DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, D.C. 20003

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on behalf of the
STUDENT,[1]

Petitioner,

v

District of Columbia Public Schools,

Respondent.

Date Issued: October 15, 2010

Wanda I. Resto Torres, Hearing Officer

Case No:

Hearing Date: October 6, 2010 Room 2006

OSSE STUDENT HEARING OFFICE 2010 OCT 15 PM 1:44

HEARING OFFICER DECISION

BACKGROUND

The Student is a year-old student attending the grade at The student is eligible to receive special education and its related services as a result of his disability category of emotional disturbance. His current individualized education program ("IEP") dated January 19, 2010 prescribes 28 hours per week of specialized instruction, 1 hour of speech and language therapy, and 1 hour of behavioral support services per week all outside of general education. It also provides for the student to sit in close proximity to the teacher who will use a multi-sensory teaching approach in a combination of auditory, visual and tactile techniques. [2]

On June 1, 2010, an IEP Team Meeting was held for the student to discuss placement. The Petitioner alleged that at the IEP Team Meeting, a representative from the provided a brief description of the program without specificity on what would be available for the student. The Petitioner contends she visited the school found it to be chaotic; and received no explanation on how two social workers at the school could service 96 students. She was not provided a written notice of placement to

On August 16, 2010, a *Due Process Complaint* was filed in which the Petitioner claimed the DCPS denied the student access to a free appropriate public education (FAPE) by *inter alia,*

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

failing to provide an appropriate educational placement for the student for the 2010/2011 school year. As relief, the Petitioner requested, among others a private placement funded by the DCPS.

On August 26, 2010, *DCPS' Response to Parent's Administrative Due Process Complaint was filed*; DCPS asserted that the Petitioner agreed with, and voiced no reservation about, the IEP developed in January 2010. The Respondent also asserted that can provide the services prescribed in the IEP, and the IEP is adequate to meet Petitioner's needs.

On September 15, 2010, a pre-hearing conference was held the parties reiterated their positions.[3]

On September 29, 2010, the Hearing Officer was assigned the Complaint (3) when the complaint was filed and you were appointed as hearing officer. A Status Conference was convened on October 1, 2010; the parties again reiterated their positions.

On October 6, 2010, a closed hearing was held, representing the Petitioner was Sarah King; and the Respondent was represented by Laura George. Thirty-one documents labeled P-1 through 31; were presented by the Petitioner. The documents were admitted without objections except Petitioner's documents 13 and 14 which were excluded; the Petitioner was allowed to provide similar evidence through testimony. five witnesses testified the: Student, Mother, Investigator Children's Law Center, Educational Consultant and the Private School Representative. The Respondent presented four documents, labeled DCPS 1 through 4 which were admitted into evidence; and one witness testified the Special Education Coordinator. The parties agreed to submit DCPS 1-3 as joint exhibits. The hearing was conducted in accordance with the rights established under federal and local laws and the implementing regulations, and the SOP. [4] No written closing arguments or briefs were submitted.

ISSUES

The issues to be determined are as follows:

1. Did the Respondent provide the student services and the accommodations he required as special education student during the school year 2010-2011?

2. Whether DCPS failed to ensure that the Petitioner had meaningful participation in the placement decision?

3. Was the Petitioner provided a prior written notice when the student's educational placement was proposed to change for the 2010-2011 school year?

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[3] The pre-hearing was held by the originally assigned hearing officer Mr. Banks.

[4] 20 U.S.C. §§1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

4. Does the student require a therapeutic environment educational placement for school year 2010-2011?

5. Has the student been denied a FAPE?

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student's present level of performance and his annual goals on the IEP in the area of mathematics indicates the student's disability is manifested through an inability to maintain focus, poor social skills, and at times, verbal and physical aggression which impacts his ability to access the general education curriculum. It also indicates the student is performing at a third grade equivalent. In the academic area of reading it also shows that his ability to access the general education is hampered by his disability and that he is at second grade academically. In the area of written expression the student is working on a 3rd-4th grade level. He is capable of writing 3-5 simple sentences with a few grammatical errors when writing a paragraph. He tries very hard to organize his thoughts into complete sentence is but he requires much help. The student's academic progress assessment score in language usage was 183 placing him on a second grade level. The student's present level of functioning in speech and language, show that his receptive and expressive vocabulary is in the low average range, while his expressive/receptive language skills were noted to be in the very low average range. The student remains easily distracted, and requires extra time to process auditory information. He has difficulty using expressive language as well as recalling in formulating sentences. The student's least restrictive environment according to the IEP requires that he is provided with an intensive and highly structured small group learning environment with a low student teacher ratio. Due to the student's delayed receptive/expressive vocabulary and language skills he is very easily frustrated and distracted; which often increases negative behaviors making him not available for learning. The student has been observed daydreaming and at times leaving the learning environment without staff approval. The student needs to be reminded and redirected several times to refocus. The student requires time to stay at the clinician's office to minimize distractions, when agitated he is allowed to take a short walk to calm down. However, as a result of the behaviors the student is unable to improve his reading, math and writing skills, as well as his interpersonal skills and social judgment at an appropriate pace.[5]

2. The student's diagnosis of emotional disturbance prevents him from maintaining his attention and control over his emotions. This causes a setback in the student's ability to learn new skills taught in academic areas and in group sessions. The student needs to be reminded and redirected several times to refocus on the task at hand with staff

[5] Joint 1, January 19, 2010, Individualized Education Program.

prompting. There have been times when staff has provided the student with headphones to block the classroom noise; because he is unable to concentrate on the assignment. The student because of academic delays requires extended school year services. [6]

3. The student's cognitive functioning was assessed in a Wechsler Intelligence Scale for Children 4th Edition (WISC-IV)[7] the student demonstrated an overall borderline level of intellectual functioning with a full scale intelligence quotient score of 71. The student's processing speed composite score of 53 places him at a low extreme range, his working memory composite score of 80 is below average and his verbal comprehension index is borderline. The student was also administered a Woodcock Johnson Test of Achievement 3rd Edition (WJ-III) to assess his academic strengths and weaknesses. On the broad reading cluster the student demonstrated low average ability in decoding of isolated letters and words. The student's overall math abilities are in the lower extreme level and his written expression abilities are in the very low range. The student is functioning at a 3.5 grade level and is below age and grade level in reading, math and writing. The student's most recent clinical diagnosis includes Pervasive Developmental Disorder, Not Otherwise Specified (NOS) provisional; Psychotic Disorder and NOS; Anxiety Disorder; Attention Deficit Hyperactivity Disorder; Combined type (by history) and mixed receptive-expressive language disorder. The Student requires de-escalation approximately 2-3 times per week. The Student also requires social skills training which helps him learn how to control his behavior. In addition the Student's needs a multi-sensory teaching approach, which combines auditory visual and tactile learning methods.[8]

4. The Petitioner signed in agreement with the January 2010 because at that time the student was attending the and he was receiving additional therapy and de-escalation services during that time. The student tells the Petitioner he hears voices in his head. He has become violent in the classroom and requires constant, close attention by school staff. The student becomes easily frustrated, aggressive, and will sometimes break or throw objects and at times dazes out. He has threatened the Petitioner with a knife.[9]

5. On June 1, 2010, DCPS held an IEP Team meeting at the The Petitioner participate in that meeting by phone, however, she told all participants that she had been recently released from the hospital and was taking high doses of medication. During the meeting there was a discussion about the student's placement and that because he had aged out of the he would be required to enroll in a new school. A representative from spoke briefly about the school, but he did not provide details about what would be specifically available for the student's program. In mid-June 2010, the

[6] Joint 1, January 19, 2010, Individualized Education Program.
[7] Wechsler Intelligence Scale for Children - Fourth Edition -identifies key cognitive strengths and weaknesses related to learning disabilities, executive function, attention disorders, intellectual disability, and giftedness in children.
[8] P 5, October 21, 2009, Psycho educational and clinical evaluation.
[9] Testimony of the Petitioner.

Petitioner and the student toured they observed very little students and only a few were doing their work, and there was little instruction provided by the teacher. The Petitioner observed children roaming the hallways unaccompanied and she overheard staff using foul language. After the visit the Petitioner informed the DCPS representative that was not an appropriate placement for the student and could not provide him with educational benefit. The Petitioner did not receive a prior written notice of the proposed placement for the 2010-2011 school year. She heard from her attorney that was the educational placement of the student in July 2010. The Petitioner had no choice but to enroll the student at The student has told the Petitioner he is scared to move from his seat or ask questions because he gets called crazy. The teachers do not provide the student assistance when he cannot do his work. The student's academic schedule does not contain no math and reading instruction hours and he is not receiving those classes. The Petitioner has called the school to ask about the missing classes on the Student's schedule and has not received a response. The student has been forced to hit other students to avoid being beaten. Recently this school year; the school bus that was to return the student home from school left without him, although he had informed a staff member he was going to the bathroom. The Student that day had to manage to get home on public transportation; he was disoriented for a few hours and arrived home scared.[10]

6. The student is afraid to go to because there are many fights, other students and the teachers call him crazy, many times other students eat his lunch, the teachers curse, and there's a lot of sexual activity among the students. The student cannot concentrate on his work because there are many distractions, things are being thrown around and there is a lot of chaos in the class and school. The student has asked his teachers for help with his assignments and he is told he should do the best he can. At times when the student becomes scared he steps out of a classroom to catch his breath and calm down. He is afraid of getting up from his seat, because other children intimidate him verbally. The student feels scared, unsafe, and fears other he may have altercations at any moment. The student while at the was excited and looked forward to going to school every day. When he had difficulty with tasks or assignments he asked for help and would receive assistance from his teachers. When he felt depressed or the other students were acting hyperactive, the student was able to talk with the Counselor for a couple of hours to help calm him down. The student visited the school he felt comfortable safe and that it could fit his needs. [11]

7. On September 14, 2010, during an observation at the student was in his health class and there was no special education teacher. There were approximately 10 students who were sitting on top of furniture, on the teacher's desk and there was no classroom structure set up. There was no instruction from the teacher during that time and the students were provided a worksheet to do their assignment. The teacher approached the

[10] Testimony of the Petitioner and DCPS 2, January 9, 2009, MDT meeting notes.
[11] Testimony of the Student, and J10 letter from student.

student to assist with some work, and another student intervene and with curses told the teacher that she better sit down and proceed to issue racial slurs against the visitor. The teacher spent most of the time trying to redirect students, and to keep them from dancing in class or fighting. One student hit the teacher with a belt and a couple was engaging inappropriate sexual behavior in the classroom. During the transition from one class to another, the hallways were crowded; a fight broke out and there were other students encouraging the fight, security guards and teachers were all trying to keep order. The environment teacher was locked out of the class for a few minutes; it took about 15 minutes to calm the class down and focused. During that class there was no lesson taught; worksheets and a book were provided. The student was trying to stay focused he did not get beyond the first page. [12]

8. At the age of the student was diagnosed suffering from anxiety and depression, attention deficit hyperactivity disorder, mood disorder and was provided with anti- psychotic medication. Only 1% of the population has a diagnosis psychotic which this student has. The student freezes in place and loses touch with reality and says he hears voices. When the student feels unsafe his behavior is unpredictable; he can become very violent in a split second According to his teachers the student hits walls and hits other students. The student isolates himself from others and tries to have a low profile. He is quiet in class, withdrawn and at times he is very explosive. The student was observed in his World History the lesson that day was with maps, the teacher spent most of the 75 minutes trying to get the students attention; some students were listening to music; others were moving around the place and there was no redirection from the teacher. The special education teacher said that the student's academic performance was lower than the other students. There is only one teacher on the student's schedule with a special education background and that teacher only provides advisory services, all of the student's other teachers are regular education teachers. The student only receives 6 hours per week of specialized instruction.
has a Blue Room that is used for de-escalation it is a large room with a blue color rug half way up the walls, it has windows and some of the staff are trained in restraints. The room is not appropriate for the student because there have been times when he has broken windows and walls with his fist, he can hurt himself or others. After six weeks had passed since the beginning of this school year, the social worker assigned to the student did not know the student's diagnosis. The social worker had seen the student in two occasions because of fights and had provided only one 30 minutes session of therapy to him. When asked about the behavior system used at the school she explained that the student is given two slices of pizza when he had a good day. Each classroom has a different set of guidelines for behavior which can become very confusing for the student. The student's verbal functioning is borderline and his visual perception is in the low average range. His memory and processing skills are at the mental retardation range. The students executive functioning shows that he has no control, is distractible and sensitive to movement. In conversations with that clinician at the student's prior school; he received both individual

[12] Testimony from the Investigator.

and group crisis intervention because he can go from self isolating to out of control and violent in a short span of time. At the previous school close to the end of the year it required two people to hold the student down. The student has been hospitalized for suicide ideation. The student requires a clinician in class, classes to be small, stable and with certified teacher with expertise. The student does not feel safe in school, there are many fights in the school, poor supervision and there is a lack of structure. The student has an emotional disturbance and he is not receiving proper or adequate programming in class and does not have special education teachers assisting him. The student requires a small class with two adults in a full time special education setting. The student's educational placement must provide an environment where the student feels safe and the material is presented at his level. The student requires a behavior intervention management program that is consistent from class to class with a proper de-escalation, conflict resolution, social skills and a family training component. He requires assistance when transitioning between classes because the student does not feel safe if there is no structure. is not appropriate for the student, his IEP is not implemented, he is physically unsafe and is a threat to others. of his type requires extraordinary supervision and the staff at do not have the expertise needed. The student is not receiving the level of services as required on his IEP. The student is decomposing at and if he stays there it can be a danger to him and others. The school can provide the student the educational benefit the student requires. [13]

9. The School in Laurel Maryland serves students with multiple disabilities, behavioral problems, emotional difficulties, learning disabilities, intellectual disabilities, and autism. The school uses a team approach, where professionals offer individual and group counseling services that are integrated in the class sessions. The staff includes: Family Specialists, Career Education staff, Behavioral Specialists, Reading Specialist, and Technology Specialist. The related service staff includes speech and language therapists, counselors, occupational therapists, physical therapists, social workers, and psychologists. All staff must call parents and introduce themselves and maintain constant communication with the parents. The school is a full time special education facility; each class has no more than 10 students, one teacher and one instructional assistant. The teachers have bachelor's degree and they are working towards their special education and content area certification. All staff receives seven days of training in behavior management to help them understand behaviors within the different disabilities and their manifestations. Each teacher is trained on knowing what triggers the specific behaviors of students and is informed of previous behaviors based on the Student's record. Teachers use different techniques with the students to process their behavior. Each floor of the school has a behavior manager, who maintains the hallways and environment under control. There is in place a school-wide behavior intervention program that consists of five levels based on the improvement of his daily behavior and

[13] Testimony of the Special Education Expert (expertise stipulated by the parties), P 5, P 11, September 22, 2010, Letter from DCPS indication the professional qualification of the classroom teachers and paraprofessionals who provide the Student instruction, and P12, September 10, 2010, Student timetable.

with each increment in level he receives reward points; these are redeemable for objects. The student would be placed in the grade homeroom; however, his course work would depend on his functioning level. The student's assessments are based on his capacity and technology is built into class work with less sit down time. The student will have lunch with his homeroom and there they work on social skills. The District of Columbia's curriculum is modified and presented at the student's level. The student was accepted based on his IEP, his assessments and an interview and it was determined that the school can meet his needs. The student is assigned a social worker based on his needs and the social worker skills. The tuition for attendance at the school is per year without related services.[14]

10. The DCPS representative at the hearing apologized for the student having received only one academic subject with a special education teacher. He commented that the student does well in class; although he has been involved in two physical altercations since the beginning of the school year. [15]

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Burden of Proof

The burden of proof is the responsibility of the party seeking relief, in this case the parent. It requires that 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 that the action and/or inaction or proposed placement is inadequate or adequate to provide the Student a FAPE.[16]

FAPE Determination

The IDEIA requires that all students be provided with a Free Appropriate Public Education ("FAPE"). FAPE means special education and related services that are provided at public expense, under public supervision, and without charge; meets the standards of the State Education Agency, include an appropriate school; and are provide in conformity with an individualized education program ("IEP") that meets the requirements of §§300.320 through 300.324. [17] Furthermore, a free appropriate public education "consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction." *Board of Education v. Rowley*, 458 U.S. 176, 188-89.

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[14] Testimony of the Educational Program Coordinator at the Phillips School.
[15] Testimony from the Special Education Coordinator.
[16] 5 D.C.M.R. § 3030.3
[17] *20 U.S.C. §1401(9), 34 C.F.R. §300.17, and 30 DCMR §3001.1.*

Prior Written Notice

Pursuant to 34 C.F.R. §§ 300.503(a)-(b), Prior Notice by the Public Agency, "written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency proposes to change ... the educational placement.

The Petitioner's uncontested testimony was that she did not receive any notice or written document as a result of a placement discussion. The Respondent provided evidence or a written notice of placement; however, it was dated June 1, 2010, six months after the alleged discussion occurred.

DCPS violated its procedural obligations by failing to provide a Prior Written Notice as it did not provide within a reasonable time to the parent a detailed explanation as to why it is making a placement determination. DCPS did not provide a written notice consistent with 34 C.F.R. § 300.503.

Parent participation

The Petitioner alleged the Respondent did not allow the parent a meaningful participation in making the placement decision. The Petitioner alleged that because she was highly medicated when the MDT meeting was convened; she was not fully alert and participatory when the placement decision was made. The Respondent argued that the parent had an opportunity to participate in the placement decision making process, and that the parent is not entitled to choose a location.

The Respondent must take steps to ensure the parents of a child with a disability are present or are afforded an opportunity to participate in meetings at each IEP Team meeting."[18]

Once children are identified, a "team" including the child's parents and select teachers, as well as a representative of the local educational agency with knowledge about the school's resources and curriculum, develops an individualized education program for the child. The IDEIA regulations require that the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the educational placement of the child.[19]

DCPS met its statutory obligations. DCPS convened an IEP meeting in January 2010 to develop an IEP and there discussed the proposed 2010-2011 educational placement for the student. The Petitioner claimed she was highly medicated during the meeting, however, she chose to participate via telephone. The Petitioner could have insisted that the IEP meeting be rescheduled for another day, she instead participated and the meeting went forward. In this case, the record shows that DCPS has effectively allowed the parent to provide input in the development of the IEP. The Petitioner participated in the development and signed in agreement with the January 2009 IEP.

[18] 20 U.S.C. § 1414(e) and 34 C.F.R. § 300. 322
[19] 20 U.S.C. §1414(d) and 34 C.F.R. § 300.321(a)

Individualized Education Program

Local and state education agencies must make certain that the student's IEP contains a statement of the student's present level of academic achievement and functional performance, and that it include: 1) a written statement of the student's measurable annual goals, 2) a description of how the student's progress toward meeting the annual goals will be measured, and 3) any statement of the special education needs and related services and supplementary aids for a student to advance properly toward attaining the annual goals.[20]

The student has a full time IEP which prescribes 28 hours of specialized instruction, one hour of speech-language therapy weekly and one hour of behavioral support services per week. The IEP also indicates the Student requires a multi-sensory teaching approach of combination auditory, visual and tactile techniques and other accommodations to reduce distractions. It describes the student's present level of function, includes written goals and objectives, the related service and supplementary aids the student then required. The Petitioner at the hearing argued that she was in agreement with the IEP when it was developed; because when it was implemented at the the Student received services beyond those in the IEP. There was no evidence to show that at the date the IEP was drafted it was inappropriate for the student.

Furthermore, local law mandates that if the IEP team determines that a child with a disability needs a particular device or service, including intervention, assessment, accommodations, or other program modifications, to receive FAPE, the child's IEP shall include a statement to that effect.[21] If the student requires services to have access to educational benefit, those services most e include in his IEP.

The Hearing Officer finds that the IEP when originally drafted was calculated to provide the student with educational benefit. The services the Petitioner claims are now required by the student were not part of the January 2010 IEP to which she agreed and the Respondent cannot be required to provide services not included in the January IEP. In considering the substantive validity of an IEP, a number of circuits have held that a court must judge prospectively. *S.S. v. Howard Road Academy,* 585 F. Supp. 2d 56; (D.D.C. 2008)

During the Hearing the uncontroverted testimony was that the student requires one-on-one attention, de-escalation room several times throughout the week, social skills training and other services that are not currently on the student's IEP of January 2010. Additionally, the evidence is the student needs more than the one hour of counseling. I find that the student's IEP must be reviewed to incorporate the services and accommodations as outlined in this Order.

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[20] 20 U.S.C. §*1414(d)*(3), (4)(B) and (7)*)* and *34 C.F.R. § 300.320*
[21] 5 DCMR 3007.8

Educational placement

The Petitioner claims the Respondent failed to provide an appropriate educational placement for the Student during the 2010-2011. The Respondent argued that the educational placement is based on the IEP developed in January 22, 1010. The Respondent's position is that it made a location decision and not a unilateral placement. The Respondent argued the parent agreed to the IEP and merely did not concur with the location at The Respondent further argued there is no information today to show that cannot implement the student's IEP and that the omission of Reading, and Math instruction hours on the student's schedule; will be fixed.

The IDEIA and local law require that the determination of the educational placement of a child with a disability should be done annually and must be based on a child's IEP. The placement must be as close as possible to the child's home, with children who are not disabled in conformity with the Least Restrictive Environment (LRE) provision and consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. [22]

The Respondent, as the local state education agency, must ensure that the parents of each child with a disability are members of any group that makes decisions on the education placement of their child.[23]

Once developed, the IEP is then implemented through appropriate placement in an educational setting suited to the student's needs. *Roark ex rel. Roark v. District of Columbia*, 460 F. Supp. 2d 32, 35 (D.D.C. 2006).

Undoubtedly the LEA in this case DCPS has an obligation to implement the IEP through an appropriate placement. Yet, the uncontroverted testimony was the student requires a small class with two adults in a full time special education setting with a clinician in class, and with certified teacher with expertise. He needs assistance when transitioning between classes, to feel safe. The student requires a behavior intervention management program that is consistent from class to class with a proper de-escalation, conflict resolution, social skills and family training component. The student does not feel safe in school, there are many fights in the school, poor supervision and there is a lack of structure. of his type requires extraordinary supervision and the staff at Shadd do not have the expertise needed.

The student's least restrictive environment according to the IEP requires that he is provided with an intensive and highly structured small group learning environment with a low student teacher ratio. The evidence was that the least restrictive environment for the Student for the school year 2010 to 2011 is a small class with two adults in a full time special education setting with counseling integrated in the program, and teacher who can address his unique needs. He needs assistance when transitioning between classes, a behavior intervention management program that is consistent from class to class, conflict resolution, and social skills component.

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[22] U.S.C 1412(a)(5). 34 C.F.R.§ .§ 300.114 , 116, 5 D.C.M.R§ 3013.1 and § 3011

[23] 34C.F.R. § 300.327, and 5 D.C.M.R. § 3013.1

The student's educational placement must provide an environment where the student feels safe to learn; the material is presented at his level and is reasonably calculated to provide educational benefit. For the reasons set forth above, I find the student needs a small setting in a full time special education program with individualized attention tailored to meet his need and aimed at achieving educational benefit; that is not being provided by the DCPS.

Under *Florence County School District Four v. Carter*,[24] when a public school system has defaulted on its obligations under the Act, a private school placement is "proper under the Act" if the education provided by the private school is "reasonably calculated to enable the child to receive educational benefits."[25] "[O]nce a court holds that the public placement violated IDEA, it is authorized to 'grant such relief as the court determines is appropriate.' '...[E]quitable considerations are relevant in fashioning relief'... and the court enjoys 'broad discretion' in so doing."[26]

The DCPS has failed to provide the Student with an educational placement according to its IDEIA obligations. The Parent has sought and the Student has been accepted in a private school special education program. The program chosen by the parent is at the
which provides a special education program that according to the uncontested evidence has includes a school-wide behavior intervention program; the teachers assist students in processing their behavior. The hallways and school environment are supervised and safe. The school can supply the specialized instruction and related services the student requires and can provide him with an educational benefit.

The Respondent argued that the District of Columbia Code imposes a strict order of priority for special-education placement: "(1) DCPS schools or District of Columbia public charter schools; (2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia."[27]

However, in this case the applicable provision of the law demands that the LEA shall if there is no appropriate program within the District shall place a student in a program outside of the District.[28] The private school is in the state of Maryland, having not received an alternative offer of placement for the Student in the District of Columbia the Petitioner is authorized to enroll the student at the of Laurel Maryland.

Free Appropriate Public Education

In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) whether the IEP developed through those procedures was reasonably calculated to enable the Student to receive educational benefits.[29] The Respondent failed its legal obligations under the IDEIA when it did not provide a prior

[24] 510 U.S. 7 (1993).
[25] *Id.*, 510 U.S. at 11.
[26] *Id.*, 510 U.S. at 15-16.
[27] D.C. Code § 38-2561.02(c) (2007).
[28] 5 DCMR 3013.6
[29] *Bd. of Educ. v. Rowley,* 458 U.S. 176, 206-07 (1982); and *Jalloh v. District of Columbia,* 535 F. Supp. 2d 13, 16 (D.D.C. 2008).

written notice of placement to . While the IEP developed in January 2010 may have been procedurally appropriate at the time developed. The evidence was that the IEP was not being implemented, the student requires additional services and the school chosen by the Respondent is causing the student to regress emotionally and feel physically unsafe. The Respondent failed to implement a program for the student gear to allow him to gain any meaningful educational benefit. The student needs a small setting in a full time special education program with individualized attention tailored to meet his need and aimed at achieving educational benefit; that is not being provided by the DCPS. The student has been denied a FAPE. .

For the reasons set forth above, I find the Petitioner met the burden of proof and the student for the school year 2010 to 2011 requires a small class with two adults in a full time special education setting with counseling integrated in the program. Where the educational material presented at his level and is reasonably calculated to provide educational benefit. The student must be provided assistance when transitioning between classes, a behavior intervention management program that is consistent from class to class, conflict resolution, and social skills component in his counseling.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

ORDERED, the Respondent will by November 15, 2010 issue a Prior Notice of Placement to the School in Laurel Maryland. The Respondent shall fund the placement of the student at the private school with transportation and related services for the 2010-2011 school year, **it is further;**

ORDERED, within 30 calendar days of the student's enrollment at the private school a MDT/IEP meeting will be convened at the school. DCPS shall be invited to this meeting. At this meeting, the IEP Team will review the IEP and include all the accommodation and related service summarized in this Order. If a representative of the DCPS fails to attend, the MDT shall proceed to review and revise the student's IEP, **it is further;**

ORDERED, the Respondent will schedule all meetings at a mutually agreeable time through the parent and provide counsel a copy of the meeting notice by facsimile, **it is further;**

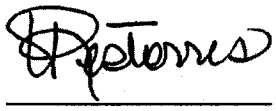
ORDERED, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. The Respondent shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives, **it is further;**

This order resolves all matters presented in the Petitioner's August 16, 2010, due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

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

Dated: October 15, 2010



Wanda I. Resto Torres- Hearing Officer