

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Student Hearing Office  
810 First Street, NE, Second Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
October 23, 2013

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Petitioner,

Hearing Officer: Kimm Massey, Esq.

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Respondent.

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**HEARING OFFICER DETERMINATION**

**BACKGROUND AND  
PROCEDURAL HISTORY**<sup>1</sup>

Student attends ninth grade at a DCPS senior high school. On August 8, 2013, Petitioners filed a Complaint against Respondent District of Columbia Public Schools. On August 22, 2013, DCPS filed its Response to the Complaint.

The parties participated in a Resolution Meeting on August 29, 2013. There was no agreement, but the parties agreed not to prematurely end the resolution period. Therefore, the 45-day timeline began on September 8, 2013 and will end on October 22, 2013, which is the HOD deadline.

On September 27, 2013, the hearing officer conducted a prehearing conference and determined, in a October 7, 2013 Prehearing Order, that the claims to be adjudicated, defenses asserted, and relief requested were as follows: ***Petitioners' Claims:*** (1) Alleged failure to provide an appropriate IEP in March 2013 (because there is an insufficient number of hours of specialized instruction and the goals are not based on Student's needs, with Petitioner contending Student was given 12.5 hours but should have been given full time out of general education). (2) Alleged failure to provide an appropriate IEP in June 2013 (for the same reasons – i.e., insufficient number of hours of specialized instruction outside of general education in accordance with team determination and the goals are not based on Student's needs; and also the alleged failure to take into account Student's lack of progress, new evaluation data, and teacher collected data). (3) Alleged failure to provide an appropriate placement for SY 12/13 (because Student did not receive meaningful education benefit even though an allegedly inappropriate IEP was being implemented). (4) Alleged failure to offer a location of services and placement for SY 13/14 (although DCPS mentioned Anacostia, it never actually assigned him there by Prior Written Notice and didn't offer anything else either; Anacostia was contingent upon getting the 26 hours IEP). (5) Alleged failure to issue a Prior Notice of placement for Anacostia or elsewhere (a procedural argument). ***DCPS Defenses:*** (i) Petitioner alleges that DCPS failed to provide the student an appropriate IEP in March 2013. The IEP team including the parent met on March 12<sup>th</sup>

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<sup>1</sup> This section sets forth only the basic procedural history. Other events, including motions practice, may have taken place that are not listed here.

2013. The team determined the student required 12.5 hours per week of specialized instruction inside the general education setting and 75 minutes per week of specialized instruction outside the general education setting in reading. The IEP is appropriate and based on Student's educational needs. (ii) Petitioner alleges that DCPS failed to provide the Student an appropriate IEP in June 2013. The IEP team agreed to amend the Student's IEP to include 26 hours outside the general education setting. The parent's advocate instructed the parent not to sign the amended IEP because it didn't provide the 27.5 hours requested by Parent. The IEP now reflects the hours agreed upon at the March 2013 meeting, and the goals are individually tailored to meet Student's needs. (iii) Petitioner alleges DCPS failed to provide the Student an appropriate location of services during the 2012-2013SY. Student attended Burroughs which was an appropriate location of service that could implement the Student's IEP. (iv) Petitioner alleges DCPS failed to provide the Student an appropriate location of service for the 2013-2014SY. DCPS indicated that Anacostia Senior High School could implement the proposed IEP for the upcoming school year. The parent refused to sign the amended IEP and to visit Anacostia. (v) Regarding the claimed failure to issue a PWN for SY 2013/14, DCPS issued a PWN reflecting the decision not to change Student's IEP and placement. **Relief Requested:** (1) DCPS to fund the Student's tuition and transportation at a non-public school (New Beginning's Vocational School) and issue a Prior Written Notice; (2) After thirty days of Student attending the new school, DCPS to convene an IEP team meeting to revise Student's IEP goals, revise Student's hours of specialized instruction to a minimum of 27.5 hours of specialized instruction outside the general education setting. (3) DCPS to fund either the compensatory education plan presented by Petitioner or, in the alternative, the compensatory education plan developed by the hearing officer.

By their respective letters dated October 7, 2013, Petitioners disclosed thirty-three documents (Petitioner's Exhibits 1-33) and DCPS disclosed sixteen documents (Respondent's Exhibits 1-16).

The hearing officer convened the due process hearing on October 15, 2013, as scheduled.<sup>2</sup> All documents disclosed by the parties were admitted into the record without objection. Thereafter, the hearing officer received Petitioner's opening statement, DCPS reserved its opening statement to the start of its case, and Petitioner began presenting its testimonial evidence. Near the end of the day, Petitioner allowed DCPS to present one witness out of turn, because the witness had been waiting for most of the afternoon to testify. The hearing officer then adjourned the hearing for the day.

The hearing officer reconvened the hearing on October 16, 2013, and received testimony from Petitioner's final witness. After Petitioner rested, DCPS presented the testimony of three more witnesses, then the hearing officer received closing statements and brought the hearing to a close.

The due process hearing was convened and this Hearing Officer Determination is written pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., the implementing regulations for IDEIA, 34 C.F.R. Part 300, and Title V, Chapter 30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

## ISSUE(S)

1. Did DCPS fail to provide an appropriate IEP in March 2013?
2. Did DCPS fail to provide an appropriate IEP in June 2013?
3. Did DCPS fail to provide an appropriate placement for SY 12/13?
4. Did DCPS fail to offer a location of services and placement for SY 2013/14?
5. Did DCPS's fail to issue a Prior Notice of placement for any school for SY 2013/14?

## FINDINGS OF FACT<sup>3</sup>

1. Student is fourteen years old, and he is currently attending DCPS high school 1.<sup>4</sup>
2. Student currently functions on a second grade level in reading, on a fifth to sixth grade level in math, and on a third grade level in written language. Student's overall academic skills and fluency with academic tasks are within the very low range.<sup>5</sup>
3. In addition to the educational achievement data from a May 31, 2013 Woodcock Johnson III assessment set forth in Paragraph 2 above, DCPS also has DC-CAS evaluation data indicating that Student progressed from Below Basic in math during SY 2010/11, to Basic in SY 2011/12, to Proficient in SY 2012/13, although he remained Below Basic in reading for all three named school years.<sup>6</sup> DCPS also has mClass assessment data indicating that during SY 2012/13 Student was performing at or about the same level in math as his peers in his class, in his school, and in the District, although he continued to perform significantly below the averages for his peers in his class, in his school, and in the District in language arts.<sup>7</sup>
4. The administrative record for this case does not include Student's IEP for August through March of SY 2012/13 – that is, Student's 2012 IEP. However, Student's 2010 and 2011 IEPs required him to receive 15 hours per week of specialized instruction outside general education, in addition to speech and language services.<sup>8</sup>
5. Student's January 25, 2013 Progress Report indicates that he received the following grades for the first and second quarters: Algebra 1 MS – C and C-; English – D and D; U.S. History and Geography – D and D; Science 8 – A and D; Advisory MS – B; and Spanish – grade illegible.<sup>9</sup> The administrative record does not contain Progress Reports for the third and fourth quarters of SY 2012/13.

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<sup>3</sup> To the extent that the hearing officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, then the hearing officer has taken such action based on the hearing officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>4</sup> Testimony of Parent; testimony of paralegal.

<sup>5</sup> Petitioner's Exhibit 15.

<sup>6</sup> Respondent's Exhibit 8.

<sup>7</sup> Petitioner's Exhibit 22.

<sup>8</sup> See Petitioner's Exhibits 4 and 5.

<sup>9</sup> Petitioner's Exhibit 21.

6. Student's IEP Progress Reports for the second half of SY 12/13 indicates that for reporting period 3 Student was Progressing on one of his math goals but otherwise made No Progress on all of his other academic goals. Similarly, for reporting period 4 Student was Progressing on one of his reading goals but otherwise made No Progress on all of his other academic goals.<sup>10</sup> The administrative record does not contain IEP Progress Reports for reporting periods 1 and 2 of SY 12/13.
7. Student's current IEP, dated March 12, 2013, identifies Student's primary disability as Specific Learning Disability and requires Student to receive 12.5 hours per week of specialized instruction in general education, 75 minutes per week of reading instruction outside general education, and 90 minutes per month of speech-language pathology services outside general education.

The IEP contains four annual goals for the academic area of math, four annual goals for the academic area of reading and two annual goals for the academic area of written expression, as well as communication/speech and language goals. The goals in each academic area, with certain limited exceptions, track word for word the 8<sup>th</sup> grade common core standards that are listed directly under them. The exceptions are Student's fourth annual goal for math, which repeats the common core standard that the third math goal tracks verbatim; the fourth annual goal for reading, which is an exact duplicate of the third annual goal, which in turn, tracks verbatim an 8<sup>th</sup> grade common core standard; and the second annual goal for written expression, which requires Student to "revise writing for word choice using a variety of references, appropriate organization, consistent point of view, and transitions among paragraphs, passages, and ideas," although the baseline information indicates that Student "is able to write a basic sentence."

A sampling of other goals reveal that one of the math goals require Student to know that numbers that are not rational are called irrational, understand that every number has a decimal expansion, for rational numbers show that the decimal expansion repeats eventually, and convert a decimal expansion which repeats eventually into a rational number, while the baseline information indicates that Student "is able to solve simple mathematical equations." Similarly, one of the reading goals require Student to determine the meaning of words and phrases as they are used in a text, including figurative, connotative, and technical meanings, and analyze the impact of specific word choices on meaning and tone, including analogies or allusions to other texts, while the baseline information indicates that Student "is able to decode basic words."<sup>11</sup>

8. The annual academic goals in Student's IEP are too complicated for Student given his current level of functioning and do not relate to the baseline levels of performance stated in the IEP, which indicates that Student is below grade level in all academic areas.<sup>12</sup>
9. Fifteen minutes per day of reading instruction outside general education is insufficient to enable Student, a 9<sup>th</sup> grader who reads on a second grade level, to make adequate progress in reading.<sup>13</sup>
10. At Student's March 12, 2013 IEP meeting, Parent indicated that she did not want Student to attend DCPS high school 1 because of shootings in that area, and Parent mentioned the

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<sup>10</sup> Petitioner's Exhibit 9.

<sup>11</sup> Petitioner's Exhibit 6.

<sup>12</sup> See testimony of educational advocate.

<sup>13</sup> See testimony of educational advocate.

requested private school as a possibility because three of her other children attend that school. When Student stated that he would be interested in attending DCPS high school 2, Parent agreed with that school, DCPS called to confirm that Student could register there, and Parent stated that she would register Student at DCPS high school that afternoon but never did so. Although Student's poor attendance was discussed, there was no discussion of any attendance interventions that could be implemented.<sup>14</sup>

11. On March 12, 2013, DCPS issued a Prior Written Notice ("PWN"), which indicated that Student meets the criteria to be identified as a student with a disability under IDEA, that Student's disability is SLD, that Student will be receiving 15 minutes per day of specialized instruction in reading outside of general education, and that Parent stated that she would take Student to DCPS high 2 instead of DCPS high school 1, which is his home school.<sup>15</sup>
12. At Student's June 17, 2013 meeting, the team discussed Student's excessive absences but agreed to increase Student's specialized instruction to 26 hours per week outside general education and place Student at DCPS high school 3. The advocate and Parent disagreed with the recommended increase in the IEP hours, stating that they wanted 27.5 hours of specialized instruction outside of general education and that DCPS high school 3 could not implement 26 hours outside general education because it is a full inclusion school. Although DCPS was willing to begin the IEP amendment process to provide 26 hours on the IEP, DCPS was not willing to increase the IEP hours to 27.5 hours. When Parent and the advocate continued to disagree with the proposed 26 hours, DCPS determined to move forward with Student's existing IEP, which the team believed was sufficient to address Student's needs if he would only attend school more regularly. DCPS also advised Parent that DCPS high school 1 is Student's feeder school.<sup>16</sup>
13. Under an IEP that provides 26 hours per week of specialized instruction outside general education, Student would interact with nondisabled students during lunch and during specials, such as art and music.<sup>17</sup> There are no concerns about Student's ability to interact with his nondisabled peers.<sup>18</sup>
14. The IEP team at Student's June 17, 2013 meeting never discussed or determined Student's least restrictive environment ("LRE") or whether Student could function in a regular DCPS high school with full time special education support in general education.<sup>19</sup>
15. On June 17, 2013, DCPS issued a PWN informing Parent that DCPS was not going to amend Student's IEP to increase the amount of specialized instruction service hours to 26 hours per week, noting that "parent/advocate" disagreed with the increase and wanted 27.5 hours of specialized instruction outside of general education.<sup>20</sup>
16. DCPS high school 3, which DCPS proposed for Student at the June 17, 2013 IEP meeting, offers a self-contained special education program for students with SLD. The

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<sup>14</sup> Respondent's Exhibit 4; testimony of paralegal; testimony of special education teacher.

<sup>15</sup> Petitioner's Exhibit 7; Respondent's Exhibit 5.

<sup>16</sup> Respondent's Exhibit 2; *See* Petitioner's Exhibit 10, testimony of paralegal; testimony of special education teacher.

<sup>17</sup> Testimony of special education teacher.

<sup>18</sup> Testimony of paralegal; testimony of teacher.

<sup>19</sup> Testimony of paralegal; testimony of special education teacher.

<sup>20</sup> Petitioner's Exhibit 11; Respondent's Exhibit 3.

program is housed in a separate side of the school building on the second floor where there are only nondisabled students. The program offers small class sizes with a teacher, teacher's aide and behavioral technician in each class. There are also two social workers and two deans on the floor. The program offers up to 26 hours per week of specialized instruction, but some of the students in the program only attend the program for half of each day and go to general education classes the rest of the day because they are working on decreasing their LRE.<sup>21</sup>

17. The requested private school is a full-time special education program located in the District. The school offers a year-round program, it services 14 to 22 year olds with a range of disabilities, and it offers small classrooms with small class sizes. The school has a full Certificate of Approval from OSSE.<sup>22</sup>

18. Petitioner is requesting the requested private school as both relief for the denial of FAPE and compensatory education.<sup>23</sup>

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). In this regard, IDEA does not require a departure from the ordinary default rule that plaintiffs bear the risk of failing to prove their claims. *See id.*; *Ridley School District v. M.R.*, 680 F.3d 260, 269 (3<sup>rd</sup> Cir. 2012); *L.E. v. Ramsey Board of Educ.*, 435 F.3d 384, 391 (3<sup>rd</sup> Cir. 2006). Now, for a consideration of Petitioner's claims, which will be grouped together as appropriate.

#### **Alleged Failure to Provide an Appropriate IEP in March 2013 and June 2013**

The FAPE required by IDEA is tailored to the unique needs of a disabled child by means of the IEP. *See Board of Education of the Hendrick Hudson Central School District, Westchester County, et. al. v. Rowley*, 458 U.S. 176 (1982). Hence, the requirement to provide a FAPE is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Rowley*, 458 U.S. at 203. The IEP must also be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. *Id.*

When revising a student's IEP, the IEP team must revise the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate, the results of any reevaluation, information provided by the child's parents, the child's anticipated needs, and other matters. 34 C.F.R. § 300.324(b)(1). Moreover, in the case of a child whose behavior impedes the learning of the child or others, the team must also consider

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<sup>21</sup> Testimony of SEC at DCPS high school 3.

<sup>22</sup> Testimony of private school director of academic programs.

<sup>23</sup> *See* Petitioner's Exhibit 1.

the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 34 C.F.R. § 300.324(a)(2).

In determining whether a Student's IEP is appropriate, the hearing officer must determine (1) whether the LEA has complied with the procedures set forth in IDEA, and (2) whether the IEP developed through IDEA's procedures was reasonably calculated to provide Student with educational benefits. *See Rowley, supra*. In turn, in determining whether an IEP is reasonably calculated to provide educational benefit, the measure and adequacy of the IEP is to be determined "as of the time it is offered to the student." *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1149 (10<sup>th</sup> Cir. 2008), *cert. denied*, 555 U.S. 1173 (2009).

In the instant case, there is only one IEP at issue – a March 12, 2013 IEP, but Petitioner asserts that DCPS failed to provide an appropriate IEP in March 2013 when it developed the IEP and also failed to provide an appropriate IEP in June 2013 by failing to revise or amend the March 2013 IEP. Petitioner asserts that Student's IEP is inappropriate because the IEP goals merely recite common core standards instead of addressing Student's specific needs and deficits, the general education setting provided is inappropriate for Student because he required all instruction outside of general education, and the amount of specialized instruction provided, including the 15 minutes per day of reading instruction, was insufficient to address Student's significant deficits. Petitioner further asserts that at the June 17, 2013 meeting, DCPS failed to conduct an LRE discussion and merely offered 26 hours, failed to offer any details regarding DCPS high school 3, failed to take into account Student's recent educational evaluation in determining the number of hours of specialized instruction to offer, and only offered 26 hours because that is the level of services DCPS high school 3 could provide.

DCPS disagrees with Petitioner's position, relying in part upon the testimony of Student's former teacher that the IEPs were appropriate. However, the hearing officer has concluded that the teacher's testimony was not credible, and therefore, no weight has been assigned to that testimony. DCPS also argues that Student's IEP goals were based on common core standards because that is a requirement in the District and across the country, and that Student does not need to be totally separated from his nondisabled peers.

The evidence in this case is conflicting in some respects. On the one hand, by the end of the first semester of SY 12/13, Student was making grades ranging from B to D with mostly Ds. However, by the end of the third reporting period and the end of the school year, Student had made basically no progress at all on his IEP goals. (It should be noted that no Progress Reports were provided for the second half of the year, and no IEP Progress Reports were provided for the first half of the school year.) Similarly, there was assessment data indicating that student was performing at or about the level of his peers in math although he continued to perform well below grade level in reading, but later assessment data collected at the end of May 2013 indicated that student was performing below grade level in math and significantly below level in reading and written language. Given this conflicting evidence, as well as the absence of any definitive evidence indicating the amount of and setting for the specialized instruction required under Student's 2012 IEP, the hearing officer concludes that there is insufficient evidence to determine whether Student's March 2013 IEP is inappropriate because the amount of specialized instruction required and the setting in which the instruction is to be provided are insufficient to meet Student's needs.

The hearing officer further concludes that given the conflicting assessment data for Student, the evidence fails to definitively prove that DCPS failed to provide Student with an appropriate IEP in June 2013 by failing to take into account the results of the May 2013 educational assessment

results. In reaching this decision, the hearing officer acknowledges but is not persuaded by Petitioner's argument that the June 2013 IEP team determined that Student requires a minimum of 26 hours but failed to provide an IEP providing same, because the evidence proves that the team never made an LRE determination for Student at either IEP meeting and agreed to increase the IEP hours at the June meeting to accommodate Parent although the team did not believe the increase was necessary to ensure the provision of a FAPE.

With respect to the annual academic goals contained in Student's March and June 2013 IEPs, however, the evidence is clear that the goals merely recite verbatim certain 8<sup>th</sup> grade common core standards,<sup>24</sup> that the goals are not related to the baseline levels of performance set forth in the IEP, and that the goals are too complicated for Student in light of his current levels of functioning. Hence, the hearing officer concludes that Petitioner has met its burden of proving that the March and June 2013 IEPs are inappropriate for failure to contain appropriate annual academic goals for Student. The hearing officer further concludes that the evidence in this case proves that DCPS also denied Student a FAPE by failure to comply with some of IDEA's procedures in connection with the revision of Student's IEP because Student's poor attendance was impeding his academic progress, but the team failed to consider the use of interventions and supports to address that behavioral issue, and the team failed to make an LRE determination for Student in connection with his March 2013 IEP.

To remedy the denials of FAPE found herein, the hearing officer will order DCPS to convene an IEP meeting for Student to revise his IEP to ensure that it contains annual academic goals that do not recite word for word the common core standards and are instead tailored to meet Student's individual academic needs, to consider the use of and, if appropriate, revise the IEP to include interventions and supports to address Student's poor attendance and its negative impact on his academic progress, and to discuss and determine Student's LRE for the current school year as well as an appropriate location of services for implementation of the revised IEP.

### **Appropriateness of Placement for SY 12/13**

Under IDEA, a public agency must provide an appropriate educational placement for each child with a disability, so that the child's needs for special education and related services can be met. See 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. Hence, a FAPE consists of special education and related services that, *inter alia*, include an appropriate secondary school and are provided in conformity with the Student's IEP. See 34 C.F.R. § 300.17. However, the term "placement" refers to the overall educational program offered to the disabled student, not the mere location of the program. *Roher v. District of Columbia*, 1989 WL 330800, \*3 (D.D.C. 1989); see also, *White v. Ascension Parish School Board*, 343 F.3d 373, 379 (5<sup>th</sup> Cir. 2003) (citations omitted) ("[e]ducational placement," as used in the IDEA, means educational program—not the particular institution where the program is implemented); *A.K. v. Alexandria City School Board*, 484 F.3d 672, 680 (4<sup>th</sup> Cir. 2007) ("educational placement" as used in stay put provision refers to overall educational environment rather than precise location where disabled student educated) (citing *AW v. Fairfax County School Board*, 372 F.3d 674, 676 (4<sup>th</sup> Cir. 2004)).

In the instant case, Petitioner argues that Student's overall educational program for SY 2012/13 was inappropriate because Student performed poorly that school year and, in general, made no

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<sup>24</sup> With respect to DCPS's argument that the District requires IEP goals to be based on common core standards, although the hearing officer offers no opinion on that assertion, the hearing officer notes that there is a difference between basing goals on common core standards and developing goals that merely reiterate word for word particular common core standards.

academic progress. However, as noted above, the evidence in this case is conflicting with respect to whether and to what extent Student made progress during SY 12/13. Moreover, the administrative record does not include Student's 2012 IEP, so there is no definitive evidence of Student's programming for SY 12/13 – that is, the amount of and setting for the specialized instruction Student's IEP team had determined he was to receive. Under these circumstances, the hearing officer concludes that there is insufficient evidence to determine whether Student's placement for SY 12/13 was appropriate. As a result, Petitioner has failed to meet its burden of proof on this claim.

### **Alleged Failure to Offer a Location of Services for SY 13/14 and Issue a Prior Notice of Placement**

As noted above, under IDEIA, a public agency must provide an appropriate educational placement for each child with a disability, so that the child's needs for special education and related services can be met. *See* 34 C.F.R. § 300.17; 34 C.F.R. §§ 300.114-300.120. Hence, a FAPE consists of special education and related services that, *inter alia*, include an appropriate secondary school and are provided in conformity with the Student's IEP. *See* 34 C.F.R. § 300.17.

Moreover, under IDEA, a public agency must also ensure that each disabled child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. 34 C.F.R. § 300.116(b). Unless the disabled child's IEP requires some other arrangement, the child is to be educated in the school that he or she would attend if nondisabled. 34 C.F.R. § 300.116(c). In selecting the LRE, consideration is to be given to any potential harmful effect on the child or on the quality of the services that he or she needs. 34 C.F.R. § 300.116(d). Finally, a disabled child is not to be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. § 300.116(e).

A public agency must provide written notice to the parents of a disabled student a whenever it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. 34 C.F.R. § 300.503(a).

In the instant case, Petitioner argues that DCPS failed to offer any location of services at all for SY 13/14 and failed to issue a Prior Notice of Placement specifying the school that had been selected to implement Student's current IEP. However, the evidence in this case reveals that DCPS indicated at Student's March and June 2013 meetings that DCPS high school 1 was the school that Student would be expected to attend for implementation of his IEP in SY 13/14, and indeed, Student is currently attending DCPS high school 1. Although DCPS did not issue a PWN specifying DCPS high school 1 as Student's location of services for SY 13/14, the hearing officer concludes that the failure to do so is a mere procedural violation that did not result in a denial of FAPE because (1) Parent stated her objection to DCPS high school 1 at the March meeting, and on Student's suggestion and Parent's agreement, DCPS agreed that Student could attend DCPS high school 2 instead but Parent failed to register Student for DCPS high school 2, and (2) Student ultimately ended up at DCPS high school 1, his assigned location of services, anyway. *See, e.g.,* 34 C.F.R. § 300.513(a)(2) (hearing officer may find denial of FAPE only where procedural inadequacies impeded child's right to FAPE, impeded Parent's opportunity to participate in decision-making, or caused deprivation of educational benefit); *Lesesne v. D.C., 447 F.3d 828 (D.C. Cir. 2006)* (only procedural violations that result in loss of educational opportunity or seriously deprive parents of their participation rights are actionable). Under these

circumstance, Petitioner has failed to meet its burden of proving a denial of FAPE in connection with this claim.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

1. Within 15 school days of the issuance of this Order, DCPS shall convene an IEP meeting for Student to revise his IEP so that it contains annual academic goals that do not recite word for word the 8<sup>th</sup> grade common core standards and are instead tailored to meet Student's individual academic needs; to consider the use of, and if appropriate, revise the IEP to include interventions and supports to address Student's poor attendance and its negative impact on his academic progress; and to discuss and determine Student's LRE for the 2013/14 school year as well as an appropriate location of services for implementation of the revised IEP.
2. DCPS shall direct all communications regarding scheduling of the meeting required in Paragraph 1 above to **both** Parent and Petitioner's counsel.
3. All remaining claims and requests for relief in Petitioner's August 8, 2013 Complaint are **DENIED**.

### **NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

Date: 10/22/2013

/s/ Kimm Massey

Kimm Massey, Esq.  
Hearing Officer