DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

Parent or Guardian, on behalf of
Student, [1]

Petitioner,

v

The District of Columbia
Public Schools

Respondent.

Date Issued: September 30, 2010

Hearing Officer: Jane Dolkart

Case No:

Hearing Date: September 14, 2010
Room: 1

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STUDENT HEARING OFFICE
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HEARING OFFICER DECISION

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[1] Personal identification information is provided in Appendix A.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is an year old grade student eligible for special education under the classifications of Specific Learning Disability (SLD) and Speech/Language Impairment (S/L). The student has also been diagnosed with ADHD. Prior to the 2009-2010 school year, the student attended school in another state. At the commencement of the 2009-2010 school year, the student was unilaterally enrolled by her parents at the for the 2009-2010 school year. Shortly after the start of the school year, Petitioners requested that DCPS identify the student as eligible for special education and develop an IEP.

On December 15, 2009, DCPS convened an eligibility and IEP meeting at The student was found eligible and the substance of her IEP at the was adopted as the DCPS IEP. The IEP provided for 27 hours pf specialized instruction and related services to be delivered outside the general education setting. DCPS proposed to implement the IEP at an open space school that does not house a full-time, outside general education program. The student would be the only student receiving special education for science and social studies.

The parents disagreed that the student could be serviced at and made clear they wanted the student placed at the The parents visited Lafayette on multiple occasions and spoke to staff. They also had their educational consultant visit the school and prepare a report which was provided to DCPS. The IEP team reconvened on June 8, 2010. A decision was made to refer the case to a newly formed central IEP team. (C-IEP). A C-IEP team meeting was held on July 19, 2010, and the C-IEP team reaffirmed the student's placement at

This due process complaint was filed on July 20, 2010. Subsequent to the filing of the complaint, a resolution meeting was held on July 30, 2010, at which no other placement was offered although was discussed. In DCPS' response to the complaint, filed on the same day as the resolution meeting, and not was proposed for the first time as the student's 2010-2011 placement. A PNOP to was not issued until September 1, 2010.

A resolution meeting was held on July 30, 2010 and a Complaint Disposition Form was signed on the same day. The 45 day timeline was reset and an HOD was due no later than September 13, 2010.

The parties were unable to agree on dates for the hearing prior to the September 13, 2010, due date. Petitioner filed an unopposed motion for a continuance which was granted on September 12, 2010, and the HOD is due no later than September 30, 2010.

On August 12, 2010, Petitioners filed a motion to assign the burden of proof to DCPS. The Hearing Officer did not receive a copy of the motion and it was re-filed on August 27, 2010. The Hearing Officer issued an order denying Petitioners request that the burden of persuasion be shifted to Respondent, but granting the shifting of the burden of production to Respondent on equitable grounds.

A pre-hearing conference was held on August 6, 2010, and a pre-hearing order was issued on August 8, 2010.

At the commencement of the hearing, Petitioners moved for partial summary judgment on the ground that the complaint as filed alleged that the student had been denied FAPE due to a failure to provide an appropriate program and location of services for the student, and that this allegation was based on the fact that DCPS had proposed placing the student at At the time of the hearing DCPS' position had changed and the proposed location of services was now Petitioners claimed that the appropriateness of as a placement for the student was not before the Hearing Officer. The Hearing Officer denied Petitioners' motion. The crux of Petitioners complaint is that DCPS has failed to provide an appropriate program and location of services for the student. DCPS never issued a PNOP to and is free to reconsider its location of services so long as Petitioners are given sufficient notice to prepare for the hearing. In this case, DCPS' July 30, 2010, response stated that was now the proposed placement for the student. The hearing was not held until September 14, 2010, and Petitioners are not arguing that they had insufficient time to prepare their case that is not an appropriate placement for the student.

Following the presentation of Respondent's case, Petitioners moved for a directed verdict. The Hearing Officer denied the motion while noting that Respondent had barely presented sufficient evidence to survive a directed verdict.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.,* 34 CFR Part 300 *et seq.,* and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

The issues in this case are divided into two distinct time periods. DCPS proposed to place the student at from December 15, 2009 through July 30, 2010. DCPS counsel arrived at the hearing in this matter and indicated that DCPS was willing to stipulate that could not have implemented the student's IEP and was an inappropriate placement for the student. DCPS further stipulated that it will reimburse the

parents for all expenses, including transportation, incurred by them in sending the student to the for the stated time period.

The remaining issue addresses whether DCPS' proposed placement at for the 2010-2011 school year is an appropriate placement.

Issue

Has DCPS denied the student FAPE by failing to provide an appropriate placement for the student for the 2010-2011 school year in that is not an appropriate placement?

IV. DOCUMENTS AND WITNESSES

Petitioners submitted a five day disclosure letter dated September 7, 2010, containing a list of witnesses with attachments P 1-30. The disclosure was admitted in its entirety. Petitioners called as a witness their educational consultant, Dr. Laura Solomon.

DCPS submitted a five day disclosure letter dated September 7, 2010, containing a list of witnesses with attachments R 1-11. The disclosure was admitted in its entirety. DCPS called as a witness the principal of

V. FINDINGS OF FACT

1. This is an year old grade student eligible for special education under the classifications of Specific Learning Disability (SLD) and Speech/Language Impairment (S/L). The student has also been diagnosed with ADHD. Prior to the 2009-2010 school year, the student attended school in another state. At the commencement of the 2009-2010 school year, the student was unilaterally enrolled by her parents at the for the 2009-2010 school year. On October 21, 2009, Petitioners requested that DCPS identify the student as eligible for special education and develop an IEP. (P 2, 3, 8)

2. On December 15, 2009, DCPS convened an eligibility and IEP meeting for the student at The student was found eligible for special education and the substance of her IEP at the was adopted as the DCPS IEP. The IEP, dated December 15, 2009, provided for 25 hours pf specialized instruction, 1 hour of S/L pathology, and 1 hour of behavioral support services per week, to be delivered outside the general education setting. DCPS proposed to implement the IEP at and issued a Prior Written Notice to on December 17, 2009. (P 7, 8, 9)

3. The parents disagreed that the student could be serviced at and made clear they wanted the student placed at the LSW. They had their educational consultant visit the school and prepare a report which was provided to DCPS. The IEP team reconvened on June 8, 2010. A decision was made to refer the case to a newly formed

central IEP team. (C-IEP). A C-IEP team meeting was held on July 19, 2010, and the C-IEP team reaffirmed the student's placement at (Testimony of Dr. Solomon, P 17, 18, R 4, 7, 8)

4. DCPS responded to the due process complaint on July 30, 2010, and for the first time proposed placing the student at for the 2010-11 school year. A PNOP to dated July 1, 2010, is submitted as R11. There is no evidence concerning whether this PNOP was ever issued to Petitioners. (DCPS Response, R 11).

5. Several evaluations of the student were conducted and reviewed by the December 15, 2009 IEP team at the time the team wrote the student's IEP and determined to place her at (P 10 – 12)

6. A Confidential Review of Independent Psychological Evaluation report prepared on December 14, 2009, reviewed previous psychological and educational evaluations of the student and administered several additional tests and conducted a classroom observation. The report was prepared by Leslie A. Arthur, Ph.D., employed by DCPS.

The student had previously been administered the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV). The student's overall cognitive skills were in the low average range. She performed much better on verbal reasoning tasks than nonverbal reasoning tasks. The student fell within the deficient range on the Working Memory Index and in the low average range on the Processing Speed Index.

The student had previously (in 2007) been administered the Wide Range Achievement Test-Fourth Edition (WRAT-IV). Her word reading, spelling, and math computation fell within the average range, but her sentence comprehension was in the deficient range. However, testing completed in September 2009 by the placed the student's overall achievement within the low range. Her broad reading, math, and written language skills fell within the low range, with particular weaknesses in the areas of math calculation, written expression, and passage comprehension. The student's instructional level in reading and math is at the beginning second-grade level and in written language at the end of the first-grade level. "... [D]espite numerous interventions that have been implemented inside and outside of the school setting to address [the student's] academic difficulties, she continues to perform below grade level."

On the basis of the Connors Parent Short Form the student was diagnosed with ADHD.

(P 10)

7. A Speech and Language evaluation was conducted by speech pathologists at the on June 6, 2009 and was reviewed at the December 15, 2009 IEP meeting. The student needed frequent breaks to maintain attention. The student had characteristics of verbal dyspraxia in that she had difficulty performing sequential oral-motor movements and producing multi-syllabic words.

The student's receptive and expressive single word vocabulary scores were below average. Understanding basic concepts and following oral directions was difficult. The student achieved low scores on all subtests of contextual language assessment. The student had great difficulty with working memory tasks, struggled to phonologically blend sounds into words, and segment words into parts. While reading in context, the student had difficulty in that she tended to omit, add, or substitute words. The student's low accuracy likely affects her reading comprehension.

The student had difficulty writing syntactically correct sentences and did not consistently use capitalization and punctuation while writing.

The student was given diagnoses of Mixed Receptive-Expressive Language Disorder, Phonological Disorder, a reading disorder and a disorder or written language. The report recommended that the student be placed in a full time LD placement with a small teacher student ratio, and speech/language services in a pull-out and integrated form.

(P 12)

8. Following the December 15, 2010 IEP meeting two additional evaluations were conducted; an Occupational Therapy Evaluation and an Assessment of Auditory Processing. (P 13, 14)

9. An Occupational Therapy Evaluation was conducted on December 7, 2009 and January 6, 2010 by Jo Ann Del Vecchio, OTRL. The evaluator reviewed the student's records, obtained a parent report and administered 6 assessments and a clinical observation. The student demonstrated decreased visual recall of some letters, difficulties in the areas of visual perception, visual motor integration and visual tracking. These problems can impact classroom performance in reading and writing. The student also exhibited ineffective kinesthetic awareness, especially within her hands.

The student was asked to complete a variety of fine motor tasks, many of which were a challenge to her. She had a immature pencil grasp, decreased pencil control, and difficulty moving her fingers separately from each other.

The student demonstrated difficulties crossing the body midline, directional confusion, identifying reversals in letters and letters within words.

The student also had difficulty maintaining her balance without visual input and she had problems with postural control. Her problems with central postural stability and balance may contribute to her fidgeting in the classroom. The fidgeting may be an attempt to maintain an upright posture and remain attentive.

The report recommends that the student receive OT at the rate of one individual session per week and integrated OT in the classroom. The report also recommends a number of accommodations including the use of sound reduction headphones to assist with concentration.

(P13)

10. An Assessment of Auditory Processing was conducted on July 2 and July 8, 2010, and a report was prepared on July 9, 2010. The assessment was conducted by Sarah Wainscott, M.Ed., CCCA. :S:S Cert AVEd., who works for Chattering Children on contract with DCPS. A variety of tests were administered.

The assessment defined an auditory processing disorder (APD), as defined by the American Speech-Language Hearing Association, as "a deficit in the perceptual processing of auditory stimuli, and the neurobiological activity that underlies that processing...not attributed to higher order language , cognitive, or related confounds."

The report finds that the student's profile indicates the presence of an Auditory Processing disorder. The student demonstrated difficulty with acoustic subtests. When competing speech targets were presented, the student's ability to understand the signal was greatly compromised. The student demonstrated great difficulty identifying small differences in sound and speech patterns, even in quiet conditions. Severe deficits were found in the areas of Cued Recall, Following Directions, and Passage Comprehension. The student's score placed her in the 5th percentile, indicating severe difficulty processing auditory information. In the area of comprehension, the student showed deficits of three of more years in vocabulary, grammatical morphemes, and elaborated sentences.

In sum, the student has difficulty comprehending auditory information, retrieving auditory information, organizing language, and following instructions. A variety of classroom based strategies were recommended as well as auditory training which can be provided by a S/L pathologist.

(P 14)

11. Dr. Laura Solomon testified for Petitioners. Dr. Solomon has a long and impressive resume in the area of special education including a B.A. and M.A. in early childhood education and a PhD in special education with a focus on learning disabilities. She has over thirty years of experience in the field of special education, including nine years as a special education teacher and 26 years as a private educational consultant. Dr. Solomon was qualified as an expert in special education with an emphasis on programming and placement of students with special education needs.

Dr. Solomon was an impressive witness with a wealth of knowledge in her areas of expertise. She had a thorough knowledge of the student having read her entire file, met with her parents on numerous occasions, attended IEP meetings, observed the student at LSW, and written a detailed report on the student's needs. She was an extremely credible witness and great weight is given to her testimony.

Dr. Solomon provided an overview of the student's special education needs and elaborated on the results of the OT and auditory processing evaluations. She emphasized

that the student is multiply learning disabled under all 7 areas of the IDEA. She has problems with listening comprehension, oral expression, basic reading, reading comprehension, math calculation, math reasoning, and written expression. These problems affect the student's performance in all of her subjects.

Dr. Solomon explained that the student's central auditory processing disorder is a failure at the brain level to process auditory information. It goes beyond a receptive language disorder. The student's difficulty with language is more than problems with vocabulary, syntax, grammar, etc. Rather the problem precedes these difficulties and is at the brain level. The is using a microphone for the teacher and a special headset for the student to eliminate all background noise so that the student can better perceive and process what is said. In general, the auditory testing indicates that the student should not be in places with a lot of noise such as a cafeteria. She will not be able to process information in such a setting. In essence, the world comes is heard by her in a garbled way and the student is confused a lot of the time. She requires visuals at all times, she must be able to see the mouth of the teacher, avoid background noise, and needs things repeated.

Dr. Solomon also prepared an educational evaluation and school placement report on May 1, 2010, which was provided to DCPS before the June 2010 IEP meeting. The report noted that the student was evaluated with a Woodcock Johnson – 3 in September 2009. Overall, the student's academic skills ranged from deficient to the low end of average. Her reading scores ranged from deficient to low average; her math scores were deficient to borderline; and writing skills were extremely deficient to low end of average. Dr. Solomon found problems with attention and clear evidence of dyslexia.

Dr. Solomon observed the student at and found the program appropriate for the student because it was structured, self-contained, with very small class size, modified and alternative approaches to curriculum, including hands-on multi-sensory teaching that does not require reading, written language, or math, use of multiple instructional programs, and integrated related services.

(Testimony of Dr. Laura Solomon)

12. Principal of testified for Respondent. His testimony was credible concerning the basics of what was provided at the school. His testimony was not credible concerning ability to implement the student's IEP.

is a full time out of general education K-8 school for students with learning disabilities. There are 16 special education teachers, 98 students, 2 social workers, 2 S/L Pathologists, 1 physical therapist, and someone available to provide occupational therapy (OT). Each class has a special education teacher and an instructional aide. The aides must have some college and experience working with children. The student would be placed in the 5th grade in a class with 6 other students, two of whom are female. The other students are approximately 1 year behind grade level. The class rotates classes and eats lunch in the cafeteria with the other students.

The main reading programs used are Dibels sight words and a reading program from Houghton Mifflin.

has never seen the student, has never spoken with any of the student's teachers or her related service providers. It is not clear if has read the various evaluations and other documents related to the student. participated by phone in the July 19, 2010 C-IEP meeting. sole knowledge of the student is from her IEP, and some anecdotal information from meeting with and showing the parents around

testified that can implement the student's IEP. The IEP he was referring to is found at R 6. It is dated July 19, 2010, is not signed by anyone and has draft stamped on each page. Prior to the 5-day disclosures in this case it had never been seen by Petitioners.

is in the second year of restructuring after having been declared a failed school under No Child Left Behind for failing to make adequate progress.

(Testimony of Dr. Solomon, R 6, P 22-24)

13. The last valid IEP for the student is the IEP dated December 15, 2009. This IEP did not take into account the later OT evaluation or the Assessment of Auditory Processing, both of which made new and important findings concerning the cause of and nature of the student's disabilities. Dr. Solomon credibly testified that it is impossible to propose a placement for the student without first including this new information in an IEP since the IEP drives placement. Additionally, Dr. Solomon's own testing uncovered a pattern of dyslexia not previously programmed for and not in the December 2009 IEP. Dr. Solomon further criticized the December 15, 2009 IEP because it contained no baseline data concerning the present level of performance. It is impossible to set useful annual goals without knowing the student's baseline performance and it is also impossible to determine student progress without this information. (Testimony of Dr. Solomon, P 8, 13, 14, 17)

14. Dr. Solomon also testified that the reading programs used at are not appropriate for the student. Read 180 is far too advanced for the student even at its lowest level. Dibels is appropriate but not sufficient. The Houghton Mifflin program is a pre-published program that does not take into account individual student needs and is also too advanced for the student.

The student requires programs like LMB visualizing, the Wilson list, and Read Naturally, all of which start at an appropriate level for the student. The student would be unable to access grade curriculum demands in social studies or science.

Dr. Solomon was of the opinion that could not provide an appropriate educational environment for the student.

(Testimony of Dr. Solomon)

15. Respondent stipulated that the is an appropriate placement for the student.

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.,* guarantees "all children with disabilities" "a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. ¶ 1400 (d)(1)(A). The IDEA defines FAPE as

> 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 State educational agency…, (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Central to the IDEA's guarantee of FAPE "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982). The educational agency must provide a "basic floor of opportunity" for students with disabilities. It need not provide the best education possible, but the educational benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16,* 331 IDELR 10 (3rd Cir. 1988).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See,* 20 U.S.C. ¶ 1413. In addition, school districts must develop comprehensive plans for meeting the special education needs of disabled students. *See,* 20 U.S.C. ¶ 1414(d)(2)(A). These plans or Individualized Education Programs (IEPs), must include "a statement of the child's present levels of educational performance, … a statement of measurable annual goals, [and] a statement of the special education and related services … to be provided to the child…." 20 U.S.C. ¶ 1414(d)(1)(A).

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).

Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast,* 546 U.S. 49 (2005).

A. Did DCPS Provide an Appropriate IEP for the 2010-2011sy?

Parents who disagree with any aspect of the provision of a free, appropriate public education may bring their dispute before an administrative hearing officer through an impartial due process hearing 20 U.S.C. §1415(f)(1). The hearing officer is charged with a two-prong inquiry, asking (a) whether the school complied with the procedures set forth in the Act, and (b) whether the contested IEP/placement were "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 206-07; *Alfonso v. District of Columbia*, 422. F. Supp. 2d. 1 (D.D.C. 2006).

The IEP that was drafted and adopted on December 15, 2009, was incomplete in that it did not contain any present levels of educational performance. Further the IEP was never updated with the crucial information obtained from evaluations conducted after December 15, 2009.

The December 15, 2009, IEP must be evaluated as written. *Knable v. Bexley City School District*, 238 F. 3d 755, 768 (6th Cir. 2001); *Briere v. Fair Haven Grade School District*, 948 F. Supp. 1242, 1256 (D.Vt. 1996)(finding that the issue before the court was whether the proposed IEP complied with the IDEA, not whether an IEP might have been developed that would have complied). A complete IEP "must" include "measurable goals, including benchmarks or short-term objectives" for all areas that the child requires special education services. *Diatta v. Dist. of Columbia*, 319 F. Supp. 2d 57, 63 (D.D.C. 2004). All of the necessary components of an IEP need to be written in the student's IEP. *Burilovich v. Bd. of Educ. of Lincoln Consol. Schs*. 208 F.3d 560, 568 (6th Cir. 2000). An IEP that fails to contain goals and objectives, and related services in areas identified by the IEP team as areas of need fails to meet the requirements of IDEA, and results in a denial of FAPE. *Alfonso v. District of Columbia*, 422 F. Supp. 2d, 1 (D.D.C. 2006).

Procedurally, each qualified child's IEP must be a written document containing (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. *Rowley*, 458 U.S. at 182 (citing 20 U.S.C. § 1414(d)). "Failures to meet the Act's procedural requirements are adequate grounds by themselves for holding that the school board failed to provide [the student] with a [free appropriate public education]."

In this case, the December 15, 2009, IEP failed to contain a statement of the present levels of educational performance of such child. At the time it was written the December IEP complied with the other requirements of the IDEA. However, following the completion of the OT Evaluation, Auditory Processing Assessment and additional testing by Dr. Solomon that revealed that the student had dyslexia, significant changes to the IEP were necessary. For instance, the December 15, 2009, IEP does not include OT as a related service.

The *Alfonso* court agreed with the plaintiff's reliance on *Carter v. Florence County*, 510 U.S. 7 (1993) for the assertion that DCPS must complete the IEP prior to the start of a school year or, otherwise, must reimburse a family for making an appropriate private school placement until the IEP is completed. Id.; *See Florence County*, 510 U.S. at 15.

In this case, on March 6, 2008 the IEP team (1) convened; (2) found the student eligible for special education; (3) developed an IEP; (4) ordered additional testing for which the parent gave consent; and (5) failed to re-convene to revise the IEP. Based upon the District Court's holding in *Alfonso*, the failure to complete the IEP denied the student a FAPE, a violation that commenced at the start of the 2010-11sy.

In *Block v. District of Columbia*, 748 F. Supp. 891, 897 (D.D.C. 1990) the District Court confirmed the parent's right to place her son in a private school while waiting for DCPS to develop an IEP, and thus rejected the notion that the parents somehow lost the corresponding right to seek tuition reimbursement for DCPS' failure to complete the IEP because the child was enrolled in a private special education school.

DCPS has denied the student a FAPE by failing to complete her IEP.

B. Did DCPS Provide the Student With An Appropriate Placement

Once an IEP is developed, the school district must determine an appropriate placement for the child that is designed to meet the child's needs as set out in the IEP. Placement decisions must be made in conformity with the child's IEP. 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Regs. Tit. 5 § 3013 (2006). Thus, it is the IEP which determines whether a placement is appropriate, not the other way around. *See, Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (DDC 2006).

If there is an appropriate public placement available that is "reasonably calculated to enable the child to receive educational benefits," the District need not consider private placement. This is true even though a private placement might better serve the child, *See Hendrick Hudson Dist. Bd. Of Educ. V. Rowley,* 458 U.S. 176, 207 (1982). However, "[i]f no suitable public school is available [DCPS] must pay the costs of sending the child to an appropriate private school." *Jenkins v. Squillacote,* 935, F.2d 303, 305 (D.C. Cir. 1991). See also, *Burlington School Committee v. Mass. Dept. of Education, 471 U.S. 359 (1985) and Florence County School District Four v. Carter, 510 U.S. 7 (1993).*

DCPS barely even defended the appropriateness of placing the student at First, their only witness, admitted that he knew little about the student beyond her IEP. The IEP that he testified could be implemented at was an invalid draft IEP that had never been seen by the parents. Thus, was unable to provide any testimony as to whether could implement the student's December 15, 2009 IEP, which in any case failed to contain present educational levels and failed to include

needed goals and services determined by later testing. described the generic education and services available at without any knowledge of the type of educational and special services needed by this student. Additionally, Prospect is itself a failed school under No Child Left Behind and has failed to make adequate progress for at least the past two years. is an inappropriate placement for the student.

When, as in this case, a public school system has failed to provide an appropriate education, reimbursement for a private school placement is "proper under the Act" if the education provided by the private school meets the Act's educational goals. *Carter v. Florence County*, 950 F.2d 156, 163 (4th Cir. 1991) *aff'd* 510 U.S. 7 (1993); *Burlington*, 471 U.S. at 370. "Where a public school system has defaulted on its obligations under the IDEA, a private school placement is 'proper under the Act' if the education by said school is 'reasonably calculated to enable the child to receive educational benefits." *Wirta v. District of Columbia*, 859 F. Supp. 1,5 (D.D.C. 1994); *Alfonso v. District of Columbia*, 422. F. Supp. 2d 1, 5 (D.D.C. 2006); *Board of Education of Murphysboro v. Illinois*, 41 F.3d 1162, 1168 (7th Cir. 1994)(holding that in the absence of an appropriate school system proposal the *only* question for the court to decide was whether the parent's choice of placement would confer educational benefits); *see also Diamond v. McKenzie*, 602 F. Supp. 632, 639 (D.D.C. 1985) (*"Moreover, this Court can see no valid reason why a hearing officer cannot consider a placement proposed by the parents as well as one proposed by DCPS*"). In *Branham v. District of Columbia*, the Circuit Court of Appeals listed a set of "relevant" factors that may be considered in determining whether a particular placement is appropriate for the student, including (1) the nature and severity of the disability; (2) the specialized needs of the student; (3) the link between those needs and the services offered; (4) the placement's cost; (5) and the extent to which the placement is the least restrictive educational environment. *Branham v. D.C.*; 427 F.3d 7,12 (D.C. Cir. 2005).

DCPS has stipulated that the is an appropriate placement for the student.

DCPS has failed to provide the student with an appropriate placement and the student is entitled to reimbursement for her placement at the for the 2010-2011sy and until such time as DCPS offers the student a FAPE. Additionally, DCPS has already agreed to reimburse the Petitioners for the costs of sending the student to the LSW for the 2009-2010sy.

VII. SUMMARY OF RULING

DCPS has denied the student FAPE by failing to provide an appropriate IEP for the 2010-2011sy.

DCPS has denied the student FAPE by failing to provide an appropriate placement for the 2010-2011sy.

DCPS has stipulated that it failed to provide the student with an appropriate placement for the 2009-2010sy.

VIII. ORDER

It is hereby **ORDERED** that

1. DCPS shall reimburse the parents for the costs they incurred, including but not limited to tuition, transportation and fees, for the student at the for the period from December 15, 2009 to July 30, 2010.

2. Commencing with the start of the 2010-2011sy, DCPS shall maintain the student at the at DCPS expense until an alternative appropriate placement is provided to her.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: September 30, 2010