District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
State Enforcement and Investigation Division
Student Hearing Office
Van Ness Elementary School
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2009 SEP 28 PM 12:25
STUDENT HEARING OFFICE

In Re the Matter of :	
Student,[1]	
Petitioner,	
v.	
The District of Columbia Public Schools **825 North Capitol Street, N.W.** **Washington, D.C. 20002** **(DCPS" or "District")**	**Date of Complaint:** July 28, 2009 **Date of Pre-hearing:** September 1, 2009 **Dates of Hearings:** September 14, 2009 and September 21, 2009
Respondent.	**Student Case Number:**

HEARING OFFICERS' DECISION (HOD) *(*Amended)*

Hearing Officer:	Attorney Ramona M. Justice
Attorney for Petitioner:	Attorney Zachary Nahass The Law Offices of James E. Brown and Associates 1220 L Street, N.W., Suite 700 Washington, D.C. 20005
Attorney for Respondent:	Attorney Laura George, Assistant Attorney General, D.C. Office of the Attorney General 825 North Capitol St., N.E., 9th Floor Washington, D.C. 20002

1 Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution. * The HOD is amended merely to accurately reflect the Student Case Number and dates of hearing.

THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004 (IDEIA), (Public Law 108-446)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
IMPARTIAL DUE PROCESS HEARING

I. INTRODUCTION

The student is years of age, and a student at , a public school located in the District of Columbia. Prior to attending the student attended during the 2006/07, 2007/08, and 2008/09 school year, ending February, 2009. In April, 2009, the student was transferred from to under the District of Columbia's Safe Haven Program. Prior to attending the student attended a full-time special education school, located in the District of Columbia.

The student is a resident of the District of Columbia, and identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is Emotionally Disturbed (ED).

On July 28, 2009, Petitioner, through her Attorney, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as "Respondent" or "DCPS", denied the student a Free Appropriate Public Education ("FAPE"), in violation of "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)".

The due process hearing convened on September 14, 2009, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003.

II. JURISDICTION

The due process complaint was initiated pursuant to the rights and guidelines established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25.

III. ISSUES

The following issues were identified in the *July 28, 2009* due process complaint:

(1) Whether D.C. Public Schools denied the student a free appropriate public education; by failing to conduct and review triennial evaluations?

(2) Whether D.C. Public Schools denied the student a free appropriate public education; by failing to implement the student's 2007/08 and 2008/09 Individualized Education Programs (IEPs)?

(3) Whether D.C. Public Schools denied the student a free appropriate public education; by failing to develop an appropriate IEP for the student during the 2007/08 and 2008/09 school years?

(4) Whether D.C. Public Schools denied the student a free appropriate public education; by failing to provide the student an appropriate placement from the 2007/08 school year to the present?

(5) Whether D.C. Public Schools denied the student a free appropriate public education; by failing to provide the student access to the student's educational records?

IV. RELIEF REQUESTED

1. Declaratory: DCPS be found to have denied FAPE to the student by failing to timely conduct and review triennial evaluations, failing to implement his IEP, failing to develop appropriate IEPs, failing to provide an appropriate placement, and failing to provide access to a qualified child's educational records.
2. Injunctive:

   a. DCPS immediately to deliver, via certified mail to the Petitioner's counsel, the student's entire cumulative educational file, including all report cards, IEP report cards, progress reports, encounter tracking forms, evaluations, standardized tests, IEPs, and MDT meeting notes, disciplinary records, and transcripts;
   b. Fund and place the student at a full-time special education school of the Petitioner's choosing, with transportation;
   c. Fund independent comprehensive psychological, speech and language, and level III vocational evaluations of the student, each at market rate;
   d. Within 10 days of DCPS' receipt of the last of the independent evaluations, DCPS to convene an MDT meeting to:
      - Review all current evaluations;
      - Review and revise his IEP as appropriate, to include behavior intervention strategies and appropriate postsecondary goals and objectives, and

* *Note: Petitioner withdrew Issue 5 of the complaint and the parties stipulated that triennial evaluations are due; and DCPS authorized Petitioner to obtain independent triennial evaluations.*

- Discuss and determine appropriate compensatory education to address the violations addressed in this proceeding; and
- DCPS to pay reasonable attorney's fees and related costs incurred in this matter.

V. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties; and whether there were any objections to the disclosures. Receiving no objections, the following disclosures were admitted into the record as evidence:

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibit 16; and a witness list dated September 4, 2009.

DISCLOSURES ADMITED INTO EVIDENCE ON BEHALF OF RESPONDENT

- Respondent's Exhibits 01 through Respondent's Exhibits 03; and an amended witness list dated September 14, 2009.

VI. DISCUSSION AND CONCLUSIONS OF LAW

ISSUE 1

Whether D.C. Public Schools denied the student a free appropriate public education; by failing to conduct and review triennial evaluations?

Petitioner represents that the student has been eligible for specialized instruction and related services for at least the last three (3) years; and determined eligible for specialized instruction, speech and language therapy, and psychological counseling.

Petitioner also represents that DCPS has not conducted and reviewed any evaluations of the student during the past three (3) years; and the student was last evaluated in 2004. Petitioner represents that on July 17, 2009, Petitioner, through his Attorney, submitted a written request to DCPS for authorization to obtain independent educational triennial evaluations; and DCPS failed to respond to the request for triennial evaluations.

Respondent represents that at the pre-hearing conference, the parties stipulated that the student's triennial evaluations are overdue and DCPS authorized Petitioner to obtain independent evaluations funded by DCPS, and therefore, there is no relief that can be granted with respect to this issue.

Respondent also represents that Petitioner failed to demonstrate that DCPS denied the student a FAPE with respect to this issue; DCPS presented testimony that when the student enrolled at in or about January 2009, DCPS attempted to evaluate the student, however the student failed to return to school to complete the evaluation process. Respondent also represents that the student admitted that he has not attended school this year, therefore, the student contributed to the delay in completing the evaluations.

Discussion

According to IDEA, 34 C.F.R. §300.303(b)(2) a reevaluation conducted under paragraph (a) of this section ***must*** occur at least once every ***three (3) years***, unless the parent and public agency agree that a reevaluation is unnecessary. There is no evidence that parent or the student, and DCPS agreed that a reevaluation was unnecessary. Therefore, DCPS is required to reevaluate the student at least once every three (3) years.

Findings of Fact

1. The student is a resident of the District of Columbia, and identified as disabled and eligible to receive special education and related services, pursuant to "The Individuals with Disabilities Education Act (IDEA); reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)". The student's disability classification is Emotionally Disturbed (ED).

2. There is no evidence that the student and DCPS agreed that triennial reevaluations were not necessary. Therefore, DCPS is required to reevaluate the student at least once every three (3) years.

3. It remains undisputed that the student's last evaluation was a comprehensive psychological evaluation, completed in May, 2004 therefore, triennial evaluations were due in May, 2007.

4. The parties stipulated that triennial evaluations are due, and DCPS issued an Independent Educational Evaluation letter authorizing the student to obtain independent evaluations.

5. The student was transferred to from in February, 2009, albeit, the enrollment completed in April, 2009. The student's triennial evaluations were due in May, 2007.

   The court acknowledges that the student may have attributed to the delay in DCPS completing the triennial evaluations, since he enrolled at in April, 2009, until such time as the student exited the school. However, the court cannot disregard the fact that triennial evaluations were due in May, 2007, approximately two (2) years prior to the student's enrollment at in April, 2009.

6. DCPS failed to conduct triennial evaluations, at least once every three (3) years, as required by the IDEA.

Conclusion of Law

DCPS failed to conduct triennial reevaluations of the student, at least once every ***three (3) years***, in violation of the IDEA, 34 C.F.R. §300.303(b)(2).

ISSUE 2

Whether D.C. Public Schools denied the student a free appropriate public education; by failing to implement the student's 2007/08 and 2008/09 Individualized Education Programs (IEPs)?

Petitioner represents that since the start of the 2006-07 school year, DCPS failed to provide the student specialized instruction and related services, as recommended in his IEP; and although the student received specialized instruction in the "learning lab", during the 2008/09 school year, he failed to receive 10 hours of specialized instruction in the general education setting, weekly.

Petitioner represents that FAPE is defined as special education and related services provide in conformity with a qualified child's IEP; and DCPS failed to provide services in conformity with the student's IEP over the 2007/08 and 2008/09 school years. Petitioner further represents that as a result, the student was denied FAPE, the resulting harm is evident from the student's transcript which indicates that the student received 16 failing grades over those two school years; his academic achievement scores were between 7 and 8.5 grade levels below where he should have been, and he became increasingly frustrated with his lack of academic success.

Respondent represents that since the student reenrolled at for the 2009/2010 school year, there have been significant changes, including elimination of the open space model, 10 new special education teachers, a new Special Education Coordinator, and the student's IEP can be implemented. Respondent also represents the student's hours of specialized instruction can be increased and services provided outside the general education environment.

Respondent concludes that it is appropriate to consider if a public school can meet the needs of a student prior to considering a private school placement; and the student's placement at comports with the least restrictive environment (LRE) requirements of the IDEA. Respondent also represents that if failed to implement the student's IEP, it was because the student was not present to receive services, however, DCPS made those services available.

Respondent concludes that the Petitioner presented no evidence to support this allegation, or that the student was denied a FAPE, by failing to impellent the student's IEP; and the evidence demonstrates that both could provide all the services on the student's IEP.

Discussion

A free appropriate program or FAPE means special education and related services that are provided at public expense, under public supervision, and without charge; meet the standards of the SEA, include an appropriate school; and are provide in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

To ensure that each eligible student receives a FAPE, the IDEA requires that an Individualized Educational Program (IEP) be developed for children with disabilities; to provide each disabled student with a plan for educational services tailored to that student's unique needs. 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii). The IEP includes services to ensure that students are able to make functional use of what they learn, in addition to ensuring academic growth.

According to IDEIA, 34 C.F.R. §300.15 evaluations are procedures used in accordance with §§300.304 through 300.311 as a means of determining whether a child has a disability and the nature and extent of the special education and related services the student requires. Upon completion of the administration of assessments and other evaluation measures a group of qualified professionals and the parent of the child must meet to determine whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and… *See, IDEA, 34 C.F.R. §300.306(a).*

Once a student is determined disabled and eligible to receive special education services, the public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within ***30 days*** of a determination that the child needs special education and related services; and

(2) *As soon as possible following development of the IEP, special education and related services are made available to the child* in accordance with the child's IEP. *See, IDEA, 34 C.F.R. §300.323 (c)(1).* Related services includes transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, …and training. *See, 34 C.F.R. Section 300.34 and 30 DCMR Section 3001.1.*

Additionally, the D.C. Code of Municipal Regulations, Title 5, §3010.2 (2003), provides that DCPS *shall* implement an IEP *as soon as possible after the meeting where the IEP is developed....*

Findings of Fact

1. The student's March 9, 2005 and May 2, 2006 IEPs recommended 16.5 hours of specialized instruction, 1 hour of counseling, and 1 hour of speech and language services, weekly.

2. The student's June 5, 2007 IEP recommends 15.0 hours of specialized instruction, 1 hour of counseling, and 1 hour of speech and language services. The IEP expired June 5, 2008.

3. The student's April 29, 2008 IEP recommends 5 hours of specialized instruction, 1 hour of psychological services, and 1 hour of speech and language services, weekly.

4. The student attended from the 2006/07 school year until April 2009, when the student was transferred to under the District of Columbia's Safe Haven Program, due to safety concerns for the student at

5. The student testified that he attended school, however, failed to comprehend the information communicated in his classes. The student also testified that he attended classes at both schools, however, failed to receive the requested assistance; and as a result he became increasingly frustrated, curtailed attending class, and since he received no benefit in attending classes, he ultimately decided to discontinue attending school.

6. The former SEC at and football coach testified that the although reevaluations were recommended for the student, the student began the evaluations, however, became frustrated with his inability to comprehend the information in the evaluation, and failed to return to school, or complete the reevaluation process.

   The former SEC also testified that he attempted to place the student on a conduct sheet, however, the student refused to participate, and refused further evaluations. The former SEC testified that the student had low levels of performance, and failed to attend class because he couldn't read; and although the student responded to "talking", at some point academic frustration set in and the student became despondent.

7. The student testified that while attending he was introduced to the Social Worker, however received no counseling services; he recalls meeting with the Social worker to discuss his homework, although unable to recall specific information regarding the for an uncertain number of occasions.

8. The student testified that during two (2) two semesters of the 2008/09 school year; while attending he participated in a Learning Lab Skill Class, administered by a special education teacher, daily, for approximately 1.5 hours per day, 5 days a week, for a total of hours weekly.

   Encounter tracking forms reflect the availability of a Speech and Language Pathologist, and the student was unavailable during the weeks of September 16, 2008, October 6, 2008, November 3, 2008, December 3, 2008, January 9, 2009, February 13, 2009 and March 11, 2009.

Encounter tracking forms also reflect the availability of Behavioral Support Services, during from 4/20/09 through June 1, 2009, although the student was transferred to in February, 2009, and enrolled in April, 2009.

9. It remains undisputed that while attending the a special education the student maintained honor roll status, for three (3) consecutive years, attended class, and exhibited no problematic behavior. However, upon transfer to the D.C. public schools, the student exhibited significant academic regression and regressed behaviorally; failed to thrive; and ultimately decided not to attend school.

10. The fact that the student actually attended and his testimony at the hearing is evidence that the student wants to attend school, however, a school that can adequately meet his educational needs; and provide educational benefit.

    The evidence reflects that the student's poor attendance is a manifestation of his disability, and failure to receive the specialized instruction and related services recommended in his IEP. This is reflected by the fact that the student actually attended classes at and and after failing to receive the necessary support, and failed to attend classes at the school; and is corroborated by the former SEC and football coach.

11. DCPS failed to implement the student's June 5, 2007 IEP, by failing to provide the student 15.0 hours of specialized instruction, 1 hour of counseling, and 1 hour of speech and language services, weekly, from 8/07 through 4/29/08.

12. DCPS failed to implement the student's April 29, 2008 IEP by failing to provide the student 5 hours of specialized instruction, for two (2) of the four (4) semesters of school, weekly; and1 hour of psychological services, and 1 hour of speech and language services, weekly, from April 29, 2008 through April, 2009.

13. DCPS failed to implement the student's 2007/08 and 2008/09 IEPs, by failing to provide the student the level of special education and related services, as recommended in his IEPs.

Conclusion of Law

DCPS failed to implement the student 2007/08 and 2008/09 IEPs, by failing to ensure that as soon as possible following development of the student's IEPs, special education and related services were made available to the student in accordance with the student's IEPs, in violation of IDEA, 34 C.F.R. §300.323 (c)(1); and D.C. Code of Municipal Regulations, Title 5, §3010.2 (2003).

ISSUE 3

Whether D.C. Public Schools denied the student a free appropriate public education; by failing to develop an appropriate IEP for the student during the 2007/08 and 2008/09 school years?

Petitioner represents that the student's May, 2004 Psychological Evaluation diagnosed the student with adjustment disorder with mixed disturbance of emotions and conduct, reading disorder, mixed receptive-expressive language disorder, and borderline intellectual functioning. According to Petitioner, the evaluator recommended that the student receive intensive academic remedial services to address his considerable academic delays s well as individual tutoring; while indicating that the student required a small, structured classroom with a low student to teacher ratio, positive encouragement and guidance.

Petitioner also represents that DCPS drastically reduced the student's prescribed specialized instruction of 16.5 hours per week, prior to the student's graduation from the without completing evaluations to support the reduction in services; and it failed to provide parent any justification for the change in the student's educational program. Petitioner represents that the student immediately began to regress academically, exhibiting a decline in his grades.

Petitioner represents that the IDEA requires that an IEP include a statement of the special education and related services, based on peer-reviewed research to the extent practicable that will be provided in order for the child to advance appropriately toward attaining the annual IEP goals, and to be involved in and make progress in the general education curriculum. *20 U.S.C. §1414(d)(1)(A)(i)(IV).* "Moreover, the LEA must, not less than annually, review a qualified child's IEP to determine whether his annual goals are being achieved, and to revise the IEP as appropriate to address any lack of expected progress.

Petitioner concludes that in this case, even if we assume that DCPS had some justification for its drastic reduction in the student's prescribed services in March 2005, the events between then and the present warranted an increase in services, or some discussion regarding the student's failure to achieve; however, DCPS never revised the student's IEP to address the student's lack of progress. Petitioner also concluded that as a result, the student has been denied appropriate services for years, which is reflected in his grades and academic abilities.

Respondent represents that the student's current IEP is appropriate because the meeting notes indicate that the student made progress and could function in the general education setting; and the student's main hindrance to improving his academic performance is poor attendance. Respondent also represents that a school has met its obligation to provide FAPE, if the IEP is reasonably calculated to enable the student to receive some educational benefit; and Petitioner presented no evidence in support of this allegation.

Respondent also represents that Petitioner offered no evaluations to support a different IEP, or experts to testify that different services were warranted, and the witnesses who testified, parents and student, offered no testimony in this regard. Respondent represents that the only evidence presented is the fact that the student's IEP was changed when the student left the and transferred to Respondent represents that DCPS issued a Prior Notice of Change in Placement indicating the reason for change in placement, that is, the student had made progress and required a less restrictive environment, and the student no longer required a full-time program to address his emotional needs.

Respondent represents that pursuant to D.C. Municipal Code if a student has 10 or more unexcused absences during a single advisory, the student will receive a failure due to absences; and in this instance, the student's transcript clearly reflect that he was absent more than 10 times in all of his classes. Respondent also represents that that student's poor grades do not reflect that the IEP is inappropriate.

Discussion

A free appropriate program or FAPE means special education and related services that are provided at public expense, under public supervision, and without charge; meet the standards of the SEA, include an appropriate school; and are provide in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

To ensure that each eligible student receives a FAPE, the IDEA requires that an individualized education program ("IEP") be developed to provide each disabled student with a plan for educational services tailored to that student's unique needs. 20 U.S.C. §1414(d); 34 C.F.R. §300.300(a)(3)(ii).

According to IDEIA, 34 C.F.R. §300.15 evaluations are procedures used in accordance with §§300.304 through 300.311 as a means of determining whether a child has a disability and the nature and extent of the special education and related services the student requires. Upon completion of the administration of assessments and other evaluation measures a group of qualified professionals and the parent of the child must meet to determine whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and... *See, IDEA, 34 C.F.R. §300.306(a).*

The IEP team must include the parents of the child, not less than one regular and special education teacher of the student; a representative of the public agency who—

(i) Is ***qualified to provide, or supervise the provision of, specially designed instruction*** to meet the unique needs of children with disabilities;
(ii) Is ***knowledgeable about the general education curriculum***; and
(iii) Is ***knowledgeable about the availability of resources*** of the public agency.

(2) ***An individual who can interpret the instructional implications of evaluation results***, who may be a member of the team described in paragraphs (a)(2) though (a)(6) of this section;
(3) At the ***discretion*** of the parent or the agency, other individuals ***who have knowledge or special expertise regarding the child,*** including related services personnel as appropriate; and
(4) Whenever appropriate, the child with a disability.

In developing an IEP for a student, the IEP team must consider: 1) the strengths of the child; 2) concerns of the parents for enhancing the student's education; and 3) results of the initial or most recent evaluation of the student; and academic, developmental, and functional needs of the child. In the case of a child whose behavior impedes the child's learning, as in this case, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. *See, IDEA, 34 C.F.R. §300.324.*

Additionally, to facilitate a student's transfer from another school, the new school has the responsibility to take reasonable steps to promptly obtain the documents and any other records relating to the provision of special education and related services to the child, from the previous public agency in which the child was enrolled. *See, IDEA, 34 C.F.R. §300.323(g).*

Findings of Fact

1. Prior to developing the student's April 29, 2008 IEP, DCPS was aware that during the 2007/08 school year the student exhibited academic regression, problematic behavior, and poor attendance; not evidenced at his prior placement; however, developed an IEP for the student significantly decreasing the student's specialized instruction.

2. DCPS initiated a significant change in the student's educational program, by reducing his specialized instruction from 15 hours weekly to 5 hours weekly, without the benefit of current evaluations to assess the student's current educational needs.

3. At the time that DCPS developed the student's April 29, 2008 IEP, it was aware of the student's problematic behavior during the 2007/08 school year, however, failed to conduct a manifestation determination meeting, or institute interventions and measures necessary to address the student's poor attendance; conduct a Functional Behavioral Assessment (FBA), or include in the IEP a Behavioral Intervention Plan (BIP).

   While attending and DCPS failed to consider the use of positive behavioral interventions and supports, *and other strategies*, to address the student's problematic behavior and failure to attend class, once aware that such behavior impeded the student's learning (i.e. conduct a Functional Behavioral Assessment (FBA), and/or develop a Behavioral Improvement Plan (BIP)).

   The former SEC at testified that the student had low levels of performance, and was advised by the student that he failed to attend class because he is unable to read, however, it failed to address the student's request for assistance in the-

classroom, reading, completing evaluations, and accessing the general curriculum. Instead, DCPS proposed to place the student on a conduct sheet, which the student resisted; and no other efforts were made to address the student's educational needs.

4. While attending DCPS became aware that the student's educational or related services needs, including improved academic achievement and functional performance of the child warranted a reevaluation, however, it failed to conduct triennial evaluations at least once every ***three (3) years***.

5. While attending DCPS failed to review the student's IEP ***periodically***, but not less than annually, to determine whether the annual goals for the student were being achieved.

6. DCPS failed to revise the student's 2007/08 and 2008/09 IEPs, as appropriate, to address the lack of expected progress toward the annual goals, and in the general education curriculum, as appropriate; review the student's academic regression compared to his academic progression at his prior school, where he received more hours of specialized instruction and related services, in a small academic environment; the student's anticipated needs; and other matters such as the students' academic, developmental. and functional needs, within the new general education environment; behavioral interventions, accommodations, modifications, and support services.

7. In developing the student's 2007/08 and 2008/09 IEPs, the IEP team failed to consider: 1) the strengths of the child; 2) concerns of the parents for enhancing the student's education; 3) results of the initial or most recent evaluation of the student; and academic, developmental, and functional needs of the child; and significant academic regression and problematic behavior the student exhibited, not evidenced when the student attended a full-time special education school.

   A review of the student's educational records and history reflect that the student was on the honor roll while at the , consistently for the three (3) years he attended the school, however, since attending D.C. public schools, the student regressed academically and behaviorally, consistently receiving nearly all failing grades during the 2007/08 and 2008/009 school years; refused to cooperate in testing; or attend class.

8. Additionally, while attending parent advised DCPS that it was not its desire that the student participate on the school's football team, and requested that the student focus on academics and his failing grades, however, according to parent's testimony, DCPS disregarded its input and request and placed the student on the football team.

9. Prior to initiating a change in the student's educational program, from a full-time special education program, to a full inclusion program, the May 2, 2006 MDT meeting notes reflect that DCPS determined that the student made progress while-

attending the and therefore, no longer requires a restrictive program,- although continuing to require supportive services to address academic concerns; and the student would attend his neighborhood school.

DCPS rendered the decision to initiate a significant change in the student's educational program, without the benefit of current evaluations; and an individual on the IEP team knowledgeable regarding the educational programs at and The fact that the student made progress in a full-time special education program, with adequate supports and interventions, is not a sufficient basis for determining that the student no longer requires a full-time special education program; and would continue to progress academically and behaviorally, in a full inclusion environment and general education program, with limited support.

The MDT meeting notes also reflect that the student would continue to require counseling services to address emotional concerns, and all services can be provided in the local school. However, the MDT meeting notes failed to reflect a discussion with parent regarding placement options, ability to implement the student's IEP, or provide the student educational benefit.
According to the meeting notes, the decision to place the student at was unilaterally rendered by DCPS; although parent testified that she objected to the proposed placement.

Conclusions of Law

1. To ensure that the student received a FAPE, DCPS failed to develop an individualized education program ("IEP") for the student tailored to the student's unique needs; in violation of 20 U.S.C. §1414(d); and IDEA, 34 C.F.R. §300.300(a)(3)(ii).

2. Prior to initiating a change in the student's educational program, and placement, DCPS failed to complete evaluations as a means of determining whether the student continue to have a disability and the nature and extent of the special education and related services the student requires; in violation of IDEIA, 34 C.F.R. §300.15.

3. In developing the student's 2007/08 and 2008/09 IEPs, the IEP team failed to consider: 1) the strengths of the child; 2) concerns of the parents for enhancing the student's education; and 3) results of the initial or most recent evaluation of the student; and academic, developmental, and functional needs of the child.

   Although aware that the student's behavior impeded his learning, the IEP team failed to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, in violation of the IDEA, 34 C.F.R. §300.324.

4. DCPS developed the student's 2007/08 and 2008/09 IEPs, without the benefit of comprehensive evaluations; and failed to convene an IEP team that included individuals knowledgeable regarding the inclusion programs , and availability of-

resources at in violation of 34 C.F.R. §300.321, and §300.304.

5. DCPS failed to develop an appropriate IEP for the student, based on current evaluations, for two (2) academic school years, denying the student an IEP specifically tailored to address his unique educational needs; access to the general curriculum, and educational benefit.

Decision

It is the Hearing Officers' Decision that DCPS failed to comply with the procedural requirements of the IDEA, in developing, reviewing, and revising the student's IEPs for the 2007/08 and 2008/09 school years; in violation of the IDEA, 34 C.F.R. §300.320 et seq..

ISSUE 4

Whether D.C. Public Schools denied the student a free appropriate public education; by failing to provide the student an appropriate placement from the 2007/08 school year to the present?

Petitioner represents that prior to the 2006-07 school year, the student was quite successful at the which was a full-time, therapeutic school offering small classes, a low student to teacher ratio, and behavior management through the day; and the student was able to thrive academically and behaviorally.

Petitioner also represents that DCPS placed the student at the 2006-07 school year, without discussing with parent the schools' ability to meet the student's needs; and since his placement at , the student has regressed academically and his frustration and attitude toward school worsened. Petitioner also represents that DCP"S never discussed with parent an alternative placement for the student.

Petitioner represents that has never implemented the student's IEP, or provided interventions to enable the student to make academic progress; and the student consistently failed academically during his enrollment at .

Petitioner represents that in April, 2009, during the 2008/09 school years, DCPS transferred the student to due to safety concerns at DCP'S never convened a meeting to discuss and determine with the Petitioner the appropriateness of for the student; or issue a Prior Notice indicating the reasons for the transfer. Petitioner represents that the student experienced the difficulties academically at as experienced at Petitioner concludes that is not an appropriate placement for the student; and since the end of the 2005/06 school year, DCPS failed to provide the student an appropriate placement or educational benefit.

Petitioner concludes that at the start of the 2009/10 school year, DCPS refused to allow the student to enroll at either despite the Petitioner's best efforts to enroll the student. Petitioner also concludes that the LEA is required to ensure that a continuum of alternative placements are available to meet the needs of children with disabilities for special education and related services; and sufficient support and services to enable the student to obtain educational benefit.

Respondent represents that the student's neighborhood school is and the student was transferred to due to safety reasons in the second half of the 2008/09 school year. Respondent also represents that this year, the student reenrolled at which has undergone some changes since last year; indicating that it is no longer an "open space" school; the classrooms are now divided by walls rather than partitions; and it has additional special education teachers and staff to support the needs of special education students.

Respondent also represents that can implement the student's IEP, as written or even if it contains additional hours of specialized instruction, outside of general education. Respondent represents that this placement consideration is proper under D.C. Code §38-2561.02; and comports with the requirement of least restrictive environment, under the IDEA.

Discussion

According to 34 C.F.R. Section 300.116, 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 ***Least Restrictive Environment (LRE)*** provisions of this subpart, including Sections 300.14 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 non-disabled;

(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***;... *Individuals with Disabilities Education Improvement Act of 2004, 34 C.F.R. Section 300.116.*

The LRE requirement also reflects the IDEA's preference that "[to] the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled", and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when ***the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily***." *See also, 34 C.F.R. Section 300.114(a)(2); 34 C.F.R. Section 300.116(a)(2); and D.C. Municipal Regulations Title 5, Section 3011.*

However, IDEA's preference for "mainstreaming" disabled students is not absolute; Section 1412(a)(5) ***permits the delivery of educational services to disabled students in less integrated settings as necessitated by the student's disability***. *A. B. ex rel. D.B. v. Lawson, 354 F.3rd 315, 330 (4th Cir. 2004).*

Findings of Fact

1. The parents testified that it opposed the student attending however, was advised by DCPS that the parent could request special permission for the student to attend another school, however, the student's records would be sent to without discussing placement options, or the school's ability to implement the student's IEP, and provide the student educational benefit. Parent was denied the opportunity to provide "meaningful" input in the placement decision.

2. In February, 2009, Parent was also advised that the student would transfer from under the Safe Haven Program; without providing parent the opportunity for a meeting to discuss the proposed placement, or provide input in the placement decision. Parent was denied the opportunity to provide "meaningful" input in the placement decision, and decisions regarding the provision of a FAPE.

3. DCPS failed to convene an IEP team meeting with a group of persons, ***including the parents***, and other persons ***knowledgeable about*** the child, to discuss the meaning of the evaluation data; ***placement options***; and a decrease in the student's specialized instruction services, prior to initiating a change in the student's placement, and educational program.

4. DCPS failed to issue a Prior Notice when it proposed to initiate a change in the student's placement from within a reasonable period of time prior to initiating the change in the student's placement.

5. DCPS' failed to convene an IEP team meeting with parent, and representatives from knowledgeable regarding the school's educational program; to discuss the student's educational program and proposed placement's ability to implement the student's IEP.

6. DCPS failed to ensure a continuum of alternative placements were available to meet the student's need for special education and related services.

7. The nature of the student's disability is such that education in a general education environment even with the use of curricular modification, accommodation and/or supplemental aids and services cannot be accomplished satisfactorily, which is evidenced by the student's poor academic performance, problematic behavior, and failure to thrive, while attending school in the combination general education/resource classroom setting.

8. The student's placement at for the 2007/08 and 2008/09 school years, were inappropriate. The schools were unable to implement the student's IEPs, or provide the student educational benefit. For two (2) academic school years, DCPS failed to provide the student an appropriate placement.

   DCPS represents that the services for special education students at have improved during the 2009/2010 school year, and additional services are available for the student; and the school can implement the student's IEP. However, the court is not convinced that SHO can implement the student's IEP, or provide the student educational benefit, in a full inclusion educational setting, because of the nature of the student's disability.

9. is a full-time special education therapeutic day program, for students ages 5-21, with disabilities ranging from learning disabled, emotionally disturbed, multiple disabilities, other health impaired, attention deficit hyperactivity disorder, speech and language impaired, mental retardation, and others; with a small student to teacher ratio, and behavior improvement and modification program.

   Related services providers on staff to include: Speech and Language Pathologist, Occupational Therapist, seven full-time behavioral counselors, resources classes where the student can receive assistance with reading, and other academic areas, individual counseling services, certified special education teachers, Summer programs, 2-3 staff per class, one on one support for students, additional support services. can implement the student's IEP, and provide the student educational benefit.

Conclusion of Law

1. In determining the educational placement of the student, DCPS failed to ensure that the placement decision was made consistent with the procedural requirements of the IDEA, 34 C.F.R. §300.116.

2. DCPS failed to ensure that parent was afforded the opportunity to provide "meaningful" input in the placement decision; consistent with the requirements of the IDEA, at 34 C.F.R. §300.116, and 34 C.F.R. §300.501 (c).

3. DCPS initiated a change in the student's educational program, and the provision of a FAPE to the student, without the benefit of current evaluations, and an IEP meeting to review the evaluations, and determine the student's educational needs, prior to initiating a change in his program, in violation of IDEA, 34 C.F.R. §300.306; and §300.503.

4. DCPS failed to ensure a DCPS failed to ensure a continuum of alternative placements were available to meet the student's need for special education and related services; in violation of 34 C.F.R. §300.115.

5. In determining the student's placement, DCPS failed to comply with the least restrictive environment requirements of the IDEA; or consider any ***potential harmful effects on the child*** or on the ***quality of services that he needs***; in violation of the IDEA, 34 C.F.R. Section 300.116.

Decision

It is the Hearing Officer's Decision that Petitioner satisfied its burden by presenting evidence that DCPS failed to provide the student an appropriate placement, during the 2007/08 and 2008/09 school years; in violation of IDEA, 34 C.F.R. §300.116.

Free Appropriate Public Education

It is the Hearing Officer's decision that Petitioner satisfied its burden by presenting evidence sufficient for a finding that the procedural inadequacies in this matter: (1) impeded the child's right to FAPE; (2) significantly impeded the parent's opportunity for "meaningful" participation in all decisions regarding the student's educational program; and (3) deprived the student educational benefit; resulting in substantive harm to the student and his parents, representing denial of a FAPE.

VII. ORDER

Based on the aforementioned, it is hereby:

(1) **ORDERED**, that no later than October 15, 2009, DCPS shall issue student a prior notice of placement for the student to attend and DCPS shall fund the student's placement and transportation to attend and it is further

(2) **ORDERED**, that DCPS shall fund independent comprehensive evaluations, in all areas of suspected disability; and upon receipt of the final independent evaluation, convene an IEP team meeting, to review the evaluations, review and revise the student's IEP, as appropriate, to include behavior intervention strategies and appropriate postsecondary goals and objectives, discuss and determine the student's placement, discuss and determine compensatory education services; and it is further

(3) **ORDERED**, that DCPS shall schedule all meetings through the parent's counsel, Attorney Zachary Nahass, in writing, via facsimile at (202) 742-2098; and it is further

(4) **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Decision and Order, Petitioner's Counsel will contact the Special Education Coordinator at and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

(5) **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further

(6) **ORDERED**, that this decision and order are effective immediately.

XII. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date of this decision.

Ramona M. Justice *9-25-09*

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Laura George, Office of the Attorney General
Attorney Zachary Nahass: Fax: 202-742-2098