

**DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
OFFICE OF COMPLIANCE & REVIEW  
STATE ENFORCEMENT & INVESTIGATION DIVISION  
STUDENT HEARING OFFICE**

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STUDENT HEARING OFFICE  
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**CONFIDENTIAL**

Jane Dolkart, Due Process Hearing Officer  
1150 5<sup>th</sup> Street, S.E.  
Washington, D.C. 20003  
202-698-3819; 202-698-3825 (Fax)

**HEARING OFFICER'S DETERMINATION**

IN THE MATTER OF:	)	
	)	
<b>DOB</b>	)	DATE OF HEARING
	)	March 6, 2009
Student I.D.	)	
Petitioner	)	DATE OF COMPLAINT
	)	February 3, 2009
V.	)	
	)	
<b>The District of Columbia</b>	)	ATTENDING SCHOOL:
<b>Public Schools,</b>	)	
<b>Respondent</b>	)	

**COUNSEL FOR PARENT/STUDENT:** **Donovan Anderson**  
**2041 Martin Luther King, Jr. Avenue, SE**  
**STE 131**  
**Washington, D.C. 20020**

**COUNSEL FOR DCPS:** **Nia Fripp**  
**Office of the General Counsel**  
**825 North Capitol Street, N.E., 9<sup>th</sup> Fl.**  
**Washington, D.C. 20002-4232**

STUDENT<sup>1</sup>, by and through his Parent

Petitioners,

v.

DCPS

Respondent.

HEARING OFFICER'S  
DETERMINATION

March 9, 2009

Representatives:

Petitioner – Donovan Anderson  
DCPS – Nia Fripp

Hearing Officer:

Jane Dolkart

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<sup>1</sup> Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.



Petitioner submitted a five day disclosure letter dated February 27, 2009, containing a list of witnesses with attachments P 1-6 (Attachments P 2-5 are also in DCPS' disclosure and were not actually attached to Petitioner's disclosure). The disclosure was admitted in its entirety. Petitioner. Petitioner did not call any witnesses.

DCPS submitted a five day disclosure letter dated February 26, 2009, containing a list of witnesses with attachments DCPS 1-8. The disclosure was admitted with the exception of DCPS 8 which is an inadvertently disclosed privileged communication. DCPS did not call any witnesses.

## V. FINDINGS OF FACT

The parties submitted the following joint stipulations of fact which are relevant to a determination in this matter.

1. The student's date of birth is \_\_\_\_\_ The student is a resident of the District of Columbia.
2. The student was enrolled at and attended \_\_\_\_\_ School of Prince George's County for the 2007-2008 school year.
3. the student's most recent IEP is dated May 13, 2008. The IEP provides for 29 hours of specialized instruction and one hour of psychological services and lists the student's disability classification as Specific Learning Disability.
4. The student chose to enroll in his neighborhood school, \_\_\_\_\_ for the 2008-2009 school year.
5. DCPS requested the IEP from Petitioner on six occasions, October 20, 2008, October 21, 2008, October 23, 2008, November 2, 2008, November r4, 2008, and November 6, 2008. DCPS did not receive a copy of the student's IEP until November 24, 2008.
6. The student was suspended from \_\_\_\_\_ for 45 days on November 24, 2008.
7. The student did not make academic progress while at \_\_\_\_\_
8. The student then enrolled at \_\_\_\_\_ Academy, an alternative educational placement.
9. The student withdrew from \_\_\_\_\_ Academy on January 16, 2009.
10. The student re-enrolled at \_\_\_\_\_ on February 6, 2009.
11. On February 24, 2009, the student was involuntarily transferred to \_\_\_\_\_
12. \_\_\_\_\_ cannot provide 29 hours of specialized instruction and one hour of psychological counseling.

In addition, the following facts are found by the Hearing Officer.

13.            did not contact                            School of PG County in order to obtain the student's IEP.
14. The student has been accepted back at                            School of Prince George's County for the remainder of the 2008-2009 school year. (P 6).

## VI. DISCUSSION AND CONCLUSIONS OF LAW

The Supreme Court has spoken on the level of education that the states are required to provide to disabled children. "[T]he education must be sufficient to confer some educational benefit upon the handicapped child." *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 200-01 (1982). A free and appropriate education (FAPE) does not require the best possible education. It does require that the IEP and placement must confer a meaningful educational benefit gauged to the child's potential. *T.R. ex rel. N.R. v. Kingwood Township Bd. of Educ.*, 205 F.3d 572, 577 (3d Cir. 2000).

As a condition of receiving funds under the Act, IDEA requires school districts to adopt procedures to ensure appropriate educational placement of disabled students. *See*, 20 U.S.C. ¶ 1413. In order to make a placement, the school district must develop an IEP that meets the special education needs of disabled the student.. *See*, 20 U.S.C. ¶ 1414(d)(2)(A). The IEP must include "a statement of the child's present levels of educational performance, ... a statement of measurable annual goals, [and] a statement of the special education and related services ... to be provided to the child...." 20 U.S.C. ¶ 1414(d)(1)(A). An IEP was developed on May 13, 2008, and Petitioner does not contest the appropriateness of the IEP.

Once an IEP is developed, the school district must determine an appropriate placement for the child that is designed to meet the child's needs as set out in the IEP. Placement decisions must be made in conformity with the child's IEP. 34 C.F.R. § 300.116 (a)(2)(b). ). If there is an appropriate public placement available that is "reasonably calculated to enable the child to receive educational benefits," the District need not consider private placement. This is true even though a private placement might better serve the child, *See Hendrick Hudson Dist. Bd. Of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). However, "[i]f no suitable public school is available [DCPS] must pay the costs of sending the child to an appropriate private school." *Jenkins v. Squillacote*, 935, F.2d 303, 305 (D.C. Cir. 1991). *See also, Burlington School Committee v. Mass. Dept. of Education*, 471 U.S. 359 (1985) and *Florence County School District Four v. Carter*, 510 U.S. 7 (1993). Moreover, the IDEA requires school districts to place special education children in the least restrictive environment possible. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114.

Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast*, 546 U.S. 49 (2005). The student's present full time IEP was developed by \_\_\_\_\_ School of PG. DCPS previously made a determination that the student's IEP could not be implemented in a DC public school, because it paid to send the student to \_\_\_\_\_ DCPS did not make a subsequent determination that the student no longer needed to be at \_\_\_\_\_. Rather, the student made a decision that he wished to be at his neighborhood DCPS high school. This turned out to be a disastrous decision. It has become clear that DCPS cannot implement the student's IEP and that DCPS is unable to offer the student a public school placement that can meet his needs. DCPS concedes that the student's present placement at \_\_\_\_\_ cannot implement his IEP. Therefore, it is appropriate that the student be placed back at \_\_\_\_\_ School of PG County. Petitioner has met his burden of proof that DCPS has denied the student FAPE by failing to provide an appropriate placement for the student.

## VII. SUMMARY OF RULING

DCPS has denied the student FAPE by failing to implement his IEP and place him in an appropriate placement.

## VIII. ORDER

It is hereby **ORDERED** that DCPS shall place and fund the student at \_\_\_\_\_ School of Prince Georges County, including transportation, commencing immediately.

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, shall extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives.

**This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.**

                  /s/ Jane Dolkart                    
Impartial Hearing Officer

Date Filed: March 9, 2009