District of Columbia

Office of the State Superintendent of Education

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STUDENT HEARING OFFICE
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Parent on behalf of the Student[1], Petitioner, v. District of Columbia Public Schools ("DCPS") Respondent. Case # 2012-0330	HEARING OFFICER'S DETERMINATION Hearing Dates: June 27, 2012 June 28, 2012 June 29, 2012 July 16, 2012 <u>Representatives:</u> Counsel for Petitioner: Michael J. Eig, Esq. 5454 Wisconsin Ave. #760 Bethesda, Md. 20815 Counsel for DCPS: Assistant Attorney General Daniel McCall, Esq. 1200 First Street, NW Washington, DC 20002 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened on June 27, 2012; June 28, 2012; June 29, 2012; and concluded on July 16, 2012, at the District of Columbia Office of the State Superintendent of Education ("OSSE") Student Hearing Office, 810 First Street, NE, Washington, and D.C. 20003, in Hearing Room 2006 on the first three days of the hearing and in Hearing Room 2004 on July 16, 2012.

BACKGROUND AND PROCEDURAL HISTORY:

The student is currently age and a native Spanish speaker. He was enrolled in an English language preschool and attended an English language private general education school located in Washington D.C. (hereinafter referred to as "School A") for kindergarten and first grade.

On October 19, 2009, while the student was in first grade at School A, the District of Columbia Public Schools ("DCPS") determined the student eligible as a child with a disability under IDEA with a classification of speech or language impairment ("SLI"). The individualized educational program ("IEP") DCPS developed for the student prescribed one hour per week of speech-language services in and out of general education setting and prescribed no other services. The student's parents did not enroll the student in his DCPS neighborhood school, hereinafter referred to as "School B," but continued his enrollment at School A for the 2009-2010 school year ("SY"). The parents, however, brought the student to School B for the remainder of SY 2009-2010 to receive the one-hour of weekly speech and language services.

At the start of SY 2010-2011 the student's parents enrolled him full time in School B. On October 15, 2010, DCPS convened an IEP meeting for the student and reviewed independent evaluations the parents provided. DCPS revised the student's IEP to add an additional 30 minutes of speech language services per week inside general education. The October 15, 2010, IEP prescribed no specialized instruction. The parents requested the team provide the student specialized instruction consistent with the recommendations of the independent evaluations. DCPS maintained the IEP it developed was appropriate and no specialized instruction was warranted. The parents disagreed with the IEP but allowed the student to continue to attend School B. DCPS implemented the October 15, 2010, IEP and the student attended School B until January 2011, when his parents removed him, home schooled him briefly, then placed him in a private full time special education school, hereinafter referred to as "School C".

The parents notified DCPS of their intent to seek DCPS funding for the student's placement at School C. DCPS requested authorization to conduct observations of the student at School C which it did in March 2011. On April 4, 2011, DCPS convened an IEP meeting held at School B to review an additional independent evaluation the parents provided and the DCPS observations. The DCPS personnel did not consider the recommendations in the evaluations for specialized instruction and full time out of general education placement to be valid and disagreed that the student needed such a restricted level of services. DCPS convened a subsequent IEP meeting on May 2, 2011. The parents renewed their request that the student be provided specialized

instruction and requested DCPS fund the student's placement at School C. DCPS revised the student's IEP to prescribe additional speech and language services: 2 hours of speech and language pathology outside general education and 30 minutes of speech language pathology inside general education. The IEP again prescribed no specialized instruction. DCPS refused to place and fund the student at School C and maintained that the student's IEP as developed was appropriate and could be implemented at School B. The parents rejected the IEP and placement and maintained the student at School C.

In June 2011 the parents filed a due process complaint alleging, inter alia, DCPS had failed to provide the student an appropriate IEP and educational placement and sought reimbursement for the student's tuition at School C. Petitioner withdrew that complaint because of scheduling conflicts with the intent of re-filing the complaint.[2] In October 2011 the student's parents chose to move the student from School C to another private full time special education school, the when a space became available for him. On October 13, 2011, the parents through counsel requested that DCPS consider placing the student at DCPS responded to the request refusing to fund the student's placement at

The student has continued to attend On April 26, 2012, Petitioner filed the current complaint alleging, inter alia, DCPS failed to provide the student an appropriate IEP and educational placement and seeking reimbursement for the student's tuition at for SY 2011-2012.

DCPS filed a response to the complaint on May 9, 2012. DCPS asserted that the IEP and placement DCPS proposed were appropriate and DCPS had made a free and appropriate public education ("FAPE") available to the student at School B. Thus, the parents are not entitled to the requested reimbursement. In addition DCPS asserted Petitioner had failed to comply with the 10-day letter/notice requirements under IDEA for tuition reimbursement.

At the May 7, 2012, resolution meeting the parties did not resolve the issues. The parties agreed that the resolution period would continue for the full thirty days. Thus, the 45-day timeline ended and the Hearing Officer's Determination ("HOD') was due on July 10, 2012.

A pre-hearing conference was conducted on May 18, 2012, at which the issues to be adjudicated were discussed and determined. On May 23, 2012, the Hearing Officer issued a pre-hearing order stating the issues to be adjudicated and setting hearing dates.

In preparation for hearing the parties submitted disclosures. Petitioner's counsel disclosed a declaration by a potential witness who was unavailable to testify. At the outset of the hearing on June 27, 2012, DCPS counsel objected to admission of the declaration because the declarant was unavailable for cross-examination. Petitioner's counsel expressed a desire for a continuance of the hearing and extension of the HOD due date to allow the declarant to be available to testify.

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[2] Petitioner filed and withdrew complaints twice thereafter prompting DCPS to request that the third complaint filed in January 2012 be dismissed with prejudice. On April 11, 2012, this Hearing Officer issued an Order of Withdrawal (2012-0092 – Petitioner's Exhibit 72) dismissing certain claims in the January 2012 complaint with prejudice and allowing Petitioner to promptly re-file the complaint but limiting the claims to those related to the request for reimbursement for SY 2011-2012 for LSW.

At the conclusion of Petitioner's case, Petitioner's counsel reiterated his desire for the continuance and at the conclusion of Respondent's case on June 29, 2012, submitted a written continuance motion that was granted over DCPS' objection. On July 9, 2012, the Hearing Officer issued an order granting the motion and continuing the hearing to allow a fourth day of hearing on July 16, 2012, for the Petitioner's final witness and for closing arguments. The HOD due date was extended ten calendar days to July 20, 2012.

ISSUES: [3]

The issues adjudicated are:

(1) Whether DCPS denied the student a FAPE in SY 2011-2012 by failing to provide the student with an appropriate IEP (May 2, 2011) by not including accurate and complete present levels of performance, appropriate goals and objectives[4], services[5], accommodations and modifications.

(2) Whether DCPS denied the student a FAPE by failing to propose/provide the student an appropriate placement/location of services from October 13, 2011, to present.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-85 and DCPS Exhibit 1-45) that were admitted into the record and are listed in Appendix A. Witnesses are listed in Appendix B.

FINDINGS OF FACT: [6]

1. The student is currently age and a native Spanish speaker. He was enrolled in an English language preschool and attended an English language private general education school, "School A", for kindergarten and first grade. (Petitioner's Exhibits 10-1, 11-1)

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[3] The alleged violations and/or issues listed in the complaint do not directly correspond to the issues outlined here. The Hearing Officer restated the issues in the pre-hearing order and at the outset of the hearing and the parties agreed that these were the issues to be adjudicated.

[4] In response to the Hearing Officer inquiry in a prior complaint the Petitioner sent a letter on July 18, 2011, to this Hearing Officer stating, "As for missing goals and objectives, an appropriate IEP for [the student] has to address the flowing areas, none of which are in the proposed IEP: Organization and Planning, Motor Control/Visual-Motor Control, [Attention], Executive Functioning, Reading, Written Language, Mathematics." (Petitioner's Exhibit 64)

[5] Petitioner alleges the student requires full time special education services including specialized instruction and speech-language services.

[6] The evidence that is the source of the Finding of Fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may only cite one party's exhibit.

2. In May 2008 when the student was four years - nine months of age his parents had a speech-language evaluation conducted because of their concerns about the student's speech proficiency. The parents are both native Spanish speakers and Spanish is the predominant language spoken in the home. The evaluator determined the student had a mild expressive speech delay and exhibited speech difficulties associated with acquiring English as a second language. The evaluator recommended the student receive individual speech therapy once per week and be immersed in an English as a second language ("ESL" or English language learner "ELL") preschool to develop his English vocabulary. (Petitioner's Exhibit 5-5)

3. The parent had another speech and language evaluation conducted in June 2009 when the student was five years – ten months of age. At that time he was attending School A. The evaluator determined the student's receptive language skills were at the 6th percentile and his expression language skills were at the 1st percentile. The evaluator recommended the student receive speech-language therapy of two hours per week and that his parents obtain a psycho-educational evaluation because the parents reported to the evaluator that the student's language deficits were impacting his educational performance. (Petitioner's Exhibit 6-4)

4. In October 2009 the parent's provided DCPS the June 2009 speech language evaluation. DCPS reviewed the evaluation, but conducted no other evaluations of the student. DCPS determined the student was in need of speech language services. On October 19, 2009, DCPS determined the student eligible as a child with a disability under IDEA with a classification of SLI while he was in first grade at School A. The IEP DCPS developed prescribed one hour per week of speech-language services in an out of general education setting and prescribed no other services. The student's parents did not enroll him in his DCPS neighborhood school, School B, but continued his enrollment at School A for SY 2009-2010. The parents, however, brought the student to School B for the remainder of SY 2009-2010 to receive one hour per week of speech language services. The student also received private speech and language services at School A. (Petitioner's Exhibits 7-1, 7-3, 8-1, 8-4, 8-5, 8-7, 8-8, 11-1)

5. In August 2010 when the student was age six years – eleven months, the student's parents had an independent neuropsychological evaluation conducted by Dr. Ellen Goldman. Dr. Goldman noted in her report that the student's first grade teacher at School A reported that the student's mastery of English was weak and he was below grade average in reading, writing and math. The evaluation[7] assessed the student's cognitive and academic

[7] The evaluation included the following assessments: Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV); Automatic Verbal Sequencing; Boston Naming Test; Oral and Written Language Scales (OWLS); Selective Reminding Test (SRT); Klove Grooved Pegboard; Developmental Test of Visual Motor Integration; Integrated Visual and Auditory Continuous Performance Test (IVA); Childe Behavior Checklist (CBCL); Teacher's Report Form (TRF); Behavior Rating Inventory of Executive Function (Brief) Parent and Teacher Forms; Selected subtest from the Wechsler Individual Achievement Test – Third Edition (WIAT-III); NEPSY-II ; Comprehensive Test of Phonological Processing (CTOPP); Test of Everyday Attention in Children (TEA-Ch) Spanish Language Testing: Selected measures from the WISC-IV Spanish; Woodcock-Munoz Third Edition (WM-III) Bateria Pruebas de aprovechamiento and Pruebas de habilidades cognitivas; and clinical observation.

functioning and was administered in both English and Spanish. The student's verbal comprehension was measured to be at the 10th percentile, perceptual reasoning at the 70th percentile, working memory at the 47th percentile and processing speed at the 21st percentile. Because of the wide differences in scores a full scale IQ could not be reported. The evaluator assessed the student's academic abilities in reading, math and written language as below average;[8] diagnosed the student with a learning disability in reading, written expression and math and recommended the student be placed in a full time special educational program that provided a language based curriculum to address his language and learning deficits. (Petitioner's Exhibit 10-2, 10-3, 10-9)

6. In September 2010 the parents also had another speech language evaluation conducted. The evaluator concluded the student has a severe receptive and expressive language disorder that impacted all areas of his speech and language including his ability to communicate and to comprehend language used in his environment. The evaluator recommended the student continue to receive weekly speech language therapy and that he be educated in a language based classroom with a low student to teacher ratio. (Petitioner's Exhibit 12-9, 12-10)

7. At the start of SY 2010-2011 the student's parents enrolled him full time in School B in first grade. The parents chose for the student to repeat first grade based on the recommendation of School A. The parents provided DCPS the new evaluations. (Ms. Blattner's testimony)

8. When the student began attending School B DCPS conduct a bilingual assessment. The student was operating overall at the second of six levels of language proficiency[9] that DCPS uses to measure English proficiency of an ELL student. Level six is the highest level of proficiency. English language mastery for an ELL student may take from five to as much as seven years. This student's speech-language deficits could reasonably be expected to cause him to learn English slower than an ELL student without such deficits. (Dr. Porro-Silina's testimony, testimony)

9. In the fall of 2010 the student's parents engaged the services of Ms. Suzanne Blattner, a special educational advocate who assisted them in IEP meetings held by DCPS. On October 15, 2010, DCPS convened an IEP meeting for the student and reviewed independent evaluations and revised the student's IEP to add an additional 30 minutes of speech language services per week inside general education. DCPS prescribed no specialized instruction. At the IEP meeting Ms. Blattner requested that DCPS prescribe specialized instruction in the areas of reading, math and written expression because of the student's deficits identified in the independent evaluations. (Ms. Blattner's testimony, Petitioner's Exhibit 15-6, 15-7)

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[8] Reading at the 34th percentile, math at the 7th percentile, spelling at the 32nd percentile, and alphabet writing at the 13th percentile. His percentile ranks in these areas were even lower when measured in Spanish. (Petitioner's Exhibit 10-13, 10-14)

[9] In August 2010 the student was rated at English proficiency level 4 in reading, 2 in listening, 1 in reading and 2 in writing. (DCPS Exhibit 1)

10. DCPS raised concerns about the validity of the August 2010 neuropsychological evaluation, and the speech language evaluation because in DCPS' opinion they were not bilingual evaluations. DCPS issued a prior notice indicating that additional evaluations were warranted. (Petitioner's Exhibits 15-2, 15-10, 15-11, 17-3)

11. According to DCPS standards any student who scores at level four or below in the English language assessment should have a bilingual evaluation. DCPS did not conduct a bilingual comprehensive psychological evaluation of the student although in August of 2010 he was measured to be at a level two in English language proficiency. Instead, DCPS reviewed and used the independent evaluations the parent's provided. However, DCPS raised concerns about the validity of the August 2010 neuropsychological evaluation because it was not administered by a bilingual evaluator. testimony)[10]

12. DCPS maintained that the IEP it developed prescribing speech language services and no specialized instruction was appropriate. DCPS concluded the student's needs could be met in the least restrictive environment ("LRE") of a general education classroom with speech language services and ELL supports. (Petitioner's Exhibit 15-11)

13. The student's parents disagreed with the October 15, 2010, IEP but allowed the student to continue to attend School B and DCPS implemented the IEP. (Petitioner's Exhibits 17-1, 18)

14. While the student attended School B he was in a general education classroom and received the IEP prescribed speech and language services and ELL instruction. (Ms. Countee's testimony, testimony, Petitioner's Exhibits 21-3)

15. , a certified ELL teacher, provided the student ELL pullout instruction with oral, writing and reading exercises to support the academic work the student received in his general education classroom. also provided the student instruction and assistance inside the general education classroom working with the student in small groups to lend support. The student worked well with his peers and in opinion was benefiting from the general education classroom instruction at School B. testimony)

16. In November 2010 DCPS psychologist Harriett Kuhn reviewed the independent neuropsychological evaluation. noted that the student was performing well academically and performing on grade level at School B with the speech language services, daily ELL instruction and the accommodations in his IEP. included in her report a list of recommendations and interventions to be used with the student to assist him in the classroom. (Petitioner's Exhibit 20-3, 20-5, 20-6, 20-8)

17. When the student entered School B he was reading at beginning 1st grade level. He met progression expectations in the 1st grade reading in both fluency and comprehension. The student engaged and got along well with his peers in the classroom and during recess.

[10] This witness was designated as an expert in school psychology.

The student's classroom teacher and classroom aide who was spoke Spanish, his ELL instructor and the speech-language provider at School B coordinated regularly with one another regarding the student classroom work. (Ms. Elizabeth Whiznant's testimony, DCPS Exhibit pages 0072, 0073)

18. At School B the student was in a classroom with approximately 21 students, one classroom teacher and an instructional aide. Most if not all of the other students were general education students. No other students were repeating first grade. The student participated in all of the activities in the classroom and generally performed well academically. His classroom teacher, would regularly check in with the student to gauge his understanding of what was going on in the classroom and the student would ask questions of her if needed. She did not have in difficulties in understanding him when he communicated. The student made progress in writing and was able to write short stories that were grade appropriate. The classroom teacher was also satisfied with the student progress in math. The student progressed as expected in the reading. There were some students in the class reading below him and he was about in the middle of the pack. His report card reflected that he was making progress in most academic areas during the first semester of SY 2010-2011. In December 2010 the student was assessed as operating at average level of academic functioning. testimony, Petitioner's Exhibit 29, DCPS Exhibits- pages 0015, 0026, 0030, 0063, 0064, 0065, 0069, 0070, 0071)

19. The student was well liked by his classroom peers and got along well with them. His classroom teacher was a member of his IEP team and based upon his performance in her classroom she did not believe the student needed specialized instruction in any academic area. However, she believed ELL instruction was an integral part of his learning in the classroom and it would have been detrimental if he were not provided this service both inside and outside the classroom. testimony)

20. DCPS speech language pathologist Shilonda Countee provided the student speech therapy services when he attended School A and when he came to School B. Ms. Countee also participated in the student's IEP meetings. While attending School B the student was making progress in vocabulary, understanding English language concepts, following directions, reading sight words, formulating sentences and using punctuation, and transferring his verbal language into written language. Ms. Countee drafted the present level of performance in the student's IEPs and regularly consulted with the student's classroom teacher and ELL teacher regarding the student's progress. (Ms. Countee's testimony)

21. Ms. Countee implemented the IEP goals and typically pulled the student out of the classroom twice per week for 45 minutes. She would also go into his classroom usually twice per week to see what the student was working on during his writing time or math time and sit with him and watch the lesson. If language came up for the student she would help him with these in the subsequent pull-out session and then work on his IEP goals. The student appeared to do well in the classroom and got along well with his peers and his social language was progressing. Ms. Countee did not see a need for specialized

instruction because all the student instructors thought he was making sufficient academic progress. (Ms. Countee's testimony)

22. The student attended School B until almost the end of the first semester of SY 2010-2011. At the end of the semester the student's parents decided to home school the student and then explored private educational placements. (Petitioner's 17-1, 18, 28, 30-1, 30-2)

23. In January 2011 the student's parents obtained an independent neuropsychological consult by Daisy M. Pascualvaca, Ph.D. to clarify the student's cognitive profile (in particular his language skills) and assist in the planning of appropriate education services. Dr. Pascualvaca completed a brief assessment of the student both in English and Spanish to establish the validity of Dr. Goldman's findings and to clarify appropriate support. Dr. Pasculavaca concluded the student had a severe receptive and expressive language disorder in both English and Spanish. The evaluation revealed the student had a limited command of Spanish and preferred English. Dr. Pascualvaca concluded it would be useless to conduct assessments in Spanish for the student and that Dr. Goldman's findings accurately reflected the student's functioning and potential. (Petitioner's Exhibit 33-1, 33-2, 33-6)

24. Dr. Pascualvaca conducted a Woodcock Johnson-III evaluation of the student. The student had the following scores:

	SS Age	% Rank	SS 1st Grade	% Rank
Broad Reading	101	53	113	89
Broad Math	86	18	99	47
Broad Written Language	100	51	116	86
Math Calculation Skills	79	8	90	24
Written Expression	102	55	117	87
Academic Skills	98	45	113	81
Academic Fluency	94	33	110	75
Academic Applications	98	43	114	82

25. After the student's parents provided DPCS a January 2011 bilingual psychological consult report, DCPS psychologists had concerns that that consult was too brief, relied upon assessments from the earlier independent evaluations, did not measure the student's cognitive abilities and used assessments that were heavily weighted for language. Given that the student has clear language deficits Ms. Kuhn was of the opinion that assessments that were not so heavily weighted for language should have been used to more

appropriately measure the student's potential, abilities and performance. (Ms. Kuhn's testimony) [11]

26. On or about January 12, 2011, the parents placed the student in School C, a private full time special education school and then through counsel, notified DCPS of their intent to seek DCPS funding for the student's placement at School C. (Petitioner's Exhibit 31)

27. On January 13, 2011, DCPS responded and stated its willingness to conduct additional evaluations of the student and reiterated that based on the current data and the student's classroom performance that DCPS believed the student's needs could be met with the services DCPS provided including ELL services and that specialized instruction was not warranted for this student. (Petitioner's Exhibit 32)

28. On February 3, 2011, the parents' attorney informed DCPS in writing that the student was enrolled at School C and the parents were willing to attend an IEP meeting to address their concern for the student's need for more intense services than DCPS proposed. DCPS requested authorization to conduct observations of the student at School C. DCPS conducted the observations in March 2011. (Petitioner's Exhibit 35)

29. DCPS personnel observed the student at School C and concluded the student was not being provided reading and writing instruction in the general education setting in which his standard evaluation scores indicated he was capable of being placed. (Petitioner's Exhibit 49-19)

30. On April 4, 2011, DCPS convened an IEP meeting and reviewed the independent evaluations including the neuropsychological consult from January 2011 and the DCPS observations. The team agreed the student still had speech language disorder and was eligible for speech therapy and the classification of SLI. The DCPS personnel did not consider the independent evaluation recommendations for specialized instruction and full time special education to be supported by the student's assessment scores and disagreed that the student needed that level of services. (Petitioner's Exhibit 49-1, 49-7, 49-21, 49-22, 49-23)

31. DCPS bilingual psychologist Dr. Patricia Porro-Silinas attended the April 4, 2011, IEP meeting and served as a consultant to the IEP team. Dr. Porro-Silina expressed an opinion that the IEP DCPS developed for the student was appropriate because his academic functioning based on the evaluations and his performance in the classroom while he attended School B did not wa rrant specialized instruction. (Dr. Porro-Silina's testimony) [12]

32. DCPS psychologist Harriett Kuhn observed the student in his classroom and around School B's campus at least twice per week while he attended school B and she participated in all of the student's IEP meetings. Ms. Kuhn reviewed the student's independent evaluations and conferred with his School B classroom instructor, ELL

[11] This witness was designated as an expert in school psychology.

[12] The witness was qualified as an expert as a bilingual psychologist.

instructor and speech-language provider and prepared a psychological evaluation report for the student. Based upon these factors, particularly the student's classroom performance which appeared to be on first grade level, Ms. Kuhn was of the opinion that the student was not in need of specialized instruction in the areas of reading, math or written expression. Although Ms. Kuhn acknowledged the independent evaluations assessed the student at or near grade level performance, Ms. Kuhn did not agree with the recommendations in those evaluations that the student was in need of full time special education placement. (Ms. Kuhn's testimony)

33. On May 2, 2011, DCPS convened an additional IEP meeting. DCPS refused to place and fund the student at School C, but amended the student's IEP to prescribe additional speech and language services: 2 hours of speech and language pathology outside general education and 30 minutes of speech language pathology inside general education. The IEP prescribed no specialized instruction. (Petitioner's Exhibit 53-6)

34. In May 2011Ms. Countte increased the hours because she had been providing him more services that had been prescribed on his previous IEP and he did appear to fatigue with the level of speech-language services he had been provided. (Ms. Couttee's testimony)

35. The May 2, 2012, IEP included information in the "Present Levels of Performance and Annual Goals" section in the area of communication/speech and language. This section contained information regarding the student's educational history and the schools he had attended and the services he was provided and a statement of the progress he made at School B. This section also recounted information and scores from the independent neuropsychological and speech language evaluations. The IEP included six communication/speech language goals. [13] (Petitioner's Exhibit 53-2)

36. The May 2, 2011, IEP included a section entitled "Classroom Aides and Services" contained a statement that the student would benefit from accommodations including but not limited to: repetition of instruction, small group instruction, reduced demand for rapid response, visual supports and scripts, self rehearsals and peer modeling. This section also recounted the student's speech language therapy services and noted he was to receive ELL services and the speech language provider, ELL instructor and classroom teacher would collaborate to present an integrated approach for presenting and reinforcing academic skills. (Petitioner's Exhibit 53-6)

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[13] (1) [the student] will demonstrate improved listening skills when provided with a variety of media.. by attending to a speaker with improved eye contact and answering "wh" questions to identify specific details and main idea..., (2) [the student] will participate appropriately in oral language activities to tell and retell stories in logical order given picture cues and sequence markers..., (3) [the student] will use appropriate syntax/grammar in oral communication...using...nouns,...pronouns...verb use, auxiliary...and superlatives/comparatives, (4) [the student] will use vocabulary related to content area...using words to name nouns, verbs and adjectives, (5) [the student] will follow simple 1 to 3 step directions with increased linguistic concepts: inclusion/exclusion..., temporal..., location,...conditional...sequence..., orientation...and math concepts...(6) [the student] will improve his critical thinking skills by recalling increased lengths of information with numbers, words, sentences, and stories by using strategies of chunking, charting, categorization and memorization...

37. The "Least Restrictive Environment" Section of the student's May 2, 2011, IEP outlines the services, time and frequency and justification for the services that are to be provided the student and a statement of the reasons describing the student's needs that require removal from general education and the supports and services that were previously attempted in general education. The justification for the student receiving zero hours of specialized instruction states: "As a student in the ELL program [the student] will receive language based curricular support in the general ed. classroom from his ELL teacher." The supports that were previously attempted recount the collaboration between the classroom teacher, ELL instructor, and speech-language provider. (Petitioner's Exhibit 53-7)

38. The Classroom Accommodations section of the May 2, 2011, IEP divides the accommodations provided the student into three sections: Presentation, Setting, Timing and Scheduling.[14] (Petitioner's Exhibit 57-8)

39. In the student's classroom during the time the student attended School B, generally used for all her first graders the accommodations listed in the student's IEP including repetition of directions, small group instruction, reduced demand for rapid response, visual supports, peer modeling but it was used for all students. Ms. Allen acknowledged that the speech language therapist was the one responsible for carrying out the student's IEP and she could not speak to the validity of the present levels of performance in the IEP or the student's progress on his goals because she was not responsible for carrying them out. testimony)

40. The parents' educational advocate who attended the meeting with the parents requested that the team write goals for the student in reading, math and written expression. DCPS maintained that the student did not require specialized instruction in any of those areas because they believed he was operating on grade level. The advocate did not say to the team that the student required all services outside general education. The parents rejected the IEP and placement and maintained the student at School C. testimony, Petitioner's Exhibit 53-6)

41. On May 3, 2011, the parents' attorney sent a letter to DCPS stating the parents' concerns with the DCPS IEP. The parents requested that the present levels of performance ("PLOP") in the IEP be amended and that the IEP goals be determined after the PLOP were amended; that the information from School C progress reports and the independent evaluations be incorporated into the PLOP, that DCPS remove from the current PLOP section all that "has nothing to do with present levels such as what some members think he has done in terms of services or how some members think he has done in programs to? this time," correct all criteria of mastery as discussed at the IEP meeting and the

[14] (1) Presentation: Interpretation of oral directions, reading of test questions (math, science and composition only), repetition of directions, translation of words and phrases (math, science and composition only), (2) Setting: location with minimal distractions, small group testing, Timing and (3) Scheduling: flexible scheduling, tests administered at best time of day for student, breaks between subtests, extended time on subtests, breaks during subtests.

"Baseline" statements be changed to provide some actual baselines from which the goals could start to be measured. (Petitioner's Exhibit 54)

42. School C prepared an individualized service plan that outlined the goals and objectives and services School C provided the student. The service plan included goals in reading, math, written expression, classroom adaptation, and expressive speech/language. In June 2011 School C provided the student's parents a report of the student's progress relative to the goals School C developed for the student and services provided him there. (Petitioner's Exhibit 61-1, 61-2)

43. Ms. Blattner conducted classroom observations of the student at School B and School C. At School C the student was making progress in a class with a low student to teacher ratio. He was provided individualized support and the information provided him was paced so he can more readily grasp it to account for his language deficits. Ms. Blattner acknowledged at the hearing that the student has strong socials skills and he could at least benefit from eating lunch at school with non-disabled peers and with support could be with non-disabled peers for recess. Ms. Blattner asserted that because School B was not offering him specialized instruction but only speech language services that educational placement was inappropriate. (Ms. Blattner's testimony)[15]

44. In June 2011 the parents filed a due process complaint alleging, inter alia, DCPS had failed to provide the student an appropriate IEP and educational placement and sought reimbursement for the student's tuition at School C. Petitioner withdrew that complaint because of scheduling conflicts with the intent of re-filing the complaint. Sometime after the start of SY 2011-2012 the student's parents moved him from School C to LSW.[16] On October 13, 2011, the parents through counsel requested that DCPS consider placing the student at LSW.[17] DCPS responded to the letter refusing to fund the student's placement at LSW. (Ms. Blattner's testimony, Petitioner's Exhibit 69, 72)

45. On October 13, 2011, prepared an IEP that only included speech language goals and the school used the School C individualized service plan for academics. At the student is operating at age level and being taught on a second to third grade instructional level. (Ms. Durham's testimony, Petitioner's Exhibits 67, 78-3)

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[15] This witness was qualified as an expert in the area of programming for and instruction of educationally disabled students.

[16] Ms. Blattner testified that at School C the student received specialized instruction and was in a classroom with students with behavior difficulties that were distracting to the student and as a result she recommended to the parents that he be moved to when a space at became available.

[17] On October 4, 2011, the student's parents received a letter notifying them that a space had become available for the student at LSW and informing the parents they would be responsible for all financial obligations to the school for the student's attendance if they accepted the offered space unless and until the local school system agreed to fund the student at or until a hearing officer's decision determined was his educational placement. Thereafter, the student's parents removed him from School C and placed him at (Petitioner's Exhibit 66)

46. The student has continued to attend On April 26, 2012, Petitioner filed the current complaint alleging, inter alia, DCPS failed to provide the student an appropriate IEP and educational placement and seeks reimbursement for the student's tuition at for SY 2011-2012. (Petitioner's Exhibit 1)

47. The student's parents have paid $26, 800 in full to for the student's attendance at and want DCPS to reimburse them for the student's attendance there from October 2011 to the end of SY 2011-2012. (Father's testimony)

48. is a private special education school that serves students with average to above average cognitive abilities and language-based learning disabilities and provides small group and individualized instruction based on a student's learning profile. serves students from first grade through high school with two campuses. The school has a total of approximately 300 students and two separate campuses; 78 of the students are in the lower school program. All students at are special education students and at this student will have no opportunity to engage with non-disabled peers. (Dr. Durham's testimony)

49. At the student is in a classroom of 12 to 13 students with a certified special education teacher and two interns. The student is provided math instruction by the certified teacher and/or interns in that classroom in small groups and provided reading instruction on most days with one to one instruction from another certified special education teacher. The student is provided science and musical theater in a group of 8 to 9 students and teachers who are content certified but not special education certified. The student has physical education each day with a group of about 12 to 13 students. On some days a certified special education teacher instructs the student in physical education; on other days someone not certified in special education taught physical education. The student has made progress since attending In reading one of his strengths is word attack skills. He can now read words he once could not. He struggles in comprehension but has learned a lot of strategies to improve his comprehension. He is good at sight word decoding and encoding and math calculation is a strength. At the student is being instructed at the second grade level in math. In written language he at second grade level. In other subjects the student is receiving grade level instruction. (Dr. Durham's testimony)

50. The curriculum specialist Dr. Durham expressed the opinion the student needs IEP goals in reading, math and written expression in language and in organization and planning. She believes the student has benefitted from being at but she also believes he could benefit from being in a school that uses mainstreaming with non-disabled peers. The student is hardworking and demonstrates no behavioral problems. At the student seems to do best working in a small group because he has displayed some concerns with paying attention in class. testimony)

51. At the student receives both individual and group speech language therapy. Since the student began attending his speech language therapist at has observed that

he has weak auditory processing and weak expressive language skills. The therapist has observed that it is difficult for him to take in information and then express it. He has difficulty following directions that are more than two steps. In the classroom he needs repetition and information broken into parts to assist his understanding. He has a weak memory for recall. He has difficulty with complex concepts and needs things explained in very simple language. His writing reflects his weak oral language and he writes run-on sentences. The student comes to school eager and ready to learn. He will sit and look attentive but he may not understand what is being presented. He is inconsistent in letting classroom teachers know if he isn't following a concept presented in the classroom. In a one-to-one setting he will ask for help or say he doesn't understand, but is less likely to do so in a larger class. The student's speech language pathologist at provided her opinion on the optimal educational placement for the student. In her opinion the student needs an educational program with supports, stimulation and repetition in all classes. He needs a program where it is understood he needs time to express himself. testimony, Petitioner's Exhibits 70-7, 70-12, 70-13, 78-24)

52. On April 30, 2012, when the student was age eight years - eight months conducted an educational assessment (WJ-III). The student had the following scores: (Petitioner's Exhibit 78-3)

	Standard Score	Percentile Rank	Age Equivalency
Broad Reading	97	43	8-5
Broad Math	95	37	8-4
Broad Written Language	92	29	8-0
Math Calculation Skills	95	37	8-4
Written Expression	95	37	8-1
Academic Skills	98	45	8-6
Academic Fluency	85	15	7-8
Academic Knowledge	95	36	8-1
Academic Applications	97	41	8-4

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--(a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. [18] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

ISSUE (1): Whether DCPS denied the student a FAPE in SY 2011-2012 by failing to provide the student with an appropriate IEP (May 2, 2011) by not including accurate and complete present levels of performance, appropriate goals and objectives, services, accommodations and modifications.

Conclusion: DCPS failed to conduct appropriate evaluations of the student and thus the Hearing Officer concludes that is IEP is inappropriate and the present levels of performance are not valid. Petitioner sustained the burden of proof on this issue by a preponderance of the evidence.

The IDEA ensures that "all children with disabilities have available to them a free appropriate pubic education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. §1400(d)(1)(A). The IDEA guarantees children with disabilities the right to a FAPE. Id. In seeking an appropriate education for students with disabilities, the child's parents, teachers, school officials, and other professionals collaborate to develop an IEP to meet the child's unique needs. See 20 U.S.C. §1414(d)(1)(B). "The IEP must, at a minimum,' provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C. Cir.2005) (quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458U.S. 176, 203 (1982)). Local school officials utilize the IEP to assess the student's needs and assign a commensurate environment. See 20 U.S.C. § 1414(d)(1)(A).

[18] The burden of proof shall be the responsibility of the party seeking relief. Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof.

The IEP team, consisting of the student's parents, teachers, and other local education personnel, examines the student's educational history, progress, recent evaluations, and parental concerns prior to implementing a free appropriate public education for the student. Id. To determine whether a FAPE has been provided, courts must determine whether: (1) the school complied with the IDEA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits. *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1312 (11th Cir. 2003).

The IEP is the central part of the special education process and the failure to develop an appropriate IEP is a substantive denial of a Free Appropriate Public Education ("FAPE"). 20 U.S.C. § 1401 (9) (FAPE consists of special education and related services that are provided in conformity with the student's IEP, which in turn is to be developed according to a student's unique educational needs); 34 C.F.R. § 300.17; D.C. Mun. Regs. Tit. 5 § 3000.1. See also *Scott v. District of Columbia*, (D.C. Cir.) 03-1672 DAR (March 31, 2006); and *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 276, 182 (1982) ("The free appropriate public education required by the Act is tailored to the unique needs of the handicapped child by means of an Individualized Educational Program ("IEP")).

20 U.S.C. 1414(a)(i) defines IEP as a "written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes a statement of the child's present levels of academic achievement and functional performance." It includes measurable goals, statements of related services, assistive technology and other appropriate accommodations. It is developed by the IEP team which consists of the child's parent, general education teachers, LEA special education teachers and anyone deemed as a necessary participant by reason of the services provided to the student. The IEP is the centerpiece or main ingredient of special education services.

The evidence in this case clearly demonstrates DCPS did not conduct its own evaluations. When the student entered School B, DCPS assessed the student and concluded he was an ELL student operating at the lower rung of English language proficiency. The student's parents provided DCPS independent evaluations that confirmed the student had speech-language deficits. One of the evaluations also indicated the student had learning disabilities. DCPS did not consider the evaluation valid because it was not performed by a bilingual evaluator as is required under DCPS standards. There is no evidence DCPS asked to conduct its own bilingual evaluation(s) despite the fact it considered the independent evaluations to be invalid. Yet DCPS deemed these evaluations sufficient to prove the student was operating at grade level irrespective of the fact that the student's cognitive abilities and academic potential may not have been adequately represented by the neuropsychological evaluation. The student's cognitive abilities were mixed in the first independent evaluation and not measured at all in the second - the neuropsychological consult.

The evidence presented in this case by both parties paints a contradictory picture of the student: on the one hand DPCS has concluded the student is an ELL student operating at the low end of English language proficiency, but the independent evaluators concluded it would be useless to measure the student's abilities and performance with Spanish language assessments because English is his dominant language. This evidence demonstrates all the more the need for DCPS to

have conducted its own evaluations. Pursuant to 34 C.F.R.§300.301 DCPS must conduct a full and individual initial evaluation, in accordance with §300.305 and §300.306, before the initial provision of special education and related services to a child with a disability.

The parents in this case took it upon themselves to obtain independent evaluations and even took efforts, again at their own expense, to validate the findings of that evaluation in attempts to ensure the student was being provided the education to which he was entitled, including the specialized instruction they believed he needed. Because DCPS did not conduct its own evaluations and instead relied upon evaluations it considered to be flawed DCPS significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE. The resulting IEP including the goals and services could not be reasonably relied upon to accurately address the student's needs if the IEP was based on flawed evaluations. Thus DCPS did not ensure that the student was being provided a FAPE as DCPS was obligated to provide.

In addition, the ELL instruction which according to DCPS is an integral part of the student's education is not in the IEP except by reference and thus not subject to measurement and accountability to ensure that it addresses the student's language issues that directly impact his academic performance.

If DCPS has not provided the student a FAPE as the Hearing Officer concluded then private placement and reimbursement might be an appropriate remedy. See, e.g. *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

34 C.F.R. § 300.148 provides:

> (a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with Sec. Sec. 300.131 through 300.144.
> (b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in Sec. Sec. 300.504 through 300.520.
> (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.
> (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--
> (1) If--
> (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
> (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of

the information described in paragraph (d)(1)(i) of this section;
(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--
(1) Must not be reduced or denied for failure to provide the notice if--
(i) The school prevented the parents from providing the notice;
(ii) The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in paragraph (d)(1) of this section; or
(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and
(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--
(i) The parents are not literate or cannot write in English; or
(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

Despite that the Hearing Officer has concluded there is a denial of a FAPE to the student because the IEP was not appropriate, because of Petitioner's repeated withdrawals of three previous complaints and the resulting delay in promptly adjudicating the issues so that DCPS could have a prompt opportunity to correct any deficiencies in the IEP and/or placement that were found to be a denial of a FAPE, the Hearing Officer concludes that the remedy that Petitioner seeks, the full reimbursement of the student's tuition at is inappropriate and unreasonable. However, as remedy the Hearing Officer will direct DCPS to conduct appropriate evaluations of the student.

ISSUE (2): Whether DCPS denied the student a FAPE by failing to propose/provide the student an appropriate placement/location of services from October 13, 2011, to present.

Conclusion: The evidence demonstrates the student was denied a FAPE because the student's May 2, 2012, IEP is inappropriate however, the Hearing Officer is not convinced that evidence demonstrates the student must be totally removed from all general education peers and thus concludes that the parents' remedy for reimbursement of the School is inappropriate because the school is not the least restrictive environment for the student.

The Hearing Officer is convinced by evidence including credible testimony[19] and the student's work samples that while the student attended School B he was performing at grade level and was engaged with and benefiting from being in a classroom with his non-disabled peers. Although there was evidence from the staff at and the educational advocate that the student was benefiting from being at and that methodologies were being used at in the classroom to assist the student's language deficits and academic needs, their testimony also reflected an opinion that the student could benefit from being with his non-disabled peers - something that is not able to provide and the law requires to the greatest extent possible.

Petitioner has removed the student from School B and placed the student at The evidence

[19] The Hearing Officer concluded this witness' testimony was credible based on her demeanor.

demonstrates that LSW can provide the student related services and special education in all subject areas. However, the Hearing Officer is not convinced by the evidence that student should be totally removed from a setting that will allow him contact with any non-disabled peers. The evidence demonstrates that LSW does not afford the student an opportunity to interact with non-disabled peers.

Removing a child with disabilities "from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily." 34C.F.R. § 300.550; see also 20 U.S.C. § (a)(5)(A) (a disabled child is to participate in the same activities as non-disabled children to the "maximum extent appropriate"); *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) ("The IDEA requires school districts to place disabled children in the least restrictive environment possible.")

In addition, a school district is not required to implement a program that will maximize the handicapped child's potential. *Rowley, 458 U.S. at 198-99.* Rather, a handicapped child has a right to "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley, 458 U.S. at 203.* Rowley explained that implicit in the congressional purpose of providing access to a 'free appropriate public education' is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.. . .We therefore conclude that the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley, 458 U.S. at 200-02.*

Although a parental placement need not be the least restrictive environment. See *Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 83-84 (3rd Cir. 1999); *Knable v. Bexley City Sch. Dist.*, 238 F.3d 775, 770 (6th Cir. 2001), the Hearing Officer can determine whether Chelsea was the least restrictive environment in evaluating whether private placement was the proper remedy. See, e.g., *Branham v. District of Columbia*, 427 F.3d 7, 12 (D.C. Cir. 2005); *Kerkham v. Superintendent, D.C. Public Schools*, 931 F.2d 84, 87 (D.C. Cir.)

34 C.F.R. § 300.114 provides:

> LRE requirements.(a) General. (1) Except as provided in Sec. 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and Sec. Sec. 300.115 through 300.120.
> (2) Each public agency must ensure that--
> (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
> (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs 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.

In addition, pursuant to D.C. Code § 38-2561.02 (c)

> Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter:
>
> (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.

Although the District must pay for private school placement "[i]f no suitable public school is available[,] ... if there is an appropriate public school program available ... the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child." *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991) (citations and quotations omitted).

As previously stated the Hearing Officer is convinced by evidence including credible testimony and the student's work samples that while the student attended School B he was performing at grade level and was engaged with and benefiting from being in a classroom with his non-disabled peers.

The Hearing Officer concludes that has no non-nondisabled students. Thus, would not be the least restrictive environment for the student. It has also not been demonstrated that DCPS cannot provide the student an appropriate placement and the Hearing Officer concludes DCPS is not required to pay for the student's placement at LSW See *N.T. et al v. District of Columbia* 58 IDELR 69 citing *Jenkins, 935 F.2d at 305; cf. School Comm. Of Town of Burlington, Mass. v. Dept. of Educ. of Mass.*, 471 U.S. 359, 373-74 (1985) (parents who unilaterally place their children in private school "do so at their own financial risk.")

ORDER:

1. If Petitioner chooses to have DCPS provide the student a FAPE after the date of this Order Petitioner must notify DCPS of this desire in writing within ten (10) business days of the date of this Order. If DCPS is so notified DCPS shall, all within thirty calendar days after having obtained the parent's consent for evaluation, do the following: (1) first determine if the student is an ELL student and if he is so determined, then (2) conduct bilingual comprehensive psychological and speech language evaluations, and (3) if he is determined not to be an ELL student then conduct comprehensive psychological and speech language evaluations in English within the same time period of having obtained parental consent as mentioned above, and (4) convene an IEP meeting to review the evaluations, review and revise the student's IEP as appropriate and determine an appropriate placement and location of services for the student consistent with the findings of this Order for the 2012-2013 school year.

2. The remedy of this student's placement at the is expressly denied and the remedy of reimbursement of the student's tuition at the for SY 2011-2012 is denied.

APPEAL PROCESS:

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

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Hearing Officer
Date: July 20, 2012