

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

PETITIONER, on behalf of STUDENT, ¹)	Date Issued: May 19, 2016
)	
Petitioner,)	Hearing Officer: Peter B. Vaden
)	
v.)	Case No: 2016-0017
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	Hearing Date: May 5, 2016
)	
Respondent.)	Office of Dispute Resolution, Room 2006 Washington, D.C.

OSSE
Office of Dispute Resolution
May 19, 2016

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (D.C. Regs.). In her due process complaint, Petitioner alleges that respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by failing to implement his Individualized Education Programs (IEP) for part of the 2014-2015 and 2015-2016 school years and by providing an unsuitable educational setting for the 2015-2016 school year.

¹ Personal identification information is provided in Appendix A.

Student, an AGE child, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on February 2, 2016, named DCPS as respondent. The undersigned Hearing Officer was appointed on February 4, 2016. The parties met for a resolution session on February 24, 2016, but did not reach an agreement. The 45-day period for issuance of this Hearing Officer Determination began on March 3, 2016. On April 6, 2016, the Chief Hearing Officer granted Petitioner's unopposed request for a 33-day continuance of the due date for the final decision, making this hearing officer determination due by May 20, 2016. On February 25, 2016, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before this Impartial Hearing Officer on May 5, 2016 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. Petitioner appeared in person and was represented by PETITIONER'S COUNSEL and PETITIONER'S CO-COUNSEL. Respondent DCPS was represented by DCPS' COUNSEL.

Petitioner testified and called as witnesses EDUCATIONAL CONSULTANT, NONPUBLIC SCHOOL DIRECTOR, and INDEPENDENT SCHOOL PSYCHOLOGIST. DCPS called CES SUPPORT SPECIALIST as its only witness. Petitioner's Exhibits P-1 through P-38 were admitted into evidence, with the exceptions of Exhibits P-1, P-2, P-3, P-6, P-8, P-9, P-10, P-29 and P-34, which were withdrawn. Exhibit P-13 was admitted over DCPS' objection. DCPS' Exhibits R-1 through R-7 were admitted into evidence without objection. Counsel for Petitioner made an opening statement. Counsel for the respective parties made closing arguments. At the request of Petitioner's Counsel, the

parties were granted leave to file written closing memoranda by May 10, 2016. Counsel for Petitioner filed a closing brief.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The following issues for determination were certified in the February 25, 2016 Prehearing Order, as revised on March 1, 2016:

Whether DCPS denied Student a FAPE, beginning in August 2014, by failing to implement his May 22, 2014 IEP when it placed Student in a general education classroom despite his IEP's provision for 25.5 hours per week of Specialized Instruction outside the general education setting;

Whether DCPS denied Student a FAPE in the 2015-2016 school year by failing to implement his December 3, 2014 IEP, as amended on April 9, 2015, including failing to implement the IEP requirement for clear written lesson objectives and daily schedule, not instructing Student at the appropriate academic level, not implementing Student's behavior plan, not using manipulatives, not providing individualized behavior goals or a point sheet, not providing differentiated instruction in reading, and not providing sufficient movement/sensory breaks;

Whether DCPS denied Student a FAPE by failing to offer him a suitable educational setting that was capable of implementing his IEP for the 2015-2016 school year; and

Whether DCPS denied Student a FAPE by failing to ensure that the parent was able to participate in decisions on his educational placement at the November 24, 2015 IEP meeting.

For relief, Petitioner requests that the Hearing Officer order DCPS to fund Student's placement at Nonpublic School. In addition, the Petitioner seeks compensatory education for Student for the denials of FAPE alleged in her complaint.

FINDINGS OF FACT

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

1. Student, an AGE youth, resides with Mother in the District of Columbia. Testimony of Mother. Student is eligible for special education and related services under the primary disability classification Autism Spectrum Disorder (ASD). Exhibit P-27.

2. Student currently attends CITY SCHOOL 3. Student attended CITY SCHOOL 1 from August 2010 until June 2013. In the 2014-2015 school year, he attended CITY SCHOOL 2 until December. He finished the 2014-2015 school year at City School 3. Testimony of Mother.

3. DCPS conducted a psychological reevaluation of Student in October 2013. The school psychologist reported that the assessment of Student's intellectual functioning showed his general abilities to be in the Borderline range. Academic assessments indicated adequate skills in reading and reading comprehension. Math was indicated as below ability indexes. Student was noted to have a diagnosis of Attention-Deficit-Hyperactivity Disorder (ADHD). Exhibit P-6.

4. Student's City School 1 IEP team met on May 22, 2014 for the annual review of Student's IEP. His disability was then reported to be Other Health Impairment (OHI) based on Asthma and ADHD diagnoses. The IEP provided annual goals for Mathematics, Reading, Written Expression, Speech and Language, and Motor Skills/Physical Development areas of concern. For Special Education and Related Services, the May 22, 2014 IEP team determined that Student required 25.5 hours per week of Specialized Instruction outside general education, 240 minutes per month of

Speech-Language Pathology and 240 minutes per month of Occupational Therapy (OT).

Exhibit P-23.

5. In July 2014, Licensed Psychologist conducted an Independent Educational Evaluation (IEE) psychological reevaluation of Student and administered a battery of cognitive, education, executive functioning and social-behavioral tests. On cognitive testing, Student's profile indicated an uneven pattern of relative strengths and weaknesses. He obtained a Standard Score of 85 (Low Average) on the WISC-IV General Ability Index and a full scale Standard Score of 81 on the CTONI-2 instrument. On the Beery-Buktenica Developmental Test of Visual-Motor Integration, Student's scores were Significantly Below Average, indicating significant weakness in his ability to use pencil and paper to copy information. On testing of academic achievement, Student's standard scores were Low Average (85) for Reading; Significantly Below Average (55) for Math Calculation; Significantly Below Average (62) for Math Applied Problems; 86 for Spelling and Below Average (75) for the Academic Skills cluster. On Executive Functioning and Attention Scales, the analysis of the Conners 3 scales completed by the parent and a classroom teacher indicated characteristics of ADHD-combined type. An analysis of findings from the General Adaptive Composite (GAC) scales described a youngster with social and adaptive delays, coupled with underlying attention and characteristics of Autism issues that appeared to be interwoven with coping difficulties. Ratings by the parent and teacher on the Autism Spectrum Rating Scales (ASRS) and the Gilliam Autism Rating Scale--Second Edition (GARS-2) suggested a Very Likely Possibility of Autism. Social-Emotional screening revealed a youngster who tended to struggle with peer interactions and negotiating various environments. In his July 20, 2014 psychological reevaluation report, Licensed

Psychologist recommended that Student's primary special education disability should be conceptualized as Autism, with secondary disabilities that included OHI (ADHD-Combined, Asthma and Tic Disorder), and Learning Disabilities (LD) in the areas of reading, math and language. Licensed Psychologist recommended additional investigations by other specialists, including Speech and Language and OT specialists, to determine Student's needs and services. Exhibit P-14.

6. Student transferred to City School 2 at the beginning of the 2014-2015 school year where he was placed in a self-contained classroom. After one month, Student's special education teacher at City School 2 resigned and he was moved from the self-contained classroom to the general education classroom. Student was pulled out of the general education classroom for special education, Lindamood-Bell reading class and related services. Testimony of Mother. At that point in time, City School 2 Staff was reviewing Licensed Psychologist's July 20, 2014 IEE psychological evaluation of Student, with a view toward revising his IEP. At a school meeting in October 2014, it was decided that Student would remain at City School 2 pending completion of the IEE review. School staff and Educational Consultant did not want Student moved from City School 2, in the midst of the reevaluation process, and then to have Student moved again. Testimony of Educational Consultant.

7. In November 2014 at a Multidisciplinary Team (MDT) meeting, the MDT agreed to change Student's primary disability to ASD. Testimony of Educational Consultant, Exhibit P-24.

8. On November 24, 2014, Student's IEP team at City School 2 met to revise Student's IEP. Mother, Petitioner's Attorney and Educational Consultant participated in the meeting. The IEP team made changes to the draft IEP as requested by the

parent's representatives, which included changes to the annual goals. Testimony of Educational Consultant. The resulting final IEP, dated December 3, 2014, provided Student 25 hours per week of Specialized Instruction outside general education, 4 hours per month of Speech-Language Pathology outside general education, 240 minutes per month of Occupational Therapy outside general education, and 120 minutes per month of Behavioral Support Services in general education. The IEP also provided for 30 minutes per month of consultative Speech-Language Pathology and 30 minutes per month of consultative Behavioral Support Services. Exhibit P-24.

9. The December 3, 2014 IEP team added the following Other Classroom Aids and Services to Student's IEP:

Verbal praise and encouragement; visual daily schedule with breaks; visual lesson schedule; multi-sensory instruction; manipulatives and/or visuals; graphic organizers; token economy; reduce the number of items to demonstrate mastery; increase amount of white space on page; modified paper; close proximity and/or directly in front of adult during instruction; visual timer; checklists with tasks he needs to complete within a lesson; break down multi-step directions; alternative ways to demonstrate mastery, use of social stories for hidden school curriculum; use of body and brain with the group; noise-cancelling headphones; brain, movement, and/or sensory breaks; pair verbal language with visuals; connect current lessons to previous ones; incorporate choice and preferences within lesson; predictable schedule and classroom routine; short, concise verbal redirection; repetition; cue attention before giving directions and/or instructions; study carrel and/or quiet workspace; break down instruction into regimented smaller segments; use positive language to frame directions and/or instructions; self-reflection before, during and after a lesson; advanced notification of changes in routine and/or schedule; check-ins for assistance and/or clarification.

Exhibit P-24.

10. After the December 3, 2014 IEP was completed, DCPS moved Student to City School 3. For the rest of the 2014-2015 school year, Student made progress in his placement at City School 3. His reading improved by several levels and his behavior

improved. That school year, Mother thought that Student's placement at City School 3 was appropriate. Testimony of Mother.

11. At the end of the 2014-2015 school year, Student was reported to be Progressing on all of his IEP goals, except for a Mathematics goal for comparing dimensional shapes, which had not yet been introduced. Exhibit R-5.

12. For the 2015-2016 school year, Student's placement continued to be in a self-contained classroom at City School 3. The class is taught by SPECIAL EDUCATION TEACHER, who was new to the school this school year. In Student's classroom, there are 8 students taught by two adults. Mother has observed that the classroom is unruly, with children walking out of the room. Student has reported being bullied and cries about having to go to school. Testimony of Mother.

13. Educational Consultant visited the classroom on November 20, 2015 to observe Student for about 1 hour. Testimony of Educational Consultant.

14. Student's IEP team convened to review his IEP on November 24, 2015. Mother, Educational Consultant, Petitioner's Attorney and an Investigator for Mother participated. Mother stated her concern that the setting at City School 3 was not meeting Student's needs and her concern about Student's social emotional state. Special Education Teacher stated that Student had not met mastery criteria for his prior IEP academic goals and noted regressions, for which the teacher was unable to account. Exhibit P-25. The IEP team increased Student's Specialized Instruction from 25 to 25.25 hours per week outside General Education, continued Student's Speech-Language Pathology at 4 hours per month, reduced Student's OT from 240 to 180 minutes per month, maintained Student's Behavioral Support Services at 120 minutes per month and continued Consultation Services for Speech-Language Pathology and Behavioral

Support Services at 30 minutes per month for each service. Exhibit P-27. DCPS continued to provide City School 3 as the location for Student's educational services. Exhibit P-26.

15. By letter of March 30, 2016, subsequent to the February 24, 2016 Resolution Session Meeting for this case, DCPS informed the parent that CITY SCHOOL 4 had been identified as Student's new location of services. In the notification letter, DCPS wrote that City School 4 was able to implement Student's IEP and provide him with the specialized instruction and related services to which he was entitled. Exhibit R-1. The proposed classroom at City School 4 is a Communication and Education Support (CES) classroom designed for students that have communication needs and social needs on top of academic needs. The great majority of CES classroom students have ASD diagnoses and some also have other special education disabilities. In the CES classroom proposed for Student at City School 4, there are up to 5 students at three grade levels, taught by a special education teacher and 2 instructional assistants. Testimony of CES Support Specialist.

16. Nonpublic School is a special education day school in suburban Maryland, which serves multiply disabled students with relatively advanced cognitive skills and proficiency in languages. In the class proposed for Student, there are 6 students, supported by a special education teacher and 2 assistant teachers. Two students in the class also have dedicated aides. Nonpublic School holds a current Certificate of Approval issued by the DC Office of the State Superintendent of Education (OSSE). The annual tuition is \$51,000, plus additional charges for related services. There are no nondisabled students at Nonpublic School. Nonpublic School Director has reviewed Student's file. The next step would be to observe Student in his current placement and

make a final admissions decision. As of the date of the due process hearing, Student had not yet been offered a place at Nonpublic School. If Student is admitted, Nonpublic School would be able to implement his current IEP, including the specified related services. Testimony of Director.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

ANALYSIS

A.

Did DCPS deny Student a FAPE, beginning in August 2014, by failing to implement his May 22, 2014 IEP when it placed Student in a general education classroom despite his IEP's provision for 25.5 hours per week of Specialized Instruction outside the general education setting?

Student's May 22, 2014 IEP provided for Student to receive 25.5 hours per week of Specialized Instruction, outside of general education. For the 2014-2015 school year, Student was initially placed in a special education self-contained classroom for most of the school day. Some 30 days after the beginning of the school year, Student's self-contained classroom teacher at City School 2 resigned. For the rest of the school term through December 2014, Student was placed in a general education classroom and

pulled out for his special education and related services. Petitioner contends that this change from the self-contained classroom to the general education classroom was a failure by DCPS to implement the May 22, 2014 IEP requirement for Student to be provided 25.5 hours per week of Specialized Instruction outside the general education setting. DCPS denies failing to implement Student's IEP during the 2014-2015 school year.

The standard for failure-to-implement claims, used by the courts in this jurisdiction, was formulated by the Fifth Circuit Court of Appeals in *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir.2000). This standard requires that a petitioner "must show more than a *de minimis* failure to implement all elements of [the student's] IEP, and instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP" in order to prevail on a failure-to-implement claim. *Johnson v. District of Columbia*, 962 F.Supp.2d 263, 268 (D.D.C. 2013) (quoting *Bobby R.*, 200 F.3d at 349).

Significantly, when Student's self-contained classroom teacher resigned in fall 2014, Petitioner did not want Student to be moved to another school to implement his IEP. At the time, City School 2 was in the process of reevaluating Student for eligibility as a student with Autism Spectrum Disorder (ASD). Educational Consultant testified that at a school meeting in October 2014, it was decided that Student would remain at City School 2 and receive his special education services. She and Mother agreed that they did not want Student moved to another school while Student's reevaluation was under way, because he might have to be moved again after his potential eligibility as an

ASD student was determined.²

Moreover, Petitioner failed to establish at the due process hearing that even after the self-contained classroom teacher resigned, Student did not continue to receive at least 25.5 hours per week of Specialized Instruction, outside general education. In late October 2014, Educational Consultant observed Student at City School 2 for 1½ hours, in a self-contained classroom, in the general education classroom and for speech-language services. She testified that during the observation, she only saw Student in the general education setting for 10 minutes. Educational Consultant was unable to quantify how much of the school day Student spent in the general education classroom. Mother also acknowledged in her testimony that during that period, Student was pulled out of the general education classroom for most of the school day, including for special education instruction, for Lindamood-Bell reading classes and for related services. In sum, the evidence does not establish how much of the school day Student spent inside, as opposed to outside, the general education setting after the self-contained classroom teacher resigned. I find that Mother has not met her burden of proof on this issue.

B.

Did DCPS deny Student a FAPE in the 2015-2016 school year by failing to implement his December 3, 2014 IEP, as amended on April 9, 2015, including failing to implement the IEP requirement for clear written lesson objectives and daily schedule, not instructing student at an appropriate academic level, not implementing Student's behavior plan, not using manipulatives, not providing individualized behavior goals or point

² If this agreement for Student to remain at City School 2 resulted in a temporary reduction in his outside of general education Specialized Instruction Services, his IEP should have been amended. *See, e.g., K.A. ex rel. F.A. v. Fulton Cty. Sch. Dist.*, 741 F.3d 1195, 1202 (11th Cir. 2013) (“If changes are needed before the IEP expires, amendments may be made either by a reconvened [IEP] team, or by a written agreement between the parents and the school district.”) Petitioner has not raised the failure of DCPS to ensure that the IEP was amended as an issue in this case.

sheets, not providing differentiated instruction in reading, and not providing sufficient movement/sensory breaks?

On December 3, 2014, Student's IEP was amended at City School 2 following his classification as a student with an ASD disorder. Among the changes made to Student's IEP was the addition of a detailed list of Other Classroom Aids and Services that Student would be provided.³ Petitioner contends that in the fall of 2015, City School 3 failed to implement some of these Aids and Services, namely clear written lesson objectives and daily schedule, use of manipulatives, individualized behavior goals and point sheets and movement/sensory breaks. In addition, Petitioner alleges that Student was not offered differentiated instruction at the appropriate academic level and Student's behavior plan was not implemented. DCPS maintains that Student's IEP has been fully implemented at City School 3 during the 2015-2016 school year.

The source for Petitioner's claim that Student's IEP has not been implemented in the current school year is a report made by Educational Consultant, who observed

³ The Other Classroom Aids and Services added in the December 3, 2014 IEP included:

Verbal praise and encouragement; visual daily schedule with breaks; visual lesson schedule; multi-sensory instruction; manipulatives and/or visuals; graphic organizers; token economy; reduce the number of items to demonstrate mastery; increase amount of white space on page; modified paper; close proximity and/or directly in front of adult during instruction; visual timer; checklists with tasks he needs to complete within a lesson; break down multi-step directions; alternative ways to demonstrate mastery, use of social stories for hidden school curriculum; use of body and brain with the group; noise-cancelling headphones; brain, movement, and/or sensory breaks; pair verbal language with visuals; connect current lessons to previous ones; incorporate choice and preferences within lesson; predictable schedule and classroom routine; short, concise verbal redirection; repetition; cue attention before giving directions and/or instructions; study carrel and/or quiet workspace; break down instruction into regimented smaller segments; use positive language to frame directions and/or instructions; self-reflection before, during and after a lesson: advanced notification of changes in routine and/or schedule; check-ins for assistance and/or clarification.

Student at City School 3 for about one hour on November 20, 2015. In her testimony, Educational Consultant reported that she was concerned that Student was not receiving differentiated instruction in Reading, although other students were significantly ahead of Student, that the teacher did not tell Student to take a break when Student started crying and that she objected to the use of the Dojo behavior management system in the classroom, because the Dojo system takes points away for “bad” behavior.

Educational Consultant’s testimony characterizing what she observed was not entirely consistent with her written report. See Exhibit P-30. For example, Educational Consultant testified that Special Education Teacher did not tell the Student to take a break during the crying episode, but her observation notes state that during the incident, the teacher asked the Student if he wanted to take a walk or if he needed a drink. Likewise, Educational Consultant testified that she did not observe the use of manipulatives in the classroom. However, she reported in her notes that Special Education Teacher put sound cards in front of Student to sound out words. (Educational Consultant testified that she did not consider sound cards to be manipulatives.)

I found Educational Consultant’s report to be colored by her own pedagogical preferences, *e.g.*, her disapproval of Special Education Teacher’s approach to reading lessons, how he interacted with Student and the use of the Dojo behavior management system. Assuming, *arguendo*, that Educational Consultant’s teaching methods are preferred, they are not necessarily required by Student’s IEP. *Cf. Stanley C. v. M.S.D. of Sw. Allen Cty. Sch.*, 628 F. Supp. 2d 902, 967 (N.D.Ind.2008) (If a school’s methodology is “appropriate,” the student is not denied a FAPE simply because the parents prefer a different method.) More fundamentally, Educational Consultant’s

report, based on a one hour observation, without more corroboration does not credibly establish that City School 3 failed to implement “substantial or significant provisions” of Student’s IEP, including the Classroom Aids and Services provisions. *See Johnson, supra*. In sum, I find that Petitioner has not established that City School 3 failed to implement Student’s IEP in the 2015-2016 school year.

C.

Did DCPS deny Student a FAPE by failing to offer him a suitable educational setting that was capable of implementing his IEP for the 2015-2016 school year?

Petitioner contends that Student’s unsatisfactory academic progress in the 2015-2016 school year and his special education teacher’s “inability” to implement Student’s IEP show that DCPS failed to offer Student a suitable educational setting for the 2015-2016 school year. DCPS responds that Student’s continued placement in the self-contained classroom at City School 3 for the 2015-2016 school year was appropriate.

The IEP requires that every special education placement must be “based on the child’s IEP,” 34 C.F.R. § 300.116(b)(2), and be “capable of fulfilling the student’s IEP,” *Lofton v. District of Columbia*, 7 F.Supp.3d 117, 123 (D.D.C. 2013). *Joaquin v. Friendship Pub. Charter Sch.*, No. CV 14-01119 (RC), 2015 WL 5175885, at 4 (D.D.C. Sept. 3, 2015). For the 2015-2016 school year, Student’s educational placement has been the self-contained classroom at City School 3. Unfortunately, Student’s performance at City School 3 this school year has been unsatisfactory. At the November 24, 2015 IEP team meeting, Student’s special education teacher stated that Student had not met mastery criteria for his prior IEP academic goals and noted regressions, for which the teacher was unable to account.

That does not mean, however, that Student’s placement at City School 3 was

unsuitable at the time his placement was decided before the start of the school year. So long as when the placement was made, it was based on Student's IEP and was reasonably calculated to provide educational benefit, the placement decision met the requirements of the IDEA. *See, e.g., S.S. ex rel. Shank v. Howard Rd. Academy*, 585 F.Supp.2d 56 (D.D.C.2008) (“[B]ecause the question . . . is not whether the IEP will guarantee some educational benefit, but whether it is reasonably calculated to do so, . . . the measure and adequacy of an IEP can only be determined as of the time it is offered to the student. . . . Neither the statute nor reason countenance ‘Monday Morning Quarterbacking’ in evaluating the appropriateness of a child's placement.” *Id.* at 66, quoting *Thompson R2–J Sch. Dist. v. Luke P. ex rel. Jeff P.*, 540 F.3d 1143, 49 (10th Cir.2008)). By all accounts, Student made satisfactory educational progress in the self-contained setting at City School 3 in the second half of the 2014-2015 school year. I find that the decision to continue that placement for the 2015-2016 school year was reasonably calculated provide Student educational benefit and that Petitioner has not shown that DCPS failed to offer Student a suitable educational setting the 2015-2016 school year.

D.

Did DCPS deny Student a FAPE by failing to ensure that the parent was able to participate in decisions on his educational placement at the November 24, 2015 IEP meeting?

Finally, Petitioner maintains that she was not allowed to participate in the decision making for Student's ongoing educational placement at the November 24, 2015 IEP meeting. DCPS responds that Mother was able to participate in the decision process, but simply disagreed with the IEP team's placement decision.

The IDEA requires that DCPS ensure that the educational placement decision for

a child with a disability be made “by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options[.]” 34 CFR § 300.116(a). “Educational placement” refers to the general educational program—such as the classes, individualized attention and additional services a child will receive—rather than the “bricks and mortar” of the specific school. *T.Y. v. New York City Dep’t of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009).

The parent was well-represented at the November 24, 2015 IEP meeting. She attended in person and was accompanied by Educational Consultant, Petitioner’s Counsel and an “Investigator” for the parent. At the beginning of the meeting, Mother, assisted by Educational Consultant, expressed her concern about the classroom setting at City School 3 being inappropriate for Student and not meeting his needs. The parent and her representatives requested a change of school placement, but were told that school authorities did not have that authority. Mother and her representatives also attended a follow-up IEP meeting on December 1, 2015 at City School 3 to finalize the IEP, at which the location of services for Student was again addressed. Although in the November 24 and December 1, 2015 IEP meetings, DCPS was unyielding to counsel’s request to change Student’s placement to a different school, I find that the parent’s right to participate in the IEP formulation process was respected. *Cf. Hawkins v. District of Columbia*, 692 F.Supp.2d 81, 84 (D.D.C.2010). (Right conferred by the IDEA on parents to participate in the formulation of their child’s IEP does not constitute a veto power over the IEP team’s decisions.)

Summary

The issues before me in this case are limited, namely whether DCPS failed to implement Student’s May 22, 2014 and December 3, 2014 IEPs; whether DCPS failed to

offer a suitable educational setting to implement Student's IEP for the 2015-2016 school year and whether DCPS failed to ensure the parent's opportunity to participate in the November 24, 2015 IEP placement decision for Student. On each of these issues, I have found that Petitioner did not meet her burden of proof. Subsequent to the filing of the due process complaint in this case, DCPS offered a Student new location of services, at a self-contained program for students with Autism Spectrum Disorder at City School 4. Whether that program is suitable for Student and is capable of fulfilling his IEP needs is not an issue in this case.

ORDER

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

ORDERED:

All relief requested by the Petitioner herein is denied without prejudice to the Petitioner's right to contest any school location or placement proposed for Student subsequent to the filing of the due process complaint in this case.

Date: May 19, 2016

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

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

**cc: Counsel of Record
Office of Dispute Resolution
Chief Hearing Officer
OSSE - SPED
DCPS Resolution Team**