DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd floor
Washington, D.C. 20002

STUDENT, a minor, by and through
his Parent[1]

Petitioner,

v

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

SHO Case No: 2012-0653
Erin H. Leff, Hearing Officer

OSSE
STUDENT HEARING OFFICE
2012 DEC 13 AM 9: 12

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On September 18, 2012 Parent, on behalf of her child ("Student"), filed an Administrative Due Process Complaint Notice ("Complaint"), HO 1,[2] requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education ("FAPE") to Student by District of Columbia Public Schools ("DCPS") under the Individuals with Disabilities Education Act, as amended ("IDEA"). 20 U.S.C.A. §1415(f)(1)(A). Respondent DCPS filed a Response to Parent's Administrative Due Process Complaint Notice (HO 5) on October 1, 2012. This was 3 days beyond the 10 day timeline for filing a response established in 34 C.F.R. § 300.508(e)(1). A resolution meeting was held on October 11, 2012. The parties were not able to reach an agreement and executed a Resolution Period Disposition

[1] Personal identifying information is provided in Appendix A, attached hereto.
[2] Hearing Officer Exhibits will be referred to as "HO" followed by the exhibit number; Petitioner's Exhibits will be referred to as "P" followed by the exhibit number; and Respondent's Exhibits will be referred to as "R" followed by the exhibit number.

Form on the same date so indicating. HO 6. The 45 day timeline began to run on October 19, 2012, the day after the 30 day resolution period ended. On October 19, 2012 Respondent's counsel filed an unopposed *Motion for Continuance of the Hearing Officer's Decision Deadline* requesting a 10 day continuance because counsel were unable to establish mutually available dates for hearing prior to the expiration of the 45 day timeline. I entered an Order granting this Motion on October 20, 2012. Following the Prehearing Conference held on October 22, 2012, I issued a Prehearing Conference Order on the same date. HO 9. My Hearing Officer Determination is due on December 12, 2012.

At all times relevant to these proceedings Petitioner[3] was represented by Alana Hecht, Esq. of the D.C. Disability Law Group, and Justin Douds, Assistant Attorney General, represented DCPS. By agreement of the parties, the hearing was scheduled for December 3 and December 5, 2012. The hearing was held as scheduled in Room 2009 of the Student Hearing Office.

On Friday, November 30, 2012, Petitioner's counsel filed Petitioner's *Motion to Accept Supplemental Exhibit for Five Day Disclosure*. I sent an email to counsel the same date stating they should be prepared to address this motion at the start of the hearing on Monday, December 3, 2012. At the start of the hearing Petitioner's counsel argued I should allow her to admit, pursuant to the motion, the IEP and meeting notes of February 8, 2011 referenced in R-7, but not provided, in Respondent's disclosures because she was unaware of the IEP until she received the disclosures and because it took some time to obtain it. Respondent opposed its introduction, indicating Petitioner had prior knowledge of the document[4] and had not requested it.

---

[3] Petitioner was accompanied at hearing for a short while by [redacted]. Petitioner, herself, was excused from the hearing after the first morning.

[4] Respondent's counsel specifically noted the document had been discussed in a resolution session in February 2012 when Petitioner had been represented by different counsel.

I denied Petitioner's *Motion to Accept Supplemental Exhibit for Five Day Disclosure* for the following reasons. According to counsel, Petitioner's current attorney was hired by Petitioner in September 2012, and the instant case was filed. At approximately the same time Petitioner's counsel made a records request. The IEP and meeting notes of February 8, 2012, referenced in R-7 and at issue here, were not provided in response to that request. A review of the meeting notes and the IEP reveals no one from DCPS was in attendance at the February 8, 2012 IEP meeting.[5] Petitioner was in attendance as evidenced by her signature on the IEP on the date of the meeting.

In general, pursuant to 34 C.F.R. § 300.512(a)(3), a party has the right to prohibit the introduction of any exhibit that has not been disclosed at least 5 business days before the hearing. In the instant matter, Petitioner's counsel argues this was impossible because she was unaware of the document because DCPS had not provided it, as required by 34 C.F.R. § 300.6139(a), in response to a records request. However, in the instant matter, DCPS was not a participant in the meeting in question, and DCPS had removed Student from its rolls, having reached the conclusion Student was parentally placed student in a non-public school.[6] I, therefore, find DCPS did not have control of this document. Further, both Petitioner and the Monroe School had knowledge and access to this document. I, therefore, conclude the IDEA right to preclude the introduction of a document that has not been disclosed 5 business days prior to the hearing is controlling, and the Motion is denied. The IEP will not be introduced.[7]

---

[5] I reviewed the documents to determine who attended the meeting. As I did not admit the documents I did not make a detailed review of the proffered exhibit.
[6] The underlying issue in the instant matter.
[7] I note Petitioner's objection to this determination for the record.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2010); and the District of Columbia Municipal Regulations, Title 5e, Chapter 30, Education of Handicapped (2003).

ISSUE

The issue is:

Whether DCPS failed to provide Student a free, appropriate public education ("FAPE") when DCPS failed to provide Student a placement for the 2012 – 2013 school year. DCPS had been paying tuition and transportation costs for Student to attend the Monroe School for several years. DCPS provided these payments through the end of the 2011 - 2012 school year. DCPS stopped these payments at the beginning of the 2012 – 2013 school year and has offered Student no other placement.

RELIEF REQUESTED

Petitioner requested the following:

DCPS is to fund tuition and transportation costs at the Monroe School for the remainder of the 2012-2013 school year. Further, DCPS is to reimburse the parent and/or the Monroe School for costs incurred during the 2012-2013 school year.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

P-1	OSSE Approved Non Public Day Schools List	November 14, 2012
P-2	Documents from Resolution Meeting	October 11, 2012
P-3	Communications between DCDLG & OSSE regarding funding for D.G	September 27, 2012
P-4	Email communications between JEB & DCPS re: placement & PWN	August 2012
P-5	Student schedule 2012-2013	September 4, 2012
P-6	Report Cards & Attendance Records, 10-11 & 11-12 Sys	2010-2011 & 2011-2012 SY
P-7	Work Samples 2012-2013 SY from Monroe School	August – November 2012
P-8	Individualized Education Program (IEP) dated November 28, 2011	November 28, 2011
P-9	Monroe, Advocate, and DCPS notes from IEP meeting on Nov. 28, 2011	November 28, 2011
P-10	Prior Written Notice (PWN) issued 11/28/2012 and later revoked	November 28, 2011
P-11	Comprehensive Psychological Evaluation	January 3, 2010

P-12	DCPS review of Independent Comprehensive Psychological Evaluation	January 11, 2010
P-13	Site Review Consideration Form by DCPS	2010
P-14	Functional Behavioral Assessment (FBA)	January 31, 2010
P-15	Educational Evaluation / WJ-III	October 28, 2011
P-16	Witness Resumes	November 21, 2012
P-17	Invoice related documents from Monroe showing funding for D.G.	December 2011-July 2012

Exhibits admitted on behalf of Respondent are:

R 01	Prior Written Notice	02/19/2010
R 02	Hearing Officer Decision	03/20/2010
R 03	Monroe MDT Notes	09/28/2010
R 04	Monroe MDT Notes	12/14/2010
R 05	Alleged Prior Written Notice	02/06/2011
R 06	Memorandum on PWNs	05/02/2011
R 07	RSM Notes	02/06/2012
R 08	Memo and Order re Stay Put	02/07/2012
R 09	Order of Withdrawal	02/28/2012
R 10	Monroe Invoice/OSSE Dispute Notice	03/12/2012
R 11	Letter from OSSE Finding Unilateral Placement	04/25/2012

Exhibits[8] admitted by the Hearing Officer are:[9]

1 Administrative Due Process Complaint Notice dated September 18, 2012
2 Notice of Hearing Officer Appointment dated September 19, 2012
3 Prehearing Conference Scheduling Letter and Order re Timelines of September 21, 2012
4 Prehearing Conference Notice (with attachment) of September 25, 2012
5 District of Columbia Public Schools' Response of October 1, 2012 to Petitioner's Due Process Complaint
6 Resolution Period Disposition Form for meeting of October 11, 2012
7 District of Columbia Public Schools' Motion for Continuance of the Hearing Officer's Decision Deadline of October 19, 2012
8 Interim Order on Continuance Motion of October 20, 2012
9 Prehearing Conference Order of October 22, 2012
10 Miscellaneous email
- Chain re provision of Order entered in a prior case regarding this student

11 List of Proposed Hearing Officer Exhibits sent November 16, 2012
12 Petitioner's Motion to Accept Supplemental Exhibit for Five Day Disclosure [10]

---

[8] Hearing Officer Exhibits include related emails forwarding them to counsel and me unless otherwise noted.
[9] The list of proposed hearing officer exhibits provided to the parties included all the exhibits identified herein except exhibit 12 which, as stated in FN 10, was introduced at hearing when the motion was argued. There was an error in the numbering, however, that was not noticed by counsel or me. The numbers 6, 7, and 6 appeared on the proposed list two times. Therefore, at hearing, exhibits 1 through 8 are admitted. However, the parties actually agreed to admitting exhibits 1 through 11identified herein.
[10] Introduced at hearing

B. Testimony

Petitioner testified and presented the following witnesses:

- Student
- [redacted], Founding President, Chief Executive Officer and former Head of School of The Monroe School
- [redacted] Head of School and Acting IEP Coordinator of The Monroe School
- [redacted], Ph.D.

DCPS presented the following witnesses:

- [redacted], Program Manager, Office of Special Education, Nonpublic Unit

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. Student is [redacted] He is in the [redacted] at The Monroe School ("Monroe"), a full time, separate, non-public special education school. Monroe is an Office of the State Superintendent of Education ("OSSE") approved, non-public, day school as of 11/6/12. Student is classified as having an Other Health Impairment. Testimony of Petitioner; Testimony of Student; Testimony of [redacted]; Testimony of [redacted]; Testimony of [redacted]; P 1; P 2; P 3; P 5; P 8.
2. On February 19, 2010, when Student was attending Lincoln Middle School, DCPS issued a Prior Written Notice ("PWN") for Student to attend Hamilton Academy effective February 19, 2010. Student never attended Hamilton Academy because Petitioner was opposed to his attending the school. Testimony of Petitioner; R 1; R 2.

3. On February 5, 2010 the instant Petitioner filed a due process complaint alleging, among other issues, that DCPS had failed to provide an appropriate location of service for Student and requesting DCPS place Student in a nonpublic school.[11] The hearing officer found the proposed DCPS placement was appropriate, and the complaint was dismissed on March 20, 2010. R 2.
4. Petitioner's attorney at that time arranged for Student to attend Monroe. Student entered Monroe in May 2010 as a unilaterally placed student. Testimony of Petitioner; Testimony of [redacted]; Testimony of [redacted]; R 3.
5. On September 28, 2010 a 30 day review meeting was held at Monroe. Petitioner attended as did the DCPS representative assigned to Monroe, [redacted],[12] Student's tutor and several representatives of Monroe. The meeting notes of that date indicate one of the purposes of the meeting was to discuss placement and "possibly issuing a PNOP [Prior Notice of Placement] at The Monroe School." [redacted] was to contact Petitioner's then current attorney to discuss placement. Testimony of Petitioner; Testimony of [redacted]; Testimony of [redacted]; R 3.
6. On December 14, 2010 a parent-teacher conference meeting was held at Monroe. A DCPS representative was not invited to the meeting because it was not an IEP meeting. It was a meeting to discuss Student's behavior and progress with his parent. Both Petitioner and Monroe representatives were aware Student continued at Monroe as a unilateral placement at this time. Student was not receiving transportation services because he was unilaterally placed. Testimony of [redacted]; Testimony of [redacted]; R 4.

---

[11] The requested school was not Monroe.
[12] [redacted] is no longer employed by DCPS. Testimony of [redacted].

7. DCPS issued a Prior to Action Notice ("PAN") on February 6, 2011. This PAN contains minimal information and is not signed. There is no signature line on the PAN. The PAN notifies Student's parent that Student's placement is being changed from Hamilton Academy to Monroe. Petitioner received this form. Petitioner began receiving bus passes to cover Student's transportation costs to Monroe in May 2011, after the PAN was issued, and the OSSE began to pay Student's tuition in June 2011. Prior to this time, Petitioner paid for Student's bus passes. Testimony of Petitioner; R 5; P 17.

8. The PAN is a one page document written in a letter format. It identifies Student as the subject of the PAN, begins with a salutation to Parent/Guardian and concludes by providing reference to the Office of Special Education and a contact phone number should the parent/guardian have any questions about the action described in the document. This PAN includes checkmarks in the boxes indicating its purpose is to notify parent/guardian of a proposed change in placement from Hamilton Academy to Monroe School. The description of the explanation of the proposed action merely states "Per MDT." R 5.

9. The PAN discussed in ¶ ¶ 7 and 8, *Supra*, is a document from the Encore system, the special education student computerized data system used by DCPS prior to the implementation of the current system (SEDS). An LRE Review Team authorization is usually attached to these forms as a separate document. The PAN is supposed to include an authorizing signature. As program coordinator for compliance on the LRE Support Team in 2011, [redacted] would have reviewed this document if it had moved through appropriate processing. Testimony of [redacted].

10. An IEP meeting was held at Monroe on February 8, 2011. The DCPS representative to Monroe[13] was not in attendance because she was not able to attend. She had, however, been invited. Subsequently, the DCPS representative to Monroe finalized[14] Student's IEP of that date through the DCPS process. Testimony of [redacted].

11. On May 2, 2011, then [redacted] issued a policy memorandum regarding prior written notices ("PWNs"). This memorandum states, in bold type, "Authority to issue Prior Written Notices for purposes of a placement in a tuition-based school or residential facility is vested solely with the Office of the Chancellor." It further states prior written notices for placement should not be issued directly from school personnel and managers or employees violating this policy are subject to adverse personnel action including removal. R 6.

12. At an IEP meeting[15] held November 28, 2011 DCPS proposed to change Student's placement from Monroe to Spectrum Shaw at Garnett-Patterson ("Spectrum Shaw"). A Prior Written Notice regarding this proposed changed was issued by DCPS on the date of the meeting. Testimony of [redacted]; P 8; P 9; P10.

13. Petitioner filed a due process complaint[16] contesting the proposed placement at Spectrum Shaw on January 23, 2012. At the resolution meeting held regarding this complaint, the compliance case manager stated the placement at Monroe was void, that DCPS had not placed Student at Monroe. Following the resolution meeting, counsel for DCPS withdrew its opposition to Petitioner's Motion for Stay-Put at Monroe in the January 2012 matter

---

[13] This individual, [redacted], is no longer employed by DCPS, nor is her supervisor. Testimony of [redacted].

[14] Only the DCPS can move an IEP from draft to final in the computerized system. Testimony of [redacted].

[15] The DCPS representative at this meeting is no longer employed by DCPS. Other DCPS staff also were in attendance. Testimony of [redacted]; P 9.

[16] The attorney who represented her in that process is not Petitioner's current attorney.

stating DCPS had not placed Student at Monroe and, therefore, had no basis for and was not proposing to move Student to a different school. Subsequently, Petitioner withdrew the complaint based on DCPS's counsel's representation that DCPS was withdrawing the Prior Notice of Placement to Spectrum Shaw. R 8; R 9.

14. Following the withdrawal of the January 2012 complaint, DCPS contacted OSSE indicating its view that the PAN placing Student at Monroe was not valid, and indicating it did not want to fund Student's placement there. OSSE conducted an independent investigation and determined Student was unilaterally placed at Monroe, and, therefore, OSSE would not approve payment for Student's costs at Monroe. In reaching this conclusion, OSSE reviewed Student's initial placement at Monroe and determined it was unilateral. OSSE also reviewed the PAN of 2/6/11 placing Student at Monroe. OSSE's findings indicate the PAN states Student was placed at Monroe "per Team meeting on the same date" and no meeting notes were found for this date. The PAN makes no reference to the date of the meeting placing Student at Monroe. OSSE further finds the PAN is not properly signed or authorized. Testimony of [redacted]; R 5; R 11.

15. After discussion with [redacted], OSSE agreed to continue funding Student through the 2011-2012 school year. OSSE paid Student's tuition and transportation costs to attend Monroe from June 2011 through July 2012 except for the month of February 2012.[17] Testimony of [redacted]; P 17.

16. Petitioner has received no written notification from DCPS indicating it has determined Student is unilaterally placed at Monroe, and DCPS is not responsible for the placement. DCPS has not offered to convene a meeting to review Student's IEP and offer him a

[17] The basis for the denial of the payment for February does not affect my determination here and will not be addressed.

placement for the 2012-2013 school year. Student is not currently funded to attend Monroe. The only written notification regarding OSSE's withdrawal of payment to Monroe was made by OSSE to Monroe. Testimony of Petitioner; Testimony of [redacted]; Testimony of [redacted]; R 11.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. All witness testimony presented in this matter was to some degree troublesome. While each witness was credible in that her/his testimony was not clearly dishonest or distorted, for the most part, each witness had clear bias impacting his/her testimony, and that bias was clear. In addition, the multiple dates and meetings provided some contradictory testimony that appeared to be based on confusion due to the passage of time. Finally, DCPS' only witness, while clearly knowledgeable and capable, was at times clearly evasive. His clear intent to provide testimony supportive of DCPS undercut the persuasiveness of his testimony regarding the placement issue addressed herein. This was particularly troublesome because he lacked any first-hand knowledge of the events relevant to this matter, did not know Student and had not discussed the relevant facts with anyone who was knowledgeable about what had occurred. In reaching my determination, therefore, I relied on consistency among witnesses and documentary evidence. In doing so I attempted to draw the most reasonable explanation that would account for the disparate evidence presented.

The issue before me is whether DCPS failed to provide Student a free, appropriate public education ("FAPE") when DCPS failed to provide Student a placement for the 2012 – 2013 school year

After a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. See also, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction is regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. The placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform with the LRE provisions cited above. 34 C.F.R. § 300.116(a)(2). In the instant matter it appears DCPS complied with these requirements during a November 28, 2011 IEP meeting.[18] However, approximately two months after the compliant actions occurred, in November 2011, DCPS essentially retracted the actions and asserted Student was parentally placed, and DCPS therefore had no responsibility for him or his program. It then withdrew its PNOP.

Several DCPS staff members attended the IEP meeting held at Monroe on November 28, 2011. Petitioner participated by telephone. The team agreed to goals and services to be provided Student. He was to receive 26 hours per week of special education instruction and 1 hour of behavior support outside the general education environment. DCPS completed a PWN recommending Student's location of service be changed from Monroe to Spectrum Shaw at

[18] In so stating I am not implying that the determination of school placement at Spectrum Shaw made at this meeting was appropriate for the student. I am stating the process was compliant with IDEA requirements.

Burnett Patterson.[19] While the PWN states the hours of service Student is to receive and identifies the records and reports used in making the recommendation to change Student's location of service it does not provide an explanation for the proposal to move Student to Spectrum Shaw. Petitioner, the Monroe staff and [redacted], who participated in the meeting as Petitioner's advocate, expressed disagreement with the proposed change, and [redacted] asked for an explanation regarding the reasons Monroe was not appropriate. DCPS staff stated this was a change of location that was within DCPS' discretion.

Following this meeting, Petitioner filed a due process complaint in January 2012. It was during the pre-hearing process involved in this January complaint that DCPS reached the conclusion DCPS was not responsible for Student's placement at Monroe and further there was no basis for DCPS' participation in the November 2011 IEP meeting at Monroe. Therefore, DCPS concluded, there was no basis for moving Student from Monroe to another school. DCPS counsel withdrew the Prior Notice of Placement to Spectrum Shaw, and, in reliance on this withdrawal, Petitioner withdrew the January complaint.[20] DCPS contacted OSSE regarding their conclusion that Student was parentally placed at Monroe and the related lack of a basis for funding Student at Monroe. OSSE initiated an investigation and concluded Student was not placed at Monroe by DCPS and notified Monroe it would cease paying Student's tuition. OSSE

---

[19] During hearing [redacted] testified that at the time of this IEP meeting DCPS was removing or attempting to remove many students from Monroe. She did not offer a reason for this effort, and I mention it here only as background information regarding the DCPS recommendation to remove the instant student from Monroe. This difficult relationship between DCPS and Monroe does not enter in to my determination in this matter. However, if as [redacted] testified, there was such a concerted effort to remove students from Monroe, it is possible this effort may have created an environment that resulted in the determination to remove the instant student from Monroe that has resulted in the current litigation. I note [redacted] suggested the efforts to remove students from Monroe have stopped, and, I further note, Monroe is an OSSE approved non-public day school as of 11/6/2012.

[20] I was the assigned hearing officer in the January 2012 matter. I entered two Orders in that matter, one on a Petitioner's motion for stay-put and one on the withdrawal. Both Orders identified, but did not resolve, as I had heard no relevant evidence, the underlying issue of responsibility for the placement at Monroe which is now before me.

then agreed, following telephone conversations with [redacted] to continue Student's funding through the 2011-2012 school year.

DCPS reached the conclusion that it was not responsible for Student's placement at Monroe based, it appears, on a review of the Prior Action Notice dated February 6, 2011. As stated by Respondent's counsel during opening argument, if I find this PAN is legitimate, DCPS is responsible for Student's placement at Monroe and it follows DCPS is responsible for providing a placement to Student in the 2012-2013 school year. If, on the other hand, I find this PAN is not legitimate then it follows Student is parentally placed in a non -public school, and DCPS is not required to provide him a placement for the 2012-2013 school year or any school year as long as he remains at Monroe.[21] As my findings of fact make clear I find the February 6, 2011 PAN placing Student at Monroe is legitimate. Therefore, DCPS is responsible for providing Student a placement for the 2012-2013 school year. The discussion that follows explains my rationale for this determination.

It is clear that Student's original placement at Monroe in May 2010 was made by Petitioner with the assistance of her then current attorney. It is also clear that discussions to have DCPS assume responsibility for this placement began soon after Student's enrollment at Monroe. Petitioner, her advocate and two Monroe representatives all testified that DCPS through its representatives agreed Student would be placed at Monroe. DCPS disputes this view relying on statements in notes of meetings that do not clearly state agreement had been reached. Petitioner and her witnesses state these notes do not reflect the substance of the discussions at these meetings, and DCPS cannot provide testimony to counter Petitioner's witnesses because none of the DCPS employees who attended these meetings as the DCPS representative are currently employed by DCPS and therefore are not available to testify. Thus, my determination in this

[21] I add even in this circumstance DCPS would be responsible for making a FAPE available to Student.

matter must rely heavily on the documentary evidence and the actions taken by the parties outside the litigation process.

DCPS makes several arguments challenging the validity of the 2011 PAN. First, DCPS argues the form itself is from the Encore system, and this system and thus the form were not in use in 2011. However, Petitioner's witnesses [redacted], [redacted] and [redacted] all testified credibly they have seen this document in recent years. Persett's testimony that the new computer system began to be phased in 2008 does not contradict Petitioner's witnesses. It merely identifies when the turn over to a new system began, not when it was completed. Further, it does not address the actual availability of forms from the Encore system at the beginning of 2011. Although [redacted] stated that these forms should no longer be accessible, and Petitioner's witnesses appeared to contradict this, [redacted] was testifying regarding his understanding of how the system should work. He did not, and I note could not, testify regarding whether personnel had hard copies of the form they continued to use,[22] nor did his testimony address whether the specific form was still available in 2011 when the PAN at issue was generated. The fact that it exists, suggests it had not been totally phased out by early 2011.

The second challenge to the February 2011 PAN is that it was not completely filled out and that it lacks much information. The PAN is a one page document written in a letter format. It identifies Student as the subject of the PAN, begins with a salutation to Parent/Guardian and concludes by providing reference to the Office of Special Education and a contact phone number should the parent/guardian have any questions about the action described in the document. This PAN includes checkmarks in the boxes indicating its purpose is to notify parent/guardian of a

[22] I note the PWN of 11/28/11 notifying Petitioner of DCPS' intent to change Student's placement to Spectrum Shaw, a form which was not challenged by Respondent, was completed by hand. It is, therefore, likely that DCPS staff adopt and complete forms in various manners.

proposed change in placement from Hamilton Academy to Monroe School. The description of the explanation of the proposed action merely states "Per MDT."[23]

[redacted] detailed several problems with this particular form. He testified that it is not clear what "Per MDT" means and that it cannot be determined based on this form who made the decision to move Student to Monroe. [redacted] was particularly focused on two missing pieces of documentation in relation to this PAN. He testified that an LRE team review[24] was required in February 2011 to effectuate a change in placement from a public to a non-public school, and that as program coordinator for compliance on the LRE team at that time he would have seen this PAN as part of the LRE review process. He testified he does not recall seeing this PAN,[25] and the LRE team review authorization is not attached to the PAN. [redacted] also testified the PAN should have been signed by the Deputy Chancellor. However, when I questioned him about this requirement he acknowledged there is no signature line on the form. [redacted] candidly agreed there is no way to determine by looking at the form that these elements he described should be there.

Petitioner's witnesses, [redacted] and [redacted] agreed the PAN does not include specific information regarding the basis for the placement at Monroe nor specifics about who made the placement. The difference in their testimony, compared to Persett, is that they assert this is not unusual, and they have seen similar forms with similar deficiencies regarding other students. I accept this testimony. That is I accept there is missing documentation. I accept the form is not completely filled out, and I accept Petitioner's witness' averments that they have seen similar forms with similar deficiencies regarding other students. None of these points establish

---

[23] MDT means Multidisciplinary Team. It is the term used by DCPS for the team that makes IDEA decisions.
[24] The LRE team review authorizing such a change in placement would have been a separate document attached to the PAN addressed to the Deputy Chancellor recommending the change and explaining the basis for the change.
[25] He stated there had only been 3 notices regarding changing a student from a public to a nonpublic placement during the time period he held this position.

the form at issue here is invalid. Petitioner received this form and relied on it. The PAN accomplished its stated intent, notifying the Petitioner of DCPS' proposal to change Student's official placement school from Hamilton Academy to Monroe.

Respondent's position, that the PAN is not completed properly, as testified by [redacted], does not mean it was not issued.[26] DCPS attempts to support its position that this is an invalid PAN that does not establish Student was placed at Monroe by DCPS by reference to a memorandum of May 2, 2011 signed by [redacted] which reviews DCPS policy for prior written notices.[27] In this memorandum, [redacted] makes clear that only the Chancellor or his/her designee is authorized to commit district funds, and the authority to issue PWNs for placements in a tuition based school is vested in the Office of the Chancellor. The memorandum concludes with notification that violations of this PWN policy will result in adverse personnel action. DCPS argues this memorandum demonstrates DCPS policy required the authorization, i.e., a signature of the Deputy Chancellor on this form, and that since the signature is not there, it establishes the form is invalid as it was not issued by DCPS. I disagree. While it is clear, and I add understandable, that authorization to commit district funds would be vested, by policy, in the Chancellor's office, the existence of policy and a memorandum on that subject does not assure that all personnel have complied with the policy. In my view it is more likely that a memorandum reminding personnel of the policy and threatening adverse personnel action, including dismissal, suggest the policy was not being complied with in all instances. It is unlikely a reminder memorandum would have been issued had there been no difficulties with compliance with this policy. Thus, neither the existence of the policy nor the Deputy

[26] No one who testified was able to identify who issued the PAN.

[27] I note that throughout the testimony and legal argument in the instant matter, counsel and witnesses used the term prior written notice when discussing the PAN. As the PAN states it is a notice, these terms appear to be interchangeable in DCPS' implementation of the IDEA notice/notification process.

Chancellor's memorandum invalidates the PAN based on the lack of required Deputy Chancellor's authorization. It is, I note, possible that this PAN which, as issued, did not comply with DCPS policy, resulted in some personnel action[28] (as stated in the Deputy Chancellor's memorandum). I find, by a preponderance of the evidence, the PAN was issued by DCPS and notified Petitioner that Student had been placed at Monroe by DCPS.

My determination that the February 2011 PAN was legitimate is bolstered by DCPS' actions following its issuance. DCPS acted as if this PAN were a legitimate authorization of placement at Monroe. An IEP meeting was held on February 8, 2011, two days after the PAN was issued. The DCPS representative to Monroe was not in attendance for some unspecified reason. However, she had been invited. More importantly, the DCPS representative to Monroe finalized the IEP developed in that meeting through the DCPS computer system sometime following this meeting. OSSE began paying Student's tuition at Monroe in June 2011, and Student began receiving payment for bus vouchers in approximately May 2011. DCPS attended the IEP meeting at Monroe in November 2011 and issued a PWN to change Student's school placement from Monroe to Spectrum Shaw. It was only when Petitioner raised issues regarding DCPS' proposed change in school sites in a due process complaint that DCPS raised a question regarding the basis for the placement, decided it was not responsible for Student's placement at Monroe because the February 2011 PAN was invalid and asked OSSE to stop paying for Student to attend Monroe.

When DCPS asked OSSE to stop funding Student's placement at Monroe, OSSE conducted an independent investigation and determined Student was unilaterally placed at

[28] The DCPS representative at Monroe at the time this PAN was issued was allegedly terminated sometime after the PAN was issued. I cannot and do not conclude she issued the PAN in question here. I only note the possibility in reference to the potential personnel actions identified in the Deputy Chancellor's memorandum on the PWN policy for placement in tuition based schools.

Monroe, and, therefore, OSSE would not approve payment for Student's costs at Monroe. In reaching this conclusion, OSSE reviewed Student's initial placement at Monroe and determined it was unilateral. Petitioner agrees Student's initial placement was unilateral. OSSE also reviewed the PAN of 2/6/11 placing Student at Monroe. OSSE's findings indicate the PAN states Student was placed at Monroe "per Team meeting on the same date" and no meeting notes were found for this date. OSSE further finds the PAN is not properly signed or authorized. I have already discussed the lack of signature and authorization and recognized they were required by DCPS policy but not provided. Significantly, however, in reaching its determination that this PAN is not legitimate OSSE indicates the PAN references a meeting of the same date. It does not. It simply references a meeting. Petitioner's contention is that this is a reference back to the September 2010 meeting. I have been provided no evidence that allows me to determine what meeting is referenced in the PAN, but I am able to determine that OSSE's expectation of notes for a meeting held the date of the PAN is misplaced. As a result I cannot rely on OSSE's conclusions that Student was unilaterally placed as I expect that conclusion might have been different had it found the PAN to be legitimate, and a finding of legitimacy may have occurred had OSSE not been looking for notes from a meeting that is not referenced on the PAN.

For the reasons stated above I conclude DCPS placed Student at the Monroe School in February 2011 as evidenced by the PAN of 2/6/11. As referenced above, DCPS is required to identify a placement to implement a student's agreed upon IEP. Student obviously was in attendance at Monroe when the PAN was issued and tuition payments began a few months later. Furthermore, the IEP team, including DCPS representatives, Monroe representatives and Petitioner agreed on an IEP on November 28, 2011. That IEP required Student receive 26 hours of specialized instruction and 60 minutes of behavior support each week outside the general

education environment. DCPS proposed moving Student's placement from school from The Monroe School to Spectrum Shaw at Garnett- Patterson during that meeting and issued a PWN reflecting this proposal. DCPS subsequently withdrew its proposal to move Student to a different school placement. OSSE continued to fund Student at Monroe for the duration of the 2011-2012 school year. DCPS has been determined to have placed Student at Monroe and, therefore, is responsible for offering Student a placement to implement his IEP in the 2012-2013 school year. DCPS has not offered Student a placement for the 2012-2013 school year. Student is in the untenable position of having an IEP that was agreed to by DCPS and no offer of placement.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law as follows:

I find by a preponderance of the evidence that DCSP has failed to provide Student a FAPE because it has not provided him a placement for the 2012-2013 school year

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that:

1. Within 10 business days of receipt of this HOD, DCPS is to issue a Prior Notice of Placement for Student to attend the Monroe School for the 2012-2013 school year.
2. Within 10 business days DCPS is to notify OSSE that The Monroe School is Student's placement for the 2012-2013 school year. DCPS is to assure Student's tuition costs and transportation costs are paid retroactive to the beginning of the 2012 -2013 school year through the remainder of the 2012 -2013 school year.

3. An IEP meeting for Student is to be held no later than March 15, 2013 to include Petitioner, her advocate(s) if she so chooses, DCPS staff including those able to make placement decisions, and Monroe School staff to review Students program and placement. If DCPS proposes to change Student's placement or placement school, all legally complaint notifications and notices required to make this proposal shall be provided to Petitioner and her representatives, within 10 business days of this meeting.

IT IS SO ORDERED:

December 17, 2012
Date

Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the Findings and/or Decision may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 USC §1451(i)(2)(B).