OSSE
Student Hearing Office
April 08, 2013

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002

Parent, on behalf of STUDENT, [1]	)	**Case Number: 2012-0835**
Petitioner,	)	
v.	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Respondent.	)	**Hearing Officer: Frances Raskin**

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was invoked in accordance with the Individuals With Disabilities Education Act ("IDEA"), as amended in 2004, codified at 20 U.S.C. §§ 1400, *et seq*.; the District of Columbia Code, §§ 38-2561.01, *et seq*.; the federal regulations implementing IDEA, 34 C.F.R. §§ 300.1, *et seq*.; and the District of Columbia regulations at D.C. Mun. Reg. tit. 5-E §§ 3000, *et seq*.

II. BACKGROUND

Petitioner is the parent of a [redacted] year-old student ("Student") with a disability who attends a nonpublic school ("Nonpublic School 1") in the District of Columbia. On January 22, 2013, Petitioner filed a due process complaint ("Complaint") against Respondent, the District of Columbia Public Schools ("DCPS"), alleging violations of the IDEA.

On January 23, 2013, this Hearing Officer was assigned to preside over this case. On January 31, 2013, Respondent filed a timely response ("Response") to the Complaint[2] and Motion to Dismiss. On February 1, 2013, Petitioner filed an opposition ("Opposition") to the Motion to Dismiss.

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[1] Personal identification information is provided in Attachment A.
[2] Respondent did not challenge the sufficiency of the Complaint.

On February 7, 2013, the parties participated in a resolution meeting but did not resolve the Complaint. The parties did not agree to start the forty-five day, due process hearing period on that date. Thus, the resolution period ended on February 21, 2013.

On February 26, 2013, this Hearing Officer held a prehearing conference in which Counsel for Petitioner and Counsel for Respondent participated. During the prehearing conference, both counsel agreed that the forty-five day, due process hearing timeline began on February 21, 2013. This Hearing Officer informed counsel that the end of the forty-five-day timeline, i.e., the deadline for the hearing officer determination ("HOD"), is April 7, 2013. Both counsel agreed to schedule the due process hearing for March 29, 2013.

On March 1, 2013, this Hearing Officer issued a prehearing conference summary and order ("Prehearing Order"). On March 22, 2013, the parties exchanged five-day disclosures in accordance with the deadline specified in the Prehearing Order. On March 29, 2013, this Hearing Officer denied Respondent's Motion to Dismiss.

The due process hearing commenced at 9:00 a.m. on March 29, 2013, in room 2004. Present at the hearing were Petitioner, his counsel, the Student. and counsel for Respondent.

At the outset of the due process hearing, this Hearing Officer entered into evidence Petitioner's proposed exhibits,[3] and Respondent's proposed exhibits.[4] Petitioner testified and presented four witnesses on his behalf, an educational advocate ("Advocate 1"), a second educational advocate ("Advocate 2"), and expert in counseling psychology ("Expert"), and the founding director of Nonpublic School 1 ("Director"). Respondent presented no witnesses. The due process hearing concluded at 5:00 p.m. on March 29, 2013.

III. ISSUES PRESENTED.

This Hearing Officer certified the following issues for adjudication at the due process hearing:

A. Whether Respondent denied the Student a free, appropriate, public education ("FAPE") on December 14, 2012, by changing the Student's placement for the 2013-2014 school year from Nonpublic School 1, a full-time, nonpublic school for students with disabilities, to Nonpublic School II, even though a hearing officer on November 13, 2012, found that Nonpublic School II would not be an appropriate placement for the Student, Respondent lacked sufficient information to make this decision, and failed to consider the Student's unique needs; and

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[3] This Hearing Officer admitted into evidence Petitioner's exhibits 2-15, inclusive. This Hearing Officer excluded Petitioner's Exhibit 1, portions of a transcript from a prior due process hearing.

[4] This Hearing Officer admitted into evidence Respondent's exhibit 1.

B. Whether Respondent denied Petitioner his right to participate in the decisionmaking process regarding the Student's placement by predetermining the Student's placement, i.e., unilaterally making the decision to remove the Student from Nonpublic School 1 and place the him at Nonpublic School 2, for the 2013-2014 school year without input from Petitioner, issuing the prior written notice ("PWN") after Petitioner and his advocate left the December 14, 2012, meeting, and failing to provide Petitioner a copy of the PWN.

Petitioner requests relief in the form of an order that would require Respondent to withdraw the PWN and bar Respondent from making a decision regarding the Student's placement for the 2013-2014 school year prior to May 2013 and without including Petitioner in the placement decision.

For the reasons explained below, this Hearing Officer finds that Petitioner failed to prove these issues by a preponderance of the evidence.

IV. FINDINGS OF FACT

1. The Student is a [redacted] year-old young man eligible for special education services as a student with a specific learning disability ("SLD").[5] The Student is in the [redacted] grade and currently attends Nonpublic School 1, which is located in Washington, D.C.[6]

2. The Student has low cognitive abilities.[7] His full-scale IQ is quite low; it falls somewhere between 50 and 70.[8] His academic achievement is higher than would be expected for a student with his full-scale IQ.[9] He generally performs two years behind his grade level in math and four to five years behind his grade level in reading and written expression.[10]

3. The Student has significant anxiety and difficulty managing stress.[11] He is sensitive to his environment and easily distracted.[12] He has low motivation to perform academically due to his history of academic frustration and educational failure.[13] In the past, he has had outbursts and been confrontational.[14]

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[5] Petitioner Exhibit 3 at 1 (November 29, 2012, Individualized Education Program ("IEP")).
[6] Testimony of Petitioner, Director.
[7] Testimony of Advocate 2.
[8] *Id*.
[9] *Id*.
[10] *Id*.; Petitioner Exhibit 5 at 3 (December 14, 2012, Nonpublic School 1 IEP Meeting Notes).
[11] Testimony of Expert.
[12] Testimony of Advocate 2.
[13] Petitioner Exhibit 5 at 5 (December 14, 2012, draft IEP goals).
[14] Testimony of Advocate 2.

4. The Student began attending Nonpublic School 1 in 2010. At the time, he was experiencing extreme stress and had difficulty transitioning to his new school.[15] Due to his low self-esteem, and the trauma he experienced in school prior to attending Nonpublic School 1, the Student required a lot of emotional support.[16] He had difficulty concentrating on his schoolwork and staying in his seat.[17] He often left his classroom to go to other classrooms and socialize with his peers.[18]

5. It took four months for the Student to adjust to his new school.[19] Although he attended school every day, he was emotionally guarded and often avoided social interactions.[20] He often pulled the hood of his sweatshirt over his head, put his head on his desk, and refused to perform his schoolwork.[21] He was reluctant to trust the staff and his peers at Nonpublic School 1.

6. During the Student's first few months at Nonpublic School 1, the Expert worked with him on self-regulating behaviors.[22] The Expert helped the Student maintain self-control, remain in his classroom, and focus on his schoolwork.[23]

7. The Expert has continued to work with the Student throughout the three years he has attended Nonpublic School 1.[24] As a result, the Student has learned to regulate his behavior and focus on his schoolwork.[25] Over time, he developed trust in his peers and school staff.[26]

8. Although the Student has made behavioral and emotional progress during his three years at Nonpublic School 1, he continues to have low self-esteem and difficulty regulating his emotions.[27] When he experiences conflict at home or with his neighborhood peers, the Student loses academic motivation.[28] On occasions when was under stress, he broke out in hives.[29]

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[15] Testimony of Expert.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] *Id*.

9. On November 13, 2012, Petitioner participated in a due process hearing before Hearing Officer James McKeever.[30] Among the issues the Hearing Officer had certified for hearing was whether Respondent denied the Student a FAPE in July and August 2012 when it changed his placement from Nonpublic School 1 to Nonpublic School 2.[31] Petitioner, the Expert, and Advocate 2 testified at the due process hearing.[32]

10. On November 23, 2012, Hearing Officer McKeever issued a hearing officer determination ("HOD") that found that, if the Student were moved to another school, he would regress academically and behaviorally.[33] The Hearing Officer found that Respondent's decision to change the Student's location of service to Nonpublic School 2 was inappropriate, in part because Nonpublic School 2 lacked a certificate of approval and could not accept any DCPS students.[34]

11. In the November 23, 2012, HOD, Hearing Officer McKeever found that Respondent had denied the Student a FAPE on the grounds that removing the Student from Nonpublic School 1 and placing him at Nonpublic School 2 "would pose a serious and unnecessary risk to the Student."[35] Hearing Officer McKeever ordered Respondent to fund the Student's placement at Nonpublic School 1 through the end of the 2012-2013 school year.[36]

12. On December 14, 2012, just three weeks after the issuance of the HOD, Respondent convened a meeting to review the Student's IEP.[37] Petitioner participated in this meeting by telephone.[38] Advocate 1, two of the Student's special education teachers, a school counselor, and a local education agency ("LEA") representative attended the meeting in person.[39] The IEP team discussed the Student's present levels of performance and developed annual goals.[40]

13. At the December 14, 2013, meeting, the LEA representative asked when the Student would be ready for a less restrictive environment than Nonpublic School 1.[41] The Nonpublic School 1 members of IEP team responded that it was too early in the school year to discuss whether he should be placed in a less restrictive environment.[42] The school

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[30] Petitioner Exhibit 2 at 2 (November 23, 2012, HOD).
[31] *Id*. at 3.
[32] *Id*. at 8, 11, 13.
[33] *Id*. at 8-9.
[34] *Id*. at 9.
[35] *Id*.
[36] *Id*. at 12.
[37] Petitioner Exhibit 5 at 3; Petitioner Exhibit 6 at 1 (December 14, 2012 Advocate Notes).
[38] Testimony of Petitioner.
[39] Petitioner Exhibit 5 at 3; testimony of Director.
[40] Testimony of Advocate 1; Petitioner Exhibit 5 at 3.
[41] Testimony of Advocate 1.
[42] *Id*.

counselor informed the IEP team that the Student has difficulty coping with transitions.[43] The counselor stated that the Student fears that he will be removed from Nonpublic School 1 and placed in Nonpublic School 2.[44] None of the meeting participants believed the Student was ready to transition to a less restrictive environment.[45]

14. After the IEP team concluded its development of the Student's IEP, Petitioner hung up the telephone.[46] Advocate 1 also left the meeting.[47] Petitioner and Advocate 1 had been under the impression the meeting had concluded because the IEP team had developed the Student's IEP, which was the purpose of the meeting.[48]

15. Once Petitioner and Advocate 1 had left the meeting, the LEA representative informed the remaining participants that Respondent planned to remove the Student from Nonpublic School 1 and place him in Nonpublic School 2 for the 2013-2014 school year.[49] The LEA representative then drafted a PWN ("PWN-1") and provided it to the remaining meeting participants.[50]

16. In PWN-1, the LEA representative explained that Respondent planned to move the Student to Nonpublic School 2 for the 2013-2014 school year to ensure he is adequately prepared to meet his goals in a less restrictive setting.[51] PWN-1 reflected that the Student's goals were to attended a four-year university.[52] PWN-1 did not explain how Nonpublic School 2 is a less restrictive setting than Nonpublic School 1.[53]

17. Sometime after the December 14, 2012, meeting, Nonpublic School 1 sent a copy of PWN-1 to Petitioner and Advocate 1.[54] On December 27, 2012, Advocate 1 sent a letter to the LEA representative that outlined her concerns about Respondent's issuance of PWN-1.[55] In the letter, Advocate 1 informed Respondent that she and Petitioner disagreed

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[43] *Id*.
[44] *Id*.
[45] *Id*.
[46] *Id*.; Testimony of Petitioner.
[47] Testimony of Advocate 1.
[48] Testimony of Advocate 1.
[49] Petitioner Exhibit 5 at 7; Petitioner Exhibit 10 at 1 (December 14, 2012, DCPS Prior Written Notice).
[50] Petitioner Exhibit 7 at 3 (December 14, 2012, DCPS Meeting Notes).
[51] Petitioner Exhibit 10 at 1 (December 14, 2012, PWN).
[52] *Id*.
[53] *Id*.; testimony of Director.
[54] Petitioner Exhibit 9 at 3 (December 27, 2012, letter from Advocate 1 to LEA representative).
[55] *Id*.

with Respondent's decision to remove the Student from Nonpublic School 1 and place him at Nonpublic School 2.[56]

18. Nonpublic School 1 is a full-time, special education day school for students with SLD.[57] The school currently serves twenty or twenty-one students in grades nine through twelve.[58] The Nonpublic School 1 academic year is eleven months.[59] The Office of State Superintendent of Education ("OSSE") has issued a certificate of approval to Nonpublic School 1.[60]

19. Each classroom at Nonpublic School 1 has no more than six students.[61] Students at Nonpublic School 1 have an opportunity to interact with their nondisabled peers during extracurricular activities and field trips, both during and after the school day.[62]

20. Nonpublic School 1 offers a curriculum based on the common core standards that are designed to fulfill the requirements for a DCPS diploma.[63] To satisfy the diploma requirement that all students take two years of foreign language, the Nonpublic School 1 offers French.[64] The Student has taken one year of French so far.[65]

21. The Student has made academic progress at Nonpublic School 1 during the 2012-2013 school year.[66] For the first semester, which ended at the end of February 2013, the Student had four Bs and three Cs.[67]

22. Nonpublic School 2 also is a full-time, special education, day school for students with SLD.[68] It is located in Washington, D.C.[69]

23. Nonpublic School 2 offers a ten-month program.[70] Students at Nonpublic School 2 may earn either a high school diploma or a certificate of completion.[71] The school offers Spanish courses but not French.[72]

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[56] *Id*.
[57] Testimony of Director.
[58] *Id*.
[59] *Id*.
[60] *Id*.; Petitioner Exhibit 13 at 4 (OSSE Division of Specialized Education Approved Nonpublic Day Schools as of February 28, 2013).
[61] *Id*.
[62] *Id*.
[63] *Id*.
[64] *Id*.
[65] Testimony of Advocate 2.
[66] Testimony of Student, Petitioner.
[67] Testimony of Student.
[68] Testimony of Advocate 1.
[69] *Id*.

24. About sixty-five students are currently enrolled in Nonpublic School 2.[73] Class sizes at Nonpublic School 2 range from ten to twelve students.[74] Students at Nonpublic School 2 do not interact with their nondisabled peers during the school day or during extracurricular activities.[75]

25. Nonpublic School 2 requires prospective students to visit the school and complete an interview.[76] Petitioner and the Student have never visited Nonpublic School 2.[77] Nor has the Student participated in an interview at Nonpublic School 2.[78]

26. Respondent has twice previously attempted to remove the Student from Nonpublic School 1 and place him in Nonpublic School 2.[79] The Student does not want to attend Nonpublic School 2.[80] Each time he learned that Respondent planned to place him in Nonpublic School 2, the Student became upset.[81]

27. The Student did not learn that Respondent had once again proposed placing him in Nonpublic School 2 until March 28, 2013, the day before the due process hearing.[82] As of the date of the due process hearing, the Student had attended Nonpublic School 1 throughout the 2012-2013 school year.[83]

28. On January 24, 2013, Respondent issued another PWN ("PWN-2").[84] In PWN-2, the LEA representative states that the Student's location of services would remain at Nonpublic School 1 until revisited by an IEP team prior to the end of the 2012-2013 school year.[85]

29. Respondent will hold an IEP team meeting in May or June 2013 to discuss the Student's location of services.[86] Respondent will ensure that Petitioner is a participant in the meeting.[87]

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[70] Testimony of Advocate 2.
[71] *Id*.
[72] *Id*.
[73] Testimony of Advocate 2.
[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] *Id*. Testimony of Petitioner.
[78] *Id*.
[79] Testimony of Student.
[80] *Id*.
[81] *Id*.
[82] *Id*.
[83] Testimony of Director.
[84] Respondent Exhibit 1 (January 24, 2013, PWN).
[85] *Id*. at 1-2.
[86] Stipulation of Respondent.

30. The Expert has informed Respondent that moving the Student to Nonpublic School 2 would be detrimental to his emotional state and his academics.[88] She explained to Respondent that the Student has difficulty trusting others, maintaining appropriate behavior, and managing his stress.[89] She explained that, without the consistency he has received over the past three years, the Student would start exhibiting behavioral difficulties and his academic performance would decline.[90] She explained that the Student has weak coping skills and moving him to a new school may lead him to give up on his academics.[91]

31. All of the witnesses at the due process hearing provided credible testimony with the exception of Petitioner. Petitioner had difficulty recalling events because he suffers from memory lapses that are the result of a stroke.[92]

V. CONCLUSIONS OF LAW

The purpose of 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."[93] Implicit in the congressional purpose of providing access to a FAPE is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child.[94]

FAPE is defined as:

> Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State Education Agency . . . include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program.[95]

A school district need not maximize the potential of children with disabilities, but the door of public education must be opened in a meaningful way and the IEP must provide the opportunity for more than only "trivial advancement."[96]

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[87] *Id*.
[88] Testimony of Expert.
[89] *Id*.
[90] *Id*.
[91] *Id*.
[92] Testimony of Petitioner.
[93] *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91 (1982); *Hinson v. Merritt Educ. Ctr*., 579 F. Supp. 2d 89, 98 (2008) (citing 20 U.S.C. § 1400(d)(1)(A)).
[94] *Rowley*, 458 U.S. at 200; *Hinson*, 579 F. Supp. 2d. at 98 (citing *Rowley*, 458 U.S. at 200).
[95] 20 U.S.C. § 1401 (9); 34 C.F.R. § 300.17.
[96] *P. v. Newington Bd. of Educ*., 546 F.3d. 111 (2nd Cir. 2008) (citations omitted).

In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.[97] In other words, an IDEA claim is viable only if those procedural violations affected the student's *substantive* rights.[98]

The burden of proof is properly placed upon the party seeking relief.[99] Petitioner must prove the allegations in the due process complaint by a preponderance of the evidence.[100] The preponderance of evidence standard simply requires the trier of fact to find that the existence of a fact is more probable than its nonexistence.[101]

In other words, preponderance of the evidence is evidence that is more convincing than the evidence offered in opposition to it.[102] Unlike other standards of proof, the preponderance-of-evidence standard allows both parties to share the risk of error in roughly equal fashion,[103] except that when the evidence is evenly balanced, the party with the burden of persuasion must lose.[104]

VI. DISCUSSION

A. Petitioner Failed to Prove that Respondent Denied the Student a FAPE on December 14, 2012, by Changing his Educational Placement for the 2013-2014 school year from Nonpublic School 1 to Nonpublic School 2.

The term "educational placement" refers to the type of educational program prescribed by the IEP.[105] "Educational placement" refers to the general educational program, such as the classes, individualized attention, and additional services a child will receive, rather than the "bricks and mortar" of the specific school.[106]

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[97] 34 C.F.R. § 300.513 (a)(2).
[98] *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original; internal citations omitted).
[99] *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
[100] 20 U.S.C. § 1415 (i)(2)(c). *See also Reid*, 401 F.3d 516, 521 (D.C. Cir. 2005) (discussing standard of review).
[101] *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993) (internal quotation marks omitted).
[102] *Greenwich Collieries v. Director, Office of Workers' Compensation Programs*, 990 F.2d 730, 736 (3rd Cir. 1993), *aff'd*, 512 U.S. 246 (1994).
[103] *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983) (internal quotation marks omitted).
[104] *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 281 (1994).
[105] *T.Y. v. N.Y. Dept. of Educ.*, 584 F.3d 412, 419 (2d Cir. 2009) (citation omitted).
[106] *Id*.

Placement decisions must be made in conformity with the child's IEP.[107] The decision to place a student before developing an IEP on which to base that placement violates the IDEA regulations.[108] It also violates the spirit and intent of IDEA, which emphasizes parental involvement.[109] After the fact involvement is not enough.[110] Thus, the placement should not dictate the IEP but rather the IEP determines whether a placement is appropriate.[111]

The considerations relevant to determining whether a particular placement is appropriate for a particular student include the nature and severity of the student's disability; the student's specialized educational needs; the link between those needs and the services offered by the school; the placement's cost; and the extent to which the placement represents the least restrictive environment.[112]

The question of what constitutes a change in educational placement is, necessarily, fact specific and thus, "in determining whether a given modification in a child's school day should be considered a 'change in educational placement,'" the "touchstone" is whether the modification "is likely to affect in some significant way the child's learning experience."[113] In determining whether a "change in educational placement" has occurred, the LEA must determine whether the proposed change would substantially or materially alter the child's educational program.[114]

In determining whether the change in location would substantially or materially alter the child's educational program, the LEA must examine the following factors: whether the educational program set out in the child's IEP has been revised; 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;

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[107] 34 C.F.R. § 300.116 (a)(2)(b), D.C. Mun. Reg. tit. 5-E § 3013 (2006); *Spielberg v. Henrico County Public Schools*, 853 F.2d 256, 258 (4th Cir. 1988).
[108] *Spielberg*, 853 F.2d at 258.
[109] *Id*.
[110] *Id*.
[111] *See Rourke v. District of Columbia,* 460 F.Supp.2d 32, 44 (D.D.C. 2006). In the District of Columbia, special education placements shall be made in the following order or priority, provided, that the placement is appropriate for the student and made in accordance with IDEA: (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school; (2) private or residential District of Columbia facilities; and (3) facilities outside of the District of Columbia. D.C. Code § 38-2561.02.
[112] *Branham*, 427 F.3d at 12 (citing *Rowley*, 458 U.S. at 202). *See also* D.C. Mun. Reg. tit. 5-E § 3013 (in selecting the least restrictive environment, consideration shall be given to any potential harmful effect on the child or on the quality of services that the child needs).
[113] *J.R. v. Mars Area Sch. Dist.*, 318 Fed. Appx. 113, 119 (3d Cir. Pa. 2009).
[114] *Letter to Fisher*, 21 IDELR 992 (Office of State Education Programs ("OSEP"), July 6, 1994).

and whether the new placement option is the same option on the continuum of alternative placements.[115] In other words, if the proposed change substantially or materially affects the composition of the educational program and services provided the student, it is a change in placement.[116]

In contrast, a simple change in location is limited to the physical characteristics associated with a particular site. A transfer of a student from one school to another school that has a comparable educational program is generally considered a change in location only.[117] Simple changes in the location of a building or facility are not generally viewed as a change in placement if there are no significant changes in the educational program.[118]

Here, Petitioner failed to prove that moving the Student from Nonpublic School 1 to Nonpublic School 2 would be a change in the Student's placement. Both schools are full-time, segregated, special education day schools in Washington, D.C. While Nonpublic School 2 does not offer French, Petitioner failed to prove that this would be a significant change in his educational program or require a revision of his IEP.

There is no question that the Student would suffer significant emotional distress were he to be removed from Nonpublic School 1. However, Petitioner failed to show that this amounted to a change in placement rather than indicia of the Student's disability.

Petitioner also failed to prove that the Student would not will be educated with nondisabled children at Nonpublic School 2 to the same extent as he is at Nonpublic School 1. Petitioner failed to present any proof to address whether the Student will have the same opportunities to participate in nonacademic and extracurricular services. Petitioner did prove that Nonpublic School 2 is the same option on the continuum of alternative placements as Nonpublic School 1.

Even if the proposed transfer of the Student from Nonpublic School 1 to Nonpublic School 2 were a change of placement, Petitioner failed to prove that the Student was denied a FAPE by this proposed change of placement. While the Student experienced significant stress in relation to the Respondent's previous attempts to place him at Nonpublic School 2, the Student admitted he learned of PWN-1 only the day before the due process hearing. Moreover, the Student had made academic progress in the two months following the issuance of PWN-1, as evidenced by his good grades for the school term that ended on

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[115] *Id*.
[116] *Letter to Flores*, 211 IDELR 233 (OSEP Aug. 18,1980); *Letter to Fisher*, 21 IDELR 992.
[117] *See*, e.g., *Concerned Parents & Citizens for the Continuing Educ. at Malcolm X (P.S. 79) v. New York City Bd. of Educ*., 629 F.2d 751, 753-54 (2d Cir. 1980), *cert. denied*, 449 U.S. 1078 (1980).
[118] *Letter to Flores*, 211 IDELR 233. *See also A.W. v. Fairfax County Sch. Bd*., 372 F.3d 674, 682 (4th Cir. 2004) (where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs.)

February 28, 2013.

Moreover, Respondent effectively withdrew PWN-1 on January 24, 2013. Respondent stipulated that it would hold a meeting to discuss the Student's placement in May 2013. Respondent also stipulated that it would ensure that Petitioner is a participant in this meeting. Thus, there is no relief for this Hearing Officer to order on this claim.

For these reasons, this Hearing Officer finds that Petitioner failed to prove that Respondent denied the Student a FAPE.

B. Petitioner Failed to Prove that Respondent Denied Petitioner His Right to Participate in the Decisionmaking Process Regarding the Student's Placement for the 2013-2014 School Year.

IDEA guarantees parents of disabled children the opportunity to participate in the evaluation and placement process.[119] One of the policies underlying the need for an accurate written IEP is "to serve a parent's interest in receiving full appraisal of the educational plan for her child, allowing a parent both to monitor her child's progress and determine if any change to the program is necessary.[120]

Thus, Respondent must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.[121] Procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in the denial of FAPE.[122]

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.[123] A group that does not include a student's parent may make a placement decision if the public agency is unable to obtain the parent's participation in the decision.[124] In this case, the public agency must have a record of its attempt to ensure their involvement.[125]

While the IDEA requires parental participation in educational placement decisions, it does not mandate that parents be involved with site selection.[126] The term "placement"

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[119] 20 U.S.C. §§ 1414(f), 1415(b).
[120] *Alfano et al. v. District of Columbia,* 442 F. Supp. 2d 1, 6 (D.D.C. 2006) (citation omitted).
[121] 34 C.F.R. § 300.501 (c)(1).
[122] *See, e.g.*, *W.G. v. Board of Trustees*, 960 F.2d 1479, 1484 (9th Cir. 1992).
[123] 34 C.F.R. § 300.501 (c)(3).
[124] 34 C.F.R. § 300.501 (c)(4).
[125] *Id*.
[126] *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379 (5th Cir. 2003) (stating that the term "educational placement," as used in the IDEA, means educational program, not the particular institution where that program is implemented)(citations omitted).

does not mean a particular school, but a setting, such as regular classes, special education classes, special schools, home instruction, or hospital or institution-based instruction.[127] Moreover, the provision that requires the IEP to specify the location is primarily administrative; it requires the IEP to include such technical details as the projected date for the beginning of services, their anticipated frequency, and their duration.[128]

Here, as discussed above, Petitioner failed to prove that Respondent's proposal to move the Student from Nonpublic School 1 to Nonpublic School 2 was a change of placement. For this reason, Respondent was not required to convene a meeting and include Petitioner in the discussion regarding its proposal to place the Student at Nonpublic School 2 for the 2013-2014 school year.

Thus, Petitioner failed to prove that Respondent denied his right to participate in the decisionmaking process regarding the Student's placement.

ORDER

Based upon the findings of fact and conclusions of law herein, it is this the seventh day of April hereby:

ORDERED that the Complaint is dismissed with prejudice.

By: /s/ *Frances Raskin*
Frances Raskin
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).

Distributed to:

Counsel for Petitioner
Counsel for Respondent
Student Hearing Office

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[127] *Id*. at 380.
[128] *Id*. (citing 20 U.S.C. § 1414(d)(1)(A)(vi)).

APPENDIX A

Docket No. 2013-0036

Student	
Student ID No.	
Petitioner	father
Educational Advocate	
pert in Counseling Psychology	
A Representative	
Nonpublic School I	Washington, D.C.
Nonpublic School II	, Washington, D.C.
Attorney for Petitioner	Alana Hecht
Attorney for Respondent	Justin Douds

* Did not testify at the due process hearing.

[redacted]

** NOTE: Please do not modify subject line when replying **

** This email was sent by Frances Raskin [mailto: Frances.Raskin@dc.gov] **

Dear counsel,

The HOD is attached.

Thank you,

Frances Raskin
Hearing Officer
Student Hearing Office
Office of the Chief Operating Officer
Office of the State Superintendent of Education
Government of the District of Columbia
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Washington, D.C. 20002
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