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DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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

STUDENT,[1] through the Parent,	)	
Petitioner,	)	Date Issued: June 3, 2011
v.	)	Hearing Officer: Virginia A. Dietrich
District of Columbia Public Schools	)	Case No:
Respondent.	)	Hearing Dates: 05/12/11 Room: 2006 05/13/11 Room: 2006 05/24/11 Room: 2009

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of Student, filed a due process complaint notice on 03/25/11, alleging that Student had been denied a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA").

Petitioner stated multiple allegations against the District of Columbia Public Schools ("DCPS") that included the public school system's failure to evaluate her year old childwithin the prescribed statutory timeframe, failure to comply with child find obligations to identify and evaluate Student, failure to develop an appropriate Individualized Education Program ("IEP"), failure to provide a location of services that could implement Student's IEP, failure to issue a Prior Written Notice that complied with the requirements of the IDEA, and failure to provide Petitioner meaningful participation in the placement decision. Petitioner argued that Student's educational needs could not be met in the combination general education and special education setting with the level of services offered by DCPS in June 2010. Petitioner sought tuition reimbursement for the 2009-2010 and 2010-2011 school years and a nonpublic school placement for the 2011-2012 school year.

DCPS asserted that Petitioner had enrolled Student in a private school long before she approached DCPS for funding and that Petitioner never intended to have Student attend a public school. DCPS argued that Student's needs were not so severe as to warrant a full-time IEP and

[1] Personal identification information is provided in Appendix A.

segregated placement and that the combination setting should be tried first with the appropriate supports and accommodations. DCPS asserts that the initial IEP it finalized in June 2010 was reasonably calculated to provide Student with a FAPE and the site location offered by DCPS was able to implement the initial IEP. Therefore, DCPS had not denied Student a FAPE and Petitioner was not entitled to tuition reimbursement and prospective placement at a private special education school.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act ("IDEA"), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations ("C.F.R.") Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R."); and 38 D.C. Code 2561.02.

Procedural History

The due process complaint was filed on 03/25/11. This Hearing Officer was assigned to the case on 03/28/11. Both parties waived the resolution meeting, effective 04/04/11. The 30-day resolution period ended on 04/04/11, the 45-day timeline to issue a final decision began on 04/05/11, and the final decision was initially due on 05/19/11. See 34 C.F.R. 300.510, 300.515.

The due process hearing, which was initially scheduled to begin at 9:00 a.m. on 05/12/11 and continue on 05/13/10, began at 1:00 p.m. on 05/12/11 at the request of Petitioner with the understanding that if the hearing could not be concluded on 05/13/11, Petitioner would request a continuance. At the end of a full day of testimony on 05/13/11, the hearing had not concluded. Petitioner requested and was granted a continuance to 05/24/11, and the due process hearing concluded on that date. As a result, the due date for the final decision was extended until 06/03/11.

The due process hearing was a closed hearing. Petitioner was represented by Matthew Bogin, Esq. and DCPS was represented by Daniel McCall, Esq.. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in person throughout the hearing.

Petitioner presented seven witnesses: Petitioner; Student's uncle; an expert in psychology and neuropsychology; an expert in special education; an expert in IEP development and special education programming; an expert in speech and language pathology; and Head of High School at

DCPS presented three witnesses: DCPS Special Education Coordinator ("SEC"); DCPS Special Education Teacher ("SET"); and DCPS general education teacher ("GET").

Petitioner's disclosures dated 05/05/11, containing a witness list and Exhibits P-1 through P-21, were timely filed and admitted into evidence without objection.

Hearing Officer Determination

DCPS' disclosures dated 05/05/11, containing a witness list and Exhibits DCPS-1 through DCPS-13 (hereinafter referred to as R-1 through R-13), were timely filed and admitted into evidence without objection.

Parties agreed to the following stipulation:

#1. Petitioner and DCPS both agreed to meet on 05/25/10 to review all evaluations and determine eligibility.

The issues to be determined in this Hearing Officer Determination are as follows:

Whether DCPS denied Student a FAPE by DCPS' failure to evaluate Student and determine eligibility within 120 days of the initial referral.

Whether Student was denied a FAPE by DCPS' failure to comply with its child find obligations to locate, identify and evaluate Student since 08/20/09.

Whether Student was denied a FAPE by DCPS' failure to develop an appropriate IEP on 06/22/10.

Whether was an appropriate school for the implementation of Student's initial IEP.

Whether Student was denied a FAPE by DCPS' failure to issue a Prior Written Notice on 06/22/10 that complied with the content requirements of the IDEA.

Whether Student was denied a FAPE by Petitioner being denied meaningful participation in the placement decision that occurred on 06/22/10.

For relief, Petitioner requested reimbursement for tuition paid at for the 2009-2010 and 2010-2011 school years, and placement at for the 2011-2012 school year.

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. Student, a -year old resident of the District of Columbia, has always attended private schools in the District of Columbia. She attended for grades 1-6 which has a general education curriculum and she attended for grades 7-8 which has a full-time specialized instruction curriculum.[2]

#2. During elementary school, Student evidenced difficulties with auditory processing that resulted in severe deficits associated with understanding academic assignments across all subjects and she received direct speech and language services outside of the general education

[2] Testimony of Petitioner.

curriculum to address these deficits beginning in the 3rd grade.[3] As early as 2nd grade, it became evident that Student needed special education services in order to function and achieve any degree of success in the general education curriculum. Despite accommodations that were put into place beginning in the 2nd grade, Student was to be retained at the end of the 4th grade, but Petitioner did not allow it. Rather, Petitioner pushed Student forward with a dedicated in-class tutor for 2 hours/day for 4 days/week. However, by 6th grade, Student required and received special education services outside of the general education curriculum for at least 2-3 hours/week in addition to the in-class tutoring. And still, Student struggled mightily to keep up with the general education class. By the beginning of Student's 6th grade year, Petitioner finally acknowledged that her child would require full-time specialized instruction in junior high school because the curriculum would be more rigorous and abstract. By the end of Student's 6th grade year in June 2009, Petitioner had enrolled Student at and Student attended summer program during the summer of 2009. Around that time, Petitioner became aware of the "IDEA Program," which she understood to be "a program under the law where students are entitled to special education if they have learning disabilities and could attend a private institution to meet their needs.[4]"

#3. On 08/20/09, Petitioner went to to explore what services Student could receive as a non-attending student because Petitioner intended for Student to continue schooling at the Petitioner was directed to the DCPS Private-Religious Office ("DCPS-PRO") to obtain forms and submit them there. Petitioner went to the DCPS-PRO office the same day and obtained a verification of her D.C. residency, but it wasn't until 12/07/09 that Petitioner, through her educational advocate/consultant, submitted a Student Referral For Special Education Services with lengthy documentation to the DCPS-PRO. The purpose of this referral was to begin the evaluation process to determine whether or not Student was a child with a disability who required special education services.[6] The documentation submitted by Petitioner consisted of classroom observations conducted by Petitioner's advocate dated October 2009, teacher referral/reports dated October 2009, a Diagnostic Educational Evaluation dated 04/29/07, progress reports dated August 2007, Wechsler Intelligence Scale for Children (WISC) testing results dated May 2006, Woodcock Johnson-III achievement testing results dated 09/01/09, a Comprehensive Speech and Language Assessment dated 06/08/09, and IEP dated 09/30/09.[7] On 12/30/09, DCPS acknowledged receipt of the referral[8] and met with Petitioner and Petitioner's representatives on 01/11/10 to set up a Student Evaluation Plan and analyze the existing data that had been submitted by Petitioner.[9]

#4. On 01/11/10, the documentation that was submitted by Petitioner was reviewed by the Multidisciplinary Team ("MDT") that included DCPS, Petitioner and Petitioner's representatives. DCPS accepted the Speech and Language Assessment dated 06/08/09 and the educational evaluation dated 09/01/09, but determined that a psychological evaluation was

[3] P-6: Testimony of Petitioner.
[4] Testimony of Petitioner.
[5] *Id.*
[6] P-1; P-3: Testimony of special education expert.
[7] P-2; Testimony of special education expert.
[8] R-1.
[9] R-2.

necessary in order to determine eligibility for Student under DCPS criteria. Petitioner volunteered to obtain a psychological evaluation at her own expense.[10]

#5. In April 2010, DCPS received from Petitioner a copy of an independent neuropsychological evaluation dated 03/01/10, which was reviewed by DCPS in writing on 05/20/10, and DCPS did not disagree with the findings or data in the evaluation, but disagreed with the recommendations that Student required placement in a special education school.[11]

#6. On 04/27/10, DCPS initiated the scheduling of a MDT meeting to review the independent neuropsychological evaluation and other existing data, and determine eligibility.[12] DCPS and Petitioner agreed to a meeting date of 05/25/11, but the meeting did not take place.[13] On 05/25/11 and 05/28/10, DCPS contacted Petitioner's advocate to confirm a meeting date. Petitioner and her representatives could not meet the week of 06/14/11, but indicated their availability on dates that extended past end of the school year. A final meeting date of 06/22/10 was confirmed by both parties.[14]

#7. The independent neuropsychological evaluation dated 03/01/10 contained the following recommendations for accommodations that Student should receive to address her Attention-Deficit/Hyperactivity Disorder: Frequent repetition and comprehension checks; preferential seating in the classroom to reduce unnecessary stimulation; additional time to complete assignments accurately; small group instruction whenever possible; extended time for tests and formal assessments (150%); use of organizational tools such as a daily assignment notebook or folder; teaching Student specific study skills and strategies; providing Student with leadership opportunities in the classroom and school; recognizing and reinforcing improvement; and identifying a coach or mentor.[15]

#8. The independent neuropsychological evaluation dated 03/01/10 revealed that Student's overall intelligence or cognitive ability fell in the Low Average range, with only one score in the extremely low average range, which was Perceptual Reasoning. Perceptual reasoning measures Student's ability to engage in abstract reasoning with nonverbal material. Student's overall verbal comprehension score was in the Average range. Student's Working Memory score was in the Low Average range, and Student's Processing Speed score was in the Average range. This independent neuropsychological evaluation also revealed that Student's academic achievement levels were as follows: Broad Reading in the Low Average range at a 5.1 grade level equivalent and Broad Math in the Borderline range at a 4.3 grade level equivalent. Student was diagnosed with Reading Disorder, Mathematics Disorder, Disorder of Written Expression, and Attention-Deficit/Hyperactivity Disorder-Inattentive Type.[16] Testing results indicated that Student had difficulty with disorganized written and oral language. In written language, Student had difficulty responding to content. ADHD-inattentive type and auditory

[10] R-4.
[11] P-14; Testimony of SEC, SET.
[12] R-13.
[13] R-13; Stipulation; Testimony of SEC.
[14] R-13.
[15] P-6.
[16] P-6.

processing deficits affected Student's ability to listen to information, file it and retrieve it and this affected her academic performance in all domains.[17]

#9. The Comprehensive Speech and Language Assessment dated 06/08/09, which was reviewed and accepted by the MDT, revealed that Student had significant language-based disabilities in the presence of high average cognitive skills. Although Student received an extremely low score in auditory reasoning, this was the only area of testing that was very low, and all of Student's composite testing scores fell in the average range. The assessment reflected a diagnosis of Mixed Receptive-Expressive Language Disorder due to weaknesses in language organization, word retrieval, inferencing, understanding ambiguous/figurative language and semantic-syntactic integration. Student received a diagnosis of Reading Disorder due to difficulty with decoding of novel words and her contextual reading fluency and a diagnosis of Disorder of Written Expression due to difficulty with written language organization, sentence structure and punctuation. Recommendations to address the weaknesses included 45 minutes/week of individual speech and language services, 45 minutes/week of group speech and language services, and regular integrated services to ensure the transfer and maintenance of new skills to the classroom and integration of speech and language goals into the curriculum. The recommendations for classroom accommodations included: speaking slowly, chunking information into manageable units, pairing verbal stimuli with visual, verbally repeating directions, having Student restate the information, providing cues in the classroom, and extra time to respond to questions.[18]

#10. Student's auditory processing difficulties, as identified in the 06/08/09 Comprehensive Speech and Language Assessment, and the implication of these difficulties in terms of Student's performance in the classroom, were consistent with what the Speech and Language Pathologist ("SLP") observed during the 2010-2011 school year at At Student received specialized instruction in a classroom of 6 students with one teacher and in this small, highly specialized academic environment, the SLP observed that Student's receptive language problems were significant and pervasive. Student had a great deal of difficulty processing auditory and verbal information and struggled to understand specific auditory information presented in the classroom. As the length and direction of auditory complexity increased, so did Student's inability to hear, file, retrieve and respond to the auditory information. And, even when speech and language services are integrated into the classroom and provided directly by the SLP, Student still had a great deal of difficulty in understanding more than one step commands and executing them. Student could not understand ambiguity or complex sentences. She would ask a clarifying question or take visual cues from what others were doing in response to the verbal directions. Student had a 40% success rate with directions if she already knew the structure of the class and the routine. And, even if Student knew the structure of the class and observed others or was redirected, she still required prompts 75% of the time. For example, a simple two step command of "Put your binders under the table and line up to go to the library" would only result in a 40% success rate if Student relied on cues from the behavior of other students in the classroom. If verbal material was new to Student, she was very unsuccessful with it. If Student was given specific verbal instructions for completing an activity without visual cues, she was very unsuccessful at it. If student heard the following statement:

[17] Testimony of special education expert, neuropsychology expert.
[18] P-5.

"As soon as the boy went to school, he realized his homework was home," she could not process the sentence because she could not remember the second part of the sentence. And, these difficulties were significant because in junior high, the curriculum becomes more complex.[19]

#11. Student's significant auditory processing deficits also affected her socialization with peers. During the 2010-2011 school year at Student struggled socially to become part of the conversation and this occurred in all areas of classwork and in interactions with peers. Student got off task easily and took the class off on tangential subjects with her. More often than not, Student's verbal responses to auditory information were not relevant to what was said and were far afield. Student exhibited delays in retrieving information as well; she had a lag time in responding and if the pace of the discussion was fast, Student needed more time to express herself. Even in a quiet setting, Student had difficulty getting nuances in the conversation and that difficulty was pervasive. During the 2010-2011 school year, Student was not on the 8th grade level of functioning in speech and language skills, and although she had made progress in discreet vocalization skills over the past year, Student's progress was not that evident because the progress got lost in all integrated activities.[20] Student definitely needed the support of a language therapist to be weaved into the curriculum. She also required an intensive level of language based support and accommodations that were integrated into the classroom. The general education setting comes with demands that cannot be adjusted such as a large class size and auditory distractions due to large class size. Student required a high level of intensity and specialty that required her removal from general education for all academic subjects.[21]

#12. On 06/22/10, the MDT met. The MDT consisted of DCPS representatives as well as Petitioner, Petitioner's two educational advocates/consultants, and several representatives from The MDT reviewed existing data and unanimously determined that Student was a child with a Specific Learning Disability ("SLD"); however, Petitioner and her representatives believed that Student also should receive a disability classification of Other Health Impairment ("OHI") based on Student's diagnosis of Attention Deficit Disorder-Inattentive Type.[22] Petitioner's representatives were concerned that Student's OHI problems of alertness and handling stimuli would not be incorporated into IEP goals and placement if the OHI disability classification was not included on Student's IEP.[23] However, as indicated by DCPS at the MDT meeting, the primary disability classification was sufficient to establish eligibility, and the IEP was developed to encompass all of Student's identified needs.[24]

#13. On 06/22/10, an initial IEP was finalized that prescribed 5 hours/week of specialized instruction in mathematics outside of general education, 5 hours/week of specialized instruction in reading outside of general education, 5 hours/week of specialized instruction in written expression outside of general education, and 1 hour/week of Speech-Language Pathology services outside of general education.[25] An IEP for a student attending a DCPS public school does not contain IEP goals in social studies, science, physical education and lunch or elective

[19] Testimony of SLP expert.
[20] *Id.*
[21] Testimony of special education expert.
[22] R-11; Testimony of special education expert.
[23] Testimony of special education expert.
[24] Testimony of SEC.
[25] R-11.

classes such as art and music. If specialized instruction is required in these areas at it is provided to the student within the general education setting. Implementation of the 06/22/10 IEP meant that Student would receive science, social studies, art and music classes in the general education setting; with 3 hours/day of specialized instruction outside of general education and 2 hours/day of instruction within the general education setting.[26] Classroom accommodations, as specified in the IEP, included scaffolding of assignments, and both classroom and statewide assessment accommodations included small group instruction, repetition of directions, modified work, preferential seating, location with minimal distractions, small group testing, breaks between subtests and extended time on subtests.[27] Petitioner, Petitioner's advocates and staff all disagreed with the number of hours in the IEP; indicating that the level of specialized instruction was insufficient because it did not include specialized instruction in all academic areas.[28]

#14. On 06/22/10, DCPS issued a Prior Written Notice indicating that a DCPS school, could provide the services in the initial IEP to Student for the 2010-2011 school year.[29] is a public school that services disabled and non-disabled peers. On 06/22/10, the instruction to be provided at was in classrooms with walls that were open ¼ of the way from the ceiling, which meant that some degree of ambient noise could be heard in each classroom.[30] At children were provided special education services according to their IEP, and if children required specialized instruction outside of the classroom, they were pulled out of the general education setting for instruction. The special education teacher was generally available to assist children with specialized instruction within the general education setting.[31]

#15. The Prior Written Notice issued on 06/22/10 also indicated that the least restrictive environment for Student was a combination setting of general education and special education, as was recommended by DCPS. DCPS' rationale for a combination setting was that based on the evaluations, a combination setting should be tried prior to placing Student in a full-time special education setting. The Prior Written Notice indicated that the evaluations and data used in support of as the site that would implement Student's initial IEP were the neuropsychological evaluation and Speech and Language Assessment, report cards, work samples, documentation submitted by Petitioner, and the reports of teachers and providers.[32] Petitioner, Petitioner's advocates and staff all disagreed with the combination setting at indicating that Student required a full-time IEP outside of general education with placement at a full-time special education school.[33]

#16. On 08/02/10, Petitioner provided written notice to DCPS that she formally rejected the IEP developed on 06/22/10 and the placement of Student at and that she was

[26] R-11; Testimony of SEC.
[27] R-11.
[28] R-11; Testimony of special education expert, IEP development and special education expert.
[29] R-10.
[30] Testimony of SEC, Petitioner.
[31] Testimony of SET.
[32] R-10.
[33] R-10; Testimony of Petitioner, special education expert, IEP development and special education expert.

unilaterally placing Student at for the 2010-2011 school year with the expectation of public funding.[34]

#17. Student currently attends grade at where she receives specialized instruction in all areas of instruction and where she has made some progress with a curriculum of all specialized instruction and speech-language services that are integrated into the curriculum.[35] is an accredited nonpublic school that is approved by the Office of the State Superintendent of Education and services students who are placed and funded by DCPS. services students from kindergarten though grade 12 who have learning disabilities, and class size is typically 4-8 students per teacher.[36]

#18. Petitioner paid for tuition at for the and school years.[37]

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:

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast,* 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The first issue to be addressed is whether DCPS denied Student a FAPE when DCPS failed to evaluate Student and determine eligibility within 120 days of the initial referral.

Petitioner failed to meet her burden of proof on this issue. D.C. Code 38-2561.02 requires that DCPS complete the initial evaluation within 120 days of the initial referral. The initial referral was made on 12/07/09.[38] The team met on 01/11/10 at which time it was determined that a psychological evaluation was a necessary in order to determine eligibility and

[34] P-21.
[35] Testimony of Head of P-13; P-17; P-18.
[36] Testimony of Head of High School at
[37] Testimony of Petitioner.
[38] Finding #3.

Petitioner volunteered to obtain the evaluation at her own expense.[39] The evaluation that Petitioner obtained, i.e., the neuropsychological evaluation dated 03/01/10, was received by DCPS in April 2010, and beginning on 04/27/10, DCPS made efforts to schedule a meeting to complete the review of relevant data and determine eligibility.[40] There was no action that DCPS could have taken to hasten the determination of eligibility because Petitioner had volunteered to complete the necessary evaluation. That evaluation was not provided to DCPS until approximately three months later. On a day for day timetable, the 120-day evaluation process should have been completed on or about 04/07/11. In this case, the three months it took for Petitioner to complete the evaluation and provide it to DCPS tolled the 120 days by at least two months (allowing one month as a reasonable amount of time for the evaluation to be completed). DCPS adhered to a reasonable timetable by convening the initial meeting with Petitioner approximately one month after receiving the initial referral and then again beginning on 04/27/10 to schedule the eligibility meeting after receipt of the independent evaluation. The evidence in the record showed that both parties had agreed to a meeting on 05/25/10. The failure to hold the eligibility meeting between 05/25/10 and 06/22/10 was simply due to the non-availability of all the parties at a mutually agreeable date and time; DCPS offered dates that were not convenient to Petitioner.

Based on the evidence presented, the Hearing Officer concludes that DCPS timely and responsibly complied with its statutory obligation to evaluate Student and determine initial eligibility for special education services.

The second issue to be addressed is whether Student was denied a FAPE by DCPS' failure to comply with its child find obligations to locate, identify and evaluate Student beginning on 08/20/09.

Pursuant to 34 C.F.R. 300.111, 300.131, DCPS is responsible for identifying, locating and evaluating all children with disabilities who reside in the District of Columbia, including children with disabilities who are attending private schools, regardless of the severity of their disability, and who are in need of special education and related services.

Petitioner argued that the document that showed that Petitioner had verified her residency with DCPS on 08/20/09 was sufficient to trigger DCPS' child find obligation under 34 C.F.R. 300.111 and that DCPS should have completed the evaluation process within 120 days, i.e., by 12/20/09. The Hearing Officer was not convinced by the testimony of Petitioner that this document was provided to DCPS on 08/20/09, although it was clear that the document was signed by DCPS on 08/20/09. Rather, the evidence was clear that on 08/20/09, Petitioner went to DCPS to get information about what services Student could obtain from being a non-attending Student because Petitioner never intended for Student to attend a DCPS school.[41] Petitioner testified that she had obtained many of the necessary forms online and filled them out, and these forms that are part of the record at P-2, show signature dates of Petitioner and Petitioner's representatives in October and November 2009. Petitioner did not specifically testify that she enrolled Student in school on 08/20/09, and if Petitioner did submit the residency verification

[39] Finding #4.
[40] Findings #5, #6.
[41] Finding #3.

form to DCPS on 08/20/09, there was no evidence in the record that the submission of this form constituted enrollment. On 12/07/09, Petitioner's advocate submitted an initial referral packet to DCPS.[42] It is more likely than not that the D.C. residency verification form was obtained by Petitioner on 08/20/09 with the intent to submit it with the initial referral packet as it was the only form that required a signature by a DCPS representative. This supposition is bolstered by the fact that Petitioner provided all evaluations and reports to DCPS for the determination of eligibility and volunteered to obtain an evaluation at her own expense. The only data DCPS contributed to the evaluation process was its own observations of Student at The Hearing Officer concludes that Petitioner intended to control the process and the process started on 12/07/09 when the initial referral packet was sent to DCPS. Petitioner failed to meet her burden of proof on this issue.

The third issue to be addressed is whether Student was denied a FAPE when on 06/22/10, DCPS failed to develop an IEP:

(a) With a sufficient amount of specialized instruction and related services in an out of general education setting:

"The IEP is the "centerpiece" of the IDEA's system for delivering education to disabled children," *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and the centerpiece for the implementation of FAPE is the IEP. *S.H. v. State-Operated Sch .Dist. of the City of Newark,* 336 F.3d 260, 264 (3d Cir. 2003). At a minimum, the IEP must be reasonably calculated to enable the child to receive meaningful educational benefits in light of the student's intellectual potential." *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (2010) (*quoting Chambers v. Philadelphia Bd. of Educ.,* 587 F.3d 176, 182 (3d Cir. 2009).

Petitioner alleges that on 06/22/10, DCPS finalized an IEP that prescribed 5 hours/week of specialized instruction outside of general education in the areas of reading, mathematics and written language, for a total of 15 hours/week of specialized instruction outside of general education plus 1 hour/week of speech-language services outside of general education; all of which were insufficient to address Student's educational needs. Petitioner asserted that Student required a full-time IEP; i.e., specialized instruction in all academic areas, which included social studies, science, music and art, and 1.5 hours/week of speech-language services, with all services to be provided outside of general education. Petitioner also asserted that the combination setting of general education and special education prescribed by the IEP was inappropriate because Student could not benefit from receiving her elective courses in the general education curriculum.

Petitioner met her burden of proof on this allegation. Although Student's cognitive ability was low Average and at first glance, it appeared that Student's disability was not severe, Student's significant auditory processing deficits were significant from an early age and pervasive across all academic areas and manifested in below grade low performance in academics and inability to comprehend and respond to auditory information in a meaningful

[42] Finding #3.

way.[43] The testimony from the Speech and Language Pathologist ("SLP") at was clear, credible and unbiased. She had worked with Student over the 2010-2011 school year by providing speech and language services within the specialized instruction classroom, and even in that highly structured, small teacher to student ratio setting, Student was still off track with non-relevant responses to auditory information.[44]

The IEP that was finalized on 06/22/10 provided for specialized instruction in math, reading and written expression outside of the general education setting at but the evidence was clear that Student's social studies and science classes would occur with at least 25 other children with one teacher present.[45] And, although the special education teacher credibly testified that she co-taught with the general education teacher and that she was present in the every general education class in which a special education student participated, and the general education science teacher credibly testified that she worked with the special education teacher to make necessary modifications of the curriculum for the special education students, the flaw in the program that DCPS proposed and finalized for Student was that Student's IEP did not reflect that she would receive specialized instruction within the general education setting. If it had been the intention of DCPS to ensure that Student received specialized instruction in all of her general education classes, her IEP should have so reflected, and it didn't.

The Hearing Officer concludes that the IEP developed on 06/22/10 did not contain sufficient specialized instruction to adequately address Student's educational needs and Student was denied a FAPE.

(b) With IEP goals and present levels of performance in curriculum areas other than reading, written language and mathematics, i.e., social studies, science, art, music and physical education:

Petitioner did not meet her burden of proof on this allegation. The credible testimony of the SEC was that IEPs developed by DCPS do not contain IEP goals for academic areas other than reading, math and written expression. And, there is no specific requirement under the IDEA that the requested goals be incorporated into Student's IEP. 34 C.F.R. 300.320 requires that the IEP meet all of Student's needs, and her need for specialized instruction in all academic areas could have been addressed by providing for specialized instruction within the general education curriculum, as discussed previously. The lack of the requested goals and present levels of performance in Student's IEP did not deprive Student of a FAPE because typically DCPS did not provide IEPs with goals in academic areas of than math, reading and written expression.

(c) With the necessary supplementary aids and services because the IEP developed on 06/22/10 did not include all of the classroom accommodations listed in the neuropsychological evaluation dated 03/01/10 and these accommodations were necessary in order to address Student's Attention Deficient/Hyperactivity Disorder:

[43] Findings #2, #8, #9, #10, #11.
[44] Findings #10, #11..
[45] Testimony of GET, SEC.

Hearing Officer Determination

Petitioner failed to meet her burden of proof on this allegation. The IEP contained most of the accommodations listed in the neuropsychological evaluation and the accommodations listed were consistent with Student's ADHD needs, i.e., repetition, breaks, small group setting, etc.[46] There is no requirement under the IDEA that the DCPS component of the MDT adopt each and every recommendation made in each and every report presented to DCPS. DCPS must simply ensure that Student's educational needs are being met, and that can be a fluid process. In order to refine or add accommodations, Student would have to be observed in the classroom environment at DCPS, and this has never happened. The Hearing Officer determines the accommodations on Student's initial IEP were sufficient to address her needs and she was not denied a FAPE.

(d) With IEP goals in the areas of reading, written language and mathematics that were measurable and observable:

Petitioner failed to meet her burden of proof with respect to this allegation. Petitioner's two expert witnesses[47] both testified that their opinion that the goals were insufficient and not measureable was because DCPS' IEP goals were not exact duplicates of goals. DCPS is not required to adopt IEP, word for word. Petitioner's argument lacked merit. The testimony was clear that IEP was used as the basis for developing DCPS' IEP and for the most part, IEP goals were carried over to DCPS' IEP goals.

(e) That included the disability classification of OHI:

Nothing in the IDEA requires that children be classified by their disability so long as each child who has a disability listed in the IDEA and who, by reason that that disability, needs special education and related services is regarded as a child with a disability under the IDEA. 34 C.F.R. 300.111(d). The IEP developed by DCPS on 06/22/11 identified Student as a child with a Specific Learning Disability and that is all that is required by the IDEA.[48] Specific Learning Disability is a disability that is recognized under the IDEA. 34 C.F.R. 300.8(2)(c)(10).

(f) That included the recommendations of personnel that Student receive full-time education services at

There is no requirement in the IDEA that DCPS must bow to the requests of all parents and representatives with respect to the program or placement that parents want or think is best for their child. The IDEA only requires that parents be included in development of the IEP and the placement decision. 34 C.F.R. 300.116, 300.121. In this case, Petitioner and Petitioner's representatives were present and gave their input about IEP and placement determinations.[49] Even if DCPS were to determine that Student required full-time special education services, DCPS is still free to make its own recommendation or determination of placement as long as the placement can implement the IEP. Petitioner failed to meet her burden of proof.

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[46] Findings #7, #13.
[47] Testimony of special education expert, IEP development and special education programming expert.
[48] R-11.
[49] Finding #12.

Hearing Officer Determination

The fourth issue to be addressed is whether the site location at could implement Student's 06/22/10 IEP.

Petitioner offered no proof that could not implement Student's 06/22/10 IEP, as written. DCPS offered credible evidence that the 06/22/10 IEP, as written, could be implemented at TEC. Petitioner did not meet her burden of proof on this issue.

The fifth issue to be addressed is whether Student was denied a FAPE when DCPS issued a Prior Written Notice on 06/22/10 that did not comply with the content requirements of the IDEA as follows:

(a) Petitioner requested placement at and DCPS' refusal to place Student at was not sufficiently addressed; and

(b) The Prior Written Notice did not sufficiently address why Petitioner's request for a full-time IEP and placement was denied and why DCPS decided that a combination setting of general education and special education was appropriate for Student; and

(c) The Prior Written Notice did not contain a description of the evaluations and procedures that DCPS used to arrive at the IEP placement decision and location of services decision.

Petitioner did not meet her burden of proof on any aspect of this issue. 34 C.F.R. 300.503 outlines the contents of the written notice any time DCPS proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

On 06/22/10, Petitioner, armed with a battery of representatives, all made it clear that they wanted DCPS' IEP to be an exact duplicate of IEP and they wanted Student placed in the full-time specialized instruction program at but DCPS did not agree.[50] R-12 indicates that Petitioner, Petitioner's uncle, Petitioner's educational advocate and four members of the staff all participated in the meeting on behalf of Petitioner. R-12 also reflects discussions about combination setting vs. full-time out of general education setting and reflects that Petitioner's input was fully considered by DCPS. The Prior Written Notice also explained DCPS' rationale that a combination setting should be tried before a full-time special education setting. The Prior Written Notice also reflects that the MDT used the neurological evaluation, speech and language evaluation, report cards, work samples, documentation submitted by Petitioner, and teachers and providers reports in determining that a combination setting at was the least restrictive educational placement for Student.

It is clear from the documents admitted into evidence as well as the testimony presented, that the debate about the number of specialized instruction hours in the IEP and the discussions about the combination vs. full-time setting were extensive and the reasons for each position fully explored and articulated. DCPS was not required to give an expose` in writing on the reasons it

[50] Findings #13, #15.

rejected a full-time IEP and full-time placement. The purpose of the statute is to give adequate notice and DCPS did that verbally and in writing.

The sixth issue to be addressed is whether Petitioner was denied meaningful participation in the placement decision that occurred on 06/22/10 as follows:

(a) DCPS' pre-determination that Student required a combination education setting and that was an appropriate site location denied Petitioner meaningful participation in the placement decision:

There was no evidence in the record that DCPS had pre-determined that Student required a combination setting or that was the appropriate site to provide the combination setting. At the MDT meeting on 01/11/10, the team reviewed documentation provided by Petitioner, all of which indicated that Student needed a full-time special education setting. A subsequent independent neuropsychological evaluation provided to DCPS by Petitioner also indicated that Student needed full-time specialized instruction at There was testimony in the record that a meeting took place in between the 01/11/10 MDT meeting and the 06/22/10 MDT meeting and it was at that meeting that as a site location for the implementation of services came up because in March 2009, Petitioner and her representatives began making observation visits to By law, DCPS is required to consider public school placements prior to nonpublic placements, and that is what DCPS did. See 38 D.C. Code Section 2561.02. DCPS representatives conducted observations of Student at and when the MDT reconvened in June 2009, DCPS took into account all evaluations, reports, and observations of Student at and concluded that Student's needs could be met at The SET credibly testified that her observation of Student at was that Student was able to work independently, and with verbal prompts Student was able to find her mistake and correct her own errors. Petitioner failed to meet her burden of proof that DCPS pre-determined a combination setting and as the site where the combination services would be provided.

(b) By identifying as the location of services on 06/22/10, Petitioner and Petitioner's representatives were unable to view the proposed site over the summer, and as a result, Petitioner enrolled Student at for the 2010-2011 school year:

This allegation was without merit and Petitioner failed to meet her burden of proof. Petitioner's representative/consultant testified that she visited on 03/26/10 and in May 2010.[52] Both of these dates predated 06/22/10.

(c) Although Petitioner was allowed to view once school began in August 2010, Petitioner's consultants were prohibited from viewing the school and this denied Petitioner the opportunity for meaningful participation in the placement decision:

Petitioner failed to meet her burden of proof on this allegation. Petitioner's representative/consultant testified that she visited on 03/26/10 and in May 2010.

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[51] P-6.

[52] Testimony of IEP development and special education programming expert.

Conclusion

The overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1. Free appropriate public education or FAPE means special education and related services that...include an appropriate school and are provided in conformity with an IEP that meets the requirements of the IDEA. 34 C.F.R. 300.17.

Each public agency must ensure to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114.

Petitioner is entitled to reimbursement for private special-education services when DCPS fails to provide a FAPE and the private-school placement is appropriate, regardless of whether the child previously received special education services through the public school.[53] *Forest Grove School District v. T.A.*, 52 IDELR 151 (2009).

Petitioner did not prove that Student had been denied a FAPE prior to 06/22/10 and 06/22/10 was the very last day of the 2009-2010 school year. Tuition reimbursement for the 2009-2010 school year is denied.

On 06/22/10, DCPS failed to provide Student with an IEP that was reasonably calculated to provide her with a FAPE because it failed to provide her with specialized instruction in all academic areas.

Pursuant to 34 C.F.R. 300.148, Petitioner gave written notice to DCPS on 08/02/10 that she disagreed with the IEP and placement at and that she was enrolling Student in a private school for the 2010-2011 school year and was seeking reimbursement from DCPS. [54]

38 D.C. Code 2561.02 prescribes the priority of special education placements, stating that Student shall be placed first in a DCPS public or charter school and next in a private or residential District of Columbia facility, provided that the placement is appropriate for the student. On this record, DCPS did not offer an appropriate public placement for Student. Petitioner requested placement at which the Hearing Officer determines to be an appropriate placement that can meet Student's educational needs. Student requires removal from the general education setting in order to receive educational benefit and Student is making some progress at

[53] Finding #1.
[54] Findings #16, #18.
[55] Finding #17.

ORDER

(1) DCPS to reimburse Petitioner for tuition expenditures made to l for the 2010-2011 school year, subject to Petitioner's production of proper documentation and receipts;

(2) is determined to be Student's current placement; and

(3) DCPS to place and fund Student at for the 2011-2012 school year.

SO ORDERED.

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 U.S.C. §1415(i).

Date: June 3, 2011

/s/ Virginia A. Dietrich
Hearing Officer

Copies to:

Petitioner (U.S. mail)
Petitioner's Attorney: Matthew Bogin, Esq. (electronically)
DCPS' Attorney: Daniel McCall, Esq. (electronically)
DCPS (electronically)
SHO (electronically)