

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

STUDENT,¹)
through the Parent,)
)
Petitioner,)
)
v.)
)
District of Columbia Public Schools)
)
Respondent.)

Date Issued: October 18, 2011
Hearing Officer: Virginia A. Dietrich

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

Background

Petitioner, the legal guardian of -year old Student, filed a due process complaint notice on August 4, 2011, alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA"). At the time the complaint was filed, Student was a child with Multiple Disabilities who required a supportive, structured and therapeutic educational setting that could provide full-time specialized instruction and weekly behavioral support services, with all services to be provided outside of general education. In August 2010, Student returned to the community after being discharged from a residential placement and during the course of the 2010-2011 school year, Student failed miserably in attendance at two different full-time non-public special education day schools that were funded by the District of Columbia Public Schools ("DCPS"). As a result, Student failed all of his classes and was not promoted to the next grade.

Petitioner asserted that the least restrictive environment in which Student could access his education and receive some educational benefit was a residential placement because all attempts to educate Student in the community at non-public therapeutic day schools for the past year had been unsuccessful. Petitioner further asserted that Student's behavior of avoidance of school was a manifestation of his disability, that Student's truancy and aggressive behaviors severely impacted Student's availability for learning and that Student's emotional needs and educational needs were intertwined and inseparable.

¹ Personal identification information is provided in Appendix A.

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DCPS argued that Student's problems were home and community based, that Petitioner had not been cooperative in utilizing a community service agency that would have provided case management and assistance with getting Student to school, that truancy alone was not an indicator of the need for a residential placement and that residential placement for Student could not be recommended by DCPS because Student couldn't be observed at school due to his chronic truancy.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

Procedural History

The due process complaint was filed on 08/04/11. This Hearing Officer was assigned to the case on 08/05/11. A resolution meeting took place on 08/18/11 at which time the parties agreed to let the 30-day resolution period expire prior to proceeding to a due process hearing. The 30-day resolution period expired on 09/03/11, the 45-day timeline to issue a final decision began on 09/04/11, and the final decision was due on 10/18/11.

The due process hearing was a closed hearing that took place on 10/05/11. Petitioner was represented by Roberta Gambale, Esq. and DCPS was represented by Tanya Chor, Esq. Neither party objected to the testimony of witnesses via telephone. Petitioner participated in the hearing in person.

Petitioner presented three witnesses: Petitioner; Psychiatrist; and the admissions coordinator at residential treatment center RTC"). DCPS also presented three witnesses: DCPS program manager for non-public schools; DCPS progress monitor at School; and DCPS progress monitor at School

Petitioner's Five Day Disclosure dated 09/27/11, contained a witness list and Exhibits P-1 through P-39. DCPS filed objections to Petitioner's Five-Day Disclosure on 09/28/11. Petitioner's Exhibits P-4 through P-22, P-24, and P-32 through P-37 were admitted into evidence over objection, Petitioner's Exhibits P-25 through P-28 were not admitted into evidence by consent of Petitioner, and all other of Petitioner's Exhibits were admitted into evidence without objection.

DCPS' Disclosure Statement dated 09/28/11, containing a witness list and Exhibits R-1 through R-17, were admitted into evidence without objection. DCPS' Supplemental Disclosure Statement dated 09/28/11, containing a witness list, was also admitted into evidence without objection.

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The parties agreed to the following stipulation of fact:

(1) DCPS has placed students at _____ RTC in the past.

The two issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS denied Student a FAPE by failing to revise Student's Individualized Education Program ("IEP") at the Multidisciplinary Team ("MDT") meeting on 04/14/11 to provide Student with a residential placement.

Whether DCPS denied Student a FAPE by changing Student's placement from a full-time therapeutic placement to a placement at his local neighborhood school on 05/25/11, when Student's 11/29/10 IEP still prescribed a full-time, separate, therapeutic day school.

For relief, Petitioner requested a finding that Student was denied a FAPE on each of the issues presented and that DCPS fund and place Student at the _____ RTC.

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. Student, age _____ has a history of being placed at residential treatment facilities by DCPS, beginning when he was 8 years old.² More recently, on 11/03/09, Student was placed at the _____ by DCPS due to Student's truancy, his failure to take medication, mood swings and erratic thought processes.³ At _____ while on medication and receiving intensive behavior supports to control aggression and severe agitation, Student was ultimately able to refrain from most maladaptive social behaviors for long periods of time and Student was able to make progress towards his IEP goals and receive passing grades.⁴ Student progressed satisfactorily in his treatment at _____ RTC and was discharged on 08/27/11.⁵

#2. After Student's discharge from _____ RTC, Student returned home to live with Petitioner. Upon returning home, Student became non-compliant with taking medication and Student needed medication in order to be receptive to learning.⁶ Things did not work out too well for Student due to Student's truancy, substance abuse, explosive temper and failure to comply with regulations.⁷ Shortly after Student's return to the community in August 2010, Petitioner secured the services of First Home Care, a core community service agency that could provide behavior management and medication management services; however, Petitioner was unable to complete the intake process because Student refused to participate. Student would

² Petitioner.

³ Petitioner, Pathways School progress monitor.

⁴ P-13 through P-21.

⁵ Petitioner.

⁶ Id.

⁷ Id.

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leave the home every time mention was made that he had to go to a doctor's appointment, community service worker appointment, or any other type of appointment. Although appointments with First Home Care were made, Petitioner cancelled them one day in advance when Student told her that he refused to be present and participate with the service providers.⁸ And, without Student's participation, First Home Care could not provide the community based services that Student needed.⁹

#3. As of 11/29/10,¹⁰ Student was a child with Multiple Disabilities and an IEP that prescribed 26 hours/week of specialized instruction and 1.5 hours/week of behavioral support services in a small structured therapeutic environment, with all services to be provided outside of general education.¹¹ After discharge from RTC in August 2010, Student was placed by DCPS at School, a Level 5 therapeutic day school located in the District of Columbia.¹² Student failed to arrive at school on a daily basis even though Petitioner escorted Student to the public transportation system.¹³ As of 11/29/10, Student had missed 44 days out of 64 days, he was suspended for 4 days, and for every day that Student attended, he was late.¹⁴ As of 11/29/10, Student was unable to learn the concepts being taught and when he was present at school, he did minimal work and was off task.¹⁵ The purpose of the behavioral support services prescribed by Student's IEP was to work on improving Student's focus, manage his anger and frustration, improve his interaction with peers appropriately and non-violently, and address his social skills, communication skills and self-esteem.¹⁶ As of 11/29/10, Student had not attended group therapy at all at School and had only attended individual therapy once, due to truancy. While at School, Student received all failing grades.¹⁷ Petitioner requested that Student be evaluated for residential placement and DCPS authorized funding for an independent psychiatric evaluation.¹⁸

#4. On 12/21/10, Student was evaluated by a psychiatrist for a determination on program placement. The evaluating psychiatrist had an extremely difficult time tracking down Student in order to conduct the psychiatric evaluation; he made multiple trips to School to interview Student, both with notice and without notice, but Student was never in attendance at school. While at the school, the psychiatrist received first hand information from school staff that Student was not progressing satisfactorily in that he was "AWOL" from school and when he did attend, he was unable to complete classroom assignments due to his poor concentration skills and he frequently ended up engaging in disruptive and impulsive behavior that resulted in his removal from the classroom.¹⁹ Ultimately, a call from Petitioner to the psychiatrist with

⁸ Petitioner.

⁹ Petitioner, psychiatrist.

¹⁰ The record was void of the IEP that predated the 11/29/10 IEP.

¹¹ P-5-5, P-5-8.

¹² School progress monitor.

¹³ Petitioner.

¹⁴ R-6-3.

¹⁵ P-5-2.

¹⁶ P-5-5.

¹⁷ R-8-1.

¹⁸ P-26, Petitioner.

¹⁹ P-1, Psychiatrist.

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information that Student was at home, resulted in the psychiatrist being able to conduct the psychiatric evaluation at Student's home with only five minutes notice.²⁰

#5. The medical diagnoses contained in the 12/21/10 psychiatric evaluation consisted of Attention Deficit Hyperactivity Disorder ("ADHD"), Bipolar Disorder II, and Oppositional Defiant Disorder ("ODD").²¹ At the time of the psychiatric evaluation, Student's ADHD and ODD were beyond acceptable levels of management in the community.²² The psychiatrist recommended multi-modal treatment interventions that included case management services, a Level V school placement, individual therapy, family therapy, placement in a highly structured residential treatment facility, medication management and outpatient psychiatric services upon Student's discharge from the residential treatment program.²³

#6. Due to Student's failure to attend School regularly, and by agreement of Petitioner and DCPS, Student was placed at School in January 2011.²⁴ School is also a Level 5 non-public full-time therapeutic special education school located in the community, that could implement Student's IEP and provide the services that Student needed, if Student attended.²⁵ Student refused to take the school bus to School.²⁶ At a MDT meeting on 03/10/11 at School, DCPS agreed to inquire about a CSS worker to assist Student with getting to school because he had not attended School at all by that date.²⁷ Ultimately, Student fared even worse with attendance at School, attending only 2-3 days from January 2011 through June 1, 2011.²⁸ Student's classroom functioning at School could not be determined because he was always unavailable due to truancy.²⁹

#7. Student's overall level of functioning at home and in the community was also poor. Student avoided scheduled medical and psychiatric appointments, left home at will, refused to take medication and used aggressive behavior.³⁰

#8. At a MDT meeting on 04/14/11, the team reviewed the independent psychiatric evaluation and discussed Student's chronic truancy. DCPS was unwilling to hire a CSS worker to assist with getting Student to school because the intake process could not be completed unless Student was in school and attending.³¹ At that meeting, Petitioner requested that Student be placed in a residential treatment center and DCPS indicated that Petitioner's request would be sent to the DCPS Least Restrictive Environment team for a decision. At a subsequent MDT meeting on 05/25/11, DCPS determined that it would not make a referral for residential placement because there was no opportunity to observe Student in school due to his truancy.³²

²⁰ Psychiatrist.

²¹ P-1.

²² Psychiatrist.

²³ P-1.

²⁴ R-3, R-4, R-6, Petitioner, School progress monitor.

²⁵ P-39-2, School progress monitor.

²⁶ P-39-1, Petitioner.

²⁷ R-11.

²⁸ P-39-1, R-16-1.

²⁹ P-24.

³⁰ Petitioner.

³¹ P-39-1.

³² P-2-2, School progress monitor.

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#9. As a result of Student's poor attendance at School, DCPS relocated Student to his neighborhood school on 06/01/11 because he had exceeded the allowable number of absences for continued placement at a non-public school.³³ As of June 2011, Student had not earned the necessary credits to be promoted to the next grade.³⁴ The neighborhood school, a school that is larger than School and unlike School, also services general education students, can provide Student with the service hours in Student's IEP.³⁵

#10. Resources in the community must be exhausted before DCPS makes a referral to a residential placement for Student, e.g., providing Student with a school bus, giving Student a different location of services, and providing Student with a person who can help get him on the bus.³⁶

#11. RTC is an intensive residential treatment center for children and adolescents with emotional and behavior needs that cannot be met in the community. The program provides secure (locked) treatment services in a highly structured therapeutic program and the program is highly skilled at addressing truancy and medication management issues. The program also provides medication management by a psychiatrist, a behavior modification program that allows students to transition to the less structured setting of cottages, individual and group tutoring after school, and individual and group therapy in substance abuse, anger management and social skills. It is impossible for students at RTC not to go to school; they either go to the classroom or the class work is brought to them on the ward if they refuse to go to the classroom. The structure of the on-campus school includes a principal. Average class size is 6-8 students, all teachers are content certified and many teachers are also special education certified, and a behavioral management specialist is stationed outside of the door of each classroom.³⁷ DCPS has placed other students at RTC in the past and Student has met the criteria for admission to the program.³⁸ is an appropriate placement that can meet Student's educational needs.

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:

"Based solely upon 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 with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

³³ R-16-1, School progress monitor.

³⁴ R-16-1.

³⁵ Pathways School progress monitor.

³⁶ DCPS program manager.

³⁷ Admissions Coordinator at RTC.

³⁸ Stipulation #1, Admissions Coordinator at RTC.

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A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The first issue to be determined is whether DCPS denied Student a FAPE by failing to revise Student's IEP at the MDT meeting on 04/14/11 to provide Student with a residential placement.

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

A free appropriate public education must be available to all children residing in the District of Columbia between the ages of 3 and 21, inclusive. 34 C.F.R. 300.101, 5 D.C.M.R. E-3000.1. A free appropriate public education or FAPE means special education and related services that are provided at public expense, meet the standards of the State Education Agency, include an appropriate school and are provided in conformity with an IEP. 34 C.F.R. 300.17.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. 34 C.F.R. 300.39(a)(1). Specially designed instruction means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction. 34 C.F.R. 300.39(b)(3). The term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes psychological services, counseling services, and medical services for diagnostic or evaluation purposes. 34 C.F.R. 300.34. If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. 34 C.F.R. 300.104.

The Supreme Court has held that an appropriate education consists of "access to specialized instruction and related services which are individually designed to provide educational benefit to the disabled child. *Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201, 102 S. Ct. 3034, 3048 (1982). The substantive question is whether a placement is "reasonably calculated to enable the child to receive educational benefits. *Id.* at 207, 102 S. Ct. at 3051.

"Educational benefit is the "touchstone" for the purposes of determining a school district's responsibility to provide a residential placement. If such a placement is needed for

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reasons unrelated to Student's educational needs, then the placement is not required in order for the student to receive the requisite educational benefit under the FAPE standard, and the school district has no legal responsibility to provide it." *Hamilton-Wenham Regional School District*, 41 IDELR 103 (2004). However, the state has to fund a residential program when it is necessary for the child to make "meaningful educational progress." When the medical, social or emotional problems that require a residential setting create or are intertwined with the educational problem, the states remain responsible for the costs of the residential placement. The Second Circuit requires that a court point to objective evidence of a child's regression in a day program before finding that a residential placement is required by the IDEA." *M.H. and J.H. vs. Monroe-Woodbury Central School District*, 51 IDELR 91 (2nd Cir. 2008).

In *North v. District of Columbia Board of Education*, 551 IDELR 157 (D.C.D.C. 1979), the court held that a child's emotional needs were closely interwoven with his educational needs and the school system was required to provide the child with an appropriate residential academic program. In *North*, the child's medical, emotional and learning disorders all contributed to a recommendation that the child required residential placement that could provide medical supervision, special education and psychological support to address non-compliance with medication management and failure to cooperate with staff or students. The child's educational needs were determined to be inseparable from his emotional needs. Similarly, in the present case, a psychiatrist indicated the need for a residential placement to address Student's emotional and educational problems.³⁹

In considering whether a full-time residential placement may be necessary for educational purposes, or for medical, social, or emotional problems that are segregable from the learning process, the non-severability of such needs is the very basis for holding that the services are an essential prerequisite for learning. *Kruelle v. New Castle County School District*, 552 IDELR 350 (3rd Cir. 1981). In *Kruelle*, the court agreed that residential placement was appropriate because Student had been unsuccessful in a therapeutic day school. And, in *Abrahamson v. Hershman*, 554 IDELR 403 (1st Cir. 1983), the court determined that the IEP providing only a special day program would not enable the student to receive a FAPE where services in a residential program, i.e., training and reinforcement in skills of daily life, were essential in order for the child to make any educational progress whatsoever.

Petitioner met her burden of proof that Student required a residential placement in order to receive some educational benefit. While Student resided at RTC from November 2009 through August 2010 where he received medication and intensive behavior supports, Student was able to attend school, control aggression, make progress towards his IEP goals and receive passing grades.⁴⁰

Since being discharged from a residential placement in August 2010, Student was never able to transition back into a community based school placement successfully. Over the course of the 2010-2011 school year, Student was terminated from two different non-public therapeutic

³⁹ Findings #4, #5.

⁴⁰ Finding #1.

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special education day schools due to truancy. He failed all subjects at both schools and did not earn enough credits to proceed to the next grade.⁴¹

Student was an elusive young man who avoided structure, rules and regulations. He avoided home, medical appointments, community service provider appointments and school, all of the time. Various attempts to facilitate Student getting to school were unsuccessful.⁴² In short, Student refused to attend school and all measures to assist Student in the community with getting to school failed, and the reason they had failed was because Student refused to participate.

Student also became noncompliant with taking medication after his discharge from a residential treatment center in August 2010, and without medication, Student was unavailable for learning.⁴³ As of December 2010, Student's ADHD and ODD were beyond acceptable levels of management in the community and things did not improve over time. Student refused to attend appointments with his doctors, thus frustrating the medication management process. Overall, Student refused to attend school, and when he did attend school on his own terms, he was non-compliant with directives, unable to grasp the academic concepts presented, did minimal work, and frequently ended up in aggressive or impulsive behaviors that resulted in his removal from the class.⁴⁴

On 04/14/11, it was clear that Student could not be successful in a community based therapeutic special education day school. He was unwilling to make himself available for classroom instruction and individual and group therapy at school.⁴⁵ With an IEP that prescribed full-time specialized instruction in a therapeutic small structured setting,⁴⁶ Student received no educational benefit whatsoever over the course of the entire 2010-2011 school year. At

School, Student attended periodically and failed all subjects. At School, Student's classroom functioning could not be measured because he was always truant. And, these two therapeutic day schools were the most restrictive community based settings possible. Measures to help Student get to school, such as bus transportation, a new location for services and the assistance of core community services agency workers were tried and had failed.⁴⁷ On 04/14/11, Student should have at least been referred for residential placement because all community resources had been exhausted.⁴⁸

The Hearing Officer determines that Student's educational needs could not be met in any community-based educational placement and the data to support this conclusion existed on 04/14/11 and was in the hands of the DCPS members of the MDT.⁴⁹ On 04/14/11, Student should have received an IEP that specified residential placement because Student had completely failed to adhere to the requirements of the non-public therapeutic special education day schools,

⁴¹ Findings #2, #4, #6, #7, #9.

⁴² Findings #2, #3, #4, #6, #8.

⁴³ Finding #2.

⁴⁴ Findings #4, #5, #6, #7, #9.

⁴⁵ Findings #3, #6.

⁴⁶ Finding #3.

⁴⁷ Finding #2, #3, #6, #8.

⁴⁸ Finding #10.

⁴⁹ Finding #8.

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which were the most comprehensive and restrictive day school programs available in the community.

The Hearing Officer determines that for Student, the basic floor of educational opportunity that is required by *Rowley* can only be provided in a residential treatment center. In a residential treatment center, Student is able to make progress with his IEP goals and receive passing grades.⁵⁰ Without a residential treatment center placement, Student is unable to derive any meaningful educational benefit from the educational experience because he simply refuses to attend school. Although there was evidence in the record that Student was non-compliant with rules and regulations at home and in the community, the gist of the evidence clearly indicated that Student was not receiving *any* educational benefit with a therapeutic non-public special education day school placement and that "he would only receive an education if he was chained to a chair."⁵¹ That quoted statement by Petitioner captures the essence of the case. In accordance with least restrictive mandate of 34 C.F.R. 300.114, Student requires removal from the community in order to receive a FAPE.

RTC is an appropriate placement that can meet Student's educational needs. At RTC, Student will not be able to avoid going to school. The school program at RTC is headed by a principal, the teachers are content certified and some are special education certified, the school program offers afterschool tutoring and behavioral support services, and Student has met the criteria for admission. Moreover, DCPS has placed students there in the past. It is a locked facility where Student will receive education by either going to the classroom or having the work brought to him on the ward if he refuses to attend school.⁵²

The second issue to be determined is whether DCPS denied Student a FAPE by changing Student's placement from a full-time therapeutic placement to a placement at his local neighborhood school on 05/25/11, when Student's 11/29/10 IEP still prescribed a full-time, separate, therapeutic day school.

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003). 34 C.F.R. 300.323(c)(2) requires that the services in the IEP be provided to a student as soon as possible after the development of the IEP.

Student's 11/29/10 IEP required a full-time therapeutic setting,⁵³ but the IEP did not require that Student's education take place in a separate school. The evidence in the record was that the neighborhood school was larger than Student's previous non-public special education day school and the neighborhood school also serviced non-disabled children; however, there was uncontroverted evidence in the record that Student's IEP could be implemented at the

⁵⁰ Finding #1.

⁵¹ Petitioner.

⁵² Finding #11.

⁵³ Finding #3.

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neighborhood school.⁵⁴ There was no evidence in the record as to whether or not the specific program that Student would participate in at the neighborhood school was therapeutic in nature.

Moreover, Student was relocated to the neighborhood school simply because he had exceeded the allowable number of absences for continued placement at a non-public school.⁵⁵ Over the course of the 2010-2011 school year, DCPS had borne the expense of placing Student at two different non-public full-time therapeutic special education schools and Student was unable to take advantage of either placement opportunity due to truancy. At the point in time that Student was relocated to the neighborhood school, he had attended his non-public therapeutic day school for a scant 2-3 days from January 2011 through June 1, 2011.⁵⁶ The relocation of services to Student's neighborhood school did not deny Student a FAPE because he was not attending school at that time, he had not attended school for the past six months, and all prior measures to help Student get to school had failed. Relocation to the neighborhood school was undoubtedly a temporary measure taken until Student's participation in the educational process could be secured. Petitioner failed to meet her burden of proof on this issue.

ORDER

(1) DCPS shall place and fund Student at the residential treatment center within 30 calendar days of the date of this Order.

IT IS SO ORDERED.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: October 18, 2011

/s/ Virginia A. Dietrich
Hearing Officer

⁵⁴ Finding #9.

⁵⁵ Id.

⁵⁶ Finding #6.