DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

In Re the Matter of:

Parent, on behalf of Student,

Petitioner,

v.

The District of Columbia Public Schools ("DCPS"),

Respondent.

Date Issued: June 2, 2011

Hearing Officer: Ramona M. Justice

Case Number:

OSSE STUDENT HEARING OFFICE 2011 JUN -3 PM 12:27

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

II. PROCEDURAL POSTURE

On April 18, 2011, the parent, through her Attorney, filed an "Administrative Due Process Complaint Notice", with the District of Columbia, Office of the State Superintendent of Education ("OSSE"), Student Hearing Office. The complaint involves an issue of discipline; therefore, the complaint is administered in accordance with the expedited due process hearing provisions of the IDEA.

On April 20, 2011, the Student Hearing Office assigned the due process complaint to this Hearing Officer. On April 27, 2011 the Respondent filed a response to the due process complaint notice. On May 2, 2011, the Hearing Officer issued to the parties a "Notice of Prehearing and Due Process Hearing", notifying the parties that the prehearing conference is scheduled for May 5, 2011 at 4:00 p.m.; and the due process hearing is scheduled for June 27, 2011 at 9:00 a. m... The Hearing Officer also issued to the parties an Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting. On May 5, 2011, the Hearing Officer issued an amended prehearing notice to reflect a change in the proposed hearing date.

In an expedited due process complaint, the Respondent must convene a resolution meeting within seven (7) calendar days from the date of the complaint, expiring in this matter on April 25, 2011. The fifteen (15) day resolution period expired on May 18, 2011. The resolution meeting convened on April 28, 2011; and the parties were unable to resolve the issues in the complaint. The due process hearing must convene no later than May 24, 2011, within twenty (20) school days of the date the complaint requesting the hearing is filed. The Hearing Officer must render a determination no later than June 8, 2011, within ten (10) school days after the hearing.

The prehearing conference convened on May 5, 2011, at 4:00 p.m., as scheduled. On this date, the Hearing Officer issued a prehearing order summarizing matters discussed during the prehearing conference, issues to be decided by the Hearing Officer, and confirming the due process hearing for May 23, 2011, at 9:00 a. m...

The due process hearing convened on May 23, 2011, at 9:00 a.m., at 810 First Street, N.E., 2nd Floor, Washington, D.C., as scheduled, however, was delayed at the request of the parties, to provide an additional opportunity to resolve the issues in the complaint. The hearing was closed to the public, pursuant to the parents' request. Each party was represented by an Attorney; and each Attorney provided opening statements.

During discussion of preliminary matters, the parties informed the Hearing Officer that the parties were willing to stipulate to certain facts, however, the stipulations failed to resolve the issues in the complaint. As a result, the Hearing Officer decided that the hearing would proceed as scheduled; and provided the parties the opportunity to submit joint stipulations of fact to the Hearing Officer, no later than 4:30 p.m. on May 31, 2011. Joint stipulations were not submitted by the parties by the due date, and therefore, are not included in the record. There were no other preliminary matters for the Hearing Officer to decide, prior to proceeding with a hearing on the merits.

The Respondent offered into evidence Respondent's exhibits 1-2; and the Petitioner offered into evidence Petitioner's exhibits1-9, renumbered as Petitioner's exhibits 1-30. Receiving no objections, the Hearing Officer admitted into the record as evidence Petitioner's exhibits 1-9, and Respondent's exhibits 1-2. It was subsequently determined that the Petitioner's exhibits were not properly numbered; and the exhibits are renumbered and identified as Petitioner's Exhibits 1-30; and admitted into the record as evidence.[1]

Petitioner's witnesses included: the parent, student, and the Admissions Director, of the school. The Respondent presented no witnesses, resting on the record.

The due process hearing concluded with the Petitioner and Respondent providing closing statements; and requesting that the Hearing Officer find in each party's favor on the issues in the complaint.

[1] The Petitioner is admonished for failing to properly identify and tab the exhibits offered into evidence, as ordered by this Hearing Officer in the prehearing order. Failure to properly tab and identify disclosures submitted in the future will result in the disclosures not being admitted into evidence.

III. BACKGROUND

The student is years of age; and resides in the District of Columbia with the Petitioner. During the 2009/10 school year the student attended a District of Columbia Public Charter School. On March 10, 2010, while attending the charter school, the Respondent developed an Individualized Education Program (IEP) for the student, prescribing 25 hours of specialized instruction, outside the general education setting, 1 hour of behavioral support services, 1 hour speech language services, weekly; and a full-time dedicated aide.

During the Summer 2010, the student's school closed and the student was placed at the student's neighborhood high school a District of Columbia public high school, for the 2010/11 school year. In February, 2011, while attending the high school, the student received a long-term suspension; and was placed at an interim alternative educational setting.

On April 18, 2011, the Petitioner, through her Attorney, filed this due process complaint challenging the Respondent's compliance with the disciplinary procedures of the IDEA, in rendering the manifestation determination and initiating a change in the student's placement; implementation of the student's May 5, 2010 IEP; the appropriateness of the alternative placement; and the Respondent's alleged failure to respond to parent's requests for a change in the student's placement.

IV. ISSUES

The issues before the Hearing Officer are as follows:

(1) Whether the District of Columbia Public Schools denied the student a free appropriate public education, because on February 10, 2011, the Respondent initiated a change in the student's placement by suspending the student for 45 days without complying with the discipline procedures of the IDEA; and determined that the student's disability was not a manifestation of the student's disability, in violation of the IDEA, at §§300.530, 300.536, and 20 U.S.C. §1415(k)(5)?

(2) Whether the District of Columbia Public Schools denied the student a free appropriate public education by failing to implement the student May 5, 2010 Individualized Education Program (IEP), because it failed to ensure that as soon as possible following development of the IEP, the student received a full-time special education program, outside the general education setting, 2 hours of behavioral support services, weekly; and a dedicated aide, as prescribed in the student's IEP; in violation of the IDEA, at 34 C.F.R. §§300.301 and 300.323(c)(2)?

(3) Whether the District of Columbia Public Schools denied the student a free appropriate public education, because during the 2010/11 school year, it failed to provide the student an appropriate placement, because the location of services identified in the student's May 5, 2010 IEP, is unable to provide the student the full-time special education program, outside general education, which the student require(s) to access the general education curriculum; and receive educational benefit; in violation of the IDEA, at 34 C.F.R. §§300.301, 300.323, 300.114 (a)(2)(ii), and 300.116?

(4) Whether the District of Columbia Public Schools denied the student a free appropriate public education (FAPE); by failing to respond to parent's December 29, 2010, February 16, 2011, and March 11, 2011 requests for a change in the student's placement, by issuing to the parent a Prior Written Notice within a reasonable time, prior to the agency's decision refusing to initiate a change in the student's educational placement, in violation of the IDEA, at 34 C.F.R. §300.503(a) (2)?

V. RELIEF REQUESTED

The Petitioner requests that the Hearing Officer find in its favor on each issue identified in the Prehearing Order; and issue an Order requiring the Respondent to fund the student's placement and transportation, to attend The reimbursement of any costs incurred by the parent for unilateral placement of the student at the school; and compensatory education services due to violations occurring during the 2010/11 school year.

VI. CREDIBILITY DETERMINATIONS

The Hearing Officer finds that the testimony of all witnesses was credible. The Respondent presented no witnesses to refute the testimony of Petitioner's witnesses.

VII. STATEMENT OF THE CASE

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Statement of the Case is as follows:

1. The student is years of age and resides in the District of Columbia with the Petitioner.[2] The student is disabled and eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA).[3] The student's disability classification is Mental Retardation.[4]

2. During the 2009/10 school year, the student attended a District of Columbia Public Charter School for a 90 day trial period.[5] During the Summer 2010, the charter school closed and the student was placed at the student's neighborhood school, a District of Columbia public high school, for the 2010/11 school year.[6] In February, 2011, while attending the high school, the student was received a long-term suspension; and was placed at an interim alternative educational setting for one (1) year.[7]

3. On ***April 2, 2009***, the Respondent convened a Multidisciplinary Development Team (MDT) meeting to conduct an annual review of the student's IEP.[8]

4. The student's educational record reflects that throughout the student's education the student struggled academically and behaviorally.[9] The student was retained in the 1st and 4th grades, and as of May 6, 2010, was failing the 9th grade.[10]

   The student's ***January 25, 2010*** Report Card reflects that the student failed all classes except the student received a grade of "D: in Freshman Seminar and a grade of "C" in Life Centered Career Education.[11]

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[2] Testimony of parent.
[3] Petitioner's Exhibit 14.
[4] Petitioner's Exhibit 27-1.
[5] Petitioner's Exhibit 26-1.
[6] Testimony of parent.
[7] Testimony of parent, student, Respondent's Exhibit 1-1, 1-2, 1-3.
[8] Petitioner's Exhibit 8-1.
[9] Petitioner's Exhibits 14-1 through 14-3, 16-22, 28-5, 28-7 through 28-10, and 28-13.
[10] Petitioner's Exhibit 28-5.
[11] Petitioner's Exhibit 22-1 and 14-1.

The student's school transcript dated ***March 10, 2010*** reflects a grade point average of 2.0 for the 2009/10 school year; and a cumulative grade point average of .60.[12] The student received failing grades in Transition to Advanced Mathematics, Strategic Reading, and Biology 1; a grade of "D" in Freshman Seminar; and a grade of "C" in Live Centered Career.[13] The student's ***March 10, 2011*** IEP Progress Report reflects that while attending the District of Columbia Public Charter School, the student made no academic progress during the third reporting period.[14]

5. On ***March 10, 2010***, while attending School, the Respondent developed an IEP for the student prescribing 25 hours of specialized instruction services, outside the general education setting, weekly; 1 hour behavioral support services, weekly; and 1 hour speech language services, weekly.[15]

   The Respondent also determined that classroom interventions and behavioral supports previously employed were unsuccessful, and the student required constant support in and out of the general education setting to be successful and make academic progress; and included in the student's IEP a full-time dedicated aide.[16]

6. On ***March 10, 2010***, the Respondent completed a "Family to Family Support Referral Form-Social Services" indicating that the student can work approximately 10 minutes with an adult by his side; without an aide to provide constant attention and assistance with directions and class assignments, the student will leave the classroom or not come to class at all; and while the student received counseling and behavioral intervention plans, the interventions and behavioral supports have not satisfactorily addressed the student's behavior needs; and a dedicated aide is necessary due to the extensive attention that this aide can provide the student.[17]

7. On ***May 17, 2010***, the Superior Court of the District of Columbia, Family Court-Court Social Services Division, Child Guidance Clinic, completed a "Confidential Psycho-educational Evaluation".[18] The student was referred for evaluation to assess the student's level of cognitive, academic, adaptive and personality functioning and risk assessment in order to make recommendations to the Court regarding intervention and placement because the student's school, was closing and the student required alternate placement.[19]

   The student received a diagnosis of Developmental Disorder of Adolescence, NOS, Cannabis Dependence, Mild Mental Retardation, and the evaluator recommended additional testing to rule out Pervasive Developmental Disorder, NOS.[20] Testing places the student in the overall extremely low range of cognitive functioning and the student's Woodcock Johnson III scores are in the second and third grade levels.[21]

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[12] Petitioner's Exhibit 14-1.
[13] Petitioner's Exhibit 14-1.
[14] Petitioner's Exhibit 11-1 through 11-5.
[15] Petitioner's Exhibit 10-14 and 10-22.
[16] Petitioner's Exhibit 10-22.
[17] Petitioner's Exhibit 25-1.
[18] Petitioner's Exhibit 28-1.
[19] Petitioner's Exhibit 28-2.
[20] Petitioner's Exhibit 28-12.
[21] Petitioner's Exhibit 28-13.

In addition to the Intellectual Disability, the student has a significant level of emotional incapacity, mood swings, anxiety or phobias, temper tantrums, impaired social skills and poor judgment.[22] The evaluator made several recommendations including however not limited to a GAINS assessment to consider the need for inpatient detoxification; a Neurological Evaluation to rule out seizure activity, neurotoxicity, or other complicating factors in the student's behavior; referral to one of the Core Agencies for wrap around service; updated Speech/Language evaluation; a Psychiatric Evaluation to rule out additional mood disorder symptoms.[23]

8. On ***May 19, 2010***, the Respondent convened a Multidisciplinary Development and Manifestation Determination Team meeting to discuss the student's reentry from a 10 day suspension; and determine whether the student's conduct was a manifestation of the student's disability.[24] The team determined that the student's behavior was a manifestation of the student's disability; and assigned the student a dedicated aide to monitor the student's daily work, routines and social interactions, while at school.[25]

9. During the Summer of 2010, the student's attending school, School, closed and the student was placed at a District of Columbia public high school; and the student's neighborhood school.[26]

10. On ***September 29, 2010***, the Respondent issued to the Petitioner a Notice of Final Disciplinary Decision notifying the Petitioner that the student's proposed suspension was upheld because on September 23, 2010, the student caused disruption on school properties or at any DCPS sponsored or supervised activity; and the student would endure an off-site suspension from September 24, 2010 through September 30, 2010, returning on October 1, 2010.[27]

11. On ***November 18, 2010***, the Respondent issued to the Petitioner a Notice of Proposed Disciplinary Action, notifying the Petitioner that the Respondent proposed an off-site long term suspension of the student because on November 18, 2010, the student physically assaulted another student/ staff.[28]

12. On ***November 30, 2010***, the Respondent issued to the Petitioner a Notice of Final Disciplinary Decision notifying the Petitioner that the student's proposed long term suspension was upheld because on November 17, 2010, the student assaulted another student, vandalized the student's classroom, and caused the student's teacher to flee the classroom; and the student would endure a 90 day off-site suspension at from November 18, 2010 through April 28, 2011.[29]

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[22] Id.
[23] Petitioner's Exhibit 28-13 and 28-14.
[24] Petitioner's Exhibit 1.
[25] Petitioner's Exhibit 1-3 and Petitioner's Exhibit 2-1.
[26] Id.
[27] Respondent's Exhibit 1-6.
[28] Respondent's Exhibit 1-14.
[29] Respondent's Exhibit 1-5.

13. On ***December 29, 2010***, the Petitioner, through her Attorney, forwarded an email to the Principal at Cardozo Senior High School, stating that it appears that the school is unable to meet the student's educational needs; the student had a full-time IEP at his previous school and his disabilities clearly require a higher degree of intensity and structure than any program that serves a general population of students can provide; and requested a meeting prior to January 15, 2010, to discuss alternative academic settings such as Florence Bertell or Ivymount or the like can be considered.[30]

14. On ***January 11, 2011***, the Respondent convened a manifestation determination meeting regarding an incident occurring on January 6, 2011, wherein the team determined that the student's behavior was a manifestation of the student's disability.[31] The Petitioner was present at the meeting.[32]

15. On ***January 12, 2011***, the Respondent issued to the Petitioner a Notice of Final Disciplinary Decision notifying the Petitioner that the student's behavior on November 18, 2010 was a Tier 5.09 behavior, described as assault/physical attack on student or staff; the proposed long term suspension was approved, beginning on November 18, 2010 through April 27, 2011, returning on April 28, 2011; and that the student will attend for the duration of the off-site long-term suspension, and that the Petitioner should contact for immediate enrollment.[33]

16. On ***January 18, 2011***, the student and another student were witnessed by a teacher setting firecrackers in the hallway and observed on security surveillance video running from the scene.[34]

17. On ***January 19, 2011***, the Respondent met with the student to discuss the January 18, 2011 firecracker incident; and determined that the student was responsible for the conduct, and proposed an emergency suspension of the student.[35]

18. On ***January 19, 2011***, the Respondent issued to the Petitioner a Long-Term Suspension & Expulsion/Emergency, Notice of Proposed Disciplinary Action notifying the Petitioner that the school met with the student to discuss the incident involving emergency condition, and based on the interview with the student, the school determined that the student's is responsible for this conduct, and that the school proposed an emergency suspension of the student for the January 18, 2011 incident.[36]

    The school also informed Petitioner that due to the emergency conditions of the incident, the student shall not be admitted to school until the Instructional Superintendent's office, as designated by the Chancellor, has reviewed all information relating to this matter; and the Instructional Superintendent will either authorize or modify the proposed disciplinary action; and if an emergency suspension is upheld, the Office of Youth Engagement would contact the Petitioner to schedule a hearing.[37]

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[30] Petitioner's Exhibit 29-5.
[31] Respondent's Exhibit 2-1.
[32] Id.
[33] Respondent's Exhibit 1-8.
[34] Id.
[35] Respondent's Exhibit 1-10.
[36] Respondent's Exhibit 1-10 and 1-12
[37] Respondent's Exhibit 1-10.

The school requested that the parent arrange to retrieve an Educational Plan for the student; that the parent ensure that the plan is completed by the student which will make up class assignments, homework, and exams without penalty.[38]

19. On ***January 21, 2011***, the Respondent convened a manifestation determination meeting with the parent to discuss the January18, 2011 incident; and the January 19, 2011 notice of proposed disciplinary action.[39] The Petitioner participated in the meeting via telephone.[40]The Respondent determined that the student's behavior was not a manifestation of the student's disability.[41]

20. On ***January 31, 2011***, the Respondent conducted a hearing to discuss the January 18, 2011 incident involving the student, and the school's proposed expulsion of the student.[42]

21. On ***February 15, 2011***, the Respondent developed an IEP for the student prescribing 27.5 hours of specialized instruction services; 1 hour behavioral support, and 1 hour speech language services, weekly; and a dedicated aide.[43]

22. On ***February 16, 2011***, the District of Columbia Public Schools, Targeted Student Support, Office of Youth Engagement, issued to the Petitioner a "Notice of Final Disciplinary Decision" notifying the Petitioner that during the hearing, it was substantiated that the student was lighting and throwing firecrackers in a school hallway, and that after carefully considering the findings of the hearing and documentation of the incident, the District of Columbia Public Schools decided to uphold the proposed disciplinary action.[44] The notice also informed the Petitioner that the consequence for the January 18, 2011 incident was a one year off-site expulsion from school, and placement of the student at from January 19, 2011 through January 18, 2012.[45]

23. On ***February 16, 2011***, the Respondent provided the Petitioner the "Notice of Final Disciplinary Action" informing the Petitioner that the student's behavior was a Tier 5.07 behavior, described as Possession of Fireworks or Explosives; that the proposed disciplinary action was approved; the period of expulsion; the student would attend for the duration of the expulsion; and that the parent should contact for immediate enrollment.[46]

    The Respondent provided the Petitioner, a "Parent/Guardian and Student Rights" notice, informing the Petitioner of her rights, prior to imposition of the disciplinary action. [47] The Respondent also issued to the parent a "Student Referral Form", referring the student from to as the alternate placement for the student, during the student's period of expulsion.[48]

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[38] Id.
[39] Respondent's Exhibit 2-2.
[40] Id.
[41] Id.
[42] Respondent's Exhibit 1-1.
[43] Petitioner's Exhibit 27-6.
[44] Respondent's Exhibit 1-1.
[45] Id.
[46] Respondent's Exhibit 1-3.
[47] Respondent's Exhibit 1-4.
[48] Respondent's Exhibit 1-2.

The Petitioner and student toured the school and obtained information regarding the services and program at the school.[49] The student attended the school for approximately one week, and although the parent was not aware of whether the student received services or had any information regarding the student's experience at the school, the Petitioner decided to transfer the student from to The of Washington, D.C., a non-public school, because the Petitioner opined that was not good for the student because the student knows too many students at the school".

The student testified that he does not care for The however, the Petitioner prefers that the student attend the school; at times he receives assistance; and he does not have a dedicated aide at the school.

24. On ***February 16, 2011***, the Petitioner, through her Attorney, forwarded an email to the Principal at School, stating that the student's IEP, evaluations, and file was forwarded to the school, and it was his understanding that a meeting was recently held at the school regarding the student; the student should not be suspended and is in desperate need of a new educational setting; and requested that the school contact him via email regarding placement options for the student, not as that placement is unable to meet the student's educational needs.[50]

25. On ***March 3, 2011***, the student was accepted at The a non-public school.[51] The student began attending the school in March, 2011.

26. On ***April 8, 2011***, the Petitioner, through her Attorney, forwarded an email to the Principal at requesting a more restrictive academic setting for the student, representing that there was no response to Petitioner's December 29, 2010 and February 16, 2011 requests for an alternate placement and the Respondent suspended the student and recommended an alternative setting that is unable to implement the student's IEP; and that the Petitioner placed the student in an academic setting akin to the school the student attended prior to its closure; and requested that the Respondent fund the alternate placement provided by the Petitioner.[53]

27. On ***April 18, 2011***, the Petitioner, through her Attorney, filed this due process complaint challenging the Respondent's compliance with the disciplinary procedures of the IDEA; the appropriateness of the student's placement during the 2010/11 school year.

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[49] Testimony of Petitioner.
[50] Petitioner's Exhibit 29-4.
[51] Petitioner's Exhibit 30-1.
[52] Testimony of Admissions Director.
[53] Petitioner's Exhibit 29-2.

VIII. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. Compliance with Discipline Procedures in Suspending Student

Manifestation Determination

On January 19, 2011, the Respondent issued to the parent a Notice of Proposed Disciplinary Action, notifying the parent that the school met with the student to discuss the incident and determined that the student is responsible for the conduct; and that the school proposed an emergency suspension of the student. [54] The notice also provided that the student would not be admitted to school until the Instructional Superintendent's office, as designated by the Chancellor, reviews the information relating to this matter, and renders a determination whether to authorize or modify the proposed disciplinary action.[55]

On January 21, 2011, within ten (10) school days of the decision to propose an emergency suspension of the student, the Respondent convened a manifestation determination meeting with the LEA, parent, Special Education Specialist, Social Worker, Special Education Coordinator.[56] However, in administering the suspension the Respondent failed to comply with the disciplinary procedures of the IDEA, for the following reasons:

First, the Respondent failed to ensure that the team that convened on January 21, 2011 included relevant members of the student's IEP team, particularly the student's special education teacher.[57]

Second, the Respondent failed to ensure that the team carefully considered all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was not caused by, or had a direct and substantial relationship to the child's disability; *or if the conduct in question was the direct result of the LEA's failure to implement the student's IEP.*

In fact, a review of the student's file reflects that since the 2009/10 school year, the student required the support of a full-time dedicated aide to access the general education curriculum and receive educational benefit.[58] A review of the student's file reflects that the student's March 10, 2010 IEP prescribes a full-time dedicated aide, however, since the beginning of the 2010/11 school year, the Respondent failed to implement the student's IEP by ensuring that the student received the support of a full-time dedicated aide as prescribed in the student's IEP.[59]

Third, the Respondent failed to consider all relevant information in determining whether this student was one of the students involved in the incident of lighting fireworks in the school hallway, and if so, whether the student's conduct was a manifestation of the student's disability, by ensuring that the teacher that observed the January 18, 2011 incident was a member of the team.

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[54] Respondent's Exhibit 1-10.
[55] Id.
[56] Respondent's Exhibit 2-2.
[57] Respondent's Exhibit 2-2.
[58] Petitioner's Exhibit 10.
[59] Testimony of student, and parent.

According to the teacher that witnessed the incident, there was a loud popping noise in the hallway near her classroom and two young men dressed in black, one with his head covered in black, ran away from the scene laughing and claiming that they or someone else was shooting up the school.[60] The teacher did not identify the individual involved in the incident as the student.[61]

Fourth, the Respondent failed to consider all relevant information in rendering the manifestation determination, by ensuring that the team that convened on January 21, 2011 included individuals having relevant information regarding the January 18, 2011 incident. The Respondent failed to ensure that the team included the custodian of the security surveillance video recording students lighting fireworks in the school hallway on January 18, 2011; and the security surveillance video, allegedly recording the student's involvement in the January 18, 2011 incident.[62]

Fifth, the Respondent failed to ensure that the IEP team that convened on January 21, 2011 not only determined whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, the team also had a responsibility to determine whether the conduct in question was the direct result of the LEA's failure to implement the student's IEP; however, the team failed in this regard.

In summary, the Respondent rendered the manifestation determination without the benefit of input from the student's teacher, a relevant member of the student's IEP team; without carefully considering all relevant information in the student's file and IEP; without carefully considering information received from individuals having relevant information regarding the January 18, 2011 incident and teacher observations; and without determining whether the conduct in question was the direct result of the LEA's failure to implement the student's IEP.

For these reasons, the Hearing Officer finds that the Respondent failed to comply with the procedural requirements of the IDEA, in rendering the January 19, 2011 manifestation determination.

Change in Placement

The Hearing Officer finds that on February 16, 2011 the Respondent initiated a change in the student's placement by removing the student from the student's placement for more than ten (10) consecutive school days; and in initiating a change in the student's placement the Respondent failed to comply with the discipline procedures of the IDEA.

First, on January 19, 2011, the student's school proposed a long-term emergency suspension of the student, pending a final determination regarding the proposed disciplinary action.[63] On February 16, 2011, the District of Columbia Public Schools, Targeted Student Support, Office of Youth Engagement upheld the school's determination that the student's conduct on January 18, 2011 was not a manifestation of the student's disability, and initiated a one year off-site expulsion of the student. Removal of a student for more than ten (10) consecutive school days constitutes a change in the student's placement.

[60] Respondent's Exhibit 1-13.
[61] Id.
[62] Id.
[63] Respondent's Exhibit 1-10.

Second, on February 16, 2011, as a consequence of the student's behavior, the District of Columbia Public Schools, Targeted Student Support, Office of Youth Engagement placed the student in an interim alternative educational setting for one (1) year; far exceeding the maximum 45 day period in which a student may be placed in an interim alternative educational setting.

Third, the Respondent ensured that on February 16, 2011, the date the decision was made to make a removal of the student, that constitutes a change in the student's placement, the Petitioner was properly notified of the decision, and provided the procedural safeguards notice.[64] However, the Respondent failed to ensure that once the determination was made to uphold the proposed long-term suspension and remove the child from school; the child's IEP team convened to determine the student's interim alternative educational setting. Instead, on February 16, 2011, the District of Columbia Public Schools, Targeted Student Support, Office of Youth Engagement unilaterally determined that the student's interim alternative educational setting for the student to receive services, as

The emergency situation which occurred on January 18, 2011, the date of the incident, no longer existed, because the school decided that the student was not allowed to return to the school, pending a final determination regarding the proposed long-term suspension.[66] Therefore, the Respondent had the opportunity to convene the child's IEP team to determine the interim placement after the February 16, 2011 decision, however, failed to do so, denying the Petitioner the opportunity to provide input in all decisions regarding the student's interim alternative educational placement.

Finally, the Respondent failed to ensure that once the decision was made to remove the student from the student's placement at School, the student continued to receive educational services at (i.e. a full-time dedicated aide), to enable the child to continue to participate in the general education curriculum, and to progress toward meeting the goals in the student's IEP.

The Respondent also failed to ensure that the student received, as appropriate, a Functional Behavioral Assessment (FBA) and behavioral intervention services and modifications, designed to address that behavior violation so that it does not recur; and if a FBA and BIP already exists, convene a meeting to determine whether additional assessment are appropriate, and modify the student's BIP, as necessary, to address the student's behavior.

2. Failure to Implement Student's May 5, 2010 IEP

The Petitioner alleged in the April 18, 2011 due process complaint that on May 24, 2010, a Multidisciplinary Development Team (MDT) determined that a dedicated aide was necessary to provide the student a FAPE, and address the student's behavior; and that on May 24, 2010, the MDT revised the student's *May 5, 2010* IEP, to include a dedicated aide.

The issue in the complaint is whether the Respondent failed to implement the student's May 5, 2010 IEP, because it failed to ensure that the student received the services prescribed in the student's IEP, including a full-time dedicated aide. However, the Petitioner presented no evidence to substantiate these allegations; or that an IEP was developed for the student on May 5, 2010.

[64] Respondent's Exhibits 1-3 and 1-4.
[65] Respondent's Exhibits 1-1, 1-2, and 1-3.
[66] Respondent's Exhibit 1-10.

The Hearing Officer finds that for this reason, there can be no finding that the District of Columbia Public Schools denied the student a free appropriate public education by failing to implement a *May 5, 2010* IEP, because it failed to ensure that as soon as possible following development of the IEP, the student received a full-time special education program, outside the general education setting, 2 hours of behavioral support services weekly, and a dedicated aide, as prescribed in the student's May 5, 2010 IEP.[67]

3. Failure to Provide the Student an Appropriate Placement (Location of Services)

As indicated supra, in the April 18, 2011 due process complaint, the Petitioner's Attorney alleges that on May 24, 2010, a Multidisciplinary Development Team (MDT) determined that a dedicated aide was necessary to provide the student a FAPE, due to the e student's behavior; and revised the student's *May 5, 2010* IEP to include a dedicated aide. The Petitioner presented no evidence supporting these allegations, or evidence of an IEP dated May 5, 2010, therefore, the Hearing Officer is unable to decide this issue.

The Hearing Officer finds that allegations that the Respondent failed to provide the student an appropriate placement during the 2010/11 school years fail for the following reasons:

First, the student's placement is based on the student's IEP, and the appropriateness of the student's IEP, is not an issue in this complaint or before this Hearing Officer. Therefore, any IEP presented by the Petitioner is deemed appropriate, unless otherwise determined that the IEP is inappropriate. The student's placement is based on the student's IEP, therefore, the student's placement is also deemed appropriate.

Second, the Petitioner presented no evidence that School and the schools attended by the student during the 2010/11 school year, are inappropriate placements because the schools are unable to implement the student's IEP or provide the student educational benefit.

Third, the Petitioner testified that the student attended and did not have a dedicated aide. However, failure to receive a dedicated aide, does not equate to an inappropriate placement.

Fourth, the Petitioner testified that the student and Petitioner toured the interim alternative educational setting; received information regarding services available at the school and the school's educational program; and that the student attended the school for approximately one week.

The Petitioner testified that she had no knowledge of whether the student received the services at and during cross-examination testified that the student did not receive a dedicated aide while attending the school.

[67] This decision does not relieve the Respondent of its obligation under the IDEA to implement the student's IEP of record, by ensuring that as soon as possible following development of the IEP, the student received the special education and related services prescribed in the student's IEP.

The Petitioner also testified that she had no knowledge of the student's experience at and that she transferred the student to the non-public school because she opined that "the school was not good for the student because the student knows too many students at the school". The Petitioner did not testify that the student was removed from and placed in the non-public school because the school was unable to implement the student's IEP or provide the student educational benefit.

Finally, on or about December 29, 2010, without any notice to the Respondent that the parent had concerns regarding the student's placement, the Petitioner's Attorney forwarded an email to the Principal at representing that the school was unable to meet the student's educational needs because the student had a full-time IEP at his previous school and the student's disabilities indicate that the student requires a higher degree of intensity and structure than can be provided in a program that serves a general population of students.[68]

Instead of requesting a meeting with the Respondent to discuss and determine the educational needs of the student; implementation of the student's February 15, 2011 IEP at the School (i.e. provision of a full-time dedicated aide); or placement of the student at an alternative District of Columbia Public School, the Petitioner's Attorney forwarding a series of emails to the school's Principal requesting a meeting to discuss alternative settings such as or the like, which are non-public and private schools.[69]

The Hearing Officer finds that for these reasons, there can be no finding that the District of Columbia Public Schools failed to provide the student an appropriate placement during the 2010/11 school year, because the location of services identified in the student's May 5, 2010 IEP, is unable to provide the student the full-time special education program, outside general education, which he require(s) to access the general education curriculum; and receive educational benefit.

4. Failure to Respond to Parent's Requests for Change in Placement in Timely Manner

The record reflects that on December 29, 2010 and February 16, 2011, the Petitioner's Attorney forwarded an email to the Principal at requesting a meeting to discuss placement options and an alternate placement for the student. The Respondent failed to respond to Petitioner's requests.

First, the requests were sent via email to the Principal of The methodology utilized by the Petitioner's Attorney in communicating with the student's school regarding the needs of the student; and request a meeting to discuss placement, is not the usual and customary method utilized in requesting services for students, particularly when the emails were not preceded by a formal letter of representation, and request for a meeting.

Second, there is no evidence that the Petitioner utilized other methods to communicate with the school regarding the student's needs (i.e. an official letter of representation, telephone calls facsimile); or provided follow-up with the school to verify receipt of the emails by the Principal or to determine whether the Principal, the individual to whom the emails were addressed, is the appropriate party to receive and respond to the request for a meeting to discuss the student's placement.

[68] Petitioner's Exhibit 29-1.
[69] Id.

Third, the December 29, 2010 and February 16, 2011 emails were forwarded to the school Principal and not the Special Education Coordinator (SEC), the individual responsible for special education services for students attending the school. The Petitioner presented no evidence of communications with the SEC at the student's school.

Fourth, although alleged by the Petitioner, there is no evidence that on March 11, 2011, the Petitioner forwarded an email to the Principal at the student's school, to request a meeting to discuss the student's placement.

Finally, the Hearing Officer finds that the Petitioner's Attorney failed to exercise due diligence in requesting a meeting to discuss the needs of the student; and the student's placement.

For these reasons, there can be no finding that the District of Columbia Public Schools denied the student a free appropriate public education (FAPE), by failing to respond to parent's December 29, 2010, February 16, 2011, or a March 11, 2011 requests for a change in the student's placement, by failing to issue to Petitioner a Prior Written Notice within a reasonable time before the public agency's decision, or that the District of Columbia Public Schools refused parent's request to initiate a change in the student's educational placement.

IX. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.[70] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[71]

2. The Individuals with Disabilities Education Act ("IDEA")[72] is the federal statute governing the education of students with disabilities.[73] The IDEA requires that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services, specifically designed to meet their unique needs; and prepare them for further education, employment, and independent living. *See, 20 U.S.C. §1400(d) (I) (A)*.

3. The IDEA defines a FAPE as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State involved. The IDEA also provides that the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.[74]

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[70] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.
[71] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)
[72] The IDEA is reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) Public Law 108-446 and 20 U.S.C. §1400 et seq..
[73] The Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.
[74] IDEA, 34 C.F.R. §300.17(d).

In the District of Columbia, the local education agency (LEA) must ensure that *all children with disabilities*, between the ages of 3 and 21, have available to them a free appropriate public education (FAPE); that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. This student is a child with disabilities entitled to receive special education services, under the IDEA; and District of Columbia Municipal Regulations.

4. In this matter, the Hearing Officer must determine whether the State complied with the *procedural requirements* of the IDEA, in rendering the manifestation determination, initiating a change in the student's placement, implementing the student's IEP, and providing the student an appropriate placement during the 2010/11 school year. However, the 2004 amendments to IDEA, at Section 615(f) (ii) specifically limit the jurisdiction of administrative hearing officers to make findings that a child failed to receive a FAPE due to procedural violations, unless it can be determined that the procedural violations:

    (I) impeded the child's right to a free and appropriate public education;
    (II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; or
    (III) caused a deprivation of educational benefit to the student.

5. **Compliance with Discipline Procedures in Suspending Student**

    Manifestation Determination

    Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent and relevant members of the child's IEP team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

    (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
    (ii) If the conduct in question was the direct result of the LEA's failure to implement the student's IEP.[75]

    The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant team members of the child's IEP team determine that a condition in either paragraph (e) (1) (i) or (1) (ii) of this section was met.[76] If the LEA, the parent, and relevant members of the child's IEP team determine the condition described in paragraph (e) (1) (ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.[77]

    In this matter, the Respondent failed to properly apply the criteria established by the IDEA in determining whether the student's behavior was a manifestation of the student's disability, by failing to properly convene the child's IEP team; failing to review all relevant information in the student's file, including the child's IEP, teacher observations, and any relevant information in determining whether the student's behavior was a manifestation of the student's disability.

[75] IDEA, 34 C.F.R. §530(e).
[76] IDEA, 34 C.F.R. §300.530 (e)(2).
[77] IDEA, 34 C.F.R. §300.530((e) (3).

The evidence of record clearly supports a finding that both criteria apply in this instance, and the Respondent erred in its determination that the student's conduct was not caused by, or had a direct and substantial relationship to, the child's disability; or that the student's conduct was not the direct result of the LEA's failure to implement the student's March 10, 2010 and February 15, 2011 IEPs. Instead, the Respondent proposed a long-term suspension, and ultimately expelled the student from school for an entire year.

It is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that on February 16, 2011, the District of Columbia Public Schools failed to comply with the disciplinary procedures of the IDEA, in determining whether the student's conduct was a manifestation of the student's disability, in violation of the IDEA, at §300.530 (c) (d) and (e).

Change in Placement

Generally, school personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).[78]

In special circumstances, school personnel may remove a student to an interim alternative educational setting for a maximum of 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if it is determined that the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.[79]

On February 16, 2011, the Respondent determined that this student was responsible for the January 18, 2011 incident involving lighting of firecrackers in the school hallway; the firecrackers were weapons that the student carried to and possessed at school, on school premises; the student's conduct was not a manifestation of the student's disability; and that the student would be removed from the student's school and placed in an interim alternative educational setting for one (1) year, far exceeding the maximum 45 day period in which a student may be placed in an interim alternative educational setting.

According to the IDEA, whether the behavior is determined to be a manifestation of the child's disability or not, the LEA must ensure that the student—

(i) Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP;

[78] IDEA, 34 C.F.R. §300.530(b).
[79] IDEA, 34 C.F.R. §300.530(g).

(ii) Receives, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.[80]

In this matter, the Respondent failed to ensure that the student continued to receive the special education services prescribed in the student's IEP (i.e. a dedicated aide) during the period of the expulsion; and that the student received a FBA and BIP, and/or the student was reevaluated or the student's BIP reviewed to determine whether modifications are necessary to address the behavior resulting in the violation to ensure that the behavior does not recur.

The IDEA also provides that the child's IEP team must determine the interim alternative educational setting for the child's services, under §300.530(c), (d) (5), and (g). The Respondent failed to convene the child's IEP, and on February 16, 2011, unilaterally determined the student's interim alternative setting.[81]

It is the Hearing Officer's decision that the Petitioner satisfied its burden by proving that on February 16, 2011, the Respondent failed to comply with the disciplinary procedures of the IDEA, in initiating a change in the student's placement; in violation of the IDEA, at 34 C.F.R. §300.530, 300.536, and 20 U.S.C. §1415 (k)(5).

6. **Failure to Implement Student's May 5, 2010 IEP**

It is the Hearing Officer's decision that the Petitioner failed to satisfy its burden by proving that the District of Columbia Public Schools denied the student a free appropriate public education by failing to implement the student *May 5, 2010* IEP, because it failed to ensure that as soon as possible following development of the IEP, the student received a full-time special education program, outside the general education setting, 2 hours of behavioral support services, weekly; and a dedicated aide, as prescribed in the student's IEP; in violation of the IDEA, at 34 C.F.R. §§300.301 and 300.323(c)(2).

7. **Failure to Provide the Student an Appropriate Placement (Location of Services)**

It is the Hearing Officer's decision that the Petitioner failed to satisfy its burden by proving that the District of Columbia Public Schools denied the student a free appropriate public education by failing to provide the student an appropriate placement during the 2010/11 school year, in violation of the IDEA, at 34 C.F.R. §300.114(a)(2)(ii) and 300.116.

8. **Failure to Respond to Parent's Requests for Change in Placement in Timely Manner**

It is the Hearing Officer's decision that the Petitioner failed to satisfy its burden by proving that the District of Columbia Public Schools denied the student a free appropriate public education (FAPE); by failing to respond to parent's December 19, 2010, February 10, 2011, and March 11, 2011 requests for a change in the student's placement, by issuing a Prior Written Notice within a reasonable time before the public agency's decision, refusing parent's request to initiate a change in the student's educational placement, in violation of the IDEA, at 34 C.F.R. §300.503(a) (2).

[80] IDEA, 34 C.F.R. §300.530(d)(1).
[81] IDEA, at 34 C.F.R. §300.531.

X. Free Appropriate Public Education

It is the Hearing Officer's decision that in rendering the manifestation determination and initiating a change in the student's educational placement, the Petitioner proved that the Respondent failed to comply with the procedural requirements of the IDEA. However, the Petitioner failed to prove that the student was denied a FAPE because the procedural violations:

(I) impeded the child's right to a free and appropriate public education;
(II) significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the parent's child; and
(III) caused a deprivation of educational benefit to the student.

The record reflects that on February 16, 2011, the Respondent upheld the school's decision that the student's conduct was not a manifestation of the student's disability; upheld the proposed long-term suspension of the student from school; and placed the student at an interim alternative educational setting, for one (1) year.

The student attended the interim alternative educational setting, for approximately one (1) week.[82] There is no allegation by the Petitioner or evidence that while attending the student failed to receive the specialized instruction and related services prescribed in the student's February 15, 2011 IEP, except that it is undisputed that while attending the interim placement, the student failed to receive a dedicated aide, as prescribed in the student's IEP.

On March 3, 2011, approximately ten (10) school days after the February 16, 2011 decision to change the student's placement, and place the student at the student was accepted at The D.C., a non-public school. In March, 2011, the Petitioner unilaterally removed the student from , and enrolled the student at The which the student currently attends. Since the student's enrollment at The the student receives specialized instruction and related services.[83] The student has not suffered any loss in educational services, except the support of a dedicated aide during the one (1) week the student attended the interim alternative educational setting.[84]

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[82] Testimony of parent.
[83] Testimony of parent, student, and Admissions Director, at the
[84] The April 18, 2011 due process complaint alleges that the Respondent failed to implement an IEP for the child, without referencing the date of the IEP. During the prehearing conference the Hearing Officer inquired of Petitioner's Attorney the date of the IEP which the Petitioner alleges was not implemented. The Petitioner's Attorney informed the Hearing Officer that the Respondent failed to implement the student's May 5, 2010 IEP, by failing to provide the student a dedicated aide. On May 6, 2011, the Hearing Officer issued a prehearing order citing the issue as failure to implement the student's May 5, 2010 IEP; however, the Petitioner presented no evidence that the student has an IEP dated May 5, 2010. As a result, the Petitioner was unable to satisfy its burden of proof on this issue. The May 6, 2011 prehearing order, page 6, provides that the parties will be held to the matters agreed upon, ordered, or otherwise set forth in the prehearing order, and that if either party believes this Hearing Officer in this Order has overlooked or misstated any item, he/she is directed to advise this Hearing Officer of the same within three (3) business days of the date of this Order (with a copy to opposing counsel), and the concerns will be immediately addressed. Neither Attorney raised any matters of concern regarding the information included in the prehearing order, within three (3) business days of the order. Additionally, as part of the Hearing Officer's opening, the Hearing Officer referred the Attorneys to the prehearing order, and read into the record the issues as identified in the prehearing order. The Petitioner's Attorney did not inform the Hearing Officer that the Hearing Officer overlooked or misstated any item in the prehearing order; however, the Petitioner's Attorney requested that the Hearing Officer change the dates in Issue 4 of the prehearing order, which the Attorney provided the Hearing Officer during the prehearing conference, to reflect different dates. The Respondent offered no objections to the changes, and the dates in Issue 4 of the prehearing order were changed to accurately reflect the dates of the emails.[84]

For these reasons, it is the decision of the Hearing Officer that the student was not denied a FAPE, and is not entitled to compensatory education services for violations occurring during the 2010/11 school year.

XI. Tuition Reimbursement

The LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the LEA made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed.

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private school without the consent of or referral by the public agency, a court of a hearing officer may require the agency to reimburse the parents for the cost of that 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.

In this matter, the Petitioner failed to ensure that at the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents informed the IEP team that the Petitioner was rejecting the placement proposed by the public agency to provide FAPE to their child, and stated their concerns and intent to enroll the child in a private school at public expense; or that at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents provided the Respondent written notice as indicated herein.

The cost of reimbursement may be reduced or denied if, among others, at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child form the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section.

There is no evidence that special education, behavioral support, and speech language services were not made available to the student at the interim alternative educational setting, except that the Hearing Officer determined that the student failed to receive a dedicated aide during the one (1) week the student attended

The Petitioner's decision to remove the student from the interim alternative setting to the private school after the student attended the school for merely one (1) week, was not because the school was unable to implement the student's IEP, or provide the student educational benefit, however, according to the parent, the student was removed from the school because the parent opined that the school was not a good school for the student because the student knew too many students at the school.

The Petitioner failed to provide the Respondent the opportunity to address any concerns regarding the student's interim alternative placement; or advance notice of its intent to remove the student from the interim alternative placement; and place the student in a private school. The Petitioner also failed to consider other District of Columbia schools as alternative placements for the student, prior to securing the student's private school placement.

It is the decision of the Hearing Officer that there can be no finding that the Respondent denied the student a FAPE. The Petitioner unilaterally placed the student in a non-public school, without the consent of or referral by the public agency; and without complying with the procedural requirements of the IDEA; and for these reasons, the Petitioner is not entitled to tuition reimbursement for the non-public school placement.

XII. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the relief requested by the Petitioner in the April 18, 2011 due process complaint, is **DENIED**.

XIII. NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: *June 2, 2011*

Ramona M. Justice

Ramona M. Justice, Hearing Officer