DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

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STUDENT HEARING OFFICE
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Confidential

STUDENT[1], by and through Parent Petitioners, v. Public Charter School Respondent.	**HEARING OFFICER'S DECISION** **Date: February 2, 2010** **Hearing Officer: Wanda I. Resto**

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

I. PROCEDURAL BACKGROUND

On November 19, 2009, parent's counsel filed a Due Process Hearing Complaint ("Complaint") against the Public Charter School ("Respondent") pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), alleging the Respondent denied the Student a Free Appropriate Public Education ("FAPE"). [2] The Petitioner claimed the Respondent failed to identify and address all areas of the Student's disability, failed to develop an appropriate individualized education program ("IEP"), failed to provide an appropriate educational placement, and failed to ensure the Student make academic and emotional progress.

The Petitioner asserted that although the Student has received poor cognitive testing results, academic testing and evaluations which showed the Student is functioning between third and sixth grade level in most areas, his disability classification has never changed to encompass his learning problem, nor has his level of special education and related services changed for the last school years, despite multiple detentions and suspensions which have prevented the Student from making academic and motional progress. The Petitioner argued that the Respondent failed to identify and address all of the Student's disability because the Student has a history of receiving speech and language as a related service and his academic testing shows severe delays in all academic areas, his current disability classification is for emotional disturbance. Further argued the Petitioner, the Respondent failed to develop an appropriate IEP for the last two years, the 2008-2009 IEP does not contain present levels of performance, his goals and objectives are limited and not individually tailored to provide educational benefit. The Petitioner asserted that the IEP also fails to include a functional behavior assessment and a behavioral intervention plan. The Petitioner argued the Student's academic goals are not individually tailored, and are not appropriate for a Student who is learning several grades below his [redacted] grade placement. The Petitioner further argued that the Respondent has also failed to provide the Student with an appropriate educational placement because it has failed to appropriately identify and address all areas of the Student's disability. Additionally, the Petitioner argued the [redacted]PCS has an inclusion model for their special education and related services program, which cannot provide the Student with the services on his IEP. Lastly, the Petitioner alleged the Respondent has failed to ensure the Student made academic and emotional progress.

The Petitioner requested that the Respondent be deemed to have denied the Student a FAPE and ordered to immediately issue a Prior Written Notice for the Student to attend a full time therapeutic non public special education placement that can address his learning, academic, behavioral and emotional needs for the remainder of the 2009-2010 school year. The Petitioner also requested the Respondent fund the placement and transportation of the Student. Additionally, the Petitioner requested that compensatory education be provided in the form of intensive tutoring and therapy.

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[2] 20 U.S.C. §1415(c)(2)(B)(i)(I); D.C. Code § 38-1802.02(19), each public charter school shall elect to have the District of Columbia Public Schools (DCPS) serve as its Local Education Agency (LEA) for purposes of the Individuals with Disabilities Education Act (IDEIA), 20 USC § 1400 *et seq.*, (a District Charter), or shall be an independent Local Education Agency (an LEA Charter). The student in the present case was and is enrolled in a public charter school which is its own LEA Charter during the period of the alleged violations.

On November 30, 2009, the PCS filed a Response to the Parent's Administrative Due Process Complaint. The Respondent denied all allegations against it. The Respondent alleged the Student failed the second and third quarters of the 2008-2009 school year; and was given an opportunity to attend summer school and the Student did not; and consequently was retained in the grade for the 2009-2010 school year. The Respondent neither denied nor admitted that the Student has been diagnosed with adjustment disorder, mixed disturbance of mood and conduct, and borderline intellectual functioning. The Respondent argued that the diagnosis appears to be the result of an independent psychological educational evaluation; which it has never received a copy of nor has been given an opportunity to review. The Respondent asserted the Student's psychological educational evaluation completed on August 28, 2008 and a clinical evaluation completed on September 2, 2008 were reviewed and on September 30, 2008 the Student was determined eligible for special education services as a student with emotional disturbance. It's the contention of the Respondent there was nothing in the evaluations to suggest that the Student had an apparent learning disability or intellectual deficiency. The Respondent further argued that the parent participated in the IEP development meeting and signed the IEP indicating that she agreed with its content. Additionally, the Respondent argued that although the Student's IEP calls for 16 hours of specialized instruction, all of the Student's classes at the PCS have been taught by general education teacher and a special education teacher, which has provided him with the benefit of a special education teacher during the entire school day. The Respondent denied it failed to identify and address all of areas of the Student's disability; it argued that the Student's cognitive and academic deficits are attributable to emotional interference rather than an inherent learning disability or cognitive impairment. The Respondent alleged that the Student's IEP did include present levels of performance but that page was inadvertently missing from the records provided to the Petitioner's counsel. The Respondent also denied that the Student's goals and objectives were not individually tailored. Additionally, the Respondent asserted that any lack of progress or failure of the Student to advance from middle school to high school was the result of his excessive absences. Lastly, the Respondent argued that the Student has been provided with all the services called for on his IEP and despite the Student's attendance problems, he has made some progress at the PCS, and has been provided with a FAPE.

A telephonic pre-hearing conference call for the above reference matter was conducted December 21, 2009 at 4:30 PM. Attorney Sarah Tomkins participated on behalf of the Petitioner. Attorney Ellen Dalton participated on behalf of PCS. The parties generally reiterated their positions.

A December 24, 2009 Order required the Petitioner to demonstrate at the hearing what aspect of the Student disability was not identified nor addressed; what is inappropriate about the IEP and educational placement. The Petitioner had also to demonstrate how the Respondent's alleged failures caused the Student not to achieve academic and emotional progress; or cause harm. The Petitioner must show her choice of placement is appropriate. The Respondent was ordered to show that the IEP is appropriate and that the MDT acted correctly when it decided the educational placement of the Student. The Respondent had to show a FAPE was provided. The Order also reminded the Petitioner be prepared to satisfy the standard set out in *Reid*.

Hearings were held on January 5th and 10th, 2010. The Petitioner presented a disclosure letter dated January 11, 2010 to which thirty-two documents were attached, labeled P-1 through 32 and listing seven witnesses; five witnesses testified. The Respondent presented a disclosure letter dated January 11, 2010 identifying nine witnesses and to which thirty documents were attached, labeled [redacted]PCS 1 through 30; six witnesses testified. The documents were admitted without objections except Petitioner's document 4 and 5 were excluded. Documents 30, 31 the hearing officer deferred a ruling until offered into evidence.[3] The Petitioner withdrew document 24.

The hearings were conducted in accordance with the rights established under the IDEIA and the implementing federal and local regulations, and the SOP. [4]

II. ISSUE(S)

1. Did the Respondent fail to identify and address all areas of the Student's disability

2. Is the Student's IEP inappropriate?

3. Did the Respondent fail to provide an appropriate educational placement?

4. Has the Student made academic and emotional progress?

5. Was the Student denied a FAPE?

III. FINDINGS OF FACT

1. Both the parent and the Student reside within the District of Columbia. The Student was enrolled in a District of Columbia Public Charter School which is its own LEA during the period of the alleged violations.[5]

2. The Student has a disability classification under the IDEIA of emotional disturbance. The Student's most recent IEP is dated August 4, 2009 and provides 16 hours of specialized instruction, and 30 minutes of psychological services weekly.[6]

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[3] The hearing officer sustained [redacted]PCS' objections to Petitioner's proposed exhibit numbers 4 and 5 because they had no relevancy to the claims in the current Complaint. The Petitioner withdrew document 24. The hearing officer overruled Respondent's objection to admission of Petitioner's document 30 after the Petitioner decided to call the writer of the document as a witness; and accepted Petitioner's document 31 as relevant to the claim.

[4] IDEIA 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; 34 CFR Part 300; and Title 5 District of Columbia Municipal Regulations (D.C.M.R.), Chapter 30, including §§3029-3033, and the Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures ("SOP").

[5] D.C. Code § 38-1802.02(19), each public charter school shall elect to have the District of Columbia Public Schools (DCPS) serve as its Local Education Agency (LEA) for purposes of the Individuals with IDEIA, 20 USC § 1400 *et seq.*, (a District Charter), or shall be an independent Local Education Agency (an LEA Charter). The Student on the date of the hearing was incarcerated.

3. The Student was disruptive in class and would walk out of school; the Petitioner was called weekly to take the Student home for one or two days. The Petitioner wrote various letters justifying the Student's absences from October 2008 through February 2009 to avoid being reported to child protective services. The Student threw a book at a teacher and was suspended. The Student is in the grade for the third time; was given the opportunity to attend a summer school program to be promoted to the grade; the Petitioner allowed the Student to work instead. The Petitioner participated in an IEP meeting in September 2009, she requested more services and was told that the Student did not have a full time IEP; but that transportation services would be provided. The Student wanted to leave school on Fridays to participate in a prayer session; the Student's program was adjusted to allow the prayer service to happen at school. The Student insisted on leaving and the Probation Officer recommended school personnel call the police. The Student has not complied with his probation conditions and has been committed to a youth rehabilitative services program. [7]

4. The Student has a full scale IQ of 74, and index scores on the WISC-IV in the borderline to low average range. The Student's adaptive functioning; revealed scores in the deficient with an adaptive behavior composite score of 61. The Student is functioning generally at the fourth to sixth grade level in basic reading skills and at the fifth grade level in reading comprehension, writing and spelling. The Student has problem retaining and processing information; and has borderline intellectual functioning. He has an adjustment disorder, disruptive disorder, and his social interaction, common sense and daily living skills are tremendously limited. The Student evaluations were comprehensive but did not include a diagnosis of learning disorder not otherwise specified; a diagnosis the witness would include. The witness recommended the Student receive a speech and language evaluation because of receptive and expressive language difficulties. The Student's cognitive limitations and defiant behavior play into his problem of not feeling engaged in school. Being in the [redacted] grade at age [redacted] has caused the Student to feel the lack of progress and not wanting to attend school. The Student requires an educational placement that addresses his adaptive delays and provides individualized attention, in a smaller setting with very low distraction and reinforcement and repetition from the teacher. The witness was not aware that the family chose for the Student to work instead of going to summer school.[8]

5. The Student has an attendance problem; the Petitioner and grandmother allow the Student to stay at home; leave school early or serve in-school suspension time at home. The Student made progress but not enough to be promoted to the next grade because of attendance. The student was given an opportunity to be promoted to the grade; but failed to attend

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[6] The Petitioner signed in agreement both 2008 and 2009 IEP, testimony of the Petitioner and P10, and 12.

[7] Testimony of the Petitioner, the Probation Officer, the Director of SEC, P 11, and R9.

[8] Testimony of the clinical psychologist, P 20 Psychological evaluation September 2008, P 21 November 2009 Psychoeducational evaluation, Vineland adaptive behavior scale, and P32 Brief psychological assessment.

classes. During the period he was in a youth shelter his attendance and performance improved; upon his return home his attendance and work diminished.[9]

6. A September 2008 psychological evaluation recommends part time accommodations and a small class with a 1:2 teacher ration when performing tasks.[10] Assessment and planning to address the Student's behavior and a BIP was created at the beginning of the school year. The BIP included a point sheet, verbal praise, behavior specialist and crisis intervention team to manage behavior in the classroom. The Student had access to the alternative classroom to complete work independent from the group. To address the Student's attendance; he was provided assignments, telephone calls to the Petitioner and sent to the crisis intervention room. The Student when present in class he progressed; he matured and was less resistant. The Student was able to get out of class by calling mother or grandmother for permission. The Student had inappropriate behavior but not as severe as other students.[11]

7. The 2008 and 2009 IEP's do not contain the pages describing the level of performance; however there is evidence that the MDT discussed the Student's ability level and performance in class when IEP's [12] The MDT agreed to request a FBA for the Student in August 2009. [13]

8. The Student's diagnostic impression is an Axis I – Adjustment Disorder with Mixed Disturbance Of Emotions And Conduct; Axis II- borderline intellectual functioning; Axis III- none; Axis IV-Psychosocial stressors: involved with the court's residing in a shelter; inadequate social support; poor grades; history of fighting; truancy and other academic and factions, a strained relationship with biological father; friends and neighbors murdered; neighborhood violence and Axis V-Global function 70 which is between mental retardation and borderline intellectual function. Individual counseling was recommended the Student's current placement should continue and include a behavior or incentive plan; and indicates continues to need a substantial amount of home, school, and community support.[14]

9. A December 15, 2009 MDT reviewed the Vineland assessment and the clinical psychological and determined that the Student did not meet the criteria for mental retardation or learning disabled; there is variability in his score and he performs in a low average range. The MDT decided that the Student's behaviors were disruptive yet not extreme to warrant a modification of disability classification, because when the Student consistently attended classes he responded positively. The Student's MDT discussed the current evaluations, the Student's needs and services; and decided the Student continues to exhibit an emotional disturbance; that a diagnosis of borderline intellectual functioning does

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[9] Testimony of the Director of Special Education at , P 16 and R-17 Report card 2009-2010 (1st Quarter).

[10] P 20 Psychological evaluation September 2008.

[11] Testimony of the Special Education Teacher, P 11 MDT notes, P 14, and P 17 Progress Reports.

[12] P10 and P12

[13] R 14- MDT August 4, 2009 notes.

[14] Testimony of the School Psychologist, R 23 2009 Psycho-Educational Evaluation, and P 22.

not change the Student's disability classification. The MDT increase counseling to one hour weekly; and determined that the Student does not require a more restrictive placement.[15]

10. The Student does not like being in the [redacted] grade at age [redacted] does not like [redacted]PCS and cuts class which has impacted his grades. The Student will present resistance to the program at [redacted]PCS regardless of the services. [redacted]PCS can provide a full time placement and one hour of vocational training. [16]

11. Public Charter School is a full-time therapeutic Special Education Program with intensive behavior modification services. It serves children in Grades [redacted] part-time to full time specialized instruction. The program at [redacted]PCS provides the student with 27.5 hours of specialized instruction; although the IEP calls for 16.5 hours. The program is provided through a team of a general education teacher and a special education teacher during all classes. [17]

12. The Student was retained at [redacted]PCS in school year 2008-2009. The disciplinary log during September and October 2008 shows loss of privilege, detention, however there are no out of school suspensions. [18] He failed language arts, social studies, art classes and had 28 absences. The Student also had problems with conduct and missing class work.[19] The Petitioner was informed that the Student must meet the academic requirements during summer school in language arts and social studies for the promotion to the next grade. The Student did not attend the summer program required and went to work instead.[20]

13. The Student's classes in the core subjects are provided with the collaboration of a special education teacher and a general education teacher with 10 students during 45 minutes. The Student was flourishing, had good relationships, was not disrespectful and did his work. During October-November 2009 he was doing extremely well, while at a shelter. The Student does not require a more restrictive placement; he can get the work done. The Student was a leader in his language arts class, followed directions, and paid attention. The Student had to be redirected; but not as much as other students. The Student was eager to participate in the behavior control incentive program because he would get "scholar chips" to purchase. [21]

14. The 2008 IEP contains no present level of performance page to establish if on target and without them it's difficult to evaluate the appropriateness of the objectives. The 2009 levels of performance are global and fail to identify how the objectives will be achieved. Without a

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[15] Testimony of the Director of Special Education at [redacted]PCS; School Psychologist, and R 25.

[16] Testimony of the Petitioner's Clinical Psychologist.

[17] Testimony of the Director of Special Education at [redacted]PCS.

[18] R-11 School-wide Information System

[19] R- 10 Student's report card for school year 2008-2009, R 12- Student Schedule revised June 29-August 5, 2009, and testimony of the Director of Special Education at [redacted]PCS.

[20] R-13 July 13, 2009 Letter advising Petitioner of absences during summer session.

[21] Testimony of the Social Studies and Language Arts Teachers

FBA/BIP there is a failure to assess what is occurring and plan to address the Student's needs. The Student's goals in math are not reachable and not focused on his needs. The Student was not achieving the objectives as set and there was a failure to do a task analysis of the Student's need. The Student has an emotional disturbance and problems in school, instead of replicating the goals as was done; the goals should have been broken down. Repeating the [redacted] for the third time reinforces the Student sense of failure. There was no evidence a failure to draft goals impacted the Student's promotion; attendance hugely impacts promotion to the next grade. [22]

15. The 2008 and 2009 IEPs contain conflicting information in the percent of time in specialized instruction (21-60%) and the percent of time Not in Regular education setting it (100 %). Neither the present level of performance page or the impact statement pages are attached to the IEPs, although it indicates there are addendums for behavior, extended school year ("ESY"), transportation and transition service the documents were not included. The transportation was put in place to address safety and attendance concerns for the Student; after the Student failed to be available the [redacted] PCS discontinued the transportation services for the Student. [23] The 2008 IEP does not include social emotional goals does not address attendance because the Student was a recent transfer to [redacted] PCS and without a prior IEP. The 2009 IEP also does not include goals to address the attendance problem. The hours of services on the IEP remained the same because he was making some progress. [24]

16. The witness stated a compensatory education was due because the Student needed a full time special education program for at least two years because of failures and repeating the seventh grade. The witness indicated that had the Student received during the past three years effective services truancy would not have been so severe and the Student would have progressed in school. With the appropriate services the Student would have been in the grade. The witness was not aware that of the opportunity to be promoted to grade which was rejected by the Student and Petitioner. [25]

17. [redacted] School program in Baltimore, Maryland provides educational, vocational and therapeutic services to high school students The , under the leadership of the executive director of education and two directors of education, operates a nonpublic special educational program: Type I full day special education and related services program for students with autism, emotional disturbance and/or mental retardation in an elementary school (grades 6-8); a secondary school (grades 9-12); and in a non-graded (ages 14-21) educational program. The Student is provided individualized instructional programming and related services based on the IEP. The Student would be placed in the secondary school program provides the Student credits towards a DC school diploma in the vocational building. The Student would have special

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[22] Testimony of Petitioner's Expert - IEP

[23] P 10, 12, and testimony of the Director of Special Education at [redacted] PCS.

[24] Testimony of the Director of Special Education at [redacted] PCS, the SET, R-14and, R 15.

[25] Testimony of the Clinical Psychologist –witness for the Petitioner.

education teacher and an instructional assistant staff in the self-contained classroom with a limit of no more than nine students; and transition classes. The Student's counseling would be provided by licensed social workers and certified professional counselor to provide individual, group and family therapy, behavior management, counseling, and crisis management intervention. To address the Student's attendance problems; he is required to participate in designing his schedule, there are weekly calls to the Petitioner, the instructional aide intervenes with verbal direction, followed by timeout rooms and other techniques and staff intervention as the situation requires. [redacted] would have to reach an arrangement with DC schools to allow the Student to bypass the [redacted] grade (to accommodate the opportunity to obtain a high school diploma. The Student requires a vocational assessment, which can be provided at [redacted] and all the services require on the IEP. The Student's IEP and educational record were reviewed and the Student was accepted into the program. The Student appears to be interested in attending the [redacted] program. Cost is daily.[26]

IV. CONCLUSIONS OF LAW

FAPE Determination

Each LEA Charter is responsible for compliance with all requirements applicable to an LEA under the IDEIA and its implementing regulations, and local laws, regulations and policies, including, providing a FAPE.[27]

The LEA Charters are required to establish and implement policies and procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). An LEA Charter is responsible for responding to any due process complaint made in respect of a child enrolled in the LEA Charter, including any child who attends a nonpublic school.[28]

The applicable regulations define a FAPE as "special education and related services that are provided at public expense; meet the standards of the SEA; include an appropriate pre-school, elementary school, or secondary school; and are provided in conformity with an individualized education program (IEP)." [29]

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[26] Testimony of the Director of [redacted]

[27] 20 U.S.C. § 1415(a); and Chapter 30 of Title 5 of the (District of Columbia Municipal Regulations (DCMR) 3019.3

27 20 U.S.C. § 1415(a); and DCMR 3019.3.

[28] Chapter 30 of Title 5 of the (District of Columbia Municipal Regulations (DCMR) Section 3019.3 Due Process Complaints; and

[29] 34 C.F.R. § 300.17

In assessing whether a FAPE has been provided, a court must determine whether (1) the school complied with the IDEIA's procedures; and (2) the IEP developed through those procedures was reasonably calculated to enable the student to receive educational benefits.[30]

Burden of Proof

The burden of proof is the responsibility of the party seeking relief, in this case the parent. It requires that based solely upon the 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 a FAPE.[31]

Suspected disability

A December 24, 2009 Order required the Petitioner demonstrate at the hearing what aspect of the Student disability was not identified nor addressed. The Petitioner did not show there was a disability identified by the majority of the MDT or experts that was not addressed.

Individualized Education Program

In accordance with 20 U.S.C. § 1414 (d)(1)(A)(i)(II)(aa), (bb), Individualized Education Programs or IEP "means a written statement for each child with a disability that includes a statement of measurable annual goals, including academic and functional goals, designed to—

aa. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

bb. Meet each of the child's other educational needs that results from the child's disability."

The IEP must include a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how these goals are to be met; a statement of the special education and related services to be provided; and an explanation of the extent to which the child is to be educated with children without disabilities. "'[T]he primary vehicle for implementing'" the goals of the statute "'is the individualized education program, which the [IDEA] mandates for each child.'" *Harris v. District of Columbia,* 561 F. Supp. 2d 63, 65 (D.D.C. 2008). An IEP must be based on "the academic, developmental, and functional needs of the child." [32]

The IDEIA requires that local and state education agencies make certain that the

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[30] *Bd. of Educ. v. Rowley,* 458 U.S. 176, 206-07 (1982); and *Jalloh v. District of Columbia,* 535 F. Supp. 2d 13, 16 (D.D.C. 2008).

[31] 5 D.C.M.R. § 3030.3,

[32] 20 U.S.C. § 1414 (d) (1) (A) (i) and (3) (A) (iv); 34 C.F.R. § 300.320 (a) and § 300.32 4 (a) (1) (iv).

Student's IEP contains a statement of the student's present level of academic achievement and functional performance, and in particular, 1) a statement of the student's measurable annual goals, 2) a description of how the student's progress toward meeting the annual goals will be measured, and 3) any statement of the special education needs and related services and supplementary aids for a student to advance properly toward attaining the annual goals.[33] &

The Respondent did not meet its statutory obligations. Although [redacted]CPS did not include the performance level or the FBA/BIP documents these are procedural violations that did not result in a FAPE denial based on the evidence presented at the due process hearing. The Respondent demonstrates that both performance and behavior were elements discussed and considered when programming services for the Student.

Notwithstanding that the [redacted]PCS failed to perform a procedural requirement of the IDEIA. The IDEIA[34] requires"[I]n matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education [FAPE] only if the procedural inadequacies—

i. impeded the child's right to a free 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 benefits."

The Petitioner did not demonstrate that the parent was left out of the process, or that the Student suffered an educational harm or was affected by any procedural violations [redacted]PCS committed. Section 300.513(a)(1) and section 615(f)(3)(E) of the IDEIA provide that, in general, a decision made by a hearing officer must be made on substantive grounds based on a determination of whether the child received FAPE. In this case, the credible evidence was that the documents were not included but the team discussed the FBA/BIP and the Student's ability, needs, level and performance during a September 30, 2008 meeting.

Moreover, the D.C. Circuit Court held that: "only those procedural violations of the IDEIA which result in a loss of educational opportunity or seriously deprive parents of their participation rights are actionable." The procedural violations are actionable only if they affect the student's substantive rights. *Lesesne ex rel. B.F. v. District of Columbia,* 447 F.3d 828, 834 (D.C. Cir. 2006).

Placement

Undoubtedly the LEA in this case [redacted]PCS has an obligation to implement the IEP through an appropriate placement. Although the Student's IEP calls for 16 hours of specialized instruction, all of the Student's classes at the [redacted]PCS have been taught by general education teacher and a special education teacher.

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[33] 20 U.S.C 1412 (a)(1), 1412 (a)(12)(A)(i), 1414(d)(3), (4)(B) and (7) and 1414(e).

[34] 20 U.S.C. § 1414 (E) (ii), and as provided in 34 C.F.R. § 300.513(a).

The evidence demonstrated the Student is allowed to choose when he attends classes. The evidence was that the Student when attending regularly class receives educational benefit.

The credible evidence was that the Student has psychosocial stressors; truancy and borderline intellectual functioning. Individual counseling was recommended and maintaining the Student's current placement with a behavior incentive plan. It is clear the Student continues to need a substantial amount of home, school, and community support.

However, there was insufficient evidence to demonstrate that the Student's failure to achieve educational benefit was a result of the Respondent's actions or inactions. The Petitioner did not demonstrate that the Student's academic or emotional setbacks were a product of the Respondent's inactions. Based on this hearing record, there is no evidence supporting the Parent's claim that the Student's placement denied him a FAPE.

A local government meets its federal and local statutory obligations to implement a student's IEP -- and thus provide a FAPE -- where public placement is "reasonably calculated to enable the child to receive educational benefits." Rowley, 458 U.S. at 207.

Least Restrictive Environment

IDEIA requires that children with disabilities, to the maximum extent appropriate, be educated with children who are not disabled and that separate schooling or special classes occur only when 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.[35] The evidence is that the Student does not require a more restrictive environment than offered through his program at [redacted] PCS.

Furthermore the [redacted] would have to reach an arrangement with the SEA to allow the Student to bypass the [redacted] grade and accommodate a high school diploma track; an arrangement which significantly impacts the Student's IEP which requires a MDT discussion.

Although the IDEA guarantees a FAPE, it does not, however, provide that this education will be designed according to the parent's desires. The primary responsibility for formulating the education to be accorded a [child with a disability] and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parent or guardian of the child. Thus proof alone that loving parents can draft a better program than a state offers does not, alone, entitle them to prevail under the Act." Shaw v. The District of Columbia, 238 F. Supp. 2d 127, 139 (D.D.C. 2002).

Compensatory education

The Petitioner claimed that compensatory education was due because the Student needed a full time special education program for at least two years because of failures and repeating the grade. The Psychologist stated that had the Student received during the past three years effective services truancy would not have been so severe and the Student would have been

[35] 20 U.S.C. §1412(a)(5) and it's regulation at Sections 300.114 through 300.118.

progress in school. It's the opinion of the witness that with the appropriate services the Student would have been in the grade. The witness was not awarded that of the opportunity to be promoted to grade which was rejected by the Student and Petitioner.

The Petitioner failed to prove that there was a denial of a FAPE warranting a compensatory education award.

V. SUMMARY OF DECISION

The evidence was the Student failed the 2008-2009 school year; and was given an opportunity to attend summer school and the Student did not; and consequently was retained in the grade for the 2009-2010 school year. There was nothing in the evaluations to suggest that the Student had an apparent learning disability or intellectual deficiency. The Respondent proved all of the Student's classes at the PCS have been taught by general education teacher and a special education teacher, which has provided him with the benefit of a special education teacher during the entire school day. The Petitioner did not prove that the Student's cognitive and academic deficits are attributable a learning disability or cognitive impairment. The Student was provided with all the services called for on his IEP and despite the Student's attendance problems, made some progress at the PCS.

Upon consideration of Petitioner's request for a due process hearing, reviewing the documents in the record, the case law, and the above findings of fact, this Hearing Officer determines that the PCS has not denied the Student a FAPE and issues the following:

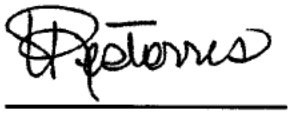
VI. ORDER

Ordered, that the special education due process hearing **is Dismissed.**

This order resolves all matters presented in the Petitioner's November 19, 2009 due process hearing complaint; and the hearing officer makes no additional findings.

NOTICE OF RIGHT TO APPEAL

This is the FINAL ADMINISTRATIVE DECISION. An Appeal can be made to a court of competent jurisdiction within ninety (90)-days of this Order's issue date pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B) and 34 C.F.R. §300.516)



Signed: February 2, 2010

Wanda Iris Resto - Hearing Officer