

DEC 27 2011

DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
Student Hearing Office  
810 First Street, N.E.  
Washington, D.C. 20002

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Parents, on behalf of, Student<sup>1</sup>,

Petitioner,

Hearing Officer: James McKeever

v.

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS

Respondent.

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HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was brought in accordance with the rights established under the Individuals with Disabilities Education Act 2004 ("IDEIA"), and its implementing regulations codified at 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. INTRODUCTION AND PROCEDURAL BACKGROUND

Petitioner is the parent of Student, a year-old boy who is classified as a student with a specific learning disability and who attends a Private School in the District of Columbia for the 2011-2012 school year. On October 11, 2011, Petitioner filed a Due Process Complaint ("DPC") against the District of Columbia Public Schools (DCPS) alleging violations of the Individuals with Disabilities Education Act ("IDEA").

Respondent did not challenge the sufficiency of the DPC. DCPS filed its response to the DPC on October 31, 2011.

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<sup>1</sup> Case information listed at Appendix "A."

The parties participated in a resolution meeting on October 19, 2011, but were unable to resolve the complaint. The resolution period expired on November 11, 2011. The forty-five day due process hearing timeline began on November 12, 2011. The prehearing conference PHC was held on November 14, 2011. Counsel for Petitioner and counsel for DCPS participated in the prehearing conference.

On November 15, 2011, a Prehearing Summary and Order was issued. The issues identified for the hearing are set forth below.

The parties filed their disclosures on December 5, 2011. On December 8, 2011, Petitioner filed objections to Respondent's Exhibits R-1, the IEP dated May 31, 2011 and Respondent's Exhibit R-2, Prior Written Notice, dated October 28, 2011.

The Due Process hearing was held on December 12, 2011 and continued on December 13, 2011.

Petitioner's objections to R-1 and R-2 were addressed on the record at the impartial hearing. Petitioner asserted that R-1 and R-2 were not relevant because the parent had not received either document until Respondent's disclosures were filed on December 5, 2011. R-1 was admitted over Petitioner's objection as it was the IEP in dispute and, as such, it was relevant and material to the issues raised in the DPC. R-2 was initially marked for identification, subject to connection from a DCPS witness. R-2 was admitted into evidence after Respondent's witness testified that it was generated by DCPS as a result of the parent's unilateral placement.

Petitioner's Exhibit's 1-53<sup>2</sup> and Respondent's Exhibits 1-12 were admitted into evidence.

The following witnesses testified on behalf of the Petitioner: Parent; Parent's Evaluator, who was qualified as an expert in special education

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<sup>2</sup> A list of all Exhibits entered into evidence is annexed hereto at Appendix "B."

programming, Curriculum Coordinator (CC) at the Private School, who was qualified as an expert in special education and a Speech Pathologist at the Private School, who the parties stipulated was an expert in speech and language pathology.

The following witnesses testified on behalf of the Respondent: Special Education Coordinator (SEC), who was qualified as an expert in IEP development; and a DCPS School Psychologist, who was qualified as an expert in special education programming

### III. ISSUES PRESENTED

The following issues were certified for adjudication at the due process hearing:

a. Whether DCPS denied the Student a free and appropriate public education by failing to timely conduct an initial evaluation of the Student after the parent requested evaluations in October 2009 and in June 2010.

b. Whether DCPS denied the Student a free and appropriate public education during the 2010-2011 school year by not convening an IEP meeting until March 2011, eight months after they received the Student's psychological and speech and language evaluations.

c. Whether DCPS denied the Student a free and appropriate public education by failing to timely offer the Student Extended School Year services in the summer of 2010.

d. Whether DCPS denied the Student a free and appropriate public education during the 2010-2011 school year by failing to offer the Student a sufficient amount of special education services.

e. Whether DCPS denied the Student a free and appropriate public education during the 2011-2012 school year by failing to offer the Student a placement.

DCPS asserted a general denial to the allegations contained in the DPC and contends that DCPS was not obligated to offer the Student a FAPE for the subject school years because the parents made it known to DCPS that they would not accept any placement offered by DCPS.

Petitioner requests an Order directing DCPS to fund the Student's placement at the School for the 2011-2012 school year.

#### IV. FINDINGS OF FACT

The Student is a      year-old boy who currently lives with his parents in the District of Columbia and who was classified as a Student with a specific learning disability. The Student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), speech and language delays and has deficits in reading comprehension, math and written expression. From Pre-K through the 5<sup>th</sup> grade, the Student attended a parochial school located within the District of Columbia (Exhibit P-1, DPC and Exhibit R-10).

On October 1, 2009 the parents contacted DCPS to request an initial evaluation because the Student was not meeting his academic goals at the parochial school (Parent testimony, DPC).

On October 27, 2009, Petitioner completed the "Private-Religious School Student Referral" form and requested a psychological and speech and language evaluation for the Student (Exhibit 4).

On December 4, 2009, Petitioner provided written consent for the Student's initial evaluation and provided DCPS with consent for the initial evaluation (Exhibit P-5).

On January 27, 2010, DCPS conducted a comprehensive psychological evaluation of the Student and determined that the Student was eligible for special education services as a Student with Learning Disabilities (Exhibit R-10, Report dated February 4, 2010, page 14). The Student's WISC-IV results showed that his cognitive skills were "scattered." The Student's verbal reasoning skills are in the Average range, but his nonverbal reasoning abilities are in the Borderline range. The Student's general working memory abilities are in the Low Average range as are his general processing speed abilities. The Student's ability to sustain attention, concentrate and exert mental control is weak relative to his verbal reasoning abilities. With respect to academics, the Student is strong in decoding, but struggles in processing what he has read (Exhibit P-6).

On March 26, 2010, Petitioner contacted a private speech evaluation facility (Exhibit P-8).

On June 21, 2010, DCPS convened an IEP meeting and determined that the Student was eligible for special education services. The IEP recommended 5 hours of specialized instruction within the general education setting and 5 hours of specialized instruction outside of the general education setting. No related services were recommended (Exhibit P-10). On the same

date, Petitioner requested that DCPS conduct an occupational therapy (OT) evaluation (Exhibit 11).

The parents continued the Student's placement at the parochial school for the 2010-2011 school year where he began to receive 4 hour per week of special education services (School psychologist testimony).

On June 28, 2010, Petitioner obtained a private speech and language evaluation for the Student. The evaluation found expressive and receptive language delays and recommend 2 hours per week of vocabulary and language therapy (Exhibit 13).

On August 24, 2011, DCPS granted the Student 60 hours of compensatory education services for their delay in convening the IEP meeting four months after receiving the psychological report dated February 4, 2010 (Exhibit R-4).

On August 25, 2010, DCPS conducted an occupational therapy (OT) evaluation. The evaluation made recommendations to support the Student's writing, such as providing him with "small spaced lined paper" and "movement breaks" in the classroom, but did not recommend OT services (Exhibit P-15).

An IEP meeting held on September 29, 2010, found the Student not eligible for OT services (Testimony of Petitioner's Evaluator).

Petitioner's private speech evaluation was provided to DCPS on September 16, 2010, but this evaluation was misplaced by DCPS (Exhibit P-20).

On January 31, 2011, DCPS reviewed Petitioner's private speech evaluation. DCPS acknowledged that the Student had language deficits, but did not make a determination as to the Student's eligibility for speech and services (Exhibit 19).

On March 15, 2011, DCPS held an IEP meeting to review and discuss the private speech evaluation. This IEP recommended 5 hours of specialized instruction within the general education setting and 5 hours of specialized instruction outside of the general education setting as well as 1.5 hours per week of speech and language therapy.

On April 24, 2011, Petitioner's private Evaluator conducted a "Diagnostic Educational Evaluation" of the Student (Exhibit P-30). The Evaluator confirmed that the Student presented with multiple learning

disabilities and a speech and language disorder. The Evaluator also confirmed the Student's ADHD diagnosis for which the Student is prescribed medication. As part of her evaluation, the Evaluator used various academic and behavioral assessments, as well as a direct observation of the Student in school and as well as a record review (Exhibit P-5, page 3). Although the Student scored in the Average range on the basic skill measures in reading, when asked to use his reading skills independently, the Student scored in the 1st percentile. The Student's integrated written language skills were in the 3<sup>rd</sup> percentile. In Math, the Student struggled to understand the vocabulary and the directions (Exhibit P-30, page 20).

The Student's current teachers and tutor reported that the Student is functioning far below grade level in math and reading (P-30, pages 19-21).

Petitioner's Evaluator recommended that the Student be placed in a full time special education program that can service his "constellation" of disabilities and that he receive specialized instruction across all subjects. The Evaluator also recommended that the Student receive speech and language therapy, individually and in small groups, which should be integrated into his classroom. Finally, the Evaluator recommended that the Student be placed at the Private School or any DCPS school which can meet the Student's needs (Exhibit P-30, page 21).

On May 31, 2011, DCPS held another IEP meeting. The following persons were in attendance: Parent, Special Education Teacher, School Psychologist, Coordinator, Speech and Language Pathologist, Principal, parent's attorney and parent's private Evaluator. The IEP recommended 5 hours per week of specialized instruction outside the general education setting and 5 hours per week of specialized instruction within the general education setting, as well as 6 hours per month of speech and language therapy services (Exhibit R-1, page 1, 8).

The IEP meeting minutes indicate that the Student was only receiving 4 hours per week of specialized instruction at the parochial school during the 2010-2011 school year "when he needed 10 hours per week of specialized instruction" (Exhibit R-1, page 13). The parent's private Evaluator testified that the MDT team agreed to adjourn the IEP meeting and reconvene another meeting in order to include the goals that she drafted for the Student (Testimony of Evaluator). The meeting minutes indicate that "the meeting will be rescheduled for a few weeks from now at the request of [parent's attorney]" (Exhibit R-1, page 14).

A Letter of Invitation (LOI), dated June 2, 2011, indicates that DCPS invited the parents to an annual review to discuss the student's IEP. The

LOI indicates that it was sent June 2, 2011, but it does not include a date for the proposed meeting (Exhibit P-8).

By letter, dated June 7, 2011 the parent's attorney advised DCPS that he and the parent were not available for an IEP meeting scheduled for June 8, 2011, but agreed to provide additional dates and times for the meeting (Exhibit 36).

By letter, dated June 15, 2011, the parent's attorney advised DCPS that he and the parent were available for the IEP meeting on June 29, 2011 (Exhibit P-37). There is nothing contained in the record, however, to explain why the IEP meeting did not occur on June 29, 2011.

The Resolution Meeting Minutes, dated July 27, 2011 (Regarding prior DPC), indicates that the parties discussed reconvening the IEP meeting on August 23<sup>rd</sup> or August 26<sup>th</sup> 2011 (Exhibit P-42) . There is nothing contained in the record to explain by the IEP did not occur on August 23<sup>rd</sup> of August 26<sup>th</sup> 2011.

By letter, dated September 16, 2011, the parent's attorney advised DCPS that he and the parent could not meet for an IEP meeting on October 19, 2011 because that was the "second scheduled day for the [Student's] Due Process Hearing." The parent's attorney asked for several alternate dates for the IEP meeting (Exhibit P-45).

The parent testified that there was another IEP meeting scheduled in the fall of 2011, but that it was canceled because the DCPS SEC had a medical emergency (Parents' testimony). The parent did not provide a date regarding this IEP meeting; however, the SEC, who testified at the hearing, did not rebut the Parent's testimony. As of the date of the impartial hearing, an IEP meeting to finalize the May 31, 2011 IEP had not been held.

Petitioner testified that she did not receive the May 31, 2011 IEP until it was disclosed by DCPS on December 5, 2011 (Parents' testimony). Petitioner testified that although the IEP indicates that the proposed school was the Bilingual school in her neighborhood, Petitioner stated that this was not discussed at the IEP meeting, nor was it ever offered for the 2011-2012 school year. Petitioner also testified that had she known of the proposed school, she would have rejected it because she believed that a Bilingual school would not be appropriate for her son who has significant speech and language delays (Petitioner's testimony).

Petitioner placed the Student at the Private School for the 2011-2012 school year (Petitioner's Testimony, DPC).

The Curriculum Coordinator (CC) of the Private School, who was qualified as an expert in special education of learning disabled students, testified that the Private School is a full-time, self-contained special education elementary school with approximately 78 students. The CC testified that the Student's needs are all encompassing because his language based learning disability affects his performance in all content areas. Specifically, the CC testified that although the Student can change money, the Student lacks the foundational knowledge needed to address multi-step problems. Additionally, the CC testified that although the Student is good at decoding words, he does not understand the meaning of the words (Testimony of CC). At the Private School, the Student is placed in a class of 8 students with 3 teachers and that for math and reading, the student is taught in a group of 3 students, which provides opportunities for 1:1 instruction. The CC testified that the Student is now learning strategies to help him organize and understand the academic material presented to him and that the Student is beginning to derive meaning from what he has read (Testimony of CC).

The Private School developed its own IEP for the Student that contained goals and objectives to address his academic delays (Exhibit P-46 A and B).

The Private School is not approved by Office of the State Superintendent of Education in the District of Columbia. Tuition for the 2011-2012 school year is

DCPS confirmed that the proposed location of services for the Student was the Bilingual school referenced above. The SEC at DCPS Bilingual school testified that if the parent did not want the Student placed at the Bilingual school, the Student's IEP could have been implemented at another school (Testimony of SEC). The record shows that the SEC worked at the Bilingual school and was not employed at the alternate proposed placement. No other information about the alternate school was presented at the hearing.

DCPS school psychologist testified that that the Bilingual school is "not for everyone" (Testimony of School Psychologist).

On October 28, 2011, DCPS generated a Prior Written Notice (PWN). Petitioner testified, credibly, that she did not receive the PWN and there was no proof of service offered at the hearing.

The Parent testified that she wanted a private school placement for her son, however, the evidenced showed that the parent cooperated with the IEP process (Petitioner's testimony).

## V. STATUTORY AND LEGAL FRAMEWORK

The IDEA was enacted "to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). It requires all states and the District of Columbia to provide resident children with disabilities a FAPE designed to meet their unique needs. *Id.* § 1412(a)(1).

The IDEA aims to guarantee children with disabilities a FAPE by requiring states and the District of Columbia to institute a variety of detailed procedures. "[T]he primary vehicle for implementing" the goals of the statute "is the [IEP], which the [IDEA] mandates for each child." Harris v. District of Columbia, 561 F. Supp 2d 63, 65 (D.D.C. 2008) *citing* Honig v. Doe, 484 U.S. 305, 311-12 (1988)). An IEP is a written statement that includes, among other things: (i) a statement of the child's present levels of academic achievement and functional performance; (ii) a statement of measurable annual goals, including academic and functional goals; (iii) a description of the child's progress in meeting those goals; (iv) a statement of the special education and related services and supplementary aids and services to be provided to the child; and (v) an explanation of the extent, if any, to which the child will not participate with nondisabled children in any regular classes. *Id.* § 1414(d)(1)(A)(i). An "IEP Team" -- which consists of the parents of the child with disability, not less than one regular education teacher of the child (if applicable), not less than one special education teacher or provider of the child, and a representative of the local education agency -- is charged with developing, reviewing, and revising a child's IEP. *See id.* § 1414(d)(1)(B) (defining an IEP Team). Because the IEP must be "tailored to the unique needs" of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), it must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities, and must be amended if its objectives are not met. *See*, 20 U.S.C. §§ 1414(b)-(d). In order to be sufficient to confer a FAPE upon a given child, an IEP must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 207. Each local educational agency is required to have an IEP in effect for each child with a disability in the agency's jurisdiction at the beginning of each school year. 20 U.S.C. § 1414(d)(2)(A).

The IDEA requires that children with disabilities be placed in the "least restrictive environment" so that they can be educated in an integrated setting with children who are not disabled to the maximum extent appropriate. *See* § 1412(a)(5)(A). The IDEA also guarantees parents of

disabled children the opportunity to participate in the evaluation and placement process. See §§ 1414(f), 1415(b)(1).

## VI. BURDEN OF PROOF

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be the responsibility of the party seeking relief. In this case, the burden of proof rests with the parent.<sup>3</sup>

## VII. ANALYSIS AND CONCLUSIONS OF LAW

The first issue is whether DCPS denied the Student a free and appropriate public education by failing to timely conduct an initial evaluation of the Student after the parent requested evaluations in October 2009 (initial psychological) and in June 2010 (speech and language evaluation).<sup>4</sup>

In the District of Columbia, an LEA shall conduct an initial evaluation of a child suspected of having a disability within 120 days from the date the student was referred for an evaluation. The initial evaluation must consist of procedures to determine if the child is a child with a disability and to determine the educational needs of the child. (D.C. Mun. Reg. tit. 5-E § 3004.1 (b) (c), D.C. Code § 38-2561.02).

Here, the record shows that parent contacted DCPS to request an initial evaluation of the Student on October 1, 2009 (Petitioner's testimony and DPC). The record shows that DCPS conducted a comprehensive psychological evaluation of the Student on January 27, 2010 and then generated a report dated February 4, 2010, which determined that the Student was eligible for special education services as a student with Learning Disabilities (Exhibit R-10, Report dated February 4, 2010, page 14). The record shows that the evaluation was conducted within the 120 day timeframe. However, DCPS did not convene an IEP meeting to review the psychological report until June 2010, which is approximately 8 months after the initial request was made. DCPS conceded that they did not convene a timely IEP meeting after receiving the Student's psychological evaluation and issued Petitioner an award of compensatory education (Comp Ed.) services for 60 hours of independent tutoring to compensate the Student for DCPS' delay. Although Petitioner testified at the hearing that she was satisfied with the award of Comp. Ed., I find that DCPS' delay in convening an IEP meeting to review the evaluation was a denial of FAPE for the 2009-2010 school year. However, Petitioner accepted DCPS' award of Comp Ed. as

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<sup>3</sup> See, *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

<sup>4</sup> Issue and (a) and (b) referenced above are addressed jointly as they involve substantially the same facts.

the remedy for this denial of FAPE and nothing in the record was offered to support an additional award of Comp Ed. (*Reid v. District of Columbia*, 401 F.3d 516, 521). As such, this issue is moot.

With respect to the parent's request for a speech and language evaluation in June 2010, the evidence shows that Petitioner obtained a private speech evaluation shortly after requesting DCPS to conduct a speech evaluation (Exhibit P-13). As such, there was no denial of FAPE based on DCPS' failure to conduct a timely speech and language evaluation. Nevertheless, the evidence shows that the parent provided DCPS with the private speech evaluation, which recommended that the Student receive speech and language services, on September 16, 2010 (Exhibit P-20). DCPS reviewed the speech evaluation on January 31, 2011, but did not convene an IEP meeting to offer the Student speech and language services, until March 15, 2011, which is approximately 7 months after DCPS received the evaluation (Exhibit P-19 and P-23). I find that DCPS' delay in reviewing and offering the Student speech and language services, denied the Student a FAPE for the 2010-2011 school year. However, Petitioner has not sought an award of compensatory education with respect to speech and language services (DPC), nor was any evidence presented to support an award of compensatory speech and language services (*Reid v. District of Columbia*, 401 F.3d 516, 521).

With respect to whether DCPS denied the Student a free and appropriate public education by failing to timely offer the Student Extended School Year (ESY) services in the summer of 2010, I find that Petitioner has failed to meet her burden of proof on this issue.

Pursuant to D.C. Mun. Reg. 3017.1, the LEA shall ensure that extended school year services are available as necessary to provide FAPE to a child with a disability. Extended school year services must be provided only if a child's IEP team determines, on an individual basis (in accordance with § 3007, Individualized Education Program (IEP) Development), that the child needs those services in order to receive FAPE, *id.*, at 3017.2.

Petitioner failed to introduce any evidence at the hearing that demonstrated that the Student required ESY in the summer of 2010. Additionally, the parent testified that she enrolled the Student at a different parochial school for summer school in 2010 and that she would not have considered summer services at a DCPS school. As such, I find that Petitioner failed to meet her burden of proof on this issue.

The next issue raised in the DPC and certified during the PHC was whether DCPS denied the Student a free and appropriate public education

during the 2010-2011 school year by failing to offer the Student a sufficient amount of special education services.

An IEP must be "tailored to the unique needs" of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), In order to be sufficient to confer a FAPE upon a given child, an IEP must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 207.

The IEP dated June 21, 2010 recommended 5 hours per week of specialized instruction within the general education setting and 5 hours per week of specialized instruction outside of the general education setting. The proposed location of services was the Student's neighborhood Bilingual school. The evidence shows that Petitioner consented to the level of services in the IEP, but that Petitioner opted to continue the Student's enrollment at the parochial school for this school year. Petitioner also testified that she did not visit DCPS' proposed school for this school year. (Petitioner's testimony). Additionally, Petitioner failed to offer any evidence at the hearing to support a finding that this IEP denied the student a FAPE. As such, I find that Petitioner has not met her burden of proof with respect to his issue.<sup>5</sup>

The next issue is whether DCPS denied the Student a free and appropriate public education during the 2011-2012 school year by failing to offer the Student a placement.

Pursuant to 20 U.S.C. § 1414(d)(2)(A), each LEA is required to have an IEP in effect for each child with a disability in the agency's jurisdiction at the beginning of each school year. *Alfonso v. District of Columbia*, 422 F. Supp. 2D 1, (DDC 2006) (awarding reimbursement where DCPS failed to finalize the IEP prior to the beginning of the school year).

Here, the evidence shows that the IEP dated May 31, 2011, was never finalized. Despite DCPS' assertion to the contrary, the IEP meeting minutes indicate the meeting was adjourned before the IEP was finalized (Exhibit R-1, page 14, Parent and Evaluator testimony). Thereafter, the evidence shows that there was correspondence between DCPS and Petitioner throughout the summer of 2011 regarding dates and times in which to reconvene another IEP meeting in order to finalize the IEP. However, as of the date of the impartial hearing, an IEP meeting to finalize the May 31, 2011 IEP had not been held (Exhibits, P-36, P-37, P-42, P-45). Accordingly, I find Petitioner has demonstrated that DCPS failed to offer the Student a FAPE for 2011-2012 school year based on DCPS' failure to finalize the Student's IEP prior to the beginning of the school year 20 U.S.C. § 1414(d)(2)(A).

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<sup>5</sup> I note that is issue was not raised in Petitioner's post-hearing brief.

Further, although Petitioner testified that she believed that DCPS would be recommending placement be implemented at the Students' neighborhood Bilingual school, the evidence shows that DCPS failed make the offer of placement prior to beginning of the school year (Parent testimony) 20 U.S.C. § 1414(d)(2)(A).

Unilateral Placement:

It is undisputed that the Student was placed at the Private School for the 2011-2012 school year. The evidence shows that the most recent academic and behavioral evaluation confirmed that the Student presented with multiple learning disabilities and a speech and language disorder, as well as a diagnosis of ADHD (Exhibit P-5). Additionally, the evidence shows that the Student's independent reading skills were in the 1st percentile and that his integrated written language skills were in the 3<sup>rd</sup> percentile and in math, the Student was functioning far below his grade level (Exhibit P-30, Testimony of Evaluator and CC).

The evidence shows that the Private School offers specialized educational services to learning disabled students. The evidence shows that the Private School developed an IEP for the Student, which contained goals and objectives to address his academic delay. The Private School also provides differentiated and individualized instruction for each student and the class sizes and student to teacher ratio are small in order to provide opportunities for small group and 1:1 instruction (Testimony of CC and Evaluator, Exhibit P-46 A and B). The evidence also shows that although the Student's needs are all encompassing, since his placement at the Private School, the Student has learned strategies to access his education and that he is making progress with his ability to derive meaning from what he has read (Testimony of CC). Based on these facts, I find that the program and services offered at the Private School are appropriately matched to the Student's needs and that the Student is obtaining an academic benefit from his current placement Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

With respect to the Student's least restrictive environment (LRE), the evidence shows that the Student deficits require that he be educated, as least for now, in a full-time special setting (P-30, Testimony of Evaluator and CC). As such, I find the Private School is also the Student's LRE.

Further, although the DCPS SEC testified that the Student's IEP could have been implemented at the Bilingual school, or another neighborhood school, the IEP she was referring to only provided for part-time specialized instruction (Exhibit R-1). As stated above, the evidence shows that the

Student presently requires full-time special education services. Moreover, DCPS acknowledged that the Bilingual school "was not for everyone" (Testimony of School Psychologist). Additionally, there was insufficient evidence presented at the hearing to demonstrate that the "alternate" school could implement a full-time IEP (Testimony of SEC) and no evidence was presented to support a finding that an approved private school could have addressed the Student's needs (D.C. Code Section 38-2561.02). Finally, no evidence was presented to suggest that the annual tuition of \$35,000 was unreasonable. As such, I find that Petitioner has met her burden of proof with respect to demonstrating that the current placement is appropriate for the Student.

Equities:

The evidence shows that the Parent wanted a private placement for the Student, however, the evidence also shows that the Parent cooperated with the IEP process and there was no showing that the parent was responsible for the failure of DCPS to finalize the IEP at issue (*Weast v. Schaffer*, 240 F. Supp.2d 396). As such, I find that the equities support an award of tuition reimbursement.

Lastly, DCPS asserts that Petitioner failed to provide notice of the unilateral placement. The evidence shows that this matter was initially filed in July 2011 and assigned to this IHO. The initial DPC, dated July 12, 2011, provided that the Student was to attend the Private School for the 2011-2012 school year and that Petitioner was seeking reimbursement for same (Exhibit P-40).

**ORDER**

Based upon the Findings of Fact and Conclusions of Law herein, on this 25<sup>th</sup> day of December 2011, it is hereby

ORDERED that, on or before January 31, 2011, the DCPS shall reimburse Petitioner for the full cost of the tuition at the Private School for the 2011-2012 school year and arrange for the Student's transportation to and from the Private school.

Dated December 25, 2011

By: /s/ James McKeever  
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's Determination 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. Section 1415(i)(2).