DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

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

Petitioner,

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Erin H. Leff, Hearing Officer

OSSE
STUDENT HEARING OFFICE
2012 JUL -2 AM 9: 33

HEARING OFFICER DETERMINATION
and Decision on Motion for Directed Verdict

STATEMENT OF THE CASE

On April 6, 2012 Parents, on behalf of their child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education ("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a Response to Parent's Administrative Due Process Complaint Notice (HO 6) on April 25, 2012. A resolution meeting was held on April 18, 2012. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on the same date so indicating. HO 5. The 45 day timeline began to run on May 7, 2012, the day after the 30 day

[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

resolution period ended. Following the Prehearing Conference held on May 1, 2012, I issued a Prehearing Conference Order on May 2, 2011. HO 7. On June 6, 2012, following the second day of hearing in this matter, I granted a 10 day continuance based on Petitioner's Motion for a Continuance, which was opposed by Respondent, to allow time for the parties to complete their examination of Respondent's final witness and to allow Petitioner to present a rebuttal witness. My Hearing Officer Determination ("HOD") is due on June 30, 2012.

At the close of Petitioner's case, Respondent made a Motion for Directed Verdict. I heard counsels' arguments on the Motion and stated on the record I was holding the Motion in abeyance and would enter my Order on the Motion when I filed my HOD. My decision on the Motion is addressed *infra*. at pages 8 - 10.

By agreement of the parties, the hearing was scheduled for June 1, and June 5, 2012. The hearing was held as scheduled in Rooms 2004 and 2006 of the Student Hearing Office. Heather Elliott, Executive Director of DC Early Stages, was present throughout the hearing as DCPS party representative. Near the close of the hearing on June 5, 2012, Petitioner entered a Motion for Continuance on the record. I granted the continuance on the record and then required Petitioner to file a written Motion to complete the record. As noted *Supra*, I granted the Motion by Order dated June 6, 2012. A third day of hearing was scheduled for June 20, 2012. The hearing was held as scheduled in room 2006 of the Student Hearing Office.[3]

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

[3] The Chief Hearing Officer was present, but did not participate, during the June 20, 2012 hearing date.

ISSUES

The issues are:

1) Whether DCPS failed to provide Student a free appropriate public education ("FAPE") by failing to provide Student an appropriate individualized education program ("IEP") for the 2010-2011 and 2011-2012 school years.

   a. An IEP was developed in the 2010-2011 school year. The IEP of October 5, 2010 provided the student 6 hours per week of specialized instruction, 45 minutes per week of speech/language therapy and 45 minutes per week of occupational therapy in the general education setting. The IEP also provided 45 minutes per week of behavior support and 1 hour of physical therapy per week outside the general education setting. Petitioners do not challenge the goals as written. Petitioners contend the amount of service is not appropriate in that Student required a full time program;[4]

   b. No IEP was developed in the 2011-2012 school year because Student was not enrolled in and attending a DCPS school;

2) Whether DCPS failed to provide Student a FAPE by failing to provide Student an appropriate placement;[5]

3) Whether DCPS failed to provide Student a FAPE by refusing to complete the IEP process in the 2011-2012 school year and offering the student only an Individualized Service Plan ("ISP"). Petitioners allege that despite Petitioners' informing DCPS of their interest in continuing the IEP process in the hopes of developing an appropriate program, DCPS refused to continue the process because the student was not attending a DCPS school; and

4) Whether the is an appropriate placement for Student.

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[4] During the prehearing conference Petitioners' counsel stated the challenge was to the amount of special instruction included in the October 2010 IEP. Counsel further stated he would confer with his client to determine whether there also was a challenge to the amount of related services included in this October 2010 IEP and that he would then notify Respondent's counsel and me. I ordered that this clarification be provided by 5:00 PM on May 11, 2012, three full weeks before the first scheduled hearing date of June 1, 2012. Petitioner's counsel provided a letter by email on May 11, 2012, stating Petitioners were not claiming insufficient amounts of related service in the October 2010 IEP.

[5] Petitioners' counsel withdrew the portion of this issue relating to a claim of failure to provide an appropriate location of service after I noted IDEA does not identify location of service as a possible area of due process complaint, *See* 34 C.F.R. §300.507(a)1, during the prehearing conference.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

P 1 Due Process Complaint Notice, 4-06-2012;[6]
P 2 Neuropsychological Evaluation by Dr. Vincent Culotta, 11-20-2008;
P 3 Primary Conference Report, November 2008;
P 4 School Outpatient Speech and Language Report, January 2009:
P 5 Letter to Jenny Johnson from Dr. Eric Levine, 3-31-2009
P 6 Observation Report by Dr. Eric Levine, 4-04-2009:
P 7 DCPS Review of Independent Evaluation and Physical Therapy Clinical Observation Report, 5-20-2009;
P 8 School End-of -Year Report, 6-18-2009;
P 9 Next Steps Pediatric Physical Therapy Report, 6-22-2009:
P 10 DCPS Early Stages Occupational Therapy Evaluation and Review or Independent Evaluations, 7-06-2009;
P 11 Letter to Phyllis Bolden from William and Laura Vinyard. 7-29-2009;
P 12 Play Based Physical Therapy Comprehensive Reassessment, 8-13-2009;
P 13 Letter to Monica Johnson-Harris fl'0111 Mr. William Vinyard. 9-08-2009:
P 14 Letter to Mr. William Vinyard from Dr. Nathaniel Beers, 09-18-2009:
P 15 Letter to Dr. Nathaniel Beers from Mr. William Vinyard, 9 -29-2009:
P 16 Neuropsychological Re-Evaluation by Dr. Vincent Culotta, 12-30-2009:
P 17 Letter to Mr.and Mrs. Vinyard from Dr. Christopher Renner, 12-31-2009:
P 18 Rehabilitation Evaluation, 2-17-2010;
P 19 School Outpatient Speech and Language Evaluation and Progress Report, February 2010;
P 20 Letter to Dr. Linda Goldstein from Dr. John Myscros, 3-11-2010;
P 21 Letter to Dr. Nathaniel Beers from Anjali Prakash. Esq. 4-30-20 I 0;
P 22 School or Washington Occupational Therapy Progress Report. April 2012
P 23 l.cttcr to Donna Anthony from Anjali Prakash, Esq., 5-06-2010
P 24 Physical Therapy Progress Report by Sujata P. Singh, 5-07-2010
P 25 Letter to Anjali Prakash. Esq. from Donna Anthony, 5-18-20
P 26 Letter to Donna Anthony from Anjali Prakash, Esq., 5-26-20 I 0
P 27 Letter to Anjali Prakash, Esq. hum Donna Anthony, 5-27-20 10
P 28 Letter to Donna Anthony from Anjali Prakash, Esq., 6-03-2010
P 29 DCPS Consent for Initial Evaluation and Release of Information, 6-17-2010;
P 30 DCPS Review of Independent Speech Language Evaluation, 7-23-20 I 0
P 31 DCPS Early Stages Psychological Evaluation Report and Review of Neuropsychological Evaluation, 7-27-2010
P 32 DCPS Letter of Invitation to a Meeting, 7-28-2010
P 33 DCPS Early Stages Occupational Therapy Evaluation Report, 7-29-2010

[6] My Prehearing Order required the parties not to duplicate the exhibits in my proposed list of Hearing Officer Exhibits in their own exhibits. Therefore, I will not reference any such duplicates within this Hearing Officer Determination. The duplicates include P 1, P 93 and R 56.

P 34 Letter to Maria Monserrate from Paula A. Rosenstock, Esq., 7-29-20
P 35 DCPS Early Stages Review of Independent Evaluations and Physical Therapy Clinical Observation Report, 8-2-2010
P 36 DCPS Eligibility Determination Report, 8-03-2010
P 37A DCPS Eligibility Meeting Notes, Handwritten, 8-03-2010
P 37B DCPS Eligibility Meeting Notes, Typed, 8-03-2010
P 38 DCPS Draft IEP provided at Eligibility Meeting, 8-03-2010
P 39 DCPS Draft IEP, 8-23-2010
P 40 DCPS IEP Meeting notes, 8-24-2010
P 41 Letter to Maria Monserrate from Anjali Prakash, Esq. 9-14-2010
P 42 DCPS Consent to Extend IEP Development Timeline, 9-27-2010;
P 43 Letter to Maria Monserrate from Anjali Prakash, Esq., 10-04-2010
P 44 DCPS IEP, 10-05-20 I 0
P 45 DCPS IEP Meeting Notes, 10-5-2010
P 46 Letter to Maria Monserrate from Anjali Prakash, 10-18-2010
P 47 DCPS Prior Written Notice, 10-21-2010
P 48 Letter to Maria Monserrate from Anjali Prakash, 11-02-2010
P 49 Kennedy Krieger Institute Rehabilitation Re-Evaluation, 11-08-2010
P 50 DCPS Prior Written Notice, 11-10-2010
P 51 Letter to Maria Monserrate from Anjali Prakash, Esq., 12-01-2010
P 52 Letter from Dr. Linda Goldstein of Friendship Pediatrics, 2-01-2011
P 53 Letter from Dr. Robert Clancy of Children's Hospital of Philadelphia, 2-08- 2011
P 54 Letter from Dr. Frank Pidcock of the Kennedy Kreiger Institute, 2-09-2011
P 55 Letter to Maria Monserrate from Michael J. Eig, Esq., 3-17-2011
P 56 DCPS Prior Written Notice, 3-25-2011
P 57 Letter to Maria Monserrate from Anjali Prakash, Esq., 4-14-2011
P 58 Neuropsychological Evaluation by the Stixrud Group, 4-18-201 1
P 59 DCPS Prior Written Notice, 4-29-2011
P 60 School Outpatient Speech and Language Evaluation and Progress Report, May 2011
P 61 Letter 10 Maria Monserrate from Michael J. Eig. Esq., 6-29-20 11
P 62 Lettcr from Jessica Wisniewski of Children's National Medical Center. 7-07-2011
P 63 School Occupational Therapy Progress Report. 8-1-2011
P 64 Lctter to Heather Elliot from Michacl J. Eig, Esq. 8-05-2011
P 65 DCPS Annual Student Enrollment 8-11-2011
P 66 DCPS IEP Meeting Notes. 8-16-2011
P 67 DCPS Consent for Initial Evaluation and Release of Information. 8-16-20 11
P 68 DCPS Prior Written Notice. 8-17-2011
P 69 Letter to Elizabeth Druy from Michael J. Eig. Esq. 9-21-20 11[7]
P 70 School Occupational Therapy Progress Report. September 2011
P 71 Letter to William and Laura Vinyard from Elizabeth Druy 10-4-2011
P 72 Letter to Elizabeth Druy from Michael J. E:ig, Esq. 10-4-2011
P 73 Letter to William and Laura Vinyard from Elizabeth Druy. 10-18-2011
P 74 Letter to Elizabeth Druy from Michael J, Eig. Esq. 10-20-2011
P 75 Rehabilitation Reevaluation Note. 10-20-2011
P 76 Letter to Elizabeth Druy from Michael J. Eig. Esq., 10-24-2011

[7] This document was not included in the exhibits provided to me at hearing.

P 77 School IEP, 10-28-2011
P 78 Physical Therapy Progress Report by Sujata P. Singh, 11-03-2011
P 79 Letter to William and Laura Vinyard from Elizabeth Druy, I 1-09-2011
P 80 Letter to Elizabeth Druy from Michael J. Eig, Esq., I 1-15-2011
P 81 Letter to William and Laura Vinyard *from* Elizabeth Druy. 11-17-2011
P 82 Letter to Elizabeth Druy from Michael J. Eig, Esq., 11-18-2011
P 83 DCPS ISP 11-21-2011
P 84 Letter to William and Laura Vinyard from Elizabeth Druy, 1 I -23-2011
P 85 Letter from Jessica Wisniewski of Children's National Medical Center, 12-15-2011
P 86 Next Steps Pediatric Physical Therapy Evaluation. 1-26-2012
P 87 Email from Mr. William Vinyard to Michael J. Eig, Esq. and Starr Stixrud, 1- 31-2012
P 88 School Speech-Language Progress Notes, January 20 I l-January 2012
P 89 Dr. William Stixrud Proposed Additional IEP Goals, February 2012
P 90 School of Washington Progress Report. February 2012
P 91 Letter to Dr. John Myseros from Dr. Robert Clancy, 3-20-201
P 92 Letter to Sharon Courm from Michael J. Eig, Esq. 4-06-2012
P 93 Resolution Period Disposition Form, 4-1S-20 12
P 94 Occupational Therapy Initial Evaluation Note, 4-19-2012
P 95 DCPS Office of Special Education Statement of Services Agreement for Parentally-Placed Private School Children with Disabilities
P 96 Resume of Dr. William Stixrud
P 97 Resume of Dr. Jennifer Durham
P 98 Resume of Kathryn Roessler
P 99 Resume of Jo Ann Del Vecchio

Exhibits admitted on behalf of Respondent are:[8]

R 2 Eligibility meeting documents
R 3 PWN 8/3/10
R 4 MDT Notes 8/3/10
R 5 IEP and notes 10/5/10
R 10 Consent to extend IEP timeline
R 13 Letter from Eig 8/19/10
R 14 Letter from DCPS 8/16/12
R 17 Letter from DCPS 7/21/10
R 18 Notes 6/17/10
R 26 PWN
R 27 Letter from Parent 9/29/09
R 34 Letter from DCPS

[8] My Prehearing Order required the parties to confer in order to assure the parties did not enter duplicate exhibits into evidence. The parties had not conferred as of the date the 5 day disclosures were provided to opposing counsel and me. Therefore, I required counsel to meet prior to the start of the hearing on June 1, 2012 to determine which exhibits would be entered into evidence. The parties had the option of either withdrawing duplicates or entering joint exhibits. The parties agreed Respondent would withdraw duplicate exhibits, with a few exceptions, that I allowed to facilitate the presentation of Respondent's testimonial evidence. All of Respondent's exhibits were provided in a bound format. I have marked those exhibits that were withdrawn by covering the tab and by placing an "X" on the first page of each withdrawn exhibit.

R 35 Letter from DCPS 8/2/11
R 36 Letter from Eig 8/5/11
R 41 Notice of PT
R 42 Notice of OT
R 43 Observation form
R 44 PWN 9/23/11
R 47 Letter from DCPS 10/18/11
R 52 Letter from DCPS 11/17/11
R 55 ISP
R 56 DCPS response with exhibits[9]
R 57 CVs

Exhibits admitted by the Hearing Officer are:

HO 1 Administrative Due Process Complaint dated April 6, 2012
HO 2 Notice of Hearing Officer Appointment dated April 9, 2012
HO 3 Prehearing Conference Scheduling letter dated April 10, 2012
HO 4 Prehearing Conference Notice dated April 17, 2012
HO 5 Resolution Period Disposition Form executed April 18, 2012
HO 6 DCPS Response dated April 25, 2012 to Parents' Administrative Due Process Complaint
HO 7 Prehearing Conference Order dated May 2, 2012
HO 8 Miscellaneous Emails
Email chain re McCall representation of DCPS & receipt of notices
Email chain re Resolution Period Disposition Form
Email chain allowing 5 day disclosures to be filed by 11:59 PM rather than 5:00 PM on May 24, 2012
Email chain re duplication of exhibits in 5 day disclosure contra my Prehearing Order
HO 9 Proposed Hearing Officer Exhibit List
HO 10 Memorandum of Points and Authorities on Behalf of Child and Parents 6/5/12
HO 11 Motion for Continuance June 5, 2012
HO 12 Order granting Continuance dated June 6, 2012
HO 13 Memorandum of Law on Behalf of Child and Parents of June 20, 2012

B. Testimony

Petitioner, father ("Father"),[10] testified and presented the following witnesses:

[9] See FN 6, *Supra.*
[10] Father was called both during the presentation of Petitioners' case and as a rebuttal witness on the last day of hearing. Father was traveling on the last day of hearing and provided his direct testimony by telephone. When Respondent's counsel attempted to cross examine him, Father revealed he did not have the exhibits in this case available to him. My Prehearing Order of May 2, 2012 required all witnesses testifying by telephone have the exhibits in this matter available to them during their testimony. Respondent's counsel after several attempts to cross-examine Father asserted he was unable to proceed with cross examination without reference to the exhibits. As my

- William R. Stixrud, Ph.D., admitted as an expert in neuropsychology; and
- Jennifer Durham, PhD., admitted as an expert in special education in the programming and instruction of educationally disabled children

DCPS presented the following witnesses:

- Jessica McGuire, DCPS Occupational Therapist;
- Lorna Luz Sanchez, Psy.D.;
- Principal, School; and
- Executive Director DCPS.

ORDER RE MOTION FOR A DIRECTED VERDICT

On June 1, 2012, after Petitioner's counsel rested following presentation of his witnesses, Respondent's counsel moved for a directed verdict. In making this Motion Respondent's counsel argued there had been no evidence presented in support of Petitioner's claims 1, 2 and 3, above, and that the School was not in compliance with the DC Code and, therefore, could not be an appropriate placement for Student. Petitioner responded indicating that a Motion for a Directed Verdict must be resolved in the light most favorable to the party opposing the Motion. I agree.

Under Federal Rule of Civil Procedure 50(a), a motion for directed verdict must be granted if "under the governing law, there can be but one reasonable conclusion as to the verdict. *Brady* v. *Southern R. Co.*, 320 U. S. 476, 479-480 (1943). If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed. *Wilkerson* v. *McCarthy*, 336 U. S. 53, 62 (1949)." *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 251 (Sup.Ct. 1986). The inquiry is whether there is a sufficient disagreement to require submission to a trier of fact or whether the evidence is so one-sided that one party must prevail as a matter of law. *Id.* at 252 -

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Prehearing Order clearly addressed the requirement to have the exhibits available during telephone testimony and the exhibits were not available to Father, I struck Father's direct rebuttal testimony from the record in this case.

253. The determination then is made in a fashion similar to that used when deciding a motion for summary judgment. If there is a basis by which the non-moving party could prevail, the motion should not be granted.

In the instant matter, Respondent's Motion for a Directed Verdict as to issues 1 -3 was based on Petitioners' testimonial evidence in that Respondent's counsel's argument in support of his Motion rests solely on Petitioners' testimonial evidence. Respondent's counsel's argument in support of his motion did not reference Petitioner's extensive documentary evidence.[11] Respondent's counsel stated there was no evidence presented regarding Issues 1 through 3, despite the multiple documents in evidence addressing these issues. Petitioners counsel, in response to Respondent's Motion, referred to the documentary evidence, noting, in particular, the 2010 IEP was relevant to this matter because it was the program in effect at the beginning of the 2011-2012 school year and further stated evidence supporting Petitioners' claims was in the documents entered into evidence. I agree. Not only did Petitioners' witnesses provide support for Petitioners' contention that Student required extensive special education services, Petitioners' documentary evidence also provides evidence in support of these claims. Thus Respondent's Motion for a Directed Verdict as to Issues 1 – 3 must fail as there is sufficient evidence in the record by which the Petitioners, the non-moving party could prevail.

Respondent's Motion for a Directed Verdict as to Issue 4 appears based on two arguments. First, Respondent references Respondent exhibit 5, p.34, which indicates according

[11] I note that prior to making this motion for a directed verdict, Respondent renewed his objection to many of Petitioner's exhibits stating they were hearsay, not relevant and/or not properly authenticated. I had already overruled Respondent's objections to these exhibits when these documents were offered at the start of this hearing and again overruled these objections at this point in the hearing. I noted the rules of evidence are relaxed in administrative hearings, that as trier of fact I would give each document the weight it was due in reaching my determination and that many of the documents were facially self-authenticating. *See,* Rule 803(6), Federal Rules of Evidence. I further noted I could not rule on the admissibility of the 32 documents to which Respondent was objecting without an individual review of each document (Petitioner's exhibits 2, 3, 4, 5, 6, 8, 9, 16, 18, 19, 20, 22, 24, 49, 52, 53, 54, 58, 60, 62, 63, 70, 75, 78, 85, 86, 87, 89, 90, 91 and 94) . I offered to make such a review on the record and Respondent's counsel indicated he did not want to have me rule on individual objections to each exhibit.

to notes made by Respondent staff that Petitioners had chosen to keep Student in a private placement. Yet the decision to keep Student in a private placement referenced by Respondent refers to Petitioners' decision to keep Student at during the 2010-1011 school year. There are, however, subsequent documents indicating Petitioners had asked to continue the IEP process and were willing to consider DCPS' offer of a FAPE once it was made. See, for example, P 64. Secondly, Respondent argues that Student cannot be placed at the School because the School does not comply with DC Code requirements, including, for example, having all appropriately certified teachers on staff. However, under School *Committee of Burlington, Mass. v. Dept. of Educ. of Mass*, 471 US 359 (1985) and *Florence County School District Four v. Carter,* 510 U.S. 7 (1993), See discussion *Infra* at pp. 22 -24, a school chosen by a parent when the public school is not providing FAPE need not meet all the requirements of the state education agency. Thus once again the Motion for a Directed Verdict must fail as there is sufficient evidence in the record by which the Petitioners, the non-moving party could prevail

I, therefore, find Respondent's Motion for a Directed Verdict must be denied. The facts before me are not so one sided as to require a decision in Respondent's favor as a matter of law. It is necessary that I review the facts and determine whether Petitioners have presented a case that will allow them to prevail.

FINDINGS OF FACT

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

1. Student is a year old boy who is eligible for special education and related services under the classification of Other Health Impaired. He currently is parentally placed at the P 36; P 39; R 3; Testimony of Petitioner.

2. Student attended prior to attending the School. He has never attended a DCPS school. P 3; P 4; P 6; P 8; P 19; P 22; P 30; P 46; P 51; P 55; P 60; P 61; P 63; P 64; P 70; P77; P 80; P 82; P 83; P 88; P 90; R 4; R 5; R 43; and R 55.

3. On October 5, 2010, while Student was attending the IEP team at Early Stages developed an IEP that provided Student the following weekly services: 6 hours of specialized instruction in general education; 45 minutes of behavioral support services outside general education; 45 minutes of occupational therapy in general education; 45 minutes of speech language services in general education; and 60 minutes of physical therapy outside general education. The IEP also included the following supports, modifications and accommodations: frequent breaks especially for lengthy tasks; reduced distractions; written checklist of sequences for multiple steps; multiple rehearsals, drills and practice of skills in small chunks; break down and organize tasks; positive reinforcement; preferential seating; frequent check-in for comprehension; opportunities for rest/movement breaks; parent-child log book; software to assist with writing. Petitioners rejected this program and the associated proposed placements at either or Schools and requested DCPS provide funding for Student's related services while he continued to attend School for the 2010 – 2011 school year. P 46; P 47; P 48.

4. On March 17, 2011, Petitioners notified DCPS of Student's acceptance by the School and requested DCPS consider placing Student at the School for the 2011 - 2012 school year. On March 25, 2011, DCPS responded indicating the October 2010 IEP and associated placement provided Student meaningful educational benefit and declining to fund a private program. DCPS offered to provide Student an individual service plan

("ISP") while he attended the School and further stated DCPS would provide Student with an IEP if he enrolled in a DCPS school. P 55; P 56.

5. On August 5, 2011, Petitioners notified DCPS, by letter, of their intent to place Student at the School for the 2011 – 2012 school year because DCPS had not provided Student an appropriate program or placement. They further stated their intent to continue the IEP process. DCPS again offered the program described in the October 2010 IEP and the associated placements, and Petitioners again rejected this program and placement. P 64; P 65.
6. The DCPS Private and Religious Office ("PRO") updated its policy for parentally placed private school children with disabilities on November 9, 2011. P 95.
7. On November 17, 2011 DCPS notified Petitioners that PRO had updated its guidelines, and Student was now eligible for equitable services. DCPS further stated it would proceed with writing an IEP for Student if Petitioners enrolled Student in a DCPS school. P 81; See also P 84.
8. Student has had disabilities since birth. He has a cognitive disorder secondary to birth complications including an intraventricular hemorrhage and hydrocephalus. He had seizures at birth and has a shunt. He has a history of strabismus and left-side weakness. He shows weaknesses in nonverbal cognition, executive functioning, visual motor integration, fine motor skills, oral motor skills, speech-language skills, social skills and adaptive behavior. P 2; P 4; P 6; P 7; P 9; P 10; P 12; P 16; P 18; P 19; P 22; P 24; P 30; P 31; P 33; P 35; P 36; P 44; P 45; P 49; P 58; P 60; P 66; P 70; P 75; P 78; P 83; P 86; P 88; R 2; R 3; R 4; R 5; R 43; R 55; Testimony of Testimony of Father.

9. Student has periventricular leukomalacia which affects the white matter in his right brain. Student presents with a nonverbal learning disability profile including difficulty with spatial tasks, visual motor tasks, nonverbal social skills, math concepts,[12] and learning new tasks. These limitations affect Student's ability to learn because anything new is difficult for him. He is unable to make inferences and his limitations with executive functioning impact his ability to start, continue and work independently on tasks. Student has specific struggles with reading comprehension,[13] working memory and non-literal verbal comprehension. He often requires adult intervention and support to engage with his peers. In order to learn Student needs formulas, rules and scripts that he can use as he goes through the day. Modeling is helpful to him. Student needs intense special education throughout the school day. He does not ask for assistance. P 16; P 58; Testimony of

   Testimony of

10. Student has been making noteworthy progress. The evaluations by his providers of services including speech-language therapists, occupational therapists, physical therapists, educators and doctors recognize this progress. P 54; P 62; P 75; P 86; P 88; P 91; P 94; Testimony of Father.
11. Student has complex needs and requires a comprehensive IEP. Testimony of Sanchez.
12. Bancroft has a bilingual program, and has an open classroom floor plan. P 45; Testimony of
13. When the October 5, 2012 IEP was developed Respondent had available the October 2008 and December 30, 2009 neuropsychological reports completed by Dr. Vincent Culotta. DCPS also had several speech language reports, occupational therapy evaluation

[12] He is able to memorize math facts but has trouble understanding the underlying concepts.
[13] Student is able to read words at a high level but his reading comprehension is limited.

reports, physical therapy reports as well as progress reports from

DCPS reviewed most of these reports and used them in developing the October 2010 IEP. P 33; P 35; P 37; P 44; P 45; Testimony of Testimony of

14. The School is a private special education school providing instruction to students with learning disabilities. It provides students an ungraded program. Student is in the classroom with the youngest elementary age students. There are 11 students with 4 adults in the morning and 2 adults in the afternoon. Student's demonstrated strengths in school include making effort, good behavior, calculation, handwriting, decoding skills and adding double digit numbers. He has needs in working memory, short term memory, reading comprehension,[14] long term memory connections, sequencing, transitions, interacting with peers. Testimony of

15. In addition to full time special education instruction Student receives integrated speech and OT services in his classroom two to four times per week.[15] He also receives 45 minutes of individual speech therapy two times per week and 45 minutes of group speech therapy and 45 minutes of occupational therapy once per week. After school, Student receives 135 minutes of physical therapy each week. Student is making progress. He requires teacher intervention throughout the day including lunch and to facilitate interaction with his peers. Testimony of

16. Petitioners applied to the School for Student admittance in January 2011. Student was accepted in March 2011 at which time a deposit to hold his place in the school was paid. The contract for 2011-2012 was completed June 1, 2011, and Petitioners paid his tuition in full around the same date. The total costs for the 2011-2012 school year are

[14] Student is able to decode at the 5th grade level but his comprehension is at the first grade level.
[15] These services are provided to all students in the classroom. This is part of the School program and not particular to Student.

in base tuition and for related services[16]). Petitioners have received reimbursement for costs associated with related services at a rate of about for each dollar spent. This reimbursement comes from insurance for which Petitioners pay. Student's tuition is funded through a trust created as a result of medical negligence. Father is the trustee. Testimony of Father.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find all witness testimony presented in this matter to be credible, at least in part, some witnesses were more persuasive than others. Dr. Stixrud was particularly persuasive. His lengthy experience in neuropsychology and ability to connect the results of neuropsychological evaluation to student's educational strengths and needs and provide recommendations for classroom interventions provided strong evidence.[17] In contrast, Dr. Sanchez presented as reluctant to address identified areas of Student disability and need. She drew very strong lines between medical diagnoses and educational need – lines that appeared to be a defensive posture. For example, Dr. Sanchez is both a clinical and school psychologist. When asked about one of Student's neurological impairments, periventricular leukomalacia, she stated she had looked it up but refused to talk about it or its impact on Student because she was not a medical doctor. I recognize she is not a medical doctor, but the reports addressing this condition also addressed the impact on Student's learning. It would have been helpful to me, as the trier of fact, to hear Dr. Sanchez' testimony regarding this condition and

[16] Student has been receiving related services at the School for approximately four years.

[17] Respondent's counsel objected to this testimony regarding Student's strengths and needs and how to address them in the classroom as being beyond Dr. Stixrud's expertise. I overruled this objection. Dr. Stixrud was admitted as an expert in neuropsychology. Expertise is not demonstrated in a vacuum. The results of evaluations are intended to be used to benefit the individual evaluated. Moreover, Dr. Stixrud's many years of experience included interpreting assessment results.

how she saw it as affecting or not Student's ability to learn. Instead she withheld this information suggesting her testimony is less than candid.

1. Whether DCPS failed to provide Student a free appropriate public education by failing to provide Student an appropriate individualized education program for the 2010-2011 and 2011-2012 school years.

> *a. An IEP was developed in the 2010-2011 school year. The IEP of October 5, 2010 provided the student 6 hours per week of specialized instruction, 45 minutes per week of speech/language therapy and 45 minutes per week of occupational therapy in the general education setting. The IEP also provided 45 minutes per week of behavior support and 1 hour of physical therapy per week outside the general education setting. Petitioners do not challenge the goals as written. Petitioners contend the amount of service is not appropriate in that Student required a full time program.*

An IEP is a written statement that includes, in pertinent part, the eligible student's: present levels of academic and functional performance; the effect of the student's disability on his/her involvement and progress in the general curriculum; measurable annual academic and functional goals designed to meet the student's educational needs resulting from his/her disability; a statement of the special education and related services, supplementary aids and services, and program modifications and supports to be provided to the student to allow him/her to advance toward attaining the IEP goals and progress in the general curriculum and to participate in nonacademic activities. In addition the extent of the student's participation with nondisabled peers must be addressed. 34 C.F.R. § 300.320. See also, D.C. Code § 30.3009. In developing the IEP the team is to consider the strengths of the child, the concerns of the parent for enhancing the education of the student, the results of the most recent evaluation and the academic, developmental and functional needs of the student. 34 C.F.R. § 300.324(a). *See also*, D.C. Code § 30.3007. An IEP that memorializes the team's FAPE determination must be designed to provide the student with some educational benefit. *Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982). To determine whether an IEP provides a

student a FAPE, a hearing officer must make two inquiries: 1) Did the district procedurally comply with the IDEA and its implementing regulations; 2) Is the IEP reasonably calculated to provide educational benefit to the student? *Id.*

In the instant matter, Student has been classified as a student with Other Health Impairment. He has disabilities in multiple areas including a nonverbal learning disability, speech/language disability, physical disabilities and social disabilities. He has a well-documented history of disabilities stemming from birth that have manifested themselves in school since pre-kindergarten. He received his first IEP in October 2010. In the academic arena his test scores show his functioning is quite variable. He demonstrates strengths above grade level in decoding, for example, yet his comprehension skills are at the first grade level. His social interaction skills with peers are extremely limited and require consistent, on-going adult intervention.

Student's parents have provided him with therapy in many areas for many years. Evaluation reports over the course of time demonstrate these interventions are having a major positive effect upon Student's abilities and skills. He is learning to learn and becoming more successful as time passes. None of this success, however, corrects his significant underlying disabilities. He has periventricular leukomalacia which is an organic, neurological impairment related to many of the learning and social disabilities Student manifests. He also has hydrocephalus and had seizures at birth. While it is clear Student is progressing, it is impossible to determine how Student would be affected if the programs and services he is receiving were cut-back or eliminated. In fact, his doctors have written letters indicating the services he receives are necessary if he is to continue progressing. The evidence supports a finding that Student's program and services at the School are beneficial. However, this is not the issue before me. The issues are whether the IEP and ultimately the placement offered by DCPS under the October

2010 IEP were designed to provide Student some educational benefit and thus constituted a FAPE.[18]

The first prong of the two-pronged *Rowley* test for determining whether an IEP provides a FAPE is easily answered in the affirmative. The district procedurally complied with the IDEA and its implementing regulations. A meeting was held including the required members of the IEP team, and an IEP was developed. There have been no concerns raised regarding this process. However, Petitioners and their representatives have consistently maintained the October 2010 IEP is not reasonably calculated to provide Student educational benefit. Petitioners have been clear that related services are not at issue nor are the goals, objectives or supplementary aids and services included in this IEP.[19] The question is whether Student can receive educational benefit from the 6 hours of specialized instruction in the general education environment included in the October 2010 IEP.

Student's October 2010 IEP was developed for his kindergarten year. It includes 12 goals in the adaptive daily living area intended to address Student's identified needs including a cognitive disorder and borderline intellectual functioning. He is stated to have weaknesses in executive functioning, nonverbal reasoning, visual-motor, fine motor and pragmatic language. The IEP also notes Student is delayed in peer social interaction and play skills. Under impact on the Student, the IEP states, "[Student's] condition makes it impossible for him to access the

[18] For purposes of this analysis I am limiting my discussion of the October 2010 IEP to the time period it was in effect for the 2011- 2012 school year and the placement offered to implement it during that time period. Petitioners' counsel stated during argument on Respondent's Motion for Directed Verdict that Petitioners were not seeking relief for the 2010-2011 school year. The request for relief in the instant Complaint seeks only reimbursement for the costs of placing Student at the Lab School in the 2011-2012 school year and prospective placement at the Lab School for the 2012-2013 school year. References to Petitioners' rejection of the October 2010 IEP and the proposed placement are made only for context and to demonstrate Petitioners consistent view that this October 2010 IEP did not provide Student a FAPE. I also discuss the procedures used to develop this IEP in order to address the FAPE analysis defined by *Rowley*.

[19] I note that prior to the initiation of the instant matter the concern regarding the IEP expressed by Petitioners appeared to focus on the amount of related services.

general curriculum without specialized supports." Under the communication/speech language section of the IEP, the needs section notes Student is unable to take advantage of opportunities to fully contribute in a classroom and social settings. Six goals are provided in this area. Under social, emotional and behavioral, the IEP includes 5 additional goals. There are 7 more goals under health and physical and 9 goals under motor skills/physical development. All of student's 6 special education instruction hours are to be provided in the general education environment as are most of his related services. Only 45 minutes of behavioral support and 60 minutes of physical therapy are to be provided outside of general education each week.[20]

As noted above the standard is whether the IEP as proposed will provide Student some educational benefit. The documentary and testimonial evidence are clear that Student has complex needs requiring multiple, on- going interventions. The October 2010 IEP includes 39 goals in multiple areas. The IEP also notes Student's extensive needs and inability to perform as expected both academically and socially without significant adult intervention. It is clear that the members of the IEP team recognized Student's needs and attempted to address them in the IEP. Dr. Sanchez, a DCPS psychologist, who participated in reviewing Student's evaluations and developing the IEP also recognized his needs.

However, despite the recognition of the Student's complex needs DCPS developed an IEP providing only 6 hours of specialized instruction in the general education environment. For a student recognized to be struggling in all areas of cognition and whose executive functioning is limited, it is difficult to understand limiting the number of special education instructional hours to this degree. Moreover, despite DCPS staff repeatedly stating Student could benefit from education in the regular education environment, the evidence suggests otherwise. Student's need

[20] I review the content of the IEP as to related services to the extent to provide a picture of the extent of services included in the IEP and to identify the complexity of Student's needs. Y determination, however, is focused on the amount of special education instruction included in the IEP.

for on-going, almost omnipresent intervention suggests otherwise. The evidence indicates Student requires adult intervention and support in all areas including academic and social. These interventions are required throughout the school day. This IEP does not provide such interventions. It provides only 6 hours of special instruction in addition to the identified related services.

I therefore find by a preponderance of the evidence that the October 5, 2010 IEP is not designed to provide Student some educational benefit, as required by *Rowley*, and therefore does not provide him a FAPE.

b. No IEP was developed in the 2011-2012 school year because Student was not enrolled in and attending a DCPS school.

There is no dispute regarding whether DCPS developed an IEP for Student for the 2011-2012 school year. It did not. DCPS offered to develop an ISP for Student. DCPS argues this limitation to an ISP providing equitable services is all that is required under PRO policy and all that is required under IDEA.

The District of Columbia Public Schools, Office of Special Education Statement of Services Agreement for Parental –Placed Private School Children with Disabilities defines DCPS' policy for special education students placed, by their parents in private schools. This policy states,

> The school district . . .in which a child resides is responsible for ensuring FAPE is available. The District where a child resides is responsible for making FAPE available to parentally-placed children with disabilities who attend a private school unless the parent makes clear his or her intent to keep the child enrolled in the private school.

This policy, on its face, requires that a FAPE be made available to parentally-placed private school children. As noted above a district's FAPE determination for a particular student is found in the student's IEP. That IEP must be designed to provide the student with some educational

benefit. *Rowley at 203-204.* To determine whether an IEP provides a student a FAPE, as noted above, a hearing officer must make two inquiries: 1) Did the district procedurally comply with the IDEA and its implementing regulations; 2) Is the IEP reasonably calculated to provide educational benefit to the student? *Id.*

Under IDEA a FAPE must be available to all children eligible for special education residing in the State between the ages of 3 and 21. 34 C.F.R. § 300.101(a). Further, the State must assure an IEP is developed for each child with a disability. 34 C.F.R. § 300.112. In the instant matter, under the PRO policy implemented in the 2011- 2012 school year, DCPS stated Student, as a private school student was entitled to equitable services as memorialized in an Individualized Service Plan and, further, if Student returned to the District and enrolled in a DCPS school, DCPS would make FAPE available to him and develop an IEP. This policy, as implemented, confuses the provision of a FAPE with the offer of a FAPE. In order to make a FAPE available to a student, the district must define the FAPE. As noted in *Rowley*, it is the IEP that defines the FAPE. A promise to make FAPE available, without defining the FAPE, does not make FAPE available. It merely states intent. It does not allow the parent to assess the offer of FAPE and determine whether to place the student in a district school. In April 2011, the Office of Special Education and Rehabilitative Services issued Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private Schools. It states the LEA where the child resides is obligated to make FAPE available unless the parent makes clear his or her intent to keep the child enrolled in the private school. See answer to question B-5.

In the instant matter, Petitioners have stated their intent to continue with the IEP process. This intent was repeated both before and after Student's enrollment in the School. DCPS appears to have relied on Petitioners' rejection of the October 2010 IEP as a basis for not

offering FAPE despite Petitioners clear statement of willingness and desire to continue the IEP process. DCPS has not made an offer of FAPE subsequent to the October 2010 IEP. DCPS has, instead, stated it would make FAPE available to Student should he be returned to a DCPS public school. This does not meet the IDEA requirement. DCPS is to make FAPE available and Petitioners would then be able to accept or reject the proposed FAPE.

The illogic of DCPS' position, apart from its confusion of the IDEA requirement, is clear. Here Student was enrolled in a private school by his parents. DCPS' position is that the parents would have to remove Student from his private placement, enroll him in a DCPS public school and wait for the IEP which memorializes the FAPE offer to be developed so parents could then determine whether to accept the offer of FAPE or reject it. In so doing Parents would be required to risk Student's enrollment slot in the private school he was attending for the undefined possibility of a FAPE in a public school.

While it is true that parents who choose to enroll their children in private schools do so at their own risk, *School Committee of Burlington, Mass. v. Dept. of Educ. of Mass*, 471 US 359, 373 -74 (1985), Petitioners, here, have not received an offer of FAPE because they have not received an IEP subsequent to the October 2010 IEP. As the Court indicated in *Burlington*, if the district's proposed IEP is ultimately found to be appropriate, the parents would not be eligible for reimbursement. Here, however, there was no proposed IEP so the proposed IEP cannot be found to be appropriate.

There is no question that DCPS has defaulted on its obligations under the IDEA. It has not offered a FAPE to student. It has not even held a meeting to develop an IEP. Instead it has provided an ISP and a promise of FAPE should Student's parents choose to enroll him in the

District. In so doing DCPS misconstrues the requirement to have a FAPE available to every student who resides in the district as stated in OSEP's policy guidance.

I therefore find, by a preponderance of the evidence that DCPS has failed to offer the student a FAPE in both the 2010-2011 and the 2011-2012 school years.

2. Whether DCPS failed to provide Student a FAPE by failing to provide Student an appropriate placement

3. Whether DCPS failed to provide Student a FAPE by refusing to complete the IEP process in the 2011-2012 school year and offering the student only an Individualized Service Plan. Petitioners allege that despite Petitioners' informing DCPS of their interest in continuing the IEP process in the hopes of developing an appropriate program, DCPS refused to continue the process because Student was not attending a DCPS school

4. Whether the Lab School is an appropriate placement for Student.[21]

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction is regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. The placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c).

[21] These three issues are combined for discussion herein as they raise similar and overlapping factors that are most readily addressed together.

Moreover, the placement decision must conform with the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2). Reviewing these regulations it is clear that placement involves more than the determination of the number of hours of service a student is to receive under his/her IEP. That is, the number of hours of service does not address where along the continuum of services, as identified under IDEA, a student's program will be implemented. See 34 C.F.R. § 300.115.

DCPS, relying in part, on *N.T. v. Dist. of Columbia*, 11-676 (RMC) an unpublished decision for the US. Distr*ic*t Court, argues the Lab School is not the least restrictive environment for the Student and I should, therefore, find it is not an appropriate placement for Student. DCPS, further argues that Petitioners are inappropriately attempting to maximize Student's special education entitlement, and I should, therefore, find DCPS has offered the student a FAPE and Petitioners are not entitled to a remedy. I decline to do so. In reaching this conclusion I rely on *Florence County School District Four v. Carter,* 510 U.S. 7 (1993) which requires I find both that the school district failed to provide Student a FAPE and further that the parents' unilateral placement was proper if I am to order remedy. *Id.* at 7. To reach this determination I must find the public school has defaulted on its obligations under IDEA and the education provided by the private school is reasonably calculated to enable the child to receive educational benefits. *Id.* at 11.

There is no doubt the School is a separate, special education school. All students attending the school are students with educational disabilities and thus Student would have no opportunity for interaction with non-disabled peers. However, as noted in *N.T. supra*, a parental placement need not be in the least restrictive environment. DCPS has asserted Student could (and should) be educated with his non-handicapped peers, but DCPS has not provided parents with a description of how that would be done in a proposed IEP. There is no basis, therefore, by which

I, or anyone, can determine whether DCPS offered Student an appropriate placement during the 2011-2012 school year because there is no IEP establishing the FAPE the district proposed to implement in the 2011-2012 school year. Without an IEP the District cannot make a determination as to the least restrictive environment in which the IEP can be implemented.

Student has never attended a DCPS public school. Prior to enrolling in and attending the School in the 2011- 2012 school year, Student attended the School. There is no doubt Petitioners sought to have the School declared the appropriate placement for Student in the 2011-2012 school year. Petitioners through counsel notified DCPS of this request in a letter of March 17, 2011. Respondents sent a notice on March 25, 2011 stating they had offered an appropriate program and placement for 2011 – 2012 school year referring to the October 2010 IEP and further it was DCPS' understanding that Petitioners did not intend to enroll Student in DCPS.[22] Therefore, according to DCPS, Student was not entitled to a FAPE under IDEA. Rather he would be able to receive equitable services under an ISP. In taking this position, DCPS ignored Petitioners' statement which was that they were asking DCPS to consider placing Student at the School because the IEP and placement proposed by DCPS did not provide Student a FAPE. On August 5, 2011, Petitioners notified DCPS through counsel they intended to place Student at the School because the proposed October 2010 IEP and placement were not appropriate. They further stated their intent to continue the IEP process. DCPS' responded on several occasions stating DCPS would not develop an IEP for Student unless he were enrolled in a DCPS school and further stating Student was eligible to receive equitable services under an ISP. DCPS, in short, did not offer Student a FAPE for the 2011-2012 school year and could not, therefore, offer an appropriate placement. I note, moreover, that there

[22] Petitioners had stated they would not accept the October 5 IEP and related proposed placement and would continue Student's enrollment at Aiden Montessori, but they had not said, and never said, they would not enroll Student in DCPS.

could have been no offer of an appropriate placement in the 2010-2011 school year because the proposed IEP was not appropriate. An IEP that addresses all of a student's educational needs is a necessary condition precedent to the identification of a placement in which to implement the IEP. A failure to offer an appropriate IEP, or to develop any IEP, prevents the provision, or even the offer, of an appropriate placement because it cannot be determined whether the proposed placement can provide the student a FAPE as defined by his/her IEP because the inappropriate IEP or the nonexistent IEP cannot define FAPE.

It is important to recognize in this regard that DCPS cannot take the position that parent intended student remain in his private placement. Parents repeated notifications request that the process continue to establish the parameters of DCPS' offer of FAPE. There is no doubt Petitioners had determined the Lab School was providing their son beneficial services, and DCPS appears to have been equally committed to their position -- that attending the School would not be an option considered by the district. Petitioners, however, also made clear that they wanted the IEP process to continue, that they were interested in reviewing the district's offer of FAPE. It was DCPS that terminated the IEP process because Student was not enrolled in a DCPS school.

I, therefore, find by a preponderance of the evidence that DCPS denied Student a FAPE by failing to complete the IEP process that would have defined the FAPE available to Student and, therefore, by failing to offer Student an appropriate placement. I further find, the Lab School was an appropriate placement for the 2011-2012 school year.

The Remedy

DCPS argued, at hearing, there was no basis to reimburse Petitioners for the costs of placement at the School because these costs had been paid through Student's medical trust,

and the IDEA only allows for reimbursement to parents. I note this argument omits one of the basic tenets of IDEA. That is that the education provided to students under the IDEA is to be free. All students, as noted above, are entitled to a **Free,** appropriate public education. It is illogical to assume, that students who have their own financial resources would not receive the same protections under the Act as are granted to students who are totally financially dependent on their parents. Denying reimbursement to a student who is able to fund his own education would create two classes of special education students. Clearly this was not the intent of Congress. The intent of Congress was to assure that all students with disabilities are on the same footing as students without disabilities. Just as all general education students are eligible to receive a free education no matter their own individual financial means, so too are all special education students to have the opportunity to receive a free, appropriate public education no matter their independent financial means.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

1. The IEP developed for Student on October 5, 2010 was not appropriate. It did not provide Student a FAPE.
2. DCPS did not make FAPE available to Student in the 2011 -2012 school year. The October 5, 2010 IEP did not offer a FAPE and other IEP was developed.
3. DCPS denied Student a FAPE by failing to provide him an appropriate placement during the 2011- 2012 school year under the October 5, 2010 IEP or thereafter when DCPS provided only an ISP.
4. The School was an appropriate placement in the 2011 – 2012 school year.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

1. Respondent's Motion for a Directed Verdict is denied.
2. DCPS is to reimburse Petitioners for all costs associated with Student's education at the School for the 2011-2012 school year. This includes tuition, the costs for the provision of related services and, transportation and all other costs associated with Student's education at the School. Petitioners are to provide DCPS with documentation of all such costs[23] within 30 days of receipt of this HOD. DCPS is to reimburse Petitioners within 30 business days of receipt of this documentation.
3. Within 30 business days of the receipt of this HOD, DCPS is to convene a meeting including Petitioners,[24] Petitioners' advisors and representatives of the School familiar with Student's educational needs to develop an IEP designed to address all of Student's educational needs and, once completed, to determine an appropriate placement. Petitioners are to have 10 days to accept or reject this proposed program and placement. Student's is to continue attending the School throughout this IEP and placement development process, and DCPS is to continue to fund this program and placement throughout the IEP and placement development process.
4. The School is deemed Student's current placement for stay-put purposes until either Petitioners and DCPS agree otherwise or another hearing officer or court of appropriate jurisdiction decides otherwise.

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[23] As discussed above, I recognize that some part of these costs may have been paid directly from Student's medically based trust fund. The costs that are to be reimbursed to Petitioners include costs paid directly by Petitioners as well as any costs incurred by the trust fund. It goes without saying that this Order is not intended to create double reimbursements. If any of Petitioners out of pocket expenditures were already reimbursed by the trust fund they area not to reimbursed again. These funds would be reimbursed to the trust fund only.

[24] One or both parents may attend.

IT IS SO ORDERED:

June 30, 2012
Date

/s/
Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).