

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

STUDENT,¹ by and through his Parent,

Petitioners,

Case No. 2009-1200
Bruce Ryan, Hearing Officer

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Hearing: November 9, 2009
Decided: November 19, 2009

Respondent.

HEARING OFFICER DECISION

I. PROCEDURAL BACKGROUND

The due process complaint in this matter was filed August 20, 2009, 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 [REDACTED] old student (the "Student") who resides in the District of Columbia and has been determined to be eligible for special education as a child with a disability. The Student currently attends the [REDACTED] a private school located in D.C., where he was placed by his parent at the beginning of the 2009-2010 school year.

Petitioner alleges that Respondent District of Columbia Public Schools ("DCPS") has denied the Student a free appropriate public education ("FAPE") by: (a) failing to implement the Student's individualized education program ("IEP") dated March 10, 2009; and (b) failing to provide an appropriate placement. More specifically, Petitioner alleges that the Student was enrolled at his neighborhood school ([REDACTED] Senior High School) on or about July 23, 2009, and that DCPS staff informed Petitioner that [REDACTED] could not implement the Student's IEP. On or about July 29, 2009, Petitioner allegedly notified DCPS that she would unilaterally place the

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

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Student into the [REDACTED] School for the 2009-2010 school year, but did not receive any response to that notice prior to the beginning of the school year and the filing of this complaint.

DCPS filed a late Response and a Motion to Dismiss on or about September 15, 2009,² following an unsuccessful resolution process. DCPS asserted, *inter alia*, that “DCPS determined shortly after the student’s attempted enrollment at Ballou that it could fully implement the student’s IEP at [REDACTED] High School,” and that “DCPS then offered this location plus three months of compensatory education for any possible missed services the student may have encountered from DCPS’ delay in specifying an appropriate DCPS location” on or about September 3, 2009, the date of the resolution meeting. *DCPS’ Response*, p.1. DCPS argues that “[b]ecause the parent in the instant case has not reasonably allowed DCPS the opportunity to address concerns about the student,” the Hearing Officer should deny reimbursement and dismiss the case with prejudice. *Id.*, p.5.

A prehearing conference (“PHC”) was held on October 6, 2009, and a Prehearing Order was issued the same date. At the PHC, the Hearing Officer denied DCPS’ motion to dismiss because DCPS had not shown that reimbursement for the parent’s unilateral placement should be denied as a matter of law pursuant to 20 U.S.C. §1412 (a)(10)(C) and 34 C.F.R. §300.148, or under general principles of equity. *See Prehearing Order* (Oct. 6, 2009), ¶ 4. The Hearing Officer ruled that (1) the complaint appeared to be based on valid legal theories alleging entitlement to relief, and (2) genuine issues of material fact appeared to exist relating to the requested relief, including with respect to (a) whether DCPS made FAPE available to the Student in a timely manner prior to his enrollment at the [REDACTED] School, (b) whether Petitioner gave appropriate written notice to DCPS prior to the Student’s removal from [REDACTED], and/or (c) whether Petitioner acted reasonably or unreasonably with respect to these matters. *Id.*; *see* 34 C.F.R. §300.148(c),(d) (2) & (3).

Required five-day disclosures were filed by both parties on or about October 19, 2009, for the due process hearing originally scheduled for October 26, 2009. Following a substitution of Petitioner’s counsel, an unopposed motion for continuance was granted to reschedule the hearing to November 9, 2009.

² The response was originally due 8/30/09. *See* 34 C.F.R. §300.508(e).

The Due Process Hearing was then held on November 9, 2009. At the hearing, 13 documentary exhibits submitted by Petitioners (identified as "GC-1" through "GC-12" and "GC-15") and seven documentary exhibits submitted by DCPS (identified as "DCPS-1" through "DCPS-7") were admitted into evidence.³ Testifying on behalf of Petitioners were: the Parent-Petitioner; Ms. [REDACTED] (Educational Advocate, James E. Brown & Associates, PLLC); and Ms. [REDACTED] (Director, The [REDACTED] School). Testifying on behalf of DCPS were: Ms. [REDACTED] (Special Education Coordinator, Coolidge SHS); Mr. [REDACTED] (Project Coordinator, DCPS Office of Special Education); and Ms. [REDACTED] (Special Education Coordinator, [REDACTED]).

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").

II. ISSUES AND REQUESTED RELIEF

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

- a. Whether DCPS has denied the Student a FAPE by failing to implement the March 10, 2009 IEP;*
- b. Whether DCPS has denied the Student a FAPE by failing to provide an appropriate educational placement; and*
- c. What relief, if any, is appropriate for any established denial of FAPE, including reimbursement for private school placement pursuant to 34 CFR 300.148.⁴*

³ Exhibits GC-01 through GC-08, GC-10, and GC-11 were admitted without objection. GC-9, GC-12, and GC-15 were admitted over DCPS' objections. Petitioner withdrew GC-13 and GC-14, which appeared to be duplicative of DCPS-3 and DCPS-4. All of the DCPS Exhibits were admitted without objection.

⁴ Petitioners' complaint had originally included a request not only for reimbursement, but also for an order of prospective placement and an award of compensatory education. However, as a result of the PHC, the case has focused on the claim for reimbursement. Petitioners did not present evidence at hearing to support a remedy of compensatory education, and the Hearing Officer has determined that placement of the Student going forward should first be considered by the MDT/IEP Team including the parent.

III. FINDINGS OF FACT

1. The Student is a [REDACTED] resident of the District of Columbia who has been determined to be eligible for special education and related services as a child with a disability under the IDEA.

2. During the 2008-2009 school year, the Student was a [REDACTED] grader enrolled at [REDACTED]”), which is its own LEA. *See Parent Testimony; [REDACTED]; GC-1.* [REDACTED] provided a full-time, self-contained, special education setting. *Id.*

3. On or about March 10, 2009, an IEP was developed for the Student at [REDACTED]. The IEP classifies the Student as learning disabled and provides for full-time special education and related services in a 100% out-of-general-education setting. *See DCPS-1.* Specifically, the IEP provides 26 hours of specialized instruction, 30 minutes of occupational therapy (“OT”), one hour of speech/language therapy, and 30 minutes of counseling services per week, all in a special education setting. *Id.* (p.1 of 4). In rejecting an LRE setting in regular education, the team determined that the Student “requires full-time special education in all academic areas ...based on the severity of the student’s disability.” *Id.* (p. 4 of 4).

4. On or about July 1, 2009, the parent withdrew the Student from [REDACTED] because she moved and also was not entirely satisfied with the school. *Parent Testimony; GC-1.*

5. On or about July 23, 2009, the parent enrolled the Student into his neighborhood school [REDACTED], and provided a copy of the Student’s March 10, 2009 IEP to the [REDACTED] staff. *Parent Testimony; GC-1.*

6. Upon enrollment of the Student at [REDACTED] on or about 7/23/09, the staff at [REDACTED] reviewed the Student’s March 10, 2009 IEP and indicated that the school could not implement the IEP. *Parent Testimony; GC-1; see also DCPS-4* (resolution session meeting notes); *Straughter Testimony.*

7. On or about July 29, 2009, the parent (through legal counsel) delivered a letter to the DCPS Office of Special Education and [REDACTED] DCPS that the parent “intends to remove [the Student] from the District of Columbia Public Schools and unilaterally place him into [REDACTED] School, at DCPS’ expense.” *GC-5.* The letter explained that the [REDACTED] School is

a nonpublic, full time, special education program addressing students with learning disabilities”; that the Student’s current IEP dated March 10, 2009 provided “28 hours of special education services to be implemented in an out of general education, full time special education program”; that when the parent enrolled the Student into ██████████ for the 2009-2010 school year, ██████████ High School informed they cannot implement the IEP”; and that “[a]ccordingly, [parent] has chosen to secure placement at the ██████████ School.” *Id.*

8. DCPS did not respond to the parent’s July 29, 2009 correspondence over the course of the next month.

9. On August 20, 2009, the parent filed the current due process complaint claiming that DCPS had denied the Student a FAPE by failing to implement the March 10, 2009 IEP and failing to provide an appropriate placement for the 2009-2010 school year. *GC-1.*

10. On August 28, 2009, at the end of the first week of the DCPS 2009-2010 school year, DCPS issued a Prior to Action Notice proposing a “Change in Placement” for the Student. *DCPS-3; see also GC-12* (email correspondence from ██████████, DCPS-OSE, attaching “notice of placement”). The notice inaccurately informed the parent that “a multidisciplinary team (MDT), of which you were an invited member, has made the following decisions about your child: ...Location of Services – ██████████....” *DCPS-3.* In fact, it is undisputed that DCPS convened no MDT meeting to consider this decision and invited no input or participation by the parent into this decision prior to issuing the notice. *See P ██████████ Testimony; Parent Testimony.* The notice also provided no information about the program or setting at Coolidge SHS.

11. On or about August 31, 2009, the parent (through legal counsel) delivered a letter to the DCPS Office of Special Education rejecting the proposed placement at ██████████, and noting “DCPS’ failure to permit the parent to participate in the placement decision making process.” *GC-4.*

12. The 2009-2010 school year began at the ██████████ School on August 31, 2009, and the Student has attended the ██████████ School from that date to the present. *See ██████████; Parent Testimony.*

13. The [REDACTED] School is a full-time, special education program in an out-of-general-education setting, and is appropriate to meet the Student's needs. It provides a program for learning disabled students that includes appropriate specialized instruction in all academic areas, small classrooms with low student-teacher ratios (generally 5 to 1), and all required related services as set forth in the March 10, 2009 IEP. *See Logan Testimony; Parent Testimony.* The school also has a Certificate of Approval from the D.C. State Education Agency to serve students with specific learning disabilities and OHI/ADHD. It currently includes approximately 20-25 DCPS-funded students out of a total enrollment of roughly 35 students. *Id.*

14. On or about September 3, 2009, DCPS convened a resolution meeting to discuss Petitioner's current due process complaint and the facts that form the basis of the complaint, pursuant to 34 C.F.R. § 300.510. The meeting notes further indicate that "[t]he purpose of this resolution meeting is to discuss placement." *DCPS-4.* According to the meeting notes, when the parent registered the Student at Ballou SHS (her neighborhood school), "Ballou stated that they would not be able to meet [the Student's] needs [since] they do not offer an LD cluster program." *Id.*, p. 1. DCPS proposed to place the Student at [REDACTED] and offered compensatory education. *Id.*; *see also DCPS-5; [REDACTED].* The parent rejected DCPS' proposed settlement, and the parties agreed to proceed to a due process hearing. *DCPS-4; GC-2.*

15. The evidence indicates that the [REDACTED] Cluster Program now proposed for the Student is not a full-time, special education program conducted in a completely out-of-general-education setting. Rather, it appears to be an "inclusionary/resource" program where instruction in at least some academic areas is provided in a general education setting and/or by general education teachers working with modified curricula. However, two classes (English and math) are conducted in self-contained, special education classrooms. *See GC-10; [REDACTED] Testimony; SEC Testimony.*⁵

16. Since the Student registered at [REDACTED] July 2009, DCPS has not convened any MDT meeting of which the parent was an invited member, either to review the Student's IEP

⁵ One of the special education teachers in the [REDACTED] is a former teacher at [REDACTED] and is familiar with the Student's educational history. According to the Student's educational advocate, the teacher indicated during a 10/15/09 observation that "the way the LD program is designed at [REDACTED] [the Student] would have a hard time keeping up the pace of instruction." *GC-10*, p. 1.

or to discuss and determine an appropriate placement for the 2009-2010 school year. See [REDACTED] Testimony; Parent Testimony; [REDACTED] Testimony.

IV. SUMMARY OF DETERMINATIONS

Issue (a): DCPS denied the Student a FAPE by failing to implement the March 10, 2009 IEP at the beginning of the 2009-2010 school year.

Issue (b): DCPS denied the Student a FAPE by failing to provide an appropriate educational placement at the beginning of the 2009-2010 school year.

Issue (c): Partial-year reimbursement for the parent's private school placement and other appropriate equitable relief is ordered for DCPS' denial of FAPE in this case. DCPS will be ordered to reimburse the cost of first-semester enrollment at The [REDACTED] School. DCPS is also ordered to convene an MDT/IEP Team meeting within the next 30 days, with the parent an invited member, to (i) review and revise (as appropriate) the Student's IEP and (ii) discuss and determine an appropriate educational placement for the remainder of the 2009-10 school year.

V. DISCUSSION AND CONCLUSIONS OF LAW

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). For the reasons discussed below, the Hearing Officer concludes that Petitioners have met their burden of proof on each of the specified issues.

2. First, it is undisputed that the March 10, 2009 IEP requires full-time special education in all academic areas in a setting that is wholly outside general education, and that [REDACTED] was unable to implement such IEP. It is also undisputed that DCPS did not implement or offer to implement the Student's IEP at any other location as of the beginning of the 2009-2010 school year. The Hearing Officer concludes that this failure to implement the IEP was a denial of FAPE.⁶

⁶ The Hearing Officer requested the parties to address in post-hearing statements the potential applicability of 34 C.F.R. § 300.323(e), since the Student may be argued to have effectively transferred from one LEA to another within the same state and within the same school year (or over the summer, see 71 *Fed. Reg.* 46682 (Aug. 14, 2006)). However, that provision does not appear to affect the outcome in this case, as it still would require DCPS to provide FAPE to the Student (including services comparable to those described in the IEP from Options PCS) until DCPS either adopted that IEP or formulated and implemented a new IEP. See also vol. 56 DC Register (Oct. 16, 2009) (proposing permanent final rule under DCMR 5-3019.5, to clarify that receiving LEA under 34 CFR 300.323(e) is "responsible upon enrollment for ensuring that the child receives special education and related services according to the IEP").

3. Second, it is undisputed that DCPS also failed to provide an appropriate placement – or, as DCPS might prefer to put it, failed to designate an appropriate school or location of services at which to implement the IEP – as of the beginning of the 2009-2010 school year. The Hearing Officer concludes that this failure to provide an appropriate placement and/or location of services that could implement the IEP also was a denial of FAPE within the meaning of the IDEA.

4. Third, Petitioners' evidence showed that the [REDACTED] School is an appropriate private placement that can fully implement the Student's March 10, 2009 IEP, and DCPS did not present evidence to contradict that showing.

5. IDEA provides that "a court or a hearing officer may require the agency to reimburse the parents for the cost of [private school] enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate." 34 C.F.R. § 300.148 (c); *see also Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 12-13 (1993); *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 369-70 (1985); *Roark v. District of Columbia*, 460 F. Supp. 2d 32 (D.D.C. 2006). In this case, the Hearing Officer finds that DCPS failed to make a FAPE available to the Student in a timely manner, *i.e.*, at the beginning of the 2009-2010 school year. The Hearing Officer also finds that the private placement chosen by the parents (*i.e.*, [REDACTED] School) is appropriate to meet the Student's needs as established in the IEP.

6. However, "equitable considerations are relevant in fashioning relief," *Burlington*, 471 U.S. at 374, and courts and hearing officers have "broad discretion" in the matter. *Id.* at 369. The hearing officer "must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required." *Carter*, 510 U.S. at 16; *see also Forest Grove School District v. T.A.*, No. 08-305, 557 U.S. ___ (June 22, 2009), slip op. at 16-17 (court or hearing officer should consider all relevant equitable factors "in determining whether reimbursement for some or all of the cost of the child's private education is warranted"). Moreover, where the child previously received special education and related services under the authority of a public agency (as here), IDEA specifically provides that the cost of reimbursement may be reduced or denied under certain circumstances, including where the parents fail to give

appropriate written notice to the agency at least 10 business days prior to removal of the child from the public school, 34 C.F.R. §300.148 (d) (1)(ii), or “[u]pon a judicial finding of unreasonableness with respect to the actions taken by the parents.” *Id.* §300.148(d)(3).

7. In this case, the parent gave written notice to DCPS of her intent to enroll her child into the [REDACTED] School at public expense more than three weeks (approximately 18 business days) before the start of the 2009-10 school year. As discussed further below, the Hearing Officer also finds that the actions taken by the parent were not unreasonable under the circumstances. Accordingly, the Hearing Officer concludes that Petitioners are entitled to reimbursement for the cost of the Student’s enrollment at [REDACTED] School in accordance with IDEA, 34 C.F.R. Section 300.148. Considering all relevant factors and on this particular record, the Hearing Officer finds that the cost of one full semester at [REDACTED] is the proper measure of reimbursement. *Cf. Kitchelt v. Weast*, 341 F. Supp. 2d 553 (D. Md. 2004) (awarding one semester of private school tuition where parent was forced to pursue private placement due to LEA’s failure to provide a FAPE at the beginning of the school year). On balance, the Hearing Officer believes that a one-semester commitment will provide an appropriate level of financial reimbursement to the private school,⁷ without being too disruptive to the Student’s education, and is equitable under the circumstances. *Id.* Under the Order, DCPS will have the opportunity to convene a procedurally proper MDT/IEP Team meeting prior to the beginning of the second semester to consider the appropriate educational placement for the Student going forward, including for the remainder of the 2009-2010 school year.

8. With respect to the reasonableness of the parent’s conduct in this case, DCPS contends that there was only “a few days delay in identifying an appropriate DCPS location to implement this student’s IEP” and that the parent acted unreasonably by enrolling her child in the private school and “not reasonably allow[ing] DCPS the opportunity to address concerns about the student.” *DCPS-7*, pp. 2, 4-5. The Hearing Officer finds these arguments to be without merit. The evidence shows that DCPS failed to respond or act on the parent’s July 29, 2009 letter for an entire month, and ultimately took action only in response to the parent’s filing of a due

⁷ The Director of the [REDACTED] School testified that the school does not dictate an entire year commitment for students, but generally charges a per diem rate during the period of enrollment (based on an annual tuition cost of approximately \$35,000). Petitioners have not yet paid for the per diem charges they have incurred since 8/31/09. *See Logan Testimony.*

process complaint. Moreover, DCPS never convened any meeting of the Student's MDT/IEP Team to address the parent's concerns about the Student's proposed 2009-10 placement before issuing a unilateral notice on the afternoon of Friday, August 28. The notice arrived after the Student had already missed a full week of the new DCPS school year, and on the eve of his starting the new school year on time at [REDACTED] on 8/31/09. Finally, it was not until the 9/3/09 resolution session (not MDT meeting) – almost two weeks after the DCPS school year began – that DCPS first sought to discuss its proposed placement with the parent.⁸

9. As the *Kitchelt* court appropriately put it, under IDEA the Student “was entitled to begin the school year at the beginning somewhere.” 341 F. Supp. 2d 553, 42 IDELR 58 (slip op. at 6). Indeed, the situation addressed in *Kitchelt* appears to be quite similar to that presented here. The agency in that case took no action on placement and failed to communicate with the parents for several weeks following a parental request during the summer, and the delay was determined to be wholly the fault of the LEA. As with [REDACTED], had the parents started their child at the neighborhood public school on time, he would have been in a placement that everyone eventually agreed was inappropriate. As a result, he was essentially impelled into a private parental placement by the school board's failure to act in a timely fashion. *Id.*, slip op. at 6-7. See also *Wirta v. District of Columbia*, 859 F. Supp. 1, 5 (D.D.C. 1994) (holding private school placement to be an appropriate remedy where DCPS unreasonably delayed in making available a FAPE when it “failed to propose an appropriate special education program and placement” for the current school year, and thereby “defaulted on its obligations under IDEA”).⁹

10. DCPS also appears to argue that it did not fail to provide a FAPE in this case because the Student already had an IEP and “placement” was never at issue. *DCPS-7*, p. 3. DCPS suggests that it was always free, on its own, to identify a “location” that could

⁸ In a similar vein, DCPS counsel appeared to suggest at the PHC and at hearing that Petitioners were seeking to “game” the system to secure a desired private placement. The Hearing Officer agrees with the court's reasoning in the *Kitchelt* case, which explained that it would not deny or limit reimbursement “so long as the parents continue in good faith (e.g., no intentional delays, no obstructions) to participate in the development of an IEP and placement in the public school system,” despite their belief that only a private school placement would be appropriate for their child. 341 F. Supp. 2d 553, at n. 1. The only delays here were solely the fault of DCPS.

⁹ The Hearing Officer does note that the student in *Kitchelt* actually began at the private school prior to the LEA's action on placement (but after the public school year began), whereas here the Student began at [REDACTED] one day later (on August 31). However, the Hearing Officer believes that as a practical matter, this did not put the parent in a materially different position, especially since DCPS (unlike the agency in *Kitchelt*) never held an actual MDT meeting and did not even offer an opportunity to discuss the proposed program at [REDACTED] until September 3.

“appropriately implement this student’s IEP.” *Id.* However, whatever merit DCPS’ legal distinction may have in other situations, the Hearing Officer concludes that it provides no valid defense in this case. Unlike the situation addressed in the recent Second Circuit decision cited by DCPS, *T.Y. v. New York City Dept. of Educ.*, 2009 U.S. App. LEXIS 22238 (Oct. 9, 2009), at *5, here the parent was never involved in the school selection process and was never even given any information about possible school selections until nearly two weeks into the new school year, after she had already enrolled the Student in private school. It is clear that Petitioners were only seeking “input,” not a “veto” over school choice. *Id.*, citing *White v. Ascension Parish Sch. Bd.*, 343 F. 3d 373, 380 (5th Cir. 2003). See also *McKenzie v. Smith*, 771 F. 2d 1527 (D.C. Cir. 1985) (when DCPS chose to propose a change from private day school to a special education program at ██████████, it was “essential that DCPS adequately explain the basis for its placement decision and the services to be provided at ██████████, as well as how those services could meet [the student’s] individual needs”); *Paolella v. District of Columbia*, 210 F. Appx. 1 (D.C. Cir. 2006) (DCPS’ designation of a particular public school conformed with IDEA’s placement requirements where record showed that parents “had a meaningful opportunity to participate” and “placement suggested by DCPS was not predetermined”; DCPS discussed why the designated public school could provide the services identified in the IEP, and the parents visited the suggested school and had the opportunity to express their disagreement with DCPS’ decision); *A.K. v. Alexandria City School Board*, 484 F. 3d 672 (4th Cir. 2007) (“certainly in a case in which the parents express doubt concerning the existence of a particular school that can satisfactorily provide the level of services that the IEP describes, the IEP must identify such a school to offer a FAPE”); *White, supra* (“assuming arguendo that the regulations contemplate a parental right to provide input into the location of services, the facts are undisputed that the [parents] did so as part of the IEP team that discussed location at length and that ultimately selected the centralized site”); *Holdzclaw v. District of Columbia*, 524 F. Supp. 2d 43, 47-48 (D.D.C. 2007) (no evidence that parents were denied right to participate in placement decision); *T.T. v. District of Columbia*, 48 IDELR 127 (D.D.C. 2007) (MDT meeting convened to discuss two public placement options identified by DCPS site review committee).

11. Nor does the Hearing Officer believe that this case is analogous to the situations described in *Letter to Veazey*, 37 IDELR 10 (OSEP Nov. 26, 2001), in which an agency may properly make an “administrative determination” among “two or more equally appropriate

locations” that admittedly can meet the child’s needs, provided such determination is “consistent with the placement team’s decision.” DCPS’ witness testified that he was not merely selecting among two or more equally appropriate locations; rather, he said his task was to “find a program that fits the Student.” ██████ *Testimony*. This certainly sounds like what courts have generally characterized as a “placement” decision under IDEA,¹⁰ and LEAs do not have the “unilateral discretion under the [IDEA] to choose the educational placement of a child with a disability as an administrative matter to the exclusion of any input from that child’s parents.” *Letter to ██████ supra*. Moreover, there was no “placement team decision” – or any other meeting or discussion of the Student’s MDT/IEP Team, for that matter – against which a “location” designation could be measured. The parent merely received a notice in the mail a week into the new school year reflecting the unexplained result of a wholly unilateral decision by a DCPS project coordinator. IDEA’s mandate to “ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child,” 20 U.S.C. § 1414(e); 34 C.F.R. § 300.327; *see also* 34 C.F.R. § 300.116(a)(1) (“each public agency must ensure that the placement decision is made by a group of persons, including the parents”), surely must mean more than that.

12. Finally, even assuming *arguendo* that DCPS had properly made a decision on placement and/or location of services for the 2009-10 school year, the evidence does not show that the ██████ program can fully implement the March 10, 2009 IEP, as presently written. *See Findings*, ¶15. Thus, based on this record, DCPS would not have made FAPE available to the Student in a timely manner even if the ██████ program were considered.

13. As noted above, 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*, 401 F.3d at 521-23. *See also* 34 C.F.R. § 300.148 (c), (d). In this case, the Hearing Officer has exercised his discretion to fashion appropriate equitable relief, based on the record developed in this proceeding and the particular denials of FAPE adjudicated

¹⁰ *See, e.g., Branham v. District of Columbia*, 427 F. 3d 7, 12 (D.C. Cir. 2005), citing *McKenzie v. Smith*, 771 F. 2d 1527, 1534-35 (affirming “placement based on match between a student’s needs and the services offered at a particular school”). Indeed, even DCPS has elsewhere characterized its action in this case as a “placement” decision. *See, e.g., DCPS-3; DCPS-4; GC-12.*

herein. The appropriate relief is set forth in the Order below. The relief includes the cost of the [REDACTED] School from August 31, 2009 through the end of the first semester on a *pro rata* basis. It also includes a directive for DCPS to convene an MDT/IEP Team meeting within the next 30 calendar days, at which DCPS should review the Student's performance at [REDACTED] School this semester, review and revise (as appropriate) the Student's IEP, and discuss and determine a placement for the remainder of the 2009-2010 school year that is appropriately tailored to meet the Student's specific needs. At such meeting, the MDT/IEP Team may choose to consider [REDACTED] or another public school program as a possible placement, depending on the needs of the Student at that time. *See, e.g., Green v. District of Columbia*, 45 IDELR 240 (D.D.C. 2006) ("While [private school] might be an appropriate placement for [student] at the current time, another school – including a D.C. public school – might be an appropriate placement at a later date depending on [student's] progress").

VI. ORDER

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

1. DCPS shall reimburse Petitioners for the cost of enrolling the Student in The [REDACTED] School of Washington, D.C., including tuition and transportation, from August 31, 2009 through the completion of the first semester of the 2009-10 school year in January 2010, pursuant to 34 C.F.R. §300.148 (c) and (d).
2. Within **30 calendar days** of this Order, DCPS shall convene a meeting of the Student's MDT/IEP team for the following purposes: (a) to review the Student's current special education needs and progress at the [REDACTED] School since August 31, 2009; (b) to review and revise, as appropriate, the Student's March 10, 2009 IEP to ensure that it is reasonably calculated to provide educational benefit to the Student; and (c) to discuss and determine an appropriate educational placement and location of services for the remainder of the 2009-2010 school year that is tailored to meet the Student's specific needs and is capable of implementing the IEP.
3. Within **five (5) school days** of the MDT/IEP Team meeting, DCPS shall issue a Prior to Action Notice of Placement for the Student for the remainder of the 2009-2010 school year.
4. Petitioners' other requests for relief, including compensatory education, are hereby **DENIED**.
5. All written communications from DCPS concerning the above matters shall include copies to counsel for Petitioners, Domiento Hill, Esq., via facsimile (202-742-2098), or via email (dhill@jeblaw.biz).

6. Any delay in meeting any of the deadlines in this Order caused by Petitioners or Petitioners' representatives (*e.g.*, absence or failure to attend a meeting, or failure to respond to scheduling requests) shall extend the deadlines by the number of days attributable to such delay.
5. This case shall be, and hereby is, **CLOSED**.

Dated: November 19, 2009



Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 U.S.C. §1415(i)(2).

APPENDIX

CASE NO. : 2009-1200

STUDENT: [REDACTED]

DATE OF BIRTH: [REDACTED]

STARS NO. : [REDACTED]

SCHOOL: [REDACTED]

PARENT-PETITIONER: [REDACTED]

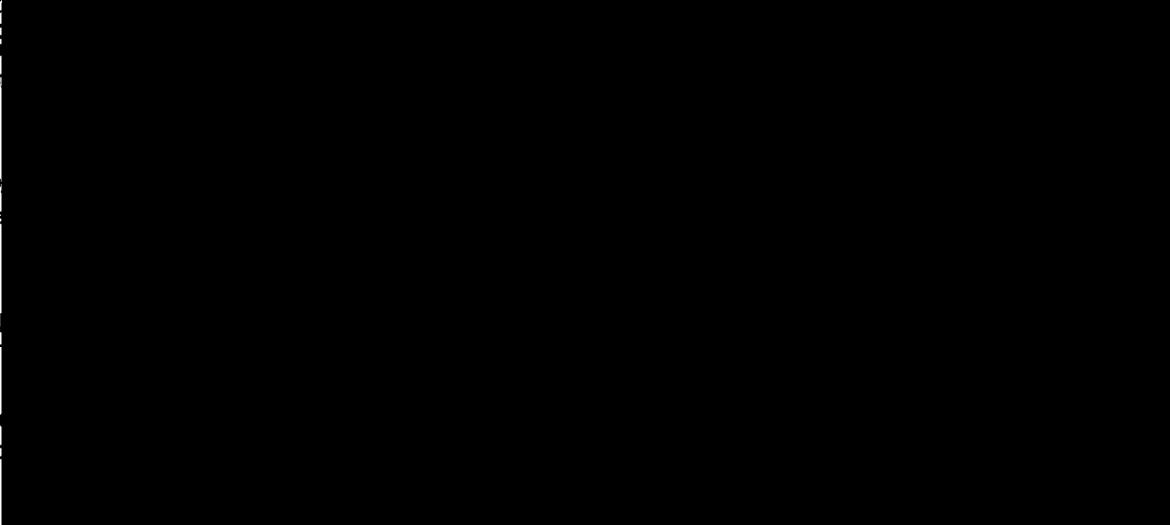
PETITIONERS' ATTORNEY: DOMIENTO HILL, ESQ.

RESPONDENT DCPS' ATTORNEY: HARSHAREN BHULLER, ESQ.

Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

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