

District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
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Confidential

<p>STUDENT¹, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools</p> <p>“DCPS”</p> <p>Respondent.</p> <p>Case :</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: July 21, 2010 & July 27, 2010</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Pamela Halpern, Esq. 1220 L Street NW Suite 700 Washington, DC 20005</p> <p>Counsel for DCPS: Tanya Chor, Esq. Assistant Attorney General District of Columbia DC Public Schools 1200 First Street, NE Washington, DC 20002</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (“IDEIA”), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

BACKGROUND:

Petitioner alleges that on December 8, 2009, an individualized educational program (“IEP”) team met at the student’s school and determined the student was in need of, inter alia, a full time special education placement with significant behavioral supports. Petitioner alleges that on April 26, 2010, DCPS placement specialist, Eric Abraham, requested a meeting to review the student’s IEP and “location of services” and advised the parent to visit two DCPS public schools.

Petitioner alleges on May 11, 2010, at an IEP meeting Mr. Abraham and other DCPS staff, over the objection of the parent and the staff of the student’s private special education school, created a “student reintegration plan” and amended the student’s IEP by reducing the student’s hours of specialized instruction from 29 hours per week to 5 hours per week and issued a prior notice for the student to attend a DCPS public middle school, at the start of the 2010-11 School Year (“SY”).

Petitioner alleges the student remains in need of a full time special education therapeutic placement that cannot be adequately met in a general education setting and specifically cannot be met at the DCPS proposed middle school. DCPS asserts the student’s IEP as amended is appropriate and the DCPS proposed placement is appropriate and can implement the student’s amended IEP.

A Due Process Hearing was convened July 21, 2010, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003, in Hearing Room 4A. The Hearing resumed and concluded on July 27, 2010, in Hearing Room 6B. The hearing was held pursuant to a due process complaint submitted by counsel for the parent and student filed May 17, 2010, alleging the issue(s) outlined below. A pre-hearing conference in this matter was conducted June 23, 2010, and a pre-hearing order was issued on June 28, 2010.

ISSUE(S):²

The issues adjudicated are: (1) Whether DCPS denied the student a FAPE by failing provide the student an appropriate IEP? Specifically, is the change in the student’s IEP made May 11, 2010, reducing the student’s specialized instruction from a full-time special education program to a part-time program appropriate? and (2) Whether DCPS denied the student a FAPE by failing to provide an appropriate placement. Specifically, Petitioner alleges the student remains in need of

² The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn.

a full time special education placement and the placement proposed by DCPS for SY 2010-11 is inappropriate. Petitioner seeks as relief for the alleged denial(s) of FAPE that the Hearing Officer place and fund the student's continued attendance at his current full time special education school for SY 2010-11.

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1 through 16 and DCPS Exhibits 1 through 24) which were admitted into the record.³

FINDINGS OF FACT 4:

1. The student (*hereafter "the student" or "Student"*) is a year old resident of the District of Columbia and resides with his parent(s), (*hereinafter "Petitioner" or "Parent"*). DCPS has determined the student to be eligible for specialized instruction and related services under IDEA with a disability classification of Other Health Impairments ("OHI"). (Petitioner's Exhibit 7)
2. On March 12, 2008, a psycho-educational evaluation was conducted of the student while he was a grader attending School C, a DC Public Charter School. The student was age years -11 months at the time of evaluation. The evaluation determined the student had a full scale IQ of 97 - average intelligence - and his educational scores were also in the average range; specifically his composite scores on the WIAT-II were 118 in Reading, 106 in Math and 100 in Written Language. The evaluation also determined the student displayed aggression, hyperactivity and conduct problems in school. The evaluator concluded based on assessments the student had Attention Deficit Hyperactivity Disorder ("ADHD"). (Petitioner's Exhibit 9)
3. On March 19, 2008, a neuropsychological evaluation was conducted of the student. In addition to diagnosing the student with ADHD, the evaluation diagnosed with the student with Oppositional Defiant Disorder ("ODD"). The evaluator recommended a clinical psychological evaluation and a functional behavior assessment ("FBA") be conducted and that the student be provided in-school therapy. (Petitioner's Exhibit 10)
4. On May 21, 2008, a multidisciplinary team ("MDT") convened and determined the student eligible with a disability classification of OHI and developed an IEP that prescribed the student receive the following weekly services: 27.5 hours of specialized instruction, 30 minutes of occupational therapy, and 1 hour of counseling. The IEP team agreed the student should be in a full time special educational placement. (DCPS Exhibit 22: p. 5 – FOF # 20)

³ The disclosed and admitted documents are listed in Appendix A.

⁴ The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. When citing an Exhibit that was disclosed by both parties but submitted separately, the Hearing Officer may cite only one party's exhibit.

5. The student was placed at School A (a private full time special education school) with DCPS funding by a Hearing Officer's Determination ("HOD") dated September 25, 2008. The student began attending School A early in SY 2008-09. The student was in the grade. (DCPS Exhibit 22)
6. The student was an "A" student at his previous school prior to attending School A. However, because of his behavioral difficulties at the public charter school the student's academic performance deteriorated. Since attending School A the student's academic performance has been consistently high particularly because of the behavioral supports that are in place for him there. The parent is of the opinion that when the student does not have behavioral supports his academic performance declines significantly. (Parent's testimony)
7. On March 20, 2009, a clinical psychological evaluation was conducted of the student. The evaluator conducted assessments of the student and interviews with the student, his parent and teachers. The evaluator noted the student's aggressive behaviors at school including temper tantrums, swearing, unpredictable behavior and trouble controlling his anger. "Many of his outbursts of rage are more extreme than the situation calls for." The evaluator concluded the student met the criteria for a chronic Adjustment Disorder "with Mixed Anxiety and Depressed Mood due to his severe emotional and behavioral reaction to his sister's death, and difficulty adjusting to the change in his family. This tragedy has caused him to feel an elevated amount of stress and worry. His thoughts and behaviors have also been affected and caused difficulty carrying out his responsibilities in school can be attributed to this." The evaluator recommended, inter alia, monitoring of the student's symptoms over the following year in light of the recent murder of his sister before considering an emotional disturbance classification. (Petitioner's Exhibit 11, DCPS Exhibit 24)
8. On November 20, 2009, a Woodcock Johnson III was conducted of the student. The assessment found the student was operating on grade level. The student obtained the following scaled scores again in the average range: Broad Reading: 110, Broad Math: 97, Broad Written Language: 103. (Petitioner's Exhibit 12)
9. On December 7, 2009, the student's occupational therapist at School A prepared a written justification to reduce the student's direct services and provide consultative occupational therapy services (classroom observation and communication with and assistance to the classroom teacher) of 30 minutes per month to assist with strategies, accommodations, and recommendations to improve his sustained attention to improve his availability for learning. (DCPS Exhibit 19)
10. On December 8, 2009, the student's psychologist at School A prepared a written justification for a change in counseling services to include 30 minutes of art therapy. The psychologist noted "While [the student's] defiant and aggressive behaviors have decreased since last year, [the student] cannot articulate an awareness of how these changes occurred or what he can do to maintain these gains. Developing rapport with [the student] has been difficult as he comes across as quiet and guarded and seems to take awhile to trust new

adults in his environment. The only expressive outlets [the student] seems to have are his drawings and poetry. He uses them to cope and takes pride in their quality. Through them, he has been able to share feelings about his sister's death. This writer recommends a trial of art therapy for the upcoming school year to help [the student] with self-expression and understanding the emotions that drive his behavior." (Petitioner's Exhibit 7-31)

11. On December 8, 2009, an IEP team meeting was convened for the student at School A. The parent and her educational advocate participated in the meeting. The School A staff who participated included the student's classroom teacher, the school psychologist and occupational therapist, a DCPS psychologist and the DCPS placement specialist, Mr. Eric Abraham. (Petitioner's Exhibit 7)
12. The IEP team updated the student's IEP to include 29 hours of specialized instruction weekly with academic goals in math, reading and written expression. The IEP also included 1 hour of weekly behavioral support services (with extensive and detailed social/emotional goals) and occupational therapy services. The least restrictive environment ("LRE") section of the IEP stated the student required 100% out of general education classroom - "Separate School - Student requires a full-time placement in an educational environment specifically designed to address the needs of students with disabilities within a special education school." The student's classroom accommodations included: daily schedule posted, small group testing, repetition of directions, and graphic organizers. (Petitioner's Exhibits 7-3, 7-5, 7-6, 7-7, 7-8, 7-9 7-10, -11,7-12, 7-16, 7-23)
13. The student's December 2009 IEP also included a behavior intervention plan ("BIP"). The BIP targets the student's ability to control impulses and negative behaviors without being disrespectful, instigating or teasing others. Monitoring of the plan is to be done by the student's classroom teacher, counselor and other school staff and service providers. The student's behavioral performance is evaluated daily via a point sheet. The data is collected regarding his behavioral progress through daily observation, therapy notes, Behavior Counseling Center ("BCC") logs, work samples and team staffing. Quarterly reports are generated to produce yearly progress reports. (Petitioner's Exhibit 7-4)
14. During the December 8 2009, IEP meeting the student's classroom teacher and psychologist acknowledged the student had made tremendous progress in his behavior since the previous school year and required less redirection. The team members noted the student was on the highest behavioral level: Level 5 for the past month and had fewer referrals to the school behavior center ("BCC sends"). The classroom teacher noted the student was operating at or near grade level in academic subject areas and was the most highly functioning student in the class. The team agreed with the recommendation for the change in the IEP to include art therapy and for occupational therapy services to be reduced to consultative services on a monthly basis. (Petitioner's Exhibits 7-33 through 7-51)
15. During the December 8, 2009, IEP meeting Mr. Abraham asked that his immediate supervisor join the meeting because Mr. Abraham believed that it was appropriate to discuss the student's transition to a less restrictive environment in light of the student's academic and behavioral progress. The parent, her educational advocate an the School A staff all

stated such a transition was premature and the student would lose the gains made if such a reduction in services or change in level of placement were initiated at that point. Mr. Abraham believed the parent and School A staff were being unreasonable in their refusal to have such a discussion at that time. Consequently, Mr. Abraham and his supervisor stated that the discussion would be delayed for three months and a meeting would be reconvened to assess the student's readiness for transition to a less restrictive environment. (Mr. Abraham's testimony Petitioner's Exhibits 7-33 through 7-45)

16. The student's psychologist at School A, Dr. Singer, has provided the student individual⁵ therapy during SY 2009-10. Dr. Singer sees the student at least once per week for individual therapy. Dr. Singer acknowledged the student had an extremely difficult time during his first year at School A: SY 2008-09; he spent a great deal of time out of the classroom because of his behavioral difficulties. She noted the student has been on level 4 and 5 throughout in the school's behavior system during SY 2009-10. (Dr. Singer's testimony)
17. The student's classroom at School A in SY 2009-10 has a certified special education teacher and an educational aide. There are five students in the classroom for Reading, English and Math and four students for Social Studies. The student also takes Physical Education and Computer Lab. The classroom has a point system with a daily point sheet that reflects the student's behavior in the classroom and school. The point system has five levels with level five being the highest that results in the student having the greatest privileges and freedoms within the school. (testimony)
18. According to his classroom teacher at School A, (testimony) the student needs frequent reassurance and praise regarding his work and needs a small class setting and behavioral supports throughout the day. During SY 2008-09, the student's first year the student had a significant number of incidents that resulted in him being sent to the BCC. The most recent school year, however, the student has had better peer relations. He still needs frequent redirection but has accepted the redirection better and complies more readily. He has had some aggressive behavior, but rare. He sometimes becomes frustrated when he is challenged academically and he needs help with organization. But, he retains knowledge and skills. He has had more independent reading to challenge him and has worked on sixth grade standards in reading and written expression. He is a bit of a perfectionist and gets upset when he doesn't perform well on assignments. (testimony)
19. (testimony) feels the student would benefit from one more year of full time specialized instruction based on the length of time it took him the first year to adjust to the staff and setting and School A. She suggested the student transition to a less restrictive environment by gradually removing the incentives and privileges so he internalizes the behaviors without external prompting. (testimony)
20. On April 26, 2010, Mr. Abraham requested a meeting to review the student's IEP and determine the appropriate location of services. Additionally, in Mr. Abraham's April 26,

⁵ The student has also been provided 1 hour of group therapy per week, which is not on the student's IEP but a part of the School A program for all students.

2010, request to convene a meeting, Mr. Abraham advised the parent to visit the student's local public middle school and another public middle school, School B. (Petitioner's Exhibit 14)

21. Mr. Abraham asked the principal of School B to come to School A to observe the student prior the IEP meeting and she did. Following her observation the principal, conveyed to Mr. Abraham based on her observation and her review of the student's IEP and behavior plan that the student was not being challenged academically at School A to the level of his apparent abilities and that the student's behaviors during the observation were unremarkable. She expressed to Mr. Abraham that the student's could be adequately served at School B and School B would have the related service providers to provide the student counseling services in his IEP. She stated that based on the student's current academic performance he would be well served both academically and behaviorally at School B. (Mr. Abraham's testimony)
22. As a result of Mr. Abraham's request an IEP team convened on May 11, 2010. The parent and her educational advocate participated. The School A staff who participated included the principal, two of the school's psychologists, one of whom provides direct services to the student, the student's classroom teacher and the school's occupational therapist. The DCPS personnel included Mr. Abraham, psychologist Dr. Sonia Pilot and the principal of School B, (Petitioner's Exhibit 8-3)
23. The School A staff expressed at the May 11, 2010, meeting the student is need of one more year at School A to gain the self-regulating capacity to sustain his academic and behavior progress of the last school year. In Dr. Singer's opinion, the next steps would be a decrease of services so the student demonstrates being responsible for his behavior for a period of thirty days and be on a "transitional stage." The student if he would stay at School A in SY 2010-11 would be in the middle school program where he will have higher expectations for academics and behavior and would change classes to different teachers. Dr. Singer believes the option of the BCC or a self-contained space where the student can deescalate without being disruptive to other students is beneficial for the student. (Dr. Singer's testimony)
24. The student's end of year classroom report prepared by his classroom teacher states that the student is operating on or above grade level in reading, and written language and just below grade level in math. The teacher notes the student made excellent progress on his IEP goals and followed directions and remained on task. She noted her made excellent strides in academics. "The investment in the behavior system and improved relationship with teachers and service providers have allowed [the student] great success behaviorally, thus leading to increased availability for instruction, learning and demonstration of skills and knowledge. [The student] has been able to access grade-level curriculum, work to potential, and enjoy level privileges. The small classroom setting, behavioral support, and therapeutic staff-student relationships have been instrumental in [the student's] progress and success." (DCPS Exhibit 24)
25. The student's end of year report from his psychologist at School A acknowledged the student "made leaps and bounds this year with regard to behavioral control... [the student]

has shown a gradual decrease in refusal, disrespect, tantrums, and preoccupation with toys this year... [the student had 33 BCC sends this year, compared to 112 last year.] “[The student] benefits from the structure and consistency of the therapeutic milieu that [School A] provides and he needs at least one more year in this environment to solidify his gains.” (DCPS Exhibit 24)

26. Mr. Abraham currently monitors 34 students at School A – the students who are in the elementary school program. Mr. Abraham is at School A four days out of the week. During SY 2009-10 Mr. Abraham conducted classroom observations of the student, communicated with the student’s classroom teacher, participated in his IEP meetings and personally interacted with the student at School A. Based on his observations of the student Mr. Abraham believes the student is adopting negative behaviors from the peers in the classroom because many of the other students have behavior problems. The student’s peers have emotional disabilities. The student has a pleasant demeanor and does not need the level of redirection as most of the students in his classroom. Based on his Woodcock Johnson and DC-CAS combined with his academic performance reflected in his report cards, the student is clearly a college bound student. (Mr. Abraham’s testimony)
27. DCPS psychologist Dr. Pilot reviewed the Woodcock Johnson scores for the student and determined the student scored in the average range. The DC-CAS scores were consistent he score in the proficient range and basic in Math (basic is on grade level and proficient is beyond grade level). Based on his evaluations and academic progress the student can access grade level curriculum. Dr. Pilot and Dr. Kim and Mr. Abraham all thought the student did not need a full time level of instruction and because the student was getting all As in all his subjects and the student had been able to consistently reach and sustain the highest level in the school’s behavioral system. (Dr. Pilot’s testimony)
28. Based on her review of the student data and participation in the student’s IEP meeting, Dr. Pilot was of the opinion the student could gain significantly from in an inclusion program such as he would at School B. She believes the student does not currently have a high level of educational competition and he is missing out in not being challenged by students who are performing at his educational level which is the case at School A. The student has benefitted over the past year from therapeutic support that was recommended in his clinical psychological evaluation that cautioned against the ED classification. The behavior and emotional gains the student has displayed have suggested this approach has been successful and now the student is ready a less restrictive environment with proper supports. (Dr. Pilot’s testimony)
29. During the May 11, 2010, meeting the parent and her educational advocate took the position that they were not going to discuss reductions in services for the student. Mr. Abraham, however, moved forward with changing the student’s IEP. Dr. Pilot and the principal of School B, were also in agreement with amending the student’s IEP to reduce his level of services. The number of hours of specialized instruction in the student’s IEP were amended to reflect one hour in each area of instruction in which the student had academic goals. The school staff noted during the meeting the student has never had an academic problem it was his behavior that needed to be supported. Consequently, the DPCS team

members amended the IEP to add one additional hour of behavior support services because that is what the student was getting at School A with the individual and group therapy. (Mr. Abraham's testimony, Dr. Pilot's testimony, Petitioner's Exhibit 8-4, 8-5)

30. Mr. Abraham, and Dr. Pilot, the DCPS members of the team disagreed with the rest of the team's position and concluded based on the student's academic performance and behavioral improvements over the past year that the student was ready for a less restrictive environment. Consequently, Mr. Abraham (DCPS) issued a prior to action notice of placement ("PNOP") for the student to attend School B at the start of SY 2010-11 with a transitional case manager for the first six months. Mr. Abraham explained that the student would be able to finish the school year at School A and begin at School B on August 23, 2010. School A staff, the parent and the parent's educational advocate refused to sign the IEP, MDT notes and reintegration plan. (Petitioner's Exhibit 8)
31. The parent believes the student should remain at School A to make certain the foundation he has obtained can be sustained. She believes that if he is thrust into an environment with larger class sizes and without sufficient support he will regress both behaviorally and academically. The parent hopes the student can first experience changing classes during the school day and gradually be in larger class sizes so that he will be successful. The student gets frustrated easily and the parent wants to ensure he has stabilized. The parent knows the student is bright and believes if he can continue at School A at least one more year he can internalize the social and behavioral skills. (Parent's testimony)
32. Following the May 11, 2010, IEP meeting when the student became aware that he might be sent to another school in the next school year, the student was sent to the BCC on eight occasions in May 2010 and four occasions in June 2010, for behaviors that included destruction of school and peer property, disrespect and verbal abuse. (Mr. Abraham's testimony, Petitioner's Exhibit 8, DCPS Exhibit 24)
33. The student population in 2008-09 at School A was 180 students and the current enrollment is 98. Mr. Abraham is of the opinion that the staff of School A is reluctant to have the student transition out of the school and are holding on to students rather than allowing students who are ready to transition to less restrictive environments do so. Mr. Abraham has recommended 10 of the 34 students that he monitors at School A to be reintegrated to a less restrictive environment. Starting in SY 2009-10 DCPS had prepared a reintegration plan for each special education student. There are trainings on a monthly basis for DCPS placement specialists on the procedures and methodologies for reintegrating students into the general education setting. (Mr. Abraham's testimony)
34. School B is a public middle school with an approximately 900 students. Of the student body there are approximately 60 special education students. School B has a modification mark system for students to meet teachers' expectations and to make teachers responsible for the discipline in the classroom before any discipline issues reach the school administration. There are modification marks for students that are recorded by each team teacher that are put into a central computer database and the modification marks reset every advisory. When a student meets the level of ten marks within an advisory the student is

referred to the counselor and/or assistant principal for the grade level administration team to make a final decision on the consequences the student will receive as a result of his or her actions in the classroom or school. testimony)

35. School B also has a peer mediation group in which students volunteer and receive training in mediating disputes between peers and the system is administered by the counseling staff of the school. This system deals with minor peer concerns. The grade level teams reward the students for positive behavior, as the school staff believes this is more important than giving discipline for negative behaviors. testimony)
36. A psychologist will be on staff at School B at the start of SY 2010-11 to assist all students. This is the first time that School B will have a dedicated staff psychologist for IEP meetings and direct services to students. School B also will have a school social worker to provide counseling services to special education students. All special education students will have case managers. There are seven special education teachers in the school, two in the seventh grade level. The special education teachers also serve as case managers for a caseload of special education students to monitor services and performance relative to IEP goals. The student will have daily check-ins with his case manager or another school staff member. testimony)
37. The School B staff will monitor the student's behavior plan and ensure the student is meeting the objectives of the plan. The general education teacher and case manager will be responsible for collecting data for the student. When students are in crisis the Dean of Students along with grade level counselor and the school resource officer (police officer) are responsible for intervention. testimony)
38. At School B the student could be in a classroom with a ratio of 8 to 10 or as many as 20 to 25 students. The student's schedule and courses will determine the ultimate class size. If it is determined after the student has been at School B that the student needs to be in a smaller class setting the staff will review that requirement and make modifications in the student's schedule. The student's class work will be modified, if necessary, by the student's special education teacher in an inclusion setting and a special education teacher will assist in the instruction. The special education students will be integrated into the general education classroom and the special education teacher will work with the student on any additional academic needs. testimony)
39. There are additional tutoring resources available to the student in School B. There will also be weekly progress reports and communication with the parent to ensure the student is progressing relative to his IEP goals. Weekly meetings with the service provider teams, special education teachers and the special education coordinator will be held to review the progress of each student with an IEP. testimony)
40. There will be a 30-day period to review the student's academic and behavioral progress. If it was determined the student is not making adequate progress at School B a full IEP meeting will be convened at School B to address the student's needs and review his program

and placement. If there is regression DCPS could reconsider returning the student to a more restrictive environment including a return to School A. (Mr. Abraham's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to 34 C.F.R. 300.17 a free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge;(b) Meet the standards of the SEA, including the requirements of this part;(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. Sec. 300.320 through 300.324. (Authority: 20 U.S.C. 1401(9))

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a 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.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief. ⁶ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Issue 1: (1) Whether DCPS denied the student a FAPE by failing provide the student an appropriate IEP? Specifically, is the change in the student's IEP made May 11, 2010, reducing the student's specialized instruction from a full-time special education program to a part-time program appropriate? Conclusion: Petitioner's did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. 300.320 provides:

(a) As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sec. Sec. 300.320 through 300.324, and that must include--

(1) A statement of the child's present levels of academic achievement and functional

⁶ 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 with FAPE.

performance, including--

(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(2)

(i) A statement of measurable annual goals, including academic and functional goals designed to--

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

The Hearing Officer is not convinced by the testimony of Dr. Singer or that the student's IEP as amended, specifically the reduction in specialized instruction, by the DCPS members of the team is inappropriate for this student. The IEP that was drafted at the May 11, 2010, reduced the student specialized instruction to a level which would still allow for the student to achieve the academic goals in the IEP. Those goals were apparently unchanged in the amended IEP and the student's BIP was maintained.

The student, based upon his evaluations, is of average intelligence and average to near above average academic performance. The student is operating at or near grade level in all academic areas. In addition, he is the highest performing student in his class at School A.

The School A staff admits the student's level of specialized instruction in his IEP is not based on his academic needs but based on the fact that he in a full time special education setting where he receives behavioral supports.

DCPS personnel have observed the student in his classroom, thoroughly reviewed his evaluation data (including his recent Woodcock Johnson III, DC-CAS and his academic report card) and academic performance and Mr. Abraham has had a regular opportunity to observe and interact with student. The DPCS witnesses were credible in conveying the student's academic strengths and the basis for the reduction in his specialized instruction.

Based on the evidence presented the student's IEP meets the requirements of 34 C.F.R. 300.320. The Hearing Officer concludes Petitioner failed to prove, by a preponderance of the evidence, that the student's IEP as amended at the May 11, 2010, meeting is inappropriate.

Issue 2: (2) Whether DCPS denied the student a FAPE by failing to provide an appropriate placement. Specifically, Petitioner alleges the student remains in need of a full time special education placement and the placement proposed by DCPS for SY 2010-11 is inappropriate. Conclusion: Petitioner's did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. 300.116 provides: - In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that--

(a) The placement decision--

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including Sec. Sec. 300.114 through 300.118;

(b) The child's placement--

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Authority: 20 U.S.C. 1412(a)(5))

On December 8, 2009, the IEP team met and continued the student's placement in a fulltime a special education school. At that meeting the DCPS representative broached the subject of the student being transitioned to a less restrictive environment. The rest of the team was not willing to address the issue and the DCPS representative agreed to delay the discussion. The discussion was raised again by the DCPS representative near the end of the school year. The student continued to maintain the academic and behavioral progress he had demonstrated at the time of the December 2009 meeting.

Although the School A teacher and service providers believe the student is not yet ready to transition into a general education setting and needs one more year in a full time placement in order to smoothly transition to a less restrictive environment, the Hearing Officer concludes that the testimony of the student's classroom teacher, and psychologist did not sufficiently rebut the clear documentary evidence of the student's academic and behavioral progress over the past school year.

Although the student apparently experienced significant emotional trauma during the time he was placed at School A and apparently had a difficult time adjusting to the school staff and environment he has apparently done so well and consistently, but for a few occasions, maintained the highest behavioral privilege level in the school behavior system. The supports have apparently been effective and now to the point it seems reasonable for the student to be moved to a less restrictive environment.

If the student were to remain at School A he would transition to a new section of the school with new teachers and with multiple class schedule. It seems an appropriate time given the student's demonstrated academic and behavioral progress for him to be transitioned to a less restrictive environment.

DCPS has an obligation under 34 C.F.R. 300.116 to provide the least restrictive environment ("LRE"). Based upon the student's evaluative data and current academic and behavior

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that 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. § 415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: August 6, 2010