District of Columbia
Office of the State Superintendent of Education
Student Hearing Office
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CONFIDENTIAL

In Re the Matter of :	)	
	)	
[1]Parent on behalf of Student,	)	** Amended*
	)	
Petitioner,	)	
	)	
	)	
v.	)	
	)	
The District of Columbia Public Schools,	)	
	)	
Respondent.	)	
	)	**Hearing Officer:** Attorney Ramona M. Justice
	)	
	)	

HEARING OFFICERS' DECISION ("HOD")

I. JURISDICTION

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

II. INTRODUCTION

The above-captioned matter came before this Special Education Due Process Hearing Officer, Attorney Ramona M. Justice, pursuant to Petitioner's Notice of Due Process Complaint, filed with the Office of the State Superintendent of Education, Government of the District of Columbia, Student Hearing Office, on May 20, 2010. On May 21, 2010, the complaint was assigned to this Hearing Officer; and on May 29, 2010, the Hearing Officer issued to the parties a "Notice of Prehearing-Conference", scheduling the prehearing conference for June 21, 2010, at 2:30 p.m...

[1] *Personally identifiable information is provided in the "Appendix" located on the last page of this Order and must be removed prior to public distribution. This decision is amended merely to clarify the language regarding compensatory education on page10, paragraph 5, last line; and the first paragraph of the Order.*

On June 1, 2010, Respondent filed "District of Columbia Public Schools' Response to Petitioners' Due Process Complaint". On May 26, 2010, Respondent issued a "Resolution Meeting Confirmation" notice, confirming the resolution meeting for June 3, 2010 at 9:00 a.m... The resolution meeting was held on June 3, 2010, as scheduled, and on this date DCPS issued a "Due Process Complaint Disposition", notifying the Student Hearing Office that the parties were unable to resolve the issues in the complaint; and requested that the matter proceed to hearing.

The prehearing conference was held on June 21, 2010, at approximately 3:15 p.m., and on this date the Hearing Officer issued to the parties a prehearing conference order. The Hearing Officer also issued an amended prehearing order on this date. The due process hearing initially convened on July 20, 2010, at 8:30 a.m., and reconvened on July 22, 2010, at 8:30 a.m., as scheduled. The hearing was conducted at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. At the hearing held on July 20, 2010, Petitioners' Exhibits 01 through Petitioners' Exhibits 35 and a witness list dated July 13, 2010; and Respondents' Exhibits 01 through Respondents' Exhibits 17, and a witness list dated July 13, 2010; were admitted into the record as evidence.

III. BACKGROUND

The student is years of age; and resides in the District of Columbia with his mother, the Petitioner in this matter. In 2004, the student was evaluated and determined disabled and eligible to receive special education and related services, pursuant to the Individuals with Disabilities Education Act (IDEA).

This due process complaint was filed by the parent on behalf of the student, challenging the D.C. Public Schools' decision to change the location of the student's services, from hereinafter referred to as to a public school, located in the District of Columbia.

IV. ISSUE

The following issue is before the Hearing Officer:

Whether the D.C. Public Schools denied the student a free appropriate public education (FAPE), by initiating a change in the students' placement at the May 12, 2010 Multidisciplinary Development Team meeting?

V. 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. The student is identified as disabled and eligible to receive special education and related services, under the Individuals with Disabilities Education Act; and his disability classification is identified as multiple disabilities (MD), including: specific learning disability (SLD), Other Health Impaired (OHI), as a student presenting with Attention Deficit Hyperactivity Disorder (ADHD).

The student is a grade student at a private full-time special education school for students with learning disabilities; located in Springfield, Virginia. The student has attended since the 2008/09 school year.

2. On August 25, 2008 a due process complaint was filed in this matter; challenging the student's need for extended school year (ESY) services for the summer of 2008; and to identify an appropriate placement for the student during the summer of 2008 and the 2008/09 school year. On September 5, 2008, the Hearing Officer issued a decision ordering, among other, DCPS to fund the student's *interim* placement at for the 2008/09 school year; and convene a meeting within 45 school days to discuss and determine the student's placement.

3. An IEP team meeting was held on November 24, 2009, to conduct an annual review of the student's IEP. The team developed an IEP for the student, recommending 28 hours per week of specialized instruction, *outside general education*, because the *student required intensive specialized instruction to make progress toward meeting IEP goals*; and *had not made progress in the general education setting*. The IEP also recommended 2 hours per week of behavior support services, *outside general education.*

   In identifying the student's least restrictive environment, *the team determined that the supports and services previously attempted in a general education setting, were either not available or were not sufficient to develop the skills the student requires to be successful in the general education curriculum.* The team discussed *reintegration* of the student into the mainstream, however, *agreed that it would not make a decision to reintegrate the student into the mainstream, until it was determined that the student is ready for the transition.*

4. On February 17, 2010, a MDT meeting was held to discuss extended school year services, the student's attendance, and location of services. Meeting participants included: DCPS, LEA representative, Special Education Teacher, Special Education Coordinator (SEC), student's English teacher, Administrator, Education Advocate, Parent, and Psychologist.

   During discussion of ESY services for the student, the Administrator advised the team that the student had *regressed to some extent*, academically in written language; and the student's English teacher shared with the team samples of the student's work reflecting the student's regression, during extended breaks. The English Teacher also advised the team that the student was *twice retained* and was *beginning* to work as a ninth grader. The Social Worker advised the team that the student had made some progress this period, towards his social/emotional goals. The Psychologist, parent, and SEC agree that the student has attending the school for two years and is showing progress.

   The MDT, including the DCPS/LEA representative agreed that based on the information provided the team, is an appropriate setting for the student at this time; and agreed that although the student was beginning to progress academically, the team-would discuss transitioning the student at a time when the student has shown more social/emotional progress. Parent also agreed to the student remaining at the school; and advised the team that she is also open to a half day program for the student, in the future.

5. At the May 12, 2010 MDT meeting, approximately three (3) months after the February 17, 2010 MDT meeting, the same DCPS LEA representative attending the February 17, 2010 MDT meeting who agreed that is an appropriate setting for the student at this time and the team would discuss transitioning the student at a time when he has shown more social/emotional growth; advised the parent that it proposed to transition the student into the mainstream, by changing the student's location of services from to School, the student's neighborhood school.

The DCPS LEA advised parent that the law governing identification of the least restrictive environment for the student, the student's attendance, and level of progress since attending supported reintegration of the student into the mainstream. However, DCPS presented no information to the team, reflecting a significant change in the student's educational needs or programming; warranting or supporting a change in the location of his services, placement, or reintegration into the mainstream.

Parent disagreed with the proposed change indicating that the student's prior experience at a DCPS public school, failed the student; and would regress academically and behaviorally, if returned to the mainstream at this time. The parent, student's Education Advocate, Social Worker, Principal, teachers, and Psychologist, opposed the change in location of services; advising DCPS that reintegration of the student at this time was premature.

The staff and related service providers advised DCPS that although the student attended for two school years, because of nature and extent his disabilities, it has taken the two school years for the student to begin showing academic and behavioral progress; which had only been evident within the past three (3) weeks.[2] They also advised DCPS that the student's academic and social emotional skills were emerging and not yet secured[3]. The staff also expressed concern that the student will regress if returned to the mainstream prematurely, with less structure and support; and that due a recent change in medication, any additional changes may have an adverse effect on the student.

The Psychologist also advised DCPS that the student continues to struggle with mood and motivation issues, anxiety and attention to subject matter; and reintegration would be devastating for the student. The student's teacher reported that the student is the only student in his English class requiring consistent support.[4] The student expressed his desire to remain at because he is learning; has improved in his reading, and that the sports activity has assisted tremendously in managing his behavior.

The DCPS LEA representative disregarded input from all team members, including the parent, student, related service providers, and individuals having personal knowledge of the student and his needs; as well as, prior evaluations, and the student's educational history.

[2] Testimony of Program Director/Administrator,
[3] Testimony of Education Advocate and student's teachers.
[4] Respondent's Exhibit 5, page 2. Special Education Teacher.

Instead, DCPS unilaterally issued to parent a Prior Notice changing the location of the student's services from a more restrictive environment where he was beginning to progress academically and behaviorally; to a less restrictive environment. The Education Advocate invoked "stay put"; and the parent refused to sign the IEP expressing her disagreement with the proposed change.

6. In addressing the student's academic progress during the 2009/10 school year, the student's grades fluctuated; and when in school he made some progress towards meeting the goals in his IEP. However, a decline is also noted in several grades is also noted, which teachers attribute to absences for medical reasons; and extended breaks. Socially and emotionally, the student continues to struggle socially/emotionally.[5]

7. In determining the educational placement of the student, DCPS failed to ensure that the decision was made by a group of persons, including the parent, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The change proposed by DCPS at the May 12, 2010 MDT not only represents a change in the location of the student's services, however, also represents a change in the student's IEP and placement. DCPS disregarded input from all team members, and unilaterally changed the location of the student's services, and placement.

8. DCPS failed to ensure that the team included a representative from or an individual having knowledge regarding the educational program at the school, its ability to implement the IEP, or provide the student educational benefit. The team also failed to include an individual to discuss placement options with the parent. As a result, the parent was denied the opportunity to make an informed decision; and provide "meaningful" input in the placement decision. *See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.*

9. The placement decision was not made in conformity with the LRE provisions of the IDEA, it was not based on the student's November 24, 2009 IEP which recommends a full-time special education program, outside general education; which is not available at Anacostia SHS. Instead, the placement decision was made consistent with the following DCPS, Office of the State Superintendent of Educations' reintegration plan[6] and policy.

   Effective October 1, 2008, the DCPS, Office of the State Superintendent of Education issued "Policy and Procedure for Placement Review", which represents a plan to reintegrate disabled students into classrooms with nondisabled students. Under the reintegration plan, the Deputy Chancellor directed placement specialists to review the cases of all District supported private school students to see who may be candidates for reintegration. An initial list of more than 200 students was developed. The plan requires full inclusion of special education students into the mainstream; calling for the elimination of special education placements and the strengthening of the general education classrooms to accommodate all students with disabilities. The initiative requires public schools to place students in their neighborhood schools, without consideration of the unique educational needs of a student, which is contrary to the IDEA and relevant case law.

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[5] Petitioner's Exhibit 7.

[6] Petitioner's Exhibit 18, pages 4 of 5 and 5 of 5, Petitioner's Exhibit 10, page 4. Petitioner's Exhibit 15, and Petitioner's Exhibit 7, page 4; and Testimony of DCPS, SEC at

According to the Deputy Chancellor for Special Education, the reintegration plan is one that the District of Columbian intends to pursue; while acknowledging that the manner in which the plan is being executed, is not.[7] However, the D.C. Public Schools continues to implement this policy under its existing guidelines, requiring DCPS to remove students' educational programs from private schools; and return students to their neighborhood schools, without any consideration of the student's unique educational needs; or the new school's ability to implement the student's IEP; as in this instance.

It is clear that the problem may not lay with the Deputy Chancellor's policy, however, with implementation of the policy. In fact, research shows that students ***prepared and reintegrated using a transition process*** have been successful academically and socially. The transition process has also resulted in higher rates of transition into the mainstream, as compared with more conventional transition processes (D. Fuchs, Mathes, & L. Fuchs, 1991-1992; D. Fuchs, Roberts, L. Fuchs, & Bowers, 1996). However, it is also apparent that the DCPS has little research-based guidance or a plan for how best to reintegrate disabled students back into the general education environment.

For instance, in this matter, a DCPS witness and representative from testified that she reviewed the student's educational records, however, also testified that she is not personally familiar with the student, his grade level, performance levels, or disabilities. This is evidence that the the school identified for reintegration of the student, is not only familiar with the student or his disabilities; and DCPS has no plan in place to assist this student in successfully reintegrating back into the mainstream at

An important criterion for DCPS to consider for successful transition should be how well the student may perform or function in the new setting, not simply placement of the student with age appropriate nondisabled peers. Successful reintegration means meeting the challenge of preparing the reintegrating student for the logistical, behavioral, and academic rigors of the mainstream classroom. In this case, the student has not yet secured the necessary academic, social, and emotional skills necessary for successful reintegration.

Finally, the most important factor for DCPS to consider is the least restrictive environment requirements of the IDEA, which is a determination of whether the nature and severity of the student's disabilities are such that education in the general education environment, even with the use of supplemental aids and supports, can be accomplished satisfactorily. Based on the evidence presented with regard to this student, the response is in the negative. The fact that the student made some academic and behavioral progress within the past three (3) weeks does not equate to the student's readiness to return to the mainstream; particularly since the student's progress in these areas is reported as emerging; and not yet secured.

10. DCPS failed to carefully consider the potential harmful effect on the student or on the quality of services he requires; by relocating his educational services from a more restrictive environment, where he is beginning to progress academically and behaviorally; to a full inclusion, and less restrictive environment, where he is likely to regress and not progress.

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[7] The Washington Post (May 28, 2010).
[8] Testimony of SEC at

The student's education in the therapeutic environment at is the first sign of academic and behavioral progress the student has shown, throughout his education; and although the student made progress towards meeting the goals in his IEP during the 2009/10 school year, he continues to require consistent teacher prompting to remain focused; and program modification. Additionally, in meeting his social emotional goals, the student continues to require significant prompting to engage in classroom activities with energy and concentration, redirection, significant encouragement and prompting to practice identifying his needs, concerns; and continued focus to support his self esteem and learn to cope with his frustrations in a mature manner that includes respecting others.[9]

The student continues to require a full-time special education program in a therapeutic environment, and works well in a class with a small student teacher ratio, and can accomplish goals in his IEP, with a significant amount of prompting and cues[10]; individualized instruction; a high degree of structure; and academic and behavioral support; which is not available at The student also continue to present with attention problems and social skill deficits that continue to interfere with his ability to access the general education curriculum; and receive educational benefit, however, with constant guidance and prompts he is able to complete basic assignments in class, and remain focused.

The record also reflects that any disruption in the student's education either for extended periods of time; or intermittently due to medical reasons, results in some academic and behavioral regression. Therefore, reintegrating the student into the mainstream, at this time, when his progress is "emerging" and skills in this area are not yet secured, is likely to have a detrimental impact on the student.[11]

11. is not an appropriate placement for the student because it is unable to implement the student's November 24, 2009 IEP, by providing the student a full-time special education program, outside general education; or provide the student educational benefit.

The student's IEP recommends; and the student requires a full-time special education program, in a therapeutic environment, which is not available at educates students in a full-time inclusion setting with special and general education teachers co-teaching students in a general education classroom. The student would be placed in a cluster program for learning disabled students, consisting of two (2) classrooms, and a maximum of 17 students in each class; with a teacher and two (2) aides in each class. In the cluster program, the student would be educated with disabled peers, except during lunch, recess, and while participating in an elective class, at which time he will interact with nondisabled students. The school has one teacher certified in special education, and language arts; and another teacher certified in special education, math, and science.

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[9] Petitioner's Exhibit 25.
[10] Testimony of Student's English Teacher.
[11] Psychologist.

Additionally, the nature and severity of the student's disabilities are such that education of the student in the general education setting, even with the use of supplementary aides and supports cannot be achieved satisfactorily. Based on the evidence presented, the least restrictive environment for the student, at this time, is not however, is can implement the student's IEP, and continue to provide the student educational benefit.

VI. CONCLUSIONS OF LAW

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

1. The burden of proof in this matter is properly placed on the Petitioner, the party seeking relief in this matter.[12] Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.[13]

2. The student is a child with disabilities, entitled to receive special education and related services, pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq.; the federal statute governing the education of students with disabilities. Federal regulations promulgated under the IDEA are codified at 34 C.F.R. Part 300.

3. The IDEA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.[14] States receiving federal assistance under the IDEA are obligated to (1) provide a "free appropriate public education" to each disabled child within its boundaries, and (2) ensure that such education is in the "least restrictive environment" possible. In the District of Columbia a FAPE must be made available to all disabled children residing in the District of Columbia, between the ages of 3 and 21.

   The IDEA defines a free appropriate public education ("FAPE"), as follows:

   > Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA... include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.[15]

   The Supreme Court, in *Rowley*[16] provides:

   > Insofar as a Sate is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing *personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction*. Such instruction and services must be provided at public expense,-

[12] *Shaffer v. Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C. M.R. §3030.3.
[13] 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)
[14] 20 U.S.C. §1400(d)(1)(A) and §1412(a)(1).
[15] IDEA, 34 C.F.R. §300.17.
[16] *Board of Education v. Rowley*, 458 U.S. 176, 203-204 (1982).

> must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore, the personalized instruction, should be formulated in accordance with the requirements of the Act *and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.*

Hence, the U.S. Supreme Court has held that the FAPE required by the IDEIA is tailored to the unique needs of the student by means of an IEP. *See Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley, 458 U.S. 176 (1982).*

4. In determining whether a student received a FAPE, a Hearing Officers' inquiry is twofold. ***First,*** the Hearing Officer must determine whether DCPS complied with the procedural requirements of the IDEA's, and if not, whether the procedural requirements are to such an extent that they are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE); and ***Second,*** whether the IEP developed for the student is reasonably calculated to provide the student access to the general education curriculum, or enable the child to receive educational benefits. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).* If these two (2) requirements are satisfied, the State has complied with the obligation imposed by Congress and the courts can require no more. Here, DCPS failed to satisfy the first requirement.

5. In determining the student's educational placement, DCPS failed to comply with the procedural requirements of the IDEA, at 34 C.F.R. §300.116, by failing to ensure that the decision was made by a group of individuals, including the parents and other individuals knowledgeable about the child, the meaning of the evaluation data, and placement options.

6. DCPS failed to ensure that the placement decision was made in conformity with the least restrictive provisions of the IDEA, which provides that the educational placement must be based on a child's IEP.[17] The student's November 24, 2009 IEP recommends a full-time special education program, outside general education; however, DCPS' proposed placement of the student at is not based on the student's IEP, because is unable to provide the student a full-time special education program, outside general education, as recommended in his IEP.

7. DCPS failed to comply with the least restrictive provisions of the IDEA which provide that once the IEP is developed, it is then implemented through appropriate placement of the student in an educational setting specifically tailored to the student's needs. *See Roark v. District of Columbia, 460 F. Supp. 2d 32, 35 (D.D.C. 2006).*

   The IDEA seeks to educate disabled children with non-disabled children "to the maximum extent possible"; and with appropriate interventions and supports. *See*, 20 U.S.C. §1412 (a)(5)(A). "Special classes, separate schooling, or other removal...occurs only when the *nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;*" as in this matter.

[17] 20 U.S.C. 1412(a)(5); 34 C.F.R. §300.116; and 5 D.C.M.R. §3013.1(e).

The educational benefit to be provided a child must be "meaningful" and it "must be assessed based on the educational capacity of each individual student." *J.P. v. County Sch. Bd. Of Hanover County, 447 F.Supp. 2d 553, 584 (E.D. VA. 2006).*

The nature and severity of this student's disabilities are such that education of the student in a full inclusion or general education setting, even with the use of supplementary aids and services cannot be achieved satisfactorily; and the student is likely to regress and not progress if placed in a less restrictive environment, at

8. Petitioner satisfied its burden of proof by presenting evidence that on May 12, 2010, DCPS initiated a change in the student's placement; and in determining the student's educational placement, it failed to comply with the procedural and least restrictive requirements of the IDEA, at 34 C.F.R. §300.116.

   The decision made by DCPS at the May 12, 2010 MDT meeting not only represents a change in the location of the student's services, as represented by DCPS, it also represents a significant change in the student's IEP and placement. The level of specialized instruction the student will receive at . will be significantly reduced from 28 hours to 19.5 hour, per week; and the level of behavioral support services will be reduced from 2 hours to 1 or 1.5 hours per week. These changes will be made not to reflect a significant change in the needs of the student, however, to reflect the level of services can provide the student.[18]

   The change in location of the student's services will also result in a significant change in the student's placement, because the least restrictive environment for the student will change from the provision of specialized instruction and related services, outside general education setting, as recommended in his IEP; to the provision of services in a full inclusion setting.

   In conclusion, the procedural violations in this matter are to such an extent that they are serious and detrimentally impact upon the child's right to a free and appropriate public education (FAPE); entitling the student to compensatory education services, for the period of time the students' return placement to is delayed, beyond thirty (30) days from the date of this decision. *See, Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982).*

VII. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby:

1. **ORDERED**, that within thirty (30) calendar days of the date of this decision, DCPS shall issue to parent a Prior Notice of Placement, authorizing continued funding of the student's tuition and transportation; for the student to attend the
   located in Springfield, Virginia, during the 2010/11 school year; and it is further

[18] Testimony of SEC at

2. **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

3. **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives.

VIII. NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: *July 26, 2010*

Attorney Ramona M. Justice

Ramona M. Justice, Hearing Officer