

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office

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Confidential

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| <p>STUDENT¹, by and through his Parent</p> <p>Petitioners,</p> <p>v.</p> <p>District of Columbia Public Schools</p> <p>Respondent.</p> | <p>HEARING OFFICER'S DETERMINATION</p> <p>May 15, 2009</p> <p><u>Representatives:</u></p> <p>Counsel for Petitioners: Iris Barnett, Esq.</p> <p>Counsel for DCPS: Candace Sandifer, Esq.</p> <p><u>Hearing Officer:</u> Kimm H. Massey, Esq.</p> |
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STUDENT HEARING OFFICE

¹ Personally identifiable information is attached as Appendix A to this decision and must be removed prior to public distribution.

I. JURISDICTION

The Due Process hearing was convened and this Order is written pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 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.").

II. PROCEDURAL BACKGROUND

On March 30, 2009, Petitioner filed an Administrative Due Process Complaint Notice ("Complaint"), alleging that DCPS denied Student a free appropriate public education by (1) transferring Student from one school to another without ensuring that the new school had a copy of, and could implement, Student's IEP; (2) failing to implement Student's IEP after the transfer; (3) reducing Student's hours of service with no explanation; (4) convening an IEP meeting without providing Student's foster parent with notice and an opportunity to participate; (5) convening a manifestation determination review meeting without providing Student's foster parent with notice and an opportunity to participate; (6) suspending Student for 25 days without providing him with an alternative placement; (7) failing to conduct triennial evaluations for Student; and (8) keeping Student in a school where he is receiving no educational benefit.

The Student Hearing Office ("SHO") set April 15, 2009 as the prehearing conference date and provisionally scheduled the due process hearing for May 4, 2009 from 9:00 a.m. to 1:00 p.m. However, after consultation with the parties, the hearing officer rescheduled the prehearing conference for May 24, 2009.

On April 15, 2009, DCPS filed District of Columbia Public School's Motion to Dismiss, or in the Alternative For Proof of Standing, and Response to Petitioner's Due Process Complaint. With respect to its Motion to Dismiss or for Proof of Standing, DCPS asserted that Student had a new foster parent and was no longer living with the foster parent listed in the Complaint, and that Student's guardian *ad litem* has failed to complete a contact information sheet upon DCPS's request. As its Response, DCPS asserted that Student's IEP had been increased to full-time IEP, that he had been placed in his current school's full-time ED cluster program, that Student's foster parent had been invited to Student's recent IEP and MDR meetings, that DCPS had proposed a 100-hour compensatory education plan for Student at a recent MDT meeting, that an agreed upon evaluation had been completed and he had received an FBA and a BIP, and that Student's behavior had improved and he was doing well.

On April 16, 2009, Petitioner filed Petitioner's Reply to DCPS's Response and Motion to Dismiss, and Request to Name New Petitioner. In its pleading, Petitioner pointed out DCPS's failure to timely file its Response, asserted that DCPS failed to address all allegations in the Complaint in its untimely response, and requested that Student's current foster parent be substituted for his previous foster parent, who was named in the Complaint. Thereafter, Petitioner's counsel faxed to the hearing officer and opposing counsel an April 24, 2009 D.C. Superior Court Amended Order Appointing Education Attorney, which appointed Petitioner's counsel as education attorney for Student's current foster parent.

Also on April 16, 2009, Petitioner filed a Letter Motion for Continuance, indicating that Petitioner's counsel would be unavailable to attend the provisionally scheduled due process hearing due to previously scheduled appointments.

On April 20, 2009, the hearing officer issued an Interim Order on Continuance Motion resetting the due process hearing to May 5, 2009 from 9 a.m. to 1 p.m.

The hearing officer attempted to convene the prehearing conference on April 24, 2009, as scheduled, but was unable to move forward due to an inability to reach counsel for DCPS. After receiving DCPS's counsel's subsequent email indicating that she was in a prehearing conference that was running longer than expected, the hearing officer rescheduled the prehearing conference for April 27, 2009. However, upon attempting to convene the due process hearing on April 27th, the hearing officer was once again unable to reach counsel for DCPS. As a result, no prehearing conference was held for this case.

By their respective Five-Day disclosure statements dated April 28, 2009, DCPS disclosed seven potential witnesses and thirteen documents labeled DCPS-1 through DCPS-13, and Petitioner disclosed three potential witnesses and nine documents (hereinafter Petitioner's Exhibits 1 through 9).

On April 29, 2009, the hearing officer issued the following three Orders: (1) a Pre-Hearing Order based primarily on the Complaint and DCPS's Response thereto, (2) an Interim Order Granting In Part and Denying In Part DCPS's Motion to Dismiss or For Proof of Standing, in which the hearing officer declined to dismiss the case but ordered Petitioner to prove that the proper party was prosecuting this action, and (3) an Interim Order Granting Petitioner's Request to Name New Petitioner, by which the hearing officer substituted Student's new foster parent for the previous foster parent named in the Complaint.

Shortly before the close of business on April 29, 2009, Petitioner filed Petitioner's Request to be Excused From the Due Process Hearing. In the Request, Petitioner represented that Student's current foster parent was scheduled to teach on the morning of the scheduled due process hearing, and that he had no personal knowledge of the issues to be addressed at the hearing.

On April 30, 2009, DCPS filed District of Columbia Public School's Response in Opposition to Petitioner's Request to be Excused from the Due Process Hearing Scheduled for May 5, 2009. In its Opposition, DCPS essentially argued that because the hearing officer issued an April 29th Order requiring Petitioner to prove standing, standing remained a live issue to be decided as a preliminary matter at the due process hearing, and the current foster parent's testimony was crucial to the determination of the issue of standing.

Also on April 30, 2009, Petitioner filed Petitioner's Reply to DCPS's Opposition to Request to be Excused From the Due Process Hearing. In its Reply, Petitioner asserted (1) that the issue of standing is moot in light of the hearing officer's April 29, 2009 Order granting Petitioner's Request to Name New Petitioner; (2) that the new foster parent is "parent" within the meaning of the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. §§ 1400 et. seq.; and (3) that under IDEIA, a Petitioner has a right to participate in a due process

hearing but is not required to do so.

On May 2, 2009, the hearing officer issued an Interim Order Denying Petitioner's Request to be Excused from the Due Process Hearing, noting that at the time of granting Petitioner's Request to Name New Petitioner, the hearing officer fully expected that the current foster parent would participate in the due process hearing and submit to questioning concerning Student's recent placement in his home. The hearing officer then ordered the current foster parent to make himself available to testify either in person or by telephone for at least twenty minutes during the due process hearing.

By an email sent on May 3, 2009, Petitioner's counsel informed the hearing officer and opposing counsel that the current foster parent would be available to testify by telephone from 9:00 a.m. to 9:30 a.m. on the morning of the due process hearing.

The hearing officer convened the due process hearing on May 5, 2009, as scheduled, and the parties' previously disclosed documents were admitted into the record without objection. Petitioner also offered a tenth exhibit, Student's acceptance letter from a private special education school, for admission, and that document was admitted without objection as well.

Thereafter, given the current foster parent's limited availability, the hearing officer made only a brief preliminary statement before allowing the current foster parent to testify. After the current foster parent's gave his testimony and the hearing officer made a more comprehensive statement of the issues to be adjudicated, DCPS agreed to delay its opening statement until the start of its case so that Student's community-based intervention worker, who had appeared in person for the hearing but had to leave for another appointment before he was called to the hearing room, could testify.

Upon the conclusion of Petitioner's case, DCPS made a motion for Directed Verdict on the issue of compensatory education. Petitioner promptly withdrew its claim for compensatory education, stating that it would accept the 100-hour compensatory education plan that had been offered by DCPS and look to DCPS to resolve any further claims for compensatory education, which, in turn, led DCPS to withdraw its Motion for Directed Verdict. Thereafter, DCPS presented its case, the parties made closing statements, and the hearing officer brought the hearing to a close.

On May 8, 2009, Petitioner filed Petitioner's Request to Supplement the Record Regarding the Propriety of the Current Placement in Light of a Recent Development. In its pleading, Petitioner asserted that Student had been suspended for two days on May 6th, the day after the due process hearing, and that said suspension was directly contrary to DCPS's position at the hearing that Student is not having behavior problems at his current placement and the current placement can provide him with a FAPE. Based on this assertion, Petitioner requested that the hearing officer include in the administrative record both the information contained in the pleading and any Response thereto filed by DCPS.

In light of SHO procedural rules allowing DCPS three business days to respond to Petitioner's request², the hearing officer has deferred ruling on the request until the issuance of the instant Hearing Officer's Determination.

III. ISSUE(S)

Did DCPS deny Student a FAPE by:

1. Transferring Student from one school to another without ensuring that the new school had a copy of, and could implement, Student's IEP;
2. Failing to implement Student's IEP after the transfer;
3. Reducing Student's hours of service with no explanation;
4. Convening an IEP meeting without providing Student's foster parent with notice and an opportunity to participate;
5. Convening a manifestation determination review meeting without providing Student's foster parent with notice and an opportunity to participate;
6. Suspending Student for 25 days without providing him with an alternative placement;
7. Failing to conduct triennial evaluations for Student; and
8. Keeping Student in a school where he is receiving no educational benefit?

IV. FINDINGS OF FACT

1. Student is years old. He has lived in a series of foster homes, beginning when he was years old, and he has a history of demonstrating very explosive, threatening and destructive behaviors. Student also has a history of inpatient mental health support, as he has been hospitalized at least four times since the age of years old. Student's family background includes a maternal grandmother who reportedly neglected him and his siblings when they resided with her, a biological mother with a history of drug abuse and incarceration, and a biological sister who was brutally raped and murdered by one of Student's older biological brothers while Student was present.³

² Despite the title of Petitioner's pleading, it is actually a post-hearing motion, and motions are governed by § 401 of the SHO's Standard Operating Procedures ("SOPs"). Moreover, although § 401(A) of the SOPs defines a motion as a request that the hearing officer issue a ruling or make a decision on a particular issue prior to or during a hearing, absent a comparable provision governing post-hearing motions, the hearing officer has looked to the provisions of § 401(A) in addressing Petitioner's post-hearing motion.

³ See Complaint at 1; Petitioner's Exhibit 9.
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2. By a Prior Notice of Placement ("PNOP") dated June 23, 2008, DCPS transitioned Student from his previous placement, an elementary school for ED students, to the middle school he currently attends. According to that PNOP, Student's current disability category is emotional disturbance ("ED") and he was to be placed in an out of general education classroom at the middle school.⁴
3. The Meeting Notes for Student's June 23, 2008 IEP meeting state that the team from his former placement met to review Student's placement for SY 2008/09, and that the team revised Student's IEP "to reflect the change in hours in specialized instruction to 16.5 from 26 hours." No explanation or justification for the reduction in hours was given. The Notes merely stated that the Parent agreed with the team's placement recommendation to Student's current school, and that a copy of the PNOP would be mailed to Parent.⁵
4. At the start of SY 2008/09, the only document DCPS transferred to Student's new placement was 4 pages of a February 12, 2008 IEP, which initially required Student to receive 26 hours of specialized instruction per month, including 9.5 hours of specialized instruction in the general ed setting and 16.5 hours of specialized instruction in the special education setting; however, the 9.5 hours of instruction in the general education setting had been crossed out by hand, .5 hour of speech and language service and 1 hour of psychological services had been written in by hand, and the number "18" had also been written in by hand in the section for total hours. No other documents, such as previous evaluations, report cards and the like, were supplied to Student's new placement, even though the current placement requested records from all of Student's previous schools.⁶
5. Upon arriving at his new placement, Student was immediately placed in a general education class, and he began having behavioral problems at home and at school. Indeed, (i) in October 2008, Student was reassigned to a community-based intervention level 2 worker to assist in dealing with his behavior issues; (ii) on November 3, 2008, Student bit a general education teacher and his current placement recommended a 45-day suspension of Student at a November 5, 2008 manifestation determination review ("MDR") meeting that, according to the MDR Notes, was attended only by the special education coordinator ("SEC") at Student's current placement, and (iii) Student was admitted to a psychiatric hospital on November 12, 2008 after he bit the SEC, and he remained at the hospital for 21 days.⁷
6. In addition to his CBI level 2 worker, Student also has a social worker, a community

⁴ Petitioner's Exhibit 3; *See also*, Petitioners' Exhibit 5 and DCPS-8.

⁵ DCPS-2; *See also*, DCPS-6 and Petitioner's Exhibit 7.

⁶ Testimony of SEC; *See* Petitioner's Exhibit 1, Petitioner's Exhibit 7, DCPS-6.

⁷ Testimony of CBI worker; testimony of special education teacher; testimony of SEC; Petitioner's Exhibits 4 through 6 and 9; DCPS-4, DCPS-5, and DCPS-8. NOTE: The SEC testified that he invited one of Student's foster parents to the MDR meeting, only to learn that Student had already been moved to another placement, and then he invited the foster parent from the then new placement to the MDR.

support worker, and a case manager. Student also receives medication management services from one of the community based intervention organizations that works with him.⁸

7. DCPS convened an MDT meeting for Student at his current placement on December 19, 2008 and increased his hours of service to 27 hours of specialized instruction, 1 hour of behavioral support services, and .5 hour of speech and language services, for a total of 28.5 hours of special education and related services per week in an outside of general education setting. However, the resulting IEP indicates that it is a "DRAFT." At that meeting, DCPS agreed to complete an FBA and a BIP for Student, and DCPS also determined that Student required a full-time therapeutic environment. The FBA and BIP were subsequently developed on February 25, 2009.⁹
8. Subsequent to the December 19, 2008 IEP meeting, Student was placed in the self-contained ED class at his current placement. However, despite Student's new assignment to the self-contained ED classroom at his current placement, he continued to experience behavior problems because once he stopped acting out and began trying to learn, he became the subject of verbal and physical attacks from the other students in the class, who are not able to self-control their behavior as well as Student does. These attacks from the other students exacerbated Student's condition, which is characterized by explosive outbursts of anger and physical violence, and resulted in Student's current placement becoming a hostile environment for him, where he suffers from a great deal of stress and frustration.¹⁰
9. On February 25, 2009, DCPS reconvened Student's IEP meeting. DCPS acknowledged in the Notes for that meeting that it had erred in placing Student in a general education class when he first began attending his new placement. Instead, Student should have been stepped down by going from the cluster ED classroom, to a resource room, to an inclusion class, and then to general education. The IEP team stated that although Student can escalate into an explosion very quickly, he can do the work assigned him. The team also stated that Student can control himself, but he needs appropriate resources. DCPS agreed that Student requires compensatory education and offered to develop a 100-hour compensatory education plan and to also discuss the possibility of additional compensatory education after completion and review of evaluations. DCPS further stated that it would award Student any missed social work and speech/language services as well, although a review of the service tracker forms for Student's social work services, which are included in the administrative record, reveals that Student received most of the social work services he was entitled to receive. An undated compensatory education plan offering Student 100 hours of tutoring is included in the administrative record, and during the course of the due process hearing for this case, Petitioner indicated its acceptance of the plan.¹¹

⁸ Testimony of CBI worker; testimony of current foster parent.

⁹ DCPS-6, DCPS-12 and DCPS-13; Petitioner's Exhibit 7.

¹⁰ Testimony of special education teacher; testimony of CBI worker; DCPS-12 and DCPS-13.

¹¹ DCPS-6, DCPS-7, DCPS-9; Petitioner's Exhibit 7.

10. DCPS's Attendance Summary for Student indicates that he was absent for a total of only two days between August 18, 2008 and April 19, 2009.¹²
11. As a result of the difficulties Student has experienced in the self-contained ED cluster class at his current placement, his ED cluster special education teacher now sends him to another self-contained special education class for one-half of each day. That class is a less restrictive environment with students who are not in need of intensive behavior management. However, the ED cluster teacher does not know whether the teacher of the class he sends Student to each day is a certified special education teacher, nor does he know whether that class is for ED students. In any event, Student continues to be under the ED cluster teacher's supervision for the entire school day, and the ED cluster teacher checks in on Student while he's in the other class.¹³
12. On March 30, 2009, the school psychologist at Student's current placement issued a comprehensive psychological evaluation report for Student. In the Background section of the resulting evaluation report, the psychologist noted that Student takes Prozac and Abilify to manage his moods. In the Parent Interview portion of the evaluation report, the psychologist notes Student's previous foster parent's opinion that Student is very emotionally unstable. The evaluator conducted cognitive, visual-motor integration (perceptual), and social/emotional testing of Student. The report does not contain any educational testing. Overall, the psychologist concluded that Student's intellectual ability is in the low average range, his verbal ability, cognitive efficiency and working memory are in the average range, his perceptual skills are below average, and his behavioral adjustment, although poor in the past, has begun showing incremental improvement in school. The evaluator opined that Student can achieve at or close to grade level but needs a considerable amount of help managing his feelings and emotions, and that Student continues to meet the criteria for classification as an ED student.¹⁴
13. The ED cluster special education teacher at Student's current placement recalls administering an educational evaluation to Student at some point in February, March or April of 2009. The SEC also recalls that said educational evaluation was administered to Student. However, the administrative record in this matter does not include an educational evaluation report.¹⁵
14. From the perspective of the SEC and ED cluster special education teacher at Student's current placement, however, Student's outbursts have dramatically decreased recently. Moreover, Student's third advisory report card reveals that although Student earned two Fs and a C for first advisory, his grades improved to include four Cs and one A (in Math) for third advisory. The ED cluster special education teacher would like to ease Student back into general education since his behavior has improved, and Student's BIP

¹² DCPS-11.

¹³ Testimony of special education teacher; *See also* Petitioner's Exhibit 9 and DCPS-8. .

¹⁴ Petitioner's Exhibit 9; DCPS-8.

¹⁵ Testimony of special education teacher; testimony of SEC.

states that his time in the ED cluster classroom has been "markedly decreased with the intention of reintroducing him to the general education classroom."¹⁶

15. In general, Student tends to present at school as a mild-mannered child who keeps to himself and wants to learn, but when he is teased, or physically or verbally assaulted, he tends to respond with an emotional physical outburst.¹⁷
16. Although Student has had at least three foster parents during the time he has attended his current placement, the only foster parent to testify at the due process hearing was Student's current foster parent. Unfortunately, Student was not placed with the current foster parent until March 23, 2009, and the current foster parent has no knowledge of events that took place prior to that time. The current foster parent is aware, however, that Student continues to act out at school, and he never comes home with any homework. Student also acts out at the current foster parent's home.¹⁸
17. By letter dated April 23, 2009, Student was accepted at a private, full-time special education school based upon the admission team's review of his current IEP and his comprehensive psychological evaluation report. The maximum class size at the school is 8 students, with one certified special education teacher and at least one behavioral technician or instructional aide. The school offers evaluations, individualized and group therapy, speech therapy, enrichment activities such as computer and art classes, weekly field trips, an individualized behavior management system, and parent support groups. The school has a year-round program, and it costs approximately per year per student. The actual class that Student would be placed in already has 7 students who are 11 and 12 years of age. The school has serviced children like Student for the past 10 years, and the staff is confident they can also service Student.¹⁹

V. CONCLUSIONS OF LAW¹

At issue in this case is whether DCPS denied Student a free appropriate public education by (1) transferring Student from one school to another without ensuring that the new school had a copy of, and could implement, Student's IEP; (2) failing to implement Student's IEP after the transfer; (3) reducing Student's hours of service with no explanation; (4) convening an IEP meeting without providing Student's foster parent with notice and an opportunity to participate; (5) convening a manifestation determination review meeting without providing Student's foster parent with notice and an opportunity to participate; (6) suspending Student for 25 days without providing him with an alternative placement; (7) failing to conduct triennial evaluations for Student; and (8) keeping Student in a school where he is receiving no educational benefit. To the extent appropriate, the hearing officer will group related issues together for the sake of analysis. The hearing officer will also address Petitioner's post-hearing motion to supplement the record.

¹⁶ Testimony of SEC; testimony of special education teacher; DCPS-10 and DCPS-12.

¹⁷ Testimony of SEC; testimony of special education teacher; Testimony of CBI worker; DCPS-12.

¹⁸ Testimony of current foster parent; testimony of SEC.

¹⁹ Testimony of private school Vice President.

As the party seeking relief in this action, Petitioner bears the burden of proof. See 5 D.C.M.R. § 3030.3; *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005).

1. Petitioner's Post-Hearing Request to Supplement the Record

Petitioner's Post-hearing Request to Supplement the Record was electronically filed by Petitioner's counsel on May 8, 2009, and counsel asserts therein that DCPS suspended Student from his current placement for two days on May 6th, 2009, thereby disproving DCPS's position at the May 5, 2009 due process hearing in this case that Student is not having behavior problems and that the current placement can provide Student with a FAPE. DCPS failed to respond to the motion, and under § 401(C)(5) of the SOPs, a failure to timely respond may be taken as concession of the motion.

On the other hand, however, the hearing officer notes that Petitioner failed to include with its motion a Suspension Notice, witness affidavit, or other Exhibit intended to serve as evidence of counsel's assertions in the motion. In light of basic legal principles holding that assertions of counsel do not constitute evidence, and that lawyers may not serve as witnesses in cases where they are functioning as party representatives, the hearing officer concludes that Petitioner has failed to provide the hearing officer with any evidence that rightfully can be added to the administrative record in this case. As a result, the hearing officer is left with no choice other than to deny Petitioner's Request to Supplement the Record.

2. DCPS's Alleged Denial of FAPE by Failing to Ensure Student's New School Had and Could Implement Student's IEP, Failing to Implement Student's IEP After He Was Transferred, and Reducing Student's Hours of Service with No Explanation

Pursuant to IDEIA, a child's IEP must be accessible to all of his teachers and service providers who are responsible for its implementation, and a FAPE, by definition, consists of special education and related services provided in conformity with an IEP. 34 C.F.R. §§ 300.323(d)(1), 300.17(d). In this case, the evidence proves that DCPS provided Student's current placement with at least 4 pages of his existing IEP when he transferred there, even though only one page of the IEP is included in the administrative record. However, the evidence is also clear that the current placement failed to implement that IEP upon Student's arrival, and that Student's prior placement reduced his IEP hours without providing any explanation or justification for doing so. As a result, the hearing officer concludes that Petitioner failed to meet its burden of proving that Student's current placement did not have a copy of his IEP when he was transferred there, but Petitioner met its burden of proving that DCPS reduced Student's IEP hours without explanation and failed to implement the IEP after transferring Student to his current placement.

3. Alleged Failure to Provide Student's Foster Parent with Notice and an Opportunity to Participate in an IEP Meeting and an MDR Meeting

IDEIA obligates DCPS to take steps to ensure parents are afforded an opportunity to participate in IEP meetings and MDR meetings. 34 C.F.R. §§ 300.322(a), 300.530(e). Although the meeting notes in this case indicate that Student's foster parent of record at the time did not attend the IEP and MDR meetings at issue, in light of Petitioner's failure to present the testimony of said foster parent(s) concerning invitations or lack of invitations to the meetings, the hearing officer finds that Petitioner failed to meet its burden of proof on these claims.

4. Alleged Suspension of Student for 25 Days Without Providing Him With an Alternative Placement

The hearing officer has searched the documentary evidence and reviewed the testimonial evidence in this case and has failed to find any evidence tending to prove that Student was suspended for 25 days. There is evidence that the SEC intended to suspend Student for 45 days after a November 3, 2008 biting incident, but there is no evidence that the intended punishment was implemented, and indeed the SEC testified in this case that Student was suspended for maybe two weeks after the incident. Under these circumstances, the hearing officer concludes that Petitioner has failed to meet its burden of proving this claim.

5. Alleged Failure to Conduct Triennial Evaluations for Student

Under IDEIA, a child with a disability must be reevaluated at least once every three years, unless the parent and public agency agree a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). In this case, the only evaluation report contained in the record is a March 2009 Comprehensive Psychological Evaluation. The record also contains a recent FBA and a BIP for Student. Otherwise, there is no convincing evidence that any other evaluations have been provided to Student, despite DCPS witness claims that an educational evaluation recently was provided to Student. As a result, the hearing officer concludes Petitioner has met its burden of proof on this claim, and the hearing officer will order DCPS to fund an independent speech/language evaluation for Student, and to either produce a recent educational evaluation report within 10 days or fund an independent educational evaluation for Student.

6. Allegation that DCPS is Keeping Student in a School Where He is Receiving No Educational Benefit

Based on the evidence in this case, the hearing officer finds that Petitioner has failed to meet its burden of proving that Student is receiving absolutely no educational benefit this claim. Nevertheless, the evidence is also clear that Student's current placement is unable to implement his IEP because Student is unable to function in the self-contained ED cluster classroom his IEP calls for on a full-time basis, and although he has been attending another self-contained special education class, it is unclear whether that class is geared toward ED students. The evidence further proves that Student has been accepted at a private full-time special education school that can implement his IEP and provide him with educational benefit. Under these circumstances, the hearing officer will order DCPS to place Student in the full-time private placement until such time as it can provide Student with a DCPS placement that can properly implement his IEP.

VI. SUMMARY OF DECISION

The hearing officer determined that Petitioner met its burden of proving Student's entitlement to certain independent evaluations and an interim private placement, but otherwise failed to meet its burden of proof.

VII. ORDER

1. Petitioner's post-hearing Request to Supplement the Record is hereby **DENIED**.

2. DCPS shall fund an independent speech/language evaluation for Student, and either (a) produce a recent educational evaluation report within 10 days of this issuance of this Order, or (b) fund an independent educational evaluation for Student.

3. DCPS shall place Student in the full-time private special education school that accepted him by letter dated April 23, 2009 until such time as it can provide Student with a DCPS placement that can properly implement his IEP.

/s/ Kimm H. Massey, Esq.

Kimm H. Massey, Esq.
Impartial Due Process Hearing Officer

Dated this 15th day of May, 2009.

NOTICE OF APPEAL RIGHTS

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision may appeal to a State court of competent jurisdiction or a district court of the United States, without regard to the amount in controversy, within 90 days from the date of the decision pursuant to 20 U.S.C. § 1415(i)(2).