

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Student Hearing Office
October 31, 2013

PETITIONER,
on behalf of STUDENT,¹

Date Issued: October 30, 2013

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the “Petitioner” or “MOTHER”), under the Individuals with Disabilities Education Act, as amended (the “IDEA”), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“DCMR”). In her Due Process Complaint, Petitioner alleges that Respondent District of Columbia Public Schools (“DCPS”) has denied Student a free appropriate public education (“FAPE”) by changing his placement from NONPUBLIC SCHOOL to PUBLIC HIGH SCHOOL and by not conducting a triennial eligibility reevaluation.

Student, an AGE young man, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on August 21, 2013, named DCPS as respondent. On September 5, 2013, the parties agreed to curtail the resolution period and proceed to the due process hearing. On September 5, 2013, the Hearing Officer convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters. On September 16, 2013, the Chief Hearing Officer granted Petitioner's unopposed motion for a 14 calendar day continuance. As a result, the Hearing Officer Determination in this case must be issued by November 1, 2013.

The due process hearing was convened before the undersigned Impartial Hearing Officer on October 22, 2013 at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person, and was represented by PETITIONER'S COUNSEL. DCPS was represented by DCPS' COUNSEL.

Petitioner testified, and called as witnesses SPECIAL EDUCATION ADVOCATE and Nonpublic School ADMINISTRATOR. DCPS called as witnesses DCPS PROGRESS MONITOR and SCHOOL PSYCHOLOGIST. Petitioner's Exhibits P-1 through P-16 were admitted into evidence without objection, with the exception of Exhibit P-3 which was admitted over DCPS' objection. Respondent's Exhibits R-1 through R-49, R-51 and R-55 were admitted into evidence without objection. Exhibit R-50 was admitted over Petitioner's objection. Counsel for both parties made opening and closing statements. At the request of DCPS' Counsel, I granted the parties leave to file post-hearing memoranda by October 23, 2013. Counsel for both parties filed post-hearing briefs.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and DCMR tit. 5-E, § 3029.

ISSUES AND RELIEF SOUGHT

The issues to be determined in this case are:

- Whether DCPS denied Student a FAPE by failing to conduct a triennial evaluation in May 2013;
- Whether DCPS' June 5, 2013 IEP is inappropriate for Student because it reduced his Specialized Instruction services by 5.5 hours per week;
- Whether DCPS denied Student a FAPE by offering him an unsuitable placement/location of services for the 2013-2014 school year at Public High School; and
- Whether DCPS denied Student a FAPE by failing to fully involve Mother in the development of Student's June 5, 2013 IEP and the placement decision.

For relief, Petitioner seeks an order for DCPS to continue to fund Student's full-time private placement at Nonpublic School for 2013-2014 school year; for DCPS to fund Independent Educational Evaluation ("IEE") comprehensive psychological and Occupational Therapy ("OT") assessments of Student and to convene an Multidisciplinary Team ("MDT") meeting to review the assessments.

FINDINGS OF FACT

After considering all of the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student, an AGE young man, resides with Petitioner in the District of Columbia.

Testimony of Petitioner.

2. Student is eligible for special education and related services under the Primary

Disability classification Specific Learning Disability (“SLD”). Exhibit P-10. He was last reevaluated, and determined to be a child who continued to have a disability and in need of special education and related services, on February 8, 2011. Exhibit P-10.

3. Since 2007, Student has been enrolled at Nonpublic School as a result of a prior Hearing Officer Determination. He is currently in the GRADE. Testimony of Special Education Advocate.

4. On March 30-31 2010, a comprehensive psychological and clinical evaluation of Student was conducted by EVALUATORS. On the Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV) Student attained a Full Scale IQ score of 81, which fell in the Low Average range and at the tenth percentile. On the Woodcock-Johnson Tests of Achievement Normative Update, Third Edition (WJ-III NU), Student scored in the Average range on reading and spelling. He scored in the Low Average range on writing fluency. On mathematics, Student scored in the Low range on math calculation and math fluency and in the Very Low range on the applied problems test. On the spontaneous writing portion of the Test of Written Language - Third Edition (TOWL-3), Student scored in the Poor or Very Poor range. The Evaluators reported that Student displayed attention-related weaknesses, which supported a diagnosis of Attention-Deficit/Hyperactivity Disorder, predominately Inattentive type. In terms of emotional functioning, the Evaluators reported that Student was experiencing symptoms of sadness and anger. The Evaluators reported that Student met the diagnosis criteria for ADHD, for SLD in math and for Dysthymic Disorder. Exhibit P-5.

5. On May 7 and May 13, 2010, Student was reevaluated by OCCUPATIONAL THERAPIST for concerns relating to poor organizational skills and decreased fine motor skills. Areas of difficulty noted included overall organizational skills, pacing, attention to detail, control

over small precision movements, performance of synchronized movements, balance tasks, and general strength and endurance. Exhibit P-6.

6. Student has not received a formal comprehensive psychological reevaluation since the March 2010 evaluation or a formal OT reevaluation since the May 2010 OT evaluation.

Testimony of Mother.

7. Under his December 8, 2011 Individualized Education Program (“IEP”) at Nonpublic School, Student was provided 27.75 hours per week of Specialized Instruction, 90 minutes per week of Behavioral Support Services and 45 minutes per week of Occupational Therapy – all outside General Education. The IEP reported that Student requires small class size, low student to teacher ratio, and specialized instruction with integration of related services in an out of general education, nonpublic setting. Student was also reported to require a high level of scaffolding in order to access content. Exhibit P-8.

8. For the 2011-2012 school year Fourth Quarter, Student received grades of B- in History, B+ in Language Arts, C+ in Math, A- in Science, A in Art, A in Music and A- in Physical Education. Exhibit R-28.

9. In Student’s October 25, 2012 Nonpublic School IEP, Student’s Specialized Instruction Services were increased to 29.75 hours per week. His Behavioral Support Services and OT services were not changed. The IEP team continued to report that Student required small class size, low student to teacher ratio, and specialized instruction with integration of related services in an out of general education, nonpublic setting. Exhibit P-9.

10. Progress Monitor attended the October 25, 2012 IEP meeting as the DCPS representative. At the meeting, Progress Monitor informed Mother that DCPS was considering transitioning Student from Nonpublic School into a less restrictive environment and that there

would be observations of Student and multiple meetings throughout the school year. Progress Monitor stated that a transition decision would be made in spring 2012 and would include teacher/related service provider observations and evaluations. Mother asked what placements were available and was informed by Progress Monitor that the placement to a DCPS school would be based on a determination of Student's needs and whether the placement would be able to fulfill those needs. Exhibit R-34.

11. Progress Monitor made in-class observations of Student at Nonpublic School on January 25, 2013, February 5, 2013 and March 26, 2013. Progress Monitor reported his observations that Student was generally well behaved, was easily redirected by the teacher, answered questions, helped out other students in the classroom, and had good relationships with peers and adults. Progress Monitor also informally observed Student at the school. Exhibits R-36, R-37, R-38, Testimony of Progress Monitor.

12. For the 2012-2013 school year, Student earned final grades of all A's and B's except for a C in science. Exhibit R-49.

13. On March 19, 2013, Progress Monitor convened a Least Restrictive Environment ("LRE") meeting for Student at Nonpublic School. Mother and Nonpublic School Staff attended the meeting. Progress Monitor stated that DCPS could provide Student the same classroom setting he had at Nonpublic School at a public school, with the same amount of services. Progress Monitor affirmed at the meeting that Student could not be completely separated from his normally developing peers and that Student would be placed at a high school that has the services he needs. Mother expressed concern that Student would be lost in a large public high school setting. Progress Monitor stated that Student would be placed in a 100% resource setting

but would be able to interact with general education peers outside of the classroom. Exhibit P-11.

14. At the March 19, 2013 meeting, it was reported that Student, in academics, was doing well in class, that Student had improved on his attention, that Student never has any major behavior issues, that except for a C- grade in math, all of his grades were A's and B's and that he had difficulty with sequencing and organizing his work. With regards to social-emotional issues, Student was reported to have issues with self esteem and anxiety. With regard to OT concerns, Student was reported to be making great progress, but to still have difficulty with organization and to need constant reminders to follow through with OT strategies. Exhibit R-39.

15. At the March 19, 2013 meeting, Nonpublic School representatives expressed concern that Student would have difficulty transitioning from Nonpublic School to a DCPS public school. Progress Monitor responded that DCPS had experience transitioning children from nonpublic schools back to public school. At this meeting, DCPS decided to offer Student Extended School Year ("ESY") programming to facilitate his transition back to public school. Testimony of Progress Monitor. Student worked over the summer and did not attend the ESY program. Testimony of Mother.

16. On May 23, 2013, DCPS convened an annual IEP review meeting for Student at Nonpublic School. The IEP meeting was not completed and was reconvened on June 5, 2013. Progress Monitor announced that Student was slated to start at Public High School in the fall. Progress Monitor stated at the IEP meeting that DCPS believed that Student would perform better in a public school setting than in a separate school. Mother again expressed her objection stating that Student was not ready for a large school population, that he would get lost, would

shut down and would regress. Progress Monitor responded that this decision had been made by the DCPS office of programming and he was only the messenger. Exhibit P-12.

17. After the June 5, 2013 IEP meeting, DCPS finalized Student's revised IEP. Mother and the Nonpublic School staff were responsible for almost all of the IEP's substantive input including baselines, annual goals, special education and related services requirements. The June 5, 2013 IEP provided for 24.25 hours per week of Specialized Instruction, 90 minutes per week of Behavioral Support Services and 45 minutes per week of OT services – all Outside General Education. In the LRE statement, the IEP recites that Student requires a small class size, low student to teacher ratio, and specialized instruction with integration of related services in an out of general education classroom. He also requires a high level of scaffolding in order to access content. Exhibits P-12, P-13, Testimony of Progress Monitor.

18. The Nonpublic School staff was concerned that at the May 23/June 5, 2013 IEP meeting, no steps were identified for transitioning Student from Nonpublic School to Public High School. The team members expressed concern that without a transition plan, a move to a new school would be extremely difficult for Student. Testimony of Administrator.

19. Beginning with the 2013-2014 school year, DCPS has established a separate special classroom at Public High School for students with learning disabilities ("LD"). The classroom currently has 7 students and the enrollment is limited to 12-13 students. The class is taught by a teacher certified in Special Education and a teacher's aide. In the special class, Student would be provided differentiated instruction. Students in the program eat in the school cafeteria with nondisabled peers. While in school, they are always escorted by the special education teacher. Testimony of Program Monitor.

20. On June 5, 2013, DCPS issued a Prior Written Notice stating that Student would transition to a least restrictive environment where he would be in a 100% separate classroom.

Exhibit P-15.

21. On June 27, 2013, the DCPS Chief of Special Education formally informed Mother by letter that the location of services for implementation of Student's IEP for the 2013-2014 school year would be Public High School. Mother was provided contact information for the LEA Representative at Public High School. Also on June 27, 2013, DCPS Program Manager in the Office of Special Education Non-Public Unit wrote Mother that Student would be provided case management services "to ensure a smooth transition and maximum success" at his new school. Exhibit P-16.

22. On August 1 and August 6, 2013, a DCPS case manager left telephone voice messages with Mother to offer to help enroll Student at Public High School. On August 9, 2013, the case manager spoke to Mother. Mother informed the case manager that she would not be sending Student to Public High School and that she had "filed for" Student to stay at Nonpublic School. Exhibit R-50.

23. During the pendency of this due process proceeding, Student's DCPS-funded enrollment has continued at Nonpublic School under the IDEA's "stay-put" provision. *See* 20 U.S.C. §1415(j). Hearing Officer Notice.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

Analysis

The issues raised by Petitioner in this case are (1) whether DCPS failed to conduct a required triennial reevaluation of Student in May 2013 and (2) whether Student has been denied a FAPE by DCPS' June 5, 2013 IEP and his change of placement to Public High School.

1. Triennial Evaluation

With regard the reevaluation issue, Petitioner contends that DCPS denied Student a FAPE by not conducting a comprehensive psychological reevaluation or an OT reevaluation of Student in the spring of 2013. Student was last found eligible for special education in February 2011. The IDEA provides that a reevaluation may occur not more than once a year and must occur at least once every three years, unless the parent and the public agency agree otherwise. *See* 34 CFR § 300.303. As stated in § 300.303, consistent with section 614(a)(2) of the IDEA, a parent can request a reevaluation at any time. *See* Department of Education, Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46641 (August 14, 2006). Here, however, DCPS last reevaluated Student less than 3 years ago and there was no evidence that Mother requested a reevaluation of Student prior to filing her due process complaint. I conclude, therefore, that Petitioner has not shown DCPS violated the IDEA or denied Student a FAPE by not conducting a reevaluation in May 2013.

2. The June 5, 2013 IEP and Placement at Public High School

Petitioner has identified three issues regarding the June 5, 2013 IEP and Student's placement at Public High School:

- i. Is the June 5, 2013 IEP inappropriate because it reduced Student's Specialized Instruction services by 5.5 hours per week?
- ii. Is Public High School an unsuitable placement/location of services for Student? and
- iii. Did DCPS deny Student a FAPE by failing to fully involve Mother in the development of the June 5, 2013 IEP and the decision to change Student's placement to Public High School?

The appropriateness of the IEP and school placement turn on: (1) whether DCPS complied with IDEA's procedural requirements, and (2) whether the IEP was reasonably calculated to provide some educational benefit to Student. *See, e.g., Anderson v. District of Columbia*, 606 F.Supp.2d 86, 90-91 (D.D.C.2009) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)). Accordingly, my inquiries here shall be (a) whether the development of the June 5, 2013 IEP was procedurally deficient, and (b) whether the IEP and placement at Public High School were reasonably calculated to enable Student to receive educational benefits.

a. Procedural Noncompliance

With regard to the alleged procedural deficiency, Petitioner contends that DCPS violated the IDEA by not adequately involving Mother in the development of the June 5, 2013 IEP or the decision to change Student's placement from Nonpublic School to Public High School. The IDEA requires that the parents of a student with a disability be members of any group making a decision regarding the student's placement. *Wilkins v. District of Columbia*, 571 F.Supp.2d 163, 167 (D.D.C.2008), citing 20 U.S.C. § 1414(e); 34 C.F.R. § 300.327. The IDEA regulations provide that, in determining the educational placement of a disabled child, the public agency

must ensure that the placement “[i]s based on the child’s IEP.” 34 C.F.R. § 300.116(b)(2).

Courts have held that “the placement decision must be based on the IEP produced by the IEP team and cannot be made before the IEP is produced.” *Board of Educ. of Tp. High School Dist. No. 211 v. Michael R.*, 2005 WL 2008919, at 14 (N.D.Ill. Aug. 15, 2005) (citing *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258–59 (4th Cir.1988)). Consequently, a school district’s “unilateral decision to change a student’s placement before the IEP meeting with the student’s parents, referred to as ‘predetermination,’ can constitute a violation of the IDEA.” *Id.*

In its response to the due process complaint in this case, DCPS contended that the decision to move Student from Nonpublic School to Public High School was only a change of location of services, which did not require parental involvement. *See, e.g., James v. District of Columbia* 2013 WL 2650091, 3 (D.D.C. Jun. 9, 2013) (While the IDEA requires a student’s parents to be part of the team that creates the IEP and determines the educational placement of the child, it does not explicitly require parental participation in site selection.) Several factors are relevant in determining whether a change in location amounts to a change in the student’s educational placement, including, whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.² *Savoy v. District of Columbia*, 844

² Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under §300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) . . .

F.Supp.2d 23, 31 (D.D.C.2012). *See, also, Assistance to States for the Education of Children with Disabilities, supra*, 71 Fed. Reg. at 46644 (A change of placement under the IDEA occurs where a child’s new educational program is likely to be substantially and materially different than his current program or would result in a change in the level of interaction with nondisabled peers.) Student’s placement since 2007 has been at Nonpublic School with no interaction with nondisabled peers. His new, less restrictive, IEP placement is a separate special class for LD students in a large public high school where, for the first time since 2007, Student would have regular in-school contact with general education students. I find that this is a change of placement under the IDEA, because the new placement is a less restrictive option on the continuum of alternative placements and because at Public High School, Student will have considerably more interaction with nondisabled peers. Therefore, the IDEA required that Mother be involved in the placement decision. *See Aikens v. District of Columbia*, 2013 WL 3119303, 4 (D.D.C. Jun. 21, 2013).

Prior to June 2013, Student’s IEPs, including his October 25, 2012 IEP, have provided, expressly, that Student required, *inter alia*, “specialized instruction with integration of related services, in an out of general education, nonpublic setting.” At the March 19, 2013 Multidisciplinary Team (“MDT”) meeting, styled as an “LRE Meeting,” DCPS Progress Monitor announced that DCPS could provide Student the same amount of services he was receiving at Nonpublic School at a DCPS public high school. Progress Monitor stated that Student would be placed in a 100 percent resource classroom, but at the school he would be able to interact with his general education peers. Although Student’s October 25, 2012 IEP was not revised at the March 19, 2013 meeting, DCPS offered to provide Student Extended School Year (“ESY”) services in order to facilitate his transition to public school. At Student’s next IEP team

34 CFR § 300.115

meeting, held over two days on May 23 and June 5, 2013, Progress Monitor announced that Student was slated to start at Public High School in the fall. When Mother and other members of the IEP team objected, Progress Monitor stated that the decision to place Student at Public High School had been made by the DCPS office of programming and that he was only the messenger. After the IEP meeting concluded, Progress Monitor completed a revised IEP for Student which, *inter alia*, removed the prior IEP requirement that Student receive specialized instruction and related services “in a nonpublic setting.” Based on the above evidence, I conclude that, contrary to the requirements of the IDEA, DCPS predetermined Student’s placement in a general education high school special class before the June 5, 2013 IEP was produced.

Predetermining school placement is a procedural violation of the IDEA. *See Holdzclaw v. District of Columbia*, 524 F.Supp.2d 43, 48 (D.D.C.2007). Procedural flaws do not automatically render an IEP legally defective. *Roland M. v. Concord School Committee*, 910 F.2d 983, 995 (1st Cir. 1990). Before Student’s June 5, 2013 IEP may be set aside for the procedural violation, Petitioner was required to also establish that DCPS’ predetermining Student’s change in placement (i) impeded Student’s right to a FAPE; (ii) significantly impeded Mother’s opportunity to participate in the decision-making process regarding the provision of a FAPE to Student; or (iii) caused a deprivation of educational benefit. *See* 34 CFR § 300.513(a)(2); *Jalloh v. District of Columbia*, 2013 WL 5188430, 6 (D.D.C. Sep. 17, 2013); *Holdzclaw, supra*. I find that Petitioner has not met that evidentiary burden.

With regard to Mother’s participation in the decision-making process, DCPS first introduced the consideration of transitioning Student to a public high school at the October 25, 2012 IEP meeting at Nonpublic School. At that meeting, which Mother attended, Progress Monitor stated that the process would include observations and multiple meetings during the

school year. Mother asked what placements were available and was informed by Progress Monitor that the placement to a DCPS school would be based on a determination of Student's needs and whether the placement would be able to fulfill those needs. Subsequently, at the LRE meeting on March 19, 2013, Progress Monitor stated that DCPS could provide Student the same classroom setting he had at Nonpublic School at a public school, with the same amount of services. Mother objected strongly, and voiced her concern that Student would get lost in the larger setting.

Mother also participated in the May 23/June 5, 2013 IEP meeting at which the June 5, 2013 IEP was developed. Mother and the Nonpublic School staff were responsible for almost all of the IEP's substantive input including baselines, annual goals, special education and related services requirements. When Progress Monitor stated at the IEP meeting that DCPS believed that Student would perform better in a public school setting than in a separate school. Mother again expressed her objection stating that Student was not ready for a large school population, that he would get lost, would shut down and would regress. Although Mother never consented to changing Student's placement from Nonpublic School, the record indicates that she had an opportunity to participate, in a meaningful way, in the formulation process for the June 5, 2013 IEP. *Cf. L.G. ex rel. E.G. v. Fair Lawn Bd. of Educ.*, 486 Fed.Appx. 967, 972, 2012 WL 2442591, 4 (3rd Cir. 2012) (Parents not excluded from the process of determining child's placement); *Hawkins v. District of Columbia*, 692 F.Supp.2d 81, 84 (D.D.C.2010). (Right conferred by the IDEA on parents to participate in the formulation of their child's IEP does not constitute a veto power over the IEP team's decisions.) I conclude that, notwithstanding DCPS' unwavering determination to transition Student back to public school, Mother's opportunity to participate in the IEP decision-making process was not significantly impeded.

Whether DCPS' procedural violation of predetermining Student's change in placement impeded Student's right to a FAPE or caused a deprivation of educational benefit dovetails with the remaining, substantive, issues alleged by the Petitioner in this case. I address those issues next.

b. Is the June 5, 2013 IEP inappropriate because it reduced Student's Specialized Instruction services by 5.5 hours per week?

Petitioner contends that DCPS' June 5, 2013 IEP is substantively deficient because it reduced Student's Specialized Instruction services by 5.5 hours per week. Student's October 25, 2012 Nonpublic School IEP provided for Student to receive 29.75 hours per week of Specialized Instruction outside of General Education. The June 5, 2013 IEP provides Student 24.25 hours per week of Specialized Instruction outside of General Education. The reduction in Specialized Instruction hours in the June 5, 2013 IEP reflects the fact that at Public High School, Student would go to lunch in the general education school cafeteria. Both IEPs provide that Student will receive all of his instruction in an outside of General Education setting.

The IDEA requires that children with disabilities be placed in the "least restrictive environment" "so that they can be educated in an integrated setting with children who do not have disabilities to the maximum extent appropriate." *K.S. v. District of Columbia*, 2013 WL 4506969, 3 (D.D.C. Aug. 26, 2013) (citations omitted). *See, also, DeVries by DeBlaay v. Fairfax County Sch. Bd.*, 882 F.2d 876, 878 (4th Cir.1989) ("Mainstreaming of handicapped children into regular school programs where they might have opportunities to study and to socialize with nonhandicapped children is not only a laudable goal but is also a requirement of the Act.") Nonpublic School Administrator, who testified for Petitioner, emphasized her concern that Student should continue to receive full-time special education services, which the June 5, 2013 IEP provides. However, there was no competent evidence from Administrator, or

any other witness, that it would not be appropriate for Student to interact with his nondisabled peers during lunch time. I conclude, therefore, that Petitioner has not shown that the reduction of Student's specialized instruction hours from 29.75 to 24.25 hours per week, to allow for lunchtime in the general education cafeteria, would result in denial of FAPE.

c. Did DCPS deny Student a FAPE by offering him an unsuitable placement/location of services at Public High School?

Mother's core concern in this case is the decision by DCPS to change Student's placement to Public High School. Since the fall of 2012 when DCPS first broached transitioning Student back to public school, Mother has sought, as all good parents do, to secure the best services for her child. Mother has consistently objected to transitioning Student to a large public high school because she believes her son would be "lost" in that setting. However, "[a] local government meets its federal and local statutory obligations to implement a student's IEP – and thus provide a FAPE – where public placement is 'reasonably calculated to enable the child to receive educational benefits.'" *T.T. v. District of Columbia*, 2007 WL 2111032, 9 (D.D.C. Jul. 23, 2007), quoting *Rowley*, 458 U.S. at 207. The role of the Hearing Officer is not to determine whether DCPS has offered the best services, but "whether the services offered confer the child with a meaningful benefit." *See K.S. v. District of Columbia* 2013 WL 4506969, 5 (D.D.C. Aug. 26, 2013).

Here, the burden of proof was on the Petitioner to demonstrate by a preponderance of the evidence that Public High School is an inappropriate placement. *See, e.g., McAdoo v. McKenzie* 1988 WL 9592, 11 (D.D.C. Jan. 28, 1988). At Public High School, Student would be placed in a new, full-time, program for children with learning disabilities. The special class, which is taught by a special education teacher and a teaching assistant, is limited to 12 to 13 students and offers a lower student to teacher ratio than available at Nonpublic School. In the special class, Student

would be provided differentiated instruction. While Mother's concern about moving Student to a special class in a public high school, after six years at Nonpublic School, is understandable, she offered no competent evidence that Student would not receive meaningful benefit from the program at Public High School.³ Therefore, I find that Petitioner has not met her burden of proof to demonstrate that Student's placement in the full-time special class for LD students at Public High School was not reasonably calculated to enable Student to receive educational benefits.

SUMMARY

In this case, Petitioner alleges that DCPS has denied Student a FAPE by failing to conduct a triennial evaluation in May 2013 and by changing his placement to the special class for LD students at Public High School. On the first issue, I have found that DCPS was not required to reevaluate Student in May 2013. With regard to Student's placement at Public High School, I have found that DCPS committed a procedural violation of the IDEA by predetermining Student's placement before the June 5, 2013 IEP was developed. However I do not set aside the IEP because Petitioner has not shown that DCPS' predetermining Student's change in placement significantly impeded her opportunity to participate in the decision-making process or affected Student's substantive rights. Lastly, I find that Petitioner has not met her burden of proof to establish that the special class for LD students at Public High School is an inappropriate placement for Student or that the reduction of Student's Specialized Instruction to 24.25 hours per week results in a denial of FAPE.

ORDER

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

³ Nonpublic School Administrator testified about her concerns that Student would have difficulty transitioning to the new program. To facilitate the transition, DCPS authorized ESY services for Student at Public High School over the 2013 summer break. However, Mother elected not to send Student to the ESY program.

All relief requested by Petitioner herein is denied.

Date: October 30, 2013

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

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).