

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

Student Hearing Office
810 First Street, N.E.
Washington, DC 20002

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Student Hearing Office
February 21, 2013

Student, ¹ by and through the Petitioner,	Date Issued: February 20, 2013
Petitioner,	Hearing Officer: Michael Lazan
v.	Case No: 2012-0813
District of Columbia Public Schools,	Hearing Dates: February 13, 2013
Respondent.	Room: 2003

HEARING OFFICER DETERMINATION

INTRODUCTION

This matter comes before the undersigned Hearing Officer on Petitioner’s Notice of Due Process Complaint (“Complaint”) received by Respondent on December 7, 2012. This IHO was appointed to hear this matter on December 10, 2012. Respondent filed a Response to the Complaint on December 17, 2012.

A resolution meeting was held in this case on December 18, 2012. The parties did not agree in writing to waive the resolution period or resolve the Complaint. The parties did not agree to shorten the resolution period, which ended on January 6, 2013. The HOD was due on February 20, 2013.

¹ Personal identification information is provided in Appendix A.

A Prehearing Conference was held on January 9, 2013. A Prehearing Conference Summary and Order was issued on January 14, 2013. After requests for revision by Petitioner, the Prehearing Conference Summary and Order was revised on January 24, 2013.

Hearing dates were held on February 13, 2013. This was a closed proceeding. Petitioner was represented by Nicholas Ostrem, Esq. Respondent was represented by Maya Washington, Esq. Petitioner entered into evidence exhibits 1-21; Respondent entered into evidence exhibits 1-7. Petitioner presented as witnesses: Petitioner; the Student; [REDACTED] Educational Advocate, [REDACTED], Special Education Specialist. Respondent presented as witnesses: [REDACTED] Special Education Specialist, [REDACTED], Teacher, [REDACTED], Teacher, [REDACTED] Principal. At the end of the hearing day, the parties presented oral arguments.

JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C. Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

BACKGROUND

The Student is female, [REDACTED] and eligible for services as a student with an a specific learning disability. The Complaint involves claims implicating 34 CFR 300.507(a). The Complaint indicates that DCPS failed to determine an appropriate placement for the Student, failed to issue a Prior Written Notice for the Student, failed to provide an appropriate placement for the Student, and failed to implement an appropriate IEP.

ISSUES

As identified in the Revised Prehearing Conference Summary and Order, the issues to be determined are as follows:

1. Did DCPS fail to make a timely placement determination for the Student for the 2011-2012 school year from the start of the school year through to November 21, 2011? If so, was that failure to make a timely placement determination violative of law and regulation? If so, was the Student denied a FAPE by DCPS's failure to make a timely placement determination for the 2011-2012 school year?

2. Did DCPS fail to issue a Prior Written Notice for the Student for the 2011-2012 school year from the start of the school year through to November 21, 2011? If so, was that failure to issue a Prior Written Notice violative of law and regulation? If so, was the Student denied a FAPE by DCPS's failure to issue a Prior Written Notice for the 2011-2012 school year?

3. Did DCPS fail to provide an appropriate placement for the Student for the 2011-2012 school year from the start of the school year through to November 21, 2011? If so, was that failure to provide an appropriate placement violative of law and regulation? If so, was the Student denied a FAPE by DCPS's failure to provide an appropriate placement for the 2011-2012 school year?

4. Did DCPS fail to implement the 2011-2012 IEP from the start of the school year through to November 21, 2011? If so, was that failure to implement violative of law and regulation? If so, was the Student denied a FAPE by DCPS's failure to implement the IEP for the 2011-2012 school year?

As relief, Petitioner seeks an an independent comprehensive psychological assessment, an independent vocational II assessment, and an independent compensatory education

assessment. Petitioner requests that such assessment be ordered at the market rate. Petitioner is also requesting 90 hours of independent tutoring by Christian Roman or one of his agents.

FINDINGS OF FACT

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

1. The Student is a [REDACTED] female who is eligible for services as a student with a specific learning disability. (P-13-1)
2. The Student is in the custody of Petitioner, her grandmother. (Testimony of Petitioner)
3. The Student has experienced learning problems since the first grade. (Exh. 17-1)
4. The Student has a severe expressive/receptive language disorder. (P-19-5)
5. The Student's mathematics disability greatly impacts on her ability to perform at grade level. She needs intensive assistance and instruction in math. She needs a small student to staff ratio. (Exh. 13-2)
6. In reading, the Student needs specialized instruction to assist with reading fluency, comprehension, information, distinguishing fact from fiction. She needs direct instruction, verbalization to assure understanding and meaning. (Exh. 13-4)
7. The Student requires specialized instruction in writing. She needs to work on her vocabulary, word meaning, comprehension skills. (Exh. 13-5)
8. The Student's poor academic skills have led to difficulties with behavior, including the failure to report to and remain in class during instructional periods. (Exh. 13-2)
9. The Student has gone to at least seven different schools during her academic career. She repeated the first and third grades. (Exh. 17-3)

10. The Student went to School A for the 5th and 6th grade. (Testimony of Petitioner)
11. At School A, a gang of girls were bothering her. (Testimony of Petitioner)
12. The Student did not regularly attend classes at School A. (Exh. 17-1)
13. The Student went to School B for the 2009-2010 and 2010-2011 school year.

(Testimony of Student; Testimony of Petitioner)

14. As measured by WISC-IV testing on April 9, 2010, the Student was deemed to have a 78 Full Scale IQ. (Exh. 17-5)

15. As measured by the Conners 3rd Edition Teacher Rating Scale on April 9, 2010, the Student scored in the Very Elevated Range in Inattention, Learning Problems/Executive Functioning and Defiance/Aggression. (P-17-7)

16. As measured by the Woodcock-Johnson III Tests of Achievement on May 11, 2010, the Student scored an 81 in broad math (5.2 grade level equivalent), 65 in broad reading (2.7 grade level equivalent), 61 in broad written expression (2.6 grade level equivalent). (P-18-1)

17. On a DC standardized assessment on or about 2010-2011, the Student was deemed to have brought her mathematics score from "below basic" to "basic." (Exh. 13-2)

18. On the DC standardized assessment on or about 2010-2011, the Student was deemed to have lost ground in reading and rated "below basic" after having been rated "basic." (Exh. 13-3)

19. In writing, on the DC standardized assessment on or about 2010-2011, the Student scored in the "below basic" level. (Exh. 13-5)

20. For her April 13, 2011 IEP, the Student was offered 5 hours per week of specialized instruction outside general education in reading, 5 hours per week of specialized instruction inside general education in written expression, 5 hours per week of mathematics

outside general education, 5 hours per week of mathematics inside general education. (Exh. 13-8)

21. The IEP provides for classroom accommodations of repetition of directions, simplification of oral directions, test modifications. (Exh. 13-10)

22. The 2010-2011 school year was the Student's last year in middle school. Petitioner contacted School B for information about a high school for the Student for 2011-2012. Petitioner was told that she should get a package relating to the school. (Testimony of Petitioner)

23. The Student did not receive any package or any specific notice indicating the school setting that they Student should appear at for 2011-2012. (Testimony of Student)

24. At or near the start of the 2011-2012 school year, the Student received a call indicating that she was supposed to go to School C for 2011-2012. (Testimony of Student)

25. The Student then went to School C at or near the start of the 2011-2012 school year. (Testimony of Student)

26. After the Student started attending School C, certain other female students at the school ("the female students") began to threaten the Student via cell phone messages and texts. The Student received these messages after the school day since she had to give her phone to the school staff while she was in classes during the school day. (Testimony of Student)

27. Some or all of the female students were the students who had bothering the Student at School A. (Testimony of Petitioner)

28. Shortly thereafter, the female students approached the Student after school near a train station. The female students engaged in the verbal harassment and intimidation of the Student. Petitioner was also verbally harassed and intimidated during this encounter. (Testimony of Student; Testimony of Petitioner)

29. Petitioner alerted staff at School C about the threats and was told there would be a mediation with the female students. (Testimony of Student)

30. When there was no mediation in the next day or so, Petitioner sought a safety transfer with school officials. (Testimony of Petitioner)

31. Petitioner then received a form from school officials indicating that the Student was withdrawn from School C. (Testimony of Petitioner; Testimony of [REDACTED])

32. The Student was not at the school long enough to know what was happening in terms of special education services. The Student did not receive special education services while she was at the school. (Testimony of Petitioner)

33. According to DCPS procedure, mediation is the first step when there are safety concerns at a school. (Testimony of [REDACTED])

34. According to DCPS procedure, safety transfers are possible for "serious problems" where a formal report is filed. Safety transfers are seen as a last resort. (Testimony of [REDACTED])

35. No formal report was filed in regard to the incidents involving the Student and the female students. The Student and Petitioner did not submit an incident report or file a report with the police. (Testimony of Student; Testimony of Petitioner; Testimony of [REDACTED])

36. School C did not receive any written submissions regarding a school safety incident pertaining to the Student. (Testimony of [REDACTED])

37. Petitioner then tried to enroll the Student at School D, School E and School F but was told that the schools would not allow the Student in. School E and School F indicated that there was a waiting list to attend the school. (Testimony of Student; Testimony of Petitioner)

38. In the progress report dated September 23, 2011, the Student received C in Developmental Reading 1. She was deemed to have 11 absences. (P-16-1)

39. In the progress report dated September 23, 2011, the Student received a 75 in English 1, with excellent initiative excellent behavior and 5 absences. (P-16-1)

40. In the progress report dated September 23, 2011, the Student received an F in Biology 1, with a notation for excessive absences, possibility of failing, and a request for a conference with the parent. (P-16-1)

41. In the progress report dated September 23, 2011, the Student received a 50 in Algebra 1, with 6 absences and a notation that the Student does not complete assignments. (P-16-1)

42. In the progress report dated September 23, 2011, the Student received an F in World History/GEO I with a notation that the Student is failing. (P-16-1)

43. In the progress report dated September 23, 2011, the Student was deemed absent from Art and Design Foundations 3 times. (P-16-1)

44. In the progress report dated September 23, 2011, in regard to the entire school day, the Student was deemed to have been absent 11 times to date . (P-16-1)

45. The Student was absent September 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28 2011, until she withdrew on September 28, 2011. (R-7; R-8)

46. After the Student left School C, Petitioner went numerous times to the Central Office of the Respondent to get the Student a safety transfer. Petitioner spoke to the secretary for [REDACTED] and then spoke to [REDACTED] (Testimony of Petitioner)

47. [REDACTED] is the Special Education Specialist for School C. (Testimony of [REDACTED])

48. Petitioner was told that the Student was withdrawn and had to be re-enrolled into the system. (Testimony of Petitioner)

49. On October 20, 2011, Petitioner's attorney contacted [REDACTED] and asked her about a safety transfer. The attorney first sought placement at School F. He indicated that School F is the only school the parent believes the Student will be safe at. (Testimony of [REDACTED] Exh. 10)

50. Later on October 20, [REDACTED] replied that she would forward the request to the Instructional Superintendent and that DCPS would need documentation to substantiate the safety transfer. She indicated that School F is not accepting any more special education students. (Exh. 10-1)

51. At this time, [REDACTED] indicated that if the request for a transfer was approved, she and the superintendent's office would collaborate on an appropriate location of services. (Exh. 10-1)

52. The documentation [REDACTED] was requesting was an incident report or a police report. (Testimony of [REDACTED])

53. Requests for safety transfer are sometimes not valid. As a result, documentation is required to show that an incident in fact occurred. (Testimony of [REDACTED])

54. The incident report and the police report were never provided. (Testimony of [REDACTED])

55. Petitioner's attorney contacted [REDACTED] again on November 6, 2011 for a status update. (Exh. 11-1)

56. Afterward, ██████████ made phone calls on the Student's behalf and arranged for the Student to attend School G. This process took a little bit less than a month. (Testimony of ██████████)

57. The Student has made progress at School G. She received a B in Social Studies. She made progress in English and received a C in that subject. (Testimony of ██████████
Testimony of ██████████)

58. At School G, the Student moved from a 3rd-4th grade writing level to a 5th-6th grade writing level. She learned editing skills, how to work on structural errors. (Testimony of ██████████)

59. The Student's Progress Report at School G dated June 14, 2012 indicated a C Final Grade in Algebra 1 (F Term 1, B Term 2, F Exam)(pleasure to have in the class); C Final Grade in English 1 (F Term 1, C Term 2, C Exam)(good participation, needs more study); D Final Grade in Biology 1 (D Term 3, D Term 4, F Exam)(needs more study); C Final Grade English 2 (B Term 3, B Term 4, C Exam (good participation)). (R-3-1)

60. The Student's IEP Progress Report dated March 30, 2012 showed progress and mastery in all areas for reading, writing, mathematics. (R-4-1-2)

61. I found all the District witnesses in this matter credible. Petitioner and the Student were partly credible because they testified that the Student was at School C for only three days during 2011-2012 when the withdrawal notice and attendance records indicate that the Student was at the school for longer period of time. I also found ██████████ Petitioner's expert witness, only partly credible. At one point, ██████████ indicated that the Student did not suffer any harm from the lack of educational services in Fall, 2011. Later, ██████████ indicated

that the Student did suffer harm as a result of the lack of educational services. (Testimony of Petitioner; Testimony of Student; Testimony of [REDACTED])

CONCLUSIONS OF LAW

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

The burden of proof in a special education due process hearing lies with the party seeking relief. 5 DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conforming with a written IEP (i.e., free and appropriate public education, or "FAPE"). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D); 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005). Pursuant to the Supreme Court's decision in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005). The standard set out by the Supreme Court in determining whether a child is receiving a FAPE, or the "basic floor of opportunity," is whether the child has "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." Rowley, 458 U.S. at 201. The IDEA, according to Rowley, imposes "no additional requirement that the services so provided be sufficient to maximize each child's potential commensurate with the opportunity provided other children." Id. at 198; A.I. ex rel. Iapalucci v. Dist. of Columbia, 402 F. Supp. 2d 152, 167 (D.D.C. 2005)

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 CFR Sect. 300.513(a).

1. Failure to Determine Placement and Notify Petitioner of Placement.

Petitioner alleges that Respondent failed to determine an placement for the Student for 2011-2012. Petitioner also alleges that Respondent failed to provide Petitioner with a Prior Written Notice relating to the placement decision for 2011-2012.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that the placement decision is determined at least annually and is based on the child's IEP. 34 CFR Sect. 300.116(b)(1)(2). Prior Written Notice is to be provided for changes in placement. 34 CFR Sect. 300.503. Further, the IDEA requires that a student with a disability have an IEP in effect "at the beginning of each school year." 34 C.F.R. Sect. 300.323(a).

The record does not support the contention that Respondent did not "determine" a placement for the Student for 2011-2012. The record indicates that Respondent did determine a placement for the Student for 2011-2012, which placement was at School C. However, Respondent failed to notify Petitioner of this placement until the start of school. On or about the first day of school, 2011-2012, Respondent notified Petitioner of the placement. The Student then immediately started attending School C.

A violation of the procedural safeguards in IDEA may compel the conclusion that a child has been denied FAPE if the violation caused the child substantive harm. Lesesne v. District Of

Columbia, 447 F.3d 828, 834 (D.C.Cir.2006) (hearing officer properly determined that Petitioner was required to demonstrate that her child suffered educational harm in order to establish that he was denied FAPE by the school district's procedural violation) While courts have held that the failure to notify the parent of a school placement can result in a FAPE violation, Eley v. District of Columbia, 2012 WL 3656471 (D.D.C. 2012)(Student was not placed for several weeks before parent unilaterally placed Student at private school), courts have also found that the failure to notify the Student of an educational placement can be a procedural violation if the Student knew of the placement decision and had an opportunity to attend school. S.H. v. New York City Dep't of Educ., 2011 WL 666098 (S.D.N.Y. 2011)(where parents were sent mistaken notice and knew notice was a mistake, no FAPE violation); cf. M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256 (S.D.N.Y. 2010)(Student did not receive timely notice but did have notice by the start of the school year).

Here, Respondent did not provide the Student with notice of the school setting the Student was to have attended for 2011-2012 until the start of school. However, the Student missed little school time as a result of this lack of notice. After learning of the placement on or about the first day of school, the Student immediately attended the school. Petitioner and the Student indicated that the Student missed a maximum of one day of school as a result. Petitioner has not provided any testimony or evidence to the effect that the loss of one day of school instruction specifically harmed the Student. N.D. v. State of Hawaii, 600 F.3d 1104 (9th Cir. 2010)(even where District reduced school year by 17 days, no violation of IDEA found). Under the circumstances, Respondent's failure to provide Petitioner with timely notice of the placement determination does not amount to a FAPE denial. .

Parenthetically, the Prior Written Notice provisions in the IDEA are triggered by a "change in placement". A change in placement does not necessarily result from a change in school setting. Rather, a change in placement results from "a fundamental change in, or elimination of, a basic element of the educational program." Lunceford v. District of Columbia, 745 F.2d 1577, 1582 (D.C. Cir. 1984). In Letter to Fisher, the United States Department of Education Office of Special Education Programs (OSEP) called the issue of determining change of educational placement a "very fact-specific inquiry." Letter to Fisher, 21 IDELR 992 (OSEP 1994). OSEP concluded that whether a change in educational placement has occurred turns on "whether the proposed change would substantially or materially alter the child's educational program." Here, Petitioner has presented no testimony or evidence to indicate that the change in school setting from middle school to high school was a "change in placement."

2. Inappropriate Placement Claims/Failure to Implement Claims.

The focus on an IDEA claim is the impact on a student's substantive rights. Lesesne ex rel. B.F. v. District of Columbia, 447 F.3d 828, 834 (D.C.Cir.2006); Smith v. District of Columbia, 2010 WL 4861757 (D.D.C. 2010); Holdzclaw v. District of Columbia, 524 F.Supp.2d 43, 48 (D.D.C.2007); Kruvant v. District of Columbia, 99 Fed. Appx. 232, 233 (D.C.Cir. 2004).

Courts hold that school districts may designate schools for students as long as the District assigns a school that may appropriately implement a Student's IEP. T.Y. v. New York City Department of Educ., 584 F.3d 412 (2d Cir. 2009). Although the LEA has the discretion with respect to the location of services, that discretion cannot be exercised in such a manner to deprive a Student of a FAPE. Gellert v. District of Columbia, 435 F. Supp.2d 18 (D.D.C. 2006); Holmes v. District of Columbia, 680 F. Supp. 40 (D.D.C. 1988).

Additionally, Districts may be held liable on a "failure to implement" theory. "Failure to implement" claims are actionable if the school district cannot materially implement an IEP. A party alleging such a claim must show more than a de minimis failure, and must indicate that substantial or significant portions of the IEP could not be implemented. Savoy v. District of Columbia, 2012 WL 548173 (D.D.C. 2012)(holding no failure to implement where District's school setting provided ten minutes less of specialized instruction per day that was on the IEP); see also Van Duyn ex rel Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9th Cir. 2007).

Petitioner's main contention in this connection is that Respondent assigned the Student a school that was an unsafe environment for her and that Respondent then improperly denied the Student a safety transfer. Petitioner contends that, as a result, the Student did not attend school regularly for 2011-2012 until well into November, 2011. Petitioner also contends that School C did not provide the Student with special education services.

School districts have a duty to provide students with a safe learning environment. M.L. v. Fed. Way. Sch. Dist., 394 F.3d 694 (9th Cir. 2005); Lillbask v. State of Connecticut, 397 F.3d 77 (2^d Cir. 2005); Shore Regional High Sch. Bd. of Educ. v. P.S., 381 F.3d 194 (3^d Cir. 2004). Here, when Respondent was presented with a bullying situation, Respondent was obligated to promptly act to protect the Student from bullying, particularly when they were provided with notice of the bullying.

The record indicates that the Student was bullied while off school grounds by the female students, and I so find. The record also indicates that Respondent did in fact act to take steps to address the bullying once notified. According to the Petitioner and the Student, the Student was in School C for only three days for 2011-2012. Petitioner notified Respondent of the bullying,

and Respondent offered to mediate the situation between the Student and the girls who were harassing her.

However, Petitioner and the Student did not wait a reasonable amount of time to allow the mediation process to be conducted. Instead, Petitioner testified that she then took the Student out of school when the mediation session was not held within a day or so of it being promised. Petitioner and the Student indicated that the Student attended approximately three days of school at School C. M.L v. Fed. Way Sch. Dist., 394 F.3d at 650 (student was withdrawn from school after only five days, not giving district an opportunity to remedy the situation); compare Shore Regional High Sch. Bd. of Educ. v. P.S., 381 F.3d at 196 (District did nothing to stop harassment)

Petitioner then sought a safety transfer. To obtain a safety transfer, Petitioner was informed that documentation was required. Respondent's witnesses credibly testified that many students seek safety transfers for unsubstantiated reasons, and that police or incident reports are required to insure that a safety transfer is appropriate. However, even though Petitioner and the Student described an out of school incident that would be appropriately reported to the police, Petitioner did not provide this documentation. Respondent therefore did not grant the request for a safety transfer, though [REDACTED] of Respondent then endeavored to gain the Student access to another school, which was School G. The Student remains at School G to this day.

In her testimony, Petitioner underscored the point that she had appeared at the District's central offices numerous times to try and obtain the safety transfer. The record indicates that Petitioner also enlisted her attorney to obtain the safety transfer. However, Petitioner also failed to explain to this IHO why the requested documentation could not be provided upon request.

It should be noted that Petitioner did not show that the loss of school time had impact on the Student educationally, and did not present an expert witness to specifically explain how the loss of school time denied the Student a FAPE. Instead, Petitioner's expert initially testified that the Student did not suffer any educational harm as a result of her missed educational time during 2011-2012. It is also noted that Petitioner did not call any expert with a background in psychology to support its position that the Student required a safety transfer here. Shore Reg'l High Sch. Bd. of Educ. v. P.S. ex rel. P.S., 381 F.3d at 200 (psychologist called to rebut contentions by District that Student could have progressed at school setting with safety concerns; Circuit reversed District court and ruled for parents)

Petitioner also alleges that, for the time period that the Student was at School C, the Student did not receive any special education services. Respondent therefore contends that Respondent did not implement the Student's IEP and provided an inappropriate placement. However, Petitioner and the Student testified that that the Student was at School C for approximately three days. Accordingly, Petitioner testified that she did not know whether School C was prepared to provide the Student with the special education services on the IEP for the 2011-2012 school year. It is noted that Petitioner provides no support for the proposition that the lack of services during such a limited time period can amount to a finding of FAPE denial. N.D. v. State of Hawaii, 600 F.3d 1104 (9th Cir. 2010)(even where District reduced school year by 17 days, no violation of IDEA found). Moreover, as indicated previously, Petitioner's expert witness indicated that the Student may not have suffered any educational harm as a result of the missed time. The expert, [REDACTED] initially testified that the progress shown by the Student at School G indicates that the Student was not harmed by the lack of educational services in 2011-2012.

In sum, Petitioner has not met her burden regarding appropriate placement claims and "failure to implement" claims. While I empathize with Petitioner, this IHO is of the view that Respondent cannot be held liable for an inappropriate placement claim or for a "failure to implement" claim here. Respondent timely responded to the allegations of bullying, and Petitioner refused to follow Respondent's reasonable procedural requirements in regard to safety issues.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered that Petitioner's claims are hereby dismissed with prejudice.

Dated: February 20, 2013

Michael Lazan
Impartial 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 USC §1415(i).

Date: February 20, 2013

Michael Lazan
Impartial Hearing Officer