



Office of Review & Compliance

Student Hearing Office
 Van Ness Elementary School
 1150 5th Street, S.E., 1st Floor
 Washington, D.C. 20003
 Telephone (202) 698-3819
 Facsimile: (202) 698-3825

OSSE
 STUDENT HEARING OFFICE
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Confidential

The Student Through their)	IMPARTIAL
)	DUE PROCESS HEARING
Parents,*)	
Case No.:)	
)	<u>DECISION AND ORDER</u>
Petitioner,)	
)	
vs.)	Due Process Compl. Filed: Jan. 30, 2009
)	Hr'g Dates: Mar. 12 & Apr. 2, 2009
The District of Columbia Public Schools,)	Held at: Van Ness Elementary School
Home School:	School)	1150 5th Street, S.E., 1st Floor
Attending:	School)	Washington, D.C. 20003
)	
Respondent.)	Pre-Hr'g Conference Held By-Phone on
)	Thursday, Mar. 5, 2009 at 9:30 a.m.

Counsel for the Parent/Student:	John A. Straus, Esq.
	James E. Brown & Associates, PLLC
	Attorneys at Law
	1220 L Street N.W., Suite 700
	Washington, D.C. 20005
District of Columbia Public Schools:	Tiffany S. Puckett, Esq.
	Assistant Attorney General
	Office of the General Counsel, OSSE
	825 North Capitol Street, N.E., 9th Floor
	Washington, D.C. 20002
Independent Hearing Officer:	Frederick E. Woods

- Party identification information is stated in Appendix A of this order and Appendix A shall be removed from this order before public dissemination.

I. Case Background and Procedural Information

A. JURISDICTION

This Decision and Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, codified at 20 U.S.C. §§ 1400 -1482, 118 Stat. 2647; and its implementing regulations codified at 34 C.F.R. §§ 300.01 – 300.818; 5 D.C.M.R. §§ 3000 - 3033; and Section 327 of the D.C. Appropriations Act.

B. DUE PROCESS RIGHTS

Before the hearing the parents had been advised of their due process rights.

C. FIVE-DAY DISCLOSURES

Petitioner: Admitted, without objection, disclosure letters filed on 03/06/09 and 02/26/09 that together lists seven (7)-witnesses and attached thirteen exhibits sequentially labeled Parent-01 through Parent-13. Four witnesses were called to testify: (1) a private psychologist; (2) the student's mother; (3) the student's education advocate; and (4) the Academy assistant educational director.

Respondent: Admitted, without objection, a disclosure letter filed on 02/26/09 that list seven (7)-witnesses and attached three exhibits sequentially labeled DCPS-01 through DCPS-03. One witness was called to testify: (1) the special education coordinator.

D. STATEMENT OF THE CASE

The student, born age -years 10-months, is a student with a disability receiving her special education and related services, according to her current 07/31/08 IEP, as a grade, 64% of the school day outside of a general education classroom as a Specific Learning Disabled ("SLD") student attending School located at phone number (R. at DCPS-02.)

The parents said that they had conducted and provided two independent education evaluation ("IEE") reports to DCPS to review and to revise the student's IEP. And one of the student's evaluators recommended a therapeutic educational program for the student. DCPS, however, never convened the student's MDT to review those reports and did not provide the student a therapeutic special education program for the 2008-09 school year.

Consequently, on 01/30/09 parent's counsel filed the student's 01/30/09 Due Process Complaint ("DPC") alleging that DCPS as the LEA violated the IDEA and denied the student a Free Appropriate Public Education ("FAPE") by doing two things: (1) failing to convene the student's IEP Team Meeting to review two IEEs that the parents delivered to DCPS; and (2) failing to provide the student a therapeutic special education program as recommended by one of the student's evaluators. (R. at Parent-01.)

As relief, the parents want the student's IEEs reviewed; and want the student placed and funded at public expense to attend Academy for the remainder of the 2008-09 school year. (R. at Parent-01.)

DCPS' 02/27/09 Response to the student's DPC was twofold: (1) "DCPS attempted to convene the student's IEP Team Meeting to review the IEEs; and (2) the student's IEP is being implemented in an appropriate education setting where the student is receiving educational benefit." (R. at 02/27/09 DCPS' Response to DPC.)

The OSSE Student Hearing Office ("SHO") continued, at parent counsel's request, the two-hour due process hearing scheduled for 03/05/09 until 9:00 a.m. on Thursday, March 11, 2009. The hearing convened as scheduled and lasted four-hours and still required a second hearing date. That second hearing date was scheduled and held on Thursday, April 2, 2009 at 3:00 p.m. Both hearings were held at Van Ness Elementary School, 1150 5th Street, S.E., 1st Floor, Washington, D.C. 20003. The parties' waived participation in a Resolution Session. And the parents selected to have a closed due process hearing that convened, as scheduled, 41-days after the 01/30/09 DPC was filed.

Assistant Attorney General Tiffany S. Puckett appeared in-person representing DCPS. Attorney John A. Straus appeared in-person representing the student who was not present; and the student's parents who were present.

II. Issues

1. Did DCPS, as the LEA, violate the IDEA and deny the student a FAPE by failing to convene the student's IEP Team Meeting to review two completed independent education evaluation ("IEE") reports that the parents gave to DCPS on 10/31/08—during the 2008-09 school year?
2. Did DCPS, as the LEA, violate the IDEA and deny the student a FAPE by failing to provide the student an appropriate placement to implement her IEP for the 2008-09 school year when DCPS did not provide her a therapeutic educational setting as recommended in the student's 08/15/08 Neuropsychological Assessment Report?

Brief Answers

1. Yes. DCPS was given the student's IEE reports on October 31, 2008 and to date DCPS has not convened the student's MDT to review the IEE reports at
2. Yes. The student requires a therapeutic educational program as called for by one of the student's evaluators and DCPS did not provide the student with that program at

III. FINDINGS OF FACT

1. The student, born _____ age _____ years 10-months, is a student with a disability receiving her special education and related services, according to her current 07/31/08 IEP, as a _____ grade, 64% of the school day outside of a general education classroom as a Specific Learning Disabled ("SLD") student attending _____ School _____ located at _____ phone number _____ (R. at DCPS-02.)
2. According to the student's 07/31/08 IEP, the student is to receive these special education services in a combination general education and special education resource setting to allow the student to access the curriculum:
 - a. Specialized Instruction—20.0-hours/week; and
 - b. Social Work Services—one (1)-hour/week.(R. at DCPS-02.)
3. On 05/09/08 the student's parents via counsel sent a letter to the student's then attending elementary school principal requesting a comprehensive initial evaluation to include both a Psycho-Educational Assessment and a Neuropsychological Assessment. Further, the letter stated that "if the evaluations are not completed within a reasonable time, the parent will ... secure independent evaluations at public expense." (R. at Parent-04.)
4. There was no evidence provided that DPC conducted the two requested assessments.
5. There is evidence that the parents secured two IEEs as follows:
 - i. On 08/15/08 a Neuropsychological Evaluation Report; and

- ii. On 09/28/08 a Psycho-Educational Evaluation Report.
(R. at Parent-06, 07.)
6. Next, on 10/31/08 the parents via counsel sent a letter and a copy of the IEE reports to DCPS and requested an IEP Team Meeting to review them. (R. at Parent-08.)
7. Two months later, on December 2, 2008 DCPS sent the parents its first Letter of Invitation for an IEP Team Meeting. A meeting date of January 19, 2009 was confirmed to review the IEEs. That meeting was cancelled because 01/19/09 was a federal holiday. (R. at DCPS-01; testimony of the special education coordinator.)
8. On 02/10/09 DCPS sent the parents its second Letter of Invitation for an IEP Team Meeting that proposed three meeting dates and times. This time a second meeting date to review the IEEs was never confirmed. (R. at DCPS-03; testimony of the special education coordinator.)
9. To date, six (6)-months after receiving the parents' 10/31/08 letter requesting a meeting to review two IEEs, DCPS has not convened that requested IEP Team Meeting. (R. at testimony of the special education coordinator.)
10. If a meeting was held, DCPS would have known what the student's Neuropsychological evaluator recommended in their 08/15/08 report— "[the student] would benefit from a therapeutic structured learning environment in which efforts are made to simplify information and tasks to help [the student] process it." (R. at Parent-06.)
11. Further, the evaluator stated, "because the student's cognitive problems are directly related to her level of achievement and participation in school, she will need intensive academic services to maintain and increase her skills and overall functioning. Those findings suggest she needs a well structured school program with a small teacher-pupil ratio that is therapeutically oriented to address all of her needs." And that learning environment should include, among other things:
 - i. Instructions in multi-sensory modalities;
 - ii. Repeated directions to ensure the student understands all assignment expectations along with being given extra time to complete each assignment;

- iii. Taught various memory strategies to help increase her retention of complex information; and taught both recall and recognition techniques to assist in retrieving information;
 - iv. Provided counseling to develop self-monitoring skills, and to improve her low self esteem and confidence; and
 - v. Behavior Intervention [Strategies] Plan to reinforce positive behaviors and to learn how to curtail negative behaviors that impact her overall functioning.
- (R. at Parent-06.)

12. Additionally, the student's Psycho-Education evaluator said that "the student demonstrated global underachievement and qualifies for special education services as a Specific Learning Disabled ("SLD") student. Her best mode of learning is visually, alone rather than in groups." And the evaluator recommended in their 09/22/08 evaluation report on pages 12-14, that among other things, the student needs the following interventions:

- i. Specified services to improve her verbal processing skills in general and her vocabulary in particular;
 - ii. Specified services to improve her perceptual skills and nonverbal reasoning skills;
 - iii. Specified services to improve her processing speed;
 - iv. Specified services to improve all aspects of math; and
 - v. Specified services to improve her writing, spelling, reading, and reading comprehension skills.
- (R. at Parent-07, testimony of the private psychologist.)

13. There was no evidence whatsoever offered by DCPS that shows the student is receiving those evaluators' recommended interventions in a therapeutic special education program.

14. In fact, the only testimony offered by DCPS about the student's existing services was from the special education coordinator who simply said that "the student's 07/31/08 IEP is being implemented." No details, however, were provided about how the instruction was provided or about what, if any, interventions or teaching modalities are being used to implement that IEP. Nor was there any evidence presented about how the student is performing in

school. That type of information would have been helpful to the hearing officer.

15. And albeit it was helpful to learn that _____ partners with several other D.C. governmental agencies to service their students and the students' families as part of the DCPS Chancellor's Reform Initiative, the student in this matter and her parents are inexplicably not receiving any of those agencies' offerings. (R. at testimony of the special education coordinator.)
16. Therefore the hearing officer finds that _____ is not meeting the unique needs of the student.
17. But _____ Academy can meet the student's needs. The Academy was described by its assistant education director as follows:
 - a. It is a full time, private, therapeutic special education school for students' ages 5-21 years of age with IDEA disabilities of SLD, ED, MD, OHI/ADHD, and Traumatic Brain Injury ("TBI").
 - b. It has a teacher-pupil ratio in each class of 3-6— one lead teacher and 2-assistatnts for six-pupils in a classroom.
 - c. Its on-site related services staff consists of seven (7)-behavior counselors; nine (9) clinical psychologists; ten (10)-speech-language pathologists; three (3)-occupational therapists; five (5)-art therapist. And it has a school-wide behavior monitoring system.
 - d. Albeit the student's current IEP calls for 20-hours of specialized instruction, she needs a full time special education program based on her recent evaluators' findings of her "global underachievement" noted in their report.
 - e. The Academy will provide the student language based multi-sensory instruction; an intensive reading program—Wilson Reading Program, Linda Mood Bell, and/or Project 3; and will provide intensive strategies and interventions for math and reading as noted in the student's two recently performed IEE reports.

1. "If a child's initial evaluation suggests [s/he] is entitled to a FAPE, IDEA then requires the school district to create and implement an IEP, which is the 'primary vehicle' for implementing the Act." Hoing v. Doe, 485 U.S. 305, 311 (1988).
2. Pursuant to Initial Evaluations at 34 C.F.R. § 300.301 (a): "Each public agency shall conduct a full and individual initial evaluation in accordance with § 300.305 and § 300.306 before the initial provisions of special education and related services [are provided] to a child with a disability under this part [Part B of the IDEA]."
3. Pursuant to Initial Evaluations at 34 C.F.R. § 300.304 (c)(4): "Each public agency must ensure that ... (4) "the child is assessed in all areas related to the suspected disability, including, if appropriate ... [their] social and emotional status."
4. Pursuant to Initial Evaluations at 34 C.F.R. § 300.304 (c)(6): "Each public agency must ensure that ... (6) "in evaluating each child with a disability under §§ 300.304 - 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified."
5. Pursuant to 20 U.S.C. § 1414 (c)(1), "initial evaluation shall consist of procedures to determine whether a child is a child with a disability ... within 60-days of receiving parental consent for the evaluation, or if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe." The District of Columbia's established evaluation timeline codified at D.C. Code Ann. § 38-2051(a) was [formerly within 120-days of receipt of the referral].
6. Pursuant to 5 D.C.M.R. § 3002.1, LEA Responsibility, "[t]he services provided to the child must address all of the child's identified special education and related services needs and must be based on the child's unique needs and not on the child's disability."
7. Pursuant to 5 D.C.M.R. § 3013.1(e), Placement, "[t]he LEA shall ensure that the educational placement decision for a child with a disability is ...based on the child's IEP."
8. Pursuant to the IDEIA at 20 U.S.C. § 1414 (d) (A), (B); 34 C.F.R. § 300.323 (a) Requirement that Program be in Effect—

At the beginning of each school year, each local educational agency ... shall have in effect for each child with a disability in the agency's jurisdiction an IEP.

9. To ensure that each eligible student receives a FAPE, the IDEA requires that an IEP be developed to provide each disabled student with a plan for educational services tailored to that student's unique needs. See 20 U.S.C. § 1414 (d)(3).
10. Pursuant to 34 C.F.R. § 300.321 (a)(5), IEP Team, "[t]he public agency must ensure that the IEP Team for each child with a disability includes—an individual who can interpret the instructional implications of evaluation results."
11. "School districts may not ignore disabled students' needs nor may they await parental demands before providing special instruction. Rather, IDEA requires that school districts must identify, locate, and evaluate all children with [suspected] disabilities who are in need of special education and related services." Reid v. District of Columbia, 401 F.3d 516, 519 (D.C. Cir. 2005); See also 20 U.S.C. § 1414 (a)(3)(A).
12. DCPS did not comply with those cited IDEA regulations because when the parents requested an initial evaluation of their daughter in writing on 05/09/08; DCPS neither responded to that request nor conducted the requested evaluations. (R. at Parent-04.) That is not acceptable and here is why.
13. According to the IDEA, the initial evaluation must be conducted within 60-days of receiving parental consent for the evaluation. § 300.301 (c)(1)(i). DCPS received the parents' request and consent for an initial evaluation on or about 05/09/08. Sixty days from 05/09/08 is 07/09/08. No evaluations were performed by 07/09/08. And not only were the evaluation not performed within 60-days but DCPS never performed the requested evaluations. Instead the parent subsequently obtained IEEs and, upon completion of them, gave them to DCPS and sought an IEP Team Meeting to review the IEEs. (R. at Parent-06, 07, 08.)
14. Based on that request, according to the IDEA at 34 C.F.R. § 300.322 (a)(1-2), "[e]ach public agency [DCPS] must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team Meeting or are afforded an opportunity to participate, including—
 - (1) Notifying the parents of the meeting early enough to ensure they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed on time and place."

15. DCPS has never convened the student's IEP Team Meeting after it received the parents request for such a meeting on or about 10/31/08—almost six (6)-months ago. (R. at Parent-08.)
16. DCPS is, however, credited for attempting twice to schedule a meeting; the first one DCPS cancelled because it was scheduled on a federal holiday. (R. at DCPS-01, 03, testimony of the special ed. coordinator.) But to date DCPS has never confirmed a mutually agreed meeting time and place with the parents as required by the IDEA at § 300.322 (a)(1-2).
17. Now, although DCPS has delayed convening the parents' requested IEP Team Meeting, that delay is a procedural violation of the IDEA and is not a *per se* denial of a FAPE. But in this case it is a FAPE denial, Here is why.
18. According to the IDEIA at 20 U.S.C. § 1414 (E) (ii), and 34 C.F.R. § 300.513 (a) Decision of a hearing officer on procedural issues, states that, "[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."
19. And pursuant to 34 C.F.R. § 300.513 (3) Hearing Decisions, "[n]othing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements."
20. Herein, as to the parents' first issue, whether DCPS failed to review the student's two IEEs, that claim was proven and that failure denied the student a FAPE. That is because the evidence shows that the procedural inadequacy impeded the student's right to a FAPE or that it deprived her of educational benefits. The parents requested a meeting six (6)-months ago, that IEP Team Meeting was never held, and the student's IEE reports that would have been reviewed at the meeting would require a change to the student's special education program during the 2008-09 school year. Consequently, with only two months remaining in the 2008-09 school year, the student has loss the benefit of six (6)-months of special education program services she was

eligible to receive—hence a denial of FAPE for the 2008-09 school year because that delay impeded the student’s right to a FAPE.

21. Additionally, that violation impeded the parents’ opportunity to participate in the decision making process regarding the provisions of a FAPE for their daughter because the parents requested the IEP Team Meeting that DCPS failed to convene. (R. at Parent-08.)
22. So there is a FAPE denial because there is sufficient evidence to establish a nexus between the delayed meeting and a resulting educational harm or an impediment to the parents’ role in the decision making process regarding a FAPE to their daughter.
23. Moreover, the D.C. Circuit Court held that: “only those procedural violations of the IDEA which result in a loss of educational opportunity or seriously deprive parents of their participation rights are actionable.” Lesesne v. District of Columbia, 447 F.3d 828, 834 (D.C. Cir. 2006) (*citing* Kruvant v. District of Columbia, 99 F. App’x 232, 233 (D.C. Cir. 2004) (*holding* that although DCPS admits it failed to satisfy its responsibility to assess the student within 120 days of the parents’ request, the parents have not shown harm resulted from that error).
24. And “to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than *de minimis* failure to implement all elements of that IEP, and, instead must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. ... ‘Failure to implement all services outlined in an IEP does not constitute a *per se* violation of the IDEA.’” Catalan v. District of Columbia, 478 F. Supp. 2d 73, 75-76 (D.D.C. 2007) (*holding* that a failure to provide all of a student’s weekly speech-language therapy outlined in their IEP did not constitute a FAPE deprivation).
25. Those case law IDEA thresholds are met in this case because implementing an inappropriate IEP for six (6)-months—for two-thirds of a school year is a six month loss of education opportunity for a student already determined to have global underachievement. (R. at Parent-07.) And delaying the parents’ requested IEP Team Meeting for now six (6)-months seriously deprives the parents of their participation rights on their daughter’s IEP Team. So those are procedural violations of the IDEA resulting in a FAPE denial.
26. As to the parents’ second issue, whether _____ is an inappropriate placement; there is sufficient evidence to support that finding. Here is why.
27. The IDEA was enacted to “ensure that children with disabilities have access to a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400

(d)(1)(A). A free appropriate public education, or FAPE, is delivered through the implementation of an Individualized Education Program, or "IEP." See Burlington v. Dep't of Educ., 471 U.S. 359, 368 (1985) (*describing* the IEP as the "modus operandi" of special education).

28. The IEP is developed by a team of professionals, including the child's parents, "as well as a representative of the local educational agency with knowledge about the school's resources and curriculum." Branham v. District of Columbia, 427 F.3d 7, 8 (D.C. Cir. 2005). An appropriate IEP, at a minimum, "must provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Board of Educ. v. Rowley, 458 U.S. 176, 204 (1982).
29. And the IEP can not be implemented without first identifying a placement because the provision of the IEP services, which must be based upon the child's IEP pursuant to 34 C.F.R. § 300.116(b)(2), with consideration given to the quality of services that the child needs. 34 C.F.R. § 300.116(b)(2)(d).
30. In this matter, if an IEP Team Meeting was held, DCPS would have known what the student's Neuropsychological evaluator recommended in their 08/15/08 report—"the student] would benefit from a therapeutic structured learning environment in which efforts are made to simplify information and tasks to help [the student] process it." (R. at Parent-06.)
31. Further, the evaluator stated, "because the student's cognitive problems are directly related to her level of achievement and participation in school, she will need intensive academic services to maintain and increase her skills and overall functioning. Those findings suggest she needs a well structured school program with a small teacher-pupil ratio that is therapeutically oriented to address all of her needs." And that learning environment should include, among other things:
 - (1) Instructions in multi-sensory modalities;
 - (2) Repeated directions to ensure the student understands all assignment expectations along with being given extra time to complete each assignment;
 - (3) Taught various memory strategies to help increase her retention of complex information; and taught both recall and recognition techniques to assist in retrieving information;
 - (4) Provided counseling to develop self-monitoring skills, and to improve her low self esteem and confidence; and

(5) Behavior Intervention [Strategies] Plan to reinforce positive behaviors and to learn how to curtail negative behaviors that impact her overall functioning. (R. at Parent-06.)

32. Additionally, the student's Psycho-Education evaluator said that "the student demonstrated global underachievement and qualifies for special education services as a Specific Learning Disabled ("SLD") student. Her best mode of learning is visually, alone rather than in groups." And the evaluator recommended in their 09/22/08 evaluation report on pages 12-14, that among other things, the student needs the following interventions:

(1) Specified services to improve her verbal processing skills in general and her vocabulary in particular;

(2) Specified services to improve her perceptual skills and nonverbal reasoning skills;

(3) Specified services to improve her processing speed;

(4) Specified services to improve all aspects of math; and

(5) Specified services to improve her writing, spelling, reading, and reading comprehension skills.

(R. at Parent-07, testimony of the private psychologist.)

33. And based on the hearing record, there was no evidence whatsoever offered by DCPS that shows the student is receiving the evaluators' recommended interventions in a therapeutic special education program. And DCPS did not offer the parents' any other placement options whatsoever that it reasoned could meet the student's needs.

34. Consequently, the student is eligible for special education services but DCPS has not provided her with an appropriate public educational setting to meet her needs. That results in DCPS defaulting on its IDEA placement obligation.

35. Therefore next, according the United States Supreme Court, "[w]hen a public school system has defaulted on its obligation under the Act [the IDEA], a private school placement is 'proper under the ACT' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefit.'" Florence County School District Four v. Carter, 510 U.S. 7, 11 (1993); See also Massey v. District of Columbia, 400 F. Supp. 2d 66 (D.D.C. 2005).

36. The parent's requested relief, placement with transportation at public expense for the student to attend Academy is granted. And Academy can provide the student educational benefit.

37. Academy was described by its assistant education director as follows:
- a. It is a full time, private, therapeutic special education school for students' ages 5-21 years of age with IDEA disabilities of SLD, ED, MD, OHI/ADHD, and Traumatic Brain Injury ("TBI").
 - b. It has a teacher-pupil ratio in each class of 3-6— one lead teacher and 2-assistatnts for six-pupils in a classroom.
 - c. It has all of the related services and service providers that the student needs, to wit: seven (7)-behavior counselors; nine (9) clinical psychologists; ten (10)-speech-language pathologist; three (3)-occupational therapists; and five (5)-art therapist. And it has a school-wide behavior monitoring system.
 - d. The Academy will provide the student language based multi-sensory instruction; an intensive reading program—Wilson Reading Program, Linda Mood Bell, and/or Project 3; and will provide intensive strategies and interventions for math and reading as noted in the student's two recently performed IEE reports.
 - e. And the Academy admitted the student on February 17, 2009 because the Academy can provide the student educational benefit.
(R. at Parent-09; testimony of the Academy asst. education director.)
38. Pursuant to 5 D.C.M.R. § 3030.3, "The burden of proof shall be the responsibility of the party seeking relief; either the parent/guardian of the child or the LEA. 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 Free Appropriate Public Education (FAPE)."
39. The parents, who filed the hearing request, had and met their burden of proof in this case because the parents proved that:

- a. DCPS' failure to convene the student's IEP Team Meeting requested six (6)-months ago was a denial of a FAPE; and
- b. DCPS failed to provide the student an appropriate placement at or any other public school for the 2008-09 school year.

So in consideration of the hearing record, the student was denied a FAPE; and the hearing officer issues this—

ORDER

DCPS shall

1. Fund at public expense and issue, effective on April 13, 2009 or from the student's first day of enrollment after April 13, 2009, and for the remainder of the 2008-09 school year, the student's prior Written Notice of Interim Placement, related services, with transportation to attend Academy located at Telephone number and website
2. The student may enroll at Academy, if the school permits, while awaiting DCPS' Prior Written Notice of Interim Placement, funding, and bus transportation based on the conditions established in this Order.
3. Continue the student's placement at Academy unless and until DCPS provides the student another appropriate placement to implement her IEP.
4. The 45-day time limit, from filing the Due Process Hearing Request to its Disposition after the expiration of the 30-day period under § 300.510 (b) — receipt of the final Hearing Officer's Decision (HOD) pursuant to 34 C.F.R. § 300.515 (a) (1)—was extended by the parents for good cause; and the time for disposition was extended, in accord with this Order, to accommodate the parents' requested and jointly agreed to continuance.

Furthermore, pursuant to SOP § 402 (B)(2) Continuances, states that "in general the parties' agreement to a continuance constitutes 'good cause' to reschedule the hearing to another date and to extend the deadline for issuance of a final determination."
5. This Order resolved all issues raised in the student's 01/30/09 Due Process Complaint that is dismissed; and the hearing officer made no additional findings.

This is the final Administrative Decision. An appeal can be made to a court of competent jurisdiction within ninety (90)-days from the date of this Decision and Order pursuant to 20 U.S.C. § 1415 (i)(1)(A), (i)(2)(B); 34 C.F.R. § 300.516 (b).

_/s/ Frederick F. Woods
Frederick E. Woods
Hearing Officer

April 12, 2009
Date