DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
1150 Fifth Street, S.E.
Washington, DC 20003

STUDENT,[1]	)	
	)	
Petitioner,	)	Case Number:
	)	
v.	)	Hearing Date: November 23, 2010
	)	Hearing Room 2004
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	Hearing Officer: Frances Raskin
	)	
Respondent.	)	

2010 DEC -6 AM 9:00
STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Improvement Act of 2004 ("IDEA"), codified at 20 U.S.C. §§ 1400 *et seq.*, D.C. Code §§ 38-2561.01 *et seq.*; the federal regulations at 34 C.F.R. §§ 300.1 *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000 *et seq.*

II. BACKGROUND

Petitioner is a resident of the District of Columbia who is eligible for special education as a student with specific learning disability.[2] Petitioner currently attends a non-public school ("Non-Public School") in Washington, D.C.[3]

On September 9, 2010, Petitioner filed a Due Process Compliant ("Complaint") against the District of Columbia Public Schools ("DCPS") pursuant to IDEA. This Hearing Officer was appointed to preside over this case on September 13, 2010. Respondent DCPS filed a response to the Complaint on September 17, 2010.

The parties participated in a resolution meeting on October 1, 2010. The parties were unable to resolve the Complaint and agreed to proceed to a due process hearing. Thus, the resolution period ended on October 1, 2010. The parties agreed that the forty-five day, due process hearing timeline began on October 2, 2010.

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[1] Personal identification information is provided in Attachment A.
[2] Petitioner Exhibit 2, p. 1 (Dec. 17, 2009, individualized educational program ("IEP").
[3] Testimony of Petitioner, parent, Acting Head of Non-Public School.

The due process hearing commenced on November 23, 2010. At the inception of the hearing, this Hearing Officer admitted into evidence Petitioner's exhibits 1-10 and DCPS exhibits 1-5. Petitioner testified and presented three additional witnesses on her behalf. DCPS presented one witness. After the parties presented oral closing arguments, the due process hearing concluded.

IV. ISSUES PRESENTED

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether DCPS denied Petitioner a free, appropriate, public education ("FAPE") by developing an individualized educational program ("IEP") that fails to provide sufficient hours of specialized instruction and related services and lacks appropriate transition goals;

B. Whether the non-public school in which Petitioner unilaterally enrolled is appropriate; and

C. Whether Petitioner is entitled to reimbursement for the costs of her enrollment at the non-public school.

V. FINDINGS OF FACT

1. Petitioner is a special-education student who attends a Non-Public School where she is enrolled in a diploma-track program.[4] During the 2009-2010 school year, Petitioner attended a DCPS high school ("DCPS School") in the District of Columbia.[5] Petitioner is four credits shy of earning her high school diploma.[6] She also must earn one hundred hours of community service credits to receive her diploma.[7]

2. Petitioner was identified as having a specific learning disability when she was in third grade.[8] The Student has significantly below average verbal intelligence and verbal reasoning.[9] She has average nonverbal intelligence.[10] Her nonverbal reasoning skills range from

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[4] Testimony of Petitioner; Acting Head of Non-Public School.
[5] Testimony of Petitioner, Parent, and DCPS Special Education Coordinator ("SEC").
[6] Testimony of Petitioner; Acting Head of Non-Public School.
[7] Testimony of Acting Head of Non-Public School.
[8] DCPS Exhibit 2, p. 2 (DCPS Confidential Psychological Evaluation). The evaluator did not testify at the due process hearing and this Hearing Officer cannot discern whether this evaluation was conducted in October or November 2010. The report states that the evaluation was conducted on November 8, 2010, although the report is dated October 16, 2010.
[9] *Id.* at p. 5.
[10] *Id.*

average to below average.[11] Thus, her verbal and nonverbal intelligence skills are not evenly developed for some tasks.[12] Her composite intelligence is moderately below average.[13]

3. Petitioner's academic performance is very low compared to her same-age peers.[14] In broad reading, she performs equivalent to students in the ninth month of second grade.[15] Her reading ability is very low, below the first percentile of her same-age peers.[16] This suggests that she has negligible reading ability.[17] Reading tasks above the third grade, fifth month level will be quite difficult for her.[18]

4. Petitioner's spelling abilities are equivalent to students in the second month of fourth grade.[19] Her spelling is in the second percentile.[20]

5. Her broad math ability is equivalent to students in the fourth month of fourth grade.[21] Her overall math skills are in the first percentile of her same-age peers.[22] Thus, her mathematical achievement lags many years behind high school level.[23] Math calculation tasks above the seventh-grade, eighth-month level will be quite difficult for her.[24]

6. Petitioner also has a speech-language impairment that can negatively impact her ability to access academic instruction.[25] Her overall (core) language ability is in the low range of functioning and in the fifth percentile of her same-age peers.[26] Her listening and language comprehension (receptive language) abilities are in very low range of functioning, below the first percentile of her same-age peers.[27] Her use of language (expressive language) and language memory is average.[28] Her semantic knowledge is below the first percentile of her same-age peers and in the very low range of functioning.[29]

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[11] *Id.* at p. 6. Petitioner's average- to below-average nonverbal reasoning skills indicate that she does not have an intellectual deficiency. *Id.* Moreover, her adaptive functioning is in the average range. *Id.* at pp. 6-7.
[12] *Id.* at p. 5.
[13] *Id.*
[14] DCPS Exhibit 2.
[15] *Id.* at p. 7.
[16] *Id.* at p. 8.
[17] *Id.*
[18] *Id.*
[19] *Id.* at p. 7.
[20] *Id.* at p. 8.
[21] *Id.* at p. 7.
[22] *Id.* at p. 8.
[23] *Id.*
[24] *Id.*
[25] Petitioner Exhibit 5 at p. 6 (August 7, 2010, Independent Speech-Language Evaluation).
[26] *Id.* at p. 4 (August 7, 2010, Independent Speech-Language Evaluation).
[27] *Id.*
[28] *Id.*
[29] *Id.*

7. Petitioner continues to struggle in all academic areas and to lag behind her same-age peers despite receiving targeted interventions to address her reading, writing, and math difficulties.[30] She tends to view herself as having some difficulty maintaining the levels of attention necessary for academic functioning.[31] She also is dissatisfied with her ability to perform a variety of tasks even when she puts forth substantial effort.[32] Her English teacher views Petitioner as exhibiting signs of possible anxiety and depression.[33] She also presents some minor behavior issues at school.[34] She is sometimes mean to peers, argumentative, and verbally aggressive.[35] These issues do not appear to be so significant to present a barrier to school achievement.[36] She likely would benefit from interventions designed to help her engage in more appropriate behavior toward peers, decrease her anxiety and depressive feelings, and decrease her verbal aggression.[37]

8. Petitioner's deficient verbal reasoning skills and low academic achievement limit her ability to access the general education curriculum without special education services in all core academic subjects.[38] She should be provided the opportunity to take classes with nondisabled peers to the extent that she still needs to earn credits for non-core academic courses.[39] Accommodations that may benefit her include extended time, use of a calculator when necessary, teacher proximity, preferential seating, and reduced classroom distractions.[40] She also requires sixty minutes per week of direct speech-language intervention.[41]

9. Petitioner's current IEP provides 3.75 hours of specialized instruction per week in the general education setting and 3.75 hours of specialized instruction per week outside the general education setting.[42] It provides no related services, no dedicated aide, and no extended school year.[43] The IEP provides accommodations in the form of small group testing and extended time on subtests.[44] It also includes a post-secondary transition plan.[45]

10. During fall 2009, Petitioner was placed in large, overcrowded, general-education classes at the DCPS School.[46] She was accustomed to being in classes with fewer students and

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[30] DCPS Exhibit 2 at p. 10.
[31] *Id.* at p. 9.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.* at p. 10.
[36] *Id.* Petitioner's depression and anxiety are not of such a magnitude to be characteristic of an emotional disturbance. *Id.*
[37] *Id.* at p. 11.
[38] *Id.* at p. 10.
[39] *Id.*
[40] *Id.*
[41] Petitioner Exhibit 5 at p. 6.
[42] Petitioner Exhibit 2, p. 4 (December 17, 2009, IEP).
[43] *Id.* at pp. 4-6.
[44] *Id.* at p. 6.
[45] *Id.*
[46] Testimony of Petitioner, Parent.

individualized attention at the charter school she attended the prior year.[47] She struggled in her general education classes at the DCPS School.[48] Petitioner then started skipping class and her grades declined.[49] By December 2009, she had missed twenty-five days of school.[50]

11. In November 2009, DCPS placed Petitioner in a special education academy ("Academy") at the DCPS School.[51] In the Academy, she was in a small setting with only five to ten students in each classroom.[52] During her time in the Academy, Petitioner received the individual instructional assistance she required.[53] Her grades recovered, and her self-esteem improved.[54] She also attended class regularly.[55]

12. After Petitioner was in the Academy for about four months, DCPS removed some of the special-education teachers to teach inclusion classes.[56] Petitioner followed these teachers to inclusion classes for part of the day.[57]

13. By March or April 2010, DCPS removed Petitioner from the Academy and placed her in a mix of general education and inclusion classes with ten to twenty students per class.[58] In these classes, Petitioner could not access the instruction and was not getting the individualized instruction she required to access the curriculum.[59] She became frustrated, her grades fell, and eventually she stopped attending school.[60]

14. DCPS disbanded the Academy at the end of the 2009-2010 school year.[61] Her grades at the end of the year included seven Fs and three Ds.[62] She received Bs and Cs in the remaining six classes. Four of these six classes were learning labs or electives.[63] The remaining

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[47] *Id.*
[48] *Id.*
[49] Testimony of Petitioner.
[50] Petitioner Exhibit 2 at p. 12 (Analysis of Existing Data).
[51] *Id.*; Testimony of Parent.
[52] Testimony of Parent.
[53] *Id.*; Testimony of Petitioner.
[54] Testimony of Parent; DCPS Exhibit 3 (IEP Progress Report for Reporting Period 4 (4/13/10 - 6/17/10)).
[55] Testimony of Petitioner, Parent.
[56] *Id.*; Testimony of DCPS SEC.
[57] Testimony of Petitioner, Parent.
[58] *Id.*
[59] *Id.*
[60] *Id.*; DCPS Exhibit 3; Petitioner Exhibit 8 at 2 (Educational Advocate's notes from August 27, 2010, IEP meeting).
[61] Testimony of DCPS SEC.
[62] Petitioner Exhibit 10 (DCPS Transcript, printed August 27, 2010).
[63] *Id.*

two were Developmental Reading and Algebra II and Trigonometry, in which she received a B and a C, respectively.[64]

15. In June 2010, the Non-Public School accepted Petitioner for the 2010-2011 school year.[65] Petitioner attended summer school at the DCPS School and earned passing grades of D in world history and French.[66]

16. DCPS held an IEP meeting August 27, 2010, to review the Student's independent psychological, speech-language, and vocational evaluations, which had been conducted over the summer of 2010.[67] Petitioner attended the IEP meeting by telephone from her home as she was not enrolled in school.[68] The Educational Advocate, DCPS Special Education Coordinator, and a DCPS psychologist attended the meeting.[69] The DCPS psychologist informed the IEP team that the independent psychological assessment was invalid because it lacked a report from Petitioner's teacher and the evaluator was not a licensed psychologist in the District of Columbia.[70]

17. At the August 27, 2010, the IEP team briefly discussed the findings of the student's vocational assessment.[71] The IEP team did not review Petitioner's speech-language evaluation. The IEP also did not develop any new transition goals or otherwise revise Petitioner's IEP in light of the independent evaluations.[72]

18. On August 31, 2010, Petitioner began attending the Non-Public School.[73] On September 7, 2010, counsel for Petitioner informed DCPS that the Student invoked her rights to a unilateral placement at the Non-Public School and requested that DCPS fund her enrollment there.[74]

19. The Non-Public School has a total of thirty-five, special education students between the ages of twelve and twenty.[75] No general education students attend the Non-Public

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[64] *Id.* Considering that Petitioner performs on a fourth-grade level in math, this Hearing Officer is curious as to how she managed to earn a C in Algebra II and Trigonometry, which is a higher-level, general education subject.
[65] Petitioner Exhibit 9 (June 10, 2010, Acceptance Letter).
[66] Testimony of Petitioner; Petitioner Exhibit 10.
[67] Testimony of Educational Advocate.
[68] *Id.*
[69] Petitioner Exhibit 8 at p. 2.
[70] *Id.*; Testimony of Educational Advocate.
[71] Petitioner Exhibit 8 at 2.
[72] *Id.*; Testimony of Educational Advocate.
[73] Testimony of Parent.
[74] Petitioner Exhibit 7 (September 7, 2010, Email from M. Hull to C. Adams, L. George).
[75] Testimony of Acting Head of Non-Public School.

School.[76] However, the special education students at the Non-Public School interact with non-disabled peers during their community service hours when they volunteer at a public school.[77]

20. The classrooms at the Non-Public School have five students to each teacher.[78] All of the classes are co-taught by general education and special education teachers so that Non-Public School students may earn high school diplomas.[79] The Non-Public School offers post-secondary transition opportunities through community-based organizations that provide internships and apprenticeships.[80]

21. Petitioner has maintained steady attendance at the Non-Public School and completes her schoolwork.[81] She is progressing at the Non-Public School, her reading has improved, her self-esteem has increased, and she is eager to go to school.[82] She is passing all her classes at the Non-Public School.[83]

VI. CREDIBILITY DETERMINATIONS

The testimony of all the witnesses at the hearing was credible. The DCPS Special Education Coordinator corroborated the testimony of Petitioner and her mother. DCPS presented no other witnesses to rebut the testimony of Petitioner's witnesses.

VII. CONCLUSIONS OF LAW

IDEA guarantees children with disabilities the right to a free and appropriate public education with services designed to meet their individual needs.[84] FAPE is defined as:

> [S]pecial education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA…include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)…"[85]

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[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] Testimony of Parent; Testimony of Acting Head of Non-Public School.
[82] Testimony of Parent.
[83] Testimony of Acting Head of Non-Public School.
[84] 20 U.S.C. §§ 1400(d) (1)(A), 1412 (a) (1); *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Shaffer v. Weast*, 546 U.S. 49, 51 (2005).
[85] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.

In deciding whether DCPS provided Petitioner a FAPE, the inquiry is limited to (a) whether DCPS complied with the procedures set forth in IDEA; and (b) whether Petitioner's IEP is reasonably calculated to enable Petitioner to receive educational benefit.[86]

In matters alleging a procedural violation, a hearing officer may find that the 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.[87] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[88]

Once a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals.[89] The court should not "disturb an IEP simply because [it] disagree[s] with its content."[90] The court is obliged to "defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides."[91]

The burden of proof is properly placed upon the party seeking relief.[92] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[93]

VIII. DISCUSSION

A. Petitioner Failed to Prove that DCPS Failed to Develop an Appropriate IEP for the 2009-2010 School Year.

The IEP is the centerpiece of special education delivery system.[94] An appropriate educational program begins with an IEP that accurately reflects the results of evaluations to identify the student's needs,[95] establishes annual goals related to those needs,[96] and provides appropriate specialized instruction and related services.[97] The program must be implemented in

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[86] *Rowley,* 458 U.S. at 206-207.
[87] 34 C.F.R. § 300.513 (a)(2).
[88] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[89] *Tice v. Botetourt County School Board*, 908 F.2d 1200, 1207 (4th Cir. 1990) (internal citation and quotations omitted).
[90] *Id.*
[91] *Id.*
[92] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[93] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[94] *Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ.*, 397 F.3d 77, 81 (2d Cir. 2005) (internal quotation marks omitted).
[95] 34 C.F.R. § 300.320 (a) (1).
[96] 34 C.F.R. § 300.320 (a) (2).
[97] 34 C.F.R. § 300.320 (a) (4).

the least restrictive environment ("LRE").[98] For an IEP to be "reasonably calculated to enable the child to receive educational benefits," it must be "likely to produce progress, not regression."[99]

The adequacy of the student's IEP is determined by whether the student has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child."[100] IDEIA does not require that the services provided maximize each child's potential.[101]

Here, Petitioner failed to present any evidence on the appropriateness of the December 17, 2009, IEP at the time it was developed. First, Petitioner presented no testimony on whether DCPS complied with the procedures set forth in IDEA. In other words, Petitioner presented no evidence to show that, in December 2009, DCPS failed to convene an appropriate IEP team, failed to review the Student's current educational evaluations, or failed to tailor the Student's IEP to meet her individual needs. Second, Petitioner presented no evidence to show that, based on the information available to the IEP team in December 2009, her IEP was not reasonably calculated to enable her to receive educational benefit.

Thus, Petitioner failed to show that DCPS denied her a FAPE by failing to develop an appropriate IEP for the 2009-2010 school year. Because Petitioner has the burden of proof, and failed to meet that burden, DCPS is the prevailing party on this issue.

B. Petitioner Proved that DCPS Denied Her a FAPE by Failing to Develop an Appropriate IEP for the 2010-2011 School Year.

In developing an IEP, the team must consider the strengths of the child; concerns of the parents for enhancing the education of the child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child.[102] An IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.[103]

At the August 27, 2010, meeting, DCPS failed to even discuss Petitioner's most recent evaluations. The IEP team may have been justified in refusing to consider the independent psychological evaluation on the ground that the evaluator was not licensed in the District of Columbia.[104] However, the IEP team failed to consider the other independent evaluations, much less revise her IEP in light of evaluative data that showed she required direct speech-language

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[98] 20 U.S.C. § 1412 (a) (5); 34 C.F.R. §§ 300.114 (a) (2), 300.116 (a) (2).
[99] *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119, 130 (2d Cir. 1998) (internal quotation marks and citation omitted).
[100] *Rowley,* 458 U.S. at 201 (1982).
[101] *Id.* at 198.
[102] 34 C.F.R. § 300.324 (a).
[103] 34 C.F.R. § 300.320 (a) (1); 5 D.C.M.R. § 3007.2 (a).
[104] *See* 34 C.F.R. § 300.502 (c)(1) (parent-initiated independent evaluation must be considered by public agency *if* it meets agency criteria) (emphasis added).

services, at a minimum.[105]

As stated above, the IEP team also had an obligation to discuss Petitioner's academic needs and her failures the prior school year.[106] Had they done so, they may well have come to the same conclusions as the DCPS Psychologist eventually reached in the October 16, 2010, psychological evaluation, i.e., that Petitioner requires specialized instruction outside the general education environment for all core subjects.

Thus, Petitioner proved that DCPS failed to comply with the procedural requirements of IDEA. Petitioner further proved that DCPS denied the Student a FAPE by failing to develop an appropriate IEP on August 27, 2010.

In light of Petitioner's failure to attend school in the spring of 2010, the IEP team had an obligation to discuss strategies to improve her attendance.[107] Instead, they simply terminated the meeting after finding the psychological evaluation invalid.

Thus, Petitioner proved that DCPS denied her a FAPE when it failed to develop an appropriate IEP on August 27, 2010. Petitioner is the prevailing party on this claim.

C. Petitioner Proved that She is Entitled to Reimbursement for the Costs of Enrollment in the Non-Public School.

IDEA contemplates that a student's IEP "will be implemented where possible in regular public schools, with the child participating as much as possible in the same activities as non-handicapped children, but also provides for placement in private schools at public expense where this is not possible."[108] The District is required only to make available a "basic floor of opportunity" that is "reasonably calculated to enable the child to receive educational benefits."[109]

However, IDEA authorizes reimbursement for the cost of private education when a parent unilaterally enrolls a child in private school because the public school has proposed an inadequate IEP and thus failed to provide a FAPE.[110] Here, DCPS failed to develop an appropriate IEP for Petitioner on August 17, 2010.

Considering the turmoil Petitioner experienced at the DCPS School during the 2009-2010 school year, this Hearing Officer finds that Petitioner's decision to enroll herself in the Non-Public School was appropriate. The fact that her counsel failed to diligently represent her by failing to timely provide notice of the unilateral placement does not outweigh the failure of DCPS to develop an appropriate IEP for the 2010-2011 school year.

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[105] *See id.*
[106] 34 C.F.R. § 300.324 (a).
[107] *See* 34 C.F.R. § 300.324 (a). (In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior).
[108] *Burlington v. Dept. of Ed.*, 471 U.S. 359, 370 (1985).
[109] *Kerkam v. McKenzie*, 882 F.2d 884, 886 (D.C. Cir. 1988) (citing *Rowley*, 458 U.S. at 195).
[110] *Burlington*, 471 U.S., at 369.

Moreover, the Non-Public School is an appropriate location of services for the Student. It has provided the small, structured classes that she requires and she has made academic progress since enrolling. Thus, this Hearing Officer finds that Petitioner is entitled to reimbursement for the costs of enrollment in the non-public school.

D. **Petitioner Failed to Prove that the Non-Public School is the Least Restrictive Environment.**

IDEA requires that unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.[111] In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs.[112] A child with a disability is not removed from education in age appropriate regular classrooms solely because of needed modifications in the general education curriculum.[113]

The considerations relevant to determining whether a particular location of services is appropriate for a student include the nature and severity of the student's disability; the student's specialized educational needs; the link between those needs and the services offered by the school; the placement's cost; and the extent to which the location represents the least restrictive environment.[114]

To the maximum extent appropriate, children with disabilities, including children in public or private institutions with other care facilities, are to be educated with children who are nondisabled.[115] This requirement also applies to non-academic and extracurricular services and activities such as recess, meals, athletics, counseling, groups, and clubs.[116]

In the District of Columbia, 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 IDEA:

(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.[117]

Here, Petitioner did not challenge the conclusions of the DCPS October 2010 psychological evaluation. This evaluation recommended that Petitioner receive specialized

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[111] 34 C.F.R. § 300.116 (c).
[112] 34 C.F.R. § 300.116 (d).
[113] *Id.* at (e).
[114] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202).
[115] 34 C.F.R. 300.114 (2) (i).
[116] 34 C.F.R. § 300.117.
[117] D.C. Code § 38-2561.02.

instruction outside the general education environment for her core classes. It also recommended that Petitioner be exposed to her non-disabled peers for elective classes. Petitioner presented no evidence to the contrary. Thus, Petitioner failed to prove that the Non-Public School is her least restrictive environment.[118] For this reason, this Hearing Officer does not believe it would be appropriate to place the Student at the Non-Public School for the remainder of the 2010-2011 school year.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 3rd day of December 2010, it is hereby:

ORDERED that, on or before December 17, 2010, DCPS shall convene a meeting of Petitioner's IEP team to review her November 8, 2010, psychological evaluation, revise her IEP to provide specialized instruction in all core academic areas outside the general education setting with a low student-teacher ratio not to exceed ten students to each teacher;

IT IS FURTHER ORDERED that, on or before December 17, 2010, DCPS shall convene a meeting of Petitioner's IEP team to review her July 26, 2010, vocational assessment and review and revise the transition goals on her IEP;

IT IS FURTHER ORDERED that, on or before December 17, 2010, DCPS shall convene a meeting of Petitioner's IEP team to review Petitioner's August 7, 2010, speech and language evaluation, provide her sixty minutes per week of direct speech-language therapy, and review and revise the speech-language goals on her IEP;

IT IS FURTHER ORDERED that DCPS shall bear all expenses of the Petitioner's enrollment at the Non-Public School from August 2010 until January 2011, as well as all transportation costs; and

IT IS FURTHER ORDERED that, on or before January 3, 2010, DCPS shall provide Petitioner a Prior Notice of Placement to a location of services that can both implement the IEP required by this Hearing Officer Determination and provide her the Carnegie units necessary to earn a DCPS diploma.

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[118] *See* D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

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).

Distributed to:

Miguel Hull, counsel for Petitioners
Laura George, counsel for Respondent
Hearing Office
dueprocess@dc.gov

APPENDIX A

Jaconna Fogle v. District of Columbia Public Schools
Docket No. 2010-1150

Petitioner/Student	Jaconna Fogle
Date of Birth	November 10, 1991
Student ID No.	9011155
Parent	Yvonne Fogle
Petitioner's Educational Advocate	Juan Fernandez
Non-Public School	The Monroe School, Washington D.C.
DCPS School	Dunbar Senior High School
DCPS Special Education Coordinator	Philip Shecter
Acting Head of Non-Public School	Ruth Logan-Stanon