

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

Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
December 1, 2014

STUDENT, ¹)	
through her Parent,)	
Petitioner,)	Date Issued: 11/29/14
)	
v.)	Hearing Officer: Keith L. Seat, Esq.
)	
District of Columbia Public Schools)	
("DCPS"),)	
Respondent.)	
)	
)	
)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, Student’s mother, filed a due process complaint on 9/16/14, alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Improvement Act (“IDEA”) because DCPS did not place Student in a full-time, separate, special education day school to address her need for a more restrictive environment as her IEP Team had previously concluded, did not amend her Individualized Education Program (“IEP”) accordingly, and did not permit Petitioner meaningful participation in the placement decision. DCPS responded that Student was not denied a FAPE as her IEP and placement were appropriate and Petitioner did have the opportunity to voice her concerns about DCPS’s proposed placement for Student.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; Title V, Chapter E-30,

¹ Personally identifiable information is provided in Appendix A.

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of the District of Columbia Municipal Regulations (“D.C.M.R.”) and 38 D.C. Code 2561.02.

Procedural History

Following the filing of the due process complaint on 9/16/14, the undersigned was assigned to the case on 9/17/14. DCPS filed a response to the complaint on 9/19/14 and made no challenge to jurisdiction.

The resolution meeting took place on 10/31/14, but the parties did not settle the case. The standard 30-day resolution period concluded on 10/16/14. A final decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 11/30/14. A prehearing conference was held on 10/17/14 and a Prehearing Order issued that same day.

The due process hearing, which was closed to the public,

Counsel declined to discuss settlement at the beginning of the hearing. Petitioner was present in person on 11/14/14 until 1:10 p.m. when the hearing recessed for lunch, and participated by telephone on 11/19/14.

Neither party objected to the testimony of witnesses by telephone. The parties made no admissions and agreed only to stipulate that Student has a disability, which is Emotional Disturbance (“ED”). Petitioner’s Motion for a Continuance to shift the hearing date to 11/14/14, which did not affect the HOD due date, was withdrawn on the record at the hearing by Petitioner’s counsel.

Petitioner’s Disclosure statement, filed on 11/6/14, consisted of a witness list of 6 witnesses and documents P1 through P33. Petitioner’s Disclosure statement and documents were admitted into evidence over objections as to the relevance of certain documents and one document being a duplicate.

Respondent’s Disclosure statement, filed on 10/29/14, consisted of a witness list of 8 witnesses and documents R1 through R19. Respondent’s Disclosure statement was admitted into evidence without objection, as Petitioner’s objections were withdrawn, except for an objection to R3, which was replaced by a complete version of the document and admitted into evidence without objection on 11/19/14.

Petitioner’s counsel presented 4 witnesses in Petitioner’s case-in-chief (*see* Appendix A):

1. Educational Advocate

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2. Private Psychologist – qualified, after objection was withdrawn, as an expert in Clinical Psychology
3. Petitioner (Mother)
4. Admissions Director for Nonpublic School (“Admissions Director”)

Respondent’s counsel presented 3 witnesses in its case (*see* Appendix A):

1. Middle School Psychologist – qualified over objection as an expert in School Psychology
2. High School Psychologist – qualified over objection as an expert in School Psychology
3. Compliance Case Manager

Petitioner’s counsel did not present any rebuttal witnesses.

The issues to be determined in this Hearing Officer Determination are:

Issue 1 – Whether DCPS denied Student a FAPE by failing to reconvene the IEP Team and provide a full-time IEP prior to 7/19/14 when both the IEP Team on 5/28/14 and DCPS at a due process hearing on 5/29/14 stated that Student needs full-time special education services out of general education in a separate day school.

Issue 2 – Whether Respondent denied Student a FAPE by failing to provide an appropriate educational placement, including location of services, when her IEP Team intended her to be in a full-time, separate, special education day school, as she needed a more restrictive setting.

Issue 3 – Whether Respondent denied Student a FAPE by failing to allow Parent meaningful participation in the educational placement decision, including the location of services, when Parent’s educational advocate was informed by Public Middle School staff that the DCPS LRE Committee alone would determine Student’s placement and IEP needs, excluding Parent from the decision-making process. DCPS later advised Parent and advocate of its unilateral decision to place Student in the Behavior Education Support (“BES”) classroom at Public High School.

Petitioner seeks the following relief:

1. A finding that DCPS denied Student a FAPE.
2. DCPS shall reconvene the IEP Team and revise Student’s IEP to provide 32.5 hours per week of special education and related services in a full-time, separate, special education day school.

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3. DCPS shall place and fund Student at a school that can implement her IEP, such as Nonpublic School, and provide necessary transportation services.
4. DCPS shall fund compensatory education² for any denial of FAPE.
5. Any other just and proper relief.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact³ are as follows:

1. Student is a resident of the District of Columbia. Petitioner is Student's mother ("Mother").⁴

2. Student has been struggling with both severe behavioral and academic issues for some time.⁵ As stipulated by the parties, Student's current disability classification is ED. Student was previously classified as Other Health Impairment ("OHI") due to an Attention Deficit Hyperactivity Disorder ("ADHD").⁶

3. Student's multidisciplinary team ("MDT") was very concerned about her throughout 2013/14, with some similar concerns continuing into 2014/15.⁷ Student was

² With regard to the request for compensatory education, Petitioner's counsel was put on notice during the Prehearing Conference that Petitioner must introduce evidence supporting any requested compensatory education, including evidence of specific educational deficits resulting from Student's alleged denial of FAPE and the specific compensatory measures needed to best correct those deficits, i.e., to elevate Student to the approximate position Student would have enjoyed had Student not suffered the alleged denial of FAPE. Respondent was similarly put on notice that it should be prepared at the due process hearing to introduce evidence contravening the requested compensatory education in the event a denial of FAPE is found.

³ Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. 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, 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.

⁴ Mother.

⁵ Educational Advocate.

⁶ Private Psychologist.

⁷ P15; Educational Advocate. All dates in the format "2013/14" refer to school years.

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volatile, disruptive, disrespectful and aggressive, and school staff had difficulty calming her after flare ups.⁸ Student had difficulty completing her work at school and her homework.⁹ Her peers and environment often distracted Student.¹⁰ Student's interaction with peers was largely negative and she frequently had disagreements and fights, which on occasion escalated to the point of Student stabbing or attempting to stab peers with pencils or pens.¹¹ Student was suspended occasionally and had in-school suspensions.¹² The police brought Student home several times because of fighting in the community.¹³

4. An independent Psychological Evaluation of Student was conducted in late 2013, and reviewed at a meeting on 3/12/14.¹⁴ Due to Student's issues, DCPS decided to try a trial placement of Student in the full-time BES program at Public Middle School while awaiting the results of additional assessments it committed to conduct, which were expected before the end of 2013/14.¹⁵ Mother and Educational Advocate urged a more therapeutic setting on 3/12/14, but the MDT team did not agree then or later to place Student outside DCPS.¹⁶

5. In the Spring of 2014, there were 3 adults in the BES program with 6 or 8 students, all of whom were classified as ED.¹⁷ Student remained in the BES program through the end of 2013/14.¹⁸

6. Mother and Educational Advocate believed that some of the IEP Team shared their view that if the BES program did not work for Student, she would need a more restrictive placement.¹⁹ Any more restrictive setting would require a different school, as the BES program was the most restrictive option at Public Middle School.²⁰ Student's IEP was not revised on 3/12/14, or in the following months, so continued to reflect only 20 hours of specialized instruction out of general education.²¹ The hours were not increased to match the BES program because Student was included in BES on a trial

⁸ Educational Advocate.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Educational Advocate; Private Psychologist.

¹² Educational Advocate; P8.

¹³ Educational Advocate; Mother.

¹⁴ Educational Advocate.

¹⁵ Middle School Psychologist; Educational Advocate.

¹⁶ Middle School Psychologist.

¹⁷ *Id.*

¹⁸ Educational Advocate; Middle School Psychologist.

¹⁹ Educational Advocate.

²⁰ *Id.*

²¹ Educational Advocate; P17.

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basis; it would have required approval of the DCPS LRE Team to formally include Student in the BES program.²²

7. The BES program at _____ School did not work out well for Student, and her behaviors and academic performance regressed.²³ The BES classroom was an “uncomfortable environment” for Student due to the large majority of boys and/or other reasons.²⁴ Student has “difficulty adapting to change,” which may have made Student’s shift to the BES program less successful.²⁵

8. On 5/28/14, Student’s MDT team was ready to increase Student’s IEP to full-time with 26.5 hours.²⁶ However, the assistant principal came into the meeting to say that Student’s hours could not be increased until the situation was reviewed by the DCPS LRE Team downtown; Student’s services were not impacted and she remained in the full-time BES program.²⁷ Mother and Educational Advocate strongly urged placement in a full-time special education day school, but no change was made.²⁸

9. During the 5/28/14 meeting, DCPS proposed trying another BES program at the high school level for 2014/15.²⁹ The MDT team spoke highly of Public High School and its BES program, as well as its vocational component, since Student was interested in hair and cosmetology.³⁰ Mother responded and didn’t object to Public High School, although Educational Advocate strongly urged a more therapeutic setting.³¹ DCPS stood on its view that Public High School would be a better fit and that Student would benefit from a new start in a new school.³²

10. Student had told Middle School Psychologist that she (Student) was good with wigs and weave and knew about Public High School’s cosmetology program and preferred to go there rather than the nonpublic school that Mother wanted her to attend.³³ Student also told her DCPS social worker on 6/3/14 that she wanted to attend Public High

²² Middle School Psychologist.

²³ R14-1; R4-17; Educational Advocate.

²⁴ R4-17.

²⁵ R5-1.

²⁶ Educational Advocate; P21.

²⁷ Middle School Psychologist; Educational Advocate; P21-3.

²⁸ Educational Advocate; P20-17.

²⁹ Middle School Psychologist.

³⁰ *Id.*

³¹ Middle School Psychologist; Educational Advocate.

³² Middle School Psychologist.

³³ *Id.*

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School and pursue its cosmetology program, and that she didn't want to attend a full-time therapeutic school.³⁴

11. Despite her challenges, at the end of 2013/14 Student finally "bought into" the BES program and showed some improvement by doing school work rather than sleeping most of the day, because she wanted to participate in the festivities at the end of the year and be promoted.³⁵ DCPS also developed a Behavioral Intervention Plan ("BIP") at that time to try to address the behavioral problems of Student, after conducting a Functional Behavioral Assessment ("FBA").³⁶ Student's overall grades for 2013/14 were relatively good, notwithstanding her behavioral issues, with an A, B, B, C, D and D.³⁷

12. At a resolution session meeting on 7/29/14, DCPS formally proposed the BES program at Public High School as the placement/location for Student, asserting that her needs could be met by the BES program there.³⁸

Mother and Educational Advocate were in "total disagreement" about placement in the BES program at Public High School.⁴⁰ No other option for Student was presented by DCPS.⁴¹ At that time, Student's IEP was increased to full-time, with 27.5 hours of specialized instruction, and her disability category was changed from OHI to ED.⁴²

13. Student began the BES program at Public High School at the beginning of 2014/15, and continued to have challenges, including a suspension and other incidents.⁴³ Even when at school, Student often does not go to the classes she should be in, and the school often has no idea where she is.⁴⁴

14. However, Student has begun making progress academically in the BES program at Public High School.⁴⁵ Student is doing work there and receiving relatively good marks, including high scores on a range of work samples: 8 of 10 points (R18-8), 10 of 10 points (R18-10), 15 of 15 points (R18-12), 25 of 25 points (R18-16), 8.5 of 10 points (R18-21), and 10 of 10 points (R18-23). Student's 1st term 2014/15 grades at Public

³⁴ R11-1.

³⁵ Middle School Psychologist; Compliance Case Manager.

³⁶ R14; R7-1.

³⁷ Educational Advocate; R19-1,2.

³⁸ Educational Advocate; Compliance Case Manager.

⁴⁰ Educational Advocate.

⁴¹ Educational Advocate; Compliance Case Manager.

⁴² Educational Advocate; R1; R2.

⁴³ Educational Advocate; P11; P31; P4-1.

⁴⁴ Educational Advocate; Mother.

⁴⁵ Compliance Case Manager; P24-2; P25-3.

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High School were a B+, B, C, and F.⁴⁶ Student is also making progress in writing and is now able to write 10 sentences, which is a notable increase.⁴⁷

15. While she had been “very disruptive” in 2013/14,⁴⁸ Student’s 2014/15 Algebra teacher reported that “most of the time, [Student] is quiet and compliant as she completes her work.”⁴⁹ Student is often able to interact appropriately with peers in 2014/15.⁵⁰

Conclusions of Law

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

The overall purpose of the IDEA is to ensure that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).

“The IEP is the ‘centerpiece’ of the IDEA’s system for delivering education to disabled children,” *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3d Cir. 2010), quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173 (3d Cir. 1988), and is the primary vehicle for providing a FAPE. *S.H. v. State-Operated Sch. Dist. of the City of Newark*, 336 F.3d 260, 264 (3d Cir. 2003).

The Act’s FAPE requirement is satisfied “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), citing *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child’s potential. *Rowley*, 458 U.S. at 198. Congress, however, “did not intend that a school system could discharge its duty under the [IDEA] by providing a program that produces some minimal academic advancement, no matter how trivial.” *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir. 1985).

In addition, DCPS must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that

⁴⁶ R17-1.

⁴⁷ High School Psychologist.

⁴⁸ P4-2.

⁴⁹ P3-5.

⁵⁰ High School Psychologist.

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education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114.

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child's *substantive* rights.

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof is on the party seeking relief. *Schaffer v. West*, 44 IDELR 150 (U.S. 2005).

Issue 1 – *Whether DCPS denied Student a FAPE by failing to reconvene the IEP Team and provide a full-time IEP prior to 7/19/14 when both the IEP Team on 5/28/14 and DCPS at a due process hearing on 5/29/14 stated that Student needs full-time special education services out of general education in a separate day school.*

Issue 2 – *Whether Respondent denied Student a FAPE by failing to provide an appropriate educational placement, including location of services, when her IEP Team intended her to be in a full-time, separate, special education day school, as she needed a more restrictive setting.*

Petitioner first challenges the fact that prior to July 2014, Student's IEP only provided for 20 hours of specialized instruction out of general education, even though she actually had an increase in services when she was placed in a self-contained BES program at Public Middle School on a “trial” basis following an MDT meeting on 3/12/14. Student continued receiving full-time specialized instruction in the BES program until the end of 2013/14. Student's IEP, however, was not increased from 20 to 27.5 hours of specialized instruction until 7/30/14. Thus, Student was receiving full-time services at Public Middle School even though the hours in her IEP did not catch up for several months, apparently because DCPS had not obtained approval from its internal LRE Team to formally consider Student a part of the BES program at Public Middle School.

A “student's IEP determines whether an educational placement is appropriate; the placement does not dictate the IEP.” *S.S. by & through St. v. Dist. of Columbia*, CV 13-557 (CKK), 2014 WL 4650885, at *12 (D.D.C. Sept. 19, 2014), citing *Roark v. Dist. of Columbia*, 460 F. Supp. 2d 32, 44 (D.D.C. 2006); *Spielberg v. Henrico Cty. Public Sch.*, 853 F.2d 256, 258 (4th Cir. 1988) (“Educational placement is based on the IEP, which is

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revised annually”). Here, however, it would elevate form over substance to find a violation when there was no educational harm resulting from Student’s IEP not fully reflecting the hours of service she was receiving. Indeed, Petitioner’s complaint about the hours on Student’s IEP is not that she was in too restrictive a setting for her IEP, but that she should have been in an even more restrictive setting than the BES program.

Petitioner’s more serious substantive concern is the lack of success that Student experienced in the Public Middle School BES program. Despite the hopes and expectations that the BES program, with small classes containing 3 adults for 6 or 8 children and increased attention, would benefit Student, it was largely unsuccessful. Student resisted the BES program and regressed until near the end of 2013/14 when Student finally “bought into” the program somewhat and began doing school work.

However, the decision to put Student into the BES program in March 2014 must be judged prospectively, rather than by how the decision turned out. As with IEPs, the issue is not whether the decision “will guarantee some educational benefit, but whether it is reasonably calculated” to provide benefit. *S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 66 (D.D.C. 2008) (citation and internal quotations omitted). Applying this standard to the current claim, this Hearing Officer finds that the decision to place Student in the BES program in March 2014 was reasonable and not a denial of FAPE. Student had been having serious difficulties since early in 2013/14, about which her MDT team was very concerned, and the BES program seemed a reasonable choice, calculated to provide educational benefit to Student.

When it became clear that the BES program was not working as hoped, Mother and Educational Advocate strongly urged on 5/28/14 that Student be placed in an even more restrictive setting in a separate, full-time, therapeutic day school. Mother and Educational Advocate believed that at least some others on Student’s MDT team thought that a separate day school would be appropriate if the BES program did not work out for Student.⁵¹ However, when looking to 2014/15, DCPS determined that even though the particular BES program at Public Middle School was an “uncomfortable environment” for whatever reason and had not worked out well for Student, the BES program at Public High School might be different due to factors such as location, class composition and staffing. But Mother and Educational Advocate were certain that Student would do no better in a second BES program than the first and strenuously urged that Student be sent to a separate day school.

⁵¹ Much advocacy focused on whether Student’s MDT team at any point agreed that Student would need a separate day school if the BES program at Public Middle School did not work out for Student. This Hearing Officer is not persuaded that the MDT team committed to place Student in a more restrictive environment if the BES program was not sufficient. In any case, the IEP Team never incorporated such a requirement into Student’s IEP and resisted Mother’s and Educational Advocate’s efforts to have Student placed in Nonpublic School.

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The issue is whether the BES program at Public High School offered a basic floor of opportunity to Student or whether a separate day school was necessary for Student to access the curriculum and receive a FAPE. *See Smith*, 846 F. Supp. 2d at 202 (school needs to provide only basic floor of opportunity), *quoting Rowley*, 458 at 201, 102 S.Ct. 3034. The BES program was a full-time out of general education placement with small classes that DCPS believed could carry out Student's full-time IEP, address her needs and provide educational benefit. Further, Public High School is where Student wanted to attend rather than Nonpublic School, and Student's opposition to her program at Public Middle School clearly contributed to her lack of success there in 2013/14, until her attitude shifted and she chose to work late in that school year. Judged prospectively, *Shank, supra*, this Hearing Officer finds that DCPS's determination was not unreasonable and that Petitioner has not met her burden of proof as to the placement of Student in the BES program at Public High School.

Finally, the issue arose again when Student's IEP was recently considered at an IEP meeting on 10/24/14 and a determination was made that no adjustment in placement or setting needed to be made because Student was making progress in the Public High School BES program. Student continues to face challenges, including a suspension and other incidents, but her behavior has improved and she seems to be doing better academically, according to the credible testimony of her Teacher and High School Psychologist. While not dispositive, Student's grades and marks on her sample school work are also encouraging, as passing marks are "one important factor in determining educational benefit," *Hinson ex rel. N.H. v. Merritt Educ. Ctr.*, 579 F. Supp. 2d 89, 103 (D.D.C. 2008), *quoting Rowley*, 458 U.S. at 207, 102 S.Ct. 3034. This Hearing Officer finds that continuing Student in her current placement/location in October 2014 was reasonably calculated to provide her with educational benefit and was not a denial of FAPE.

In sum, Petitioner did not carry her burden of demonstrating that Respondent denied Student a FAPE by failing to amend her IEP or by failing to place her in a full-time, therapeutic, separate day school.

Issue 3 – *Whether Respondent denied Student a FAPE by failing to allow Parent meaningful participation in the educational placement decision, including the location of services, when Parent's educational advocate was informed by Public Middle School staff that the DCPS LRE Committee alone would determine Student's placement and IEP needs, excluding Parent from the decision-making process. DCPS later advised Parent and advocate of its unilateral decision to place Student in the BES classroom at Public High School.*

Petitioner next contends that DCPS violated the IDEA because she was excluded from the decision-making process when DCPS decided to place Student in the BES program at Public High School. This claim is without merit. The IDEA does require parental involvement regarding any decisions "on the educational placement of their child." *See Aikens v. Dist. of Columbia*, 950 F. Supp. 2d 186, 190 (D.D.C. 2013), *citing*

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20 U.S.C. § 1414(e); 34 C.F.R. 300.116(a)(1), 300.327. Here, however, Mother, directly and through her Educational Advocate, emphatically and repeatedly made clear her position and perspective that Nonpublic School was needed for Student instead of Public High School. Indeed, Mother and Educational Advocate had been urging a separate, full-time, therapeutic day school for months, in both meetings and other communications with DCPS staff.

Although DCPS and the MDT team did not yield to Mother's desire that Student be placed in a separate, full-time, therapeutic day school, Mother had an opportunity to participate, in a meaningful way, to plainly make her views known. *Cf. Hawkins v. Dist. of Columbia*, 692 F. Supp. 2d 81, 84 (D.D.C. 2010) (right conferred by the IDEA on parents to participate does not constitute a veto power over the IEP team's decisions). Accordingly, this Hearing Officer finds that Petitioner did have the input required by the IDEA and has not shown that DCPS failed to ensure her right to participate in the placement decision for Student to attend the BES program at Public High School.

ORDER

Petitioner has failed to meet her burden of proof on the issues in this case. Accordingly, **it is hereby ordered** that any and all claims and requests for relief are **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Caption

/s/ Keith Seat

Keith L. Seat, Esq.
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).