations are provided.[135] OSSE also required Nonpublic School 1 by August 31, 2012, to provide an assurance that its curriculum options are aligned with the District of Columbia's learning standards, grades, promotion, and graduation requirements so that students are able to earn credits from their sending local education agencies; and provide a list of courses that must be completed to meet the high school graduation requirements through its partners.[136]

39. In the provisional exit plan, OSSE informed Nonpublic School 1 that, by September 17, 2012, it must provide copies of all certifications, licenses, and qualifications of its teachers, related service providers, administrators, and paraprofessionals.[137] OSSE informed Nonpublic School 1 that, by September 17, 2012, it must provide proof of the

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[128] Petitioner Exhibit 7 at 1 (August 3, 2012, notice of OSSE award of provisional COA to Nonpublic School 1).
[129] Petitioner Exhibit 8 at 2 (August 17, 2012, letter from OSSE to Nonpublic School 1).
[130] *Id.*
[131] *Id.*; Respondent Exhibit 3 at 1 (August 17, 2012, Provisional Exit Plan for Approval).
[132] Petitioner Exhibit 8 at 2.
[133] Respondent Exhibit 3 at 3.
[134] *Id.* at 9.
[135] *Id.* at 4.
[136] *Id.*
[137] Respondent Exhibit 3 at 1.

physical restraint certifications of its staff.[138] OSSE further informed Nonpublic School 1 that, by September 17, 2012, it must provide documentation that its curriculum is aligned with the District of Columbia standards of learning.[139]

40. The Provisional Exit Plan for Nonpublic School 1 contained several other requirements, including that, by September 17, 2012, it must provide a signed certificate of compliance, submit its policy for reintegration plans for a student's return to a less restrictive environment, submit its plan to ensure all students are included in the statewide assessment, and submit a statement that identifies all circumstances under which a student might receive monetary incentives or rewards from the school, its staff, donors, or others affiliated with the school.[140] OSSE also required Nonpublic School 1 to submit by September 17, 2012, a list of all students who were previously enrolled in the national external diploma program in partnership with the CBO, their new exit goals (i.e., standard high school diploma, GED, certificate of completion), and the date these goals were established.[141] Finally, OSSE required Nonpublic School to provide fiscal audits for the past two years no later than October 15, 2012.[142]

Proposed Change in "Location of Services"

41. On August 3, 2012, the Monitor sent a letter to Petitioner informing him that Respondent planned to convene a meeting on August 7, 2012, to discuss his change in location of services for the 2012-2013 school year.[143] In the letter, the Monitor informed Petitioner that he would attend Nonpublic School 3 for the 2012-2013 school year.[144] She stated that the decision to identify a new location of services was the result of the failure of Nonpublic School 1 to obtain a COA.[145]

42. On August 22, 2012, Respondent convened a meeting to discuss the Student's placement.[146] At the meeting, Respondent proposed that Petitioner attend Nonpublic School 3.[147] Petitioner responded that he did not want to attend Nonpublic School 3.[148]

43. Nonpublic School 3 services emotionally disturbed students.[149] The school has a total of forty-four students who range in age from fourteen to nineteen years old.[150]

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[138] *Id.*
[139] *Id.* at 2.
[140] *Id.* at 2-3.
[141] *Id.* at 3.
[142] *Id.*
[143] Petitioner Exhibit 6 at 1 (August 3, 2012, letter from Monitor to Petitioner).
[144] *Id.*
[145] *Id.*
[146] Petitioner Exhibit 3 at 1 (August 22, 2012, Meeting Notes).
[147] *Id.*
[148] *Id.*
[149] Testimony of Admissions Director.
[150] *Id.*

There are no general education students at Nonpublic School 3.[151] The school issues diplomas to its students who earn sufficient credits, as well as certificates of completion.[152]

44. Nonpublic School 3 offers vocational classes in the areas of carpentry, which includes plumbing and electrical; graphic web design; child care courses for students who want to work with infants; and a culinary arts class that teaches students the basics of cooking and prepares them to work in restaurants.[153] Nonpublic School 3 also offers a vocational computer systems class.[154] It does not offer any vocational classes or training in fashion, although it would coordinate with department stores to provide seasonal jobs or internships to students interested in fashion.[155]

45. Nonpublic School 3 employs transition coordinators who work with students on generating resumes, assessing their skills, filling out online job applications, and general employment readiness.[156] It provides students opportunities to participate in mock interviews and teaches them how to answer interview questions.[157] It also provides job shadowing and internship opportunities to students.[158]

46. Nonpublic School 3 does not offer remedial education classes.[159] It has one classroom in which students may practice daily living skills such as doing laundry, writing checks, shopping for food, and taking public transportation.[160]

47. Nonpublic School 3 would be able to implement the specialized instruction and related services on Petitioner's IEP.[161] However, if the Student attended Nonpublic School 3, he would be mostly segregated from the regular student body.[162] Nonpublic School 3 does not believe it would be appropriate to place a twenty-one-year-old student in classes with fourteen-year-old students.[163]

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[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.* Although the Nonpublic School 1 students would spend most of their time in the area dedicated to transition classes, they may interact with the regular student body when attending content-area classes. *Id.*

48. If Petitioner were to attend Nonpublic School 3, he would be placed in its Pre-General Equivalency Diploma ("GED")/Adult Basic Education Program.[164] The program would focus on adult basic education and transition services.[165] While this program would not provide students the opportunity to earn Carnegie units toward a high school diploma, it would provide them an opportunity to earn a high school certificate of completion.[166] The program would focus on preparing students to enroll in a GED preparatory program.[167]

49. The pre-GED program would provide instruction in reading, writing, and mathematical problem solving.[168] It would provide instruction in graphic literacy skills by teaching students to use graphic organizers to help them master the thinking skills necessary to take the GED exam.[169] Upon completion of the pre-GED/Adult Basic Education Program, a student would receive a DCPS certificate of completion and would be eligible to enroll in a certified GED program.[170]

50. The pre-GED/Adult Basic Education Program at Nonpublic School 3 also would provide transition services.[171] Petitioner would first take an interest inventory.[172] Then Nonpublic School 3 would put together a fashion vocational program for him.[173] The school transition coordinator would work with Petitioner on generating a resume, assessing his skills, filling out online job applications, and general employment readiness.[174] The transition coordinator would provides Petitioner opportunities to participate in mock interviews and teach him how to answer interview questions.[175] He also would have opportunities for job shadowing and internships.[176]

51. Currently, there are no students enrolled in the pre-GED/Adult Basic Education Program at Nonpublic School 3.[177] This is because the program does not yet exist.[178] Nonpublic School 3 would design the program especially for incoming students from Nonpublic School 1.[179]

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[164] Testimony of Admissions Director; Respondent Exhibit 5 at 1 (description of Nonpublic School 3 Pre-GED/Adult Basic Education Program).
[165] *Id.*
[166] Respondent Exhibit 5 at 1.
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] Testimony of Admissions Director.
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*

52. At the August 22, 2012, meeting, Petitioner stated that he may be interested in pursuing a high school diploma.[180] The Monitor then suggested that Petitioner consider Nonpublic School 2 as an option.[181] Petitioner and his Aunt agree to visit Nonpublic School 2.[182] The meeting participants agreed to reconvene the meeting in a few days.[183]

53. Petitioner and his Aunt visited Nonpublic School 2 the day after the August 22, 2012, meeting.[184] Petitioner liked Nonpublic School 2, but was reluctant to attend this school because he would be placed in an evening program, which would conflict with his work schedule.[185] Additionally, Petitioner prefers to attend school during the day because he gets tired by evening.[186] Petitioner also felt that Nonpublic School 2 was too far from his home.[187] Petitioner lives in the southeast quadrant of the District of Columbia while Nonpublic School 2 it is in the northeast quadrant.[188]

Nonpublic School 3 Provisional Certificate of Approval

54. On October 26, 2012, OSSE issued a provisional COA to Nonpublic School 3.[189] OSSE informed Nonpublic School 3 that, while its COA is on probationary status, it may not enroll any additional students from the District of Columbia.[190] OSSE also provided Nonpublic School 3 a "Provisional Exit Plan."[191]

55. In the October 26, 2012, letter, OSSE informed Nonpublic School 3 that, if it failed to satisfy the requirements of the provisional exit plan by December 17, 2012, its COA would expire.[192] before OSSE would grant approval for Nonpublic School 3 to enroll District of Columbia students.[193] OSSE explained that, if the COA expires, no student whose special education or related services is funded by the District of Columbia government may be placed in Nonpublic School 3 unless so ordered by a court or a hearing officer pursuant to IDEA.[194]

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[180] Petitioner Exhibit 3 at 1.
[181] *Id.*
[182] *Id.* at 1-2.
[183] *Id.* at 2.
[184] Testimony of Aunt; testimony of SEC.
[185] Testimony of Petitioner; testimony of Director.
[186] Testimony of Petitioner.
[187] *Id.*
[188] *Id.*
[189] Petitioner Exhibit 10 at 1 (October 26, 2012, letter from OSSE to Nonpublic School 3).
[190] *Id.* at 2.
[191] *Id.*; Petitioner Exhibit 11 at 1-2 (October 26, 2012, Nonpublic School 3 Probationary Exit Plan for Approval).
[192] Petitioner Exhibit 10 at 2.
[193] *Id.* at 3.
[194] *Id.* at 3.

56. OSSE notified Nonpublic School 3 that, based on its review, Nonpublic School 3 failed to obtain a current health inspection.[195] OSSE informed Nonpublic School 3 that four members of its staff lacked special education certifications.[196] OSSE explained that each member of the teaching staff and each related service provider must be certified.[197] OSSE also informed Nonpublic School 3 that its emergency behavioral interventions, including its use of seclusion and restraint, violated the COA regulations.[198]

The 2012-2013 School Year

57. During the 2012-2013 school year, Petitioner attends school at Nonpublic School 1 for 6.5 hours per day.[199] Petitioner spends four hours of each day in academic classes.[200] The remaining two hours per day, he is in career exploration, where he works on job readiness, or in life skills and transition planning course.[201] He also receives one hour per week of counseling and thirty minutes per week of speech and language services.[202]

58. Through the Nonpublic School 1 career exploration component, Petitioner will soon begin job shadowing.[203] To explore his interest in fashion, after the winter break, he will begin shadowing a local clothing stylist.[204]

59. Petitioner also has obtained a part-time job at a sports clothing and shoe store through with the assistance of Nonpublic School 1.[205] He works at this retail store from [redacted].[206] Occasionally, he works the [redacted].[207]

60. Petitioner also is enrolled in driver's education.[208] He is not enrolled in any of the vocational classes at Nonpublic School 1 because he was not successful in these classes.[209] Since he is employed, he should be able to achieve his goal of living in an apartment when he leaves high school.[210] Because he turns [redacted] in [redacted]

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[195] Petitioner Exhibit 12 at 1 (Certificate of Approval Scoring Sheet).
[196] Petitioner Exhibit 12 at 3.
[197] Petitioner Exhibit 11 at 1.
[198] Petitioner Exhibit 12 at 3.
[199] Testimony of Director.
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] *Id.*
[210] *Id.*

[redacted], Petitioner will leave high school at the end of the 2012-2013 school year because his eligibility for special education services will have expired.[211]

61. He enjoys the atmosphere at Nonpublic School 1 and rarely misses a day of school.[212] He loves his teachers and feels comfortable at Nonpublic School 1.[213]

62. Because Petitioner has difficulty warming up to people and it took him a while to get adjusted at Nonpublic School 1.[214] For this reason, it would be difficult for Petitioner to adjust to a new school.[215] He informed the Director that, if he were placed at Nonpublic School 3, he would not attend school.[216]

63. As of November 15, 2012, Petitioner had earned only three Carnegie units toward a high school diploma.[217] In order to obtain a high school diploma, a student must earn twenty-four Carnegie units and perform one hundred hours of community service.[218]

64. As of November 15, 2012, Nonpublic School 1 had complied with all of the requirements of its provisional exit plan that were due by that date.[219] Nonetheless, Nonpublic School 1 presently cannot provide students a traditional high school diploma.[220]

65. As of November 15, 2012, Nonpublic School 3 had complied with all of the requirements of its provisional exit plan.[221]

Credibility Determinations

66. Petitioner was a credible witness. He testified forthrightly about his visits to Nonpublic School 2 and Nonpublic School 3. He testified in detail about his employment at the retail store, his plans for the future, and his desire to obtain a high school diploma. His testimony was corroborated by the documents in evidence and the testimony of the other witnesses, including the Monitor.

67. The Aunt was a credible witness. She was familiar with the documents in the record, recalled with precision the discussion at the July 5, 2012, and August 22, 2012,

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[211] Testimony of Petitioner; testimony of Aunt; testimony of Director; testimony of SEC; testimony of Admissions Director.
[212] *Id.*
[213] *Id.*
[214] Testimony of Petitioner; testimony of Director.
[215] Testimony of Director.
[216] *Id.*
[217] Testimony of Director; testimony of Monitor; testimony of Admissions Director.
[218] Testimony of Admissions Director.
[219] Testimony of Director. Nonpublic School 2 had not yet provided OSSE the financial audits because they were not yet due. *Id.*
[220] *Id.*
[221] Testimony of Admissions Director.

meetings, and was forthright about Petitioner's academic shortcomings. Her testimony was corroborated by the documentary evidence and testimony of the other witnesses.

68. The Director provided credible testimony about Petitioner's academic needs, and her recollections of the discussion at the July 5, 2012, meeting. She was forthright about the services that Nonpublic School 1 did not offer, including that it could not longer offer its students high school diplomas. She also was forthright about the difficulties experienced by Nonpublic School 1 in obtaining a COA from OSSE. She exhibited genuine concern for the Student's future and acknowledged his academic difficulties, even when it reflected poorly on Nonpublic School 2. She also was forthright about her lack of knowledge of the programs and services available at Nonpublic School 3. Her testimony was generally corroborated by the documents in evidence and the other witnesses who testified at the due process hearing.

69. The SEC testified credibly about the programs offered by Nonpublic School 1 as well as its limitations, including the severance of its relationship with the CBO. She testified credibly about her limited knowledge of how a student would earn an external diploma, which was an intrinsic part of the program at Nonpublic School 1. She admitted that her knowledge of Petitioner's academic performance was limited because she had been employed with Nonpublic School 1 for only eight months. Because of her lack of knowledge of several of the key aspects of this case, the SEC's testimony had little bearing on the issues in this case.

70. The Admissions Director testified credibly about the general curriculum at Nonpublic School 3. She also testified credibly about the planned pre-GED/Adult Basic Education Program at Nonpublic School 3, including that it did not exist. Her testimony was uncontroverted by any of the other witnesses who testified.

71. The Monitor testified credibly about the July 5, 2012, and August 22, 2012, meetings. She testified forthrightly about the reasons she issued the PWN that proposed placing Petitioner in the pre-GED/Adult Basic Education Program at Nonpublic School 3. The Monitor did not try to hide the fact that her decision to place Petitioner pre-GED/Adult Basic Education Program at Nonpublic School 3 was driven more by concerns about operations at Nonpublic School 1 than by Petitioner's individualized needs. She admitted that she had little knowledge of the pre-GED/Adult Basic Education Program at Nonpublic School 3. Her testimony was generally corroborated by the documents in evidence and the other witnesses who testified at the due process hearing.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."[222] Implicit in the congressional purpose of

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[222] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).

providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.[223] FAPE is defined as:

[S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)."[224]

In matters alleging a procedural violation, a hearing officer may find that the 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.[225] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[226]

The burden of proof is properly placed upon the party seeking relief.[227] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[228]

VI. DISCUSSION

Petitioner Proved that Respondent Denied Him a FAPE by Unilaterally Changing his Placement in August 2012 Without Considering the Harmful Effects or the Appropriateness of the Program at Nonpublic School 3.

The term "educational placement" refers to the type of educational program prescribed by the IEP.[229] "Educational placement" refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school.[230]

Placement decisions must be made in conformity with the child's IEP.[231] The decision to place a student before developing an IEP on which to base that placement

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[223] *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).
[224] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[225] 34 C.F.R. § 300.513 (a)(2).
[226] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[227] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[228] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[229] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[230] *Id.*
[231] 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Reg. tit. 5-E § 3013 (2006); *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).

violates the IDEA regulations.[232] It also violates the spirit and intent of IDEA, which emphasizes parental involvement.[233] After the fact involvement is not enough.[234] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[235]

The considerations relevant to determining whether a particular placement is appropriate for a particular student include the nature and severity of the student's disability; the student's specialized educational needs; the link between those needs and the services offered by the school; the placement's cost; and the extent to which the placement represents the least restrictive environment.[236]

The question of what constitutes a change in educational placement is, necessarily, fact specific and thus, "in determining whether a given modification in a child's school day should be considered a 'change in educational placement,'" the "touchstone" is whether the modification "is likely to affect in some significant way the child's learning experience."[237] In determining whether a "change in educational placement" has occurred, the LEA must determine whether the proposed change would substantially or materially alter the child's educational program.[238]

In determining whether the change in location would substantially or materially alter the child's educational program, the LEA must examine the following factors: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.[239] In other words, if the proposed change substantially or materially affects the composition of the educational program and services provided the student, it is a change in placement.[240]

In contrast, a simple change in location is limited to the physical characteristics associated with a particular site. A transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location

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[232] *Spielberg*, 853 F.2d at 258.
[233] *Id.*
[234] *Id.*
[235] *See Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (D.D.C. 2006).
[236] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). *See also* D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the least restrictive environment, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).
[237] *J.R. v. Mars Area Sch. Dist.*, 318 Fed. Appx. 113, 119 (3d Cir. Pa. 2009).
[238] *Letter to Fisher*, 21 IDELR 992 (Office of State Education Programs ("OSEP"), July 6, 1994).
[239] *Id.*
[240] *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18,1980); *Letter to Fisher*, 21 IDELR 992.

only.[241] Simple changes in the location of a building or facility are not generally viewed as a change in placement if there are no significant changes in the educational program.[242]

Here, Petitioner has an extremely low IQ as well as deficits in visual motor integration. Although the record did not include current data on Petitioner's academic performance, he is far behind his same-age peers.

Petitioner exhibits a cluster of symptoms of dysthymia in which feelings of uselessness, dejection, pessimism, and discouragement are intrinsic components. He is preoccupied with concerns about his social adequacy and self-worth. He has pervasive self-doubts. He has difficulty warming up to people and it took him considerable time to get adjusted to Nonpublic School 1.

Petitioner's current IEP, developed on October 25, 2011, provides that he is to receive 28.5 hours per week of specialized instruction, one hour per week of behavioral support services, and thirty minutes per week of speech-language therapy outside the general education setting. The IEP contains annual goals mathematics, reading, written expression, speech and language, and emotional, social, and behavioral development.

Petitioner's October 25, 2011, transition plan is designed to enable him to reach his long-term goal of working in the fashion industry. The transition plan provides that he is to receive thirty minutes per week of job opening awareness training, thirty hours per year of job coaching, three hours per month of job placement services, thirty hours per year of job shadowing, and ten hours per year of mock interview training. It also provides that he would attend an employability class for sixty minutes per week, job fairs for ten hours per year, and career lectures for five hours per year. Petitioner's transition plan contemplated that he would take employability and life skills classes in addition to his academic classes.

Nonpublic School 1 is a special education school for students between the ages of seventeen and twenty-two with low academic achievement. The academic program at Nonpublic School 1 is designed to provide remedial academic instruction to prepare them to obtain a national external diploma. In the three years Petitioner has attended Nonpublic School 1, his reading and math skills have increased from the third-grade level to the seventh-grade or eighth-grade level.

Nonpublic School 1 has vocational training programs that train students for post-secondary jobs and partners with community organizations to provide unique career opportunities for students, such as Petitioner, who are not interested in traditional

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[241] *See*, e.g., *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 753-54 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980).

[242] *Letter to Flores*, 211 IDELR 233. *See also A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.)

vocational pursuits such as mechanics or barbering. It offers classroom-based instruction aimed at preparing students to enter the workplace. This program focuses on financial literacy, and teaches students how to register to vote, obtain a driver's license, and prepare and adhere to a household budget.

In the three years he has attended Nonpublic School 1, he has earned only three of the twenty-four Carnegie units required to earn a high school diploma. Nonetheless, he has made significant academic progress in reading and math, fundamental skills he will require to remain gainfully employed and achieve his goal of supporting himself and living in his own apartment. He also has developed the vocational and job preparedness skills to obtain a job in a retail clothing and shoe store. After the winter break, Petitioner will have the opportunity to shadow a local fashion stylist.

In other words, while Petitioner will not achieve his goal of obtaining a high school diploma, he has received academic benefit at Nonpublic School 1. He also has obtained gainful employment, which is one of the main goals of his transition plan.

In the summer of 2012, the Monitor had legitimate concerns about the ability of Nonpublic School 1 to meet Petitioner's needs. She had concerns about the quality of instruction Petitioner was receiving, the dramatic reduction in staff at Nonpublic School 1, the possibility that Nonpublic School 1 did not have a reading specialist or a vocational specialist on staff, and the collapse of its external diploma program. The Monitor questioned the pacing of the instruction as it appeared to her that students at Nonpublic School 1 were not progressing as quickly as she thought they should. The Monitor also was concerned about the myriad issues OSSE outlined in the provisional COA.

While the Monitor had a legitimate reason to be concerned about whether it was appropriate to allow Petitioner to remain in Nonpublic School 1, she failed to consider Petitioner's unique needs in finding an alternate location of services for him. Instead of convening a meeting to discuss Petitioner's needs and determine which location of services could implement Petitioner's IEP, including its vocational and transitional components, and meet his academic and behavioral needs, the Monitor unilaterally decided to place Petitioner at Nonpublic School 3.

The Monitor made the decision to send Petitioner at Nonpublic School 3 even though she had little knowledge of the program in which Nonpublic School 3 planned to place Petitioner and the other students from Nonpublic School 1. Nonpublic School 3 never intended to enroll Petitioner in its general curriculum. Instead, Nonpublic School 3 planned to place Petitioner in its Pre-General Equivalency Diploma ("GED")/Adult Basic Education Program.

The Pre-General Equivalency Diploma ("GED")/Adult Basic Education Program at Nonpublic School 3 does not offer the remedial education classes that Petitioner requires. It would not provide Petitioner an opportunity to earn Carnegie units toward a high school diploma, as required by his October 25, 2011, IEP. It would not prepare Petitioner for an external diploma program, such as a DCPS Stay program. Instead, the focus of the Pre-

General Equivalency Diploma ("GED")/Adult Basic Education Program was to prepare students to enroll in a GED preparatory program.

At Nonpublic School 3, Petitioner would not receive classroom instruction designed to help him achieve financial literacy. Instead, he may learn to cook, clean, and take public transportation, if Nonpublic School 3 decides to allow him to join its independent living class, which is not included in its Pre-General Equivalency Diploma ("GED")/Adult Basic Education Program.

For these reasons, removing Petitioner from Nonpublic School 1 and placing him in Nonpublic School 3 was not jus a simple change in location. Rather, Respondent's proposed change would substantially and materially affect the composition of the educational program and services provided Petitioner. In other words, it would be a change in placement.

When the Monitor issued the PWN on July 31, 2012, she explained that Respondent decided to change Petitioner's *location of services* because Nonpublic School 1 did not have an OSSE COA and Nonpublic School 3 could meet his needs. Had the Monitor investigated the proposed placement at Nonpublic School 3, she would have learned that her rationale for placing Petitioner at Nonpublic School 3 had no basis in fact. She would have learned that the program in which Nonpublic School 3 planned to place Petitioner did not even exist.

Yet, Respondent did not consider any of these factors when it decided to remove Petitioner from Nonpublic School 1 and place him in Nonpublic School 3. Respondent did not consider the harm that Petitioner may suffer from the removal, including the fact that he may decide not to attend school there because of his difficulties adjusting to people. Respondent also failed to consider that the long commute between Petitioner's home and the Nonpublic School 3 may prevent him from working in the retail clothing and shoe store after school. Considering that Petitioner has little chance of earning a high school diploma before he leaves high school, he should not be forced to give up the opportunity to fulfill his transition plan.

Respondent failed to consider that Petitioner had made academic progress while at the Nonpublic School 1. Respondent also failed to consider that Petitioner was close to finishing his high school career due to his age when deciding to change his placement.[243]

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[243] *See Block v. District of Columbia*, 748 F Supp. 891, 895-96 (D.D.C. 1990) ("[W]hile a school may be appropriate for a student if he begins the school year there, it is not necessarily appropriate to inject the student into that school part-way through the school year"); *Holmes v. District of Columbia*, 680 F. Supp. 40, 41-42 (D.D.C. 1988) (finding that it would be inappropriate to change a disabled student's placement in the middle of the school year; rather, "[t]he appropriate place for this youngster is to permit him to finish the remaining seven months of his high school education in the environment that he has been accustomed to over the past three years").

Further, Nonpublic School 3 is not Petitioner's least restrictive environment. Unlike Nonpublic School 1, which is near Petitioner's home, Nonpublic School 3 is several miles away.[244]

Finally, as of the date the record was closed in this case, Nonpublic School 3 did not have a COA. For this reason, Nonpublic School 3 is not an approved school in which Respondent has legal authority to place its students.[245]

Thus, by failing to consider the impact of the change in placement on Petitioner, and changing his placement to a program that cannot provide the specialized instruction and transition services he requires, in part because it doesn't exist, Respondent denied Petitioner a FAPE.[246]

ORDER

Based upon the findings of fact and conclusions of law herein, it is this twenty-eighth day of November 2012 hereby:

ORDERED that Respondent shall fund Petitioner's costs of attending Non-Public School 1, including transportation, for the entire 2012-2013 school year.

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

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[244] *See* D.C. Mun. Reg. tit. 5-E § 3013.1 (f) (LEA shall ensure that the educational placement decision for a child with a disability is as close as possible to the child's home); D.C. Mun. Reg. tit. 5-E § 3013.3 (in selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).

[245] *See* 5-DCMR-A-2803.6 (A nonpublic special education school or program with a probationary certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. § 300.513). Although Respondent argued that this Hearing Officer should not overturn its decision to place Petitioner in Nonpublic School 3 because the school had a COA at the time the Monitor issued the PWN, this Hearing Officer cannot ignore the fact that it does not presently have a COA. Thus, pursuant to District of Columbia law, Respondent cannot place Petitioner, or fund his tuition, at Nonpublic School 3 until it receives a COA.

[246] While the academic program Nonpublic School 1 is in dire need of improvement, it has benefitted Petitioner academically and social emotionally. Because the program at Nonpublic School 3 does not exist and would not be appropriate for Petitioner if it did, Respondent has left this Hearing Officer no choice but to order it to place Petitioner in Nonpublic School at public expense for the remainder of his high school tenure.

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:

Alana Hecht, counsel for Petitioners
Cherie Cooley, counsel for Respondent
Student Hearing Office