**STATE EDUCATIONAL AGENCY FOR THE DISTRICT OF COLUMBIA**
**STATE ENFORCEMENT AND INVESTIGATION DIVISION (SEID)**
**SPECIAL EDUCATION PROGRAMS**

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**STUDENT,[1] by and through his Parent,**

**Petitioners,**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,**

**Respondent.**

**Case No. 2009-1217**
**Bruce Ryan, Hearing Officer**

**Hearing: November 10, 2009**
**Decided: November 27, 2009 [2]**

# HEARING OFFICER DECISION

## I. PROCEDURAL BACKGROUND

The due process complaint in this matter was filed August 25, 2009, against Respondents Achievement Preparatory Academy Public Charter School ("APA") and the Office of the State Superintendent of Education ("OSSE") pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.,* and its implementing regulations. The complaint concerns a 12-year old student who resides in the District of Columbia, has been determined to be eligible for special education and related services under the IDEA, and attended [redacted] during the 2008-2009 school year. [redacted] operates as an LEA Charter School under D.C. law, and thus has its own LEA obligations under the IDEA. [3]

The complaint raised four claims or issues alleging that [redacted] denied the Student a free appropriate public education ("FAPE") during the 2008-2009 school year: (1) that [redacted] failed to

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[1] Personally identifiable information is attached as an Appendix to this decision and must be removed prior to public distribution.

[2] An unopposed continuance motion filed by [redacted] was granted to permit all parties sufficient time (*i.e.,* to November 17, 2009, one week after the due process hearing) to prepare and submit written closing arguments, as agreed on the record at the conclusion of the hearing. All parties consented to extend the 10-day and 45-day timelines to allow 10 days from the date of the written closing arguments for issuance of the HOD.

[3] The complaint also originally named District of Columbia Public Schools ("DCPS") as a respondent, but DCPS' unopposed motion to dismiss was granted because during the relevant time period, the Student was enrolled at [redacted] and [redacted] (as an LEA Charter School) had responsibility for developing appropriate programs for students enrolled there under DCMR §5-3019.3. *See Prehearing Order* (Oct. 22, 2009),¶ 4 (c).

provide an appropriate IEP on or about February 10, 2009; (2) that [redacted] failed to provide an appropriate IEP on or about May 5, 2009; (3) that APA failed to provide an appropriate IEP on or about August 11, 2009; and (4) that [redacted] failed to provide Extended School Year ("ESY") services to the Student for the 2009 summer. The complaint also alleged one claim or issue against OSSE, the State Educational Agency ("SEA") under the IDEA, relating to its alleged failure to "identify and/or recommend an appropriate alternate placement for the student for the 2009/2010 school year." [redacted] *2*, p. 7.

Respondent [redacted] filed a Response on or about August 31, 2009, which generally denied the allegations of the complaint. [redacted] admitted that the Student attended APA for the 2008-09 school year, but stated that he withdrew from [redacted] on or about August 19, 2009, and is now under the jurisdiction of another LEA. APA asserted that it held an MDT/IEP Team meeting on or about 8/11/09 to review a clinical psychological evaluation in accordance with a prior HOD dated 5/13/09, to make certain changes to the IEP, and to consider placement. [redacted] also determined that the Student did not warrant ESY services for the 2009 summer. [redacted] *1*, pp. 1-2.

Respondent OSSE filed a Response on or about September 3, 2009, asserting that it was not a proper party to this case because its involvement as SEA "was limited to its role as technical advisor pursuant to the OSSE Policy and Procedure for Placement Review [PPPR]." *OSSE Response,* p. 1. The Response asserted that under that policy, "OSSE makes a non-binding recommendation on whether a change in placement is warranted" and the "ultimate authority to move forward with a change in placement remains always with the LEA. Hence, the OSSE has no liability in this case." *Id.,* p. 2. OSSE also filed a Motion to Dismiss on or about October 2, 2009, based on the same argument. *OSSE Motion to Dismiss,* p. 1.

In the Prehearing Order, the Hearing Officer denied OSSE's motion to dismiss. *See Prehearing Order* (Oct. 22, 2009),¶ 4 (d). The Hearing Officer ruled that disputed facts appeared to exist with respect to the OSSE's precise role in considering placement at the 8/11/09 meeting, thus suggesting the appropriateness of allowing the parties to provide evidence relating to those facts at hearing. *Id.; see SOP,* § 401 (C) (7). Thus, the Hearing Officer concluded that OSSE had not shown, at the threshold pleading stage, that Petitioners could prove no set of facts in support of its claim against OSSE that would entitle Petitioners to relief. *Id.*

A resolution meeting was held on or about September 8, 2009, which did not resolve the complaint, and the parties agreed to proceed to a due process hearing. A Prehearing Conference ("PHC") was then held on October 9, 2009; and the Prehearing Order was issued October 22, 2009, which included the rulings on motions as noted above. Petitioners elected for the hearing to be closed. Five-day disclosures were filed by both parties as directed. [4]

The Due Process Hearing was held on November 10, 2009. At the hearing, the Hearing Officer admitted into evidence the following exhibits: 41 documentary exhibits submitted by Petitioners (identified as "[redacted]1" through "[redacted]44," but excluding [redacted]6, [redacted]21 and [redacted]24 [5]); 25 documentary exhibits submitted by [redacted] (identified as "[redacted]1" through "[redacted]25"); and five documentary exhibits submitted by OSSE. The [redacted] and OSSE exhibits all were admitted without objection. [redacted] objections to Petitioners' exhibits [redacted]23, [redacted]25, and [redacted]28 on the basis of relevancy and collateral estoppel were overruled.

Testifying at the hearing on behalf of Petitioners were: (1) the parent-Petitioner; (2) [redacted] Ph.D., Licensed Psychologist; (3) [redacted] Case Manager, [redacted]; and (4) [redacted] Assistant Educational Director, [redacted]

Testifying at the hearing on behalf of Respondents were: (1) [redacted] (2) [redacted] and (3) [redacted], OSSE Change in Placement Specialist.

This decision constitutes the Hearing Officer's determination pursuant to 20 U.S.C. §1412 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("*SOP*").

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[4] While no Due Process Complaint Disposition was filed with the Student Hearing Office ("SHO"), at the 10/9/09 PHC, counsel represented that a DPC Disposition had been signed and provided the Hearing Officer with an unfiled copy. According to the DPC Disposition, APA and Petitioner appeared to have agreed in writing as of 9/18/09 that no agreement was possible, and thus the resolution period was found to have ended and the 45-day timeline under IDEA started on 9/19/09. *See* 34 C.F.R. § 300.510(c)(2). Petitioners subsequently filed continuance motions to extend the timelines, first due to the late-discovered DPC Disposition, and then to reschedule the due process hearing to an agreed date of November 10, 2009.

[5] At the hearing, Petitioners withdrew [redacted]6 (which appeared to be duplicative of [redacted]4); and [redacted]21 and [redacted]24 were never formally admitted into evidence. An evidentiary ruling on the latter two exhibits was reserved pending their use and presentation during the hearing, but Petitioners subsequently did not offer the exhibits into evidence.

## II. ISSUES AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioners, along with the pleadings filed by both parties, has resulted in the following issues being presented for determination at hearing:

*a.* ***Inappropriate IEP*** — Whether [redacted] denied the Student a FAPE by failing to develop an appropriate IEP, on or about February 10, May 5, and August 11, 2009, in the specific respects identified in the *Prehearing Order*;

*b.* ***Extended School Year ("ESY") Services*** — Whether [redacted] denied the Student a FAPE by failing to provide ESY services for summer 2009; and

*c.* ***Inappropriate Placement*** — Whether OSSE failed to provide an appropriate alternate placement for the Student at the August 11, 2009 MDT meeting, contrary to its obligations under IDEA and/or DCMR §5-3019, and whether as a result the Student has been denied a FAPE.[6]

As noted in the *Prehearing Order*, the relief requested by Petitioners includes: (1) a finding that the Student has been denied a FAPE; (2) an order requiring that "the student's IEP shall be revised to reflect his need [for a] full time program"; (3) award of "a private placement with transportation to [redacted] or an alternate placement approved by the parent"; and (4) compensatory education for the alleged past denials of FAPE.

## III. FINDINGS OF FACT

1. The Student is a [redacted] year old student who resides in the District of Columbia, and has been determined eligible for special education and related services under IDEA. He is classified as a child with Multiple Disabilities. *See* [redacted] *2;* [redacted] *15.*

2. The Student attended [redacted] Public Charter School ("[redacted] for the first time as a 5th grade student during the 2008-2009 school year. [redacted] is a charter school located in the District of Columbia that operates as its own local educational agency ("LEA") under IDEA. *See* [redacted] *2;* [redacted] *1.* It is a school of choice that was selected by the parent. [redacted] *Testimony.*

[6] As noted in the *Prehearing Order*, Petitioners do not assert any claim directly against [redacted] for denial of FAPE in the form of an inappropriate placement. Nor have Petitioners asserted any claim for relief (including prospective private-placement) against DCPS, the LEA responsible for providing a FAPE for the current (2009-10) school year.

3. An IEP was developed for the Student on or about February 10, 2009, while he attended [redacted] The 2/10/09 IEP provided five (5) hours per week of specialized instruction in an inclusion setting and five (5) hours per week of specialized instruction in a resource setting outside general education, along with one hour per week of behavioral support services (counseling) and 30 minutes per week of speech and language therapy. *See* [redacted] *20;* [redacted] *14.*

4. At the February 10, 2009 meeting of the MDT/IEP Team (including the parent), the team reviewed the Student's November 2008 speech-language evaluation and decided that although [redacted] did not qualify for speech/language services, [redacted] would provide a speech/language consult in the area of vocabulary development for 30 minutes a month to address the parent's concerns. *See* [redacted] *15; Wright Testimony.* The IEP Team also established counseling goals for the one hour per week of counseling the Student began receiving in January 2009 to deal with depression after the death of his uncle. The counseling goals were created in coordination with the Student's counselor from [redacted], which provided outside counseling for [redacted] students. *Id.*

5. At the 2/10/09 meeting, the IEP Team (including the parent and advocate) agreed to let [redacted] try out a "behavior tracking" system for 30 days to see if it would help curb certain problematic behaviors. *See* [redacted] *15; Parent Testimony.* Because the Student's behavior was not disruptive to his instruction or learning and likely stemmed from the recent loss of his uncle, the IEP Team determined that a functional behavioral assessment ("FBA") and behavior intervention plan ("BIP") were not necessary at that time. [redacted] *15; Wright Testimony.* When the behavior tracking system was reviewed in March, the system appeared to be working. [redacted] *16; Wright Testimony; see also Gunn Testimony.*[7]

6. By April 2009, the Student's behavior had become more problematic,[8] and an FBA was completed. [redacted] *27.* [redacted] then convened another meeting of the Student's MDT/IEP Team on or about May 5, 2009, to review the FBA and develop a BIP. *See* [redacted] *17.* Both Dr.

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[7] The 3/09 IEP team also reviewed the speech-language evaluation addendum, which found that the Student did not need further auditory processing. *See* [redacted] *10.* The team then created goals for the 30-minute per month speech-language consults in the IEP, which were agreed to by all parties. *See* [redacted] *16* (IEP Meeting Notes, dated March 10, 2009, page 1).

[8] On or about April 17, 2009, the Student was suspended from school for one school day because of his disruptive classroom behavior and his disrespect of school policies and procedures. *See* [redacted] *32* (Letter from [redacted] Ms. Wright testified that, except for that one day, the Student's behavior was manageable and did not rise to the level of a suspension again. *Wright Testimony.*

s and Dr. c testified that the FBA and BIP were appropriate in light of the Student's needs, and were properly implemented by during this time frame. *See Ebanks Testimony; c Testimony.* Among other things, the FBA recommended that the Student continue in a classroom setting with a low student-teacher ratio, which Dr. s clarified to be roughly his current classroom size at of approximately 15 students. *See 23* (FBA), p. 4; *Testimony.*

7. At the May 5, 2009 meeting, the parent stated that she wanted the Student to be placed into a full-time special education setting. In response, the IEP Team noted as follows:

> believes they are an appropriate setting to provide FAPE in the LRE for [Student] and does not think a change of placement is necessary. that with the behavior plan in place, small class sizes, accommodations and modification to his class work and the supports outlined in the BIP that he can be successful and receive FAPE. However, since Parent and advocate request a change of placement, will initiate the placement process with OSSE and invite them to the next MDT to discuss placement." *17* (May 2009 meeting notes), p. 2. [9]

8. On or about May 13, 2009, an HOD was issued by Hearing Officer St. Clair in response to an earlier administrative due process complaint filed by the parent on January 14, 2009. Among other things, the HOD found that the Student's January 12, 2009 IEP was inappropriate in that it was not based on a full assessment of the Student's suspected disability. *5,* p. 7. The HOD required to fund a clinical psychological evaluation of the Student and then reconvene an MDT/IEP Team meeting to review the evaluation, to review and revise as appropriate the Student's IEP, and to discuss and determine placement. *Id.,* p. 8. The HOD also directed to notify OSSE if could not implement the IEP. *Id.,* pp. 8-9.

9. In July 2009, an independent clinical psychological evaluation of the Student was completed by Dr. and forwarded to *See 8.* Dr. found that the Student was experiencing behavioral issues in the school environment and that, "while [he] may be experiencing feelings of anxiety and depression, he appears to be primarily acting out his

[9] The next day, submitted a placement request to the OSSE Placement Coordinator, Avni Patel. *See 4* (Placement Request, dated May 6, 2009). The Placement Request stated that the request was made in response to the parent's wishes and that still believed it could serve the Student's needs. *Id.,* p. 2. (noting, *inter alia*, that the Student's "behaviors escalated and the school responded with a behavior tracking system. . . . One week prior to the BIP being in place, his behavior drastically improved again and at the present he has had a week of successful days"). also ordered a clinical evaluation at the May 5, 2009 meeting.

negative feelings through his defiance and refusal to complete his schoolwork." *Id.,* pp. 6-7. She also found that the [redacted] staff "appear[ed] to be invested in [the Student] and have been making efforts to ameliorate the situation." *Id.,* p. 7. Dr. [redacted] recommended (*inter alia*) that the Student's IEP, including the FBA/BIP developed in the May meeting, continue to be implemented by APA; that the Student continue to receive one hour per week of individualized counseling; that the Student begin receiving one hour per week of group counseling; and that the parent have a 30-minute per week consultation with the school counselor to discuss working with the Student in the home environment. *See* [redacted] *8.*

10. On or about August 11, 2009, [redacted] convened another meeting of the Student's MDT/IEP Team (with all members present) to review the clinical psychological evaluation, to review and revise as appropriate the Student's IEP, and to discuss placement. Dr. [redacted] stated that the classroom ratio of 15-20 students would be beneficial and that [redacted] currently offered the Student an appropriate classroom size. *See* [redacted] *19,* p. 2; [redacted] *Testimony.* The IEP Team agreed to add one hour per week of group counseling. *See* [redacted] *18.* The IEP team also agreed to conduct a reevaluation in accordance with Dr. [redacted] recommendations. *See* [redacted] *19* (IEP Meeting Notes, dated August 11, 2009), p. 2.

11. Immediately following the 8/11/09 IEP meeting, [redacted] then held a placement meeting that included the designated OSSE Placement Coordinator, [redacted]. The changes to the IEP were explained to Ms. [redacted] *See* [redacted] *20* (IEP Meeting Notes, dated August 11, 2009), p.1. Ms. [redacted] noted that the only additional service recommended by Dr. [redacted] in the independent clinical evaluation was the addition of one hour per week of group therapy. *See OSSE-4*, p. 8. Ms. [redacted] that the Student's IEP was appropriate and could be implemented by [redacted][10] She also recommended that [redacted] be given the chance to implement the latest IEP and BIP to determine its effectiveness once the new school year began. *See* [redacted] *Testimony.*

12. Based on Ms. [redacted] review of the documents, discussions with staff at [redacted] and information gathered at the August 11 placement meeting, OSSE recommended that a change in

[10] Ms. [redacted] inquired during the August 11 placement meeting whether [redacted] would be able to provide the group therapy and was told that the school would take the steps to make sure that group therapy was provided. Ms. [redacted] also testified during the hearing that the school committed to providing the group therapy. *See* [redacted] *Testimony;* [redacted] *Testimony.*

placement to a more restrictive environment was not warranted. *See OSSE-5,* [redacted] *Testimony.* OSSE's recommendation also included an instruction that [redacted] submit a corrective action plan within 10 business days to address, among other things, the poor communication that had developed between the parent and the school. *OSSE-5.* However, such a corrective action plan was never submitted because the parent chose to withdraw the Student from [redacted] eight days later, on or about August 19, 2009, stating as the reason that she was moving. *See* [redacted] *6.*

## IV. DISCUSSION AND CONCLUSIONS OF LAW

### A. Burden of Proof

1. The burden of proof in a special education due process hearing is on the party seeking relief. DCMR 5-3030.3; see *Schaffer v. Weast*, 546 U.S. 49 (2005). This burden applies to any challenged action and/or inaction, including failures to provide an appropriate IEP and/or placement.

2. Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. *See* DCMR 5-3030.3. The standard generally applied is preponderance of the evidence. *E.g., N.G. v. District of Columbia,* 556 F. Supp. 2d 11 (D.D.C. 2008); *Holdzclaw v. District of Columbia,* 524 F. Supp. 2d 43, 48 (D.D.C. 2007); *see also* 20 U.S.C. §1415(i)(2)(C)(iii).

3. For the reasons set forth below, the Hearing Officer concludes that Petitioners have failed to carry their burden of proof with respect to each issue.

### B. Issues/Alleged Denials of FAPE

***Issue (a): Inappropriate IEPs***

4. Under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Anderson v. District of Columbia,* 109 LRP 18615 (D.D.C. 2009), slip op. at 6, *quoting Board of Education v. Rowley*, 458 U.S. 176, 200, 207 (1982). *See also Kerkam v. McKenzie*, 862 F. 2d 884 (D.C. Cir. 1988); *J.G. v. Abington School,* 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate

to advance him a meaningful educational benefit."). The issue of whether an IEP is appropriate is a question of fact. *See, e.g., S.H. v. State-Operated School Dist. of Newark,* 336 F. 3d 260, 271 (3d Cir. 2003).

5. Petitioners claim that the IEPs developed in February, March and August, 2009, were not appropriate at the time they were drafted, mainly because the IEPs allegedly (a) were not based on sufficiently comprehensive evaluations (*i.e.,* a clinical evaluation and FBA); (b) did not adequately address the Student's behavioral and/or social/emotional needs; (c) did not provide the level of support the Student needed in light of his significant deficits and behavioral concerns; and (d) did not provide for a more restrictive, small therapeutic setting as requested by the parent. *See Prehearing Order* (Oct. 22, 2009),¶ 5 (a)-(c).

6. Based on the evidence presented at hearing, Petitioners have not demonstrated that the IEPs suffered from any such deficiencies or that they otherwise failed to confer educational benefits on the Student. The February, May, and August, 2009 IEPs were each reasonably calculated to confer meaningful educational benefits on the Student at the time they were developed, consistent with the Student's specific needs. The August IEP also was revised as appropriate to reflect the findings and recommendations of the independent clinical psychological evaluation, as directed in the prior HOD. Moreover, despite his low grades, the Student scored proficient on his DC-CAS tests conducted at the end of the school year in Language Arts, Math, Reading and Science. *See* [redacted] *t Testimony.* Finally, Petitioners' own expert believed that [redacted] had taken appropriate steps to meet the Student's needs. She testified (*inter alia*) that the Student "was getting a high level of support at [redacted] that the FBA and BIP were "very appropriate," that [redacted] was "doing everything they needed to be doing" to service the Student, that [redacted] was [redacted] of providing all services she recommended, and that she did not recommend a full-time special education placement for the Student. *Kovac Testimony.*

***Issue (b): Extended School Year Services***

7. ESY services "must be provided only if a child's IEP Team determines, on an individual basis...that the services are necessary for the provision of FAPE to the child." 34 CFR 300.106(a)(2); *see also* DCMR 5-3017.2; 71 Fed. Reg. 46,582 (Aug. 14, 2006) ("The inclusion of the word 'only' is intended to be limiting."); *id.* (States "have considerable flexibility in determining eligibility for ESY services"). The purpose of ESY services generally is to prevent

substantial regression of skills over the summer break and a failure to recoup those lost skills within a reasonable period of time.

8. In this case, Petitioners do not point to any evidence demonstrating the likelihood of a significant drop in the Student's skill level caused by the summer break and/or the Student's inability to recoup those lost skills in a reasonable time. Moreover, according to notes of the MDT/IEP Team meetings in February, May and August 2009, neither the parent nor educational advocate ever requested that ESY services be considered for the Student during these meetings. *See* [redacted] *15 through -19* (IEP meeting notes). Further, none of the experts, counselors or evaluators indicated that ESY services were needed for the Student in this particular case.

9. Accordingly, Petitioners have not shown that ESY services were necessary to provide FAPE to the Student; and Petitioners thus have not met their burden of proving that [redacted] improperly denied such services for summer 2009.

***Issue (c): Inappropriate Placement***

10. Petitioners allege that, in connection with the August 11, 2009 MDT/IEP Team meeting, OSSE (acting as the SEA under IDEA) failed to "identify and/or recommend an appropriate alternate placement for the student for the 2009/2010 school year." [redacted] 2, p. 7. As noted in the *Prehearing Order*, OSSE has responsibility for general supervision under IDEA, including responsibility "for ensuring that the requirements of [IDEA] are carried out." 34 C.F.R. §300.149(a).[11] More specifically, where an LEA Charter "concludes that it cannot serve a child with a disability enrolled in its facility using the funds available to it," the LEA Charter is required to notify OSSE pursuant to DCMR §5-3019.9, and under such circumstances OSSE may be held to "assume responsibility for the student, in its role as SEA, because the LEA Charter cannot serve the student." *IDEA Public Charter School v. Belton,* 45 IDELR 158 (D.D.C. 2006), slip op. at 7.

11. Accordingly, in denying OSSE's motion to dismiss, the Hearing Officer ruled that Petitioners would need to prove the following to prevail on this issue: (i) that [redacted] determined that it could not serve the Student; (ii) that [redacted] notified OSSE of that conclusion; and (iii) that,

[11] *See also Gadsby v. Grasmivk,* 109 F.3d 940, 953 (4th Cir. 1997 ("SEA is ultimately responsible for the provision of a [FAPE] to all its students and may be liable for the state's failure to assure compliance with IDEA"); *Ullmo v. Gilmour Academy,* 273 F.3d 671 (6th Cir. 2001) (same); *S.S. v. Howard Road Academy,* 108 LRP 37537 (D.D.C. 2008).

as a result, OSSE assumed responsibility for and actually made an inappropriate placement decision in this case, in lieu of the LEA (*i.e.,* [redacted] *See Prehearing Order* (Oct. 22, 2009),¶ 4 (d). The Hearing Officer now concludes that Petitioners have not made the required showing, and thus have failed to carry their burden of proof on this issue.

12. ***First, the evidence shows that*** [redacted] ***never determined that it was unable to serve the needs of the Student.*** Whenever LEA Charters are considering a change in placement to a more restrictive environment outside of the charter school, it must contact OSSE pursuant to OSSE's Policy and Procedure for Placement Review ("PPPR"). The purpose of this policy is to support public schools in meeting the educational needs of students in the least restrictive environment in accordance with the IDEA. (*See* 34 C.F.R. § 300.114.) [12] Here, the evidence clearly shows that [redacted] submitted a request to OSSE on behalf of the parent and advocate, who believed the Student needed to be in a full-time special education setting. [redacted] Justification for Removal Statement stated that "[t]he school still feels that [it] can provide FAPE at [the Student's] current setting and that this is an appropriate placement. [Student's] mother and advocate, however, have ...indicated that they think he needs to be in a full-time special education setting. . . . Achievement Prep is submitting this request on the behalf of the parent and advocate." *OSSE-1*. Hence, throughout the August 2009 IEP/placement process, [redacted] expressed a [redacted] of, and commitment to, serving the Student and never communicated otherwise to OSSE. The testimony of OSSE, the parent, and [redacted] were all consistent in that regard. *See OSSE Testimony; Parent Testimony;* [redacted] *Testimony.*

13. ***Second, the evidence shows that, as a result, OSSE never assumed responsibility for or actually made any placement decision in this case, in lieu of the LEA (i.e.,***

[12] Ms [redacted] testified that the OSSE acts in an advisory role and that the ultimate decision on placement rests with the IEP team. *OSSE Testimony; see also* PPPR, § 3.5. Pursuant to the PPPR, the charter school submits a "Justification for Removal Statement" to initiate a request for a change in placement. *Id.*

never asked the OSSE to intervene and assume responsibility for the Student's educational needs, and OSSE did not do so. Again, the testimony of OSSE, the parent, and were all consistent on this point. *See OSSE Testimony; Parent Testimony; t Testimony.* Petitioners offered no other evidence to the contrary. This failure of proof is sufficient to support judgment against Petitioners and in favor of OSSE on the inappropriate placement issue.

14. In any event, Petitioners never demonstrated that was in fact an inappropriate placement. The evidence shows that APA was of meeting the Student's special education needs and providing all of the services called for under the Student's IEP. Indeed, Petitioners' own expert testified that had taken appropriate steps to meet the Student's needs and did not recommend a full-time special education placement for the Student. *See c Testimony; Conclusions,¶6, supra.* Hence, there was no basis for the OSSE to intervene and assume responsibility for the Student's placement in this case.

### C. Appropriate Relief

15. The IDEA authorizes district courts and hearing officers to fashion "appropriate" relief, *e.g.,* 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). In this case, the Hearing Officer has found no denials of FAPE, and has found that Petitioners are not entitled to any of their requested relief, including private placement and funding of the Student at Accotink Academy. Accordingly, no relief is appropriate.

## V. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby ordered:

1. Judgment shall be, and hereby is, entered **FOR** Respondents and **AGAINST** Petitioners on each specified issue;
2. Petitioner's requests for relief shall be, and hereby are, **DENIED;**
3. Petitioner's Administrative Due Process Complaint shall be, and hereby is, **DISMISSED**, **With Prejudice;** and