

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

Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

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STUDENT HEARING OFFICE
2012 MAY 11 AM 10:24

STUDENT,¹)	
)	
Petitioner,)	
)	
v.)	
)	
THE DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
)	
Respondent.)	Hearing Officer: Frances Raskin

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3001, *et seq.*

II. BACKGROUND

Petitioner is an _____ year-old student with a disability. On February 29, 2012, Petitioner filed a due process complaint ("Complaint") against the District of Columbia Public Schools ("DCPS") alleging violations of the Individuals with Disabilities Education Act ("IDEA"). On March 2, 2012, this Hearing Officer was assigned to preside over this case.

On March 15, 2012, Respondent DCPS filed a response to the Complaint.² Respondent filed its Response five days after the deadline established by IDEA.³

¹ Personal identification information is provided in Attachment A.

² Respondent did not challenge the sufficiency of the Complaint.

³ If Respondent has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent

The thirty-day resolution period ended on March 30, 2012.⁴ The parties agreed that the forty-five day, due process hearing timeline began on April 1, 2012.

On April 11, 2012, this Hearing Officer held a prehearing conference in which counsel for Petitioner, and counsel for Respondent, participated.⁵ On April 18, 2012, this Hearing Officer held a second prehearing conference to discuss whether the parties had participated in a resolution meeting and to discuss the scheduling of the due process hearing.

The due process hearing commenced on May 7, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits⁶ and those proposed by Respondent.⁷ Petitioner testified and presented two witnesses on his behalf, his mother ("Parent"), and the director of development and public relations ("PR Director") of a non-public school ("Non-Public School").

Respondent called one witness, the special education coordinator ("SEC") of the DCPS School ("DCPS School"). After the parties presented oral closing arguments, the due process hearing concluded on May 7, 2012.

III. ISSUES 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") when it developed an individualized educational program ("IEP") on January 3, 2012, but failed to inform him of the school he was to attend in order to receive his IEP

regarding the subject matter contained in the parent's due process complaint, Respondent must, within 10 days of receiving the due process complaint, send to the parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. § 300.508 (e).

⁴ Petitioner participated in a resolution meeting on April 30, 2012. In the resolution meeting, the parties did not resolve the Complaint.

⁵ This was the first date that both counsel and this Hearing Officer were available for the prehearing conference.

⁶ This Hearing Officer admitted Petitioner's exhibits 1-4, inclusive, and Respondent's exhibits 1 and 2.

⁷ Neither party objected to the admission of the other party's exhibits. The parties agreed that, because the parties' exhibits were largely duplicative, this Hearing Officer would refer only to Petitioner's exhibits in this HOD where the parties' exhibits are duplicative.

services, resulting in Petitioner not having received any educational services since January 3, 2012.

Petitioner requests relief in the form of an order requiring Respondent to place him at a nonpublic, special education, day school ("Non-Public School") at public expense. Petitioner also seeks compensatory education in the form of tutoring.

IV. FINDINGS OF FACT

1. Petitioner is an _____-year-old, young man who is eligible for specialized instruction and related services as a student with a specific learning disability.⁸ Petitioner turned _____ in February 2012.⁹ He has been eligible for special education services since he was ten years old and in the fifth grade.¹⁰

2. Two years ago, when Petitioner was in _____ grade, his mother placed him at the DCPS School.¹¹ The DCPS School is an alternative school for adults who want to complete their high school education or earn a certificate in a trade or vocation.¹² The age of the students at the DCPS School ranges from twenty years sixty years.¹³ At the time he attended the DCPS School, Petitioner was the youngest student in the school.¹⁴

3. Petitioner's mother placed him at the DCPS School because he had had a history of interpersonal difficulties and being bullied in the schools he attended previously.¹⁵ At the time, Petitioner's mother and sister also were students at the DCPS School.¹⁶ Petitioner's mother was taking classes to earn a certificate in chemical addiction so that she could provide counseling in that area.¹⁷

4. The DCPS School provides inclusion classes in which general education and special education students are co-taught by a general education teacher and a special education teacher.¹⁸ There were at least twenty students in each class.¹⁹ Students at the DCPS School do not receive Carnegie units toward a high school diploma.²⁰ Instead, when they graduate, they receive a DCPS National External Diploma.²¹ To earn this type of

⁸ Testimony of Petitioner; Petitioner Exhibit 2 at 1 (January 3, 2012, IEP).

⁹ Petitioner Exhibit 2 at 1.

¹⁰ Testimony of Petitioner.

¹¹ Testimony of Petitioner, Parent.

¹² Testimony of Parent.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Testimony of Petitioner.

²⁰ Testimony of PR Director.

²¹ *Id.*

diploma, students must demonstrate competency, i.e., achievement at the ninth-grade level, in English and math.²²

5. For the first few months at the DCPS School, Petitioner had perfect attendance.²³ His IEP in effect at that time provided that he would receive specialized instruction in math and accommodations.²⁴ At the end of the second advisory, Petitioner had failed biology because he did not know it was on his schedule.²⁵ He also had a D in algebra and a B in world history and geography.²⁶

6. By mid-March 2011, Petitioner was being bullied by another student at the DCPS School and had stopped regularly attending school.²⁷ Petitioner's attendance declined and, by June 2011, had stopped attending school altogether.²⁸ Neither Petitioner nor his mother requested that Respondent transfer him to another school.²⁹

7. In June 2011, Petitioner's mother withdrew him from the DCPS School.³⁰ Petitioner then enrolled him in a five-month, military training and education summer program.³¹ Petitioner was suspended from the program in August 2011, after just two months there.³²

8. Petitioner did not enroll in school at the beginning of the 2011-2012 school year.³³ Instead, he re-enrolled in the military training and education program and spent time reading and studying materials to take the general equivalency diploma.³⁴ In September 2011, Petitioner was kicked out of the military program.³⁵

9. After being kicked out of the military program, Petitioner's mother did not enroll him in school.³⁶ During October and November 2011, Petitioner hung out with Occupy DC protesters and did not come home at night and his mother did not see him for

²² *Id.*

²³ *Id.*

²⁴ Testimony of Parent.

²⁵ Testimony of Petitioner.

²⁶ Petitioner Exhibit 3 at 1 (January 21, 2011, Report to Parents on Student Progress).

²⁷ Testimony of Petitioner, Parent.

²⁸ Testimony of Petitioner.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*; testimony of Parent.

³³ Testimony of Petitioner.

³⁴ *Id.*; testimony of Parent.

³⁵ *Id.*

³⁶ Testimony of Petitioner.

two to three weeks at a time.³⁷ He then spent a week in Children's National Medical Center after suffering severe depression.³⁸

10. In December 2011, Petitioner's mother learned of the Non-Public School from her next-door neighbor, the PR Director.³⁹ After the winter break, Petitioner visited the Non-Public School for two days as part of the application process.⁴⁰

11. The Non-Public School is a special education, non-profit, day school for students with disabilities.⁴¹ The school does not accept students who do not have full-time IEPs.⁴² Non-Public School serves no general education students, although its students interact with their nondisabled peers during their internships.⁴³ To be accepted into the school, a student must read on a third-grade level or higher.⁴⁴

12. The Non-Public School serves at risk kids.⁴⁵ All of its students had extreme truancy problems when they attended DCPS schools.⁴⁶ Some of the students missed years of school.⁴⁷ After they are admitted to the Non-Public School, these students make a dramatic turnaround in attendance, in part because of the wrap-around services they receive at the school, small class sizes, and small school.⁴⁸

13. The Non-Public School provides full-time, specialized instruction in coursework designed to ensure its students attain competency at the ninth-grade level in English and mathematics, obtain employment, and keep a steady job.⁴⁹ It provides academic instruction in math and English only, although the students receive some science instruction in their vocational programs.⁵⁰ Like the DCPS School, when the Non-Public School students graduate, they receive a DCPS National External Diploma.⁵¹

14. The Non-Public School has small classes of about twelve students.⁵² It provides "wrap-around services" within the school.⁵³ These services include counseling,

³⁷ Testimony of Parent. The Parent filed more than twenty missing person reports regarding Petitioner.

³⁸ *Id.*

³⁹ Testimony of Parent, Petitioner, and PR Director.

⁴⁰ *Id.*

⁴¹ Testimony of Non-Public School 2 Admissions Director ("Admissions Director").

⁴² Testimony of PR Director.

⁴³ Testimony of PR Director.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Testimony of Student.

⁵³ Testimony of PR Director.

occupational therapy, and speech-language therapy, all of which are included in the standard tuition.⁵⁴ The Non-Public School provides a job coach for students, transportation to job interviews, and professional clothing for interviewing.⁵⁵ It provides after-school tutoring twice a week.⁵⁶ All of the students attend school eleven months a year.⁵⁷

15. Throughout the school day, students at the Non-Public School attend English, math, life skills, and vocational classes.⁵⁸ The students have the opportunity to earn vocational certifications in three areas: health care, janitorial services, and an automotive certification that would enable a student to obtain a job changing tires.⁵⁹ Students also participate in internships at business such as Best Buy, Harris Teeter, Spirit Fitness, and health care facilities.⁶⁰ The goal is to prepare the students to be successful in the workplace.⁶¹

16. A total of thirty-seven students are enrolled in the Non-Public School.⁶² Respondent placed all but one of the students in the Non-Public School.⁶³ Petitioner fits the profile of the students who attend the Non-Public School.⁶⁴

17. The Non-Public School was established as a joint initiative of Respondent and another nonprofit organization.⁶⁵ At the time the Nonpublic School was established, Respondent informed its staff that the school did not have to obtain a certificate of authority ("COA").⁶⁶ To date, the Non-Public School has not obtained a COA, although it is in the process of receiving approval.⁶⁷ Respondent placed thirty-six students at the Non-Public School despite knowing that the school did not possess a COA.⁶⁸

18. The academic teachers at the Non-Public School are all certified to teach special education in the District of Columbia.⁶⁹ The math teacher is dually certified in

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* The student that Respondent did not place in the Non-Public School was placed there by a hearing officer. *Id.*

⁶⁴ *Id.*

⁶⁵ Testimony of PR Director.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

mathematics and special education.⁷⁰ Only the life skills teacher is not certified in any content area or special education.⁷¹

19. During Petitioner's January 2011 visit at the Non-Public School, a staff member informed Petitioner's mother that the school would not enroll him unless he had a full-time IEP.⁷² The staff member informed Petitioner's mother that she should retain an advocate to assist her in the process of getting Petitioner's IEP changed.⁷³

20. After Petitioner and his mother visited the Non-Public School, Petitioner's mother met with the special education coordinator at the DCPS School.⁷⁴ Petitioner's mother explained that she wanted to place Petitioner in the Non-Public School.⁷⁵ She also informed the SEC of Petitioner's hospitalization, fixation with the Occupy DC protest, and other issues.⁷⁶ She told the SEC that she was intent on getting Petitioner back in school.⁷⁷ She requested that the SEC update the Student's IEP to provide him full-time specialized instruction and related services so that he could attend the Non-Public School.⁷⁸

21. In the meeting with Petitioner's mother, the SEC informed her that she must re-enroll Petitioner in the DCPS School before she could revise his IEP.⁷⁹ Petitioner's mother then enrolled Petitioner as a non-attending student in the DCPS School.⁸⁰

22. Petitioner's mother then met with the SEC and one of Petitioner's teachers.⁸¹ They explained to her that they would revise his IEP.⁸² The SEC explained to Petitioner's mother that, even though she was willing to develop the IEP as requested, the DCPS School could not implement this IEP.⁸³

23. Although Petitioner had attended IEP meetings in the past, and was familiar with the required participants in an IEP meeting, she did not request that a meeting be held to revise Petitioner's IEP.⁸⁴ Petitioner believed that the teacher and the SEC had sufficient data to create a full-time IEP for Petitioner.⁸⁵ Petitioner did not inform the SEC that she

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Testimony of Parent.

⁷³ *Id.*

⁷⁴ Testimony of Petitioner, Parent.

⁷⁵ Testimony of Parent.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Testimony of Parent, SEC.

⁷⁹ *Id.*

⁸⁰ Testimony of Parent.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

would have to secure funding for the Non-Public School because she believed the SEC already was aware of this.⁸⁶

24. Respondent did not hold an IEP meeting to revise Petitioner's IEP because Petitioner had requested that Respondent revise the IEP without a meeting.⁸⁷ Instead, the SEC and Petitioner's former teacher revised his IEP to provide full-time specialized instruction.⁸⁸

25. Petitioner's mother did not inform the SEC that she planned to place Petitioner in a DCPS School.⁸⁹ When a parent informs the SEC that he or she wants his or her child placed in a DCPS school, the SEC gives the parent the phone number for the placement office at the Office of Special Education.⁹⁰ The SEC did not know how Petitioner's mother would pay for the Non-Public School, but she knew that Respondent had placed many of its students there.⁹¹

26. The SEC provided the IEP to Petitioner's mother in January 2012.⁹² Petitioner's mother then disenrolled the Student from the DCPS School.⁹³

27. On March 5, 2012, the Non-Public School sent a letter of acceptance informing Petitioner that he should begin attending the school within thirty days.⁹⁴ Petitioner's mother never obtained funding for him to attend the Non-Public School.⁹⁵

28. Petitioner's mother did not return to the DCPS School and ask that it provide a location of services that could implement the IEP.⁹⁶ She and Petitioner did not investigate DCPS schools or request that Respondent implement the IEP.⁹⁷ To date, Petitioner still is not enrolled in school.⁹⁸

29. Petitioner was a mostly credible witness. He testified forthrightly about his attendance problems and his difficulties in the military program. However, Petitioner downplayed his involvement with Occupy DC, his arrests associated with that involvement, and his failure to come home for several weeks. Petitioner also overestimated his academic abilities and had many gaps in his memory of the events in this case.

⁸⁶ *Id.*

⁸⁷ Testimony of SEC.

⁸⁸ *Id.*

⁸⁹ *Id.*; testimony of Parent.

⁹⁰ *Id.*

⁹¹ Testimony of SEC.

⁹² *Id.*; Petitioner Exhibit 2 at 1.

⁹³ Testimony of SEC, Parent.

⁹⁴ Petitioner Exhibit 5 (March 5, 2012, letter of acceptance).

⁹⁵ Testimony of Parent.

⁹⁶ *Id.*

⁹⁷ *Id.*; testimony of Petitioner.

⁹⁸ Testimony of Parent.

30. Petitioner's mother was a mostly credible witness. She had excellent recall of the events in this case. She was forthright about Petitioner's behavioral difficulties, obsession with Occupy DC, psychiatric hospitalizations, and attendance problems. She also provided credible testimony that she did not request an IEP meeting and was satisfied with the process in which the IEP was developed. She was not credible when she testified that the SEC knew that she would have to secure funding for the Non-Public School. This Hearing Officer also finds that Petitioner's mother was not credible when she testified that the SEC directed her to disenroll Petitioner from the DCPS School.

31. The PR Director was a credible witness. She provided in-depth testimony about the services provided at the Non-Public School. She also was a credible witness regarding the process of admitting Petitioner to the Non-Public School. Her testimony was not rebutted by any of the other witnesses.

32. The SEC was the most credible witness who testified at the hearing. She forthrightly admitted that she had failed to convene a meeting of Petitioner's IEP team to revise his IEP or explain to Petitioner's mother that a meeting should be held. She testified credibly that she thought Petitioner's mother was trying to get Petitioner enrolled in the Non-Public School on her own and was not seeking funding. She also testified credibly that the DCPS School could not implement Petitioner's January 2012, IEP.

V. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.⁹⁹ 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)...¹⁰⁰

In deciding whether Respondent provided Petitioner a FAPE, the inquiry is limited to (a) whether Respondent complied with the procedures set forth in IDEA; and (b) whether Petitioner's IEP is reasonably calculated to enable Petitioner to receive educational benefit.¹⁰¹

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

⁹⁹ 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).

¹⁰⁰ 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

¹⁰¹ *Rowley*, 458 U.S. at 206-207.

process regarding provision of FAPE, or caused the child a deprivation of educational benefits.¹⁰² In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.¹⁰³

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.¹⁰⁴ The court should not “disturb an IEP simply because [it] disagree[s] with its content.”¹⁰⁵ The court is obliged to “defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides.”¹⁰⁶

The burden of proof is properly placed upon the party seeking relief.¹⁰⁷ Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.¹⁰⁸

Petitioner Failed to Prove that Respondent Denied Him a FAPE By Failing to Provide Him a Location of Services to Implement His January 2012 IEP.

The term “educational placement” refers to the type of educational program prescribed by the IEP.¹⁰⁹ “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.¹¹⁰

In enacting IDEA, “Congress sought to protect individual children by providing for parental involvement in . . . the formulation of the child's individual educational program.”¹¹¹ The statute's emphasis on the full participation of parent(s) in the IEP process demonstrates that “adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.”¹¹²

¹⁰² 34 C.F.R. § 300.513 (a)(2).

¹⁰³ *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).

¹⁰⁴ *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

¹⁰⁸ 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).

¹⁰⁹ *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).

¹¹⁰ *Id.*

¹¹¹ *Rowley*, 458 U.S. at 208.

¹¹² *Hinson v. Merritt Educational Ctr.*, 579 F. Supp. 2d 89, 102 (D.D.C. 2008) (citing *Rowley*, 458 U.S. at 206).

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.¹¹³ One of the important policies underlying the need for an accurate written IEP is “to serve a parent’s interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child’s progress and determine if any change to the program is necessary.”¹¹⁴

Thus, Respondent must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent’s child.¹¹⁵ Additionally, the individuals who make decisions about a student’s educational placement must be knowledgeable about the student, the meaning of the evaluation data, and the placement options.¹¹⁶

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.¹¹⁷

Educational placement is based on the IEP, which is revised annually.¹¹⁸ The general rule is that placement should be based on the IEP.¹¹⁹

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.¹²⁰ 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.¹²¹ In other words, if the

¹¹³ 34 C.F.R. § 300.327; D.C. Mun. Reg. tit. 5-E § 3013.

¹¹⁴ *Alfano v. District of Columbia*, 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Dist. Of Columbia*, 360 F. Supp. 2d 138, 143 (D.D.C. 2005)).

¹¹⁵ 34 C.F.R. § 300.501 (c)(1).

¹¹⁶ 34 C.F.R. § 300.116 (a)(1).

¹¹⁷ *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 LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).

¹¹⁸ *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).

¹¹⁹ *Id.* at 259 (citing 34 C.F.R. § 300.552).

¹²⁰ *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

¹²¹ *Id.*

proposed change substantially or materially affects the composition of the educational program and services provided the student, it is a change in placement.¹²²

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 only.¹²³ Simple changes in the location of a building or facility are not generally viewed to be a change in placement where there are no significant changes in the educational program.¹²⁴

Here, Respondent changed Petitioner's placement when it revised his IEP to provide full-time specialized instruction outside the general education setting. The SEC admitted that she did not convene a meeting of the Student's IEP team to review and revise his IEP. Instead, it appears that Respondent, in changing Petitioner's placement, acquiesced to the request by Petitioner's mother, who desperately wanted to find a school that would be a good fit for her son and provide him the services and support he needed.

Additionally, Petitioner's mother informed Respondent that she did not want a meeting. Petitioner's mother stated that she only wanted a full-time IEP so that she could enroll Petitioner in the Non-Public School. Thus, Petitioner's mother agreed that Respondent could develop the IEP in her absence and without convening a meeting of Petitioner's IEP team.

Additionally, by disenrolling Petitioner from the DCPS School immediately after the SEC provided her the full-time IEP, Petitioner's mother made it clear that neither she nor Petitioner expected Respondent to implement the IEP. Instead, it appears that Petitioner's mother was so optimistic about the Non-Public School that she did not consider how she would pay the tuition.

By disenrolling Petitioner, Petitioner's mother made it clear that she and Petitioner were not seeking a FAPE from Respondent. Rather, their sole purpose in obtaining the full-time IEP was so that Petitioner could attend the Non-Public School. Thus, it made no difference whether Respondent offered a location of services that could implement Petitioner's January 2011 IEP.

Finally, Petitioner presented no evidence to show that he or his mother requested that Respondent fund his tuition at the Non-Public School. Petitioner presented no

¹²² *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18, 1980); *Letter to Fisher*, 21 IDELR 992.

¹²³ *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).

¹²⁴ *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.)

evidence to show that Respondent refused their request to fund his enrollment in the Non-Public School. Petitioner presented no evidence to show that his mother attempted to re-enroll Petitioner in a DCPS school. Nor did Petitioner present any evidence that he or his mother contacted Respondent and requested that it implement his IEP. Rather, Petitioner made no effort to inform Respondent that he desired a FAPE.

Thus, Petitioner failed to prove that Respondent denied him a FAPE by failing to provide him a location of services to implement his January 2012 IEP.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this 11th day of May 2012 hereby:

ORDERED that the Complaint is dismissed with prejudice.

By: /s/ Frances Raskin
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

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