DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

STUDENT,[1]	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
	)	**Hearing Officer: Frances Raskin**
Respondent.	)	

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HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq.*; the District of Columbia Code, §§ 38-2561.01, *et seq.*; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq.*; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq.*

II. BACKGROUND

Petitioner is a -year-old student with a disability who attends a non-public school ("NPS") in the District of Columbia. On January 13, 2012, Petitioner filed a due process compliant ("Complaint") against the District of Columbia Public Schools ("DCPS") alleging violations of the IDEA.

On January 17, 2012, this Hearing Officer was assigned to preside over this case. On January 31, 2012, Respondent DCPS filed a response to the Complaint.[2] Respondent filed its Response eight days after the deadline established by IDEA.[3]

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[1] Personal identification information is provided in Attachment A.
[2] Respondent did not challenge the sufficiency of the Complaint.
[3] If the Respondent local education agency has not sent a prior written notice under 34 C.F.R. § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, Respondent must, within 10 days of receiving the due process complaint, send to the

On February 28, 2012, the parties participated in a resolution meeting but did not resolve the Complaint. Although the parties held the resolution meeting on February 28, 2012, the resolution period ended on February 12, 2012. The parties agreed that the forty-five day, due process hearing timeline began on February 13, 2012.

During the prehearing conference, the parties agreed that the due process hearing would take place on March 21, 2012, and March 23, 2012. On March 6, 2012, this Hearing Officer issued a prehearing order memorializing the prehearing conference.

The due process hearing commenced at 9:30 a.m. on March 21, 2012. At the outset of the hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits[4] and Respondent's proposed exhibits.[5] Petitioner testified and presented two witnesses on his behalf, a curriculum and instructional specialist for the Spectrum program ("Spectrum Specialist"), and the educational advocate ("Advocate"). Due to the lengthy testimony of these two witnesses, Petitioner was unable to call all of his witnesses before the end of the day. The parties agreed to continue the due process hearing to April 3, 2012.

On April 3, 2012, the Advocate concluded her testimony, and Petitioner presented two additional witnesses: the director of admissions at the Non-Public School ("Admissions Director") and Petitioner's English teacher ("Teacher"). Respondent presented one witness, a progress monitor for the DCPS nonpublic unit ("Monitor"). On April 6, 2012, the parties filed written closing arguments. The record closed on April 6, 2012.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether Respondent denied Petitioner a free, appropriate, public education ("FAPE") on January 11, 2012, by changing his educational placement from 24.5 hours per week of specialized instruction and one hour of per week of behavioral support services outside the general-education setting in a non-public school to 26.5 hours per week of specialized instruction and one hour per week of behavioral support services outside the general education setting in a computer-based program, known as Spectrum, at District of Columbia public high school that

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parent a response that includes (i) an explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) a description of other options that the IEP Team considered and the reasons why those options were rejected; (iii) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) a description of the other factors that are relevant to the agency's proposed or refused action. 34 C.F.R. 300.508(e).

[4] This Hearing Officer admitted into evidence Petitioner's exhibits 2-35, inclusive. Petitioner withdrew exhibit 1. Neither party objected to the admission of the other party's exhibits.

[5] This Hearing Officer admitted into evidence Respondent's exhibits 1-6 and 8-15, inclusive. Respondent did not disclose an exhibit 7.

Petitioner asserts cannot implement his January 11, 2012, individualized educational program ("IEP"), provide the eleven-month program he is currently receiving at the Non-Public School, or meet his needs for differentiated instruction in all areas, a small classroom of no more than four students, and flexible scheduling;

B. Whether Respondent denied Petitioner a FAPE by denying him the right to participate in all decisions regarding his placement and the provision of FAPE to him by predetermining his placement in a meeting prior to January 11, 2012, at which DCPS personnel decided to change Petitioner's placement to Spectrum at the DCPS public school without ensuring Petitioner participated n this decision; and

C. Whether Respondent denied Petitioner a FAPE on January 11, 2012, when it decided to remove him from the Non-Public School and place him in the Spectrum program in the DCPS public school, thereby changing his placement, without considering the harm that would be caused to Petitioner by changing his placement in the middle of the school year and during his last year in high school.

Petitioner requests relief in the form of an order requiring Respondent to place Petitioner at the Non-Public School through August 2012.

IV. FINDINGS OF FACT

1. Petitioner is a -old student who is eligible for specialized instruction and related services as a student with an emotional disturbance.[6] He struggles with depression and low self-esteem, consistent with dysthymic disorder with superimposed episodes of major depression.[7] He has a history of oppositional behavior, physically and verbally aggressive behavior, destruction of property, and, before he was ten years old, theft.[8] These behaviors have been exhibited at home and in school and adversely impacted his quality of life in both areas.[9]

2. Petitioner was diagnosed with attention deficit hyperactivity disorder ("ADHD") in 2008.[10] His most recent psychological assessment, conducted in 2010, determined that his full-scale IQ is 56,[11] although it cautioned that this may not be an accurate representation of his overall IQ.[12]

3. Nonetheless, due to his low IQ, adaptive behavior skills, and academic functioning, Petitioner meets the diagnostic criteria for a mild intellectual disability.[13] His verbal

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[6] Testimony of Advocate, Petitioner Exhibit 21 at 2 (January 11, 2012, Meeting Notes).
[7] Petitioner Exhibit 28 at 9 (September 21, 2010, Confidential Psychoeducational Evaluation).
[8] Petitioner Exhibit 29 at 3 (June 26, 2008, Psychiatric Evaluation).
[9] *Id.*
[10] Petitioner Exhibit 29 at 3 (noting that the Student was previously diagnosed with ADHD).
[11] Full-scale IQ, as measured by the Wechsler Adult Intelligence Scale ("WAIS") Fourth Edition, is the aggregate of a person's performance in four areas: verbal comprehension, perceptual reasoning, working memory, and processing speed. Petitioner Exhibit 28 at 4.
[12] Petitioner Exhibit 28 at 6.
[13] *Id.* at 7-8, 10.

comprehension, perceptual reasoning ability,[14] and working memory[15] are in the first percentile of his same age peers, which is in the extremely low range.[16] His processing speed is below the first percentile and in the extremely low range.[17]

4. Petitioner's adaptive behavior, i.e., communication level, daily living skills and abilities, social functioning, and overall adaptive behavior range from moderately low to low.[18] He has the most difficulty in receptive skills.[19] In the area of communication, his challenges are in listening and attending to a story or verbally presented information for more than fifteen minutes in on sitting and understanding the meaning of abstract sayings or aphorisms.[20] He has difficulty following complex directions and multi-part instructions.[21]

5. In the daily living skills domain, his greatest challenges are associated with reading instructions and giving complicated directions to a particular destination.[22] The Student's greatest difficulties in socialization are being able to read indirect or nonverbal cues in an interaction, placing reasonable demands on friendships to perform certain chores or tasks, and using appropriate judgment in risky or potentially risky situations.[23]

6. In 2010, when Petitioner was nineteen years old, his academic achievement was markedly below his grade and age-level expectations.[24] His broad reading skills were below the first percentile of his same age peers.[25] They were equivalent to a child aged seven years and eleven months and in the sixth month of second grade.[26] His basic reading skills also were below the first percentile, equivalent to a child aged eight years and five months and in the first month of third grade.[27] His math calculation skills, also below the first percentile, were equivalent to a child aged seven years and one month and in the seventh month of first grade.[28] His overall academic fluency was below the first percentile, and equivalent to a seven year and sixth month old child in the second month of second grade.[29]

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[14] Perceptual reasoning is a measure of visual perception, simultaneous processing, spatial-visual manipulation, and the ability to anticipate relationships among parts. *Id.* at 5.
[15] Working memory refers to a person's ability to attend to verbally presented information, process this information in memory, and then formulate a response. *Id.*
[16] *Id.* at 5-6.
[17] *Id.* Processing speed taps visually perceived information, with the use of eye-hand coordination and mental performance speed. *Id.* at 6.
[18] *Id.* at 7.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Petitioner Exhibit 28 at 7.
[23] *Id.*
[24] Petitioner Exhibit 28 at 8. This is the most recent data on Petitioner's academic achievement.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*

7. In mathematics, Petitioner cannot complete problems independently and requires assistance.[30] He has difficulty understanding subtraction, multiplication, addition, and division.[31] He has shown that he has a significant learning disability that affects how he processes and receives information in the classroom.[32] He requires small group, differentiated instruction during his math class.[33] When working in small groups, he is more focused and is able to comprehend information more quickly.[34]

8. In reading, Petitioner currently comprehends text read aloud to him.[35] He struggles to make inferences and draw conclusions from text.[36] He also has difficulty comprehending text he has read.[37] He requires multiple interventions, including small groups and differentiated instruction, to build his reading skills.[38] When working in small groups, he is more focused and is able to comprehend information more quickly.[39]

9. In written expression, Petitioner writes complete sentences displaying his ideas and feelings toward a subject.[40] He struggles, however, with producing a final, edited document and sustaining a valid argument in his writing.[41] He also has difficulties with fluency in writing and making sure that what he writes flows correctly.[42] He requires multiple interventions, such as small groups and differentiated instruction.[43] When working in small groups, he is able to comprehend information more rapidly.[44]

10. In general, Petitioner is unable to work independently.[45] He needs constant assistance from an adult who can explain the assignment to him and provide simplified and repetitive directions.[46] He needs to discuss the task in front of him throughout the task to ensure he understands how to perform the task.[47] He requires support and the close supervision of a teacher in order to complete an assignment.[48] He receives this support at the NPS.

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[30] Petitioner Exhibit 23 at 3 (January 11, 2012, IEP).
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] Petitioner Exhibit 23 at 4.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] Testimony of Petitioner.
[46] *Id.*; testimony of Advocate.
[47] *Id.*
[48] Testimony of Advocate.

11. Petitioner has shown growth in the area of responding to questions from students and adults with appropriate answers.[49] He also has improved his ability to express his feelings in an age-appropriate manner.[50] He continues to exhibit weaknesses in controlling his negative behaviors, coping skills, and self-control.[51] He needs therapy and structure in a classroom with few students and multiple interventions to succeed in school.[52]

12. Petitioner's current IEP, developed on January 11, 2012, provides that he is to receive 26.5 hours per week of specialized instruction outside the general education setting.[53] The IEP provides that he is to receive one hour per week of behavior support services outside the general education setting.[54]

13. The January 11, 2012, IEP indicates that the Student will graduate with a high school diploma.[55] The IEP also includes a postsecondary transition plan to prepare Petitioner fro entering college or vocational post-secondary education following graduation from high school.[56]

14. Petitioner's postsecondary employment interests are in business management/ownership, arts, and law.[57] He has expressed an interest in working with his hands, mechanical work that requires physical strength, hands-on careers, and training.[58] He likes to work with tools and objects, and to see practical results of his work.[59]

15. The January 11, 2012, IEP specifies that, in order to successfully transition into full-time, competitive skills training, thirty percent of Petitioner's academic day during the 2011-2012 school year is to be devoted to vocational classes.[60] This training includes two hours per week of automotive vocational training in a garage.[61] He also will receive one hour per week of weekly enrichment in the classroom setting to help him develop skills necessary to effectively locate, apply, interview, and maintain employment.[62]

16. The January 11, 2012, transition plan also provides independent living goals for Petitioner.[63] The IEP provides that Petitioner will participate in independent living activities that

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[49] Petitioner Exhibit 23 at 5.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] Petitioner Exhibit 23 at 7.
[54] *Id.*
[55] Petitioner Exhibit 23 at 14.
[56] Petitioner Exhibit 23 at 11.
[57] *Id.*
[58] *Id.* at 11-12.
[59] *Id.* at 11.
[60] *Id.*
[61] *Id.* at 12.
[62] *Id.* at 13.
[63] *Id.*

will contribute to responsible behavior within the home, and using public transportation, neighborhood stores, and public agencies that will provide post-secondary education services.[64]

17. The Student currently attends the NPS, which is located in the District of Columbia.[65] He has attended the NPS for 2.5 years.[66]

18. The NPS is a full-time, special education and vocational program that serves a total of twenty-six students with disabilities who are between sixteen and twenty-one years old.[67] At the NPS, each academic class contains no more than seven students and at least one special education certified or content certified teacher.[68]

19. It offers courses in automotive mechanics, auto body repair, carpentry, electrical, plumbing, office management, and barbering.[69] Students at NPS take theoretic and practical coursework in these areas with an emphasis on individual instruction to ensure the students are prepared for the working world.[70]

20. In order to earn a high school diploma, Petitioner must earn 23.5 Carnegie units.[71] By the end of the 2009-2010 school year, Petitioner had earned seventeen Carnegie Units.[72] By the end of the 2010-2011 school year, Petitioner had earned four more credits, although these credits may not have been accepted as Carnegie units toward his diploma.[73] Petitioner is scheduled to graduate high school with a diploma in August 2012.[74]

21. During the 2011-2012 school year, Petitioner's schedule includes core courses in the following subjects: physics, algebra II, English IV, and health.[75] He also is taking the vocational classes in the areas of carpentry and auto mechanics.[76] Petitioner's vocational classes

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[64] *Id.*

[65] Testimony of Admissions Director; Petitioner Exhibit 4 (printout of NPS website). The NPS operates under a certificate of authority issued by the District of Columbia Office of State Superintendant of Education. *Id.*; Petitioner Exhibit 3 at 12-13 (list of Approved Non-Public Schools, updated December 19, 2011).

[66] *Id.*; testimony of Petitioner.

[67] Petitioner Exhibit 4 at 2; Petitioner Exhibit 8 at 2 (February 6, 2012, letter from Admissions Director to Kaya Henderson); testimony of Admissions Director.

[68] Testimony of Admissions Director.

[69] Petitioner Exhibit 4 at 3; testimony of Admissions Director.

[70] Petitioner Exhibit 4 at 3.

[71] Respondent Exhibit 4 at 35 (Letter of Understanding).

[72] *Id.* at 34 (Transcript).

[73] Petitioner Exhibit 35 at 1 ("Official High School Transcript"). Petitioner failed to prove that DCPS accepted these credits as Carnegie Units toward his diploma.

[74] Testimony of Petitioner, Advocate.

[75] Petitioner Exhibit 11 at 1 (Student 2011-2012 Schedule).

[76] *Id.*; testimony of Petitioner. Although Petitioner's schedule, i.e. Petitioner Exhibit 11 at 1, shows that he is taking cosmetology, Petitioner established that he is taking carpentry, not cosmetology.

involve classroom instruction as well as hands-on work.[77] Petitioner currently is passing all of his classes.[78]

22. At NPS, Petitioner's homeroom, physics, and health teacher possesses a certification in the content area of biology.[79] Petitioner's algebra teacher is certified in the content area of mathematics, has passed the exam to be certified in special education, and is awaiting certification by the DCPS certification office.[80] Petitioner's English teacher is not certified in the content are of English has passed the exam to be certified in special education, and is awaiting certification in both areas by the DCPS certification office.[81] Petitioner's carpentry, and auto mechanics teachers are not certified to teach a content area or special education.[82]

23. On January 11, 2012, Respondent convened a meeting of Petitioner's IEP team.[83] Petitioner and the Advocate participated in the meeting, as did his English teacher, an NPS social worker, the Admissions Director, and the Monitor.[84] The purpose of the meeting was to review and revise Petitioner's academic progress, transition plan and goals, placement, and attendance.[85] The IEP team also planned to update Petitioner's IEP.[86]

24. At the January 11, 2012, IEP meeting, the IEP team discussed Petitioner's attendance record.[87] The NPS social worker reported that she had been working with Petitioner on accountability and that he had been making progress in this area.[88] Petitioner reported that his attendance had improved because he had bonded with the staff at the school.[89] It took him a year and a half to adjust to the NPS.[90] Petitioner now attends school every day because he has adjusted to the NPS, has gained some maturity, and is motivated to graduate from high school.[91]

25. The IEP team discussed Petitioner's behavior in the classroom.[92] When Petitioner is in a classroom of more than four students, he is disruptive and unable to attend to task.[93] He is

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[77] Testimony of Petitioner.
[78] *Id.*
[79] Petitioner Exhibit 11 at 1 (Student 2011-2012 Schedule); Petitioner Exhibit 5 at 1 (list of teacher certifications); Petitioner Exhibit 8 at 3.
[80] *Id.*
[81] Petitioner Exhibit 11 at 1; testimony of English teacher.
[82] Testimony of Admissions Director; Petitioner Exhibit 5 at 1; Petitioner Exhibit 8 at 3.
[83] Petitioner Exhibits 20 (Advocate's January 11, 2012, MDT Meeting Notes), 21 (NPS January 11, 2012, Meeting Notes), and 22 (DCPS January 11, 2012, Meeting Notes).
[84] Petitioner Exhibit 21 at 1; Petitioner Exhibit 22 at 1; testimony of Advocate. The NPS special education coordinator did not attend the meeting. Testimony of Advocate.
[85] Petitioner Exhibit 21 at 1.
[86] *Id.*; Petitioner Exhibit 20 at 2.
[87] Testimony of Petitioner, Advocate, Monitor; Petitioner Exhibit 20 at 4.
[88] Petitioner Exhibit 21 at 2.
[89] *Id.*
[90] Testimony of Petitioner.
[91] *Id.*; testimony of Advocate.
[92] Petitioner Exhibit 22 at 3.

unable to sit still for any length of time and cannot be confined without becoming disruptive.[94] He becomes agitated and needs to move around or talk to someone.[95] He is extremely emotional, easily frustrated, hyperactive, has to move around a lot, and is talkative.[96] He gets upset and angry easily, anything and everything sets him off.[97]

26. Petitioner has a very short attention span and is unable to focus on the task at hand for more than a few minutes.[98] In reading, his attention span is two to three minutes.[99] In writing, he does everything and anything he can to avoid doing the assignment.[100] He may be able to focus for only three to four minutes.[101] If another student or adult comes into room, he is completely thrown off task.[102]

27. After the NPS gave Petitioner a fluid schedule, provided multiple breaks, and allowed him to leave the classroom when he felt agitated, his attention seeking behaviors decreased.[103] He works best when he is in a location with minimal distraction.[104] Petitioner exhibits no behavioral difficulties when the English teacher works with him one on one.[105] However, his ADHD impedes his learning when he is in a class of more than four students.[106]

28. Since the NPS switched Petitioner's schedule to allow him to take his core academic courses in the mornings and his vocational classes in the afternoons, Petitioner's behavior has improved markedly.[107] His academic performance has improved by ninety percent.[108]

29. At the January 11, 2012, IEP meeting, the IEP team developed an IEP for Petitioner.[109] The team agreed that Petitioner required an increase in the hours of specialized instruction and related services from his previous IEP.[110] His November 2010 IEP had provided that he was to receive 24.5 hours per week of specialized instruction and related services.[111] At the January 11, 2012, meeting, the IEP team agreed to increase his specialized instruction and

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[93] *Id.*; Petitioner Exhibit 21 at 2.
[94] Testimony of Advocate.
[95] Testimony of Petitioner.
[96] Testimony of English Teacher.
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] Petitioner Exhibit 21 at 2.
[104] Petitioner Exhibit 20 at 2.
[105] *Id.*
[106] Testimony of Advocate.
[107] Petitioner Exhibit 20 at 2.
[108] *Id.*; testimony of Advocate.
[109] Petitioner Exhibits 20, 21, 22, and 23.
[110] Petitioner Exhibit 21 at 4.
[111] *Id.*

related services to 27.5 hours per week.[112] The team also agreed to add accommodations to the IEP, including flexible scheduling throughout the school day, preferential seating, and minimal distractions.[113]

30. The IEP team reviewed the goals on the Student's November 2010 IEP and discussed whether he had mastered all of these goals.[114] The team decided that the January 11, 2012, IEP would repeat the English goals from the November 2010 IEP as Petitioner had not mastered them.[115] The team also decided to repeat the math goals as well because he had not mastered these goals.[116] The team also agreed upon independent living goals and post-secondary transition goals for Petitioner.[117]

31. After the IEP team finalized Petitioner's IEP, it discussed his placement for the following year.[118] The IEP team agreed that Petitioner should continued to receive all of his specialized instruction and related services outside the general education setting.[119]

32. At this point in the meeting, the Monitor announced that DCPS would be placing Petitioner in the program at a DCPS senior high school ("DCPS School").[120] The Monitor did not question the progress Petitioner had made at the NPS, the certifications of the NPS teachers, or whether Petitioner was receiving the services prescribed by his IEP.[121] The Monitor stated only that Respondent had discretion to determine the site location that would implement his January 11, 2012, IEP.[122] Petitioner objected to the Monitor's announcement, stating that he did not want to change schools and that he had made a lot of progress at the NPS.[123]

33. The Monitor informed the IEP team, in response to Petitioner's concerns, that the program at the DCPS School would provide Petitioner the same services he was receiving at the NPS and that it could implement his January 11, 2012, IEP.[124] Petitioner then asked why Respondent wanted to move him from the NPS, especially since he was so close to graduating from high school.[125] The Monitor did not answer this question.[126] She said only that

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[112] *Id.*
[113] Petitioner Exhibit 20 at 5; testimony of Advocate.
[114] Petitioner Exhibit 22 at 3.
[115] *Id.*; Petitioner Exhibit 20 at 3.
[116] *Id.*; Petitioner Exhibit 22 at 4.
[117] Petitioner Exhibit 21 at 3-4.
[118] Testimony of Monitor.
[119] Testimony of Admissions Director.
[120] Testimony of Petitioner, Advocate, Admissions Director.
[121] Testimony of Petitioner, Advocate, Admissions Director.
[122] *Id.*
[123] Testimony of Student, Admissions Director, Advocate, Monitor.
[124] Testimony of Student, Admissions Director.
[125] Testimony of Student; Admissions Director.
[126] *Id.*

Respondent made the decision to send him to at the DCPS School before the January 11, 2012 meeting.[127]

34. In response to Petitioner's continued questioning, the Monitor admitted that she had never been to the program and could provide no additional information.[128] No one from the program was available at the January 11, 2012, meeting to inform the IEP team about the program and how it would implement Petitioner's IEP.[129] The Monitor was unfamiliar with the program and did not have any idea how it operated, other than students in this program received their direct instruction through a computer program.[130]

35. The DCPS School is a regular high school that serves general education and special education students.[131] Within the DCPS School, the program serves students who receive specialized instruction and whose behavioral issues impede their ability to access the general education curriculum.[132] These may be students with an emotional disturbance or those at risk for emotional disturbance.[133]

36. The program is located in two, self-contained classrooms.[134] One of the classrooms serves students who are working to earn a high school diploma and the other that serves students who are working to obtain a special education certificate of completion upon their exit from high school.[135]

37. Each classroom has a maximum of twelve students.[136] The staff in each of the classrooms consists of a special education teacher, an instructional assistant, and a behavior intervention counselor.[137] The students range in age from fourteen to twenty one; they are in the ninth through twelfth grades.[138] The program students do not interact with their nondisabled peers at the DCPS School except when they enter or leave the school building.[139]

38. Each of the students has a computer workstation with a computer.[140] The students receive all of their direct instruction for their credit-bearing classes, i.e., those in

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[127] Testimony of Advocate, Monitor
[128] Testimony of Advocate, Admissions Director.
[129] Testimony of Petitioner, Advocate, Monitor.
[130] Testimony of Monitor.
[131] Testimony of Advocate.
[132] *Id.*
[133] Petitioner Exhibit 9 at 2 Co-location Classroom brochure).
[134] Testimony of Advocate; testimony of Specialist.
[135] *Id.*
[136] Testimony of Specialist.
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] Petitioner Exhibit 9 at 2.

which they may earn Carnegie units, through the A-Plus computer program.[141] The A-Plus curriculum is tied to the standardized general education curriculum for all DCPS students.[142] The A-Plus curriculum does not provide instruction in language, art, music, or other elective courses.[143]

39. The program serves students who are on grade level as well as students who are below grade level.[144] It provides textbooks geared to grade level for students who perform on their grade level.[145] The program also has textbooks that covers same material as the grade-level text books but are written for students who read on a fourth-grade level.[146] Thus, students in the program must read at the fourth-grade level or higher.[147] The A-Plus program also has software that will read to students who have difficulty with reading text.[148]

40. While the program has a transition coordinator who works with the students, it does not provide vocational instruction.[149] The program does not offer automotive vocational training.[150]

41. In the classroom where the students aim to obtain a high school diploma, each student works individually on the particular classes he or she needs to graduate.[151] Thus, in general, not every student in the program is working on the same course, or on the same grade level, at a particular time.[152] However, there may be blocks of time when all the students are working on a particular subject area such as math or science.[153] For example, during the math period, one student may be working on algebra through the A-Plus program while another student is working on geometry.[154] The students spend only forty-five minutes to an hour each day using the A-Plus program.[155]

42. In the program at the DCPS School, a special education teacher is available to help students who require assistance.[156] The special education teacher may differentiate instruction, provide interventions, or use other techniques as needed by each

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[141] Testimony of Specialist. If a student completes all his work in a particular content area and earns a passing grade, he may earn a Carnegie unit for that area. *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*

student.[157] The special education teacher is not certified to provide instruction in any content area as this is the function of the A-Plus program.[158]

43. If Petitioner requires assistance with the A-Plus program, the special education teacher could provide him differentiated instruction.[159] However, Petitioner would be expected to work independently while the special education teacher provides assistance to other students in the classroom.[160]

44. The program includes a math and English intervention program for students who are missing foundational skills.[161] This intervention program is a scripted program that has a workbook, textbook, and a teacher manual.[162] The adults who work with the program students who need intervention, whether the special education teacher or another adult, personally deliver this instruction.[163] The students who don't require intervention would continue to work on their Carnegie-unit classes through the A-Plus program.[164] Thus, the instructional assistant may provide instruction for the students in the intervention program while the special education teacher works with the students who are using the A-Plus program.[165] The instructional aide at the program in the DCPS School does not possesses a teaching certification or a certification in special education.[166]

45. Each of the program classrooms begins the school day with a journal writing exercise.[167] The students then engage in a social skills class where they are taught social skills to modify their behavioral difficulties.[168] After these two activities, each student either works on his or her content area courses in the A-Plus program or participates in the intervention program instruction.[169]

46. The students remain in a single, self-contained classroom throughout the school day.[170] Each student's behavior is rated each day according on a system of behavioral tiers.[171] As a student's behavior improves, he or she is given more privileges.[172] Every student in the program starts on level one.[173] The minimum amount of time in which a student may

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[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*

progress to the next level is twenty-nine days.[174] Once a student reaches level five, he may transition out of the program to a less restrictive environment, as decided by an IEP team.[175]

47. Students may not leave the classroom on their own until they reach level three in the behavioral program.[176] Thus, until a student reaches level three in the behavioral program, he may not go to the bathroom unless an adult escorts him.[177] Petitioner would not accept an escort to the bathroom because, at age 21, he feels he is an adult.[178]

48. If Petitioner were forced to remain in one classroom for the entire school day, he would become disruptive.[179] He likes to wander and talk while is working.[180] Thus, he would disrupt class to point where none of the other students could get anything done.[181]

49. Following the January 11, 2012, meeting, Respondent issued a prior written notice ("PWN") to Petitioner.[182] The PWN informed Petitioner that Respondent was proposing to change his "location of service" from the NPS to the program at the DCPS School effective January 23, 2012.[183] It further informed Petitioner that Respondent had determined that the program at the DCPS School "is the most appropriate location of service [that] can implement the IEP and provide the related services" Petitioner requires.[184]

50. The January 11, 2012, PWN indicates that Respondent considered Petitioner's IEP, psychiatric evaluation, teacher reports, and therapist report as a basis for the proposed action.[185] It does not provide a description of the other options considered by the IEP team, if any, or the reasons why the IEP team rejected these options.[186] It also does not provide any other factors related to the proposed change in "location of services."[187]

51. Respondent did not involve Petitioner's IEP team, or other persons knowledgeable about Petitioner in deciding to place him in the Spectrum program at the DCPS School.[188] Prior to the January 11, 2012, meeting, the staff of the DCPS Non Public Unit had been gathering data with respect to its responsibility to monitor the NPS.[189] The Non Public Unit

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[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] Testimony of Petitioner.
[179] Testimony of Advocate.
[180] *Id.*
[181] *Id.*
[182] Petitioner Exhibit 19 at 1 (January 11, 2012, PWN).
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.* at 2.
[187] *Id.*
[188] Testimony of Monitor.
[189] *Id.*

staff had concerns about the quality of instruction that the NPS provided its students and whether it provided its students all of the related services required by their IEPs.[190] The Non Public Unit staff also had concerns about whether the NPS teaching staff had all their required teaching certifications.[191] However, at the time of the January 11, 2012, meeting, the Monitor was aware that the NPS possessed a certificate of authority from OSSE, i.e., that it was approved to serve special education students in the District of Columbia.[192]

52. The Monitor determined that the program would be appropriate for Petitioner after speaking to her supervisor, prior to the January 11, 2012, meeting.[193] Although she was not familiar with the program, and had never actually seen the A-Plus computer program, she determined the program would be able to implement Petitioner's IEP.[194] She was aware that the program could not implement Petitioner's vocational goals, but she felt his academic goals and related services were a higher priority.[195]

53. On January 11, 2012, the Monitor informed the IEP team that the program could implement Petitioner's IEP even though she knew it could not provide the vocational services on his IEP.[196] At the time, she was aware that Petitioner spends at least thirty percent of each day in his vocational program.[197]

54. The Monitor then filled out the PWN exactly as her supervisor instructed her.[198] Even though she thought it was important to include in the PWN the real reasons for the decision to place Petitioner in the program, i.e., that the Non-Public Unit's concerns about the NPS were what led to the decision, she filled it out as instructed.[199] In explaining the rationale for placing Petitioner in the program, she wrote that DCPS had determined that the program was an appropriate location of services.[200] She also did not inform the IEP team of the real reason DCPS decided to place Petitioner in the program.[201]

55. At the January 11, 2012, IEP meeting, the IEP team, including the Monitor, briefly discussed the harm might result from removing Petitioner from the NPS when he had only a few months of school left to complete his diploma.[202] The Monitor felt that any harm that would result from removing Petitioner from the NPS would be outweighed by the benefits he would receive in the program, including that he would have access to certified teachers

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[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] *Id.*
[197] *Id.*
[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*

and related service providers.[203] She was not aware that, in the program, the A-Plus computer program would be the only content-certified teacher Petitioner would have access to.[204]

56. The IEP team considered no other options to the program at the DCPS School because DCPS had made the decision to place Petitioner in the program in advance of the January 11, 2012, IEP meeting.[205] The Monitor does not recall the reason that DCPS decided that would be more appropriate for Petitioner than the NPS.[206]

57. Petitioner was a credible witness. He testified forthrightly about his behavioral and academic shortcomings, including that he has a short attention span and is easily agitated. He testified in detail about the discussion at the January 11, 2012, IEP meeting. His testimony was corroborated by the documents in evidence and the testimony of the other witnesses, including Respondent's sole witness.

58. The Advocate was a credible witness. She was familiar with the documents in the record, recalled with precision the discussion at the January 11, 2012, IEP meeting, and was forthright about Petitioner's academic and behavioral shortcomings. Her testimony was generally corroborated by the documents in evidence and the other witnesses who testified at the due process hearing.

59. The Admissions Director provided credible testimony about Petitioner's academic needs, and his limited recollections of the discussion at the January 11, 2012, IEP meeting. He was forthright about the areas in which he lacked knowledge, including the provision of specialized instruction and related services to Petitioner at the NPS. However, the Admissions Director did not testify credibly about the qualifications of the NPS teachers, as his testimony was undermined by the testimony of the English Teacher and his own written communications that were entered into evidence.

60. The English Teacher testified credibly about Petitioner's performance in the classroom, his behavioral difficulties, and the strategies the teachers and the NPS implemented to address these issues. She testified in accordance with the other witnesses about the discussion at the January 11, 2012, meeting, although not in great detail.

61. The Specialist testified credibly about the program. She had extensive knowledge of the program, how it operates, and the A-Plus computer program. Her testimony was uncontroverted by any of the other witnesses who testified.

62. The Monitor testified credibly about the January 11, 2012, IEP meeting and the reasons DCPS issued the PWN that proposed placing Petitioner in the Program at the DCPS School. The Monitor was especially forthright about the fact that the decision to place Petitioner in the program was driven more by concerns about operations at the NPS than by Petitioner's individualized needs. She also forthrightly admitted that the decision to

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[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*

place Petitioner in the program had been made by DCPS staff in the absence of Petitioner and that the PWN did not reflect the real reasons they decided to remove Petitioner from the NPS.

V. CONCLUSIONS OF LAW

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs."[207] Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.[208] FAPE is defined as:

[S]pecial 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 the individualized education program (IEP)."[209]

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.[210] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[211]

The burden of proof is properly placed upon the party seeking relief.[212] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[213]

VI. DISCUSSION

A. Respondent Denied Petitioner a FAPE by Unilaterally Changing his Placement Without Considering the Harmful Effects on Him or the Appropriateness of the New Program.

The term "educational placement" refers to the type of educational program prescribed by

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[207] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).
[208] *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).
[209] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[210] 34 C.F.R. § 300.513 (a)(2).
[211] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[212] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[213] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).

the IEP.[214] "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.[215]

Placement decisions must be made in conformity with the child's IEP.[216] The decision to place a student before developing an IEP on which to base that placement violates the IDEA regulations.[217] It also violates the spirit and intent of IDEA, which emphasizes parental involvement.[218] After the fact involvement is not enough.[219] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[220]

The considerations relevant to determining whether a particular placement is appropriate for a particular student include the nature and severity of the student's disability; the student's specialized educational needs; the link between those needs and the services offered by the school; the placement's cost; and the extent to which the placement represents the least restrictive environment.[221]

The question of what constitutes a change in educational placement is, necessarily, fact specific and thus, "in determining whether a given modification in a child's school day should be considered a 'change in educational placement,'" the "touchstone" is whether the modification "is likely to affect in some significant way the child's learning experience."[222] In determining whether a "change in educational placement" has occurred, the LEA must determine whether the proposed change would substantially or materially alter the child's educational program.[223]

In determining whether the change in location would substantially or materially alter the child's educational program, the LEA must examine the following factors: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.[224] In other

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[214] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[215] *Id.*
[216] 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Reg. tit. 5-E § 3013 (2006); *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).
[217] *Spielberg*, 853 F.2d at 258.
[218] *Id.*
[219] *Id.*
[220] *See Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (D.D.C. 2006).
[221] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). *See also* D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the least restrictive environment, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).
[222] *J.R. v. Mars Area Sch. Dist.*, 318 Fed. Appx. 113, 119 (3d Cir. Pa. 2009).
[223] *Letter to Fisher*, 21 IDELR 992 (Office of State Education Programs ("OSEP"), July 6, 1994).
[224] *Id.*

words, if the proposed change substantially or materially affects the composition of the educational program and services provided the student, it is a change in placement.[225]

In contrast, a simple change in location is limited to the physical characteristics associated with a particular site. A transfer of a student from one school to another school, which has a comparable educational program, is generally considered a change in location only.[226] Simple changes in the location of a building or facility are not generally viewed to be a change in placement where there are no significant changes in the educational program.[227]

Here, Petitioner has a very low IQ, diminished adaptive behavior skills, limited academic functioning, and ADHD. He requires constant assistance from his teachers in all of his academic classes. At the NPS, his teachers explain the tasks he is to complete, and provide simplified and repetitive directions. He receives one-on-one instruction as needed, is provided opportunities to discuss what is required of him throughout the task, and feedback to ensure he understands how to perform the task. He is unable to work independently and requires the support and the close supervision of a teacher in order to complete his assignments.

When Petitioner is in a classroom of more than four students, he is disruptive and unable to attend to task. He is unable to sit still for any length of time and cannot be confined without becoming disruptive. He becomes agitated and needs to move around or talk to someone. He is extremely emotional, easily frustrated, hyperactive, has to move around a lot, and is talkative.

Petitioner has a very short attention span and is unable to focus on the task at hand for more than a few minutes. In reading, his attention span is two to three minutes. In writing, he does everything and anything he can to avoid doing the assignment. He may be able to focus for only three to four minutes. Petitioner works best when he is in a location with minimal distraction.

Petitioner's IEP provides that he is to receive 27.5 hours of specialized instruction per week and one hour of behavioral support services per week outside the general education setting. He is on track to receive a diploma., although at the NPS he spends thirty percent of his day in vocational classes. In these vocational classes, he receives training in auto mechanics and carpentry. Considering his low IQ and low academic achievement, it is conceivable that Petitioner will not attend college and instead will pursue a vocation. Thus, it is appropriate that thirty percent of his program focuses on his acquisition of vocational skills.

At the NPS, Petitioner exhibits no behavioral difficulties when the English teacher works with him one on one. However, his ADHD impedes his learning when he is in a class of more

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[225] *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18,1980); *Letter to Fisher*, 21 IDELR 992.
[226] *See*, e.g., *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ.*, 629 F.2d 751, 753-54 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980).
[227] *Letter to Flores*, 211 IDELR 233. *See also A.W. v. Fairfax County Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.)

than four students. He has a fluid schedule, is provided multiple breaks, and is allowed him to leave the classroom when he felt agitated. As a result of these accommodations, his attention seeking behaviors decreased. Since the NPS switched Petitioner's schedule to allow him to take his core academic courses in the mornings and his vocational classes in the afternoons, Petitioner's behavior has improved markedly. His academic performance has improved by ninety percent.

In January 2012, Respondent decided to remove Petitioner from the NPS because it was concerned about the quality of instruction he was receiving at the NPS and the qualifications of his teachers. While this may be a legitimate reason to remove Petitioner from the NPS, Respondent failed to consider Petitioner's unique needs in finding an alternate location of services for him.

Instead of convening a meeting to discuss Petitioner's needs and determine which location of services could implement Petitioner's IEP, including the vocational components of his IEP, and meet his academic and behavioral needs, Respondent unilaterally decided to place Petitioner in the program at . The program is designed for students who, like Petitioner, have an emotional disturbance. But this is where the similarity between this program and Petitioner's needs appears to end.

The program does not provide the direct, small group or one-to-one, instruction in core academic areas that Petitioner receives at the NPS. There is no teacher to work with Petitioner throughout the day to ensure that he understands the lesson, and provide simplified and repetitive directions. The program does not have the staff to be able to provide constant assistance to a student like Petitioner, who has low cognitive functioning.

Instead, the students in the program receive all of their direct instruction for their credit-bearing classes, i.e., those in which they may earn Carnegie units, through the A-Plus computer program. The students must work independently on the A-Plus program. The students receive only occasional assistance from the special education teacher.

program does not include a vocational component. Thus, it would not be able to implement Petitioner's IEP or provide him the extensive vocational education he receives at the NPS. Thus, Respondent's decision to remove Petitioner from the NPS and place him in the program was a change in placement. This was not a simple change in buildings, but a major alteration in Petitioner's program, both because cannot implement his IEP and because it cannot provide him the behavioral accommodations he needs to access the curriculum.

Because Petitioner cannot work independently, he would not succeed in the program. Additionally, due to his attentional difficulties and hyperactivity, Petitioner would not be able to control his behavior in a classroom of twelve students. Because Petitioner has become accustomed to a great deal of freedom at the NPS, which has enhanced his learning, it is likely he would shut down and fail to make academic progress in the strictly controlled environment of the program.

Yet, Respondent did not consider any of these factors when it decided to remove

Petitioner from the NPS and place him in the Program in the DCPS School.[228] The Monitor did not bother to investigate and, as a result, had no idea what it could provide Petitioner. She did know, however, that the program could not implement Petitioner's IEP because it could not provide him vocational training in auto mechanics and carpentry.

Finally, the Monitor did not consider the harm that Petitioner may suffer from the removal, including the fact that he likely would not be able to access the curriculum there because he required much more assistance than could provide. She did not consider that Petitioner had made academic and behavioral progress while at the NPS and was on track to receive a diploma. She also did not consider that Petitioner was close to finishing his high school career, whether due to his age or by receiving a diploma in August 2012, when deciding to take him out of the NPS.[229]

By failing to consider the impact of the change in placement on Petitioner, and by placing him in a program that could not implement his IEP, Respondent denied Petitioner a FAPE.

B. Petitioner Proved that Respondent Denied Him a FAPE By Failing to Ensure that He Participated in the Placement Determination on January 11, 2012.

IDEA guarantees adult disabled students the opportunity to participate in the evaluation and placement process.[230] One of the policies underlying the need for an accurate written IEP is to serve an adult student's interest in receiving full appraisal of the educational plan, allowing the student both to monitor his progress and determine if any change to his program is necessary.[231]

A public agency must ensure that each adult child with a disability is a member of any group that makes decisions on his educational placement.[232] Procedural inadequacies that seriously infringe the adult students' opportunity to participate in the IEP and placement process clearly result in the denial of FAPE.[233]

If the adult student cannot participate in a meeting in which a decision is to be made relating to his educational placement, then the public agency must use other methods to ensure

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[228] *See* 71 Federal Register 46588 (August 14, 2006) (educational placements must be individually determined in light of each child's unique abilities and needs, to reasonably promote the child's educational success).

[229] *See Block v. District of Columbia*, 748 F Supp. 891, 895-96 (D.D.C. 1990) ("while a school may be appropriate for a student if he begins the school year there, it is not necessarily appropriate to inject the student into that school part-way through the school year"); *Holmes v. District of Columbia*, 680 F. Supp. 40, 41-42 (D.D.C. 1988) (inappropriate to change student's placement in the middle of the school year; rather, "[t]he appropriate place for this youngster is to permit him to finish the remaining seven months of his high school education in the environment that he has been accustomed to over the past three years").

[230] 20 U.S.C. §§ 1414(f), 1415(b).

[231] *Alfano v. District of Columbia,* 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citation omitted).

[232] 34 C.F.R. § 300.501 (c)(1).

[233] *See, e.g., W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).

their participation, including individual or conference telephone calls, or video conferencing.[234] A placement decision may be made by a group without the involvement of the adult student, if the public agency is unable to obtain the student's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.[235]

Here, Respondent met prior to the January 11, 2012, IEP meeting and decided to remove Petitioner from the NPS. Respondent was concerned, perhaps rightly so, about the quality of instruction Petitioner was receiving at the NPS and the qualifications of his teachers. During this meeting, which took place at the office of the DCPS Non-Public Unit, the Monitor and her supervisor decided to place Petitioner at the program in the DCPS School.

Following this decision, the proper procedure would have been for the Monitor to explain to the IEP team and Petitioner the position of the Non-Public Unit, its concerns about the quality of instruction Petitioner was receiving at the NPS and the qualifications of his teachers, and its desire to place Petitioner in another educational setting. Instead, Respondent made no attempt to involve Petitioner in this decision, in violation of IDEA. In making this decision without the input of Petitioner, it denied Petitioner his right to participate in the decision-making process.

After it unilaterally decided to change Petitioner's placement, without his involvement, Respondent developed a PWN that obfuscated the rationale for its decision. Respondent then attended the IEP meeting on January 11, 2012, at which time it had an opportunity to remedy its failure to include Petitioner in the decision-making process. Instead, Respondent pretended that it was simply changing the location at which Petitioner's IEP would be implemented and that, other than this location change, all things would remain the same.

Thus, in repeatedly failing to involve Petitioner in its decision-making process, and by misleading him as to the reasons for and effects of the change in placement, Respondent seriously infringed Petitioner's opportunity to participate in the IEP and placement process. Thus, Respondent denied him a FAPE.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this thirteenth day of April hereby:

ORDERED that Respondent shall continue to fund Petitioner's costs of attending the Non-Public School, including transportation, through August 31, 2012.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

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[234] 34 C.F.R. § 300.501 (c)(3).
[235] 34 C.F.R. § 300.501 (c)(4).

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).