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**AUG 23 2010**

**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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<b>STUDENT, through his legal guardian,<sup>1</sup></b>	)	
	)	
<b>Petitioner,</b>	)	Case Number:
	)	
<b>v.</b>	)	Hearing Date: August 11, 2010
	)	Hearing Room 5A
<b>THE DISTRICT OF COLUMBIA</b>	)	
<b>PUBLIC SCHOOLS,</b>	)	Hearing Officer: Frances Raskin
	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**Counsel for Petitioner:** Roberta Gambale, Attorney at Law  
James E. Brown & Associates  
1220 L Street, N.W.; Suite 700  
Washington, D.C., 20005

**Counsel for Respondent:** Tanya Chor, Attorney at Law  
Office of the Attorney General  
1200 First Street, N.E., Tenth floor  
Washington, D.C., 20002

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<sup>1</sup> 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, -grade, special- education student ("Student") who attended a full-time, non-public, special education, non-public, day school during the 2009-2010 school year.<sup>2</sup> The Student has a primary disability classification of other health impairment and was diagnosed with impulse control disorder and attention deficit hyperactivity disorder ("ADHD").<sup>3</sup>

On June 2, 2010, the District of Columbia Public Schools ("DCPS") convened a meeting of the Student's individualized educational program ("IEP") team to review his educational and vocational evaluations and revise his IEP. At this meeting, DCPS informed Petitioner that, despite her objections, the Student would attend a DCPS school for the 2010-2011 school year.

On June 11, 2010, Petitioner filed a Due Process Complaint against the District of Columbia Public Schools ("DCPS") pursuant to the IDEA. The parties participated in a resolution meeting on June 22, 2010.<sup>4</sup> The parties were unable to reach an agreement and agreed to proceed to a due process hearing. Accordingly, the parties agreed that the due process hearing timeline started to run on June 23, 2010.

On June 24, 2010, this Hearing Officer held a prehearing conference in the above matter. This Hearing Officer held a second prehearing conference on July 16, 2010. During the prehearing conference, the parties agreed that the due process hearing would be closed to the public. The parties agreed to submit joint exhibits to the extent possible and to develop stipulations of fact prior to the due process hearing. The parties also agreed that the due process hearing would be held on August 11, 2010. On July 17, 2010, this Hearing Officer issued the Prehearing Order.

On August 4, 2010, both parties exchanged five-day disclosures. Neither party submitted joint exhibits, as required by the Prehearing Order.<sup>5</sup>

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<sup>2</sup> Petitioner Exhibit 21 (April 17, 2010, individualized educational program); Petitioner Exhibit 25 (June 29, 2009, Psychiatric Evaluation).

<sup>3</sup> *Id.*

<sup>4</sup> Petitioner Exhibit 6.

<sup>5</sup> See Prehearing Order, page 5, ¶ 4. This Hearing Officer requires the parties to submit joint exhibits in an effort to avoid duplication and an unnecessarily voluminous administrative record. Half of the exhibits in Petitioner's five-day disclosure were either duplicative of Respondent's exhibits or not probative (see note 2, below). Many the exhibits in Respondent's disclosure also were duplicative. Petitioner's exhibits 1, 20-23, 26-28 and Respondent's exhibits 1-3, 6-7, 9, and 12-13, were the same documents. For ease of

The due process hearing commenced on August 11, 2010. This Hearing Officer admitted Petitioner's<sup>6</sup> and Respondent's<sup>7</sup> proposed exhibits into evidence at the inception of the hearing. Ten witnesses testified at the hearing, six on Petitioner's behalf and four on behalf of DCPS. The due process hearing concluded on August 11, 2010.

### III. RECORD

Due Process Complaint Notice, filed June 24, 2010;  
DCPS Response to Parent's Administrative Due Process Complaint Notice, filed June 22, 2010;  
Resolution Meeting Confirmation Letter, filed June 24, 2010;  
Due Process Complaint Disposition Notice, filed June 24, 2010;  
Notice of Prehearing and Due Process Hearing, issued June 24, 2010;  
Petitioner's Motion for Continuance of the Due Process Hearing, filed on July 16, 2010;<sup>8</sup>  
Prehearing Order, issued July 17, 2010;  
Petitioner Disclosure Statement, listing seven witnesses and including thirty-one proposed exhibits, filed August 4, 2010;  
DCPS Disclosure Statement; listing six witnesses and including nineteen proposed exhibits, filed August 4, 2010;  
DCPS Supplemental Disclosure Statement, listing no new witnesses and including one additional proposed exhibit, filed August 4, 2010;  
Petitioner's Objections to DCPS Exhibits, filed August 6, 2010;  
Interim Order on Continuance Motion, issued August 7, 2010;  
DCPS Letter Re: Disclosure Objections; dated August 10, 2010;<sup>9</sup> and  
Petitioner's Response to DCPS Objections, filed on August 10, 2010.

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reference, when referring to documents disclosed by both parties, this Hearing Officer will cite only to Petitioner's exhibits.

<sup>6</sup> This Hearing Officer admitted into evidence Petitioner's exhibits six through eight, ten through seventeen, twenty through twenty-eight, thirty, and thirty-one. This Hearing Officer admitted Petitioner's exhibit 29 subject to connection through testimony. Petitioner did not make the connection through testimony, and thus this Hearing Officer did not consider exhibit 29. Petitioner's exhibits one through seven, and nine, (i.e., the due process complaint, notice of prehearing and due process hearing, resolution meeting confirmation, emails etc.) are automatically part of the administrative record, and have no probative value. Petitioner's exhibits nine, eighteen, and nineteen are hearsay documents that have no probative value.

<sup>7</sup> This Hearing Officer admitted into evidence Respondent's exhibits two through thirteen, fifteen, and seventeen through nineteen. Respondent's exhibit one (the due process complaint, response, and prehearing order) were not part of Respondent's five-day disclosures but were included "by reference only." These documents are automatically part of the administrative record and have no probative value. Respondent's exhibits four through six (IEPs from 2008 and 2009, and a prior written notice from 2008) have no probative value, although this Hearing Officer admitted them into evidence. This Hearing Officer sustained Petitioner's relevance objection to Respondent's Exhibit 16. Respondent's exhibit 20, which Respondent timely filed in a Supplemental Disclosure Statement, was admitted subject to connection through testimony. Respondent produced the requisite testimony and thus this Hearing Officer has considered Respondent's exhibit 20.

<sup>8</sup> Petitioner never properly filed this Motion with the Student Hearing Office.

<sup>9</sup> Counsel for DCPS never properly filed this Letter with the Student Hearing Office.

#### IV. ISSUE PRESENTED

Whether DCPS denied the Student a free, appropriate, public education (“FAPE”) in developing individualized educational programs for the Student on April 7, 2010, by failing to provide the Student an appropriate educational placement, including transition services that meet his needs.<sup>10</sup>

#### V. FINDINGS OF FACT

1. The Student is a \_\_\_\_\_ year-old, special-education student with a primary disability classification of other health impairment.<sup>11</sup> The Student was diagnosed with ADHD at age five.<sup>12</sup> Since November 2008, he has been enrolled at a full-time, non-public, special education, non-public, day school (“Non-Public School 1”).<sup>13</sup>

2. The Student’s primary diagnoses are impulse control disorder and ADHD.<sup>14</sup> His impairments in executive functioning result in difficulty monitoring and regulating his emotions and behaviors and resisting impulses.<sup>15</sup> He has difficulty holding and retrieving information stored in his short-term memory, setting goals, and organizing materials.<sup>16</sup> His limited ability to manage his executive functioning impairment results in global behavioral dysregulation that leads to significant academic and behavioral consequences.<sup>17</sup>

3. Due to his history of behavioral needs in school, the Student requires a classroom environment where behavioral expectations are clearly stated and consistently reinforced.<sup>18</sup> He would benefit from a low student-teacher ratio, a highly structured classroom environment, clear and consistent academic routines, and comprehensive therapeutic support, including counseling, crisis management, and psychological services.<sup>19</sup>

4. When compared to other students at his grade level, the Student’s academic skills, ability to apply those skills, and fluency with academic tasks are all

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<sup>10</sup> Petitioner alleged that DCPS denied the Student a FAPE by failing to provide him an appropriate placement/location of services for the 2010-2011 school year. As discussed herein, this claim is subsumed into the issue of whether DCPS failed to develop an appropriate IEP for the 2010-2011 school year.

<sup>11</sup> Petitioner Exhibits 21, 23 (January 27, 2010, Vocational Evaluation).

<sup>12</sup> Testimony of Petitioner; Petitioner Exhibit 25.

<sup>13</sup> Testimony of Petitioner; Petitioner Exhibits 21, 25.

<sup>14</sup> Petitioner Exhibit 25 (June 29, 2009, Report of Psychiatric Evaluation).

<sup>15</sup> Petitioner Exhibit 27 (June 18, 2008, Cognitive/Clinical Evaluation).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

within the average range.<sup>20</sup> He is on a diploma track and needs only six credits to graduate from high school.<sup>21</sup>

5. In the second quarter of the 2008-2009 school year, the Student had nineteen absences from school.<sup>22</sup> The Student had significant attendance problems during this school year.<sup>23</sup> The Student refused to attend Non-Public School 1 because it was too far from his home.<sup>24</sup> At the end of the school year, the Student failed all of his classes.<sup>25</sup>

6. During the first half of the 2009-2010 school year, the Student was suspended for eighteen (nonconsecutive) days.<sup>26</sup> He failed all of his classes during this period, in part because he failed to turn in assignments.<sup>27</sup>

7. Between August 2009 and March 16, 2010, the Student had fourteen unexcused absences.<sup>28</sup> After winter break, someone on the Non-Public School 1 staff informed the Student that he would not graduate that year.<sup>29</sup> The Student then stopped attending school because he felt that, if he was not going to graduate, there was no reason to attend.<sup>30</sup> From March 17, 2010, to the end of the 2009-2010 school year, the Student attended only two days of school and was truant on fifty days.<sup>31</sup>

8. The Student's post-secondary interests are in the mechanical and industrial fields.<sup>32</sup> His interests in the mechanical areas including applying mechanical principals and using tools or machines.<sup>33</sup> Mechanical jobs include engineering and related technical and scientific work, operating and maintaining mechanical equipment, operating land or water vehicles, or working in building or repair businesses.<sup>34</sup> After graduating from high school, the Student would like to attend a vocational/technical school and become an auto mechanic or work in the field of computer science.<sup>35</sup>

9. The Student's highest aptitudes are the areas of spatial and perceptual areas.<sup>36</sup> His spatial aptitude scores highlight an ability to visualize multidimensional

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<sup>20</sup> Petitioner Exhibit 24 (October 22, 2009, Educational Evaluation).

<sup>21</sup> Petitioner Exhibit 21; testimony of Petitioner.

<sup>22</sup> Petitioner Exhibit 15 (June 25, 2009 Grade Report).

<sup>23</sup> *Id.* (indicating that the Student was absent forty-seven days in the third quarter and forty seven days in the fourth quarter); Petitioner Exhibit 25 (noting that the Student was present for sixteen days and absent nineteen days in the third quarter).

<sup>24</sup> Petitioner Exhibits 25, 26 (June 30, 2009, Report of Functional Behavior Assessment).

<sup>25</sup> *Id.*

<sup>26</sup> DCPS Exhibit 17 (June 18, 2010 Non-Public School 1 Attendance Report).

<sup>27</sup> *Id.*

<sup>28</sup> DCPS Exhibit 17.

<sup>29</sup> Testimony of Parent.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Petitioner Exhibit 23 (January 27, 2010, Vocational Evaluation).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

space and to mentally manipulate objects through space.<sup>37</sup> Students with these aptitudes generally perform well in school subjects and vocations involving drafting, art, architecture, and clothing design.<sup>38</sup>

10. The Student must receive transition skill development, exposure to areas of interest, training, and support so that he can refine his interest areas.<sup>39</sup> A comprehensive transition plan is essential to assist the Student with his transition processes and for daily living.<sup>40</sup> Given his narrow interests, stated goals, and stated desire to succeed, he requires transition support and related goals and objectives as part of his transition plan.<sup>41</sup> He requires transition services in the areas of employment, further education/training, daily living, health, community participation, interpersonal skills, and communication.<sup>42</sup> These are essential the his success and transition into adulthood.<sup>43</sup>

11. The Student's transition program should provide opportunities for the Student to explore his vocational interests, and job, volunteer and work-related opportunities, as well as assist him in obtaining information about post-secondary education, including college, and financial aide.<sup>44</sup> His transition goals also must provide him life skills training, including reading basic maps, basic money management, and recognizing his needs and asking for assistance (self-advocacy).<sup>45</sup>

12. In his transition program, the Student should be exposed to health and safety activities to develop his understanding of how to obtain medical treatment and what to do in an emergency.<sup>46</sup> His transition goals should provide him opportunities to practice filing out job and school applications as well as other paperwork accurately and legibly, and to develop work readiness skills such as punctuality, proper dress, appropriate interactions with coworkers, and self-evaluation.<sup>47</sup>

13. The Student's April 7, 2010, IEP provides that he is to receive 32.5 hours of specialized instruction per week.<sup>48</sup> It also provides that the Student is to receive forty hours of behavioral support services (counseling) per year.<sup>49</sup> The IEP provides that the Student requires the support of a dedicated aide to assist him in the classroom, to help him control his behavior, and to ensure he stays in his assigned area.<sup>50</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Petitioner Exhibit 21 (April 7, 2010, IEP).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*; testimony of Petitioner.

14. The Student's IEP further states that, to address his social/emotional deficits, the Student must be educated in a small, therapeutic educational setting that is highly structured, and provides individual counseling, behavior management, and a high staff to student ratio.<sup>51</sup> The Student requires extended school year services and a dedicated aide.<sup>52</sup>

15. The April 7, 2010, IEP contains a post-secondary transition plan ("transition plan") that states that he will attend a post-secondary school to study automotive training.<sup>53</sup> The transition plan contains only three annual goals.<sup>54</sup> These goals require him to research and apply to post-secondary schools that offer automotive technology, and to research prospective employers that will allow him to work as an automotive mechanic.<sup>55</sup> The transition plan includes no independent living goals.<sup>56</sup>

16. On June 2, 2010, DCPS convened a meeting of the Student's IEP team to review the Student's January 27, 2010, vocational evaluation, discuss his attendance, and discuss placement for the 2010-2011 school year.<sup>57</sup> The Non-Public School 1 vocational education teacher did not attend the meeting, so the DCPS Transition specialist reviewed the vocational evaluation.<sup>58</sup> Due to the absence of the vocational education teacher, the IEP team did not update the transition goals on the Student's IEP to incorporate the findings and recommendations of the vocational evaluation.<sup>59</sup>

17. The IEP team determined that the Student had fifty-four unexcused absences.<sup>60</sup> The IEP team agreed that the Student would be discharged from Non-Public School 1 as a result of his excessive absences.<sup>61</sup> DCPS informed the team that, despite Petitioner's objections, the Student would attend his neighborhood school ("Neighborhood School") for the 2010-2011 school year.<sup>62</sup> The IEP team agreed that the Student would no longer receive a dedicated aide.<sup>63</sup>

18. Petitioner and the Student visited two non-public schools to ascertain whether they could meet his needs for the 2010-2011 school year.<sup>64</sup> Non-Public School 2 is located in Maryland, about twenty miles from the Student's home.<sup>65</sup> Non-Public School 3 is located in the District of Columbia close to the Student's home.<sup>66</sup> Both

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> DCPS Exhibit 13.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Testimony of Petitioner.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

schools are able to implement the Student's IEP and meet his needs.<sup>67</sup> However, Non-Public School 3 would not be able to provide the Student a dedicated aide or any vocational opportunities in the automotive field.<sup>68</sup> Non-Public School 3 has a transition program that has provides opportunities for training and work experience in the automotive industry.<sup>69</sup> Non-Public School 3 also provides an independent-living curriculum as part of its transition services.<sup>70</sup>

19. After Petitioner filed the due process complaint, DCPS later informed counsel for Petitioner that the Student will not be attending the Neighborhood School for the 2010-2011 school year. Instead, DCPS is proposing that the Student attend a public full-time, special education school ("DCPS Special Education School"). The DCPS Special Education School is close to the Student's home.<sup>71</sup>

20. The classes at the DCPS Special Education School have a low student-teacher ratio and no more than ten students in each class.<sup>72</sup> It would be able to provide the Student a dedicated aide and vocational opportunities in the automotive field.<sup>73</sup> It also has a school-wide behavior modification system.<sup>74</sup> Its not clear whether the DCPS Special Education School would be able to implement the Student's IEP.<sup>75</sup>

## VI. CREDIBILITY DETERMINATIONS

This Hearing Officer finds that all of the witnesses testified credibly. The witnesses for Respondent testified consistently with the testimony of the witnesses for Petitioner.

## VII. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a FAPE with services designed to meet their individual needs.<sup>76</sup> A free, appropriate public education "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."<sup>77</sup> The IEP is the centerpiece of special education delivery system.<sup>78</sup>

In deciding whether DCPS provided the Student a FAPE, the inquiry is limited to

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<sup>67</sup> *Id.*

<sup>68</sup> Testimony of Non-Public School 3 Education Program Director.

<sup>69</sup> Testimony of Non-Public School 2 Admissions Coordinator.

<sup>70</sup> *Id.*

<sup>71</sup> Testimony of Petitioner.

<sup>72</sup> Testimony of Former Special Education Coordinator ("SEC").

<sup>73</sup> *Id.* The Former SEC was unable to say whether the DCPS Special Education School would be able to implement the Student's IEP.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> 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).

<sup>77</sup> *Rowley*, 458 U.S. at 188, 189.

<sup>78</sup> *Lillbask ex rel. Mauclore v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).

(a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether the Student's IEP is reasonably calculated to enable the Student to receive educational benefit.<sup>79</sup>

Congress sought to protect individual children by providing for parental involvement in the formulation of the IEP.<sup>80</sup> Its 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."<sup>81</sup>

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."<sup>82</sup> 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.<sup>83</sup>

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.<sup>84</sup> A Hearing Officer should not "disturb an IEP simply because [she] disagree[s] with its content."<sup>85</sup> The Hearing Officer is obliged to "defer to educators' decisions as long as an IEP provides the child the basic floor of opportunity that access to special education and related services provides."<sup>86</sup>

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 student a deprivation of educational benefits.<sup>87</sup> In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.<sup>88</sup>

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<sup>79</sup> *Id.* at 206-207.

<sup>80</sup> *Rowley*, 458 U.S. at 208.

<sup>81</sup> *Hinson v. Merritt Educational Ctr.*, 579 F. Supp. 2d 89, 102 (D.D.C. 2008) (citing *Rowley*, 458 U.S. at 206).

<sup>82</sup> *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).

<sup>83</sup> 34 C.F.R. § 300.501 (c)(1).

<sup>84</sup> *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> 34 C.F.R. § 300.513 (a)(2); *W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992)..

<sup>88</sup> *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").

The burden of proof is properly placed upon the party seeking relief.<sup>89</sup> The Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.<sup>90</sup>

## VIII. DISCUSSION

### **Petitioner Proved that DCPS Failed to Provide the Student an Appropriate IEP for the 2010-2011 School Year.**

An appropriate educational program begins with an IEP that accurately reflects the results of evaluations that identify the student's needs,<sup>91</sup> establishes annual goals related to those needs,<sup>92</sup> and provides appropriate specialized instruction and related services.<sup>93</sup> For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."<sup>94</sup>

The school system is required only to make available a "basic floor of opportunity" that is "reasonably calculated to enable the child to receive educational benefits."<sup>95</sup> The IEP need not maximize a student's potential.<sup>96</sup>

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The transition services (including courses of study) needed to assist the child in reaching those goals.<sup>97</sup>

Transition services are to be designed to be within a results-oriented process based on the individual student's needs, taking into account the child's strengths, preferences, and interests.<sup>98</sup> Transition services are to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability.<sup>99</sup> The decisions regarding transition services must be made on the basis of the child's individual needs, taking into account the child's strengths, preferences

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<sup>89</sup> *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

<sup>90</sup> 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).

<sup>91</sup> 34 C.F.R. § 300.320 (a) (1).

<sup>92</sup> *Id.* at (a) (2).

<sup>93</sup> *Id.* at (a) (4).

<sup>94</sup> *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).

<sup>95</sup> *Kerkam v. McKenzie*, 882 F.2d 884, 886 (D.C. Cir. 1988) (citing *Rowley*, 458 U.S. at 195).

<sup>96</sup> *Id.*

<sup>97</sup> 34 C.F.R. § 300.320 (b).

<sup>98</sup> *Id.*

<sup>99</sup> 71 Fed. Reg. 46,579 (2006).

and interests.<sup>100</sup>

The term “educational placement” refers only to the general type of educational program in which the child is placed.<sup>101</sup> “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.<sup>102</sup>

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.<sup>103</sup> 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.”<sup>104</sup>

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.<sup>105</sup> 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”).<sup>106</sup>

Before a local education agency (“LEA”) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, it must provide prior written notice to the parent of a child with a disability.<sup>107</sup> This notice shall include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency’s proposal or refusal.<sup>108</sup>

In determining whether a “change in educational placement” has occurred, the LEA must determine whether the proposed change would substantially or materially alter the child’s educational program.<sup>109</sup> In determining whether the change in location would substantially or materially alter the child’s educational program, the LEA must examine the following factors: whether the educational program set out in the child’s IEP has been

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<sup>100</sup> *Id.*

<sup>101</sup> *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).

<sup>102</sup> *Id.*

<sup>103</sup> 34 C.F.R. § 300.327; D.C. Mun. Reg. tit. 5-E § 3013.

<sup>104</sup> *Alfano v. District of Columbia*, 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citing *Mewborn v. Dist. Of Columbia*, 360 F. Supp. 2d 138, 143 (D.D.C. 2005).

<sup>105</sup> 34 C.F.R. § 300.501 (c)(1).

<sup>106</sup> *See, e.g., W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

<sup>107</sup> 34 C.F.R. § 300.503 (a). *See also Letter to Lieberman*, 52 IDELR 18 (August 15, 2008) (proposal to change the type, amount, or location of the special education and related services being provided to a child, would trigger the notice requirements of 34 CFR § 300.503).

<sup>108</sup> 34 C.F.R. § 300.503 (b); D.C. Mun. Reg. tit. 5-E § 3025.

<sup>109</sup> *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.<sup>110</sup> In other words, if the proposed change substantially or materially affects the composition of the educational program and services provided the student, it triggers the notice requirement.<sup>111</sup>

In contrast, a simple change in location is limited to the physical characteristics associated with a particular site. A transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location only.<sup>112</sup> Simple changes in the location of a building or facility are not generally viewed to be a change in placement where there are no significant changes in the educational program.<sup>113</sup>

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 LRE.<sup>114</sup>

In the District of Columbia, a student's LRE shall be determined in the following order or priority, provided, that it is appropriate for the student in accordance with IDEA:

- (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.<sup>115</sup>

Here, DCPS failed to develop an appropriate IEP for the Student. Here, the Student's IEP fails to include meaningful transition goals. It provides no opportunities for the Student to develop skills to reach his goal of becoming an auto mechanic, instead just specifying that he should research and apply to a few post-secondary schools.

Moreover, DCPS's proposal to place the Student at the DCPS Special Education School would substantially or materially affects the composition of his educational program and services because it would not provide life skills training or a therapeutic

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<sup>110</sup> *Id.*

<sup>111</sup> *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18, 1980); *Letter to Fisher*, 21 IDELR 992.

<sup>112</sup> *See, e.g., Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 753-54 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980).

<sup>113</sup> *Letter to Flores*, 211 IDELR 233. *See also A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.)

<sup>114</sup> *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005) (citing *Rowley*, 458 U.S. at 202); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).

<sup>115</sup> D.C. Code § 38-2561.02.

environment. DCPS presented no evidence that the DCPS Special Education School can implement the Student's IEP.

Because the DCPS Special Education School is a less restrictive environment than Non-Public School 1, DCPS was required to include Petitioner in the placement decision. It failed to do so, and has not provided her the requisite prior written notice.

Non-Public School 2 is the only one of Petitioner's proposed non-public schools that can implement the Student's IEP. Because it is close to the Student's home and located in the District of Columbia, it also is the LRE.

### **ORDER**

Based upon the findings of fact and conclusions of law herein, on this 21st day of August 2010, it is hereby

**ORDERED** that the Student shall attend Non-Public School 2 at DCPS expense for the 2010-2011 school year;

**IT IS FURTHER ORDERED** that, if the Student has more than ten unexcused absences during the 2010-2011 school year, DCPS will not be required to fund his tuition at Non-Public School 2 from the date of the Student's tenth absence to the end of the 2010-2011 school year;

**IT IS FURTHER ORDERED** that on or before September 7, 2010, DCPS shall revise the Student's IEP in accordance with the factual findings herein, including but not limited to providing the Student a one-to-one paraprofessional for the 2010-2011 school year, revising the Student's Transition Plan, and developing a behavioral implementation plan to address the Student's attendance problems;

**IT IS FURTHER ORDERED** that DCPS shall receive a one-day extension of the MDT meeting for every day of delay caused by Petitioner, her counsel, or her educational advocate; 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).

Copies to:

Roberta Gambale, Attorney at Law  
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