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

STUDENT,[1]
through the Parent

Petitioner,

v

District of Columbia
Public Schools,

Respondent.

Date Issued: November 10, 2010

Hearing Officer: James Gerl

Case No:

Hearing Date: October 21, 2010

Room: 2008

HEARING OFFICER DETERMINATION

BACKGROUND

The due process complaint was filed on September 13, 2010. The matter was assigned to this hearing officer on September 16, 2010. A resolution session was convened on September 27, 2010, but no form was completed. The parties agreed that the 45-day timeline began to run on October 13, 2010 and that the decision is due on or before November 27, 2010. The due process hearing was convened at the Student Hearing Office on October 21, 2010. The hearing was closed to

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

the public; the student's parent attended the hearing; and the student did not attend the hearing. Four witnesses testified on behalf of Petitioner, and one witness, who also testified for Petitioner, testified on behalf of the Respondent. Petitioner's Exhibits 1 through 7 were admitted into evidence, and Respondent's Exhibits 1 through 6 were admitted into evidence.

JURISDICTION

This proceeding was invoked pursuant to the provisions of the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Title 5-E of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

PRELIMINARY MATTERS

All proposed exhibits and testimony received into evidence and all supporting arguments submitted by the parties have been considered. To the extent that the evidence and arguments advanced by the parties

are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Petitioner filed a motion for an expedited hearing in this matter. The motion was denied by a written Order. Said Order is incorporated by reference herein.

ISSUES PRESENTED

The following two issues were identified by counsel at the pre-hearing conference and evidence concerning these issues was heard at the due process hearing:

1. Is Petitioner entitled to reimbursement for unilateral placement?
2. Is Petitioner entitled to an Order requiring Respondent to fund a prospective private placement?

FINDINGS OF FACT

After considering all the evidence, as well as the arguments of counsel, I find the following facts:

1. The student was years old at the time of the due process hearing and his date of birth is (Stipulation by counsel on the record; R-4). (References to exhibits shall hereafter be referred to as "P-1," etc. for the petitioner's exhibits; "R-1," etc. for the respondent's exhibits and "HO-1," etc. for the hearing officer exhibits; references to testimony at the hearing is hereafter designated as "T".)
2. The student is currently in his 9th grade school year. (Stipulation of counsel on the record.)
3. During the 2009-2010 school year, the student was enrolled at a charter school, which is its own local educational agency. (Stipulation of counsel on the record.)
4. On October 17, 2010, Respondent provided parent's counsel with a document identified as a prior notice proposing a particular private school, Private School Number Two, as a

location for the student's IEP to be delivered. (Stipulation of counsel on the record.)

5. Prior to October 7, 2010, Respondent had not identified a location at which the student's IEP would be implemented. (Stipulation of counsel on the record.)

6. The 2010-2011 school year for Respondent began on August 23, 2010. (Stipulation of counsel on the record.)

7. The student, through his mother, has filed a number of previous due process complaints. Previous due process hearings resulting in decisions have been convened on August 21, 2008, October 9, 2008 and August 9, 2010. (R-1; R-2; R-3)

8. An IEP was developed for the student by Respondent on August 20, 2009. The IEP notes the student's primary disability as multiple disabilities. Present at the meeting were the student's mother and the student's educational advocate, a related services provider, a psychologist, an occupational therapist, a special educator, a supervisor of special education, an additional related services provider, an

adaptive physical education teacher, a special education coordinator, a special education specialist and a compliance case manager. Said IEP provides for present levels of educational performance and goals for mathematics, reading, written expression, speech language, emotional-social and behavioral development, and motor skills physical development and it provides for 26 hours per week of specialized instruction outside the general education setting, 60 minutes per week of adapted physical education outside the general education setting. The IEP provides the following related services, all provided outside the general education setting: behavioral support services of 120 minutes per week, occupational therapy of 60 minutes per week, speech language pathology of 90 minutes per week and school health and school nursing for 27.5 hours per week. In addition, the IEP provides for consultation services for occupational therapy 30 minutes a day and speech language pathology 45 minutes per day. The assistive technology portion of the IEP provides that the student will

receive keyboard instruction and text material conversion for access and for learning and studying, the student would have available a laptop; slant board; word prediction software; talking word processor; text reading features; math completion software; math practice software; graph paper; digital graphic organizer; language development software; line paper with color contrast; inflatable cushion wedge; and left hand scissors. In addition to the assistive technology, said IEP provided services for vision including vision breaks; reminders not to squint or close left eye; proper lighting with no glare; no blurred copies or small print; written instructions; and extended time to complete written work and tests. The IEP provides that transportation will be provided and that compensatory education had been discussed at the meeting. The IEP also provides that the student would receive extended school year services, four hours per day of specialized instruction and three hours per day of the following related services, one hour of each: behavioral support services, occupational therapy, and

speech language pathology. The extended school year services were to be delivered between June 29 and July 24, 2009. (R-4)

9. The student's mother enrolled him at his neighborhood school on August 17, 2010 as a "non-attending" student. When the mother enrolled the student, the special education coordinator at the school asked the mother where the student would be going to school for the next school year a number of times. Each time, the mother's response was that it was "to be determined." (T of the student's mother)

10. No IEP team meeting for the student has been convened since August 20, 2009. As of the date of the complaint herein, the student's annual IEP review meeting was 23 days late. (T of the student's mother; record evidence as a whole)

11. The student's mother has not requested an IEP team meeting since August 20, 2009. (T of student's mother)

12. The student's mother did not provide any written notice to Respondent stating her concerns with the student's

educational program or giving notice that she intended to enroll the student in a private at public expense. The student's mother unilaterally enrolled him at Private School Number One at the beginning of the 2010-2011 school year. (T of the student's mother; T of the director of the private school number one; record evidence as a whole)

13. The student suffered no harm as a result of Respondent's failure to convene a timely IEP team meeting for the student. (Record evidence as a whole.)

14. The parent participated meaningfully in the IEP team process. (T of the student's mother; record evidence as a whole; R-4)

15. The private school at which the student was unilaterally placed by his mother and which he has been attending this year provides a program that is reasonably calculated to confer academic benefit. The teachers at said school are not certified and the student receives math instruction from an aide who has not yet graduated from college, but the student

has made progress at said school. (T of the director of the private school number one)

16. Private school number two, the location and/or school provided by Respondent on October 7, 2010 is a private school that is able to implement the student's IEP. The school specializes in children who are having learning difficulties and who have mild to moderate needs who are experiencing inconsistencies between their academic achievement and intellectual abilities in reading, writing, oral expression or math. The average class has one special education teacher and one general education teacher and approximately five students. The student would likely be able to receive academic benefit at private school number two. (T of director of private school number two; R-6; R-5)

17. The IEP developed by Respondent on August 20, 2009 is reasonably calculated to confer educational benefit, and it adopts many of the recommendations of the previous evaluations of the student. Said IEP addressed the student's needs. (Record evidence as a whole; R-4; P-3; P-4)

CONCLUSIONS OF LAW

Based upon the evidence in the record, the arguments of counsel, as well as my own legal research, I have made the following Conclusions of Law:

1. In order to receive reimbursement for a unilateral placement, a parent must prove three elements: 1) that the school district has denied FAPE to the student or otherwise violated IDEA; 2) that the parent's private school placement is appropriate; and 3) that equitable factors do not preclude the relief. School Committee Town of Burlington v. Department of Educ., 471 U.S. 359, 105 S. Ct. 1996, 103 LRP 37667 (U.S. April 29, 1985); Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 114 S. Ct. 361, 20 IDELR 532 (U.S. November 9, 1993); Forest Grove School District v. T.A., 129 S. Ct. 2484, 52 IDELR 151 (U.S. June 22, 2009).

2. In the instant case, Petitioner has not established through evidence that it has met the first or third prongs of the Burlington analysis. Petitioner has failed to establish that Respondent committed an actionable violation of IDEA. Further, the equities of the case when balanced require a conclusion that reimbursement is

not appropriate. Accordingly, reimbursement is not awarded for the unilateral placement made by the student's mother in the instant case.

3. The United States Supreme Court has established a two part test for determining whether a school district provides a free and appropriate public education (hereafter sometimes referred to as "FAPE") to a student with a disability. There must be a determination as to whether the schools have complied with the procedural safeguards as set forth in the Individuals With Disabilities Education Act 20 U.S.C. §§ 1400, et seq. (hereafter sometimes referred to as "IDEA") and an analysis of whether the individualized educational plan (hereafter sometimes referred to as "IEP") is reasonably calculated to enable a child to receive some educational benefit. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v. Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991).

4. A procedural violation of IDEA only results in actionable relief when the violation substantively affects the student by causing education harm, or a denial of FAPE, or where it seriously impairs

the parent's right to participate in the IEP process. Lesesne ex rel. BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006); IDEA § 615(f)(3)(E)(ii).

5. IDEA requires that a parent seeking reimbursement for a unilateral placement must provide written notice to the school district at least ten business days prior to the removal of the child from public school regarding the concerns of the parent and the parent's intention to enroll the child in private school at public expense. The law also provides that reimbursement for a unilateral placement may be denied or reduced where a parent fails to give such notice. IDEA § 612(a)(10)(C)(iii); 34 C.F.R. §300.148. In the instant case, Petitioner failed to provide any notice of the unilateral placement or her concerns to Respondent.

6. A hearing officer or court may award relief, including prospective private placements as well as any other appropriate relief, only when there has been an actionable violation of IDEA. See Branham ex rel. Branham v. District of Columbia, 427 F. 3d 7; 44 IDELR 149 (D.C. Cir. October 25, 2005); Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982); Kerkam v.

Superintendent, D.C. Public Schools, 931 F.2d 84, 17 IDELR 808 (D.C. Cir. April 26, 1991); IDEA § 615(f)(3)(E)(ii).

7. Even though a procedural violation may not be viable unless it accompanied by evidence that the procedural violation impeded the child's right to a free and appropriate public education, or significantly impeded the parent's opportunity to participate, or caused deprivation of educations benefits, IDEA is clear that the provision restricting relief for such procedural violations does not preclude a hearing officer from ordering a school district to comply with the procedural requirements of IDEA. IDEA § 615(f)(3)(E)(iii). Because it is abundantly clear that fairness and the interests of justice require that an IEP team meeting be ordered on these facts, the Order portion of this decision includes such an order.

DISCUSSION

1. Merits

In order to receive reimbursement for a unilateral placement, a parent must prove that reimbursement is warranted by establishing three factors: 1) that the school denied FAPE to the student or

otherwise violated IDEA; 2) that the private school selected by the parents as a unilateral placement is appropriate; and 3) that equitable factors do not preclude the relief. Town of Burlington, et al. v. Department of Educ., 471 U.S. 359, 105 S. Ct. 1996, 103 LRP 37667 (U.S. April 29, 1985); Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 114 S. Ct. 361, 20 IDELR 532 (U.S. November 9, 1993); Forest Grove School District v. T.A., 129 S. Ct. 2484, 52 IDELR 151 (U.S. June 22, 2009).

In the instance case, Petitioner has not demonstrated any violation of IDEA that is remediable. Petitioner's complaint and the issue identified at the pre-hearing conference concerned an allegation that Respondent did not provide a full-time special education placement to the student. The record evidence, however, reveals that an IEP was created for the student on August 20, 2009 that does in fact provide for a full-time special education placement, including 26 hours per week of specialized instruction outside the general education environment, one hour per week of adapted physical education outside the general education environment and four additional related services, plus consultation services, all

occurring outside the general education environment. It is abundantly clear that the placement for the student was a full-time special education placement. To this extent, Respondent has not violated IDEA. IDEA § 614. In general, the term "placement" involves the core components of an educational program. This is separate and distinct from the location at which the services will be delivered. Lesesne ex rel. BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19, 2006); John M. by Christine M. and Michael M. v. Board. of Educ. Of the Evanston Township High School District. No. 202, 502 F.3d 708, 48 IDELR 177 (7th Cir. September 17, 2007). In the instant case, it is clear that the student had an educational placement in his IEP. In fact, it was the full-time special education placement that the student's mother had requested.

It appears that Petitioner is arguing that Respondent violated the act by failing to specify a location at which services would be delivered. In general, it is not required that a school district specify a location at which services will be delivered in the IEP document. IDEA §614. In the instant case, the hearing officer ordered Respondent at the prehearing conference to determine a location at

which services under the student's IEP could be implemented, since it appeared that that was what Petitioner was requesting, and it appeared that doing so could possibly facilitate settlement of this dispute. Pursuant to the hearing officer's direction, Respondent did determine a school at which the student's IEP could be implemented. The director of said school testified credibly and persuasively that her school could implement the student's IEP. Accordingly, even to the extent that Petitioner requested a location, a location that could implement the student's IEP was provided to the Petitioner prior to the due process hearing. By designating a school which is capable of implementing the student's IEP, Respondent remedied the key problem identified by the due process complaint.

In support of its position, Petitioner argued in closing argument that its case is supported by AK by JK and ES v. Alexandria City School Board, 484 F.3d 672, 47 IDELR 245 (4th Cir. April 26, 2007). Petitioner's citation to this case is inapposite. In that case, the court found a denial of FAPE because an IEP did not identify a school at which the IEP would be delivered. The facts of that case are distinguishable, however, from this case. In the AK case, the parents

contended that there was no such day school, which was identified in their student's IEP, that could appropriately deliver and implement the student's IEP. Despite the parents' contentions that there was no school that could implement the IEP as written, the IEP team did not further investigate and specify a school that could implement the IEP. The facts in the instant case are markedly different, the parent did not communicate with the school district in terms of any desire to have a particular school implement an IEP. In fact, the parent evaded questions from the school district concerning where the child would be attending school. In refusing to answer these inquiries which indicated that the officials of Respondent believed that the student was being unilaterally placed in a private school, Petitioner did not seek information which would lead to a requirement that the location of a school be included in the IEP under the reasoning of the AK decision. In addition, unlike the AK case, Respondent here did provide a school that could implement the student's IEP. Petitioner's argument is rejected.

It should be noted that Petitioner has proven a procedural violation. In particular, Petitioner has demonstrated that

Respondent failed to review and update the student's IEP at least annually. IDEA § 614(d)(4)(A)(i). In fact, the record evidence in this case demonstrates that the student's last IEP developed by Respondent was made on August 20, 2009. On the date that the complaint was filed in the instant case, September 13, 2010, Respondent was 23 days late in preparing a new IEP for the student. Although the parent never requested an IEP team meeting, as is her right, the burden of ensuring compliance with the annual IEP team meeting requirement falls upon the Respondent and not the Petitioner. Accordingly, the mother's failure to request an IEP meeting does not undo the procedural violation.

IDEA provides that in matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies: impeded the child's right to a free and appropriate education, significantly impaired the parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. IDEA § 615(f)(3)(E)(ii); Lesesne ex rel. BF v. District of Columbia, 447 F.3d 828, 45 IDELR 208 (D.C. Cir. May 19,

2006). In the instant case, Petitioner has not proven or put any evidence into the record to show that the 23-day period without an IEP either impeded the child's right to a free and appropriate education or significantly impaired the parent's opportunity to participate in the process or caused a deprivation of educational benefits.

Given the lack of evidence concerning educational harm, denial of FAPE or significant impairment of the right to participate as a result of the procedural violation of failing to timely convene the IEP team, IDEA precludes the awarding of relief based upon the procedural violation committed herein by Respondent. Accordingly, Petitioner has failed to meet the first prong of the three prong Burlington analysis, and the request for reimbursement for unilateral placement is denied.

Assuming *arguendo* that the parent had met the first prong, the parent has demonstrated that the private school selected by Petitioner is appropriate. The standard for appropriateness of the private placement was articulated by the United States Supreme Court in Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 114

S. Ct. 361, 20 IDELR 532 (U.S. November 9, 1993). A private school placement is appropriate for purposes of the Burlington analysis if the educational program at the private school is reasonably calculated to enable the child to receive educational benefits. In the instant case, it was the uncontested testimony of the director of the private school that the student is currently attending that the student is making educational progress there. Respondent put no evidence into the record to counter this finding. It should be pointed out that it is troubling that the student receives math instruction from an instructor who has not yet graduated from college, but under the Carter analysis, the school selected by Petitioner is appropriate for the student. If there had been a finding of a denial of FAPE, which there is not, the private school selected by the student would be found to be appropriate.

Concerning the third prong of the Burlington analysis, it is clear that a balancing of equities in this case favors Respondent. The equities of the facts of this case compel a conclusion that Petitioner should not receive reimbursement for a unilateral placement.

The evidence in the record compels a conclusion that Petitioner intended to deceive Respondent concerning where the student would be attending school for the 2010-2011 school year. The student's mother enrolled him on August 17, 2010 as a "non-attending" student at his local school. The parent was asked several times by the special education coordinator what school the student would be attending. The mother provided only evasive answers, stating that it was to "be determined." Thus, the parent appears to have intentionally made it unclear where the student would be attending school for the 2010-2011 school year by registering him as "non-attending" and by refusing to answer legitimate inquiries as to where he would be attending. Petitioner's actions in this regard were unreasonable. Although this does not excuse the Respondent from its obligation to prepare an annual IEP for the student, it certainly lessens the seriousness of the offense. In addition, the parent's behavior in deceiving Respondent as to where the student would be attending school is clearly in direct contradiction to the collaborative philosophy underlying IDEA. Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 44 IDELR 150 (U.S. November 14, 2005).

IDEA also requires that a parent seeking reimbursement for a unilateral placement must provide written notice to the school district at least ten business days prior to the removal of the child from public school regarding the concerns of the parent and the parent's intention to enroll the child in private school at public expense. IDEA § 612(a)(10)(C)(iii); 34 C.F.R. §300.148.

In the instant case, Petitioner argues in closing argument that Respondent has waived the notice requirement. This argument is rejected. The response filed by Respondent in this administrative proceeding makes it clear that Respondent was unclear concerning which school the student would be attending for the 2010-2011 school year. It is such misunderstandings that the notice provision of IDEA is intended to deter. It is concluded that Respondent has not waived this defense. There is no evidence in the record concerning notice of any kind given by the Petitioner that she intended to enroll the student in private school at public expense. Petitioner has not argued that any of the exceptions to the notice requirement are applicable, and petitioner has offered no evidence of any such facts.

Accordingly, reimbursement should be denied for failure to provide the required notice.

Indeed, the failure by Petitioner to give the legally mandated notice that she was seeking reimbursement after placing the student in a private school is consistent with the pattern of non-communication and deception by the parent in this case. The parent was not required or legally obligated to request an IEP team meeting, but it is clear from her testimony at the due process hearing that this is exactly what she wanted. Although the questions to the Petitioner on direct examination involve a "placement meeting," there is no such meeting described or contemplated by IDEA. IDEA does provide for IEP team meetings. IDEA § 614. The parent's failure to provide notice to Respondent is consistent with her pattern of not communicating with Respondent at all. The combination of the deceiving failure to respond to inquiries as to where the student would be attending school in connection with the parent's failure to provide notice of a unilateral placement made it difficult for Respondent to proceed in this case. The conduct of the Parent in this case was unreasonable and uncooperative. Accordingly, the equities

when balanced in this case compel a conclusion that even if Petitioner had met the first prong of the Burlington analysis, reimbursement to the Petitioner in this case would be inappropriate. Accordingly, reimbursement for the unilateral placement is denied.

At the pre-hearing conference in this case, Petitioner requested a "placement." Sensing that Petitioner desired to know a location at which the IEP would be implemented, the hearing officer directed Respondent to provide a placement, that is a location, for delivery of IEP services, to Petitioner prior to the due process hearing. Prior to the due process hearing, counsel for Respondent notified the hearing officer and counsel for Petitioner that it had determined that private school number two was an appropriate place at which the student could receive his IEP. The director of the private school number two testified at the hearing. She stated that their school could implement the student's IEP effectively and that the student could achieve educational progress at their school. Petitioner argues in closing argument that because the witness testified that it was "possible" that they might not be able to implement the student's IEP at their school, it must be concluded that the placement is

inappropriate. To require Respondent to prove that a location is appropriate under a standard of the possibility that nothing could go wrong is far more than is required by IDEA. The location selected by Respondent for the services to be delivered to the student is clearly reasonably calculated to confer educational benefit upon the student. Bd. of Educ., etc. v. Rowley, 458 U.S. 178, 102 S. Ct. 3034, 553 IDELR 656 (1982). Petitioner's argument concerning the "possibility" that the school selected by Respondent might not provide educational benefit is rejected.

Petitioner also argues that the notice of the location at which the student's IEP would be implemented, private school number two. does not comply to the requirements of a prior written notice under IDEA. The law requires that a school district provide prior written notice whenever it proposes or refuses to change the identification, evaluation, placement or FAPE of a student with a disability. IDEA §615 (b)(3); 34 C.F.R. § 300.503. In the instant case, the notice pertains merely to a location of services and not a placement. Accordingly Respondent was not required to comply with the terms of the notice requirements. Even assuming arguendo, that the cited

provisions do apply, however, Petitioner has failed to show that this procedural violation caused any educational harm for the student or impaired the parent's ability to meaningfully participate in the process, or caused a denial of FAPE. If this were in fact a procedural error, therefore, it would be a harmless error.

Petitioner's cross examination of the director of private school number two focused primarily upon whether the school followed its admission procedures in admitting the student. It is unclear what the legal import of these inquiries was, but the director of private school number two credibly and persuasively testified that some descriptions of the admission procedure on its website are not current and need to be updated. Petitioner also called an educational advocate as a witness and the advocate contradicted the testimony of the director of private school number two as to class size. The testimony of the director of private school number two is more credible and persuasive than the testimony of the advocate concerning this matter. In particular the testimony of the advocate was marred by her poor memory and her inability to identify who

had told her that class sizes were bigger at private school number two. The contrary testimony of the advocate is disregarded.

Petitioner has failed to meet her burden in this matter. Respondent has prevailed upon the issues presented.

2. Relief

1. Reimbursement for Unilateral Placement.

As has been discussed in the Merits portion of this decision, it is concluded that reimbursement for unilateral placement should not be awarded to the Petitioner.

2. Prospective Private Placement.

Because Petitioner has not demonstrated any actionable violation of IDEA, her request for a prospective private placement must be denied. Branham ex rel. Branham v. District of Columbia, 427 F. 3d 7; 44 IDELR 149 (D.C. Cir. October 25, 2005).

3. Other Relief.

Although procedural violations may not result in a finding of denial of FAPE unless a parent makes the additional showing as described above, IDEA does specifically provide in the section precluding relief for procedural violations without more that "[n]othing

in this subparagraph shall be construed to preclude a hearing officer from ordering a local education agency to comply with procedural requirements." IDEA § 615(f)(3)(E)(iii). In this case, for example, an IEP meeting is overdue. Accordingly, it would be fair, equitable and appropriate relief to order Respondent to convene a meeting of the IEP team to discuss any matters that either Petitioner or Respondent wishes to discuss and to make any necessary changes to the student's IEP. Accordingly, the Order portion of this decision shall require Respondent to convene an IEP meeting, unless the parties agree otherwise, within 30 days of the day of this decision. Inasmuch as it seems to be an IEP team meeting that the parent wanted when she testified in this proceeding, it is hoped that the IEP team meeting ordered herein shall be productive and fruitful.

ORDER

Based upon the foregoing, the following is HEREBY ORDERED:

1. That unless the parties agree otherwise, Respondent is directed to convene a meeting of the student's IEP team for the student within 30 days of the date of this decision;
2. That Respondent is directed to take any and all actions necessary to effectuate the relief described in paragraph 1;
3. That Petitioner's request for reimbursement for a unilateral private placement is hereby denied;
4. That Petitioner's request that Respondent be ordered to fund a prospective private placement is hereby denied; and
5. That all other relief requested in the foregoing due process complaint is hereby denied.

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 USC §1415(i).

Date: November 10, 2010

/s/ *James Gerl*
James Gerl,
Hearing Officer