

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
810 First Street NE, STE 2  
Washington, DC 20002

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[Parent], on behalf of  
[Student],<sup>1</sup>

Date Issued: January 12, 2012

Petitioner,

Hearing Officer: Jim Mortenson

v

District of Columbia Public Schools (DCPS),

Respondent.

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OSSE  
STUDENT HEARING OFFICE  
2012 JAN 12 PM 2:04

**HEARING OFFICER DETERMINATION**

**I. BACKGROUND**

The complaint in this matter was filed by the Petitioner on November 10, 2011.

A prior complaint was filed on April 22, 2011, by the Petitioner resulting in a hearing on May 31, 2011, and a Hearing Officer's Determination (HOD) issued by Independent Hearing Officer (IHO) Seymour DuBow on June 6, 2011. The issue in that matter, case #2011-0445, was whether the Respondent denied the Student a free appropriate public education (FAPE) "by failing to provide an appropriate placement at the

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<sup>1</sup> Personal identification information is provided in Appendix A which is to be removed prior to public dissemination.

Academy at School?"<sup>2</sup> The Petitioner sought, as relief, placement at School of D.C. IHO DuBow determined that the Student was not denied a FAPE as her placement at Academy at was implementing her individualized education program (IEP) and behavior intervention plan (BIP) and that any failing grades the Student received were the result of her "own voluntary behavior not to engage in classroom work and to leave class. . . ." The IHO denied the Petitioner's requested relief and dismissed the complaint with prejudice. The case was not appealed.

A response to the present complaint was filed on November 22, 2011. The resolution meeting was voluntarily waived by the parties on November 29, 2011, and the 45 day hearing timeline began on November 30, 2011. A prehearing conference was held on December 1, 2011 and a prehearing order was issued on that date.

The due process hearing was convened and held on January 6, 2012, in room 2003 at 810 First Street NE, Washington, D.C. The hearing was closed to the public. The due date for this HOD is January 13, 2012. This HOD is issued on January 12, 2012.

## **II. JURISDICTION**

This hearing process was initiated and conducted, and this decision is written, pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 et seq., its implementing regulations at 34 C.F.R. Part 300, and D.C. Mun. Regs. tit. 5, Chap. 30.

## **III. ISSUES, RELIEF SOUGHT, and DETERMINATION**

The issues to be determined by the IHO are:

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<sup>2</sup> The Student had been placed at \_\_\_\_\_ and the Petitioner disagreed with this placement. A complaint had been filed earlier in the school year, including that issue, and the matter was settled on January 10, 2011.

- (1) Whether the change from \_\_\_\_\_ to \_\_\_\_\_ School is a change of placement and, if so, whether the Student was denied a free appropriate public education (FAPE) when: a) the Respondent failed to ensure the individualized education program (IEP) team, including the Petitioner, made the placement decision; and b) the Respondent failed to provide prior written notice of the proposed change?
- (2) If the Student was denied a FAPE, whether Petitioner, or the Student's non-public school, is entitled to reimbursement for the cost of the unilateral non-public placement made by the Petitioner to \_\_\_\_\_ of the District of Columbia?

The substantive requested relief is reimbursement for Petitioner's unilateral placement of the Student at \_\_\_\_\_ Upper School of D.C. \_\_\_\_\_ at \_\_\_\_\_ and \_\_\_\_\_ are not materially or substantially different, and the Student's IEP was not changed. Therefore, there was no change of placement and no resulting denials of FAPE.

#### IV. EVIDENCE

Nine witnesses testified at the hearing, seven for the Petitioner and two for the Respondent.

The Petitioner's witnesses were:

- 1) Ida Jean Holman, Educational Advocate (I.H.)<sup>3</sup>
- 2) The Student's Mother, Petitioner (P)<sup>4</sup>

<sup>3</sup> Both I.H. and S.S. provided testimony about \_\_\_\_\_ Academy. I.H. visited the school for a short period one time and S.S. is the supervisor of the school and was involved with its development. Therefore, any testimony of the two witnesses that is contradictory is credited to S.S. due to her more substantive knowledge of the school.

<sup>4</sup> This witness was not entirely credible. She testified that she was never informed that \_\_\_\_\_ Academy at \_\_\_\_\_ was closing. She also testified she learned of its closing in July 2011. She then testified that she learned of the school's closing in June. In fact, her attorney had discussed putting on evidence of the school's closing at the prior hearing on May 31, 2011. This testimony, accompanied by the fact she never contacted the Respondent to learn more about the school's closing, and her attorney's letter to the Respondent on August 22, 2011 that the Parent "had no choice but to place the Student unilaterally" (P 9) (when the Parent, and her Attorney and Advocates, failed to exercise the option of simply asking the Respondent where the Student would attend school for the start of the new school year, if it was true she was not already informed) indicates the Petitioner's veracity is in question. Furthermore, Petitioner testified that she placed the Student at \_\_\_\_\_ because \_\_\_\_\_ would have been just like \_\_\_\_\_ Academy at \_\_\_\_\_ the placement she challenged in the prior hearing. This

- 3) Chithalina Khanchalern, Educational Advocate (C.K.)
- 4) Gariel Mark Hohman, Educational Advocate (G.H.)
- 5) The Student, (S)
- 6) Admissions Director,
- 7) Program Director,

The Respondent's witnesses were:

- 1) Supervisor,
- 2) LaBone Workman, Social Worker, District of Columbia Public Schools (L.W.)

19 exhibits were admitted into evidence of 28 disclosures from the Petitioner. The

Petitioner's exhibits are:

Ex. No.	Date	Document
P 1	October 24, 2011	NCLB Parent's Right to Know Request
	October 13, 2011	NCLB Parent's Right to Know Request
	October 24, 2011	NCLB Parent's Right to Know Request
P 2	December 5, 2011	Subatomic Particle Test
	Undated	Video Quiz
	November 30, 2011	Basic Atomic Structure Worksheet
	December 16, 2011	Chapter 4 Atomic Structure
	September 7, 2011	Quiz #2
	October 24, 2011	Write in Scientific Notation
	October 24, 2011	Scientific Measurement
	October 31, 2011	The Crunchy Warm-up
	November 2, 2011	The Nixon Administration
	November 14, 2011	U.S. Involvement and Escalation
	Undated	The End of the War and Its Legacy
	December 16, 2011	Latinos and Native Americans Seek Equality
	November 1, 2011	Quiz #2
	December 6, 2011	Indirect Characterization in <i>Forged by Fire</i>
	December 6, 2011	Scoring Rubric for Five-Paragraph Essay on Indirect Characterization
November 2	Geometry	
November 30	Graphing Ordered Pairs	
Undated	Geometry	

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testimony indicates she did know about despite her testimony to the contrary and the letter to the Respondent (P 9). The Petitioner, and possibly her Counsel, have not been forthcoming in this matter and any testimony from the Petitioner is viewed with an eye toward corroboration with other evidence.

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>	
P 2 (cont.)	November 4	Geometry	
	November 16, 2011	Geometry	
	Undated	Geometry	
	September 12	Geometry	
	November 29, 2011	Draw The Matching Notes	
	November 22, 2011	How Many Measures Are There?	
	December 15, 2011	Spanish 1/ 2	
	December 9, 2011	Spanish 1 B days	
	December 6, 2011	La Familia	
	December 8, 2011	[Spanish Worksheet]	
	December 6, 2011	[Spanish Worksheet]	
	December 1, 2011	Spanish 1 B days	
	December 6, 2011	Spanish 1 B days	
	December 8, 2011	Spanish 1 B days	
	December 9, 2011	Práctica y conversación	
	December 9, 2011	Espanal	
	P 3	November 2, 2011	Yellow Level Point Sheet
		November 1, 2011	Yellow Level Point Sheet
October 31, 2011		Blue Level Point Sheet	
October 29, 2011		Red Level Point Sheet	
October 27, 2011		Yellow Level Point Sheet	
October 26, 2011		Yellow Level Point Sheet	
October 24, 2011		Yellow Level Point Sheet	
October 21, 2011		Yellow Level Point Sheet	
October 20, 2011		Red Level Point Sheet	
October 19, 2011		Red Level Point Sheet	
October 14, 2011		Red Level Point Sheet	
October 13, 2011		Red Level Point Sheet	
November 12, 2011		Red Level Point Sheet	
October 11, 2011		Red Level Point Sheet	
October 3, 2011		Yellow Level Point Sheet	
September 21, 2011		Yellow Level Point Sheet	
September 20, 2011		Green Level Point Sheet	
September 19, 2011		Blue Level Point Sheet	
September 15, 2011		Blue Level Point Sheet	
September 14, 2011		Green Level Point Sheet	
September 13, 2011		Gold Level Point Sheet	
September 12, 2011		Gold Level Point Sheet	
September 8, 2011		Blue Level Point Sheet	
September 7, 2011		Blue Level Point Sheet	
September 6, 2011		Blue Level Point Sheet	
September 2, 2011		Blue Level Point Sheet	
September 2, 2011		Blue Level Point Sheet	
August 31, 2011	Blue Level Point Sheet		
August 30, 2011	Green Level Point Sheet		

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>
P 3 (cont.)	August 25, 2011	Blue Level Point Sheet
	August 22, 2011	Blue Level Point Sheet
	Undated	Green Level Point Sheet
P 4	December 20, 2011	Student Schedule
P 5	December 20, 2011	Advocate's Notes
P 6	December 20, 2011	School of Washington DC Progress Report
	Undated	Cumulative Student Scholastic Record
P 7	August 23, 2011	Email from Hecht to Hannah
P 8	August 23, 2011	Letter from Hannah to Hecht
P 9	August 22, 2011	Letter from Hecht to Beers
P 10	June 6, 2011	Hearing Officer Determination
P 11	May 31, 2011	[Transcript of Hearing #2011-0445]
P 12	April 7, 2011	Intervention Behavior Plan
P 13	April 1, 2011	Advocate's Notes
P 14	April 1, 2011	MDT Notes
	April 1, 2011	Multidisciplinary Team (MDT) Meeting Notes
P 15	June 20, 2011	IEP Progress Report – Annual Goals
	May 23, 2011	IEP Progress Report – Annual Goals
P 16	August 8, 2011	Email from Holman to Young
P 17	February 18, 2011	IEP
P 20	May 10, 2011	Report to Parents of Student Progress
	March 25, 2011	Report to Parents of Student Progress
	January 21, 2011	Report to Parents of Student Progress
	December 3, 2010	Report to Parents of Student Progress
	October 28, 2010	Report to Parents of Student Progress
P 21	December 16, 2010	Student Timetable
	September 20, 2010	Student Timetable
P 22	January 10, 2011	Proposed Settlement

Three exhibits of four of the Respondent's disclosed exhibits were admitted into evidence.

The Respondent's exhibits are:

<u>Ex. No.</u>	<u>Date</u>	<u>Document</u>
R 1	November 22, 2011	District of Columbia Public School's Response to Parent's Administrative Due Process Complaint Notice
	June 6, 2011	Hearing Officer Determination
	December 17, 2010	Petitioner's Due Process Complaint Notice
	January 10, 2011	Proposed Settlement
	February 4, 2011	Order of Withdrawal
R 2	August 23, 2011	Letter from Hannah to Hecht
R 3	February 18, 2011	IEP



education teachers.<sup>10</sup> There were six licensed social workers on staff and one school psychologist.<sup>11</sup> There were seven to eight behavior technicians who were all trained in therapeutic crisis intervention (TCI).<sup>12</sup> There were typically 60 students at Academy of a capacity of 90 to 110.<sup>13</sup> The school served students with behavior and social/emotional needs in grades nine through 12.<sup>14</sup> Positive intervention strategies and other supports were used with the Student at \_\_\_\_\_ The School had a designated room for therapeutic intervention for students in crisis or other disciplinary or social/emotional needs.<sup>16</sup> The School was housed in a renovated elementary school with no other school programs and some administrative offices.<sup>17</sup>

3. The Petitioner, Student's Mother, challenged the Student's placement at \_\_\_\_\_ in a hearing held on May 31, 2011.<sup>18</sup> She sought, as relief, placement of the Student at \_\_\_\_\_ of the District of Columbia (High Road).<sup>19</sup> The Student had attended a \_\_\_\_\_ school before attending \_\_\_\_\_ The IHO in that case determined that Transition Academy was providing educational benefit to the Student "through the implementation of her IEP that is reasonably calculated to provide educational benefit if the student takes advantage of those educational opportunities. . . ." <sup>21</sup> The case was dismissed with prejudice on June 6, 2011 and no relief awarded.<sup>22</sup>

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<sup>10</sup> P 10.

<sup>11</sup> P 10, T of I.H.

<sup>12</sup> P 10, T of I.H.

<sup>13</sup> P 10, T of I.H.

<sup>14</sup> P 10, T of I.H.

<sup>15</sup> P 10, P 12, P 13.

<sup>16</sup> T of I.H.

<sup>17</sup> T of I.H., P 10.

<sup>18</sup> P 10, P 11.

<sup>19</sup> P 10, P 11, T of P.

<sup>20</sup> T of P, T of T.S.

<sup>21</sup> P 10.

<sup>22</sup> P 10. (The record lacks any indication that case 2011-0445 was appealed and it is presumed it was not. *See e.g. R I.*)

4. The Respondent instituted and carried out a plan to communicate with all parents of students at \_\_\_\_\_ Academy that the school would be closing at the end of the school year and that their children would be moved to other locations.<sup>23</sup> The plan included calls and letters to parents, meetings at \_\_\_\_\_ Academy, an open house and field trips for Students to \_\_\_\_\_ and notification on the Respondent's website.<sup>24</sup>
- Petitioner was aware of \_\_\_\_\_ Academy's closing prior to May 31, 2011, when her attorney advised the IHO in case #2011-0445 that "the parent's been told that Shadd is closing."<sup>25</sup>
5. Despite the IEP team's determination the Student required a month of extended school year services over the summer of 2011 to ensure a FAPE, the Student did not take advantage of those services.<sup>26</sup>
6. The Petitioner claimed she did not know the Student would be attending \_\_\_\_\_ but also testified that she placed the Student at \_\_\_\_\_ School because she thought that \_\_\_\_\_ would be just like \_\_\_\_\_ which she did not like.<sup>27</sup> If the Petitioner did not know where the Student would attend school for the 2011-2012 school year, she never contacted the Respondent to inform them and seek clarification.<sup>28</sup> She did, through her attorney, contact the Respondent on August 22, 2011, to inform the Respondent that she "had no choice but to place the student unilaterally" at \_\_\_\_\_ School and expected

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<sup>23</sup> T of L.W., T of S.S.

<sup>24</sup> T of S.S., T of L.W.

<sup>25</sup> P 11 (pg. 12, 3-5) (P repeatedly and inconsistently contradicted this during her testimony.)

<sup>26</sup> P 17, T of P. (There is a pattern of the Student not availing herself to the educational opportunities the Respondent has provided which must be considered in any subsequent allegation that the Respondent denied her a FAPE.)

<sup>27</sup> T of P., P 10, P 11.

<sup>28</sup> T of P.

public funding for the placement, despite no IEP team meeting having been requested or held.<sup>29</sup>

7. The Student has been attending \_\_\_\_\_ School of the District of Columbia, a non-public separate day-school for children with social/emotional disabilities, since the start of the 2011-2012 school year.<sup>30</sup>

8. \_\_\_\_\_ was moved to \_\_\_\_\_ School for the start of the 2011-2012 school year.<sup>31</sup> The Student was to move with the program to \_\_\_\_\_ for the 2011-2012 school year.<sup>32</sup> The name of the school was changed from \_\_\_\_\_ to \_\_\_\_\_ after the new year began due to concerns about negative connotations associated with the name

9. \_\_\_\_\_ is a secondary school program serving students with disabilities outside of the general education setting.<sup>34</sup> The school is housed in the \_\_\_\_\_ School and is maintained separately from the high school with security guards between the schools.<sup>35</sup> Students at \_\_\_\_\_ may only interact with non-disabled peers when entering or leaving the building or if their IEPs require they be in a less restrictive setting for part of the day.<sup>36</sup> All students at \_\_\_\_\_ are supposed to be involved in and progressing in the general education curriculum.<sup>37</sup> Additionally, there are remedial courses and vocational courses for students.<sup>38</sup> Students do not attend classes with non-disabled peers unless their IEPs permit, and classes are provided

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<sup>29</sup> P 9, T of P.

<sup>30</sup> UF, T of S, T of T.S.

<sup>31</sup> T of S.S., T of L.W.

<sup>32</sup> UF.

<sup>33</sup> T of S.S.

<sup>34</sup> T of S.S.

<sup>35</sup> T of S.S., T of I.H.

<sup>36</sup> T of I.H., T of S.S.

<sup>37</sup> T of S.S. (This finding is not meant to be a determination on whether that involvement and progress is actually happening for any particular child attending

<sup>38</sup> T of S.S.

with specialized instruction as necessary, including electives.<sup>39</sup> The students are provided behavioral and social/emotional supports including the use of behavior technicians and a special intervention room for processing with students.<sup>40</sup> There is 31.5 hours per week of school time at but only 28 hours of instructional time for the normal school week.<sup>41</sup> There are currently 90 students enrolled at <sup>42</sup> Not all teachers have District of Columbia teaching licenses but they do have licenses from other states.<sup>43</sup> Some classes are only taught by a special education teacher and some are co-taught with a regular education teacher and special education teacher.<sup>44</sup> There are four social workers at four behavioral technicians, and a school psychologist who serves both and School.<sup>45</sup> The students are on a “block schedule” at requiring alternate days of classes and classes are 80 minutes long.<sup>46</sup>

## **VI. CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer’s own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of persuasion in a special education due process hearing is on the party seeking relief. Schaffer v. Weast, 546 U.S. 49 (2005), *See also* D.C. Mun. Regs. 5-E3030.14. “Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.” D.C. Mun. Regs. 5-E3030.14. The recognized standard is preponderance of the

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<sup>39</sup> T of S.S.

<sup>40</sup> T of S.S.

<sup>41</sup> T of S.S.

<sup>42</sup> T of S.S.

<sup>43</sup> T of S.S.

<sup>44</sup> T of S.S.

<sup>45</sup> T of S.S.

<sup>46</sup> T of S.S., T of I.H.

evidence. *See, e.g., N.G. v. District of Columbia*, 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 48 (D.D.C. 2007); 34 C.F.R. § 300.516(c)(3).

2. Parents must be members of any group determining a child's educational placement. 34 C.F.R. §§ 300.116 & 300.327. In the District of Columbia IEP teams are to make placement determinations. D.C. Mun. Regs. 5-E3001.1.
3. Parents are entitled to written notice a reasonable time before a public agency proposes to change the educational placement of a child with a disability. 34 C.F.R. § 300.503(a)(1), D.C. Mun. Regs. 5-E3024.1.
4. There are vagaries of what is meant by "placement." When moving a child from one building to another where the programs are "substantially and materially similar" there is no change of placement. 71 Fed. Reg. 46588-89 (August 14, 2006). The programs need not be identical.

According to OSEP:

Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability, and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.

Id. at 46588.

5. The Student's placement at \_\_\_\_\_ is substantially and materially similar to the Student's placement at \_\_\_\_\_ Academy. The Petitioner argues that the \_\_\_\_\_ is a change in placement because: \_\_\_\_\_ is new; not all of the students from \_\_\_\_\_ Academy transferred there; the focus of \_\_\_\_\_ is arts and technology and not therapeutic crisis intervention; that there are different numbers of various kinds of personnel at \_\_\_\_\_ than there were at \_\_\_\_\_

that the rooms for crisis intervention at the two locations are different; that occupied an entire building while is housed in a building shared with another school and that the students from the two schools can mingle; that there are not sufficient certified teachers at that art and music and vocational classes are only general education classes at that could provide students with 32.5 hours of specialized instruction per week and can only provide 28 hours of specialized instruction per week; and that there were six to eight students in six to eight classes every day at Academy and there are four classes per day at For the following reasons, the Petitioner's arguments are not persuasive. It is not material that is new. It was created, in part, to replace the now-closed Academy and presumably improve the educational experience provided to children with special needs. Thus, it is no surprise not all of the staff or students moved from Academy to The "focus" of the school is a mere term of art, not a legal standard. However, both schools provide strong behavioral and social/emotional support for students and utilize a special space for behavior management. The specific difference in the spaces is not material or substantial. Both schools are separate day schools. The fact that is housed in a building where there is also a mainstream high school does not substantially or materially distinguish it from Academy because the schools do not share the same space within the building and access between the two schools is controlled. provide "full-time" special education services for those students who require it and it is not clear from the record how many hours of specialized instruction all of the students at Transition Academy received. Assuming all the students at Academy required "full-time" specialized instruction, the fact that some students at have IEPs requiring less than "full-time" services is not material or

substantial to the placement because that is a factor of each child's IEP, not the placement as a whole and how the structure works for those students who require a fully segregated placement. The fact that the Student's IEP requires 31.5 hours per week of specialized instruction that could be provided during the normal course of the school day at Transition Academy but not the normal course of the school day at \_\_\_\_\_ does not result in a material or substantial distinction between the two placements. Rather, the Respondent must simply ensure the IEP is implemented as written, even if it means providing additional specialized instruction, pursuant to the directive of the IEP team as reflected in the IEP, before or after the regular school day at \_\_\_\_\_. The Petitioner did not prove the teachers at \_\_\_\_\_ were not licensed or that this somehow impacted the Student's involvement and progress in the general education curriculum or toward her annual IEP goals. Her evidence consisted of three memoranda from a DCPS staff person provided to an advocate and the testimony of that advocate. The evidence from the Respondent indicated the information provided in the Petitioner's evidence was incomplete, at best. \_\_\_\_\_ is not materially or substantially different from \_\_\_\_\_ Academy and so no change of placement occurred for the Student. Indeed, because the Petitioner did not like the Student's placement at \_\_\_\_\_ Academy, any improvements made in the program at \_\_\_\_\_ should be welcomed by the Petitioner.

6. Because the assignment of the Student to \_\_\_\_\_ for the 2011-2012 school year was not a change in placement, there was no violation or denial of FAPE for assigning the Student to that school without the IEP team or the Petitioner or without a prior written notice pursuant to 34 C.F.R. § 300.503, D.C. Mun. Regs. 5-E3024.1. Therefore, no remedy is warranted.<sup>47</sup>

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<sup>47</sup> Even if the Student was denied a FAPE, no reimbursement is warranted as a result of the Parent's conduct. Specifically, assuming it is true she did not know which school to send her child to for the 2011-2012 school year, the reasonable approach would be to contact the Respondent and find out, not enroll her in a non-public school and then contact the Respondent on about the first day of school to demand public funding for such a placement when

**VII. DECISION**

The change from \_\_\_\_\_ at \_\_\_\_\_ to \_\_\_\_\_ Academy was not a change of placement and so the Student was not denied a FAPE when the IEP team, including the Petitioner, did not make the determination to send the Student to \_\_\_\_\_ and prior written notice under IDEA was not required.

**VIII. ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that the Respondent prevails and the complaint is dismissed with prejudice.

**IT IS SO ORDERED.**

Date: January 12, 2011



\_\_\_\_\_  
Independent Hearing Officer

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that very remedy was recently denied in another hearing over the appropriateness of placement. This game of “gotcha” is not only unreasonable but is unconscionable. Given that the Petitioner was at all relevant times represented by Counsel and had communication with Counsel’s office, the actions of Counsel are also in question. (See 34 C.F.R. § 300.148(d)(3), a judicial finding of “unreasonableness with respect to actions taken by the parents” may result in a reduction or denial of reimbursement, *and J.J. v. Dist. of Columbia*, CA 07-1283, p. 10 (D.D.C. March 8, 2011) “[E]ven where an educational entity denies a student a FAPE, ‘courts can nevertheless deny [relief] if a parent’s own actions frustrated the school district’s efforts.’ *citing: Dorros v. Dist. of Columbia*, 510 F. Supp. 2d 97, 100 (D.D.C. 2007); *MM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 533-35 (4th Cir. 2002) (finding that a child was not denied a FAPE where the school district attempted to offer the child a FAPE but was unable to because the child’s parents failed to attend an IEP meeting and failed to notify the school district of a suitable time to schedule the meeting); and *Doe v. Defendant I*, 898 F.2d 1186, 1189 n.1 (6th Cir. 1990). *See also*, District of Columbia Rules of Professional Responsibility 2 and 3.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 Hearing Officer Determination in accordance with 20 USC §1415(i).