DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 Fifth Street, S.E.
Washington, DC 20003

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STUDENT, through his legal guardian,[1]	)	
	)	
Petitioner,	)	Case Number:
	)	
v.	)	Hearing Dates: July 14 and 15, 2010
	)	Hearing Room 7A
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	Hearing Officer: Frances Raskin
	)	
Respondent.	)	

HEARING OFFICER DETERMINATION

Counsel for Petitioner:
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[1] Personal identification information is provided in Attachment A.

I. JURISDICTION

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

II. BACKGROUND

Petitioner is the mother of a -year-old, special-education student ("Student") with multiple disabilities. The Student most recently attended a public charter school ("Charter School") in the District of Columbia.[2] At a meeting on March 5, 2010, the Student's individualized educational program ("IEP") team agreed that the Charter School could no longer meet the Student's needs and agreed to determine a new placement/location of services for the Student.[3] On March 17, 2010, the IEP team developed an IEP for the Student that specifies he is to receive twenty hours of specialized instruction, one hour and forty-five minutes of speech-language pathology, one hour of behavioral support services, and thirty minutes of occupational therapy per week.[4]

At a subsequent meeting on March 30, 2010, the District of Columbia Public Schools ("DCPS") placement specialist proposed a DCPS senior high school ("DCPS School") as an alternate placement/location of services for the Student.[5] Petitioner rejected this placement and stated that the Student requires a full-time, out of general education, non-public placement.[6] Petitioner, the Student, and their attorney visited the DCPS School on May 17, 2010.[7]

On May 24, 2010, Petitioner filed a Due Process Compliant against DCPS pursuant to the Individuals with Disabilities Education Act. On May 27, 2010, this Hearing Officer was appointed to preside over this case.

The parties participated in a resolution meeting on June 3, 2010. The parties were unable to reach an agreement and agreed to proceed to due process hearing. Accordingly, the forty-five-day due process hearing timeline started to run on June 4, 2010.

On June 10, 2010, this Hearing Officer held a prehearing conference in the above matter. During the prehearing conference, the parties agreed that the due process hearing would be closed to the public. The parties also agreed that the due process hearing would be held on July 14-15, 2010. On June 30, 2010, this Hearing Officer issued a Prehearing Conference Order.

The due process hearing commenced on July 14, 2010. Each party's five-day disclosures, as well as a set of joint exhibits that included a list of stipulations, were admitted into evidence at

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[2] Stipulation of parties.
[3] *Id.*; Joint Exhibit 1.
[4] Joint Exhibit 2.
[5] Joint Exhibit 5.
[6] *Id.*
[7] Stipulation of parties.

the inception of the hearing. After the parties presented oral closing arguments, the due process hearing concluded on July 15, 2010.

III. RECORD

Due Process Complaint Notice, filed May 24, 2010;
DCPS Response to the Petitioner's Due Process Complaint, filed June 5, 2010;
Prehearing Notice, issued June 8, 2010;
Due Process Complaint Disposition, filed June 8, 2010;
Resolution Meeting Confirmation, filed June 8, 2010;
Consent Motion for Continuance, filed June 15, 2010;
Prehearing Conference Order, issued June 30, 2010;
Joint Exhibits, including six exhibits and eight stipulations of fact, filed July 7, 2010;
Petitioner's Five-Day Disclosure Statement, listing four witnesses and including fifteen proposed exhibits, filed July 7, 201;
DCPS Five-Day Disclosure; listing three witnesses and including four proposed exhibits, filed July 7, 2010; and
Interim Order on Continuance, issued July 13, 2010.

IV. ISSUES PRESENTED

A. Whether DCPS denied the Student a free, appropriate, public education ("FAPE") by failing to propose an appropriate placement and location of services for the Student on March 30, 2010; and

B. Whether DCPS denied the Student a FAPE by failing to provide Petitioner with sufficient information about the placement and location of services to allow her an opportunity to participate in the decision-making process regarding the provision of FAPE to the Student.

V. FINDINGS OF FACT

1. The Student is a -year-old, special-education student who attended a Charter School for the 2009-2010 school year, repeating the grade for the second time.[8] The Student's intellectual functioning is in the borderline to deficient range, which generally places him in the mild range of mental retardation.[9] He has significant deficits in many aspects of cognitive, linguistic, and motor functioning.[10]

2. The Student has significant challenges in expressive language, comprehension of oral language, phonological awareness and rapid naming speed, visual-motor integration, visual-spatial organization, attention, and executive functioning.[11] The Student's academic

[8] *Id.*; Petitioner Exhibit 3 (December 2009 neuropsychological evaluation).
[9] Petitioner Exhibit 3.
[10] *Id.* The Student's scores may have been influenced by his dysphoria, inattention, and low motivation.
[11] *Id.*

achievement is below average in all academic areas, which is consistent with his cognitive and linguistic profile.[12] As a result, his academic program should emphasize functional academic skills, vocational training, and independent living skills.[13]

3. In the area of reading, the Student demonstrates an early second-grade level sight-word vocabulary and reading fluency for very simple sentences, although his phonetic decoding skills are at a late first-grade level.[14] The Student also performs at a last first-grade level in reading comprehension, which is consistent with his significant weaknesses in oral language comprehension.[15]

4. In the area of written language, the Student performs on the late second-grade level for his ability to write sentences, despite clear weaknesses with writing mechanics and late first-grade spelling skills.[16] The Student has particular difficulty with writing fluency, which is consistent with his inefficient oral language production.[17]

5. The Student's strongest academic skills lie in the mathematics domain, although his overall performance is below average compared to his same-aged peers.[18] He evidences early third-grade level word-problem solving skills, and late second-grade computational skills.[19] In contrast, the Student performs at a last first-grade level in math fluency.[20]

6. In terms of his emotional functioning, the Student displays symptoms that often reflect depression and/or anxiety.[21] While these challenges may exacerbate his cognitive and academic weaknesses, the Student has a long-standing history of poor school functioning, which would seem to indicate that his weaknesses are not entirely reflective of emotional difficulties.[22] It is likely that the Student's chromic unhappiness and intense frustration with school also reflects the presence of underlying cognitive and academic weaknesses.[23]

7. In regards to the Student's adaptive behavior, he may have areas of strength that would facilitate independence over time.[24] However, his limited adaptive capacity at school suggests that he will need support and direct instruction in areas that would foster independence, such as functional mathematics, time management, and interpersonal skills.[25]

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[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

8. The Student requires a small, highly structured, highly specialized, and self-contained educational environment.[26] It is critical for the Student to receive intensive training in phonetic decoding skills and programs for promoting literacy at the word, phrase, sentence, and passage levels.[27] The Student needs an approach to reading comprehension that emphasizes visualization and paraphrasing strategies.[28]

9. In terms of vocational programming, the Student's highest level of interest is in mechanical and physical performance vocations, although his interest levels are relatively low.[29] The mechanical area could include applying mechanical principles and using tools or machines.[30] Jobs associated with this area may involve activities such as operating and maintaining mechanical equipment in a factory or a laboratory, operating land or water vehicles, or building and repairing things on a large or small scale.[31] Vocational options related to physical performance typically involve interests in performing physical activities before an audience, such as a job in professional sports as a player or referee or acrobatics.[32] The Student expressed interest in becoming an auto mechanic and possibly attending trade school after completing high school.[33]

10. The Student's highest vocational abilities are in the spatial aptitude area.[34] Student who achieve average performance in these areas tend to perform well in school and work arenas involving drawing, art, architecture, and clothing design.[35] He may have a general ability to visualize two-dimensional objects in three-dimensional space and to mentally manipulate objects through different orientations.[36] His abilities in all other vocational areas are low to very low.[37]

11. The Student's ability to perform independent work-related tasks is low.[38] He will have difficulty with independent work-related areas and will require a high level of support and supervision.[39] While he may be able to initiate most tasks presented to him, the Student most likely will require verbal cues to problem solve and complete additional steps in sequence.[40] He

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[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] Petitioner Exhibit 4 (December 2009 Career/Vocational Evaluation).
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*

requires extended time on most tasks and presents with learning and motor delays, which impact his ability to perform.[41]

12. In terms of transition planning, the Student requires assistance in identifying jobs based on his interests and abilities, as well as demonstrating work behavior and attitudes that are desired by employers.[42] The Student requires assistance in daily living activities, including personal grooming and hygiene, locating housing, household maintenance, and money management.[43] The Student is able to navigate the public transit system.[44]

13. The Student has significant concerns about his emotional health and his ability to manage emotional problems that arise.[45] He feels that he is unable to express his feelings and ideas to others in the right way or with confidence.[46] In terms of interpersonal relationships, he believes he has no problems getting along with family, relatives, or peers at school.[47] However, he admits that he struggles with effectively interacting with teachers in the school setting.[48]

14. The Student requires a comprehensive transition plan that includes transition support and related goals and objectives in the areas of further education/training, community participation, and daily living.[49] He should participate in a regular transition services class, and his educational program should include support from a transition specialist who can explore appropriate interests and job opportunities and provide work-related opportunities.[50] He also requires a variety of pre-vocational activities to assist him with sharpening related skills such as filling out applications and paperwork accurately and legibly; recognizing his needs and requesting assistance (self advocacy); and participating in work-related tasks that address work-readiness behavior such as punctuality, proper dress, coworker interactions, and self-evaluation.

15. The Student displays disruptive behaviors in class and in the hallways with peers and staff.[51] He interrupts instruction by yelling out, has difficulty focusing and attending to assignments to completion, and he teases other students.[52] At times, the Student will respond by shutting down, i.e., refusing to talk or participate in classroom activities.[53] He also can be combative with staff when limits are set.[54]

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[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Petitioner Exhibit 5 (December 2009 functional behavioral assessment).
[52] *Id.*
[53] *Id.*
[54] *Id.*

16. The Student appears to have difficulty processing and accepting the consequences of his actions, which results in duplication of his behavior patterns.[55] He attempts to use humor to engage others, which can be verbally disruptive in the classroom.[56] When challenged by teachers, he sometimes flees the classroom and wanders the hallways.[57]

17. At the Charter School, the Student was in a general education setting where the instruction was too fast, not sufficiently individualized to meet his needs, and required a high level of language and literacy skills.[58] His language difficulties affect his ability to comprehend the oral directions given by his teachers.[59]

18. His difficulties in the classroom are in part due to the large learning environment with a student-teacher ratio of eighteen to one.[60] The large classroom intensifies his feelings of fear and failure, which exacerbate his feelings of frustration about his inability to complete the assignments.[61]

19. Overall, the intensity and frequency of the Student's behavioral difficulties correlate directly to his presence in an environment that is too stimulating and exposure to instruction that incorporates language beyond his comprehension.[62] His inability to access the curriculum at grade level, resulting in his inability to complete assignments across subject areas, contributes to his behavioral difficulties in the classroom.[63] At times, the Student's behavior escalates to a point that necessitates his removal from the classroom.[64]

20. The Student displays mostly surface behaviors that allow him to avoid feelings of frustration and failure, avoid class work that is too difficult, avoid embarrassment due to poor reading and skill levels, and seek stimulation and gain interaction and attention by peers and adults.[65] The Student requires a behavior intervention plan that focuses on managing the school environment and instructional levels, integrating praise and positive behavior interventions, and instruction on coping, social, and communication skills.[66]

21. The Student requires a full-time, special education setting with a low student-teacher ratio, and in a small school.[67] The Student requires intensive academic and behavioral instruction, supports, accommodations, and related services.[68] He must be removed from the

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[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*

general education setting to become as independent as possible and make meaningful progress.[69] The Student also requires a multi-sensory, cross-curriculum approach that includes repetition, re-teaching, use of manipulatives, extended time for completion of work, visual supports, review of basic skills and facts, modeling, skills broken down into manageable segments, and consistent checks to ensure the Student understands directions.[70]

22. The setting should provide related services integrated into the school day, including psychological and counseling service providers who interact frequently with classroom staff, the Student, and his family.[71] The Student also requires continued occupational and speech-language therapy in an integrated model of service delivery in a special education setting where providers co-treat and co-teach skills in a transdisciplinary manner.[72] To support his processing of directions given in his instructional environment, and to improve social-emotional functioning and behavioral functioning, the Student's classroom teacher and therapists should collaborate on his IEP goals.[73]

23. On March 5, 2010, the Student's IEP team met to discuss the Student's progress at the Charter School and review his recent evaluations.[74] At this meeting, the Student's special education teacher/case manager ("Teacher") reported her observations from teaching the Student for two years in an inclusion setting with a maximum of twenty students in each class.[75] The Teacher reported that the Student goes to sleep when frustrated in class and is difficult to awaken.[76] She stated that, when the Student is awake, he asks irrelevant questions in an attention-seeking manner, initiates conversations with students across the room, and is difficult to redirect.[77] She further reported that the Student requires a lot of one-on-one attention and demonstrates learned helplessness.[78]

24. At the March 5, 2010, meeting, a DCPS school psychologist ("Psychologist") reviewed the Student's December 2009 neuropsychological evaluation.[79] He informed the IEP team that, although the evaluation revealed that Student was functioning at an intellectual level that is consistent with mild mental retardation, it was his opinion that he does not qualify as a student with mental retardation.[80] The psychologist explained that, for the Student to qualify as mentally retarded, his adaptive abilities also need to be significantly low.[81] However, the

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[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] Joint Exhibit 1.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*

evaluation found that the Student's adaptive abilities were not this low.[82] Thus, the Student's adaptive ability scores do not suggest that he is mentally retarded.[83]

25. After the IEP team reviewed all of the Student's evaluations, the Charter School SEC stated that she did not believe the Charter School was an appropriate setting for the Student.[84] The IEP team agreed that, based on the evaluation reports, the Charter School could not meet the Student's needs.[85]

26. The IEP team reconvened on March 17, 2010, to develop an IEP for the Student.[86] The IEP provides that the Student is to receive twenty hours of specialized instruction, one hour and forty-five minutes of speech-language pathology, one hour of behavioral support services, and thirty minutes of occupational therapy per week.[87] The IEP indicates that the Student does not require the support of a dedicated aide and would not receive extended school year services.[88] Although the IEP includes a transition plan, it does not incorporate the recommendations of the Student's December 2009 Career/Vocational Evaluation.[89]

27. The IEP indicates that the Student will take a regular statewide assessment without accommodations.[90] Yet, this section of the IEP lists accommodations in the areas of presentation (repetition of directions and simplification of oral directions), setting (preferential seating, small group testing, and location with minimal distractions), and timing and scheduling (extended time on subtests and breaks during a subtest).[91] These accommodations mirror the Student's classroom accommodations listed in the IEP.[92]

28. The IEP also incorrectly indicates that the Student is on a diploma track.[93] The Least Restrictive Environment ("LRE") portion of the IEP is similarly flawed.[94] While it provides a justification for specialized instruction and related services, it does not address the environment in which the Student's instruction and related services are to be provided, i.e., in the general education setting, outside the general education setting, etc.[95] It also fails to specify the amount of time the Student is to be outside the general education setting, as required by the IEP

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[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*; Joint Exhibit 1.
[86] Joint Exhibit 2.
[87] Joint Exhibit 3.
[88] *Id.* The parties stipulated at the due process hearing that the transition plan should be revised.
[89] *Id.* See Petitioner Exhibit 4.
[90] Joint Exhibit 3.
[91] *Id.*
[92] *Id.*
[93] Both parties stipulated that the Student is on a certificate track.
[94] Joint Exhibit 3.
[95] *Id.*

form.[96] Thus, it is not clear from the face of the IEP whether the Student is to receive specialized instruction in an inclusion setting or outside the general education setting.

29. The IEP fails to address the Student's need for a behavioral implementation plan.[97] It also fails to address the Student's depression. Finally, the present levels of performance on the IEP do not accurately reflect the results of the Student's December 2009 neuropsychological evaluation.[98]

30. At a subsequent meeting on March 30, 2010, the District of Columbia Public Schools ("DCPS") placement specialist proposed a DCPS senior high school ("DCPS School") as an alternate placement/location of services for the Student.[99] Petitioner rejected this placement/location of services and stated that the Student requires a full-time, out of general education, non-public placement.[100]

31. The IEP team met again on March 30, 2010, to discuss the Student's location of services for the 2010-2011 school year.[101] The DCPS Placement Specialist informed the IEP team that the Student would be attending a DCPS senior high school ("DCPS School").[102]

32. The Placement Specialist asserted that the DCPS School can meet the Student's educational needs, and that it offers a "self-contained" and a mental retardation ("MR") program as well an automotive vocational program.[103] The placement specialist could not commit to whether the Student would be placed in the self-contained program or the MR program.[104] She also was unable to describe the specific program for the Student, such as his class schedule, peer group, class size, or curriculum.[105] The Placement Specialist was similarly unable to describe the qualifications of the automotive program instructors.[106]

33. When pressed for more details on what programs the DCPS School offers, the placement specialist stated that the two SECs at the DCPS School would be in a better position to provide this information.[107] However, neither of these SECs attended the IEP meeting and the IEP team was unable to reach them by telephone.[108] Petitioner rejected this placement/location

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[96] *Id.* The IEP form instructs the team to "[m]ake a brief statement describing student needs that require removal from general education to receive the following special education and related services." The IEP team failed to include this statement for the specialized instruction and for each related service.
[97] Stipulation of parties.
[98] *See* Petitioner Exhibit 3; stipulation of parties.
[99] Joint Exhibit 5.
[100] *Id.*
[101] Joint Exhibit 5; Petitioner Exhibit 10.
[102] Joint Exhibit 5.
[103] *Id.*
[104] Petitioner Exhibit 10.
[105] *Id.*
[106] *Id.*; Joint Exhibit 5.
[107] Joint Exhibit 5.
[108] *Id.*

of services and stated that the Student requires a full-time, out of general education, non-public placement.[109]

34. Petitioner, the Student, and their attorney visited the DCPS School on May 17, 2010.[110] On May 19, 2010, one of the SECs at the DCPS School ("SEC 2") followed up with counsel for Petitioner by email to explain that the Student would be in a class that follows the DCPS curriculum.[111] She explained that "the difference is how the information is presented which comes with differentiating instruction and accommodations according to the students (sic) IEP. . . . The class is a cross-category class which means you can have student (sic) with different disabilities in the class but the class has no more than 12 students at a time."[112]

35. The DCPS School offers two self-contained programs, one for students with MR and the other for students with emotional disturbance.[113] Most special education students, including learning disabled students, are in inclusion classes with the general education students.[114] These students also receive remedial math and reading classes.[115]

36. All of the Student's instruction at the DCPS School would be provided in out-of-general-education setting.[116] Nonetheless, his courses would be designed to provide him Carnegie units so that he could earn a diploma.[117]

37. Due to the Student's pervasive cognitive, academic, and behavioral deficits, he would not succeed in a class that follows the DCPS curriculum, which is traditional grade-level instruction geared toward a diploma.[118] Instead, the Student requires a strong vocational program with integrated language-based instruction that concentrates on functional language and math skills.[119] His curriculum should concentrate on building and strengthening his vocational interests and building and strengthening his functional math and language skills.[120]

38. While the DCPS School provides an excellent automotive program for general education students, the instructors are not trained in special education.[121] Although some special education students are successful in the automotive program, those students have skill sets that allow them to work with a peer (as opposed to having a special educator provide the

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[109] *Id.*
[110] Stipulation of parties.
[111] Petitioner Exhibit 14 (May 19, 2009, email from SEC 2).
[112] *Id.*
[113] Testimony of DCPS SEC 1.
[114] *Id.*
[115] *Id.*
[116] Testimony of DCPS SEC 1.
[117] *Id.*
[118] Testimony of Petitioner's Advocate/Educational Expert ("Educational Expert").
[119] *Id.*
[120] *Id.*
[121] *Id.*

instruction).[122] This would not be appropriate for the Student as he requires full-time, special education instruction.[123]

39. Moreover, the DCPS School automotive program requires that students spend their first year in a textbook- and lecture-based automotive course before being allowed to participate in the automotive workshop.[124] The textbook is written for students who read on a fifth-grade level.[125] The vocational program has no materials for students at a lower reading comprehension level.[126] The lecture also is geared toward students functioning at fifth- to eighth-grade reading levels.[127] Thus, the automotive program is beyond the Student's capabilities.[128]

40. The Student has been accepted at a full-time, non-public, special education school ("Non-Public School").[129] The academic program at the Non-Public School focuses on a wide variety of academic areas and the functional applications of these academic areas.[130] The goal for the students at the Non-Public School is post-secondary independent living, employability, and vocational skills.[131] All of the Students at the Non-Public School are students with disabilities.[132]

41. At the Non-Public School, the Student would receive instruction in reading, language, math, social studies, and physical education.[133] He would be in a class with ten students, one teacher, and two aides.[134] At the Non-Public School, related services are integrated into classroom and the providers are present during academic instruction.[135]

42. The academic program at the Non-Public School is focused on functional life skills. The students receive reading instruction at their instructional reading levels every day.[136] The math program focuses on functional math skills such as counting money and budgeting for groceries.[137] The Non-Public School also offers social studies, science, sex education, and a

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[122] *Id.*
[123] *Id.*
[124] *Id.*; Testimony of DCPS SEC 1.
[125] *Id.*
[126] *Id.*
[127] Testimony of Educational Expert.
[128] *Id.*
[129] Testimony of Non-Public School High School Director ("Director").
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*

computer lab that teaches students skills such as creating PowerPoint presentations and word processing.[138] All of the classes incorporate a multi-modal approach to instruction.[139]

43. The Student would receive reading instruction at his instructional level to work on his weaknesses such as decoding and other functional academics.[140] The Student's speech therapist would be in classroom during reading instruction and would be present for his social skills group.[141] The speech-language therapist also would accompany the Student when he is on outings outside school to assist him with his working language.[142]

44. The Non-Public School offers transitional services and prevocational training and education.[143] The vocational staff would provide vocational group instruction in the Student's homeroom classroom.[144] Within the school building, the Non-Public School has about twenty small job sites that allow students can get a sense of what they like and what they are good at.[145] Students also focus on other skill sets while working on vocational skills such as learning to follow a schedule and getting to work.[146]

45. The Student would be a candidate for the Non-Public School's post-high school program in the 2011-2012 school year.[147] This is a school-to-work program that provides opportunities for students go off campus to job sites such as restaurants, offices, the Smithsonian, and a clinical setting at the National Institutes of Health.[148]

46. The Non-Public School provides an opportunity for the Student to receive more highly individualized, structured instruction that will enable the Student to become successful in a vocation.[149] Once the Student recognizes his achievements, his self-esteem will improve and he will begin to exhibit more positive behaviors.[150]

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible with the exception of the testimony of the DCPS Special Education Coordinator 1 ("SEC 1"). SEC 1's testimony revealed her lack of knowledge of the Student's cognitive abilities, academic performance, vocational, and transition needs. This Hearing Officer especially did not find credible the SEC's testimony

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[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] Testimony of Educational Expert.
[150] *Id.*

about the ability of DCPS to provide the Student a vocational curriculum accessible to the Student and designed to fit his needs, especially her assertion that the automotive program was accessible to students with mental retardation.

Petitioner's Advocate was admitted as an expert in special education, with a particular emphasis on evaluating special education placements. She testified credibly and knowledgeably about the Student's individualized needs and the appropriateness of the vocational program offered at the DCPS School.

VII. 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.[151] 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)..."[152]

In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEIA; and (b) whether the Student's IEP is reasonably calculated to enable the Student to receive educational benefit.[153]

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.[154] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[155]

Once a procedurally proper IEP has been formulated, a reviewing court should be

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[151] 20 U.S.C. §§ 1400(d) (1)(A),1412 (a) (1); *Bd. of Education v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).
[152] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[153] *Rowley,* 458 U.S. at 206-207.
[154] 34 C.F.R. § 300.513 (a)(2).
[155] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted). *Accord, Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (denying relief under IDEA because "although DCPS admits that it failed to satisfy its responsibility to assess [the student] for IDEA eligibility within 120 days of her parents' request, the [parents] have not shown that any harm resulted from that error").

reluctant indeed to second-guess the judgment of education professionals.[156] The court should not "disturb an IEP simply because [it] disagree[s] with its content."[157] 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."[158]

The burden of proof is properly placed upon the party seeking relief.[159] Under IDEIA, a Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[160]

VIII. DISCUSSION

A. Petitioner Proved that DCPS Failed to Provide the Student an Appropriate Educational Placement for the 2010-2011 School Year.

FAPE "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction."[161] The IEP is the centerpiece of special education delivery system.[162]

The term "educational placement" refers only to the general type of educational program in which the child is placed.[163] "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.[164]

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[165] establishes annual goals related to those needs,[166] and provides appropriate specialized instruction and related services.[167] The program must be

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[156] *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).
[157] *Id.*
[158] *Id.*
[159] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[160] 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).
[161] *Rowley*, 458 U.S. at 188-89 (citation omitted).
[162] *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).
[163] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[164] *Id.*
[165] 34 C.F.R. § 300.320 (a) (1).
[166] 34 C.F.R. § 300.320 (a) (2).
[167] 34 C.F.R. § 300.320 (a) (4).

implemented in the LRE.[168] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[169]

Courts have identified a set of considerations relevant to determining whether a particular placement is appropriate for a particular student, including 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.[170]

The Student's March 17, 2010, IEP is fundamentally flawed. First, it incorrectly indicates that the Student is on a diploma track. The LRE portion fails to address the environment in which the Student's instruction and related services are to be provided, i.e., in the general education setting, outside the general education setting, etc. It also fails to specify the amount of time the Student is to be outside the general education setting, as required by the IEP form.

The IEP fails to address the Student's need for a behavioral implementation plan. It also fails to address the Student's depression. Finally, the present levels of performance on the IEP do not accurately reflect the results of the Student's December 2009 neuropsychological evaluation. Thus, the IEP is not reasonably calculated to enable to Student to received educational benefit.

Moreover, there is no question that the Student requires functional academics that will allow him to pursue a vocation after high school. Nor does DCPS dispute that the Student is and should be on a certificate track.

While the neuropsychologist and the DCPS psychologist may disagree as to whether the Student is in the mild range of mental retardation or learning disabled, DCPS does not dispute that he has significant deficits in cognitive, linguistic, and motor functioning. Moreover, the Student has significant challenges in expressive language, comprehension of oral language, phonological awareness and rapid naming speed, visual-motor integration, visual-spatial organization, attention, and executive functioning.

The Student has an early second-grade level sight-word vocabulary and reading fluency for very simple sentences, and his phonetic decoding skills are at a late first-grade level. He also performs at a last first-grade level in reading comprehension, which is consistent with his significant weaknesses in oral language comprehension.

Yet, DCPS proposes to place the Student in a class that follows the DCPS curriculum and is geared toward a diploma. DCPS is proposing a vocational program that requires one year of traditional classroom instruction and mastery of a textbook that is written for students who read on a fifth-grade level. The lecture also is geared toward students functioning at fifth- to eighth-

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[168] 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).
[169] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[170] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202).

grade reading levels. DCPS conceded that the vocational programs at the DCPS School do not provide materials for students at lower reading comprehension levels.

As a result of his pervasive cognitive, academic, and behavioral deficits, the Student would not succeed in a class that follows the DCPS curriculum, or in any environment that provides traditional grade-level instruction geared toward a diploma. Thus, it is clear that DCPS is simply placing the Student in the program available at the DCPS School rather than designing a program that addresses the student's specialized educational needs. This program would not provide the Student a basic floor of educational opportunity. Rather, he would be destined to continue to fail academically.

The Student requires a strong vocational program with integrated language-based instruction that concentrates on functional language and math skills. His curriculum should concentrate on building and strengthening his vocational interests and building and strengthening his functional math and language skills. He also requires a variety of pre-vocational activities to assist him with sharpening related skills such as filling out applications and paperwork accurately and legibly; recognizing his needs and requesting assistance (self advocacy); and participating in work-related tasks that address work-readiness behavior such as punctuality, proper dress, coworker interactions, and self-evaluation.

The Student requires intensive academic and behavioral instruction, supports, accommodations, and related services. He must be removed from the general education setting to become as independent as possible and make meaningful progress. The Student also requires a multi-sensory, cross-curriculum approach that includes repetition, re-teaching, use of manipulatives, extended time for completion of work, visual supports, review of basic skills and facts, modeling, skills broken down into manageable segments, and consistent checks to ensure the Student understands directions.

The setting should provide related services integrated into the school day, including psychological and counseling service providers who interact frequently with classroom staff, the Student, and his family. The Student also requires continued occupational and speech-language therapy in an integrated model of service delivery in a special education setting where providers co-treat and co-teach skills in a transdisciplinary manner. To support his processing of directions given in his instructional environment, and to improve social-emotional functioning and behavioral functioning, the Student's classroom teacher and therapists should collaborate on his IEP goals.

This is exactly the program the non-public school provides.

Moreover, the Non-Public School is the Student's least restrictive environment. Petitioner established that the Student requires a full-time, highly structured, highly specialized, self-contained educational environment with a low student-teacher ratio, in a small school.

Petitioners proved by a preponderance of the evidence that DCPS failed to develop an appropriate IEP and provide an appropriate educational placement for the Student for the 2010-2011 school year. Thus, Petitioners proved by a preponderance of the evidence that DCPS denied the Student a FAPE.

B. Petitioner Proved that DCPS Failed to Allow Petitioner an Opportunity to Participate in the Decision-Making Process Regarding the Provision of FAPE to the Student.

In enacting the IDEA, "Congress sought to protect individual children by providing for parental involvement in . . . the formulation of the child's individual educational program."[171] Congress' emphasis on the full participation of the parent(s) in the IEP process "demonstrates the legislative conviction 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."[172]

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.[173] 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.[174] Thus, DCPS 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.[175] Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of a free and appropriate public education ("FAPE").[176]

Here, DCPS failed to provide Petitioner any information about the DCPS School at the March 30, 2010, IEP meeting. The DCPS Placement Specialist admitted that she had no information about the DCPS School and what it could offer the Student. The Placement Specialist informed the IEP team that the DCPS School SEC would be the person to provide that information, yet DCPS did not make the SEC available to the IEP Team. At the March 30, 2010, IEP meeting, DCPS provided no information about the class in which the Student would be placed, the type of instruction the Student would receive at the DCPS School, his vocational program, or the Student's proposed schedule.

Thus, Petitioner provided that DCPS denied the Student a FAPE by failing to allow Petitioner an opportunity to participate in the decision-making process regarding the Student's placement for the 2010-2011 school year.

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[171] *Rowley, 458 U.S. at 208.*

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

[173] . 20 U.S.C. § 1414(f), 1415(b)

[174] *Alfano et al. v. District of Columbia,* 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Gov't of Dist. Of Columbia,* 360 F. Supp. 2d 138, 143 (D.D.C. 2005).

[175] 34 C.F.R. § 300.501 (c)(1).

[176] *See, e.g., W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, it is this 25th day of July 2010 hereby:

ORDERED that the Student shall attend the non-public school at DCPS expense for the 2010-2011 school year;

IT IS FURTHER ORDERED that on or before August 10, 2010, DCPS shall revise the Student's IEP in accordance with the findings herein; and

IT IS FURTHER ORDERED that this Order is effective immediately.

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. § 415(i)(2).

Distributed to:

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Hearing Office
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