

*District of Columbia*  
*Office of the State Superintendent of Education*

Office of Review and Compliance  
Student Hearing Office  
810 First Street, NW – Second Floor  
Washington, DC 20002  
Tel: 202-698-3819  
Fax: 202-698-3825

**Confidential**

2010 OCT 15 AM 9:15  
STUDENT HEARING OFFICE  
OSSE

<p>STUDENT<sup>1</sup>, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools (“DCPS”)</p> <p>Respondent.</p> <p>Case:</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Date: October 21, 2010</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Roberta Gambale, Esq. 1220 L Street NW Suite 700 Washington, DC 20005</p> <p>Counsel for DC PCS: Kendra Berner, Esq. 1200 First Street, NW Washington, DC 20002</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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<sup>1</sup> Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

## **JURISDICTION:**

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened October 21, 2010, at the OSSE Student Hearing Office 810 First Street, NW, Washington, DC 20003, in Hearing Room 2006.

## **BACKGROUND:**

Student or "the student" is age \_\_\_\_\_ During school year ("SY") 2009-2010 the student was in the \_\_\_\_\_ grade and attended at full time special education program in a District of Columbia public school hereinafter referred to as School A. At the end of SY 2009-2010 the student aged out of School A. Petitioner alleges in the complaint that DCPS, inter alia, failed to provide the student an appropriate placement for the SY 2010-2011 and consequently, the parent sent DCPS a 10-day unilateral placement letter informing DCPS the parent would place the student at a private full time special education school, hereinafter referred to as School B, and seek DPCS reimbursement. Petitioner seeks as relief: (1) a finding that DCPS denied the student a FAPE, and (2) the student's placement by the Hearing Officer at School B with DCPS funding from the date the student was unilaterally placed there.

DCPS counsel maintained DCPS had timely issued a prior notice of placement for the student to attend a full time special education program, hereinafter identified as School C, that School C can implement the student's IEP, is an appropriate placement, and there is currently an open slot at School C for the student to immediately attend. DCPS counsel agreed at the outset of the hearing that DCPS would amend the student's IEP to provide bus transportation services, thus eliminating one of the issues raised in the complaint.<sup>2</sup>

## **ISSUE(S):<sup>3</sup>**

The issues adjudicated are: (1) Whether DCPS denied the student a FAPE by failing to provide him an appropriate placement. Petitioner alleges the DCPS proposed placement for SY 2010-2011, School C, is inappropriate. Petitioner asserts that the student's ED disability manifests differently than most students who attend School C and the student would be harmed by the other student's behaviors. Petitioner also asserts she attempted to enroll the student at School C but was told by the school staff he was not enrolled and could not attend School C thus she was

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<sup>2</sup> Petitioner alleged in the complaint that following the June 14, 2010, IEP meeting DCPS inappropriately amended the student's IEP to eliminate bus transportation and instead changed the mode of transportation to Metro fare cards. Petitioner alleged the student is not capable of navigating public transportation independently to get to and from school. Petitioner sought as relief reinstatement of bus transportation. With the stipulation and agreement by the parties that the HOD would include a reinstatement of bus transportation this issue was withdrawn as an issue to be adjudicated.

<sup>3</sup> The alleged violation(s) and/or issue(s) raised in the complaint may not directly correspond to the issue(s) outlined here. However, the parties agreed to issue(s) listed here as the issue(s) to be adjudicated.

justified in unilaterally placing the student at School B; and (2) DCPS denied the student a FAPE by failing to provide the parent meaningful participation in the placement decision. Petitioner alleges DCPS unilaterally determined the placement at School C and did not give her an adequate opportunity to review and visit the school and she was not given any alternative placements.

### **RELEVANT EVIDENCE CONSIDERED:**

The Hearing Officer considered the representations of counsel that resulted in a stipulation as noted in the findings of fact below, the testimony of the witness(es), the documents submitted in the parties' disclosures (Petitioner's Exhibits 1- 23 and DCPS' Exhibits 1-2) which were admitted into the record.

### **FINDINGS OF FACT:**

1. The student is \_\_\_\_\_ years old and resides in the District of Columbia with his parent(s), (hereinafter "Petitioner" or "Parent"). The student has been determined to be a child with a disability in need of special education and related services under IDEA. (Parent's testimony, Petitioner's Exhibit 2-1<sup>4</sup>)
2. During SY 2009-10 the student attended School A in the \_\_\_\_\_ grade. School A is a DCPS public full time special education program. (Parent's testimony, Petitioner's Exhibit 2-1)
3. On April 28, 2010, and May 3, 2010, Natasha Nelson, Psy.D. conducted a comprehensive psychological evaluation<sup>5</sup> of the student, with an evaluation report prepared May 17, 2010. As a result of her evaluation Dr. Nelson determined the student was suffering from depression and sadness plagued by not having stable friendships and feeling poorly about his academic abilities, which in turn affects his concentration and academic performance. As a result of her evaluation Dr. Nelson diagnosed the student with Dysthymic Disorder, Attention Deficit Hyperactivity Disorder ("ADHD"), Learning Disorder, Dyslexia, Adjustment Disorder and Mixed Anxiety and Depressed Mood and Disruptive Behavior Disorder. Dr. Nelson recommended the student disability classifications be identified as Emotional Disturbance ("ED"), Other Health Impairment ("OHI") for ADHD and Specific Learning Disability ("LSD"). Because of the student tendency to internalize his emotionality rather than engage in disruptive school behaviors, Dr. Nelson recommended the student be in a school setting where there are low instances of students acting out and demonstrating disruptive classroom and school behaviors and that such a school environment would likely cause further emotional difficulties for the student. (Dr. Nelson's testimony, Petitioner's Exhibit 11)

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<sup>4</sup> The second number following the exhibit number denotes the page of the exhibit from which the fact is extracted.

<sup>5</sup> The evaluation included a review of the student's previous evaluations, interviews with the student and parent, questioners from the student's teachers, and the following assessments: Woodcock Johnson III, Bender Gestalt Visual Motor Test 2<sup>nd</sup> Edition, Reynold's Adolescent Depression Scale 2<sup>nd</sup> Edition, Behavior Assessment Scale for children 2<sup>nd</sup> Edition, Conner's Rating Scale, Adolescent Sentence Completion Series.

4. The student's Woodcock Johnson scores from the May 17, 2010, evaluation report were: Broad Reading score of 82, grade equivalency ("GE"): 5.3, Broad Math score of 51 – GE: 2.8), Broad Written Language score of 55 – GE: 2.6). (Petitioner's Exhibit 11-20)
5. On May 18, 2010, DCPS convened an Individualized Educational Program ("IEP") team meeting at School A to discuss the student's upcoming educational placement for the 2010-2011 school year ("SY") as the student was aging out of School A. The parent attended the meeting. The team discussed reduction of the student's special education hours from full time to an inclusion setting and his anticipated attendance at his neighborhood high school in SY 2010-2011. DCPS completed a prior written notice on May 18, 2010, noting the discussion of the student's placement at his neighborhood high school. (Parent's testimony, Petitioner's Exhibits 8-3 and 9-1,2)
6. The parent engaged the services of an educational advocate to assist in ensuring the student is provided appropriate special education services. The educational advocate participated with the parent at a June 14, 2010, IEP meeting at School A, where the team reviewed the student's independent occupational therapy evaluation and the recent comprehensive psychological evaluation. The team determined the student's primary disability classification would be ED and OHI and SLD would also be listed as disabilities on the student's IEP. (testimony, Petitioner's Exhibit 4)
7. Contrary to the preliminary determination at the May 18, 2010, IEP meeting, at the June 14, 2010, IEP meeting the team concluded should remain in a full time special education therapeutic setting. However, there was no discussion of any specific school or location where the student's IEP would be implemented in SY 2010-2011 and the advocate believed there was to be a follow up meeting on that issue. (testimony)
8. Following the meeting the educational advocate contacted the responsible DCPS staff regarding obtaining the finalized copy of the student's IEP and information on the proposed location of services. However, the educational advocate did not receive a response to her inquiry. However, DCPS contacted the parent directly and informed her that the proposed placement was School C. The educational advocate has visited and observed students at School C. Because the student is not an aggressive student the educational advocate expressed concern the student would be adversely affected by the aggressive and disruptive behaviors she believes are frequent among students at school C. (testimony)
9. Prior to the June 14, 2010, IEP meeting the student was provided bus transportation. Although after the June 14, 2010, meeting DCPS amended the student transportation services from bus transportation to metro fare cards, at the hearing the parties stipulated and agreed the student's IEP will be amended to include bus transportation and this HOD should direct that the IEP be so amended. (Stipulation)
10. On June 21, 2010, DPCS sent Petitioner's counsel a copy of the student's draft IEP as it as developed at the June 14, 2010, IEP meeting. The IEP prescribes the following

services: 26 hours per week of specialized instruction in “outside of general education” setting and 240 minutes per month of behavioral support services. The draft IEP states that the student’s primary disability classification is SLD. (Petitioner’s Exhibit 5)

11. On June 24, 2010, DCPS program manager, \_\_\_\_\_ sent the parent a letter informing her that DCPS has determined that School C could meet the student’s needs and implement his IEP and School C would be his new location of services as of August 23, 2010. The letter also offered to schedule an opportunity for the parent to visit School C. (DCPS Exhibit 2)
12. \_\_\_\_\_ did not confer with the IEP team at School A or the parent prior to sending the letter stating the student’s school location would be School C, thus the parent had no input as to the student school location for SY 2010-2011. On July 6, 2010, the parent telephoned \_\_\_\_\_ about visiting School C. On July 14, 2010, Ms. Blythe took the parent and the student to School C and met with a staff member and had a tour of the school and asked questions. There were no students present at School C during the visit. \_\_\_\_\_ had not further contact with the parent following the visit to School C. (Parent’s testimony)
13. Although there were no students present at the school when the parent and student visited, as a result of her visit the parent concluded School C was not an appropriate placement for the student because of her perception that the behavioral difficulties of other students would have an adverse affect on her child. (Parent’s testimony)
14. As the start of SY 2010-2011 approached the parent had not received any other notification about the student attending School C. Consequently, she telephoned the special education coordinator at School C in an attempt to enroll the student at School C. The coordinator informed the parent she could not enroll the student at School C, that School C had not received the student’s enrollment information from DCPS and that DCPS procedures required that the student enrollment be facilitated by DCPS. (Parent’s testimony)
15. On August 11, 2010, the parent received a class schedule for the student to attend his neighborhood high school, School D. Based upon what she was told by the special education coordinator at School C the parent did not send the student to School C on the first day of school for SY 2010-2011. The parent did not, however, also did not call \_\_\_\_\_ once she was told the student was not enrolled at School C. She expected DCPS would contact her regarding the student placement. (Parent’s testimony)
16. On August 26, 2010, after being told the student was not enrolled at School C and after receiving the student’s class schedule for School D, the parent through counsel sent DCPS a 10-day letter informing DCPS that the parent intended to unilaterally place the student at School B because DCPS had not provided the student an appropriate placement and she would seek reimbursement from DCPS for the student’s tuition and transportation costs. (Parent’s testimony, Petitioner’s Exhibit 1-1)

17. On August 27, 2010, DCPS sent the parent's attorney a letter stating DCPS' position that School C could meet the student's needs and implement his IEP and refused to fund the private placement at School B. (DCPS Exhibit 1)
18. On September 2, 2010, Petitioner filed the due process complaint. On September 28, 2010, the parent attended a resolution meeting after the complaint filed. DCPS informed the parent at the meeting that School C was full and there was no space for the student to attend School C as of the date of the resolution session.<sup>6</sup> (Parent's testimony, Petitioner's Exhibit 17)
19. The student enrolled at School B on September 7, 2010. School B is a private full time therapeutic special education school located in Springfield, Virginia, that is providing the student the specialized instruction and behavioral support services his IEP prescribes by certified special education teachers and related service providers. The school currently has 108 students and the majority of the students have ED classification. There are full time therapists at the school who provide individual and group counseling. The student can obtain a DC high school diploma from DCPS at School B. The majority of the students at the school are funded by DCPS. The school admission staff have reviewed the student's IEP and evaluations and interviewed the student prior to his admission. (testimony)
20. Since attending School B the student's has displayed an apparent need for additional processing time to address his academic deficiencies. This need can be met at school B. At times there are students who display disruptive behaviors that are addressed by the behavior support staff. The student is in a classroom of ten students with a special education teacher. The student is progressing academically and socially and has had no behavioral difficulties since he began attending. The tuition costs for School B are per day and individual counseling is per hour. The District of Columbia government has approved these rates. The parent will be billed for the student's tuition if the DCPS funding is not provided. (testimony)
21. School C is a public full time special education school that has certified special education teachers and related services providers. School C was started three years ago by DCPS for students with a primary ED classification. The school currently has 119 students from grades 9 through 12. All students are on diploma tract and there are five social workers on staff to provide students with counseling and behavioral support services. In each classroom there is either a special education teacher also certified in the content area or a certified special education teacher to assist the teacher certified in the content area in providing the student's specialized instruction. There is a dedicated behavioral intervention team of eight behavioral specialists who monitor students and assist with any behavioral difficulties. There is a transition specialist on staff. There is behavioral

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<sup>6</sup> DCPS counsel presented no evidence to refute the parent's testimony she was told by School C the student was not enrolled and presented no any evidence to refute the parent's testimony she was told at the resolution session that there was no space for the student at School C. Subsequent to the resolution meeting and as of the date of the hearing DCPS asserts there is space at School C for the student.

management token economy system to assist in managing students' behavior. Each floor has a time-out room for students to assist them in working through emotional and behavioral disruptions. Most classes have no more than 10 students in a classroom with at least one special education teacher. There are other students at the school who like this student are withdrawn and do not present with behavioral difficulties. There are sufficient counseling services available to assist a student in social skill development. School C can implement the student's IEP. However, none of the students have SLD as their primary disability classification. (testimony)

22. The student feels he is getting along well with his classmates at School B and he feels he progressing well there academically. He appreciates that that there are not students acting out in classroom which would cause him not be able to concentrate and apply himself academically. The student is happy with the supports he is getting at School B and wants to stay there because teachers gives him individualized attention and the other students are generally well behaved. The academics are not too difficult for the student; however, he feels he is being challenged academically. (Student's testimony)
23. The student receives individual counseling services at School B from Dr. James Crawford, a clinical psychologist. Dr. Crawford meets with the student once per week. The student had been forthcoming in sharing his feelings during counseling sessions. Dr. Crawford believes social skills deficits have been a challenge for the student historically. However, the student seems to be developing socially since he has been attending School B. Dr. Crawford believes given the student current social/emotional functioning he would be at high risk for additional anxiety and depression if he were to suddenly have to change schools. (Dr. Crawford's testimony)
24. The student's math teacher at School B has found that the student is getting along well with students in his class. However, the student is usually quiet and reserved. The student struggles but with the accommodations provided is able to handle the curriculum. The student's teachers are either certified in content area and/or special education. A special education teacher supervises all teachers not certified in special education. (testimony, Dr. Warnke's testimony)

#### **CONCLUSIONS OF LAW:**

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

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

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking

relief.<sup>7</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

**Issue (1):** (1) Whether DCPS denied the student a FAPE by failing to provide him an appropriate placement. Conclusion: Petitioner sustained the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.17 provides that a free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324.

Petitioner alleges the DCPS proposed placement for SY 2010-2011, School C, is inappropriate because his placement there would be detrimental due to disruptiveness of other students. However, the evidence does not support such a conclusion. [redacted] credibly testified that School C can implement the student's IEP and that the program's staff is sufficiently equipped to address any disruptive student behaviors and such behaviors do not occur with any frequency.

[redacted] testimony in this regard with his personal knowledge and experience in managing the program at School C was more credible than the educational advocate's testimony to the contrary. Thus, this Hearing Officer does not conclude that School C is an inappropriate placement for the student.

Petitioner also alleges, however, that DCPS did make FAPE available to student because at the start of the SY 2010-2011 School C was not an available placement for the student. Petitioner credibly testified that although DCPS sent her a letter stating the student's placement for SY 2010-2011 would be School C and she visited the school in July 2010; when she attempted to enroll the student at School C she was told by the school staff the student was not enrolled there and could not attend. In addition, Petitioner credibly testified she received a class schedule for the student in the mail for SY 2010-2011 from School D, the student's neighborhood high school. Although the June 24, 2010, letter sent by DCPS states School C is where the student was to attend, prior to the first day of school there was no action by DCPS to allow the student to attend School C, and apparently based on the class schedule sent to the parent there was for DCPS as well as the parent uncertainty as to where the student was to attend.

On May 18, 2010, when DCPS was considering placing the student at his neighborhood school for SY 2010-2011, DCPS completed a prior written notice. Following the June 14, 2010, meeting in which the team determined the student would remain in a full time special education program there was no such prior written notice issued for the student's placement.

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<sup>7</sup> 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 with FAPE.

Pursuant to 34 C.F.R. § 300.503<sup>8</sup> DCPS must provide the parent prior written notice in a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the a special education student. Although DCPS sent a letter on June 24, 2010 identifying the student's location of services, the Hearing Officer notes that no prior notice was issued as was done at the May 18, 2010, meeting. DCPS counsel asserts that although the June 24, 2010, letter may not be in the usual form of a prior written notice it satisfies the requirements of notifying the parent of the student's placement.

With the apparent confusion about where the student was to attend school for SY 2010-2011 the parent sent DCPS a 10-day letter in compliance with 34 C.F.R. 148 informing of her intent to enroll the student in School B and seek reimbursement. Although DCPS sent a letter in response stating that School C was an appropriate placement for the student, again at the resolution session held once the due process complaint was filed, DCPS maintained there was no space for the student at School C. DCPS presented no evidence at the hearing to refute the parent's credible testimony she was told by School C the student was not enrolled and presented no evidence to refute the parent's credible testimony she was told at the resolution session that there was no space for the student at School C.

Pursuant to 34 C.F.R. §300.148 - If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enrolls the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. (Authority: 20 U.S.C. 1412(a)(10)(C))<sup>9</sup>

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<sup>8</sup> 34 C.F.R. § 300.503 (a) Notice. 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-- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (b) Content of notice. The notice required under paragraph (a) of this section must include-- (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; (Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

<sup>9</sup> 34 C.F.R. §300.148 (a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with Sec. Sec. 300.131 through 300.144. (b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in Sec. Sec. 300.504 through 300.520. (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental

This Hearing Officer concludes that as of the start of SY 2010-2011 DCPS had not made FAPE available to the student in a timely manner prior to his enrollment at the private placement. Based on the credible evidence the parent was informed by School C that the student was not enrolled in the school and the class schedule being sent by DCPS to the parent for the neighborhood high school which is not a full time special education program, and the fact that there was no space at School C for the student even as of the date of resolution meeting, the Hearing Officer concludes the parent was justified in unilaterally placing the student at School B. There was credible testimony that School B can implement the student IEP, is an appropriate placement for the student and can and is providing him educational benefit. Although the evidence demonstrates School C is now available for the student and is also an appropriate placement for him, the evidence demonstrates and this Hearing Officer concludes it would be severely detrimental to the student to be removed from School B now and he should remain in the placement for the remainder of SY 2010-2011. Accordingly, in the order below DCPS is directed to fund the student's tuition at School B.

**Issue (2):** Whether Respondent denied the student a FAPE by failing to allow the parent meaningful participation in the placement/program decision for the 2010-2011 school year?  
Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. 501(c) (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in Sec. 300.322(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

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placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. (d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied-- (1) If-- (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. (e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement-- (1) Must not be reduced or denied for failure to provide the notice if-- (i) The school prevented the parents from providing the notice; (ii) The parents had not received notice, pursuant to Sec. 300.504, of the notice requirement in paragraph (d)(1) of this section; or (iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if--(i) The parents are not literate or cannot write in English; or (ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child. (Authority: 20 U.S.C. 1412(a)(10)(C))

Petitioner alleges DCPS unilaterally determined the placement at School C and did not give her an adequate opportunity to review and visit the school and she was not given any alternative placements. However, the evidence clearly demonstrates the parent had input at the June 14, 2010, IEP meeting as to the appropriate educational setting in which the student would be placed for SY 2010-2011. In fact, at the June 14, 2010, meeting the team reversed the prior determination that the student should attend his neighborhood high school and the draft IEP clearly stated the student's instruction and least restrictive environment ("LRE") would be "out of general education."

Although the student location of services was determined by DCPS and communicated to the parent after the June 14, 2010, meeting she was provided an opportunity to visit the proposed location. This Hearing Officer believes that ideally even the location of services should be proposed in a manner where the parent can provide input, but in this instance given the parent's involvement in determining the student's educational setting and LRE this was not an instance where the parent was not provided opportunity to participate in the placement decision for her child. Consequently, this Hearing Officer concludes Petitioner did not sustain the burden of proof that there was a violation of 34 C.F.R. 501(c) or that DCPS significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE to the student.

**ORDER:**

1. DCPS shall within 30 calendar days of the issuance of this order amend the student's IEP to provide for bus transportation services.
2. DCPS shall as of the date of this order place and fund the student at School B for the remainder of the 2010-2011 school year and provide bus transportation services.
3. DCPS shall be responsible for payment for the student's tuition and costs at School B from the date of his first attendance on September 7, 2010.
4. At the conclusion of the 2010-2011 school year DCPS should, as is customary, determine the student's placement for SY 2011-2012 and determine an appropriate placement pursuant to the DC Code § 38-2561.02 (b) and (c).<sup>10</sup>

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<sup>10</sup> DC Code § 38-2561.02 (b) DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this chapter and the IDEA. (c) Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;(2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia.

**APPEAL PROCESS:**

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



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**Coles B. Ruff, Esq.**  
**Hearing Officer**  
**Date: November 12, 2010**