District of Columbia

Office of the State Superintendent of Education

Office of Review and Compliance
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OSSE
STUDENT HEARING OFFICE
2010 DEC 28 AM 9:19

Confidential

	HEARING OFFICER'S DETERMINATION
STUDENT[1], by and through his Parent Petitioners, v. District of Columbia Public Schools ("DCPS") Respondent. Case #	Hearing Date: December 17, 2010 <u>Representatives:</u> Counsel for Petitioners: Nicholas Ostrem, Esq. Brown and Associates 1220 L Street, NW Suite 700 Washington, DC 20005 Counsel for DCPS: Assistant Attorney General Linda Smalls, Esq. 1200 First Street, NW Washington, DC 20002 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

[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*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter E30. The Due Process Hearing was convened December 17, 2010, at the OSSE Student Hearing Office 810 First Street, NE, Washington, DC 20003, in Hearing Room 2009.

BACKGROUND:

Student or "the student" is age in the grade and has been determined eligible as a child with a disability under IDEA in need of special education and related services with a disability classification of emotional disturbance ("ED"). The student is attending a DCPS full time special education program for children with the primary disability of ED, hereinafter referred to as "School A."

During the 2009-2010 school year the student was in the fourth grade at a District of Columbia public charter school, hereinafter referred to as "School B," where he received part-time special education services. In June 2010 the student's individualized educational program ("IEP") was revised to prescribe a full-time special education program. DCPS proposed the student be placed at School A. The student began attending School A at the start of the 2010-2011 school year.

On September 17, 2010, Petitioner filed a due process complaint alleging, inter alia, the student's June 2010 IEP was inappropriate and that School A was an inappropriate placement. A resolution meeting was convened October 12, 2010. The matter was not resolved and the parties agreed to proceed to hearing. A pre-hearing conference was conducted on October 19, 2010, and a pre-hearing order was issued on November 5, 2010.[2] The original hearing date was set for November 12, 2010. On November 9, 2010, Petitioner's counsel filed a motion to continue the hearing to allow time for an evaluation to be completed. The motion was granted setting a new hearing date of December 17, 2010.

Petitioner is seeking as a remedy that the student be placed at with DCPS funding and that DCPS be ordered to convene a meeting to review and revise the student's IEP to revise goals and include a revised BIP.

DCPS asserts the student's IEP and placement at School A are appropriate.

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[2] The case was originally assigned to Hearing Officer Frances Raskin. At the resolution session DCPS authorized the parent to obtain and independent psychiatric evaluation based on Petitioner's claim that the student might be in need of a residential placement. Hearing Officer Raskin granted a continuance of the case so the psychiatric evaluation could be completed and reviewed by DCPS prior to the hearing being convened. Hearing Officer Raskin conducted a pre-hearing conference on October 19, 2010, and issued a pre-hearing order on November 5, 2010. In the PHO Hearing Officer Raskin certified the issues to be adjudicated. Hearing Officer Raskin was unable to conduct the hearing due to illness. To avoid any delay in the hearing and issuance of the HOD the parties agreed for the case to be reassigned to this Hearing Officer. The case was reassigned December 16, 2010.

ISSUES: [3]

The issues adjudicated are:

1. Whether DCPS denied the student a FAPE by failing to provide the student an appropriate IEP including goals and objectives and an appropriate behavior intervention plan ("BIP")? [4]

2. Whether DCPS can implement the student's IEP at School A?

3. Whether the student requires a more restrictive setting, i.e. a non-public school or a residential setting?

4. Whether the non-public school Petitioner has proposed as the location of services for the student is appropriate?

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in the parties' disclosures (Petitioner's Exhibits 1-13 and DCPS Exhibit 1-12) that this Hearing Officer admitted into the record and are listed in Appendix A. [5]

FINDINGS OF FACT: [6]

1. The student is ten (10) years old and has been determined eligible as a child with a disability pursuant to IDEA with disability classification of ED. The student is currently in the fifth grade and attends School A, a DCPS full time special education program that

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[3] The alleged violation(s) and/or issue(s) listed in the complaint may not directly correspond to the issue(s) outlined here. However, the parties agreed at the hearing that the issue(s) listed here and as stated in the pre-hearing order are the issue(s) to be adjudicated.

[4] Petitioner's counsel alleged because there was only one goal under each academic area and the related service area the goals were inappropriate. At the outset of the hearing Petitioner's counsel stated there was no BIP in existence for the student. However, the facts alleged in the due process complaint state that DCPS failed to amend the student's BIP. Based on the statements made by Petitioner's counsel this Hearing Officer adjudicated the issue as stated by counsel at hearing that Petitioner alleged there was no BIP.

[5] In their respective disclosure statements Petitioner submitted documents indentified as Petitioner's Exhibits 1- 13 and DCPS submitted documents identified as DCPS Exhibits 1-12. DCPS counsel challenged a number of the documents Petitioner disclosed. DCPS objected to the hand written notes in Petitioner's Exhibit 5. The parties agreed to white out the hand-written notes and admit the document with the notes removed. DCPS also objected to admission of Petitioner's Exhibits 7, 8 & 9 based on relevance to the issues in the complaint. Petitioner's Counsel objected to admission to DCPS Exhibit 2. This Hearing Officer took the objection under advisement and reserved ruling on the objections until issuance of the HOD. The ruling on admission of these challenged documents is noted for the specific document in Appendix A of this HOD.

[6] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by both parties separately the Hearing Officer may perhaps only cite one party's exhibit.

serves students who primarily have the ED classification. During the 2009-2010 school year the student attended School B a DC public charter school. (Petitioner's Exhibits 2-1, 6-1, estimony)

2. A comprehensive psychological evaluation was conducted of the student in August 2009 while in the at School B. The evaluator diagnosed the student with Mood Disorder Not Otherwise Specified ("NOS"), Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder ("ADHD") and Relational Problems NOS. The evaluator determined the student's evaluation scores revealed he was functioning in the Low Average Range cognitively with full scale IQ of 83. The student's academic functioning was on third grade level in Reading, second grade level in Math and second grade level in Written Expression. The evaluator recommended that a multidisciplinary team review all reports and consider a classification of ED/LD in order to meet the student's needs that he be placed in a therapeutically structured environment. (Petitioner's Exhibit 4-7, 4-9, 4-10)

3. On September 21, 2009, School B convened a meeting at School B to review the student's evaluations. The student was determined eligible and the team developed an IEP. The parent participated in the meeting along with her educational advocate. (DCPS Exhibit 7)

4. On April 14, 2010, School B convened an IEP meeting for the student. The IEP team discussed the student being placed in a more restrictive environment due to his behavioral difficulties at school and his lack of academic progress. The team increased the student's school based counseling to two 45 minutes session per week and increased his hours of specialized instruction from 2 hours per week to 8 hours per week. The team agreed to conduct a functional behavior assessment ("FBA") and BIP and to meet prior to end of the school year. (DCPS Exhibit 6)

5. On May 17, 2010, a FBA and BIP were developed for the student. The BIP lists the student's problematic behaviors and interventions that should be instituted to address the behaviors. (Petitioner's Exhibit 5)

6. On June 2, 2010, School B convened an IEP meeting. The parent and her attorney attended. The IEP team reviewed the student's recent evaluations and determined the student's eligibility with ED and learning disabled ("LD") classification. The team developed the student's IEP including the specialized instruction and related services and developed academic and social/emotional goals. The team concluded the student was in need of 30.5 hours per week of specialized instruction and 1.5 hours of counseling. The least restrictive environment ("LRE") section of the IEP states: The team determined the student required a full time services outside the general education setting to manage his behavior concerns. DCPS proposed the student's IEP be implemented at the start of the 2010-2011 school year at School A. There was no objection raised during the meeting to the student attending School A. (DCPS Exhibit 4-1, 4-6, 5-2, 5-3, 5-4, 5-6)

7. The student's current IEP as amended June 2, 2010, contains goals in the academic areas of Math and Reading. With regard to Math the IEP states: (1) the student's Present Level of Performance in Math: [the student] is a 4th grade student. On the Wechsler Individual Achievement Test, Second Edition (WIT) [the student scored a Grade Equivalent of 3.2 Word Reading and 2.2 Numerical Operations. (2) Needs: [the student] needs a highly standard math program in a small group setting with one-on-one pull out to address his weakness in word problems and numerical operations. (3) Impact on the student: [the student's] week working member, processing speed and listening comprehension impact his ability to compete with peers in the regular classroom without the need accommodations. (4) Annual Goal: [the student] will improve his math skills by one grade level by the end of the school year 2011, in the area of numerical operations and word problems and be able to solve 8 out of 10 given problems correctly. Student will improve his math skills by working on 1 digit by 1-digit multiplication problems with 90% accuracy and 2 digits by 2 digits multiplication problems with 70% accuracy. (5) Baseline: [the student's] overall performance level in mathematics is 3.2. Student is able to do some 1 digit by 1-digit multiplication problems and student struggles with doing any 2 digits by 2 digits multiplication problems. The anticipated date of achievement is 6/1/2011. (6) Evaluation procedures and schedule: practice drill/weekly Quiz/biweekly. (DCPS Exhibit 5-2)

8. The student's current IEP contains one goal in the academic area of Reading. With regard to Reading the IEP states: (1) the student's Present Level of Performance in Reading states: [the student] reading score on the Woodcock Johnson III, administered on July 31, 2009, is 88, spelling 99 and writing skills 98. On the Wechsler Individual Achievement Test, Second Edition (WIAT) [the student] scored a Grade Equivalent of 3.2 Word Reading and 2.0 in Reading Comprehension and 4.2 in Spelling. His Listening Expression is 1.8, Listening Comprehension 1.2 and Oral Expression 1.4. (2) Needs: [the student's] weak oral and written expression and reading comprehension require remediation in decoding skills, reading fluency and comprehension skills. (3) Impact on the student: His weakness in reading comprehension, oral listening and written expression impact his ability to compete in the regular education setting without accommodations and specialized instruction. (4) Annual Goal: [the student] will improve his written expression, listening and reading skills by at least one grade level with 805 accuracy and student will be able to identify the main idea of a paragraph with 80% accuracy by June 2011. (5) Baseline: [the student] overall performance is in the low average range. Student currently struggles with being able to identify any main idea when reading paragraphs. (6) Evaluation procedures and schedule: practice drill/weekly Quiz/biweekly. (DCPS Exhibit 5-2)

9. The student's current IEP contains one goal in the area of Emotional Social and Behavioral Development. In this regard the student's IEP states: (1) the student's Present Level of Performance in this area states: [the student] currently has violent temper tantrums is unable to control himself (emotionally, physically) disrupts class activities, is inattentive and does not follow directions given by adults. (2) Needs: [the student's] needs social-emotional coping skills. (3) Impact on the student: [the student's] attention problems and social problems impact his ability to function in regular classroom setting -

psychological intervention. (4) Annual Goal 1 [the student] will improve use of positive, socially accepted coping skills to control his frustration and anger as measured by teachers written evaluation or check list at the end of each quarter with 80% accuracy. (5) Baseline: [the student] has low self-esteem and socialization skills. (6) Evaluation procedures and schedule: checklist/weekly Observation/daily. (DCPS Exhibit 5-3)

10. The student began attending School A at the start of the 2010-2011 school year. The student's classroom at School A has a certified special education teacher and instructional aide. The student is one of six students in his classroom. (testimony)

11. On August 24, 2010, the student's instructional aide was leading the student and a few other students in a reading activity. During the reading activity the student was playing with a paperclip. The instructional aide noticed the student playing with the paperclip and directed him to put it away. The student did not follow directions. Instead, he concealed the paper clip behind his back and stuck the paperclip into the electrical socket behind him. As result, he sustained burns on his hands. The classroom teacher rushed the student to the school nurse for treatment once she and the aide noticed what the student had done. (testimony, DCPS Exhibit 8)

12. On August 25, 2010, School A convened a meeting to address the "paperclip incident." The parent and her educational advocate attended. The team members discussed precautions that would be put in place to address the student's behavior, including covering the wall sockets in his classroom. The team agreed that an updated FBA would be conducted and the student's BIP would be updated. The parent expressed concern about the appropriateness of School A for the student due to his behavior. (testimony, Petitioner's Exhibit 3)

13. Following the August 25, 2010, meeting the parent, through counsel requested DCPS conduct a psychiatric evaluation of the student. DCPS initially declined to conduct the evaluation. After the due process complaint was filed DCPS authorized the parent to obtain the evaluation. (DCPS Exhibit 8 & 9)

14. Following the August 25, 2010, meeting completion of the student's FBA was delayed by his hospitalization. The FBA was completed at the end of October 2010 and School A staff have been awaiting the independent psychiatric evaluation before convening a meeting to review the FBA and review and/or revise the student's BIP. (testimony)

15. On November 30, 2010, an independent psychiatric evaluation was conducted of the student. The evaluator reviewed the student's medical and educational records and conducted an interview of the parent the student and his attending doctor when the student was in a psychiatric hospital earlier in the year. The evaluator concluded the student would benefit from a school that provides behavioral interventions and counseling in a structured therapeutic school setting where he can receive services for both emotional and learning difficulties. The evaluator also concluded the following: the student will benefit from the presence of child psychiatrist on school premises due to his frequent crises and recent hospitalization; his school instruction should be in a structured

classroom setting with a limited student/teacher ratio; he would benefit from individual counseling twice a week for 30 minutes at school; continuing family therapy and counseling outside of school and seeing a psychiatrist to monitor his psychotropic medications to control mood swings and attention problems. (Petitioner's Exhibit 6)

16. The parent has an educational advocate who participated in the student's IEP meetings at School B in June 2010 attempted to observe the student at School A in November 2010. At the time of the observation the student had been sent to the school's alternative behavior classroom ("ABC") for staying in the hall too long when he was allowed to go to the bathroom. When a staff member and the educational aide went to find the student in the ABC room he was not there. As she was later leaving the school the educational advocate saw the student wandering around outside the school and appeared no one knew he was outside. testimony)

17. The parent's educational advocate expressed an opinion at the hearing that the goals in the student's IEP are too few, too broad and do not address the student's needs noted in the student's evaluations. The advocate believes that the IEP reading goals doesn't address reading fluency, written expression or the oral weakness and does not say how the student will increase his skills. She expressed an opinion that the social emotional goal is general and does not state how the student's needs will be addressed. The advocate expressed an opinion that the goals should be more specific and/or include objectives. testimony)

18. The parent's education advocate visited School A on two other occasions during the 2010-2011 school year for other clients who attend School A. As a result of her visits the advocate does not believe School A is a therapeutic setting because she believes it is not structured enough and because the staff did not know where the student was during her visit to the school for her attempted observation. The advocate has visited Accotink, the placement location proposed by Petitioner. In her opinion it is highly structured and has a low student/teacher ratio and is a therapeutic setting because therapy is an essential part of the program. (testimony)[7]

19. During the start of the 2009-2010 school year the parent had a different educational advocate conduct an observation of the student at School A while he was in the school's ABC. During her visit the advocate observed that a fight broke out between other students. Based on her visits, the advocate has the opinion the School A is chaotic, not structured and the students are overly playful and are not immediately redirected by staff. (Petitioner's Exhibit 3)

20. The student has had several psychiatric hospitalizations during 2010 principally for threatening to harm himself. The parent believes the student has been getting in fights at School A and has been jumped on occasion by other students. The student has a history of walking out of school. On one occasion since the student has been at School A the

[7] Petitioner proffered the as an expert in the area of special education; DCPS objected. This Hearing Officer did not designate the witness as an expert but allowed her to provide opinion testimony based on her knowledge and experience with the student.

school staff telephoned the parent to inform her the student left the building. The student walked toward home and the parent saw him in his home neighborhood. (Parent's testimony)

21. The student is displaying the same behaviors at School A as he was displayed at School B. The student displays behavioral problems at home as well. There are intervention workers who come to the home to assist with family counseling. When the student first began attending School A the parent received behavior reports of the student being sent to the ABC almost daily. The reports have since stopped. The parent has not received reports of the student's academic progress since attending School A. The student has expressed to the parent that he doesn't want to go to school. The parent does not believe the School A is appropriate for the student. (Parent's testimony)

22. The student's classroom teacher has found that the student is academically bright but is sometimes defiant and doesn't like to follow directions. He is on grade level based on the recent in school assessments. His classroom teacher cannot recall the student being sent to the ABC room lately. The student reports to the teacher that he is sometimes bothered by some of the other students in the cafeteria in the mornings and may be teased about being overweight. At Schoo A the student is receiving full time specialized instruction and related services as prescribed in his IEP. (testimony)

23. School A is a DCPS full time special education therapeutic public program that serves students with the primary disability of ED. The school has 68 students approximately evenly divided between the school's lower school (grades three through six) and upper school (grades seven and eight). In the lower school there is a single third grade class, a single fourth grade class and two classes of combined fifth and sixth grade students. There are 34 students in the lower school. At School A there are special education teacher and instructional aide in each classroom and a special education teacher and aide in the ABC room along with a behavior technician. School A did not make AYP progress last school year. School A is in the restructuring phase. (estimony)

24. School A has interventions and preventions to assist its students in improving their behavior and emotional status and to assist them to return to their general education school as soon as practicable. School a uses a therapeutic crisis intervention ("TCI") program. The program teaches the students coping strategies in order to reduce behavioral difficulties. School A has an alternative behavior classroom ("ABC"), where students can calm themselves and demonstrate they can return to their classroom. School A uses the Positive Behavior Intervention ("PBI") model which includes a school store and behavior level system from level 4 to 1. Students on level 4 have the most restrictions and those on level 1 have the least in terms use of the school store and other student privileges within the school. School A has a therapeutic staff of social workers and behavior counselors. (testimony)

25. Since arriving at School A the student has displayed significant emotional issues. He can easily be frustrated and can feel that things are happening against him. His academics are proficient but his emotional issues get in his way. The student has had several

behavioral incidents and he instigates and tends to seek out conflict with other students. This behavior is being addressed in his individual and group counseling sessions. He is now on the basketball team and that has helped him work with other students rather than against them. The student has left the school twice. The time he left the school the staff were aware he left and followed him, however, the school policy is not to physical retrain the student unless he is being a danger to himself and/or others. The student has not left the school building since the incident in November 2010 and the staff is on high alert regarding his whereabouts. (testimony)

26. The student goes to the ABC room three to four time per week. It used to be every day. The length of the time varies for the infraction could be a half-day, full day or an hour. The is student is now getting to the point that he will seek out the staff and share what is going on with him. (testimony)

27. The student has been accepted at the . . is private full time special education therapeutic day program located in Springfield, Virginia. provides services to student ages 5 to 21. The school has a low student/teacher ratio, a clinical psychologist, social workers and other related service providers and behavior management counselors. A psychiatric visits the school twice per month and available to the school when needed. The daily cost of the program at is $260. The related services of counseling are billed at $150 per hour The staff has reviewed the student's evaluations and IEP. The student interviewed with several staff members and spent the day at Accotink attending classes. The student did well on the school's behavior management program the day he visited. He participated in the seventh student in the classroom that has one teacher and two assistants. (testimony, Petitioner's Exhibit 11)

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").

34 C.F.R. § 300.17 provides that 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. 300.320 through 300.324.

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. [8] *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: Whether DCPS denied the student a FAPE by failing to provide the student an appropriate individualized educational program ("IEP") including goals and objectives and an appropriate BIP? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.320 provides:

> 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 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;... (3) A description of-- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
> (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child-- (i) To advance appropriately toward attaining the annual goals; (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
> (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;

34 C.F.R. §300.323 provides in pertinent part:

> (e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either- (1) Adopts the child's IEP from the previous public agency; or (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in Sec. Sec.

[8] 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.

300.320 through 300.324.

The evidence in this case clearly demonstrates that the student's IEP contains the elements that are prescribed in 34 C.F.R. § 300.320. Although the student has one goal in each academic and related services area the goals as stated clearly delineates what the student is to achieve, by when and how frequently the student's progress will be measured and by what means it will be measured. The IEP that was developed for the student at School B is being implemented at School A and there was no apparent need for the IEP to be modified once he arrived at School A. Although testified that the IEP does not specifically state the educational and therapeutic techniques that will be used to assist the student in reaching the stated goals beyond providing him specialized instruction and counseling services, there is no specific requirement that Petitioner has pointed to that would require such detail in the student's IEP.

The student's academic and social emotion goals could perhaps be more defined, more specific and could perhaps encompasses more of the student's needs as outlined in his various evaluations. This could be achieved perhaps by the educational advocate participating in an IEP meeting and making suggestions regarding the goals. However, estimony was not sufficient for this Hearing to conclude that Petitioner had sustained the burden of proof that the IEP goals were in appropriate in the face of clear evidence that the goals meet the standards of 34 C.F.R. § 300.320. Thus, this Hearing Officer concludes Petitioner failed to sustain the burden of proof by a preponderance of the evidence. Consequently, this Hearing Officer concludes DCPS has not denied the student a FAPE.

With regard to the student's BIP Petitioner's counsel stated at the outset of the hearing that the allegation was that there was no BIP developed for the student. The evidence clearly demonstrates that both a FBA and BIP were completed for the student while he was attending School B. Thus, the Hearing Officer concludes Petitioner did not sustain the burden of proof on this element of the claim. In addition, School A agreed to revise the BIP at the August 25, 2010, meeting. credibly testified that the FBA was delayed because of the student's hospitalization and School A was awaiting receipt of the student's psychiatric evaluation to review of the student's BIP. This seems to this Hearing Officer a legitimate and reasonable reason for the BIP to not have yet been reviewed and/or revised.

Issue 2: Whether DCPS can implement the student's IEP at School A? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Ms. Townsend and credibly testified that School A is a therapeutic day program designed to meet the needs of students with emotional disturbance and is an academic setting with a low student/teacher ratio and with therapeutic interventions and supports to address the student's academic and social emotional needs. Their testimony credibly established the student is receiving the specialized instruction and related services that are prescribed in the student's IEP and that School A meets the student's IEP LRE for a full time services outside the general education setting to manage his behavior concerns. Although the parent's education advocates testified as to their opinions of what a therapeutic program is and that School A does not meet their definition, this Hearing Officer did find their testimony credible in this regard and their testimony did not sufficiently counter testimony.

is a clinical psychologist with years of experience in administering therapeutic programs. Her testimony of the interventions, therapeutic and academic supports that are available at School A were far more credible and detailed that the antidotal incidents the Dr. and elated on the view visits to School A. credibly testified that the student has behavioral difficulties when he first arrived at School A, but his behaviors have begun to improve as time has passed and he has become more accustomed to the staff and the staff more accustomed to him. The Hearing Officer concludes, therefore, that Petitioner has failed to sustain the burden of proof that School A cannot implement the student's IEP or is otherwise an inappropriate placement for the student.

Issue 3: Whether the student requires a more restrictive setting, i.e. a non-public school or a residential setting? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.114 provides:

> (1) Except as provided in Sec. 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and Sec. Sec. 300.115 through 300.120. (2) Each public agency must ensure that--
> (i) 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 nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The student's IEP indicates that the LRE is a full time special education therapeutic program with a low student/teacher ratio. There was no evidence the student is in need of a more restrictive environment such as a residential placement. The student's recent psychiatric evaluation does not recommend such a placement. This Hearing Officer has concluded that School A can implement the student's IEP and is an appropriate program for the student, thus this Hearing Officer concludes based on the provisions of DC Code § 38-2561.02 (b) and (c)[9] that DCPS has provided the student an appropriate placement and that Petitioner failed to sustain the burden of proof that the student's IEP cannot be implemented at School A, a public program, and that he is need of a private educational placement.

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[9] DC Code § 38-2561.02 (b) DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this chapter and the IDEA. (c) Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;(2) Private or residential District of Columbia facilities; and (3) Facilities outside of the District of Columbia.

Issue 4: Whether the non-public school Petitioner has proposed as the location of services for the student is appropriate? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence that the student's placement at the proposed non-public school is warranted.

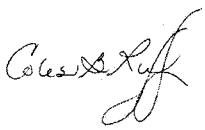
Although Petitioner presented evidence that Accotink Academy can implement the student's IEP and is a therapeutic full time special education program based on conclusions above this Hearing Officer concludes that School A is an appropriate placement for the student and the student's placement at Accotink Academy, although it meets the requirements of an appropriate placement for the student, is not warranted.

ORDER:

The due process complaint filed in the matter on September 9, 2010, is hereby dismissed with prejudice.

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. §1415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: December 27, 2010