

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

OSSE
Student Hearing Office
October 31, 2013

PARENT on behalf of
STUDENT,

Petitioner,

v

Erin H. Leff, Hearing Officer

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent

HEARING OFFICER DETERMINATION

STATEMENT OF THE CASE

On August 19, 2013 parent, Petitioner herein, on behalf of the student (“Student”) filed an Administrative Due Process Complaint Notice (“Complaint”), HO 1,¹ requesting a hearing to review the identification, evaluation, placement or provision of a free, appropriate public education (“FAPE”) to Student by District of Columbia Public Schools (“DCPS”) under the Individuals with Disabilities Education Act, as amended (“IDEA”). 20 U.S.C.A. §1415(f)(1)(A). Petitioner filed a Motion Invoking Stay-Put Provisions (“Motion”) on August 23, 2013 and supporting documentation on August 26, 2013. HO 5. Following the filing of Respondent’s Opposition on August 28, 2013, HO 7, I granted the Motion by order on the same date. HO 8. Respondent DCPS filed a Response to Petitioner’s Administrative Due Process Complaint Notice, HO 9, on August 29, 2013. This was within the 10 day timeline for filing a response

¹ Hearing Officer Exhibits will be referred to as “HO” followed by the exhibit number; Petitioner’s Exhibits will be referred to as “P” followed by the exhibit number; and Respondent’s Exhibits will be referred to as “R” followed by the exhibit number.

established in 34 C.F.R. § 300.508(e)(1). A resolution meeting was held September 3, 2013. The parties were not able to reach an agreement and executed a Resolution Period Disposition Form on the same date so indicating. HO 10. The 45 day timeline began to run on September 19, 2013, the day after the 30 day resolution period ended. On September 12, 2013, DCPS filed a Motion to Dismiss, HO 11, and Petitioner timely filed a response to the Motion to Dismiss on September 17, 2013. HO 12. I issued an Order, HO 14, on September 25, 2013 denying the Motion to Dismiss. Following the Prehearing Conference held on September 24, 2013, I issued a Prehearing Conference Order on the same date. HO 13. On October 2, 2013, Petitioner filed a Motion for Out of Time Disclosure, HO 18, and Respondent filed an Opposition on October 3, 2013. HO 19. I denied the Motion for Out of Time Disclosure on the record on the first day of hearing. My Hearing Officer Determination is due on November 2, 2013.

By agreement of

the parties, the hearing was scheduled for October 8 and 9, 2013. The hearing was held as scheduled in Room 2004 of the Student Hearing Office. Respondent made an on the record Motion for Reconsideration of the Respondent's Motion for Summary Judgment/Dismissal during preliminary matters on October 8, 2013. I denied this motion noting that it raised, for the third time, the issue of change of placement (as distinguished from change of location) which I had addressed in my order of September 25, 2013. I note here I had also addressed this issue in my order of August 28, 2013.

The legal authority for the hearing is as follows: IDEA, 20 U.S.C. §§ 1400, *et seq*; District of Columbia Code, §§ 38-2561.01, *et seq.*; federal regulations implementing IDEA, 34

C.F.R. §§ 300.1, *et seq.*; and District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

ISSUE

The issue is:

Whether DCPS' proposal to place the student at DCPS SHS for the 2013-2014 school year constitutes an inappropriate placement, site location, setting and school. Petitioner contends that the location at DCPS SHS constitutes a change in placement

RELIEF REQUESTED

Petitioner is seeking placement at Nonpublic School as relief.

SUMMARY OF THE EVIDENCE

A. Exhibits

Exhibits admitted on behalf of Petitioner are:

- P-1 Correspondence from this Office to DCPS dated September 6, 2013
- P-2 Correspondence from this Office to High Roads Academy dated August 22, 2013
- P-3 Correspondence from this Office to DCPS dated August 22, 2013
- P-4 Correspondence from this Office to DCPS dated August 1, 2013
- P-5 Correspondence from DCPS to this Office dated July 18, 2013
- P-6 Correspondence from DCPS to this Office dated July 3, 2013
- P-7 Petitioner's Supporting Documentation for Stay-Put Motion dated August 26, 2013
- P-8 Advocate Meeting Notes dated September 13, 2013
- P-9 Resolution Meeting Notes dated September 3, 2013
- P-10 Advocate Meeting Notes dated July 9, 2013
- P-11 Multidisciplinary Meeting Notes dated February 13, 2013
- P-12 Meeting Notes dated November 13, 2012
- P-13 Prior Written Notice dated November 13, 2012
- P-14 Acceptance letter from Nonpublic School dated July 1, 2013
- P-15 4th Quarter IEP progress report summary
- P-16 4th Quarter Progress Report from Attending School
- P-17 2012-2013 Report Card
- P-18 Functional Behavior Analysis
- P-19 Behavior Intervention Plan dated July 6, 2011
- P-20 Woodcock Reading Mastery Test dated October 31, 2012
- P-21 Cognitive Assessment dated July 21, 2011
- P-22 Occupational Therapy Assessment Report dated July 29, 2011
- P-23 Speech Language Evaluation dated February 11, 2010

- P-24 Education Evaluation dated January 4, 2010
- P-25 Individualized Education Program (IEP) dated November 13, 2012
- P-26 Individualized Education Program Progress Report dated March 25, 2013
- P-27 Educational Advocate (“Advocate”) Curriculum Vitae
- P-28 Individual Plan of Care for Rehabilitation Services Child and Youth dated April 22, 2013

Exhibits admitted on behalf of Respondent are:

- | | | |
|------|---------------------------------------|-------------------|
| R-1 | MDT Meeting Notes | November 13, 2012 |
| R-2 | PWN | November 13, 2012 |
| R-3 | IEP | November 13, 2012 |
| R-4 | MDT Meeting Notes | February 13, 2013 |
| R-5 | MDT Meeting Notes | July 19, 2013 |
| R-6 | Classroom Observation | November 11, 2012 |
| R-7 | Classroom Observation | December 5, 2012 |
| R-8 | Classroom Observation | December 11, 2012 |
| R-9 | Classroom Observation | January 25, 2013 |
| R-10 | Classroom Observation | February 21, 2015 |
| R-11 | Classroom Observation | March 19, 2013 |
| R-12 | Progress Reports | 2012-2013 SY |
| R-13 | Report Cards | 2011-2013 SY |
| R-14 | Behavior Support Service Trackers | 2012-2013 SY |
| R-15 | Justification Plan for Dedicated Aide | November 2012 |
| R-16 | Location of Service Letter | July 12, 2013 |
| R-17 | CV Psychologist Undated | |

Exhibits admitted by the Hearing Officer are:²

- HO 1 Administrative Due Process Complaint Notice filed August 16, 2013
- HO 2 Notice of Hearing Officer Appointment of August 19, 2013
- HO 3 Prehearing Conference Scheduling Letter and Order re Timelines of August 21, 2013
- HO 4 Prehearing Notice of August 31, 2013
- HO 5 Petitioner’s Motion Invoking Stay-Put Provisions of August 23, 2013 with documentary support provided on August 26, 2013 as required by hearing officer
- HO 6 Prehearing Notice of August 24, 2013
- HO 7 District of Columbia Public School’s [sic] Opposition to Petitioner’s Motion for Maintenance of Placement of August 28, 2013
- HO 8 Memorandum and Order re Petitioner’s Motion for Stay-Put Protection of August 28, 2013
- HO 9 District of Columbia Public School’s Response to Parent’s Administrative Due Process Complaint Notice of August 29, 2013
- HO 10 Resolution Period Disposition Form of September 3, 2013
- HO 11 District of Columbia Public Schools’ Motion to Dismiss Parent’s Administrative Due Process Complaint of September 12, 2013

² Emails forwarding the documents of record to opposing counsel and the hearing officer are filed with the documents of record unless otherwise noted.

- HO 12 Petitioner’s Response to Respondent’s Motion to Dismiss of September 17, 2013
- HO 13 Prehearing Conference Order of September 24, 2013
- HO 14 Order re Respondent’s Motion to Dismiss of September 25, 2013
- HO 15 Miscellaneous emails
 - August 21, 2013 re assigned DCPS counsel
 - Chain of 8/21 -8/23/13 re scheduling
 - Chain 8/21 – 8/23/13 re assigned counsel and stay put
 - Chain of 8/22 – 8/23/13 re stay-put
 - Chain of 8/26 -8/27 re stay put motion
 - 8/27/13 re receipt of Motion to Dismiss
 - 9/12/13 re addressing Motion to Dismiss
 - 10/3/13 re addressing Motion for Supplemental Disclosure as preliminary matter
- HO 16 List of Proposed Hearing Officer Exhibits filed September 27, 2013
- HO 17 Notice of Appearance as Co-counsel of September 30, 2013
- HO 18 Petitioner’s Motion for Out of Time Exhibit of October 2, 2013
- HO 19 DCPS Opposition to Petitioner’s Supplemental Disclosure of October 13, 2013

B. Testimony

Petitioner testified and presented the following witnesses:

- Educational Advocate
- Representative, Nonpublic School
- Special Education Teacher, Attending School (“Teacher”)
- Social Worker, Attending School (“SW”)
- Student

DCPS presented the following witnesses:

- Special Education Coordinator, DC SHS (“SEC”)
- LEA Representative/Progress Monitor, DCPS (“LEA Rep”)

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:⁴

1. Student is 15 years old. Student was first found eligible for special education in kindergarten. She has attended Nonpublic School, a separate, full time, special education school

⁴ In the findings that follow I cite exhibit numbers and/or testimony as bases for the findings. Some exhibits were introduced by both Petitioner and Respondent. Other exhibits were introduced by Petitioner and as hearing officer exhibits. The citations to exhibits reference only one party’s exhibit numbers in those instances where both parties and/or the hearing officer have introduced the same exhibit.

since 2008. Her classroom in the 2012-2013 school year had a student-teacher ratio of 3 to 1. She is currently classified as a student with multiple disabilities including intellectual disability, mood disorder and other health impairment (due to a seizure disorder). She also has been diagnosed with anxiety, depression and oppositional defiant disorder. Testimony of Teacher; Testimony of Petitioner.

2. Student has made progress at Attending School. She can write sentences and can read, albeit at a first or second grade level. She is on a second grade level in math. She has developed greater self-confidence. She is also able to identify coping skills. P 12; Testimony of Petitioner.

3. Student needs to be retaught daily due to her low ability to memorize and comprehend. P 12.

4. The 2012-2013 school year was Student's 8th grade year. Petitioner began asking about Student's transition to high school at the beginning of that school year. Testimony of Petitioner.

5. Student's annual IEP review meeting was held on November 13, 2012. At that meeting the multidisciplinary team ("MDT"), including Petitioner, discussed Student's progress, strengths and difficulties. Petitioner brought up Student's transition to high school. The team agreed Student would be on the certificate track for high school, beginning in the 2013-2014 school year. No proposed school was identified for the following school year. It was agreed there would be additional meetings to discuss Student's transition to high school. P 12; P 13; Testimony of Petitioner.

6. Petitioner did not immediately understand that Student would not be able to continue at Attending School for high school. Attending School does not have a high school program for students on the certificate track. It was not until the meeting held in February 2013 that Petitioner

fully understood the need for Student to move to a new school for the 2013 -2014 school year.
Testimony of Petitioner.

7. A short MDT meeting was held on February 12, 2013. The purpose of this meeting was to discuss Student's LRE and placement for the 2013-2014 school year. No potential school was identified during the meeting. However, the team indicated Student could move to a less restrictive environment than Attending School. LEA Rep discussed Student attending a separate program within a general education school and suggested Petitioner visit Neighborhood HS. SW offered to accompany Petitioner on the school visit. Petitioner did not verbalize any concern regarding Student attending a self- contained program housed in a general education school building during this meeting. No visit was made to Neighborhood HS. P 11; Testimony of Petitioner; Testimony of SW.

8. An IEP meeting was held on or about July 9, 2013. The purpose of the meeting was to discuss where Student would attend school in the 2013-2014 school year. Again no school was proposed for Student's 2013-2014 school year. Neighborhood HS was discussed as a possibility but it was not confirmed. Petitioner raised the possibility of Student attending Nonpublic School. Petitioner was informed she would be contacted by DCPS personnel as to Student's assigned school for the upcoming school year. Petitioner also asked whether Student's evaluations were up to date. She was told Student's new school would assure all evaluations were up to date and provide any that were warranted. P 4; P 10; R 5; Testimony of Advocate; Testimony of Petitioner.

9. Petitioner was informed Student was to attend Neighborhood HS for the 2013-2014 school year by telephone approximately one or two weeks after the July 2013 IEP meeting. She was subsequently informed that Student would not attend Neighborhood HS, and sometime later

she was informed Student was to attend DCPS SHS. Petitioner did not receive written notification identifying Student's school of attendance as DCPS HS until she attended the resolution meeting for the instant matter on September 3, 2013. R 16; Testimony of Petitioner.

10. Student's IEP requires Student receive 27 hours of special instruction outside the general education environment each week. She also is to receive 60 minutes of behavior support services, 60 minutes of speech-language Pathology and 60 minutes of Occupational Therapy outside the general education environment each week. In addition, the IEP requires Student to have the full-time support of a dedicated aide. The IEP also states Student is to receive transportation services, and she is eligible for extended school year services. P 25.

11. Student requires a full time dedicated aide for medical, academic and social reasons. Student has seizures and requires assistance when they occur as she disrobes and hallucinates. She requires significant amounts of monitoring and support to access the curriculum. She has difficulty remembering what she has been taught and requires much reteaching/repetition.⁵ She also requires the use of many supplementary aids and materials. Student also has some difficulty with comprehension and requires the additional support of the dedicated aide to assist her in understanding. Student's behavior with her peers is inappropriate and requires monitoring; she makes sexual comments on some occasions and on others acts like a much younger child. She also yells out and curses.⁶ R 15; P 25; Testimony of Teacher; Testimony of SW; Testimony of Petitioner.

12. Following the resolution meeting held regarding the instant matter, Petitioner and Advocate scheduled a visit to DCPS SHS on or about September 13, 2013. They met with SEC, and Petitioner visited the classroom for a few minutes. The teacher was not present. She was at a

⁵ For example, she needs to be retaught how to use the microwave on a daily basis.

⁶ Student had no physical outbursts in the last school year.

meeting. DCPS had not informed Petitioner of the teacher's unavailability when the visit was scheduled. The assigned classroom aide also was not present. Only a substitute teacher was in the room. The classroom was in the process of being converted from an office to a classroom.⁷ Petitioner found the classroom to be depressing. The walls were bare. The students were not doing anything. Since Petitioner's visit the classroom has been improved. It has chalkboards, whiteboards, posters, books and computers. P 8; Testimony of Petitioner; Testimony of Advocate; Testimony of SEC.

13. The program to which Student would be assigned at DCPS SHS has 13 students in two self-contained classrooms.⁸ The students attend all classes together. Each classroom has an assigned teacher, and an assigned classroom aide splits his/her time between the two classrooms. There are only three times during the school day the students from these two classes are with their nondisabled peers: 1) when they have lunch in the cafeteria;⁹ and 2) when they are in the hall when they transition from one classroom to the other for one period each day. Students from these two classrooms arrive and leave school before their nondisabled peers. DCPS SHS has staff available to provide the related services on Student's IEP. The self-contained classroom program teaches students life skills both in the classroom and in the community. There are no vocational classes in DCPS SHS. It has a career exploration program, and Project Search¹⁰ is available to students who are 18. DCPS SHS is attempting to developing partnerships that would allow students to shadow individuals working in the community. P 8; Testimony of Advocate; Testimony of Petitioner; Testimony of SEC.

⁷ Petitioner does not appear to have been aware of this at the time of her visit.

⁸ Approximately 400 students total attend DCPS SHS.

⁹ Student would be able to eat lunch in her classroom rather than the cafeteria.

¹⁰ This program is focused on filing and computer work. There is also a program that works with Marriott. These programs are not based on students' interests.

14. Nonpublic School is a full time, non-public, therapeutic day school providing academic and vocational services to special education students from ages 5 through 21. There are 8 students in the certificate track program. Students on the certificate track take classes with students on the diploma track. Students on the certificate track receive education in functional math and vocational training including the services of a job coach, career advisor and transition coordinator. The vocational training program includes community based placements. Students on the certificate track also take a language based class with an emphasis on reading. Hallways are closely monitored. Students on the certificate track take classes based on their needs. The school is approved by the Office of the State Superintendent of Education in the District of Columbia. Nonpublic School is able to provide Student a full time, out of general education program as required by her IEP. Student has visited the school and has been accepted. P 14; Testimony of Representative, Nonpublic School; Testimony of Petitioner.

DISCUSSION

The following discussion is based on my review of the exhibits introduced by the parties, witness testimony and the record in this case. While I find most of the witness testimony presented in this matter to be credible, LEA Rep's testimony raised significant credibility issues. LEA Rep testified that her job was to monitor IEP progress and assure students are in the proper LRE at four named nonpublic schools. Included in the schools for which LEA Rep performs these functions is Attending School. She stated she was starting her fourth year in this role at Attending School. However, LEA Rep also testified that she did not know whether there were any general education students from LEAs other than DCPS at Attending School. This is not believable. She has worked at the school for over three years. She serves as the DCPS representative at the school and attends IEP meetings in this role. To claim she is unaware that

Attending School is a separate, nonpublic, special education school is an assault on credulity. LEA Rep could not perform her job without this information. For example, she would not be able to monitor LRE compliance because she would not be able to determine whether the instant Student, or any other DCPS student, was assigned to the appropriate LRE. If she does not know whether there are general education students in the school it is possible that the other students in the instant Student's classroom include at least some general education students which would not be compliant with Student's IEP. When I further queried her regarding her knowledge of the students' general or special education status at Attending School, LEA Rep maintained her ignorance of this information. LEA Rep also testified she was unfamiliar with the continuum of services (34 C.F.R. §§ 300.115) in IDEA. Again this is not credible testimony coming from an individual who is serving as the DCPS representative at IEP meetings. The continuum of services is identified in the IDEA regulations in the Least Restrictive Environment section. 34 C.F.R. §§ 300.114 – 300.120. LEA Rep stated she assured students were in the proper LRE and then claimed she was unfamiliar with at least one of the IDEA regulations specifically addressing LRE.

As I conclude these statements are not credible, I have determined I cannot give any weight to LEA Rep's testimony. Her willingness to deny her own knowledge results in my inability to know whether the remainder of her testimony is credible and the weight, assuming she is testifying truthfully in other instances, to attribute to it. Rather than guess, I have chosen not to rely on her testimony at all. I note I make this decision with great reluctance. LEA Rep appeared to have genuine concern for and interest in Student as well as knowledge of Student's strengths, needs and interests. LEA Rep's knowledge and viewpoint would have been helpful had they not been sullied by her notable lack of credibility.

Placement

Under IDEA after a school district develops an IEP that meets all of a student's educational needs, it must identify a placement in which to implement the IEP. The placement is to be in the least restrictive environment in which the IEP can be implemented. 34 C.F.R. §§ 300.114 – 300.118. *See also*, D.C. Code §§ 30.3011 – 30.3013. The removal of a student with disabilities from the regular education environment is to occur “only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii). Each local education agency must have a continuum of alternative placements, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, available. 34 C.F.R. § 300.115. In selecting the placement from among those on the continuum of alternative placements, consideration is to be given to any potential harmful effect on the child or on the quality of services s/he needs. 34 C.F.R. § 300.116(d). The placement decision is to be made by a group of individuals, including the parents. 34 C.F.R. § 300.116(a)(1); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(b) and (c). Moreover, the placement decision must conform to the LRE provisions. 34 C.F.R. § 300.116(a)(2).

The issue in the instant Complaint is whether DCPS' proposal to place the student at DCPS SHS for the 2013-2014 school year constitutes an inappropriate placement. Petitioner also alleged that the site location, setting and school were inappropriate. I do not address the additional allegations, regarding site location, setting and school, here. IDEA grants hearing officers the authority to hear issues related to the identification, evaluation, placement of or provision of FAPE to a student with disabilities who is eligible for special education and related services under the Act. 34 C.F. R. §300.507(a). Site location, setting and school do not fall

within this limited jurisdiction. I agree, as DCPS argued, that site location, setting and school are within the discretion of the local education agency, here DCPS. The issues before me, then, are whether the proposed change from Attending School to DCPS SHS is a change in placement, and, if it is a change in placement, whether that change is inappropriate. Petitioner contends the proposed change is a change in placement, and it is inappropriate. DCPS contends it is not a change in placement but rather, a change in location. Therefore, I must start by addressing what constitutes a change in placement as distinguished from a change in location.

Change in Placement

Petitioner argues that the proposed move to DCPS SHS is a change in placement for multiple reasons. Most essentially, the DCPS proposed placement is to a self-contained class or program within a large, general education high school. Student has been attending a small, separate, special education school.¹¹ Secondly, the student's IEP requires that Student have a dedicated aide, and according to Petitioner, DCPS was not able to assure the aide would be available to Student from the beginning of the school year.¹² Petitioner further asserts that Student has difficulty adjusting to change without significant support.¹³

DCPS maintains there has been no proposed change in placement in the instant matter. DCPS argues that placement is not a particular school or location but rather the overall educational program. In making this argument DCPS cites a large number of cases supporting their position that location, site and/or classroom is within the discretion of the local education agency.¹⁴ DCPS further argues that here the proposed change to DCPS SHS would maintain the

¹¹ Student has been accepted at Nonpublic School, a different, small, separate special education school for the 2013 – 2014 school year

¹² As discussed *Infra* the evidence was that DCPS would provide Student a dedicated aide as required by her IEP.

¹³ There was no evidence offered regarding this assertion. I note further that whether Student attends DCPS SHS or Nonpublic School she will be required to adjust to change.

¹⁴ As I agree that location is not placement I do not address these cases here

student in a full time, out of general education setting and, therefore, this is not a change in placement. While I agree that placement is not a particular school or setting, I disagree that the change to DCPS SHS from Attending School does not constitute a change in placement simply because Student would continue to receive her program and services in a full-time, out of general education setting.

For me to accept DCPS position that Student's receiving her services in a full time out of general education setting is sufficient, in and of itself, to result in a conclusion that Student's placement on the LRE continuum remains constant whether in a separate school or in a separate class in a general education school, I must ignore the express language of the IDEA regulation regarding the continuum. I cannot do this. DCPS' assertion flies in the face of the plain language of the IDEA. The continuum of placements specifically identifies, among other placements, both special classes and special schools. 34 C.F.R. § 300.115(b)(1). Thus, where, as here, the proposed change is from a separate, special education school to a self-contained (separate) special education class within a general education school, there is a change in placement on the LRE continuum.

In *Letter to Fisher*, 21 IDELR 992, the Office of Special Education Programs ("OSEP") defines placement under the IDEA. In this letter the placement decision has three components: 1) the education program set out in the student's IEP; 2) the option on the continuum in which the IEP is to be implemented; and 3) the school or facility selected to implement the IEP. Assignment to a particular classroom or teacher is deemed an administrative decision as long as it complies with the IEP team's determination. While the Federal Register Commentary to the current IDEA regulations found at 71 Federal Register No 156, page 46687 broadens location to include a specific school -- "the Department's longstanding position is that placement refers to

the provision of special education and related services rather than a specific place, such as a specific classroom or specific school.” (*Id.*) -- the analysis of how to determine whether a particular move constitutes a change in placement should remain consistent with that found in *Letter to Fisher. Op. cit.*

In *Letter to Fisher*, OSEP provides four factors for determining whether a change substantially or materially alters the child’s educational program thereby creating a change in placement. These factors are:

- 1) Whether the IEP program in the IEP has been revised. In this matter it has not.¹⁵
- 2) Whether the child will be educated with non-disabled children to the same extent. In this matter Student would have limited contact with her nondisabled peers at DCPS SHS. Student has no contact with her nondisabled peers at Attending School. Therefore there is a change under this factor.
- 3) Whether the child will have the same opportunities to participate in non-academic and extra-curricular activities. Neither Petitioner nor Respondent have addressed this factor; and
- 4) Whether the new placement option is the same option on the continuum of alternative placements; As discussed, *Supra*, at pp. 14 -15, it is not.

In the instant matter, Petitioner has shown that the change to DCPS SHS meets three of the four factors identified as being determinative of a change in placement. Thus, while Respondent’s arguments regarding change of location being at the discretion of the LEA are convincing, they are inapposite to the instant matter as the proposed change is a change of placement under the cited standards. It is not a change of location. I further note, the D.C.

¹⁵ Please see my discussion, *Infra* at FN 17, regarding my reliance on the IEP remaining constant as a determinative factor in reaching my decision.

District Court has opined that, "Any "fundamental change in, or elimination of, a basic element of the educational program" qualifies as "a change in placement." *Petties v. District of Columbia*, 238 F. Supp. 2d 88, 98 (Dist. Ct, D. C. 2002) citing *Lunceford v. District of Columbia Board of Education*, 745 F.2d 1577, 1582 (D.C.Cir.1984) (citing *Concerned Parents & Citizens for the Continuing Education at Malcolm X v. New York City Board of Education*, 629 F.2d 751 (2d Cir.1980)). Here the fundamental change is from a separate school to a separate class within a general education school.

I, therefore, find by a preponderance of the evidence that the proposed placement at DCPS SHS constitutes a change of placement. This determination, however, does not end my inquiry. I must now determine whether the proposed change in placement is appropriate.

Beginning in November 2012 meeting, the MDT started discussing Student's proposed placement for high school in the 2013-2014 school year. The MDT, including Petitioner, agreed Student required a self-contained program and further that Student would be on a certificate, rather than a diploma, track. After that meeting two additional meetings were held and little additional information was provided to Petitioner. DCPS repeated the parameters for Student's program, but identified no specific school to provide the program. At one point DCPS suggested Petitioner visit Neighborhood School thereby indicating that Neighborhood School would be the proposed school for the 2013-2014 school year. Subsequently, however, DCPS changed the proposed identified school to DCPS SHS. The communication with parent around the proposed school was poor, and, as a result, left Petitioner with many questions and concerns. When a school visit to the actual proposed school site was finally set after the resolution meeting held regarding the instant Complaint, DCPS SHS appears to have been only minimally prepared for the visit. Petitioner was allowed to spend little time in the classroom to which Student would be

assigned.¹⁶ The teacher was not present when Petitioner visited the school despite Petitioner's visit having been scheduled, and no offer was made for a follow-up visit or telephone contact. During Petitioner's short visit the aide also was not in the classroom, and, perhaps even more importantly, the classroom itself was not ready for students, despite the visit occurring during the second or third week of school. Under these circumstances it is not surprising Petitioner remained concerned about DCPS SHS being able to implement Student's IEP.

Yet despite Petitioner's valid concerns it is clear DCPS SHS is able to implement Student's IEP, and, therefore, DCPS SHS is an appropriate placement.¹⁷ DCPS SHS has a separate, self-contained special education program for students on the certificate track. It is composed of two classrooms with a total of 13 students. An instructional aide divides his/her time between these two classrooms. Thus the student teacher ratio is low, ranging between 6 to 1 and 3 to 1. Students do not have contact with their nondisabled peers other than during one class change and lunch. Moreover, instant Student would be able to have lunch in her classroom rather than the cafeteria. Student would receive instruction in academic subjects and functional skills.

In reaching my determination that DCPS SHS is an appropriate placement, I recognize Student has been accepted at Nonpublic School, and Nonpublic school provides an environment

¹⁶ Petitioner also noted her advocate was not allowed to visit the classroom. There is no requirement that this be allowed to occur.

¹⁷ I note I make this finding based on DCPS SHS being able to implement Student's current IEP, and I further note that in *Letter to Fisher*, Supra, OSEP identified a change to a student's IEP as one of the factors to be considered in determining whether a change of placement has occurred. The requirements of Student's current IEP, and DCPS SHS's ability to implement them, are essential to my finding of appropriateness of the DCPS placement. I have not been asked to decide whether DCPS SHS would be an appropriate placement if the requirements of the IEP were changed. In this regard I focus on the current IEP requirements that are designed to address Student's complex educational needs. In particular, I relied on the assignment of a dedicated aide to assist Student with self-care, support for her difficulty with remembering and learning and monitoring of her interactions with peers and adults. DCPS has stated its ability to continue providing a dedicated aide, and I relied on this assurance in reaching this determination. I also relied on the assurance that Student would not interact with her nondisabled peers other than during transition from one classroom to another one time per day. This included Student not having lunch in the cafeteria. Finally, I relied on DCPS SHS continuing to provide Student the level of services she is currently receiving, including both instruction and related services. The effect of DCPS being unable to implement these program components or a change to these program components might have lead me to different results.

more similar to that in which Student has been educated for the last few years. That similarity, is not sufficient, however, for my finding that Student should not attend DCPS SHS. It does not mean DCPS SHS is an inappropriate placement. I further recognize that Nonpublic School has a more fully developed vocational program than that available to Student at DCPS SHS, but, again, DCPS is able to provide the vocationally related services on Student's current IEP.

I therefore find by a preponderance of the evidence that DCPS SHS is an appropriate placement for Student for the 2013-2014 school year.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that DCPS' proposal to place the student at DCPS SHS for the 2013-2014 school year constitutes a change in placement. I further conclude that the proposed placement at DCPS SHS is an appropriate placement for Student for the 2013 -2014 school year.

ORDER

Based upon the above Findings of Fact and conclusions of law, it is hereby ordered that the instant Complaint be dismissed. Student's enrollment in DCPS SHS shall proceed immediately upon the parties' receipt of this Hearing Officer Determination.

IT IS SO ORDERED:

October 31, 2013
Date



Erin H. Leff
Hearing Officer

NOTICE OF RIGHT TO APPEAL

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